

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Elizabeth A. Brown
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THE STATE OF NEVADA, ,

PLAINTIFF,

vs.

BRENDAN DUNCKLEY,

DEFENDANT.

Sup. Ct. Case No. 83867

Case No. CR07-1728

Dept. 4

RECORD ON APPEAL

VOLUME 3 OF 14

DOCUMENTS

APPELLANT

Brendan Dunckley #1023236

NNCC

P.O. Box 7000

Carson City, NV 89702

RESPONDENT

Washoe County District

Attorney's Office

Jennifer P. Noble, Esq. #9446

P.O. Box 30083

Reno, Nevada 89502-3083

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1 Code No. 4185

2

3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

6 -oOo-

7 STATE OF NEVADA,)

8 Plaintiff,)

Case No. CR07-1728

9 vs.)

Dept. No. 4

10 BRENDAN DUNCKLEY,)

11 Defendant.)

12

13 TRANSCRIPT OF PROCEEDINGS

14 SENTENCING

15 August 5, 2008

16 RENO, NEVADA

17

18

19

20

21

22

23 Reported By:

LISA A. YOUNG, CCR No. 353

APPEARANCES:

For the Plaintiff:

KELLI ANNE VILORIA
Deputy District Attorney
Reno, Nevada

For the Defendant:

DAVID C. O'MARA
Attorney at Law
Reno, Nevada

Parole and Probation:

LUPE GARRISON

EXHIBITS

MARKED

ADMITTED

A - Report from Eng Counselling

5

5

B - Letter from Alamo Casino

5

5

1 RENO, NEVADA, TUESDAY, AUGUST 5, 2008; 9:00 A.M.

2 -oOo-

3 THE COURT: Brendan Dunckley.

4 MS. VILORIA: Morning, Your Honor. Kelli Anne Viloria
5 on behalf of the State.

6 MR. O'MARA: David O'Mara on behalf of Mr. Dunckley.

7 THE COURT: This is the time set for sentencing. I am
8 in receipt of the presentence report dated July 17th, 2008.

9 I also have a document which was received by the Court
10 Clerk that has not been considered by the Court that has been
11 filed in.

12 Counsel, do you want the Court to consider the
13 document?

14 MS. VILORIA: The State does, Your Honor.

15 MR. O'MARA: Your Honor, I don't think it has any
16 bearing on this case. But Mr. Dunckley can certainly tell you
17 why this has happened with regards to his child support and the
18 Sushi Club and we have no objection to the State introducing it.

19 THE COURT: Then the Court will review the document.

20 Okay. You had an opportunity to review the
21 presentence report with your client?

22 MR. O'MARA: Your Honor, we have reviewed the
23 presentence report dated July 17th of 2008 with a few
24 corrections. Defense attorney is David O'Mara who is conflict

1 counsel and not deputy public defender.

2 Also, under Category A and Category B in the charged
3 Information, the penalties for these charges should have
4 included that he may be in prison for a period of time and that
5 he is not eligible until a sexual evaluation is completed which
6 certifies that Mr. Dunckley does not represent a high risk to
7 re-offend.

8 That language and the language that was part of the
9 guilty-plea memorandum was not included in the presentence
10 report. I want to make the Court aware of the fact that
11 probation in both of these charges is available in this case.
12 While the laws have changed since the period of time when the
13 charge one began, it does not allow probation any more. So I
14 would like the Court to take that into consideration.

15 Other than that, we have no other corrections, Your
16 Honor.

17 THE COURT: Okay. You may proceed with argument.

18 MR. O'MARA: Okay. First, I would like to introduce
19 and have admitted two documents. One document is a letter from
20 a Leslie Dietsche (phonetic), if I may approach. Let me grab
21 the other document.

22 THE COURT: Why don't you grab everything, and the
23 Clerk will mark it all at one time.

24 MS. VILORIA: I have seen a copy of these, Judge.

1 MR. O'MARA: There is also another copy from Eng
2 Counseling setting forth information about Mr. Dunckley's
3 clinical contact with Steven Eng as a sexual offender.

4 THE CLERK: Exhibits A and B marked.

5 (Exhibits A and B were marked for identification.)

6 THE COURT: Okay. Exhibit A is a report from Eng
7 Counseling, and there is no objection to its admission so I will
8 admit it. And Exhibit B is a letter from Alamo Casino and no
9 objection so I will admit that.

10 (Exhibits A and B were admitted into evidence.)

11 MR. O'MARA: Your Honor, in regards to the Eng
12 Counseling, which is Exhibit A, you will notice that there are
13 numerous attendances by Mr. Dunckley for sexual-offender
14 counseling. He had individual sessions on March 3, 26 and
15 April 29th of this year.

16 He goes on to group attendance with Mr. Eng on 4/23.
17 You notice how the 4/30 has an absence? That was because he
18 went to his individual counseling the day before. Those are the
19 dates in which he did not attend group attendance because it was
20 the same week.

21 Mr. Dunckley informed me the 6/12 was a work
22 emergency. He basically went on a weekly basis to Eng
23 Counseling.

24 What we are going to ask for today, Your Honor, is

1 that you not follow the recommendations of the Parole and
2 Probation and actually award or not award but grant Mr. Dunckley
3 the opportunity to be on probation for both of these charges.

4 One of the reasons is that when we were going through
5 negotiations in the settlement, that was one of the main reasons
6 to give him the opportunity. As you recall about five months
7 ago when we were in here during the change of plea, we set it
8 out five months to give him an opportunity to go to these
9 counseling sessions.

10 From the letter, you can see he started his counseling
11 sessions prior to the entry of the guilty-plea memorandum which
12 I believe was done on the 6th of March. He went religiously to
13 those counseling services.

14 He is really taking hold and finding out what is
15 making him do these bad things. He is trying to take
16 responsibility for his actions. I believe these therapy
17 sessions are working toward making him a better person and
18 someone who will be, at least, someone who will be a benefit to
19 our society.

20 As you can see from the letter from the Alamo Casino,
21 Mr. Dunckley has been a good person to his employers and other
22 people with regards to stepping up and doing things when not
23 everybody would do it with regards to helping and cleaning the
24 floor and things like that when there was a broken pipe when he

1 wasn't required to do that. I think there are good things
2 involved that we need to look at in that regard.

3 Also, I have today Mr. Dunckley's mother in law who
4 would like to make a statement. Her name is Pam McFerren
5 M-c-f-e-e-r-e -- I apologize. M-c-f-e-r-r-e-n. And she would
6 like to make a statement, Your Honor, to the Court to ask for
7 probation as well.

8 THE COURT: You want her sworn, Ms. Viloría?

9 MS. VILORIA: No, ma'am.

10 THE COURT: You can come forward and stand next to Mr.
11 O'Mara.

12 MS. MCFERREN: I'm Brendan's mother in law, Pam. I
13 have known him for eight and a half years. He and my daughter
14 have quite a special relationship. He has four children, two by
15 a previous marriage. He is the soul provider of his home, his
16 family. That includes with my daughter, his wife, their two
17 children, my grand children. And, also, child support for his
18 first two children by a previous marriage.

19 He also has helped me financially as well as
20 physically when I have needed help off and on over the years.

21 I have noticed the counseling that Brendan is getting
22 has been very effective. I have noticed when he comes back from
23 his meetings with his counsellor, he is a lot more calm. His
24 demeanor is a lot more calm. As calm as you can be under these

1 kind of circumstances. I believe it has been effective with
2 him.

3 I feel that he really should continue with that, and
4 it's been very helpful so far.

5 And I would like to ask for probation for him and the
6 continued counselling so that he can be with his family which is
7 a very important thing.

8 As you know, families don't stick together too much in
9 these times. And it's very important especially to those little
10 boys.

11 THE COURT: Okay. Thank you.

12 MR. O'MARA: Your Honor, in going over, it's true Mr.
13 Dunckley has four children, 10, 9, 7 and 3 which is set forth in
14 the presentence report. I think, you know, we have heard a lot
15 today in other cases and things like that. I think in this case
16 it really is true that this is really a sad case for everyone
17 involved.

18 It's not only sad for the two victims that Mr.
19 Dunckley committed these crimes against, but it is also sad for
20 the kids and his wife that are now going to have to deal with
21 these types of situations. And in light of these four kids, he
22 does have child support he needs to continue.

23 I think that in this case we really have to think
24 outside the box in sentencing. And it comes down to a lot of

1 this coming from -- one of these cases is really old. And there
2 is a whole different type of sentencing structure at this point
3 in time. And now we are looking at a sentencing structure in
4 this system where we are looking at these cases differently.

5 I think if we look outside the box and really say how
6 can we properly make sure that Mr. Dunckley takes responsibility
7 for his action and so-called punishment for the crimes he
8 committed but also give him the opportunity to rehabilitate
9 himself and provide for those people so that other people, like
10 his kids and wife, are not victimized by his behavior. I think
11 his mother in law said it really well, in fact, when he takes
12 these therapy classes he is a different person.

13 Sometimes that's what people need. They need control
14 over their lives such as a probation to tell them they need to
15 go to probation and have a job and do these things. And I think
16 when we jump to the conclusion, let's throw this person away,
17 put him in jail for the rest of his life, if we do that, then we
18 are not helping anybody in this case.

19 I think that if we look at Mr. Stivensen's (phonetic)
20 recommendations, it talks about he specifically, in bold
21 letters, says Mr. Dunckley does not represent a high risk to
22 re-offend sexually. He goes on to say Mr. Dunckley presents as
23 a positive candidate for treatment.

24 Treatment process with Mr. Dunckley, treatment should

1 be the process with Mr. Dunckley. He recognizes the need for
2 intervention. I think that assessment is correct. I think if
3 we allow Mr. Dunckley to be on probation, he will get the
4 treatment he needs.

5 There are certain recommendations that I think are
6 clearly appropriate in this case, Your Honor, and will help do
7 what we need to do to take care of the punishment of Mr.
8 Dunckley as well as rehabilitate him so these incidents do not
9 occur.

10 Those recommendations are set forth on page six of his
11 report. I would like the Court to consider those as well.

12 Your Honor, the report says Mr. Dunckley is not
13 applicable to probation. He does not have a high risk to
14 offend, so he does qualify for probation.

15 If the Court is inclined to do some type of jail term
16 in this-- prison term in this thing, we ask that you really do
17 think outside the box and give him an opportunity to prove
18 himself, even in prison.

19 There are two counts. We can suspend the first count
20 of the ten-year maximum and hold that over Mr. Dunckley's head
21 to allow him the opportunity to go into prison and do something
22 with his life and get himself out in a few years instead of ten
23 years when his kids basically are grown up and past their
24 teenage years.

1 I think probation-- we are requesting you allow
2 probation in this case, but if you do not find probation is
3 appropriate, we do ask that you, at least, give him the
4 opportunity to go to prison on maybe one count. Hold the other
5 count above his head and sentence him according to the sentence
6 of probation which is two to five years on Count II, Your Honor.

7 I think Mr. Dunckley's statement at the back page
8 really sums it up about how remorseful he is and he did is want
9 an opportunity to be with his kids, pay his child support and
10 move forward and take responsibility of the two incidents that
11 caused him to be put in this position.

12 With that, I respectfully request that you allow for
13 probation.

14 THE COURT: Ms. Viloría?

15 MS. VILORIA: Judge, first of all, I want to state
16 that paragraph 11 of the guilty-plea memorandum allows me to
17 discuss with you any counts that were dismissed or any other
18 cases that were charged or uncharged which were either dismissed
19 or not pursued by the State at the time of sentencing. That's
20 important because you need to realize here who you are
21 sentencing today.

22 Hopefully today is going to be the end of Brendon
23 Dunckley and what we have to deal with him.

24 This has been ten years of inappropriate conduct, ten

1 years of sexual attacks mostly on young woman who were 12 years
2 old or mentally ill and intoxicated cultivating into the final
3 account with the stranger attack with a woman who was .226 that
4 the defendant saw walking down the street, drunk and falling
5 down.

6 We did craft this creative plea bargain so this
7 defendant could have the right to posture himself to ask the
8 Court for sentencing. That's what he required before he came to
9 you and admitted his conduct and entered his plea of guilty.

10 The Court needs to know that your concern and the
11 State's concern are that the community have to be safe. And if
12 Brendon Dunckley is given probation, it will not be.

13 The factual corrections that I need to make on the
14 presentence investigation report in page six on March 21, 2007
15 when -- this is omitted so I'm just adding it in. When the
16 detectives went to talk to Brendon Dunckley and he denied he had
17 done anything, nothing happened, and when he ultimately changed,
18 yes, he performed fellatio on me as a way of thanking me for
19 getting her back in the apartment, that only came about after
20 the detectives said to him why are we going to find her DNA on
21 your penis?

22 The original story that this defendant crafted to
23 police is that while she was laying there unconscious she
24 started to throw up and he reached into your mouth to clear her

1 tongue and follow that had gone to the bathroom and touched his
2 penis while urinating and that would be the story of why you
3 have DNA.

4 This defendant is sophisticated in the sense that he
5 uses his wife as an alibi during the attacks so his wife is
6 brought into the picture where she says, I was on the phone with
7 him the whole time. There is no way this could have occurred.
8 What the full investigation showed is there was a few minutes
9 where he said I need to call you right back in about five
10 minutes and the rape happened and he called his wife back. It
11 wasn't a true alibi.

12 This has been ten years. That's important for you to
13 know. There are not two victims, there are three. Jessica H.
14 Laura S, and also Ashley.

15 What concerns me is when you look at the evaluation
16 that that Dr. Stivensen (phonetic) reports, everything is on
17 self-admitted conduct. And Dr. Stivensen (phonetic) sort of
18 congratulates the defendant by that saying, Look, he came
19 forward with all these other incidents of sexual conduct. But
20 he calls Ashley 14 years old at the time when we all know she
21 was 12.

22 He is not being forthcoming, and the Court needs to
23 recognize that because Dr. Stivensen (phonetic) didn't say he is
24 a low risk to re-offend. He deemed him a moderate risk to

1 re-offend. And that's based on the self-given information from
2 this defendant.

3 Judge as a parent -- from the recitation of all the
4 facts you see on everything, and, basically, how we ended up
5 solving the ultimate case is because the detectives and law
6 enforcement have been on this defendant's tail for years.

7 The defendant avoided any type of prosecution because
8 of the victims he has chosen.

9 Ashley V. is in prison right now. A good part of it
10 is because she turned to drugs and alcohol as being molested by
11 this defendant when she was little girl.

12 We created this allegation or this plea bargain so
13 that this defendant could ask you for probation, but the Court
14 needs to acknowledge Jessica, our last victim, is the one who is
15 a complete stranger to this defendant, didn't know anything,
16 literally woke up on her back in the floor of her apartment
17 right by the door with him shoving his penis in her mouth.

18 He comes to you today and brings witnesses to say he
19 is a good provider. We need to think about his children. We
20 can't put him in prison. I ask you one question, why wasn't he
21 thinking of that when he was trolling for his next sexual
22 assault victim?

23 Things have finally caught up with him, and that's why
24 we are here today. And the Division has appropriately asked the

1 Court to give him life in prison with the possibility of parole
2 after ten years.

3 I do recognize following the day of this plea bargain,
4 and I would note for the Court not a day sooner, that the day
5 after he entered his plea of guilty he began his sex offender
6 treatment.

7 And the Court is concerned as is the State whether or
8 not all of this is posturing himself for some sort of beneficial
9 sentence or a good outcome for you today.

10 The reality is I have looked at the evaluation, and
11 there are a couple things in there that are alarming to me and I
12 want to point them out to you.

13 Beginning at page seven, the paragraph under
14 perception of victim impact. One of the things that Dr.
15 Stivensen (phonetic) noted that Mr. Dunckley believed both
16 victims were harmed--again, there were three victims--as he
17 described taking their sense of security away inside, however,
18 was limited and somewhat superficial.

19 On page 11, Judge, it says, In considering the risk
20 scales along with clinical judgment, Mr. Dunckley is estimated
21 in the moderate range for sexual re-offense risk. Clinical
22 judgement elevated risk is there due to re-offense behaviors
23 occurring over an elapsed time and involved with an offense
24 against a stranger.

1 His promiscuous and impulsive sexual lifestyle places
2 him at greater risks for further allegations and charges. There
3 is evidence of being indiscriminate in regards to victim
4 selection, meaning, his modus operandi is not limited to a
5 particular victim, type, age or preference.

6 The fact that an evaluator would put that in there
7 shows you the level of gravity of danger of this defendant. And
8 my concern is that the community is flat at risk.

9 He also states on page 12 under the amenability to
10 treatment and prognosis, the second full sentence, He, being
11 Brendan Dunckley, does not present as an antisocial or defiant,
12 though, there may be some resistance to treatment upon the
13 realization of a longer-term process.

14 Why that is important, Judge, is if this defendant is,
15 in fact, doing a posturing to present walk the walk and do all
16 he needs to do to present good in Court today, then anybody, any
17 woman, whether it's a 12 year old or 28 year old that comes
18 within his way is a risk.

19 The State cannot risk that, Judge. The community
20 cannot risk that.

21 This defendant has shown himself to be deserved a
22 grant of a prison sentence. The life in prison is appropriate.

23 He should be commended for the effort he has made, and
24 that's why when the Division recommends a concurrent sentence on

1 the attempted sexual assault charge, it could be appropriate
2 here. I think the Division has short sold that count a little
3 bit because that's, really, the more egregious count. The whole
4 sexual assault nature of this should not be a two to five
5 sentence. It should be a 20-year sentence.

6 This defendant deserves to go to prison and life time
7 supervision and everything else that the Division recommends is
8 appropriate.

9 I just am concerned, frankly, Judge that nobody get
10 caught up on focussing on the children that are involved in this
11 case. Those are all people that should have been thought of
12 before this defendant decided to act on his impulse and attack
13 and escalate in violence. What's happened over the years,
14 Judge, every time he has raped somebody or inappropriately
15 touched someone and gotten away with it, he has gone up to the
16 next level.

17 The 12 year old is a friend of the family. A little
18 girl who befriended his wife who then became his victim number
19 one. There were victims in between there. Including the Laura,
20 the mental-health victim. We couldn't pursue the case because
21 of her mental-health issues. She was all part of this final
22 case where once we ended up getting the allegations with this
23 defendant with Jessica and we started seeing a pattern of
24 conduct, similarity in defenses, every single time his statement

1 was to the law enforcement was, Yes, I shouldn't have sex with
2 this girl. It was bad judgment. And he just for years and
3 years, for ten years, has been able to get away with it to the
4 point where he is escalating where he is trolling where he sees
5 drunk women falling down drunk on the street, he formulates the
6 thought in his mind, followed her in the house, and in a very
7 opportunistic and predatory manner attacked her. That deserves
8 ten years in prison, minimum.

9 MR. O'MARA: If I can just respond to a few things
10 before Mr. Dunckley addresses the Court.

11 THE COURT: Okay.

12 MR. O'MARA: First of all, there is no evidence
13 whatsoever that this charge caused Ms. Ashley -- I'm not sure
14 what her last name is. Ashley to go into drugs and use alcohol
15 and that's why she is in prison. There is no evidence of that.
16 And I understand that the D.A. wants to paint a huge horrible
17 picture of Mr. Dunckley and--

18 THE COURT: I won't consider that argument.

19 MR. O'MARA: It is also important that her description
20 of what happened on that night by Jessica was not as that she
21 woke up on her back past out. Her description in the Justice
22 Court when she testified was that she was standing up and she
23 made the affirmative step of walking toward Mr. Dunckley to
24 perform the fellatio.

1 This just goes to the point of the D.A. not having all
2 the facts and telling you different stories. It has nothing to
3 do with Mr. Dunckley not taking responsibility of his action.
4 The Court should be aware that is the testimony.

5 Also, in regards of him going to counseling, it was
6 done before the guilty plea was entered into which was March
7 6th. His counseling started on March 3rd.

8 I want the Court to be aware that Mr. Dunckley was
9 charged with those allegations against the individual Laura.
10 Laura did not show up at the preliminary hearing even though the
11 District Attorney said she was more than willing to be there and
12 they contacted her. We went-- we had three or four hours of
13 testimony over in the Justice Court. She still did not show up.

14 It's disingenuous for the District Attorney to say it
15 was because of her mental stability, and we don't know or have
16 any documentation showing she had any mental stability. To
17 place that on Mr. Dunckley, it's inappropriate to bring up in
18 the sentence.

19 MS. VILORIA: Objection. I absolutely made a
20 representation as an officer of the Court as to that being the
21 issue. And you are allowed to think about her.

22 Mr. Dunckley refers to her throughout the report to
23 Dr. Stivensen (phonetic). She is the one who he attacked on the
24 hood of a car who he claims was consensual but he put his penis

1 in her mouth.

2 I don't why we are acting like she is not a victim.
3 She did not show up at the prelim. We did not go forward with
4 that, and it is because of her mental-health issues. I am
5 making that -- and he knows that based on all the discovery
6 provided. I don't know why he is saying that's disingenuous.
7 It's not. It's the facts of the case.

8 MR. O'MARA: Well, we will let that stand. With
9 what-- if that's what she understands, that's what she
10 understands.

11 THE COURT: Does it make a difference?

12 MR. O'MARA: It doesn't. I'm just trying to set
13 forth --

14 THE COURT: Your client has admitted to the behavior
15 with her?

16 MR. O'MARA: Yes, my client has admitted to the two
17 charges that are involved in this case. But I just wanted to
18 make the Court away of those three or four different things so
19 we know what we are dealing with regards to thinking outside of
20 the box in this case to figure out some type of sentencing that
21 is appropriate which will allow for the punishment for the
22 crimes that were committed as well as allow for the
23 rehabilitation and acknowledgment of trying to get Mr. Dunckley
24 back into society and being a productive part of your society

1 instead of just saying, We are trying to give you probation.
2 And let's see what we can do. And go out there and get some
3 type of treatment and go from there. We will come to
4 sentencing. We will take that into consideration.

5 I would like to introduce another document in that
6 regard. It's an e-mail between myself and Ms. Viloría that
7 really talks about--

8 MS. VILORIA: I'm going to object. This is outside
9 the context of negotiations. This is not appropriate for
10 sentencing. I'm going to object.

11 THE COURT: What is the appropriateness of
12 negotiations being admitted?

13 MR. O'MARA: I'm going through-- she has brought up
14 the fact he is just posturing, Your Honor --

15 MS. VILORIA: Judge, my statement is we don't know
16 whether he is or not. That's something we need to take a view
17 at it.

18 MR. O'MARA: Your Honor, if I can complete my
19 sentence, in the purpose of this, Your Honor, is to show that
20 when we were in negotiations of this case, that Ms. Viloría was
21 going to take into consideration what he did during this
22 five-month period. This was an e-mail that basically said I
23 understand you will not agree to probation if it is not
24 recommended.

1 But in this case, as we discussed that there would be
2 factors in which she would take into consideration that she
3 would look at to maybe consider probation at this time.

4 THE COURT: Are you alleging that she has violated her
5 negotiations?

6 MR. O'MARA: No, no, no. Not at all. I'm just trying
7 to paint the picture of what was happening during that period of
8 time. And her statement in regards to, We don't know if he is
9 posturing goes directly to this. He was doing this because
10 that's what was asked of him--

11 THE COURT: I don't think that's her statement. Her
12 statement was talking about the whole period of time he has been
13 in counseling, whether or not it was going to last indefinitely
14 or whether or not he was posturing prior to sentence.

15 MS. VILORIA: That's right.

16 MR. O'MARA: We have made a circle of where we are
17 going in that regard, and that is fine, Your Honor.

18 With that, Your Honor, again, I request probation in
19 this is, and I will let Mr. Dunckley address the Court.

20 THE COURT: Okay. I'm going to hear from the Division
21 of Parole and Probation first.

22 MR. O'MARA: Okay.

23 MS. GARRISON: Well, Your Honor, in listening to both
24 sides of the argument, Your Honor, one of the things that was

1 brought up was the fact that they didn't want to make his two
2 sons, I believe, victims in this matter because of his behavior.
3 I believe, Your Honor, he already has done that by his behavior.

4 They are going to grow up knowing the type of person
5 their father is, and that's not going to go unnoticed by them.

6 Your Honor, I believe that the recommendation as
7 stated is appropriate. I believe that he was opportunistic
8 regarding the victims that he chose.

9 My concern, as well as Ms. Vilorio has stated, I was
10 reading the psycho-sexual evaluation and the one that stood out
11 in my mind was that he, according to the evaluator, seemed to
12 have glossed over, it seems like, the culpability or the damage
13 or the harm he did to the victims. Even though he did
14 acknowledge he did damage them in some manner.

15 The Division is going to stand by the recommendation,
16 Your Honor. We have four days credit for time served.

17 THE COURT: Thank you.

18 Mr. Dunckley, the law affords you an opportunity to be
19 heard. I have read your written statement. Do you have
20 anything you would like to say at this time?

21 THE DEFENDANT: Your Honor, the State is doing their
22 job. I moved to Reno in the Spring of 2000. The allegations
23 were made against me from 1998.

24 I took the plea as opposed to going to trial to

1 prevent the victims from pursuing further.

2 Ms. Vilorio states that I made the comment of saying
3 that the victim Ashley was 14 because of the time that I had
4 known her, which was the summer of 2000 when I met her, she
5 indicated to me that she was 14. As a matter of fact, when we
6 met, she indicated she was 17. Upon finding out later her true
7 age, myself and my wife stopped contact all together with her.
8 It doesn't change the fact of what I did.

9 Posturing, whatever it may be called, I took the deal
10 as opposed to going to trial because I wanted to prevent any
11 further harm to the victims.

12 I can't say I know what they are going through because
13 I can't. It's not my place to assume I know what they feel.

14 I know what I did, and I know what I took from them.
15 I took their sense of respect, of certainty. I can't give that
16 back.

17 I have attended treatment programs. I made it a point
18 to try and attend victim impact panels at one of the local
19 churches here.

20 When the Division and the State state that I glanced
21 over, it's not my place to say how I affected them. I can only
22 assume what happened.

23 And with regards to my children, I agree. They are
24 victims as well, as is my wife, as is my mother in law and

1 everyone who knows me. And my reputation of being who I am as
2 an upstanding citizen, I took their trust a way, too.

3 Being a father is the most important thing to me in
4 the world. And knowing I'm a horrible example kills me more
5 than anything you can punish me with, Your Honor. I ask that I
6 be given the chance to show my children that people can make
7 differences in their life and make a change.

8 I pride myself that when my wife was pregnant I never
9 missed a single doctors appointment. I never missed an
10 appointment. I'm a dad through and through. Somewhere along
11 the line, I lost that. I disrespected my family and more
12 importantly I disrespected my family.

13 I love my family more than anything in the world. I
14 took this deal to prevent any further harm for them and for the
15 victims. I just ask to have the opportunity, if it's possible,
16 to continue to be a part of my children's life.

17 My wife didn't have a father growing up, and all she
18 ever wanted was a husband and a father to raise her children.

19 I'm the sole provider of my family. I have two
20 children who I owe money to, and I try being a single income
21 household and single income father, it is hard to get money to
22 them. I try and keep stable employment, and when I'm getting
23 laid off or working, I'm always working.

24 Your Honor, all I ask is for the opportunity to show

1 that I can do better. And I can be better at this. I screwed
2 up, and I admit the fact I made mistakes and I hurt people. I
3 want to prove that it won't happen again. And if it does, which
4 I pray it never will, because I'm getting treatment every week.
5 I'm keeping support with the people I need support from. I have
6 medication to deal with my inability to make correct calm
7 decisions as opposed to being spontaneous.

8 I don't know what more I can say to Your Honor.

9 I throw my heart to you to allow me to be a part of my
10 children's lives, and I understand the fact I have hurt people.
11 But at the same time, the last five months have been such an
12 awakening to see why I allowed myself to do that and why I felt
13 it was okay to disrespect my bonds of my marriage and my
14 children who I brought into this world.

15 They don't deserve what I put them through, but that's
16 something I will have to deal with the rest of my life and so
17 will the victims.

18 I ask you give me the opportunity, Your Honor, to be
19 there and to prove that there is good. And I can make a
20 difference. And I can be productive to society and a benefit.
21 I learned so much from the victim impact panels and counseling.
22 It's something I want to pursue further to help people who are
23 in that situation. They need me to be the dummy to beat up, I
24 have no problem with that either. But I just ask that you give

1 me that opportunity, Your Honor, to prove that I can do this and
2 not just the five months that I proved I can stay out of trouble
3 and make my appointments and meetings and go above and beyond
4 but continued to be allowed to do that, Your Honor.

5 THE COURT: Mr. Dunckley, perhaps your plea would have
6 more resonance with me with regard to the issue that you had
7 with the friend of the family, even though it was a very young
8 girl, and even though you argue you thought she was 17, I have
9 heard that many times. That argument for treatment if it was an
10 isolated incident may well resonate with me.

11 However, the latest victim. I'm not talking about the
12 victim in between you are not charged with. I'm very concerned
13 with your latest victim. I agree with Mrs. Vilorio. I don't
14 think that the sentence is recommended even by the Division is
15 appropriate given your behavior.

16 You picked someone you didn't know, and you committed
17 a sexual assault on her.

18 I know you pled to something that allows for a lesser
19 offense, but it does not allow for probation.

20 It is the order of this court you pay \$25
21 administrative assessment fee, \$150 in DNA testing fees. I
22 think you have already submitted to a DNA analysis test. So you
23 won't have to submit again, but you also will have to pay the
24 \$950 in psycho-sexual fees.

1 I am sentencing you as to Count I to life in prison
2 with the possibility of parole after ten years has been served.

3 As to Count II, I'm sentencing you to 120 months in
4 prison with minimum parole eligibility of 24 months. That will
5 be allowed to run concurrent to Count I.

6 You must pursuant to NRS 1760931 submit to lifetime
7 supervision.

8 And is that with regard to Count II only?

9 MS. VILORIA: No, it's to both counts, Judge.

10 THE COURT: As to both counts at any time you are
11 released from custody or released from parole.

12 You will be given credit for four days time served.
13 You are remanded to the custody of the Sheriff for
14 transportation to the warden.

15 (Whereupon the proceedings were concluded.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, LISA A. YOUNG, Certified Shorthand Reporter of the
Second Judicial District Court of the State of Nevada, in and
for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the
above-entitled Court and took stenotype notes of the proceedings
entitled herein, and thereafter transcribed the same into
typewriting as herein appears;

That the foregoing transcript is a full, true and
correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 11th day of August,
2008.

/s/ Lisa A. Young
LISA A. YOUNG, CCR 353

FILED

2008 SEP -8 PM 2:38

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

CR07-1728 DC-990004081-008
STATE VS. BRENDAN DUNCKLEY (3 Pages
District Court 09/08/2008 02:38 PM
Washoe County 2515
nOC CKLEPLER

O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA
NEVADA BAR NO. 00837
BRIAN O. O'MARA
NEVADA BAR 08214
DAVID C. O'MARA
NEVADA BAR NO. 08599
311 East Liberty St.
Reno, Nevada 89501
775-323-1321
775-323-4082 (fax)

Attorneys for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT
FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

BRENDAN DUNCKLEY

Defendants.

Case No. CR07-1728

Dept No. 4

NOTICE OF APPEAL

Notice is hereby given that Defendant Brendan Dunckley ("Dunckley") in the above named action, hereby appeals to the Supreme Court of Nevada from the Order filed on August 11, 2008.

DATED: September 8, 2008

THE O'MARA LAW FIRM, P.C.

[Signature: David C. O'Mara]
DAVID C. O'MARA

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

_____ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

 X Personal delivery

_____ Facsimile

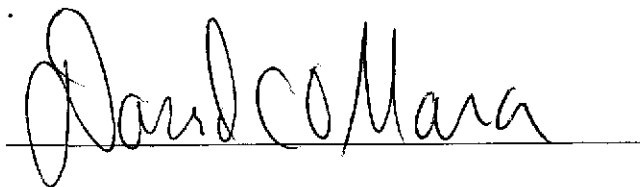
_____ Federal Express or other overnight delivery

_____ Messenger Service

addressed as follows:

Kellie Anne Vilorio
Deputy District Attorney
One South Sierra Street, 4th Floor
P.O. Box 30083
Reno, Nevada 89520

DATED: September 8, 2008



AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case No. CR07-1096.

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: September 8, 2008

THE O'MARA LAW FIRM, P.C.



DAVID C. O'MARA

ORIGINAL

FILED

2008 SEP -9 PM 4:33

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

1 CODE:
 2 THE O'MARA LAW FIRM, P.C.
 WILLIAM M. O'MARA
 NEVADA BAR NO. 00837
 DAVID C. O'MARA
 NEVADA BAR NO. 08599
 311 East Liberty St.
 Reno, Nevada 89501
 775-323-1321
 775-323-4082 (fax)

Attorneys for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT

FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

BRENDAN DUNCKLEY

Defendants.

Case No. CR07-1728

Dept No. 3

CASE APPEAL STATEMENT

1. Mr. Brendan Dunckley is filing this case appeal statement
2. The Honorable Connie Steinheimer, Second Judicial District Court Judge, issued the order appealed from.
3. Mr. Brendan Dunckley was the Defendant and the State of Nevada was the Plaintiff.
4. Mr. Brendan Dunckley is the Defendant/Appellant and the State of Nevada is the Plaintiff/Respondent.
5. The name of the law firm, attorneys with their address and phone numbers are as follows:

CR07-1728
 STATE VS. BRENDAN DUNCKLEY (4 Pages
 District Court 09/09/2008 04:33 PM
 Washoe County 1310
 CKFDJFR

1 Defendant/Appellant Mr. Brendan Dunckley
2 The O'Mara Law Firm, P.C.
3 David C. O'Mara, Esq.
4 311 E. Liberty Street
5 Reno, Nevada 89501
6 (775) 323-1321

7
8 Plaintiff/Respondent the State of Nevada
9 Washoe County District Attorney's Office
10 P.O. Box 30083
11 Reno, Nevada 89520-3083

12 6. Mr. Brendan Dunckley was represented by appointed conflict counsel, The O'Mara
13 Law Firm, P.C., after a represent him after a conflict was found in the Public Defender's Office.

14 7. Mr. Brendan Dunckley is still represented by conflict counsel, The O'Mara Law
15 Firm, P.C.

16 8. Mr. Brendan Dunckley has not granted leave to proceed in forma pauperis.

17 9. The above referenced case began in the Second Judicial District Court on or about
18 July 12, 2007, with the filing of the Information.

19 DATED: September 9, 2008

20 THE O'MARA LAW FIRM, P.C.

21 
22 DAVID C. O'MARA

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

☒ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

☐ Personal delivery

☐ Facsimile

☐ Federal Express or other overnight delivery

☐ Messenger Service

addressed as follows:

Kellie Anne Vilorio
Deputy District Attorney
One South Sierra Street, 4th Floor
P.O. Box 30083
Reno, Nevada 89520

DATED: September 9, 2008



AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case No. CR07-1096.

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

-or-

☐ For the administration of a public program

-or-

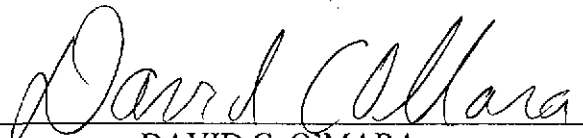
☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: September 9, 2008

THE O'MARA LAW FIRM, P.C.


DAVID C. O'MARA

FILED

SEP 10 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

Appellant(s)

Case No. CR07-1728

vs.

Dept. No. 4

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings
on file with the Second Judicial District Court, in accordance with the NRAP 3(e).

Dated: September 10, 2008

Howard W. Conyers, Clerk of the Court,

By: *[Signature]*

Cathy Kepler, Appeals Clerk



CR07-1728 DC-990004081-012
STATE VS. BRENDAN DUNCKLEY (D 1 Page
District Court 09/10/2008 11:49 AM
Washoe County 1365
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FILED

SEP 10 2008

HOWARD W. CONYERS, CLERK

By:

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

Appellant(s)

Case No. CR07-1728

vs.

Dept. No. 4

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed the Notice of Appeal and other required documents
(certified copies) were delivered to the Second Judicial District Court mailroom system for
transmittal to the Nevada Supreme Court.

Dated: September 10, 2008

Howard W. Conyers, Clerk of the Court,

By:

Cathy Kepler, Appeals Clerk

FILED

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

SEP 15 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERKBRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52383

District Court Case No. CR071728



DC-990000417-100
CR07-1728
STATE VS. BRENDAN DUNCKLEY (D 1, Page
District Court 09/15/2008 01:49 PM
Washoe County 1188
no
CKEPI FR

RECEIPT FOR DOCUMENTSO:
O'Mara Law Firm, P.C. and Brian O. O'Mara and David C. O'Mara
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Howard W. Conyers, District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/10/08 Filing Fee Waived: Criminal.

09/10/08 Filed Certified Copy of Notice of Appeal.
Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel
for appellant.)

DATE: September 10, 2008

Tracie Lindeman, Clerk of Court

By: *[Signature]*

Deputy Clerk

CASE NO. CR07-1728

TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCKLEY**DATE, JUDGE
OFFICERS OF
COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

8/5/08

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

R. Cotter

(Clerk)

L. Young

(Reporter)

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy District Attorney Kelli Vilorio, Esq., represented the State.

Defendant present with counsel, David O'Mara, Esq. Probation Officer Lupe

Garrison also present.

Court noted receipt of report.

Court noticed document received.

Defense counsel did not concur with the recommendation; presented

argument on behalf of defendant.

EXHIBITS A & B marked and offered by Defense counsel; no objection by State's counsel; ordered admitted into evidence.

Pam McFerren made a statement on behalf of the Defendant.

State's counsel did not concur with the recommendation. Probation Officer Garrison stood on recommendation. Defendant made statement on his own behalf.

COURT ORDERED JUDGMENT ENTERED and sentenced defendant to the Nevada Department of Prisons for the maximum term of life with the minimum parole eligibility of ten (10) years, for Count I; and that he be punished by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred twenty (120) months with the minimum parole eligibility of twenty-four (24) months, for Count II, to be served concurrently with sentence imposed in Count I; with credit for four (4) days time served, and by submission to a DNA Analysis Test for the purpose of determining genetic markers. Defendant is further ordered to pay a Twenty-Five Dollar (\$25.00) administrative assessment fee, a One Hundred Fifty Dollar (\$150.00) DNA testing fee, and a Nine Hundred Fifty Dollar (\$950.00) Psychosexual Evaluation Fee to the Clerk of the Second Judicial District Court.**COURT FURTHER ORDERED** that the Defendant serve a special sentence of lifetime supervision to commence after any term of imprisonment or after any period of release on parole.

OCT 06 2008

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

HOWARD W. CONYERS, CLERK
By: 
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
VS.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52383
District Court Case No. CR071728

NOTICE TO FILE DOCKETING STATEMENT AND REQUEST TRANSCRIPTS

TO: O'Mara Law Firm, P.C. and Brian O. O'Mara and David C. O'Mara

On the date, appellant has not filed the Docketing Statement and the Transcript Request Form in this appeal. NRAP 14(b); NRAP 9(a).

Please file and serve the Docketing Statement and either a Transcript Request Form or, alternatively, a certificate that preparation of transcripts is not requested within 10 days from the date of this notice. See NRAP 10(b); NRAP 30(b)(1). Failure to file a Docketing Statement or the appropriate transcript document may result in the imposition of sanctions, including the dismissal of this appeal. See NRAP 9(a)(3); NRAP 14(c).

DATE: October 03, 2008

Tracie Lindeman, Clerk of Court

By: 
Deputy Clerk

Notification List

Electronic

Paper

Attorney General Catherine Cortez Masto/Carson City
Howard W. Conyers, District Court Clerk

CR07-1728
DC-990004298-050
STATE VS. BRENDAN DUNCKLEY (D-1 Page)
District Court 10/06/2008 04:16 PM
Washoe County 4133
NOC

ORIGINAL

CR07-1728
STATE VS. BRENDAN DUCKLEY (4 Pages
District Court 10/13/2008 11:06 AM
Washoe County
3868
CCM TRK

1 THE O'MARA LAW FIRM, P.C.
2 WILLIAM M. O'MARA (Nevada Bar No. 00837)
3 DAVID C. O'MARA (Nevada Bar No. 8599)
311 East Liberty Street
Reno, NV 89501
4 Telephone: 775/323-1321
5 Facsimile: 775/323-4082

FILED

2008 OCT 13 AM 11:06

DROP BOX
HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

Attorneys for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA

Plaintiff,

Case No. CR07-1728

vs.

BRENDAN DUCKLEY,

Defendant.

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: Captions Unlimited,
Court Reporter, Department 3.

Defendant, Mr. Brendan Duckley, ("Defendant" or "Mr. Duckley"), named above, requests preparation of a rough draft transcript of the entire proceedings before the District Court on March 6, 2008, and August 5, 2008, regarding the above named Defendant.

This notice request a transcript of only those portions of the district court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Only the hearings, as they relate to Mr. Duckley on March 6, 2008 and August 5, 2008, shall be transcribed.

1 I recognize that I must personally serve a copy of this form on the above named court
2 reporter and opposing counsel, and that the above named court reporter shall have ten (10) days from
3 the receipt of this notice to prepare and submit to the district court the rough draft transcript
4 requested herein.

5 DATED: October 13, 2008

THE O'MARA LAW FIRM, P.C.

6 
7

8 DAVID C. O'MARA
9 Nevada Bar No. 8599
10 The O'Mara Law Firm, PC
11 311 E. Liberty Street
12 Reno, Nevada 89501
13 775.323.1321
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AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case
No. CR03-P0380

X Document does not contain the social security number of any person

-OR-

 Document contains the social security number of a person as required by:

 A specific state or federal law, to wit:

-or-

 For the administration of a public program

-or-

 For an application for a federal or state grant

-or-

 Confidential Family Court Information Sheet (NRS 125.130, NRS
125.230 and NRS 125B.055)

DATED: October 13, 2008

THE O'MARA LAW FIRM, P.C.



DAVID C. O'MARA, ESQ.

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct
copy of the foregoing document by:

Depositing for mailing, in a sealed envelope, U.S.
Postage prepaid, at Reno, Nevada

X Personal delivery

Facsimile

Federal Express or other overnight delivery

Messenger Service

addressed as follows:

Richard Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

Captions Unlimited
Court Reporter, Dept. 3
75 Court Street
Reno, Nevada 89520

DATED: October 13, 2008

David Callara

FILED

MAY 11 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD W. CONNERS, CLERK
By: *[Signature]*
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52383

CR07-1728
FILED

MAY 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On August 5, 2008, the district court convicted appellant Brendan Dunckley, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years (lewdness) and of one count of attempted sexual assault. The district court sentenced him to serve a term of life in prison with a minimum parole eligibility of ten years for lewdness and to a concurrent term in prison of 120 months with a minimum parole eligibility of 24 months for attempted sexual assault.

Dunckley's sole issue on appeal is whether the district court abused its discretion when it sentenced him to prison rather than to probation, for which he was eligible. Dunckley challenges the district court's decision on two grounds. First, he contends that the district court, influenced by a "mendacious" presentence investigation (PSI) report, incorrectly stated that he was not eligible for probation. Second, he contends that the district court was improperly influenced at sentencing by the State's "unsubstantiated belief" that the plea agreement was made

CR07-1728 DC-9900008127-019
STATE VS. BRENDAN DUNCKLEY (4 Pages
District Court 05/11/2009 12:32 PM
Washoe County 4134
DNC CKEPLEF

to allow Dunckley to better posture himself at sentencing. We hold that the district court did not abuse its discretion.

Absent a showing that the district court abused its discretion, we will uphold its sentencing decisions. Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994). “[W]e afford the district court wide discretion in its sentencing decision. We will refrain from interfering with the sentence imposed so long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (citation and internal quotation marks omitted) (internal footnote omitted). Further, we will look “to the record as a whole to determine whether the sentencing court actually exercised its discretion.” Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

Eligibility for probation

Dunckley contends that the district court relied on a “mendacious” PSI report to conclude that probation was not available in his case. His allegation focuses on the report’s failure to explicitly state that he was eligible for probation and the district court’s statement, “I know you pled to something that allows for a lesser offense, but it does not allow for probation.” Both arguments are without merit.

Despite the PSI report’s failure to explicitly state that Dunckley was eligible for probation, the district court was informed of his eligibility. The PSI report itself alluded to that fact in its “Conclusion,” which states that Dunckley was not viewed as “an appropriate candidate for community supervision,” thereby implying that it was an option but that the Department of Parole and Probation was not recommending it. In

addition, the district court was explicitly informed that probation was an option in the written guilty plea memorandum, during the plea hearing, and during sentencing.

Furthermore, looking at the record as a whole, the district court clearly imposed prison as a result of exercising its discretion and not because it did not believe there was another option, i.e., probation. The district court did not dismiss probation outright but rather stated that Dunckley's plea for probation would have resonated more with the court had the only charge been lewdness. The court explained why it was rejecting not only Dunckley's request for probation but also the PSI report recommendation for a maximum prison term of 5 years for attempted sexual assault, again clearly exercising its discretion. The record is therefore clear that not only was the district court aware that probation was a sentencing option for Dunckley, but that it properly exercised its discretion by imposing prison terms for the offenses.

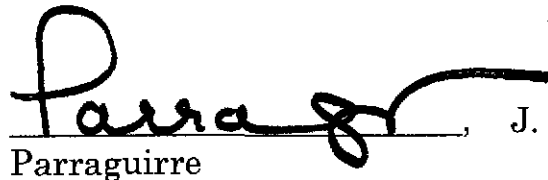
State's comments at sentencing

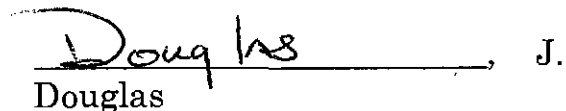
Dunckley next contends that the district court was improperly influenced by the State's "unsubstantiated belief" that the plea agreement was crafted to allow him to better posture himself at sentencing. Paragraph 7 of the guilty plea memorandum, signed by Dunckley, states in part, "I understand that I am entering my plea to [lewdness] as a legal fiction, pursuant to plea negotiations, to allow me to avoid the more serious charge of sexual assault . . . and to allow me the opportunity to qualify for probation, which would otherwise be unavailable." Further, defense counsel repeated this portion of the agreement nearly verbatim in his opening remarks during Dunckley's change of plea hearing. The State's belief that the plea agreement was crafted to give Dunckley more

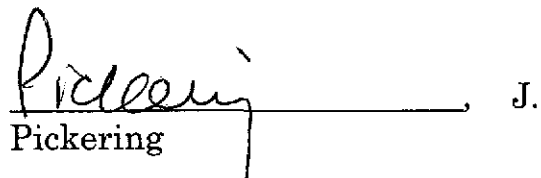
sentencing opportunities is therefore substantiated in the record. Dunckley has failed to show how the district court was improperly influenced by the state's comments.

The entire record before this court shows that the district court was aware of the sentencing options available for Dunckley, that it exercised its discretion in imposing terms of imprisonment, and that it was not improperly swayed by impalpable or highly suspect evidence in determining the sentence. We therefore

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk ✓

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUN 03 2009

BRENDAN DUNCKLEY,
Appellant,
vs

Supreme Court No. 52383

HOWARD W. CONYERS, CLERK
By *[Signature]*
DEPUTY CLERK

THE STATE OF NEVADA,
Respondent.

District Court Case No. CR071728

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 2, 2009

Tracie Lindeman, Clerk of Court

By: *A. Ingerson*
Deputy Clerk

cc (without enclosures):

Hon. Connie J. Steinheimer, District Judge
Attorney General Catherine Cortez Masto/Carson City
O'Mara Law Firm, P.C.
Washoe County District Attorney Richard A. Gammick

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 03 2009

Howard W. Conyers
District Court Clerk

01-12010

DC-9900008688-039
CR07-1728 BRENDAN DUNCKLEY (D 1 Page)
STATE VS BRENDAN DUNCKLEY (D 1 Page)
District Court 06/03/2009 04:17 PM
Washoe County
CKEPLER
DOC

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUN 03 2009

HOWARD W. CONYERS, CLERK

By: *[Signature]*
DEPUTY CLERKBRENDAN DUNCKLEY,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52383

District Court Case No. CR071728

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 8th day of May, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 2nd day of June, 2009

Tracie Lindeman, Supreme Court Clerk

By: *A. Ingerson*
Deputy Clerk



CR07-1728 DC-9900008688-041
 STATE VS BRENDAN DUNCKLEY (5 Pages
 District Court 06/03/2009 04 17 PM
 Washoe County 4134
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 CKEPLER

FILED

JUN 03 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD W. CONYERS, CLERK
 By: [Signature]
 DEPUTY CLERK

BRENDAN DUNCKLEY,
 Appellant,
 vs.
 THE STATE OF NEVADA,
 Respondent.

No. 52383

CR07-1728

FILED

MAY 08 2009

TRACIE K. LINDEMAN
 CLERK OF SUPREME COURT
 BY: [Signature]
 DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On August 5, 2008, the district court convicted appellant Brendan Dunckley, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years (lewdness) and of one count of attempted sexual assault. The district court sentenced him to serve a term of life in prison with a minimum parole eligibility of ten years for lewdness and to a concurrent term in prison of 120 months with a minimum parole eligibility of 24 months for attempted sexual assault.

Dunckley's sole issue on appeal is whether the district court abused its discretion when it sentenced him to prison rather than to probation, for which he was eligible. Dunckley challenges the district court's decision on two grounds. First, he contends that the district court, influenced by a "mendacious" presentence investigation (PSI) report, incorrectly stated that he was not eligible for probation. Second, he contends that the district court was improperly influenced at sentencing by the State's "unsubstantiated belief" that the plea agreement was made

to allow Dunckley to better posture himself at sentencing. We hold that the district court did not abuse its discretion.

Absent a showing that the district court abused its discretion, we will uphold its sentencing decisions. Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994). “[W]e afford the district court wide discretion in its sentencing decision. We will refrain from interfering with the sentence imposed so long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (citation and internal quotation marks omitted) (internal footnote omitted). Further, we will look “to the record as a whole to determine whether the sentencing court actually exercised its discretion.” Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

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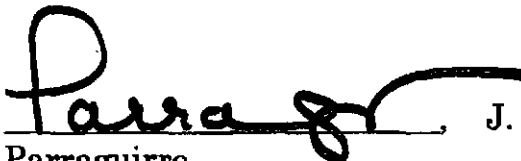
State's comments at sentencing

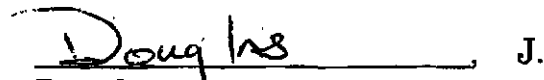
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sentencing opportunities is therefore substantiated in the record. Dunckley has failed to show how the district court was improperly influenced by the state's comments.

The entire record before this court shows that the district court was aware of the sentencing options available for Dunckley, that it exercised its discretion in imposing terms of imprisonment, and that it was not improperly swayed by impalpable or highly suspect evidence in determining the sentence. We therefore

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: June 2, 2009

Supreme Court Clerk, State of Nevada

By H. Ingels Deputy

1 Brendan Duncley # 10232362 Lovelock Correctional Center
3 1200 Prison Road
4 Lovelock Nevada 89419

5 Defendant in Pro Se

FILED

09 JUL -7 PM 2:29

HOWARD M. CONYERS

BY [Signature]6 IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA7 IN AND FOR THE COUNTY OF Washoe

8 * * * * *

9 THE STATE OF NEVADA,)

Case No. CN07-1728

10 Plaintiff,)

Dept. No. 4

11 -vs-)

Date of Hearing: _____

12 Brendan Duncley,)

Time of Hearing: _____

13 Defendant.)

14
15 NOTICE OF MOTION AND MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS16 COMES NOW Defendant, Brendan Duncley, in pro se, and submits his
17 Notice of Motion and Motion for Withdrawal of Attorney of Record and Transfer
18 of Records, moving this Court to Order that DAVID O'MARA Esq. & O'MARA Law Firm,
19 counsel of record in the above-entitled action, be withdrawn as counsel of
20 record herein, and that said counsel deliver to Defendant all Documents,
21 Pleadings, Papers and Tangible Personal Property in counsel's possession and
22 control to Defendant, at counsel's expense, to the above address.23 This motion is based upon NRS 7.055, Nevada Supreme Court Rules 46 & 166,
24 this Court's Local Rule of Practice corresponding to this Motion, as well as
25 the attached points and authorities and affidavit supporting same.26 NOTICE OF MOTION27 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
28 bring the foregoing motion on for hearing before the above-entitled Court andCR07-1728 DC-9900009450-077
STATE VS BRENDAN DUNCLEY (4 Pages
District Court 07/07/2009 02:29 PM
Washoe County
2490
V.I.A.V.R.

Department Number, on the date and time set forth on the caption above, or as soon thereafter as the matter may be heard.

Dated this 15th day of JUNE, 2009.

Brendan Dinchley

BRENDAN DINCHLEY # 1023236

Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419
Defendant In Pro Se

POINTS AND AUTHORITIES

Although an attorney may not withdraw as counsel of record if doing so would adversely affect the client's interest, Madrid v. Gomez, 150 F.3d 1030, 1038-39 (9th Cir. 1998), the client may terminate his counsel's representation at any time, Kashefi-Zihagh v. I.N.S., 791 F.2d 708, 711 (9th Cir. 1986). See NRS 7.055.

Upon being discharged by his client,

[The] attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

NRS 7.055(1)(emphasis added). See also Nevada Supreme Court Rule (SCR) 46 & 166; Second Judicial District Court Rule 23(1); and Eighth Judicial District Court Rule 7.40(b)(2)(ii).

As the judgment of conviction has been entered in this case, with appeal, if any, having been perfected, counsel's services are no longer required in this criminal matter. Defendant has, pursuant to the mandates of NRS 7.055(3), directed counsel to forward to him all documentation generated in this action and to withdraw as counsel of record, but counsel has failed to comply. See Affidavit in support of instant motion.

Counsel's refusal to withdraw himself and forward said documentation to Defendant violates the letter and spirit of SCR 166(4), which directs a discharged attorney to "protect a client's interests" by "surrendering papers

1 and property to which the client is entitled." Id. This rule governing
2 attorney conduct is a basic one of which the American Bar Association has
3 recognized by requiring of all attorneys within Canon 2 of the Code of
4 Professional Responsibility, EC2-32, and Disciplinary Rule 2-110(A)(2). The
5 Nevada Supreme Court has likewise adopted this rule within SCR 150. See, e.g.,
6 Jones, Waldo, Holbrook, Etc. v. Dawson, 923 P.2d 1366, 1376 (Utah 1996).

7 Counsel herein has no legal basis for withholding Defendant's papers in
8 this matter, as Defendant owes counsel NO fees which would permit counsel to
9 maintain said papers under a general or retaining lien. Figliuzzi v. District
10 Court, 111 Nev. 338, 340-41, 890 P.2d 798, 800-02 (1995).

11 Therefore, this Court is moved to exercise its jurisdiction in this
12 matter and ORDER counsel to be withdrawn as counsel of record and to deliver
13 to Defendant the entirety of documentation generated in the instant case, as
14 Defendant has no other remedy at law to compel counsel to do so.

15 Dated this 15th day of June, 2009.

16 Brendan Dunckley
17 BRENDAN DUNCKLEY # 1023236

18 Lovelock Correctional Center
19 1200 Prison Road
20 Lovelock Nevada 89419
21 Defendant In Pro Se

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF MOTION AND MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORD
(Title of Document)

filed in case number: CRO7-1728



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-




For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/1/09



(Signature)

BRENDA DUNCHLEY

(Print Name)

PRO PER

(Attorney for)

CR07-1728 DC-990009450-078
STATE VS. BRENDAN DUNKLEY (3 Pages
District Court 07/07/2009 02:29 PM
Washoe County
FILED

BRENDAN DUNKLEY # 1023236

Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419
Defendant In Pro Se

FILED

09 JUL -7 PM 2:29

HOWARD W. CHIVERS

BY [Signature]

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe

THE STATE OF NEVADA,

Case No. CR07-1728

Plaintiff,

Dept. No. 4

-vs-

Brendan Dunkley,

Defendant.

AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

STATE OF NEVADA)

ss:

COUNTY OF PERSHING)

COMES NOW, BRENDAN T. DUNKLEY, who being first duly sworn and
under the penalty of perjury, do hereby depose and state the following:

(1) I am the Defendant in the above-entitled action.

(2) I mailed a letter to DAVID C. O'MARA Esq on the 8th
day of JUNE, 2009, which was at least five (5) days prior to
the date indicated below, wherein I gave notice to said counsel of his
termination as counsel of record and instructed said counsel to so withdraw
himself and forward to me my case files herein pursuant to NRS 7.055.

(3) I have received no response from said counsel, nor his office, as to
my said instruction. I am therefore submitting the instant motion in good
faith, as I have no other remedy than this Court's power to enforce my

statutory rights under NRS 7.055 to cause counsel to be withdrawn and to send me my said case files.

Dated this 15th day of June, 2009.

Brendan Dunchley
BRENDAN DUNCHLEY # 1023236
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock Nevada 89419
 Defendant/Affiant In Pro Se

VERIFICATION UNDER PENALTY OF PERJURY

I do verify under the penalty of perjury that the above affidavit is true and correct and is stated to the best of my knowledge, and is made without benefit of a notary pursuant to NRS 208.165, as I am an incarcerated person.

Brendan Dunchley
BRENDAN DUNCHLEY

Defendant In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF COUNSEL OF RECORD AND TRANSFER OF RECORDS to the below addresses on this 22nd day of June, 2009, by placing same into the U.S. Mail via prison law library staff, in compliance with N.R.C.P. 5:

DISTRICT ATTORNEY
WASHOE County
P.O. Box 30083
RENO, Nevada
89520-3083

DAVID C. O'MARA
P.O. Box 2270
311 East Liberty Street
RENO, Nevada
89505

Attorney for Plaintiff
CLERK OF THE COURT
SECOND JUDICIAL DISTRICT COURT
P.O. Box 30083
RENO, N.V. 89520-3083
DISTRICT COURT

Attorney of Record
Brendan Dunchley
BRENDAN DUNCHLEY # 1023236
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock Nevada 89419
 Defendant In Pro Se

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL OF ATTORNEY OF

RECORD AND TRANSFER OF RECORD

(Title of Document)

filed in case number: CR07-1728



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/1/09



(Signature)

BRENDAN DUNCHIEY

(Print Name)

Pro Per

(Attorney for)

FILED

2009 JUL -8 AM 11:30

HOWARD W. CONYERS

BY Shince

DEPUTY

1 BRENDAN DUNCKLEY (#1023236)

2 LOVELOCK CORRECTIONAL CENTER

3 1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE

7 STATE OF NEVADA IN AND FOR THE

8 COUNTY OF WASHOE

9

10 THE STATE OF NEVADA,

CASE NO. CR07-1728

11 PLAINTIFF

DEPT NO. 4

12 -VS-

DATE:

13 BRENDAN DUNCKLEY,

TIME:

14 DEFENDANT

15

16 MOTION FOR MODIFICATION OF SENTENCE

17

18 COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND

19 SUBMITS TO THIS COURT HIS MOTION FOR MODIFICATION OF SENTENCE.

20 THIS MOTION IS MADE AND BASED UPON THIS COURT'S

21 INHERENT AUTHORITY TO MODIFY ITS OWN MISTAKES; ALL PAPERS,

22 PLEADINGS AND DOCUMENTS ON FILE HEREIN; AND THE

23 FOLLOWING POINTS AND AUTHORITIES.

24

25 POINTS AND AUTHORITIES

26

27 LET THE RECORD SHOW THAT ON BOTH APRIL 21, 2009, A.D.

28 AS WELL AS ON JUNE 18, 2009, A.D; TWO LETTERS WERE

CR07-1728
STATE VS. BRENDAN DUNCKLEY 34 Pages
District Court 07/08/2009 11:30 AM
Washoe County
2380
nnc

1 DEPOSITED FOR MAILING, IN A SEALED ENVELOPE, HANDED TO
2 PRISON LEGAL MAIL PERSONELL, BOTH BEING ADDRESSED TO THE
3 WASHOE COUNTY DISTRICT ATTORNEY OFFICE. THE LETTER DATED
4 APRIL 21, 2009, A.D. WAS SENT CERTIFIED MAIL WITH TRACKING
5 NUMBER 7007-0710-0005-2300-2620 SIGNED FOR BY THOMAS
6 FRUGOLI, (A COPY OF BOTH LETTER AND SIGNATURE CARD ATTACHED)
7 IN THE LETTER DIRECTLEY ADDRESSED TO D.A. GAMMICK (APRIL 21,
8 2009, A.D.) IT BRINGS FOWARD EVIDENCE PROVING ACTUAL AND
9 FACTUAL INNOCENCE IN BEGARDS TO COUNT ONE IN THE FILED
10 ORDER OF CONVICTION. COUNT ONE BEING A VIOLATION OF NRS.
11 201.230, LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE. THE
12 ORIGINALLY INCLUDED EVIDENCE THAT WAS SENT WAS AS FOLLOWS:
13 1) CULINARY INSTITUTE OF AMERICA TRANSCRIPTS IN HYDE PARK, NEW YORK
14 SHOWING DEFENDANT WAS A STUDENT ATTENDING FROM 11/11/1996 UNTIL
15 COMPLETION ON 2/23/1999. (INCLUDED) (PG 20)
16 2) DMV VEHICLE REGISTRATION INFORMATION FOR DEFENDANTS 1993
17 FORD TAURUS, GIVING THE BEGINING REGISTRATION DATE FOR DEFENDANT
18 ON JUNE, 5, 2000. A.D. (INCLUDED) (PG. 18-19)
19 3) A RENO POLICE DEPARTMENT (RPD) 'DRAFT REPORT' DATED 4/19/07.
20 CREATED BY RPD DETECTIVE TOM BROOME. IN THE REPORT AN INTERVIEW IS
21 REFERED TO BETWEEN DETECTIVE BROOME AND DEFENDANT'S EX-WIFE
22 JENNY DUNCLELEY. DURING THAT INTERVIEW JENNY DUNCLELEY INFORMED
23 DETECTIVE BROOME, SHE AND DEFENDANT MET AND MARRIED IN NEW
24 YORK, THEN AFTER COLLEGE MOVED TO MADERA COUNTY CALIFORNIA
25 IN THE CITY OF OAKHURST. WHERE SHE AND DEFENDANT RESIDED UNTIL
26 THIER MARRAGE BROKE UP IN JULY OF 1999. (INCLUDED) (PG. 21-22)
27 4) A COPY OF A SUMMONS OF FAMILY LAW ALONG WITH THE
28 ATTACHED PROOF OF SERVILE, SHOWING DEFENDANT WAS SERVED WITH

1 DIVORCE PAPERS AT HIS HOME LOCATED AT: 255 EAST NEES APT
2 #257, FRESNO, CALIFORNIA AT 2:45 PM ON AUGUST 16, 1999. (INCLUDED)

3 ALL OF THESE DOCUMENTS WERE SUBMITTED TO THE DISTRICT
4 ATTORNEY NOT ONCE BUT TWICE. THE SECOND LETTER DATED ON
5 JUNE 18, 2009 ADDRESSED TO CHIEF APPELLATE DEPUTY GARY HATLESTAD.
6 INCLUDED IN THAT LETTER WAS ALL THE EVIDENCE AND A COPY OF
7 THE ORIGINAL LETTER SENT TO D.A. GAMMICK. (NOTE: A COMPLETE
8 COPY OF THE JUNE 18, 2009 LETTER WAS ALSO SENT TO NEV. STATE AG.)

9 THE RELEVANCE OF THAT 'EVIDENCE' IS BECAUSE IT BOTH
10 PROVES ACTUAL/FACTUAL INNOCENCE, AND THAT THE STATE WAS IN
11 FACT IN POSSESSION OF EVIDENCE FAVORABLE TO THE DEFENDANT,
12 YET FAILED TO BOTH PRESENT IT NOR USE IT TO CORRECT A OBVIOUS
13 INJUSTICE. AND HAVE STILL FAILED TO CORRECT.

14 IN THE RECORD FOR CR07-1728 IN THE SENTENCING
15 TRANSCRIPTS ON PAGE 12 LINE 1 ADA VILORIA REFERS TO VICTIM
16 ASHLEY V.'S AGE. AS WELL AS pg 13/21; 17/19; 16/17 AND OF THE MOST
17 SIGNIFICANT QUOTE PROVING THESE THAT THE STATE'S CONTENTION
18 BEING SOLID THE INCIDENT OCCURED WHEN SHE WAS 12 IS ON
19 pg 13 LINES 19-21 "BUT HE CALLS ASHLEY 14 YEARS OLD AT THE
20 TIME WHEN WE ALL KNOW SHE WAS 12." ON THE ORIGINAL
21 COMPLAINT IT SHOWS ASHLEY V' WITH A DATE OF BIRTH OF AUGUST
22 14, 1986. SO SHE WOULD BE 12 FROM AUGUST 14, 1998 UNTIL
23 AUGUST 13, 1999. ALL THE ENCLOSED DOCUMENTATION SHOWS
24 NOT ONLY THAT PETITIONER/DEFENDANT WAS NOT EVEN A RESIDENT
25 IN RENO AS THE INCIDENT AND TESTIMONY OF ASHLEY V. AT
26 THE PRELIMINARY ON JULY 2, 2007 IN RJC CASE NUMBER 2007-
27 033884 SHOWS, ASHLEY CLAIMS THAT AFTER SPENDING THE
28 NIGHT AT DEFENDANTS HOUSE IN RENO WHILE DRIVING ON

1 LONGLEY LANE THE INCIDENT OCCURED, AS WELL AS A
2 SECOND INCIDENT ALLEGED AT ATLANTIS HOTEL AND CASINO
3 IT NOT ONLY PROVES ACTUAL AND FACTUAL INNOCENCE, BUT
4 ALSO THE STATE KNEW OF ALL THAT IN THE LEAST UP
5 UNTIL 'JULY OF 1999'. BECAUSE DETECTIVE TOM BROOM HAD BEEN
6 GIVEN ALIBI EVIDENCE ON 4/18/07, IMPORTANT TO NOTICE THE
7 DATE. AMENDED COMPLAINT INCLUDING THE PRESENT COUNT ON
8 4/16/07, AND SEVENTY-SEVEN DAYS PRIOR TO THE PRELIM-
9 INARY HEARING ON JULY 2, 2007. BUT NOT ONLY IS THERE
10 NO RECORD OF THE STATE CORRECTING THE RECORD, NOR MOVING
11 TO DISMISS AFTER WHAT WAS KNOWN TO BE PERJURED TESTIMONY.
12 EXCEPT THEY CONTINUED TO KEEP UP THE FARSE. EVEN TO GO
13 AS FAR AS INCLUDE IT IN A DEAL IT KNEW TO BE BASED ON
14 FALSE INFORMATION.

15 IT GOES WITHOUT SAYING THAT HAD THAT RELEVANT
16 INFORMATION COME FOWARD AT ANY STAGE OF THE CASE, EVEN
17 AS FAR BACK AS IN THE JUSTICE COURTS, THIS CASE WOULD BE
18 COMPLETELY DIFFERENT.

19 YOU, AS THE JUDGE, WERE NOT ONLY DEPRIVED OF
20 THIS INCREDIABLY IMPORTANT EVIDENCE, BUT WAS ALSO TOLD THAT
21 DEFENDANT HAD AN EXTENSIVE HISTORY OF BOTH CRIMINAL AND
22 INAPPROPRIATE BEHAVIOR. (pg 11/24-12/5; 14/4(6)-6; 17/13(6)-16)
23 18/2(6)-3. SENT. TRANSCRIPT) AND ADA VILORIA MAKING THE COMMENT
24 TO YOU THAT THE ONLY REDSON I'M NOT ALREADY IN PRISON IS
25 "BECAUSE "THE DEFENDANT AVOIDED ANY TYPE OF PROSECUTION
26 BECAUSE OF THE VICTIMS HE HAS CHOSEN" (pg 14/7-8). AS WELL
27 AS HER COMMENTS ON pg 17 LINES 13(6) TO 16. MAKING THE
28 INSINUATION THAT THERE ARE IN FACT NUMEROUS OTHER INCI-

1 DENTS THAT THEY CAN NOT BRING FORWARD LEGALLY. THE
2 PROBLEM WITH THIS LINE OF REASONING AND ARGUMENT
3 IS THAT THE PETITIONER IN FACT HAD ABSOLUTELY NO SUCH
4 CRIMINAL HISTORY TO SUPPORT EVEN REMOTELY SUCH
5 ALLEGATIONS, EXCEPT FOR A PETTY LARCANY CITATION IN
6 JULY OF 2005, WHICH IS A FAR CRY TO JUSTIFY SAYING
7 "HOPEFULLY TODAY WILL BE THE END OF BRENDAN DUNKLEY
8 AND WHAT WE HAVE TO DEAL WITH HIM" (PS. 11/22-23)

9 BY THIS CRUCIAL EVIDENCE AND INFORMATION NOT
10 BEING GIVEN TO YOU, YOU HAD NO IDEA THAT DUE TO THE LACK
11 OF PRESENTATION FROM BOTH SIDES OF THE AISLE THE SENT-
12 ENCE OF LIFE IN THE STATE PRISON WITH PAROLE AFTER A
13 MINIMUM OF TEN YEARS (120 MONTHS TO LIFE) FOR COUNT I
14 (NRS. 201.230) WAS SOLEY BASED ON PERJURED TESTIMONY,
15 THAT THE STATE KNEW IT TO BE SUCH. AS WELL AS YOU
16 DID NOT KNOW NOR WAS DEFENDANT INFORMED BY ADEQUATE
17 COUNSEL IN REGARDS TO THE GUILTY PLEA MEMORANDUM, THAT
18 IT INTSELF IS INVALID, DUE TO THE STATES KNOWLEDGE IT WAS
19 CREATED ON FALSE FACTS, ALL OF WHICH IS FALSE INF-
20 ORMATION PERTAINING TO DEFENDANTS CRIMINAL HISTORY AND
21 BEHAVIOR / ACTIONS.

22 DEFENDANT HUMBLEY REQUESTS THE COURTS TO FIX
23 AND SET ASIDE BOTH THE CONVICTION FOR COUNT ONE AS
24 WELL AS THE GUILTY PLEA MEMORANDUM ON THE GROUNDS OF
25 IT BEING INVALID BASED ON FALSE FACTS, IE, PERJURED TESTIMONY,
26 AND WITHHELD RELEVANT EXCULPATORY EVIDENCE, ALL TAINING
27 AND PAINTING A FALSE AND INADURATE PICTURE OF THE
28 DEFENDANTS CRIMINAL HISTORY TO THE JUDGE, YOU.

ARGUMENTS

COURTS HAVE JURISDICTION TO CORRECT OR MODIFY DEFECTIVE SENTENCES THAT, ALTHOUGH IMPOSED WITHIN THE STATUTORY LIMITS, ARE BASED UPON MATERIALLY UNTRUE ASSUMPTIONS OR MISTAKES WHICH WORK TO THE DEFENDANT'S EXTREME DETRIMENT. STANLEY V. STATE, 106 NEV. 75, 787 P.2d 396, 398 (1990). THIS COURT THEREFORE HAS JURISDICTION TO VACATE OR MODIFY SENTENCES WHICH ARE BASED ON A MISAPPREHENSION BY THE COURT OF A DEFENDANT'S CRIMINAL RECORD IN IMPOSING SENTENCE. EDWARDS V. STATE, 112 NEV. 704, 918 P.2d 321, 324 (1996).

THE POWER OF THE COURT TO MODIFY SUCH SENTENCE LIES IN ITS INHERENT AUTHORITY TO CORRECT ITS OWN MISTAKES, WHICH NATURALLY PROVIDES IT THE AUTHORITY TO ENTERTAIN MOTIONS REQUESTING IT TO DO SO. PASSANISI V. STATE, 108 NEV. 318, 831 P.2d 1371, 1373 (1992).

CONCLUSION

AS DEMONSTRATED ABOVE, THIS COURT RELIED ON FALSE INFORMATION CONCERNING DEFENDANT'S CRIMINAL HISTORY IN RENDERING ITS JUDGEMENT, AND AS SUCH SHOULD MODIFY THE SENTENCE ACCORDINGLY.

DATED THIS 26th DAY OF JUNE

2009

Brendan Dunch 1023236
BRENDAN DUNCHE 1023236
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89401
V3. 309
DEFENDANT PRO SE

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3)

4) LETTER ADDRESSED TO DISTRICT ATTORNEY GAMMICK . . . PG 1-7

5)

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7)

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15)

16) A SUMMONS OF FAMILY LAW AND PROOF OF SERVICE . . . PG. 23-25

17)

18) CERTIFICATE OF SERVICE

19)

20)

21)

22)

23)

24)

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28)

28)

Dear District Attorney Janakich,

In recent research I came across an interesting piece of information. With regards to the American Bar Association Model Rules and Standards. Namely Standard 3-2.5 entitled "Prosecutor's Handbook. Especially of interest is subsection (b) second sentence "This handbook" should be available to the public, except for subject matters declared "Confidential".

You see I would be greatly interested in obtaining a copy of that handbook. If needed I will make sure it is promptly returned.

You may even be able to shed some light on the very reason that I wish to view the handbook that as subsection (c) states, "The objectives of these policies as to discretion and procedure should be to achieve a fair, efficient, and effective enforcement of the criminal law."

I find it of real importance that the ABA used the term discretion in this paragraph. Webster's dictionary defining discretion as being "Tactful, prudent." So maybe you can help me understand why it was felt to be tactful or prudent to allow release of a criminal complaint directly pertaining to a case that at the time of release had not yet been before a court to render its decision as to guilt. There for lending the accused the right of presumption of innocence until proven guilty.

That is a serious fundamental right anyone accused of a crime is automatically granted just for being an American citizen. Just the simple mistake of accidentally releasing such information in itself could be rendered a "harmless error" not to be considered an intentional violation of the accused Sixth Amendment right to a "fair and just trial".

But unfortunately, that is not the case here. The fact that a Detective working the case in which the criminal complaints were pertained to intentionally released the material to a third party attorney dealing with a Civil matter. The release of that evidence and entering it into a Civil Matter now made all the complaints that of Public Record. Being that the detective who released the confidential paperwork was a member of the Reno Police Department and the lead detective in the same referenced Criminal Matter he is considered a member of the prosecutorial investigation team, and subsequently all his actions has direct bearing on your office.

I also am curious as to what would warrant a detective to intentionally violate the accused right of innocence and release the said documents to the accused ex-wife's attorney, who at the time was in a nine year custody battle. That would under normal scrutiny constitute in the least malice intent on hindering the constitutional rights of the accused to a fair and just trial. Having such confidential information in the public I am sure you could agree would definitely prejudice the accused.

Also, knowing your impeccable reputation and that of your colleagues in your charge for striving to ensure that justice is done, I am sure you are familiar with the Standard set forth by the American Bar Association 4.41 which states "Effective investigation by the lawyer has an important bearing on competent representation at trial, for without adequate investigation the lawyer is not in a position to make the best use of such mechanisms as cross-examination or impeachment of adverse witnesses at trial." I understand the premise of this Standard is geared towards the defense counsel, but it can and also does apply to you the State.

The reason for that line of reference is to bring up the fact that the "Prosecution's duty is never to merely

convict, but to see that justice is done by seeking truth of the matter, and to ensure that jury tries cases solely on basis of actual facts presented to them." (People v. Maestra)

The fact that the opinion stated above used the words "seeking" and "actual facts" renders the fact that the prosecution investigated the charge, not simply taking the word of the complainant. That is the fact of severe relevance in the same case involving the forementioned detective and accused. In (State v. Estes) it states "Prosecutor is expected to be diligent and leave no stone unturned, but nevertheless expected to be fair" (State v. Estes 725 P.2d, 922, 111 10Amw 923). That brings up the other reason to my letter. Which I would like to express my appreciation for your taking the time to read. But I digress.

In the referenced case that your office filed and subsequently obtained a plea deal or as referred to a Guilty Plea Memorandum. The case no. is CR07-1728. Upon review you will notice that the record has charge 1 happening in the time frame of August 14, 1998 to August 13, 2000. As you will notice from the transcripts in the Preliminary Hearing the "victim" in count 1 stated she was sure it was when she was (12) twelve years old, as affirmed by your Adl Victoria in the sentencing transcript (Pg 13; 19-21). "But he calls Ashley 14 years old at the time ~~for~~ when we all know she was 12." She is the representation of the state and therefore making it the states contention to her age of the attack being 12 years old. (August 14, 1998 to August 13, 1999). Again supported by record of sentencing hearing (Pg 11; 24-Pg 12; 1, Pg 16; 17, Pg 17; 12) The reason for bringing you this letter is this: Had your office and including the police department, as well as my own attorney appointed to me by your office done even the simplest basic investigation in the allegation you would have seen that in actuality I was not even a resident in the state of Nevada until 2000. And in 1998 at the time

the alleged incident occurred I was attending college in New York at the Culinary Institute of America in Hyde Park, NY. From 11/11/96 until 2/23/99. The information is easily verified by the college. That would have surely come up in a residential history search. Then that leaves 2/23/99 until the "victim's" thirteenth birthday 8/14/99. Well how amazed would you be to know that during that time frame I resided in Oakhurst, Ca with my former wife. And in August 1999 she filed for divorce and I was served papers in Fresno Ca. Again extremely simple information to have obtained if a due diligent investigation was in fact done. As the matter of the location of the alleged incident the said vehicle would have shown that I had not purchased and registered the said vehicle till 6/8/00. Therefore how could a crime have been committed by me in a state 3,000 miles away from my location in a vehicle I won't purchase for two years. If any evidence was deemed relevant I think this would. Not to mention "relevant in the favor of the accused" as mentioned in Brady v. Maryland. Now if you did not actually know including all members of your team including the police in the least we have a warranted example of prosecutorial misconduct. But if your office actually did know and still attempted to prosecute the case would warrant a serious case of malicious prosecution, and Brady violation, due process violation, Sixth, Fourteenth Amendment violation to say the least.

But still pursuing a conviction the Ada proceeded to bring forward a deal that to my knowledge and belief was for probation as noted in the Guilty Plea Memorandum pg. 4:25 & 4:25:2 both sites with initials of myself, my counsel and ADA Viloria. But the fact that the state fought hard to obtain the max bears a problem in regards

the validity of the original plea bargain. Especially when your ADA stated in the sentencing hearing transcripts "We did craft this creative plea bargain so this defendant could have the right to posture himself to ask the Court for sentencing. That's what he required before he came to you and admitted his conduct and entered his plea of guilt." (Pg 12; 6-9 sentencing hearing transcript)

You see the problem is that plea bargains are infact protected under contract law. In a basic breakdown the agreement should be of benefit to both parties involved. Example; a defendant looking at the death penalty for a capital crime signs a deal and it takes the death penalty off the table. All sides benefited the State gained a conviction and saved the tax payers the expense and the accused was not to be put to death. In my case if I went to trial I would be facing 10 to life and 2 to 20 years. I got 30 to life and 2 to 10. But the state fought and argued to 2 to 20 (Pg Pg 17; 3b-5) Therefore I gave up four protected rights 1) Remain silent. 2) Bring witnesses on my own behalf. 3) Face my accusers and cross examine them. 4) Right to a trial by my peers. I gave it all up and I feel that had the attorney involved on both sides of the side been even slightly competent to have exercised due diligence in pre-trial investigation and entered the relevant evidence it would have seriously changed my mind in accepting the deal and had demanded going to trial.

You I am sure would agree that once you verify the information I have given you so as to meet the Giles standards could be considered substantial evidence. Black's dictionary defines Substantial evidence as "evidence that a reasonable person could accept as adequate and sufficient to support a conclusion of defendant's guilt or innocence beyond

a reasonable doubt."

All the information I have given to you as to the Giles Standards I had handed over to my appointed attorney of record. For that and all the information in this letter along with documented evidence i.e. the released police complaints with R.P.D. Detective Tom Brown's signature on each in addition to the clerk stamp of Superior Court of California Madera County in reference to Dunneley v Dunneley, College transcripts, court documentation of the location of residence, divorce paperwork, Department of Motor Vehicles record of registration. Just think how I easily obtained all this information and documentation independently how much more so should all involved in this case have done so as well.

I will leave you with a final citation of due relevance at the point at hand: "Thus, the system of criminal justice is adversarial in nature and prosecutors have a duty and are expected to be diligent and leave no stone unturned, he is required to be fair and has a duty to avoid any misrepresentation of the facts and unnecessary inflammatory tactics." (State v. Griffiths 610 P.2d 522, 101 IDemo 163).

With my stating all that I wished, in order to help me process my next step in filing all this information by means of a Post Conviction Writ of Habeas Corpus - which I have no reason to believe will be denied due to serious relevant evidence and dare I say, respectfully though your total lack of any physical evidence to the allegations, which I did not commit. I just wanted to allow you the opportunity to view this information which I truly believe you to feel is a gross miscarriage of justice that demands an immediate remedy of. Once again as I stated earlier I am respectfully appreciative of your taking the time to read my letter. I am a learner and I apologize if at any time I unknowingly bastardized the legal field of

references and records. Your response is greatly appreciated..

Cordially Yours

Brendan Duncley

Brendan Duncley
INMATE # 1023236
L.C.C.
1200 Prison Road
Love lock, Nevada. 89419

CASE Reference NO: CVO7-1728
CASE Reference NO: 52383

P.S. Copies of this letter are as follows.

C.C.: Brendan Duncley
Morgan Duncley
NEVADA Supreme Court Clerk
David Olmara Esq.
DISTRICT ATTORNEY Richard Gammick

Documents Included:

C.I.A. transcripts

DMV. Registration information

RPD reports 04-19-07, 03/10/07 AND 8/20/05

Evidence Stamped 5/25/07 (RPD release)

MADERA Superior Court minutes Noting report

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Brendan Dunchley (1023236)

L.C.C.

1200 Prison Road

Lowell, Nevada 89419

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MR. Richard Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

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X Thomas J. Frugo

☐ Agent☐ Addressee

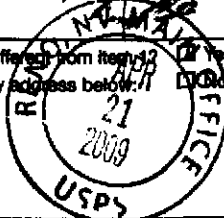
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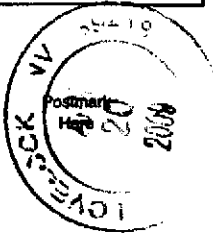
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RICHARD GAMMICK W.C.D.A.
Street, Apt. No.,
or PO Box No. P.O. Box 30038
City, State, ZIP+4[®] RENO, NV 89520

PS Form 3800, August 2006 See Reverse for Instructions

June 15, 2009

Dear Mr. Hatlestad;

First of all allow me to congratulate you on your victory in having my conviction affirmed by the State Supreme Court. With that being respectfully and genuinely stated I feel that some information needs desperately to be conveyed to you.

You see on April 21, 2009 a gentleman by the name of Thomas J. Frugoli accepted a certified letter from me. With Id number (7007-0710-0005-2300-2620). For your edification I have enclosed the letter (a copy that is) also the documents that originally were enclosed with the said letter.

As you read the letter you will see that in comparison to the alleged testimony of Ashley V. at the preliminary hearing she claims that the incident in Count 1 of the order of conviction occurred when she was twelve years old. Specific window of offense would place it August 14, 1998 until her thirteenth birthday of August 14, 1999. The State argued repeatedly (SDA Victoria) that the crime occurred on a twelve year old little girl. (Sentencing Transcript pg 12/line 1; pg 13/line 19(b) to 21; pg 16/line 17; and again on pg 17/line 17). No allegation or contention was ever made by the state that any other act occurred except during her twelfth year of life.

Except there is a serious flaw and problem with that allegation, I have mentioned this to my attorney but he failed to fix it or use the evidence I presented him. Also unfortunate is the fact that the State too had in its possession evidence to show not only that the testimony of Ashley V. was perjured but that the State had evidence proving the absolute impossibility of the crime occurring.

For the record allow me to detail and break down the allegation to you. Ashley testified that after V3.321ing, 11

the night at my house with my girlfriend/wife Morgan (in Reno) I drove her home the following morning. While driving her home on Longly Lane (Reno) I pulled over into a parking lot and she and I had consensual sex in the back seat of my Ford Taurus, then I drove her home. The second incident occurred (by her testimony) shortly afterward at the Atlantis Hotel & Casino (Reno) in an elevator. When asked by Mr David Clifton how old she was when these incidents occurred, she responded she was twelve years old, asked if she is certain she answered in the affirmative. Meaning with a birth date of August 14, 1986 her twelfth year would consist of August 14, 1998 until August 13, 1999. With that being said here's where the problem lies and again I told this to my attorney and recently sent the enclosed letter and documents.

First you will see a letter/transcript from the Culinary Institute of America located in Hyde Park, New York. There you will see the time I was in fact enrolled in college, dated 11/11/96 - 02/23/1999. So there is documented proof up until February 23, 1999 I was in fact in Hyde Park, New York attending college. So that would rule out 8/14/98 until 2/23/99 by the rules of Gile. (Evidence that proves I could not have committed the crime due to being in a location so far away that under normal circumstances I could not have been in the location of the crime.)

Next you will find a DMV print out dated December, 05, 2008 showing that the vehicle in the allegation my Ford Taurus was in fact not even purchased or registered until 6/5/00. So how did we have consensual sex in it in 1998-99 when I did not even own it until 2000.

Third, you will see that the State in fact knew that I was not even in the area of Reno when Ashley alleges that the incident occurred. Enclosed you will find a Reno Police Department 'draft' dated 4/19/07. Created by Detective Tom Broome of RPD Sex crimes division. Please note the second page with the conversation between Detective Tom Broome and my ex-wife Jenny Dinchley. She mentioned we met in N.Y. then later moved to Madera California, our marriage broke up in July of 1999 while living in Oakhurst California. A allegation and investigation was done by Madera County Sheriff's department with me. A copy of that Detective Broome obtained. So Detective Broome knew that I was in fact residing in Madera County California in 1999 at least until July with my wife Jenny. Not as alleged residing in Washoe County, Reno with Magan. Yet the State never corrected known perjured testimony and continued to allow it to go uncorrected all the way up to sentencing, and beyond. (letter 4/21/08). As a note you will see a EXHIBIT 'D' stamp on the back of the report, that is because that was one of four criminal reports Detective Tom Broome released to my ex-wife's attorney Kenneth Ballard in Oakhurst Co, to use for an ongoing custody case. That was released 5/25/07. A full six weeks before my preliminary hearing proving the State had knowledge that I was in fact innocent of counts alleged from Ashley. But Nobody fixed it not the State nor my attorney who also had the reports released by Detective Broome. (The hearing for the exhibit was June 22, 2007, Prelim. hearing was 7/12/07)

Finally enclosed in the original letter is a copy of a Summons of Family Law & Prob & Service for divorce dated 8/16/99. Notice I was served at my residency at 2:45pm at 255 East Neese, #257, FRESNO, CALIFORNIA. Two **V37323** 13

after Ashley turned thirteen. Again proving beyond a reasonable doubt that I could not have committed the crime as testified by the "Victim". Since her testimony is in fact all the evidence the State has that these incidents even occurred and I proved by documented, verifiable evidence to the contrary, the conviction can not stand. It would continue to allow a manifest injustice to go uncorrected.

As an added area of interest I did not mention in the previous letter, Ashley testified that Morgan my girlfriend/wife was pregnant as was her friend Michelle Anthony. Yet Michelle daughter Brooklyn was born September 25, 2000 and our son Jacob was born January 12, 2001. Either they both had really long pregnancies or again the allegations could not have occurred.

Please take notice that even Dr. Story's report on page 3 second paragraph shows I did not move to Reno until 2000. And in the PSI report page 3 under education I graduated H.S. in 1994 and attended the Culinary Institute of America until 1999.

I hope that you see the gross manifest injustice, prosecutorial misconduct, Brady violations, and gross bad faith negligence that has occurred here. I humbly request that the DA do their duty and set the record straight and request a reversal and vacating of Court 1 and allowing me to reverse and set aside my Guilty Plea Memorandum, and plea anew to Court 2. I hope you realize I am going to include both letters in my writ of Habeas Corpus. I just felt it necessary to once again bring to the DS's attention so they can take it upon yourselves to fix and correct this problem. Doves the courts

and in the interest of justice.

Besides is it not the ultimate duty of the Prosecutor to not seek a conviction by any and all means but to see that justice is done and obtained. Is it not why the Prosecutors are held to a higher standard to be diligent and leave no stone unturned. After all you the DA represent the State and all its people.

So, Mr. Hatlestad can you in good conscience and good faith simply ignore this information as David Clifton, Kelli Anne Villoria, and Thomas S. Frugoli not to mention also Detective Tom Broome have all done on repeated and numerous occasions. I included Detective Tom Broome because as you are I'm sure aware the misconduct by an investigating law enforcement agent is indistinguishable from misconduct by prosecuting attorneys.

Please know I truly respected your brief for the Supreme Court. I know you did not know about this information, because for my attorney to have added it in appeal would have meant admitting his ineffectiveness in acting as an advocate. But it does not excuse his actions or that of Mr Clifton and especially Mrs Villoria. As you are aware being the Chief Appellate Deputy it is the duty and obligation of a prosecuting attorney to obtain Brady evidence (evidence favorable to the defendant). Even if she is not in direct possession of said evidence, she had and still has a duty to learn of any favorable evidence known to other government agents, including the Police (i.e. Det. Broome, report 4/19/07) if those agents are involved in the investigation. Detective Broome was the lead detective.

I pray that you will do the right thing and allow an innocent man to return to his family. I again request that you vacate/dismiss and expunge Court I and allow the Guilty Plea to be reversed and ~~allow~~

Continuation:

As an additional side note to help the courts and the taxpayers further court expense and time, I would like to make a humble request and possible solution. As of June 8, 2009 I represent myself pro per. Because I know that the overwhelming evidence I am in possession of will almost certainly in the least reverse my guilty plea memorandum. But prove blatant and obvious malicious disregard for my constitutional rights on the part of ADA Victoria as well as Detective Tom Broome. There is a total of 150-160 pages of documentation proving malice, prosecutorial misconduct, ineffective assistance of counsel, police harassment, miranda violations, inappropriately obtaining evidence, perjured testimony, Brady violations, and that's just with the few pages I have given to you in this letter. Any of which will grant reversal of the deal and prove actual innocence in regards to Count 1.

So here as the chief appellate counsel you are aware that I only need to prove it with probable preponderance, except I can prove it all beyond a reasonable doubt. Or create enough reasonable doubt to a jury. So I propose the following deal for the States consideration: Guilty Plea reversed and set aside Count 1 (NRS. 201.230) dismissed on ground of insufficient evidence and actual and factual innocence, Count 2 (NRS 193.330) be amended to Assault (due to the fact the "victim" Jessica has yet to come forward since the prelim, and her testimony is inconsistent from 3/26/07 to 7/2/07 lacking credibility), So Amend Count 2 to Assault Gross Misdemeanor or at most a 'E' felony with credit for time served. I am released and allowed to leave Nevada (Reno) forever. In exchange I do not sue federally the County or D.A.'s office for the blatant Civil rights and Constitutional violations on the part of the O.A.'s office.

If that deal is accepted as a binding agreement w/ the judges signature. I will agree to sign it. Preventing your office from being flooded with appeals that ADA Victoria and Detective Tom Broome handled. **V3. 326** 16
only knows how many other innocent men/women they have persecuted.

(Contd)

or in the alternative:

Reverse the Guilty plea Memorandum and dismiss count 1 on grounds of actual/factual innocence. Allowing me to plead anew for Count 2 and we proceed to trial. I would retain the right to file a lawsuit in regards to count 1's violations. Did you know my seven year old is in therapy because of the sentence I was given for a charge the state knew I could not have committed. But I digress, back to the proposed deal:

#1 - Guilty Plea Memorandum Reversed, Count 1 dismissed on grounds of insufficient evidence and Actual/Factual innocence. Count 2 (NRS 193.330) Amended to Assault. (GM. or 'E' Felony) with Credit for time served (as of 6/15/09 \Rightarrow 419 Days = 1yr 54 Days As per AR 520 stat calculation 20%). Released and record is expunged for count 1 (NRS 201.230). In Exchange defendant (me) will Agree to abstain from suing the State, County and DA office, for civil rights and constitutional violations. Binding Agreement with sentence to be credit time served. (No Surprises).

(Or)

#2 Guilty Plea Memorandum reversed, Count 4 (NRS 201.230) dismissed on grounds of insufficient evidence and Actual/factual innocence. Count 2 Allowed to plead anew to (NRS. 193.330) And return to a not Guilty stage. Bail being allowed. And proceeding with trial -

I look forward to your response in this matter.



Jim Gibbons
Governor



Ginny Lewis
Director

555 Wright Way
Carson City, Nevada 89711-0900
Telephone (775) 684-4368
www.dmvnv.com

December 05, 2008

BRENDAN DUNCKLEY
1200 PRISON RD
LOVELOCK NV 89419

This is to certify that the records have been searched for the following;

VIN: 1FALP5244PG247860
Year/Make: 1993 FORD TAURUS GL 4 DR SEDAN
Plate: 631KWM

The records of the Dept of Motor Vehicles indicate that the above referenced
Was registered in Nevada State. We show this vehicle has been register from
06-05-2000 to 06-05-2001 under the name of Brendan Dunckley.

If you have any further questions regarding this request please feel free to
contact me at the above listed phone number.

Sincerely,

Pam Mendoza
Record Section

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES
CENTRAL SERVICES - RECORDS DIVISION
555 Wright Way
Carson City, Nevada 89711-0250
(775) 684-4590

REQUEST DATE : 12/05/2008

SUP. TRAN. ID : 45905961

BRENDAN DUNCHLEY
1200 PRISON RD
LOVELOCK NV 89419-5110

VEHICLE REGISTRATION DATA

I - VEHICLE DATA

YEAR : 1993 MAKE : FORD MODEL : TAG CYL : 06
VIN : 1FALP5244PG247860 VEHCL TYPE : VEH-SEDAN 4 DR

II - REGISTRATION INFORMATION

EXPIRATION DATE : 06/05/2001
PLATE NUMBER : 631KWM DECAL NUMBER : M39555

OWNER TYPE : REGISTERED COMBN TYPE : NONE
NAME : BRENDAN THOMAS DUNCKLEY
MAIL ADDRESS : 4458 HIGHPLAINS DR
CITY/STATE : RENO NV 89523-9176
PHYS ADDRESS : 4458 HIGHPLAINS DR
CITY/STATE : RENO NV 89523-9176

LAST TRANSACTION DATE: 06/06/2001

NAME/ADDRESS AT THE TIME OF REGISTRATION

NAME : BRENDAN T DUNCKLEY
MAIL ADDRESS : 811 PLUMAS ST
CITY/STATE : RENO NV 89509-1739

END DT : 06/13/2002

PAGE NO: 1** LAST PAGE **

CEEB Code: 003301

DUNCKLEY, BRENDAN, T
44782 SILVER SPUR CT
AHWAHNEE, CA 93601

Student ID: 36556
Birth Date: 07/04/1976
Date Issued: Dec 1, 2008

Page 1 of 2

Major: Culinary Arts

Degree(s) Conferred:

Assoc. in Occupational Studies in Culinary Arts awarded Jan 22, 1999

Course Number	Section	Course Title	Cred Course	Cred Ernd	Grd	Rep	Abs
Semester 0 (11/11/1996 - 02/23/1999)							
A1D-2B	1A	- CULINARY MATH	1.5	1.5	C-	0	
A1K-2B	0Q	- INTRO. TO GASTRONOMY	1.5	1.5	C-	0	
B1C-2B	1B	- CUL. FRENCH	0.0	0.0	B	0	
B1E-2B	17	- FOOD PURCHASING	1.5	1.5	C-	1	
B1G-2B	0Q	- SANITATION	1.5	1.5	B-	0	
C1A-2B	1D	- MEAT FABRICATION	1.5	1.5	A-	0	
C1F-2B	0Q	- MEAT IDENTIFICATION	1.5	1.5	B-	0	
B1F-2B	0Q	- NUTRITION	1.5	1.5	B+	0	
D1A-2B	1D	- SKILL DEV. I	3.0	3.0	B	0	
E1A-2B	1F	- SKILL DEV. II	3.0	3.0	A-	0	
F2A-2B	1I	- INTRO. HOT FOODS	3.0	3.0	C+	0	
F2B-2A	0V	- SUPERVISORY DEV.	1.5	1.5	C	0	
G2B-2B	1L	- AMERICAN CUISINE	1.5	1.5	D	0	
G2A-2B	1J	- SEAFOOD COOKERY	1.5	1.5	C	0	
H2C-2B	0X	- CHARCUTERIE	1.5	1.5	D	1	
H2B-2B	0X	- ORIENTAL	1.5	1.5	B	0	
I2F-2B	0Y	- LUNCH COOKERY	1.5	1.5	D	0	
I2E-2B	0X	- BREAKFAST COOKERY	1.5	1.5	C-	0	
J2A-2B	10	- GARDE MANGER	3.0	3.0	C	0	
J2B-2B	0X	- TERM II PRACTICAL	0.0	0.0	P	0	
00-2B	31	- EXTERNSHIP	6.0	6.0	C	0	
L4G-A	18	- BREAD BAKING	1.5	1.5	B	0	
L4C-A	1J	- COST CONTROL	1.5	1.5	D	1	
L4F-A	18	- PASTRY SKILLS DEV	1.5	1.5	B+	0	
M4A-A	24	- PATISSERIE	3.0	3.0	B+	0	
N4D-A	1S	- MENUS/FAC. PLANNING	1.5	1.5	B	0	
N4E-A	1R	- MGMT. WINES&SPIRITS	3.0	3.0	D	0	
N4F-A	1J	- RESTAURANT LAW	0.0	0.0	B+	0	
P4A-A	28	- INT'L COOKERY	1.5	1.5	B+	0	
P4D-A	1T	- ADV. CUL. PRINCIPLES	1.5	1.5	C	0	
CA5Q01-A	04	- CLAS BANQUET CUISINE	1.5	1.5	D	0	
CA5Q03-A	04	- INTRO TO CATERING	0.0	0.0	B	0	
CA5Q02-A	04	- INTRO TO TABLE SERV	1.5	1.5	A	0	
CA5R01-A	04	- A' LA CARTE SERVICE	1.5	1.5	B-	0	
CA5R02-A	04	- ST. ANDREW'S KITCHEN	1.5	1.5	C	0	
CA5S02-A	04	- 5TH SEM COSTING EXAM	0.0	0.0	P	0	
CA5S01-A	04	- DE MEDICI KITCHEN	1.5	1.5	D	0	
CA5S04-A	04	- 5TH SEM COOKING EXAM	0.0	0.0	P	0	
CA5S03-A	04	- TABLE D'HOTE SERVICE	1.5	1.5	C	0	
CA5T01-A	04	- FORMAL SERVICE	1.5	1.5	C+	1	
CA5T02-A	04	- ESCOFFIER KITCHEN	1.5	1.5	C-	1	
CA5U02-A	05	- AM BOUNTY SERVICE	1.5	1.5	C	1	
CA5U01-A	06	- AM BOUNTY KITCHEN	1.5	1.5	D	0	

Incident Report

RENO POLICE DEPARTMENT



Address
[REDACTED]
Address
[REDACTED]
City State, Zip
[REDACTED]
Phone Number
[REDACTED]
Fax Number
[REDACTED]

Supplement No
0003

DRAFT

Reported Date
04/19/2007
Nature of Call
SEXASSLT
Author
BROOME, TOM

Administrative Information

Agency RENO POLICE DEPARTMENT	OCA # [REDACTED]	Supplement No 0003	Reported Date 04/19/2007	Reported Time 08:22	CAD Call No [REDACTED]
Status REPORT TO FOLLOW	Nature of Call SEXUAL ASSAULT	Crime/Inc Loc [REDACTED]			
City RENO	Rep Dist H4F2	Area RN	Beat 38	From Date 03/10/2007	From Time 18:50
Emp # R1509/BROOME, TOM	Assignment Detectives - Days - Sex Crimes/Juv				
Emp #2 TRANSCRIBER, REPORTS	Assignment Administration - Academy - Days			Author R1509	
Assignment Detectives - Days - Sex Crimes/Juv			Approving Officer		Approval Date
Approval Time					

DETECTIVE 1: DETECTIVE TK BROOME

Involvement DETECTIVE	Seq # 1	Type INDIVIDUAL	Name ; DETECTIVE TK BROOME
Work/School RENO POLICE SEX CRIMES UNIT	Position/Grade DETECTIVE		

SUBJECT 1: DUNCKLEY, JIM

Involvement SUBJECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, JIM	MNI 1244891
Relationship SON	Name DUNCKLEY, BRENDAN			

SUBJECT 1: DUNCKLEY, JENNY

Involvement SUBJECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, JENNY	MNI 1244903
Phone Type MESSAGE	Phone No (559) 760-5108			

SUSPECT 1: DUNCKLEY, BREN

Involvement SUSPECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, BREN	MNI 913249	Race WHITE	Sex MALE
Date of Birth 07/04/1976	Age 30	Juvenile? No	Height 5'08"	Weight 178#	Hair Color BROWN	Eye Color HAZEL

Modus Operandi

Crime Code(s) SEX CRIMES

Narrative

On April 18, 2007 I received a call from a Jim Dunckley, who identified himself as Brendan Dunckley's father. Jim explained that he, his wife and Brendan were estranged. Jim said that he was told by his former daughter in law (Brendan's first wife), Jenny that Brendan had been arrested in Reno for sex charges. Jim said that he and his wife did some research on the Internet and saw an article in the paper confirming such. Jim asked how serious the charges were and wondered if at some point he and his wife would need to make arrangements to assist Brendan's children with he and Morgan. I explained to Jim that I could not discuss the case in detail with him. I did confirm that Brendan Dunckley had been arrested on two separate sexual assaults in Reno. Brendan's mother got on the phone at this point and explained that they feared Brendan, as he had threatened to kill her at one point during a hearing in California about custody of his two children he had with Jenny. Mrs. Dunckley said that after the hearing he walked up to her and said "your dead". Mrs. Dunckley said that Brendan felt that they should not be associated with Jenny. Mrs. Dunckley described Brendan as very manipulative and Narcissistic. Mrs. Dunckley said that Jenny recently revealed that there were some disturbing sexual issues with Brendan in

Report Officer R1509/BROOME, TOM	Printed At 04/19/2007 09:51	Page 1 of 2 V3. 331
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**Incident Report
RENO POLICE DEPARTMENT**Supplement No
0003**DRAFT****Narrative**

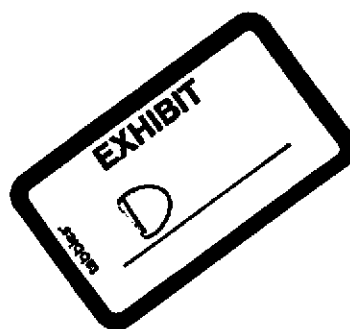
the past. I requested that Jim and his wife contact Jenny and ask if she would talk to me. They agreed. A short time later I did receive a phone call from Jenny Dunckley.

Jenny explained that she has been divorced from Brendan for 5 or 6 years. She said that they met in New York and moved to Madera County California together after they married. She said that early in their marriage in New York Brendan had affairs with friends of her's. She said that when they moved to California, her father got Brendan a job at the Pines Resort in Bass Lake California. She said that Brendan was fired two weeks later for Sexual Harassment of another employee, she described as a younger female.

During their marriage Jenny reported that Brendan was very controlling of who she could have as a friends, where she could go and it was Brendan's way or the highway. She said that Brendan was very aggressive with her both physically and sexually. I asked if there were ever any instances that she was forced to have sex with Brendan. Jenny said that she would not say that she was forced, but he did slap her around at times and she knew better than refuse him when he demanded sex.

Jenny said that the marriage broke up in July of 1999. She said that her parents owned a Bed and Breakfast in Oakhurst California and they were receiving calls from customers complaining of charges on their credit cards. Jenny said that eventually Brendan did admit to using the customer cards to pay for Internet porn and on line sex sites. She said that before he finally admitted to what he was doing he tried to "set up" her 16 year old brother by planting floppy disks with porn on them in his room, then calling her parents and tipping them off to where they could find the porn. Jenny said that there was a police report filed and there was somewhat of an investigation by Madera County Sheriffs department. She said that Brendan was not arrested since the money was paid back by the credit card companies. She said that the Sheriff's department referred to it as a victimless crime.

I asked if there were any other sexual allegations or anything involving their children. She said that there was not. The interview ended shortly thereafter. I did obtain a copy of the police report from Madera County Sheriff's Department. No Further...



SUMMONS -FAMILY LAW**CITACION JUDICIAL--DERECHO DE FAMILIA**

NOTICE TO RESPONDENT (Name): BRENDAN THOMAS
AVISO AL DEMANDADO (Nombre): DUNCKLEY

You are being sued. A usted le estan demandando.

PETITIONER'S NAME IS: JENNY ANN DUNCKLEY
EL NOMBRE DEL DEMANDANTE ES:

CASE NUMBER: (Numero del Caso)

Cv03749

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

FILED
MADERA SUPERIOR COURT

AUG 18 1999

CLERK

DEPUTY

Janet M. Gallagher

You have **30 CALENDAR DAYS** after this Summons and Petition are served on you to file a Response (form 1282) at the court and serve a copy on the petitioner. A letter or phone call will not protect you.

If you do not file your Response on time, the court may make orders affecting your marriage, your property, and custody of your children. You may be ordered to pay support and attorney fees and costs. If you cannot pay the filing fee, ask the clerk for a fee waiver form.

If you want legal advice, contact a lawyer immediately.

Usted tiene **30 DIAS CALENDARIOS** despues de recibir oficialmente esta citacion judicial y peticion, para completar y presentar su formulario de Respuesta (Response form 1282) ante la corte. Una carta o una llamada telefonica no le ofrecera proteccion.

Si usted no presenta su Respuesta a tiempo, la corte puede expedir ordenes que afecten su matrimonio, su propiedad y que ordenen que usted pague manencion, honorarios de abogado y las costas. Si no puede pagar las costas por la presentacion de la demanda, pida al actuario de la corte que le de un formulario de exoneracion de las mismas (Waiver of Court Fees and Costs).

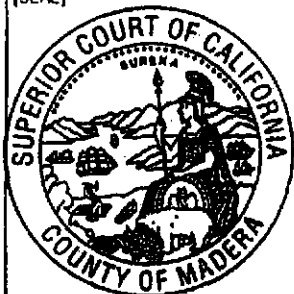
Si desea obtener consejo legal, comuniquese de inmediato con un abogado.

NOTICE The restraining orders on the back are effective against both husband and wife until the petition is dismissed, a judgment is entered, or the court makes further orders. These orders are enforceable anywhere in California by any law enforcement officer who has received or seen a copy of them.

AVISO Las prohibiciones judiciales que aparecen al reverso de esta citacion son efectivas para ambos conyuges, tanto el esposo como la esposa, hasta que la peticion sea rechazada, se dicte una decision final o la corte expida instrucciones adicionales. Dichas prohibiciones pueden hacerse cumplir en cualquier parte de California por cualquier agente del orden publico que las haya recibido o que haya visto una copia de ellas.

- The name and address of the court is: (El nombre y direccion de la corte es)
 Superior Court of California, County of Madera
 209 West Yosemite Ave.
 Madera, CA 93637
- The name, address, and telephone number of petitioner's attorney, or petitioner without an attorney, is:
 (El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
 KENNETH R. BALLARD
 Attorney at Law
 40327 Stagecoach Road, #1
 Oakhurst, CA 96344
 559-683-2122

[SEAL]



Date (Fecha) ⁵⁰⁰⁶² **AUG 16 1999** Clerk (Actuario), by **Janet M. Gallagher** Deputy **Diana Ornelas**

NOTICE TO THE PERSON SERVED: You are served

- a. ☐ as an individual.
- b. ☐ on behalf of respondent
 under: ☐ CCP 416.60 (minor) ☐ CCP 416.90 (individual)
 ☐ CCP 416.70 (ward or conservatee) ☐ other:
- c. ☐ by personal delivery on (date):

(Read the reverse for important information)
 (Lea el reverso para obtener informacion de importancia)

WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.

ADVERTENCIA: Para los efectos de la division de bienes al momento de una separacion legal o de la disolucion de un matrimonio, las leyes de California disponen que se presuman como bienes de la sociedad conyugal aquellos adquiridos en forma conjunta por las partes durante el matrimonio. Si cualquiera de las partes de esta accion muriese antes de que se dividan los bienes en tenencia conjunta de la sociedad conyugal, prevalecera el lenguaje relativo a la tenencia de los derechos de propiedad contenido en la escritura -- como, por ejemplo, copropiedad con derechos de sucesion (joint tenancy), tenencia en comun (tenants in common) o bienes de la sociedad conyugal (community property) -- y no la presuncion de que los bienes son de la sociedad conyugal. Usted debe consultar a su abogado o abogada si desea que la presuncion de que los bienes son de la sociedad conyugal se especifique en el titulo de propiedad inscrito.

STANDARD RESTRAINING ORDERS--FAMILY LAW

PROHIBICIONES JUDICIALES ESTANDARES--DERECHO DE FAMILIA

STANDARD FAMILY LAW RESTRAINING ORDERS

Starting immediately, you and your spouse are restrained from

1. removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court;
2. cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children; and
3. transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.

You must notify each other of any proposed extraordinary expenditures at least five business days prior to incurring these extraordinary expenditures and account to the court for all extraordinary expenditures made after these restraining orders are effective. However, nothing in the restraining orders shall preclude you from using community property to pay reasonable attorney fees in order to retain legal counsel in the action.

PROHIBICIONES JUDICIALES ESTANDARES--DERECHO DE FAMILIA

A usted y a su conyuge se les prohíbe

1. que saquen del estado al hijo o hijos menores de las partes, si los hay, sin el consentimiento previo por escrito de la otra parte o sin una orden de la corte; y
2. que cobren en efectivo, usen como colateral para prestamos, cancelen, transfieran, descontinuen o cambien los beneficiarios de, cualquier póliza de seguro u otras coberturas de seguro, inclusive los de vida, salud, automovil e incapacidad mantenido para el beneficio de las partes y su hijo o hijos menores; y
3. que transfieran, graven, hipotequen, escondan o de cualquier otra manera enajenen cualquier propiedad mueble o inmueble, ya sean bienes de la sociedad conyugal, quasi conyugales o bienes propios de los conyuges, sin el consentimiento por escrito de la otra parte o sin una orden de la corte, excepto en el curso normal de los negocios o para atender a las necesidades de la vida.

Ustedes deben notificarse entre si sobre cualquier gasto extraordinario propuesto, por lo menos con cinco dias de antelacion a la fecha en que se van a incurrir dichos gastos extrordinarios y responder ante la corte por todo gasto extraordinario hecho despues de que estas prohibiciones judiciales entren en vigor. Sin embargo, nada de lo contenido en las prohibiciones judiciales le impedira que use bienes de la sociedad conyugal para pagar honorarios razonables de abogados con el fin de obtener representacion legal durante el proceso.

MARRIAGE OF (last name, first name of party)
DUNCKLEY, Jenny and Brendan

NUMBER

CV03749


Serve a copy of the documents on the person to be served. Complete the proof of service. Attach it to the original documents. File them with the court.


PROOF OF SERVICE OF SUMMONS (Family Law)

1. I served the Summons with Standard Restraining Orders (Family Law), **blank Response**, and Petition (Family Law) on respondent (name): **BRENDAN THOMAS DUNCKLEY**
 - a. with (1) ☐ blank Confidential Counseling Statement (2) ☐ Order to Show Cause and Application (3) ☒ blank Responsive Declaration (4) ☒ completed and blank Income and Expense Declarations (5) ☐ completed and blank Property Declarations (6) ☐ Other (specify):
 - b. ☐ By leaving copies with (name and title or relationship to person served):
 - c. ☒ By delivery at ☒ home ☐ business
 - (1) Date of: 8/16/99 (2) Time of: 2:45 p.m. (3) Address: 455 E. Ness, #257 Fresno, CA (2) Place of:
 - d. ☐ By mailing (1) Date of:
2. Manner of service: (Check proper box)
 - a. ☒ **Personal service.** By personally delivering copies to the person served. (CCP 415.10)
 - b. ☐ **Substituted service on natural person, minor, incompetent.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration stating acts relied on to establish reasonable diligence in first attempting personal service.)
 - c. ☐ **Mail and acknowledge service.** By mailing (by first-class mail or airmail) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)
 - d. ☐ **Certified or registered mail service.** By mailing to address outside California (by registered or certified airmail with return receipt requested) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)
 - e. ☐ Other (specify code section):
☐ Additional page is attached.
3. The NOTICE TO THE PERSON SERVED on the summons was completed as follows (CCP 412.30, 415.10, and 474):
 - a. ☒ as an individual
 - b. ☐ on behalf of Respondent
 - under ☐ CCP 416.90 (Individual) ☐ CCP 416.70 (Ward or Conservatee) ☐ CCP 416.60 (Minor)
 - ☐ Other (specify):
 - c. ☒ by personal delivery on (date): 8/16/99
4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: \$35.00
6. Person serving:
 - a. ☒ Not a registered California process server.
 - b. ☐ Registered California process server.
 - c. ☐ Employee or independent contractor of a registered California process server.
 - d. ☐ Exempt from registration under Bus. & Prof. Code section 22350(b).
 - e. ☐ California sheriff, marshal, or constable.
 - f. Name, address, and telephone number and, if applicable, county of registration and number:
40327 Stagecoach Road, #1 Oakhurst, CA 93644

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: 8/16/99

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.
Date:


(SIGNATURE)


(SIGNATURE)

CERTIFICATE OF SERVICE

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I HERBY CERTIFY UNDER PENALTIES OF PERJURY THAT
ON THIS DATE I SERVED A TRUE AND CORRECT COPY OF THE
FORGOING DOCUMENT BY:

X DEPOSITING FOR MAIL, IN A SEALED ENVELOPE, U.S. POSTAGE
PREPAID, TO LEGAL MAIL PRISON OFFICIALS, AT LOVELACK
CORRECTIONAL CENTER, LOVELACK, NEVADA.
 FACSIMILE
 PERSONAL DELIVERY
 FEDERAL EXPRESS OR OTHER OVERNIGHT DELIVERY
 MESSENGER SERVICE

ADDRESSED AS FOLLOWS:

RICHARD GAMMICK	CLERK OF THE COURTS
WASHOE COUNTY DISTRICT ATTORNEY	SECOND JUDICIAL DISTRICT
P.O. BOX 30083	P.O. BOX 30083
RENO, NEVADA 89520	RENO, NEVADA 89520

DATED: JUNE 26, 2009

Brendan Pinckley (#1023236)

DEFENDANT IN PRO SE

1 CODE
 2 THE O'MARA LAW FIRM, P.C.
 3 WILLIAM M. O'MARA
 4 NEVADA BAR NO. 00837
 5 DAVID C. O'MARA
 6 NEVADA BAR NO. 08599
 7 311 East Liberty St.
 8 Reno, Nevada 89501
 9 775-323-1321
 10 775-323-4082 (fax)

11 Attorneys for Defendant

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IN THE SECOND JUDICIAL DISTRICT COURT
 FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA)	
)	
Plaintiff,)	Case No. CR07-1728
)	
vs.)	
)	Dept No. 4
BRENDAN DUNCKLEY,)	
)	
Defendants.)	RESPONSE TO DEFENDANT'S NOTICE
)	AND MOTION FOR WITHDRAWAL OF
)	ATTORNEY OR RECORD AND TRANSFER
)	OF RECORDS

COMES NOW, David C. O'Mara, Esq., of the O'Mara Law Firm, P.C. hereby responds to Defendant, Brendan Dunckley's notice and motion for withdrawal of attorney of record and transfer of records.

On June 10, 2009, the O'Mara Law Firm sent Mr. Dunckley a copy of his entire file, save and except various CDs which are not allowed. See Exhibit 1. Indeed, Mr. O'Mara advised Mr. Dunckley that he could not send the CDs but would provide them to Mr. Dunckley's new counsel.

Thus, it is believed that Mr. Dunckley is in possession of his entire file. Additionally, Mr. O'Mara will make the file available to Mr. Dunckley's new counsel as soon as Mr. O'Mara is notified of the new counsel.

DATED: July 23, 2009 THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara
DAVID C. O'MARA

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document
filed in Case No. CR07-1096.

 X Document does not contain the social security
number of any person

-OR-

 Document contains the social security number of a
person as required by:

 A specific state or federal law, to wit:

-or-

 For the administration of a public program

-or-

 For an application for a federal or state grant

-or-

 Confidential Family Court Information Sheet (NRS 125.130,
NRS 125.230 and NRS 125B.055)

DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara

DAVID C. O'MARA, ESQ.

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

☒ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

☐ Personal delivery

☐ Facsimile

☐ Federal Express or other overnight delivery

☐ Messenger Service

addressed as follows:

Brendan Dunckley
Inmate No. 1023236
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, Nevada 89419

Deputy District Attorney
One South Sierra Street, 4th Floor
P.O. Box 30083
Reno, Nevada 89520

DATED: July 23, 2009


/s/ Adrian M. Weis

ADRIAN M. WEIS

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LIST OF EXHIBITS

<u>Exhibit #</u>	<u>Description</u>	<u># Pages</u>
Exhibit 1	Letter from David O'Mara to Brendan Dunckley, dated June 10, 2009	1
Exhibit 2	Letter from David O'Mara to Brendan Dunckley, dated July 6, 2009	1

EXHIBIT “1”

O' M A R A
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

June 10, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Re: *Brendan Dunckley vs. The State of Nevada, Case No. 52383*

Dear Mr. Dunckley,

Enclosed for your records are the following:

1. The Supreme Court's Order of Affirmance.
2. My Notice of Withdrawal as your attorney.
3. Copy of the police reports, transcripts and other documents in my file, but were not included in the Supreme Court Appendix.
4. The original documents from the DMV, the Culinary Institute of America, and the Internal Revenue Service.
5. I also have in my possession various audio recording, which include 911 calls, calls from the jail, your arrest and home interview, and the victim's interview. Because the prison will not allow me to mail these directly to you, please have your new attorney contact my office so I can provide him with a copy.

At this time, I will no longer be representing you, in either the Supreme Court, or the District Court. However, please be advised that should you wish to decide to file a Petition for a Writ

O'MARA
LAW FIRM, PC

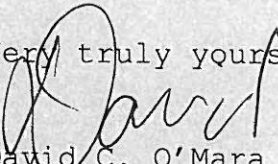
Mr. Brendan Dunckley

June 10, 2009

Page 2

of Habeas Corpus, you should obtain private counsel or file the petition yourself. In any event, you should do this immediately. I, however, can not assist you on this matter.

Very truly yours,



David C. O'Mara

DCO/aw

Enclosure

EXHIBIT “2”

O' M A R A
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

July 6, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

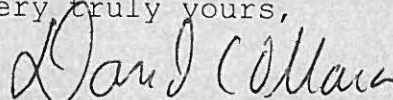
Re: *Brendan Dunckley vs. The State of Nevada, Case No.*
52383

Dear Mr. Dunckley,

I am in receipt of your June 22, 2009, letter regarding the production of your entire criminal file.

In this regard, I believe I have sent you the contents of your file, but I have enclosed a copy of the notice and motion of intent to introduce other bad acts for your records and the transcript of the preliminary hearing.

Very truly yours,


David C. O'Mara

DCO/aw

Enclosure

1 CODE
 2 THE O'MARA LAW FIRM, P.C.
 3 WILLIAM M. O'MARA
 4 NEVADA BAR NO. 00837
 5 DAVID C. O'MARA
 6 NEVADA BAR NO. 08599
 7 311 East Liberty St.
 8 Reno, Nevada 89501
 9 775-323-1321
 10 775-323-4082 (fax)

11 Attorneys for Defendant

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IN THE SECOND JUDICIAL DISTRICT COURT
 FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA)	
)	
Plaintiff,)	Case No. CR07-1728
)	
vs.)	
)	Dept No. 4
BRENDAN DUNCKLEY,)	
)	WITHDRAWAL OF ATTORNEY
Defendants.)	
)	
)	

Pursuant to Supreme Court Rule 46, David C. O'Mara, Esq., of The O'Mara Law Firm, P.C., hereby withdraws as attorney for Defendant Brendan Dunckley in the above-entitled matter. The above-referenced case was on appeal and later affirmed by the Nevada Supreme Court. The Supreme Court Remittur and Order Affirming were filed on June 3, 2009. Mr. Dunckley has filed a motion for withdrawal of attorney of record and transfer of records on July 7, 2009.

1 DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

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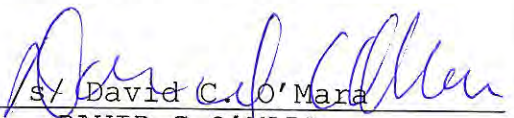
24

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s/ David C. O'Mara
DAVID C. O'MARA

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document
filed in Case No. CR07-1096.

 X Document does not contain the social security
number of any person

-OR-

 Document contains the social security number of a
person as required by:

 A specific state or federal law, to wit:

-or-

 For the administration of a public program

-or-

 For an application for a federal or state grant

-or-

 Confidential Family Court Information Sheet (NRS 125.130,
NRS 125.230 and NRS 125B.055)

DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara

DAVID C. O'MARA, ESQ.

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

☒ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

☐ Personal delivery

☐ Facsimile

☐ Federal Express or other overnight delivery

☐ Messenger Service

addressed as follows:

Brendan Dunckley
Inmate No. 1023236
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, Nevada 89419

Deputy District Attorney
One South Sierra Street, 4th Floor
P.O. Box 30083
Reno, Nevada 89520

DATED: July 23, 2009

/s/ David C. O'Mara

FILED

09 SEP 30 PM 4:48

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

BRENDAN DUNCKLEY #1023236

LOVELOCK CORRECTIONAL CENTER

1200 PRISON ROAD

LOVELOCK, NEVADA 89419

IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

PETITIONER

CASE NO: CR07-1728

VS.

CR07-1728

JACK PALMER, WARDEN

DEPT. NO: 4

RESPONDANT

REQUEST FOR SUBMISSION OF MOTION

IT IS REQUESTED THAT THE MOTION(S) FOR WITHDRAWAL OF ATTORNEY
OF RECORD AND TRANSFER OF RECORDS, INCLUDING AFFIDAVIT IN SUPPORT AND
ATTORNEY O'MARA'S RESPONSE, WHICH WERE FILED ON THE 7TH AND 23RD DAY
OF JULY, 2009 RESPECTFULLY.

ALSO REQUEST FOR MODIFICATION OF SENTENCE FILED ON THE 8TH
DAY OF JULY, 2009. IN ADDITION TO SUBMISSION OF CONSIDERATION OF THE PET-
ITION OF POST-CONVICTION WRIT OF HABEAS CORPUS, AND ALL INCLUDED PLEADINGS
AND SUPPORTING DOCUMENTATION FILED ON JULY 21, 2009.

THE UNDERSIGNED CERTIFIES THAT A COPY OF THIS REQUEST HAS
BEEN MAILED TO ALL COUNSEL OF RECORD.

DATED THIS 28TH DAY OF SEPTEMBER, 2009*Brendan Dunckley*

BRENDAN DUNCKLEY (1023236)
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

PETITIONER PRO SE.

V3. 352

CR07-1728
STATE VS BRENDAN DUNCKLEY (2 Pages
District Court 09/30/2009 04:48 PM
Washoe County 3860
DOC
TELETYPE

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
(PURSUANT TO NRS 239B.030)

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRO-
CEDING DOCUMENT, REQUEST FOR SUBMISSION OF MOTION, FILED
IN CASE NUMBER: CRO7-1728 AND CRO7P1728.

☒ DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS.

-OR-

☐ DOCUMENT CONTAINS THE SOCIAL SECURITY NUMBER OF A
PERSON AS REQUIRED BY:

☐ A SPECIFIC STATE OR FEDERAL LAW

-OR-

☐ FOR ADMINISTRATION OF A PUBLIC PROGRAM

-OR-

☐ FOR AN APPLICATION OF A FEDERAL OR OF A
STATE GRANT.

-OR-

☐ CONFIDENTIAL FAMILY COURT INFORMATION SHEET
(NRS 125.130, NRS.125.230 AND NRS 125B.055)

DATED: 9/28/09

Brendan Dunkley

BRENDAN DUNKLEY (1023236)
ATTORNEY PRO PER

1 **CODE 3025**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **BRENDAN DUNKLEY,**

13 **Defendant.**
14 _____

15 **ORDER**

16 On May 8, 2009, the Nevada Supreme Court entered an Order of Affirmance. On
17 July 7, 2009, the Defendant filed a Motion for Withdrawal of Attorney of Record and
18 Transfer of Records: Brendan Dunckley and an Affidavit in Support of that Motion. On July
19 23, 2009, counsel of record, David O'Mara, Esq., filed a Notice of Withdrawal of Attorney
20 and a Response to Defendant's Notice and Motion for Withdrawal of Attorney of Record
21 and Transfer of Records. On September 30, 2009, the Defendant formally submitted the
22 Motion to the Court for decision.
23

24 This Court having reviewed the pleadings filed herein, with good cause appearing
25 and in the interest of justice,
26

27 ///

28 ///

1 IT IS HEREBY ORDERED that the Motion for Withdrawal of Counsel of Record is
2 granted. Counsel David O'Mara, Esq., is relieved of any further representation of the
3 Defendant in this matter.

4 IT IS HEREBY FURTHER ORDERED that the Motion for Transfer of Records is
5 denied as moot as all the records in the possession of David O'Mara Esq., have already
6 been provided to the Defendant.

7
8 Dated this 21 day of October, 2009.

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11 Connie J. Stinheim
12 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 23rd day of October, 2009, I deposited in the county mailing system, a true copy of the attached document, addressed to:


Kelli Vilorio, Esq.
Deputy District Attorney
Via Inter-Office Mail

Brendan Dunckley
Inmate no. 1023236
1200 Prison Road
Lovelock, Nevada 89419
Via U.S. Postal Service

David O'Mara, Esq.
Attorney at Law
311 East Liberty Street
Reno, Nevada 89501
U.S. Postal Service

I hereby certify that on the 23rd day of October, 2009 I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney


Marci L. Stone

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 10-23-2009:11:49:18
Clerk Accepted: 10-23-2009:11:55:01
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Ord Granting/Denying in Part
Filed By: Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

KELLI VILORIA, ESQ.
BRENDAN DUNCKLEY
STATE OF NEVADA

1 CODE 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff,

Case No. CR07-1728

11 vs.

Dept. No. 4

12 BRENDAN DUNKLEY,

13 Defendant.
14 _____ /

15 ORDER

16 On July 8, 2009, the Defendant, in pro per, filed a Motion for Modification of
17 Sentence. Since that date there has been no response from the State.

18 Therefore, pursuant to DCR 13, in the interests of justice,

19 IT IS HEREBY ORDERED that the State shall file a response to the Motion for
20 Modification of Sentencing within ten (10) days of this order or the Court will deem that
21 failure to oppose is an admission that the Motion is meritorious and will grant the same.
22

23 Dated this 26 day of October, 2009.
24
25

26 Connie J. Steinheimer
27 DISTRICT JUDGE
28

CERTIFICATE OF MAILING

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 27th day of October, 2009, I deposited in the county mailing system, a true copy of the attached document, addressed to:

Kelli Vilorio, Esq.
Deputy District Attorney
Via Inter-Office Mail

Brendan Dunckley
Inmate #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Via U.S. Postal Service



Marci L. Stone

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 10-27-2009:08:42:38
Clerk Accepted: 10-27-2009:08:43:01
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Order...
Filed By: Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

KELLI VILORIA, ESQ.
BRENDAN DUNCKLEY
STATE OF NEVADA

1 CODE #2645
2 RICHARD A. GAMMICK
3 #001510
4 P. O. Box 30083
5 Reno, Nevada 89520-3083
6 (775)328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR07-1728

16 BRENDAN DUNCKLEY,

Dept. No. 4

17 Defendant.
18 _____/

19 OPPOSITION TO MOTION FOR MODIFICATION OF SENTENCE

20 COMES NOW, the State of Nevada, by and through counsel, to submit this Opposition
21 to Dunckley's Motion for Modification of Sentence. This Opposition is based on the
22 accompanying points and authorities.

23 Points and Authorities

24 Dunckley contends that his sentence should be modified because he is innocent, and his
25 convictions, albeit based on guilty pleas, were the result of "perjured . . . false facts. These are
26 not valid grounds for modifying a sentence.

A motion to correct an illegal sentence may only challenge the facial legality of the
sentence: either the district court was without jurisdiction to impose a sentence or the sentence
was imposed in excess of the statutory maximum. *Edwards v. State*, 112 Nev. 704, 708, 918
P.2d 321, 324 (1996). "A motion to correct an illegal sentence 'presupposes a valid conviction

1 and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to
2 the imposition of sentence.' " *Id.* (quoting *Allen v. United States*, 495 A.2d 1145, 1149
3 (D.C.1985)). A motion to modify a sentence "is limited in scope to sentences based on
4 mistaken assumptions about a defendant's criminal record which work to the defendant's
5 extreme detriment." *Id.* A motion to modify or correct a sentence that raises issues outside the
6 very narrow scope of issues permissible may be summarily denied. *Id.* at 708-09 n. 2.

7 Since Dunckley's motion fails to allege proper grounds justifying a modification of his
8 lawful sentence, his motion should be denied.

9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding document does not contain the
11 social security number of any person.

12 DATED: November 4, 2009.

13 RICHARD A. GAMMICK
14 District Attorney

15 By /s/ GARY H. HATLESTAD
16 GARY H. HATLESTAD
17 Chief Appellate Deputy
18
19
20
21
22
23
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25
26

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on November 4, 2009, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ SHELLY MUCKEL
SHELLY MUCKEL

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 11-04-2009:10:28:48
Clerk Accepted: 11-04-2009:10:38:46
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Opposition to Mtn
Filed By: GARY HATLESTAD, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

KELLI VILORIA, ESQ.
BRENDAN DUNCKLEY
STATE OF NEVADA

Code
3880

FILED

09 NOV 13 PM 4:05

1 BRENDAN DUNKLEY (#1023236)

2 LOVELOCK CORRECTIONAL CENTER

3 1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT

7 OF THE STATE OF NEVADA IN AND FOR

8 THE COUNTY OF WASHOE

9

10 STATE OF NEVADA,

11 PLAINTIFF

12 VS.

13 BRENDAN DUNKLEY,

14 DEFENDANT.

CASE NO: CR07-1728

DEPT. NO: 4

15 RESPONSE TO STATES OPPOSITION TO

16 MOTION FOR MODIFICATION OF SENTENCE

17

18 COMES NOW, DEFENDANT BRENDAN DUNKLEY, IN PRO PER,

19 TO SUBMIT THIS RESPONSE TO THE STATES OPPOSITION TO

20 THE DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE

21 FILED ON JULY 8, 2009. THE RESPONSE TO STATE OPPOSITION

22 IS BASED ON ACCOMPANYING POINTS AND AUTHORITY.

23 POINTS AND AUTHORITY

24

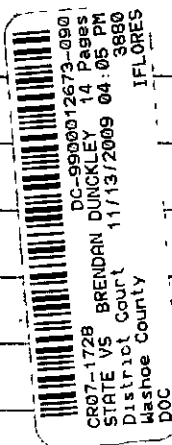
25 THE STATE CLAIMS IN THEIR OPPOSITION THAT

26 THE MOTION FAILS TO ALLEGE THE PROPER GROUNDS

27 REQUIRED TO JUSTIFY A MODIFICATION OF SENTENCE.

28 SPECIFICALLY THE STATE CLAIMS AND ASSERTS

V3. 365



1 THAT THE "DEFENDANT) DUNCKLEY CLAIMS THAT HIS SENTENCE
2 SHOULD BE MODIFIED BECAUSE HE IS INNOCENT, AND HIS
3 CONVICTIONS, ALBET BASED ON GUILTY PLEAS, WERE THE
4 RESULT OF "PERJURED... FALSE FACTS." THESE ARE NOT
5 GROUNDS VALID TO MODIFY A SENTENCE". (QUOTING LINES 20-
6 22)

7 DEFENDANT RESPECTFULLY DISAGREES, THAT IS THE VERY
8 REASON TO MODIFY A SENTENCE, PROVABLE INNOCENCE.
9 IN THE MOTION THE DEFENDANT IS NOT FOCUSING ON
10 INNOCENCE, BUT THAT THE STATE KNEW OF THE INNO-
11 CENCE AND STILL PROCEEDED TO INSIST ON THE INCA-
12 RCERATION WHEN IT KNEW IT TO BE BASED ON FALSE
13 PERJURED TESTIMONY WITH REGARDS TO BOTH CHARGES.

14 NOW THE STATE MENTIONS 'BASED ON GUILTY PLEAS'
15 THAT BRINGS UP "PLEAS BASED ON MISINFORMATION
16 IS VOID" (SIERRA V. STATE, 100 NEV. 614, 691 P.2d 431, 432-33
17 (1984)) TRUE THE COURTS HAVE FOUND REPEATEDLY THAT
18 THE VALID GROUNDS TO MODIFY A SENTENCE IS TO THE MIST-
19 AKEN ASSUMPTION OF THE DEFENDANTS CRIMINAL HISTORY,
20 WHICH WORKS TO THE EXTREME DETRIMENT OF THE DEFENDANT.

21 SINCE THE ABOVE QUOTATION IS THE STATED ENTIRE
22 ARGUMENT IN OPPOSITION, THE STATE HAS MADE THE
23 DEFENDANTS CASE. SO TO CLARIFY THE MAIN IDEA OF THE
24 ACTUAL MOTION THAT THE STATE CLAIMS FAILED TO MEET
25 THE REQUIRED GROUNDS, THE DEFENDANT SHALL ONCE
26 AGAIN SHOW HOW ADA VILORIA'S COMMENTS AND ACTIONS
-2- 27 AT SENTENCING WERE BOTH INACCURATE BUT ALSO
28 GROSSLY MISREPRESENTED THE DEFENDANTS CRIMINAL HISTORY.

1 "HOPEFULLY TODAY WILL BE THE END OF BRENDAN DUNKLEY
2 AND WHAT WE HAD TO DEAL WITH HIM" (SENTENCING TRANSCRIPTS
3 PG. 11; 22-23) "THIS HAS BEEN TEN (10) YEARS OF INAPPRO-
4 PRIATE CONDUCT, TEN (10) YEARS OF SEXUAL ATTACKS
5 MOSTLY ON YOUNG WOMAN WHO WERE 12 YEARS OLD" (SENT.
6 TRAW. PG. 11; 24-12; 1, 2) BY ADA VILORIA STATING THAT
7 IT HAS BEEN TEN (10) YEARS THAT THE STATE HAS HAD
8 TO DEAL WITH THE DEFENDANT, IT IMPLYS THAT THE
9 DEFENDANT HAS HAD EXTENSIVE CONTACT WITH THE JUD-
10 ICIAL SYSTEM. YET THAT IS NOT THE CASE. BY MAKING
11 THAT ONE COMMENT IT CAST A FALSE LIGHT ON THE
12 DEFENDANTS CRIMINAL HISTORY/RECORD, THAT DID NOT EXIST.

13 ALSO THE STATE CONTENDS THAT 'INNOCENCE' IS
14 NOT A VALID REASON TO MODIFY A SENTENCE. BUT IN
15 U.S. V. MALCOLM, (432 F.2d 809, 816 (2d cir 1970)) IT
16 STATED A VERY IMPORTANT AND RELEVANT FACT: "IF
17 JUSTICE IS TO BE DONE, A SENTENCING JUDGE SHOULD
18 KNOW ALL THE MATERIAL FACTS." TO SOLIDIFY THAT
19 FACT, WITH RESPECT THE DEFENDANT POINTS TO OTHER CASE
20 LAW: "IF A COURT RELIES ON INFORMATION WHICH IS
21 MATERIALLY FALSE OR UNRELIABLE'..., THE DEFENDANT'S
22 DUE PROCESS RIGHTS ARE VIOLATED" (US. V. KERR, 876 F.2d
23 1440, 1445 (9th cir 1989)) (SEE ALSO US V Columbus, 881 F.2d
24 785, 787 (9th cir. 1989))

25 DEFENDANT DID NOT JUST ASSERT HIS INNOCENCE
26 IN THE MOTION, HE VALIDLY SHOWED BOTH THE
-3- 27 FALSE ALLEGATIONS TOWARDS HIS CRIMINAL HISTORY
28 ON THE PART OF THE STATE, THE DETRIMENT IT CAUSED

1 THE DEFENDANT. ESPECIALLY SINCE THE FACT THAT THE
2 DEFENDANT HAS PROVEN THE EXISTANCE OF EVIDENCE IN THE
3 POSSESSION OF THE STATE THAT PROVES THE INNOCENCE OF
4 THE DEFENDANT IN BOTH CHARGES/COUNTS. ALSO THAT THE
5 STATE 1) HAD IN ITS POSSESSION EVIDENCE IT KNEW
6 TO BE BOTH IMPEACHABLE TOWARDS THEIR CASE AND ALSO
7 MATERIALLY RELIVANT TO ATTACK THE BASE FOUNDATION
8 OF THE CHARGES AGAINST THE DEFENDANT, AND 2) FAILED TO
9 INFORM THE JUDGE OF THE EXISTANCE OF THIS EVIDENCE,
10 INSTEAD MAKING STATEMENTS AND ARGUMENTS IT KNEW
11 TO BE FALSE, THAT IS WHAT THE MOTION WAS DISCUSSING.
12 NOT ATTEMPTING TO SIMPLY CLAIM INNOCENCE IN THE
13 WRONG 'VENUE'. BUT IN THE PROCESS DEFENDANT PROVED
14 BOTH THE REQUIRED GROUNDS WITHIN THE 'SCOPE' OF
15 A MOTION FOR MODIFICATION OF SENTENCE, AND ALSO PROVED
16 ACTUAL/FACTUAL INNOCENCE SIMULTANEOUSLY.

17 TO CHALLENGE A VALIDITY OF A SENTENCE TO BE
18 MODIFIED. REQUIRES THAT THE DEFENDANT PROVE MISREPRE-
19 SENTATION OF CRIMINAL HISTORY LEADING TO EXTREME DETRIMENT
20 OF THE DEFENDANT. THE DEFENDANT HAS PROVEN BOTH
21 REQUIRED ELEMENTS.

22 IN ADDITION PLEASE NOTE THAT THE STATE SAID ON
23 LINE 21 OF PAGE 1 OF THE OPPOSITION "CONVICTIONS" AND
24 "PLEAS" (EMPHASIS ADDED). BY THE STATE PLURALIZING
25 THESE TWO WORDS THEY NOW INTRODUCE THE SECOND
26 CHARGE. SINCE THE ORIGINAL MOTION HAD FOCUSED ON
-4- 27 COUNT ONE AND THE GUILTY PLEA MEMORANDUM IN ITS
28 ENTIRETY. THE STATE HAS OPENED THE "WINDOW TO NOW

1 ALLOW THE DEFENDANT TO INTRODUCE HOW THE COMMENTS
2 OF ADA VILORIA IN RESPECT COUNT TWO WAS ALSO FALSE
3 STATEMENTS KNOWN TO BE UNSUPPORTED, YET ALSO TO BE
4 IN POSSESSION OF IMPEACHABLE MATERIALLY RELIVANT
5 EVIDENCE, THAT TO WAS FAICED TO PRODUCE AND INTRODUCE
6 FOR THE JUDGES CONSIDERATION. WITH RESPECT TO THE
7 STATE I PRESENT THE FOLLOWING FOR THE STATES CONSIDERA-
8 TION: IN THE ACCOUNT OF JESSICA H. THE DEFENDANT IS ACUSSED
9 OF FORCING HIS PENIS INTO HER MOUTH AND SHE BIT IT. RES-
10 ULTING IN THE CHARGE OF SEXUAL ASSAULT (NRS 200.366)
11 EXCEPT WHEN THE STATE MADE REFERANCE TO THIS "ATTACK"
12 AT SENTENCING ON PAGE 12, 13 AND SPECIFICALLY ON PAGE 14
13 LINE 17 "WITH HIM SHOWING HIS PENIS INTO HER MOUTH". BUT
14 THAT COMMENT WAS FALSE AND THE STATE KNEW IT TO BE
15 FALSE AND BASED ON QUESTIONABLE TESTIMONY. THESE STATEMENTS
16 HAD NO OTHER REASON TO BE STATED EXCEPT TO INTENTIONALLY
17 MISLEAD AND UNDUVELY PREJUDICE THE DEFENDANT IN THE
18 EYES OF THE JUDGE IN REGARD TO SENTENCING.

19 ON MAY 21, 2007 WHICH IS EVEN PRIOR TO THE
20 ORIGINAL PRELIMINARY HEARING HELD ON JULY 2, 2007, A DNA
21 LAB RESULT REPORT WAS GENERATED. ON MARCH 10, 2007 AT
22 THE SCENE OF THE "ATTACK" A DNA SAMPLE WAS OBTAINED
23 FROM BRENDAN DUNCKLEY. DEFENDANT WAS IN FULL VIEW OF
24 NUMEROUS BY-STANDERS AT ALL TIME UNTIL POLICE HAD
25 ARRIVED ON SCENE. HE WILLINGLY AGREED TO THE DNA
26 TEST AND VISUAL INSPECTION OF HIS PENIS FOR MARKS
-5- 27 AS JESSICA CLAIMED SHE GAVE HER ATTACKER WHEN
28 SHE BIT HIM, AFTER THE PENIS WAS SHOVED INTO HER

1 MOUTH. YET ON MAY 21, 2007 THE DNA SWABS OBTAINED
2 THAT NIGHT HAD A RESULT: "NO DNA FOREIGN TO THE
3 SOURCE, BRENDAN DUNKLEY, WAS OBTAINED FROM THE
4 GENITAL SWABS." (INCLUDED) AS PER THE WASHOE COUNTY
5 SHERIFF'S FORENSIC SCIENCE DIVISION. THERE WAS NO
6 DNA TRANSFER. ADD TO THAT THE STATEMENTS OF RPD
7 OFFICERS THE NIGHT OF "ATTACK" IN THE REPORT "NO
8 VISIBLE INJURY TO BRENDAN'S PENIS SHAFT, HEAD OR BASE"

9 DEFENDANT HUMBLY REQUESTS THAT THE COURTS
10 CONSIDER AND ALLOW ENTRANCE OF THIS DOCUMENT INTO
11 EVIDENCE, PROVING THAT THE STATE HAD MATERIAL EVIDENCE
12 THAT BY ANY EXAMINATION WOULD PROVE TO BE BOTH
13 IMPEACHABLE AND DETRIMENTAL TO THE STATES CASE, AND
14 BECAUSE OF THAT FAILED TO EVER INTRODUCE IT INTO
15 EVIDENCE / RECORD. THE QUESTION BEFORE THE COURT IS
16 HAD THAT EVIDENCE BEEN INTRODUCED WOULD IT HAVE
17 AFFECTED THIS CASE AND THE ULTIMATE OUTCOME. THIS
18 EVIDENCE PROVES THAT THE ORIGINAL CHARGE OF NRS 193..
19 330 AND 200,366 REQUIRING 'PENETRATION' IS IMPOSSIBLE
20 TO HAVE OCCURED. SCIENTIFICALLY PROVEN BY THE STATE
21 OF THE DEFENDANTS INNOCENCE, YET NOT ONLY DID THE
22 STATE NEVER INTRODUCE THIS EVIDENCE, BUT WENT AS
23 FAR AS CHALLENGING / OPPOSING THE STATE RECOMMENDA-
24 TION OF 2 TO 5 YEARS FOR COUNT TWO AND REQUESTING
25 A MAXIMUM SENTENCE OF 2 TO 20 YEARS. CONTINUALLY
26 INTENTIONALLY MISREPRESENTING THE FACTS. IF ADA
-6- 27 VILORIA STATES SHE HAD NO KNOWLEDGE THEN HOW
28 CAN SHE PROPERLY REPRESENT THE PEOPLE AND PRESENT

1 THE WHOLE CASE AND ALL EVIDENCE FOR CONSIDER-
 2 ATION. WHICH IS THE ONLY WAY TO ENSURE JUSTICE
 3 IS DONE. BUT SUCH 'ERROR' IS NOT THE CASE. PAGE
 4 AFTER PAGE, REPORT AFTER REPORT, DOCUMENT AFTER
 5 DOCUMENT PROVES THE EXACT OPPOSITE, IT PROVES
 6 THAT THE MISLEADING THE RECORD AND COURTS IN
 7 REGARDS TO THE DEFENDANTS CRIMINAL HISTORY, SPE-
 8 CIFICALLY THE IMMEDIATE HISTORY, THAT THE STATE
 9 KNEW DID NOT ACTUALLY EXIST WAS INTENTIONAL AND
 10 THE ACTIONS OF ADA VILORIA WAS IREHENSABLE AND INEX-
 11 USABLE. THE SEVERE DETRIMENT IT CAUSED THE DEFENDANT
 12 IS UNFATHONABLE.

13 SUCH ACTION IS NOTED IN A CASE "WHETHER THE
 14 D.A. DID SO INTENTIONALLY OR NOT, NONETHELESS MISREPRESE-
 15 NTATION DID OCCUR DURING SENTENCING. THESE MISREPRESENTATIONS
 16 WHETHER CONSIDERED INDEPENDENTLY, CLEARLY CREATED A
 17 MATERIALLY UNTRUE FOUNDATION UPON WHICH THE SENTENCE
 18 IMPOSED IN THIS CASE RESTED" STATE V EIGHTH JUDICIAL DISTRICT
 19 Court, (100 NEV. 90, 677 P.2d 1044 (1984))

20 ALSO PLEASE NOTE THAT IN BOTH THE RULES OF
 21 CRIMINAL PROCEDURE RULE 11(h)(2) AND HANSEN V. STATE, (824
 22 P.2d 1384 (dt UNK)) IT STATES: "THAT ENTERING INTO A PLEA
 23 UNDER MISTAKEN LEGAL ADVICE THAT NO DEFENSE TO MISCOND-
 24 UCT EXISTS, ESTABLISHES FAIR AND JUST REASON TO WITHDRAW
 25 A PLEA". THE MISTAKEN LEGAL 'ADVISE' OF THE STATE PRODUCING
 26 A GUILTY PLEA MEMORANDUM BASED ON TESTIMONY IT KNEW
 -7- 27 TO BE PERJURED AS THE ONLY SUPPORT AND EVIDENCE WOULD
 28 WARRANT A REVERSAL OF THE GUILTY PLEA MEMORANDUM.

1 DEFENDANT UNDERSTANDS THAT IT IS ALL BASED ON THE
 2 FALSE ALLEGATIONS OF ADA VILORIA. IN SIMPLE TERMS IF
 3 AS THE EVIDENCE PROVES THE STATE WAS IN POSSESSION OF
 4 EVIDENCE IT KNEW TO BE IMPORTANT EVIDENCE THAT COULD
 5 'TORPEDO' THEIR CASE AND PROVE THE DEFENDANTS INNOCENCE,
 6 AND STILL PROSECUTED THE DEFENDANT, THAN ADA VILORIA
 7 KNEW THAT EVERYTHING OUT OF HER MOUTH WAS KNOWN
 8 BY HERSELF TO BE FALSE. (SIERRA V. STATE) (US. V. KERR)

9 THE DEFENDANT, HUMBLy APPRECIATES THE STATES ATTEMPT
 10 TO OPPOSE THE MOTION, BUT AGAIN RESPECTFULLY DISAGREES,
 11 DUE TO THE DEFENDANTS CONTENTION THAT BECAUSE THE STATE
 12 HAD EVIDENCE / INFORMATION PROVING THE INNOCENCE OF THE
 13 DEFENDANT. BECAUSE IT HAD ALL THIS EVIDENCE AND STILL
 14 PROCEEDED FOWARD WITH 1) PRELIMINARY HEARING, 2) ACCEPTANCE /
 15 INTRODUCTION OF GUILTY PLEA MEMORANDUM, 3) ARGUING AT SENTENCING
 16 FOR THE MAXIMUM PENALTY, AND CONTINUED FIGHT TO KEEP
 17 DEFENDANT INCARCERATED. WITH THESE FACTS IN MIND, THE
 18 DEFENDANT DIRECTS FOCUS ON "WHEN POLICE OR PROSECUTORS
 19 CONREAL SIGNIFICANT EXCULPATORY EVIDENCE OR IMPEACHING
 20 MATERIAL IN ITS POSSESSION, IT IS ORDINARILLY INCUMBANT
 21 ON THE STATE TO SET THE RECORD STRAIGHT," (CANION V. COLE,
 22 91 P.2D 355, 208, ARIZ. 133 (2004)) (ALSO REF TO ABA STANDARDS
 23 3-3.11) BY THE STATE MISSING OR IGNORING THE ABOVE
 24 THREE OPPORTUNITIES TO CORRECT THE ERRORS IS NOT HARMLESS.
 25 CONSIDERING THE STATE WAS GIVEN NUMEROUS CHANCES TO
 26 SET THE RECORD STRAIGHT. WITH LETTERS TO DA GAMMICK ON
 27 APRIL 19, 2009, ADA G. HATHSTAD ON JUNE 15, 2009 & OCTOBER 20, 2009.
 28 LETTERS TO ADA VILORIA & JUDGE STEINHEIMER ON JUNE 26, 2009

1 YET AT NO POINT HAS THE STATE RESPONDED OR ATTEMPTED
2 TO CORRECT THE RECORD OF THE GROSS AND SEVERE MIS-
3 REPRESENTATION OF THE 'CRIMINAL HISTORY' OF THE DEFENDANT.

4 AS PER THE SPECIFIC DEFINITION SO GRACIOUSLY
5 PROVIDED BY THE STATE "WHICH WORK TO THE DEFENDANT'S
6 EXTREME DETREMENT." THE DEFENDANT CLAIMS THAT THERE
7 IS NO MORE SEVERE DETREMENT THAN THE INTENTIONAL
8 CONVICTION AND INCARCERATION OF A INNOCENT MAN BASED
9 ON FALSE INFORMATION. THERE IS NO REAL EXCUSE FOR THE
10 STATES ACTIONS TO MALICIOUSLY AND INTENTIONALLY WITHHOLD
11 EXTREMELY RELEVANT INFORMATION FROM THE JUDGE, AND TO MAKE
12 FALSE ACCUSATIONS ATTACKING THE DEFENDANT, ALL TO SAVE FACE
13 AND PRESERVE THE CONVICTION RECORD. SUCH ACTIONS ARE
14 INEXCUSABLE AND PREVENTIVE.

15 BECAUSE THERE IS NO REAL EXCUSE FOR SUCH
16 BEHAVIOR THAT IS EVIDENT BY THE STATES OPPOSITION IT
17 IS NOT A SUBSTANTIAL ARGUMENT, NOT WHEN THE ENTIRE
18 ARGUMENT CONSISTS OF ONE SENTENCE. CORRECTION ONE
19 SENTENCE AND A LEGAL LESSON ON THE DIFFERENCE BETWEEN
20 MODIFICATION OF SENTANCE AND A MOTION TO CORRECT A ILLEGAL
21 SENTENCE. THIS IS CONSIDERABLY UNDERSTANDABLE SINCE THE
22 RESPONDANT HIMSELF CHIEF APPELLATE DEPUTY G. HATHRETAJ
23 RECEIVED TWO LETTERS, AND FAILED TO HONOR ABA STANDARD
24 3-3.11 AND CANON V. COLE, MAKING HIM JUST AS
25 CULPABLE AS ADA VILORIA, TO ALLOW THIS FARSE AND
26 MISCARRIAGE OF JUSTICE TO CONTINUE UNCORRECTED. BY THE
-9- 27 STATE CLAIMING ITS ENTIRE ARGUMENT IN OPPOSITION OF
28 THE MOTION BEING ONE SENTENCE IT FAILED TO DISPROVE OR

1 THE BASE ARGUMENT THAT WAS PROVEN BY THE
2 DOCUMENTATION IN THE ORIGINAL MOTION, AS WELL AS
3 THE INCLUDED DNA LAB RESULT.

4 SINCE THE STATE FAILED TO ADEQUATELY OPPOSE
5 THE MOTION FOR MODIFICATION OF SENTENCE, WHICH IS
6 SUPPORTED BY SUBSTANTIAL DOCUMENTATION, AND THE
7 STATES FAILURE TO PRODUCE ANY ARGUMENT, DEFENSE OR
8 CONTRADICTION TO THE DOCUMENTS. THEREFORE SINCE THE
9 STATE HAS FAILED TO OPPOSE THE AUTHENTICITY OF THE
10 DOCUMENTS, IT SHOULD BE DEEMED MERITORIOUS. ALSO
11 WITH THE USE OF 'CONVICTIONS' AND 'PLEAS' ON LINE 21
12 THE DNA REPORT BE CONSIDERED AS EVIDENCE, SINCE THE
13 STATE OPENED THAT DOOR ALLOWING THE CONSIDERATION OF
14 BOTH CHARGES.

15 WITH THE GROSS AND OBVIOUSLY INTENTIONAL
16 DECEPTION OF THE COURTS BY BOTH FAILING TO PRESENT
17 MATERIALLY IMPORTANT EVIDENCE/INFORMATION, AND THE COMMENTS
18 OF ADA VILORIA THAT WERE KNOWINGLY THE EXACT OPPOSITE OF
19 THE ACTUAL EVIDENCE SHE POSSESSED. STATE V. CARTER, (91 P.3d
20 1162, 278 KAN. 74 (2004)) STATES: "NO RULE GOVERNING ORAL
21 ARGUMENT IS MORE FUNDAMENTAL THAN THAT REQUIRING
22 COUNSEL TO CONFINE REMARKS TO MATTERS IN EVIDENCE;
23 STATING FACTS NOT IN RECORD IS CLEARLY IMPROPER." THAT
24 IS EXACTLY WHAT ADA VILORIA DID EXCEPT TO AN EXTREME
25 BY KNOWINGLY COMMENTING ON TOPICS SHE KNEW TO
26 BE CONTRADICTED BY 'SECRET' EVIDENCE. ALL TO PRESENT
-16- 27 A FALSE IMAGE OF THE BEHAVIOR AND CRIMINAL HISTORY
28 OF DEFENDANT, BRENDAN DUNCKLEY.

1 DUE TO THE OBVIOUS DISREGARD FOR THE DEFENDANTS
2 DUE PROCESS RIGHTS, AND BY THE MALICIOUS ARGUMENTS
3 BY ADA VILORIA FOR NOT ONLY INCARCERATION OF AN INNO-
4 CENT MAN, BUT FOR THE MAXIMUM PUNISHMENT. THE
5 DEFENDANT HAS PROVIDED NUMEROUS GOOD FAITH EFFORTS TO
6 ALLOW THE STATE TO CORRECT THIS MISCARRIAGE OF
7 JUSTICE ON THEIR OWN, BUT THEY HAVE FAILED TO DO
8 SO. THIS MOTION WAS ONLY RESPONDED TO BECAUSE THE
9 COURTS ORDERED A RESPONSE. EXCEPT THAT DOES NOT
10 CHANGE THE ONE HUNDRED AND TWENTY-FIVE (125) DAYS
11 IT TOOK TO RESPOND. THAT GOES TO SUPPORT THE BELIEF
12 THAT A 'X' IN THE WIN COLUMN IS THE MOST IMPORTANT
13 THING.

14 BECAUSE OF ALL THE OVERWHELMING EVIDENCE PROV-
15 IDED TO SUPPORT THE MOTION FOR MODIFICATION OF SENTENCE,
16 ALL THE WHILE THIS EVIDENCE AND MOTION/RESPONSE HAS
17 MET THE REQUIREMENTS NEEDED WITHIN THE 'SCOPE' REQUIRED.

18 SO WITH THAT THE DEFENDANT, HUMBLLY REQUESTS
19 SINCE THE STATE HAS FAILED TO CONTRADICT OR DISPROVE
20 THE WEIGHT AND GRAVITY OF THE EVIDENCE PROVIDED, WITH
21 THE STATES FAILURE TO SUCCESSFULLY OPPOSE, IT IS THEREFORE
22 REQUESTED THAT WITH THE INCLUSION OF THE DNA
23 REPORT THAT THE COURTS GRANT THE MOTION. TO FIND IT
24 IS WITH MERIT AND WARRENTS A FULL VACATING OF THE
25 GUILTY PLEA MEMORANDUM, COUNT ONE IN ITS ENTIRETY, INCLUDING
26 ALL ORIGINAL CHARGES AND ALTERNATIVES, ALSO A VACATING OF
-11- 27 COUNT TWO AND ALL ORIGINAL CHARGES AND ALTERNATIVES. ALSO
28 TO CLEAR DEFENDANT, BRENDAN DUNCKLEY OF ALL RECORD

1 ALL CRIMINAL DATA BASES, TO FULLY EXPUNGE ANY RECORD
2 OF ARRESTS RELATING TO THIS CASE AND ALL RELATED
3 CHARGES. TO REQUEST THAT ALL CONDITIONS OF THE CONVICTION
4 ALSO BE LIFTED IN REGARD TO LIFE TIME SUPERVISION.
5 TO REMOVE DEFENDANT FROM ANY AND ALL LISTS THAT
6 ASSOCIATE HIM WITH CONVICTED / REGISTERED SEX OFFENDERS.
7 TO HAVE ALL HIS CONSTITUTIONAL RIGHTS RESTORED.

8 DUE TO THE SEVERE, AND MALICE INTENDED
9 ACTIONS BY ADA VILORIA, WARRENT THE REQUESTED
10 ACTIONS / REMEDIES, TO CORRECT MANIFESTED AND EXTREME
11 MISLAKMAHE OF JUSTICE. THE STATES ACTIONS HAVE DESTROYED
12 THE DEFENDANT'S LIFE, FAMILY, HARMED HIS CHILDREN, DESTROYED
13 HIS MARRIAGE, REPUTATION, GOOD NAME. IN THE INTREST OF
14 JUSTICE THE STATE HAS RESPONDED AND HAD 125 DAYS TO
15 MAKE A SOLID OPPOSITION, SINCE THEY OBVIOUSLY CANT
16 CONDONE OR EXCUSE THEIR ACTIONS, AN IMMEDIATE DECISION IS
17 RESPECTFULLY REQUESTED TO FIX THIS MANIFESTED INJUSTICE.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING
20 DOCUMENT CONTAINS NO SOCIAL SECURITY NUMBERS OF ANY PERIOD.

21

22 DATED: NOVEMBER 6, 2009

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BRENDAN Dunchley

BRENDAN DUNCKLEY (#1023236)

L.C.C.

1200 PRISON ROAD

LOVELAND, NEV. 89419

PRO PER

Jan 28, 2008 4:55PM

me Lab

No. 9776 P. 3/3

L1806-07-1

WASHOE COUNTY SHERIFF'S OFFICE
MICHAEL HALEY, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD.
RENO, NV 89512-1000
PHONE (775) 328-2800
FAX (775) 328-2831



LABORATORY NUMBER: L1806-07-1
AGENCY: RENO P.D.
AGENCY CASE #: 07-9446
SUSPECT: DUNCKLEY, BRENDAN
VICTIM: HAMBRICK, JESSICA
PERSON REQUESTING: DET BROOME
DATE OF SUBMISSION: 4/6/2007
OFFENSE: SEXUAL ASSAULT

Received from the Washoe County Sheriff's Office Evidence Section on 04/09/2007

<u>CONTROL #</u>	<u>DESCRIPTION</u>
P149340	RPD Tag 070001934, Item 1: Genitals and control swabs
P149341	RPD Tag 070002369, Item 1: Reference saliva standard from Jessica Hambrick

RESULTS OF EXAMINATION:

For additional DNA results in this case refer to Laboratory report L4130-05, which includes the analysis of the Brendan Dunckley reference standard.

No DNA foreign to the source, Brendan Dunckley, was obtained from the genitals swab. No DNA results were obtained from the control swab.

PCR quantitation was completed at the Sp15.33 genetic locus. PCR amplification was completed at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S939, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818, and PGA. The sex determining Amelogenin locus was also examined.

The above listed evidence was returned to the Washoe County Sheriff's Office Evidence Section.

JEFFREY M. ROLANDS, CRIMINALIST

5-21-7
Date

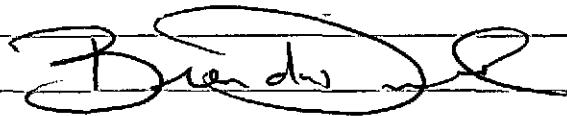
CERTIFICATE OF MAILING

PURSUANT TO NRCP 5(b) I HERBY CERTIFY THAT I
BRENDAN DUNCKLEY, DEFENDANT TURNED OVER THE TRUE COPY
OF THIS DOCUMENT TO PRISON OFFICIALS FOR MAILING, THROUGH
U.S. MAIL SERVICE. AT LOVELOCK CORRECTIONAL CENTER, IN
PERKINS COUNTY NEVADA, LETTERS WERE MAILED TO ADDRESSES
BELOW BY MEANS OF BRASS SLIP NO: 1518069

WASHOE COUNTY DISTRICT ATTORNEY
% GARY HATLESTAD
P.O. BOX 30083
RENO NEVADA 89520-3083

Second Judicial District Courts
% Clerk of the Court
P.O. Box 30083
RENO, NEVADA 89520-3083

NOVEMBER 9, 2009



BRENDAN DUNCKLEY #1023236
L.C.C.
1200 PRISON ROAD
LOVELACK, NEVADA 89415

Pro Per.

1 CODE #3860
2 RICHARD A. GAMMICK
3 #001510
4 P. O. Box 30083
5 Reno, Nevada 89520-3083
6 (775)328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR07-1728

16 BRENDAN DUNCKLEY,

Dept. No. 4

17 Defendant.

18 REQUEST FOR SUBMISSION

19 It is requested that Defendant's Motion for Modification of Sentence, filed on July 8,
20 2009, be submitted to the court for decision.

21 AFFIRMATION PURSUANT TO NRS 239B.030

22 The undersigned does hereby affirm that the preceding document does not contain the
23 social security number of any person.

24 DATED: November 25, 2009.

25 RICHARD A. GAMMICK
26 District Attorney

By /s/ GARY H. HATLESTAD
GARY H. HATLESTAD
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on November 25, 2009, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ SHELLY MUCKEL
SHELLY MUCKEL

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 11-25-2009:10:59:48
Clerk Accepted: 11-25-2009:11:10:08
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Request for Submission
Filed By: GARY HATLESTAD, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

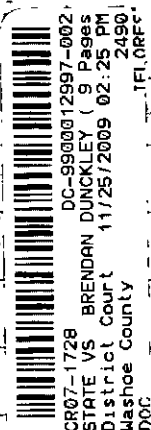
If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.



FILED

1 BRENDAN DUNCKLEY (#1023236)

09 NOV 25 PM 2:25

2 LOVELOCK CORRECTIONAL CENTER

HOWARD W. CONYERS

3 1200 PRISON ROAD

BY *[Signature]*
DEPUTY

4 LOVELOCK, NEVADA 89419

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF
WASHOE

THE STATE OF NEVADA,

CASE NO: CR07-1728

PLAINTIFF

DEPT. NO: 4

V.S.

BRENDAN DUNCKLEY,

DEFENDANT

MOTION FOR JUDGEMENT IN THE INTREST OF JUSTICE

COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND
SUBMITS TO THIS COURT HIS MOTION FOR JUDGEMENT
IN THE INTREST OF JUSTICE.

IN REGARDS AND CONNECTION TO THE MOTION
FILED BEFORE THE COURTS ON JULY 8, 2009 - A
MOTION FOR MODIFICATION OF SENTENCING, THIS MOTION
AND FORMAL REQUEST FOR JUDGEMENT IS SUPPORTED
BY POINTS AND AUTHORITIES. AND PURSUANT TO DCR 13,
IN THE INTREST OF JUSTICE, THE DEFENDANT DOES
HEREBY OFFER THIS MOTION FOR THE COURTS CON-
SIDERATION

POINTS AND AUTHORITY

ON OCTOBER 26, 2009, THE HONORABLE JUDGE CONNIE J. STEINHEIMER ISSUED AN ORDER TO THE STATE TO SUBMIT A RESPONSE TO THE MOTION FILED ON JULY 8, 2009. ON NOVEMBER 4, 2009 THE STATE FILED ITS RESPONSE. IN ANSWER TO THE STATE, DEFENDANT FILED A RESPONSE TO STATE OPPOSITION ON NOVEMBER 9, 2009. THIS MOTION IS IN RESPECT TO AND IN CONNECTION TO THAT RESPONSE.

FROM JULY 8, 2009 UNTIL THE COURT ORDERED RESPONSE ON NOVEMBER 4, 2009 TOTALLED ONE HUNDRED AND TWENTY DAYS (120). BUT THE COURT NEEDS TO ACTUALLY EXAMINE THE RECORD CORRECTLY. THE STATE IN FACT HAD ALL THE INFORMATION IN ITS POSSESSION SINCE THOMAS FRUGOLI INITIALLY SIGNED AND ACCEPTED THE LETTER FOR WASHOE COUNTY DISTRICT ATTORNEY RICHARD GAMMICK. THAT LETTER HAD ALL THE SAME 'EVIDENCE' THAT THE MOTION CONTAINED. AS DID THE LETTER DATED JUNE 15, 2009 ADDRESSED TO ADA GARY HATLESTAD, WHICH WAS COPIED AND FOWARDED TO NEVADA A.G. SO THE STATE ACTUALLY HAD THE CORRECT TOTAL OF ONE HUNDRED AND NINTY-EIGHT DAYS (198), MORE THAN ENOUGH TIME TO BUILD A DEFENSE TO THE ACCUSATION OF DUE PROCESS VIOLATIONS. NOT TO MENTION THE WILLFULL WITHHOLDING OF EXCULPATORY EVIDENCE, PROSECUTORIAL MISCONDUCT, A OBVIOUS MALICE AND FORETHOUGHT BY THE ACTIONS

1 OF ADA VILORIA.

2 EXCEPT IN THE STATES 'OPPOSITION TO MOTION', THE
 3 STATES ENTIRE ARGUMENT WAS ONE SENTENCE LONG. AT
 4 NO TIME DOES THE STATE REBUT THE DOCUMENTATED
 5 EVIDENCE, POLICE REPORTS, DNA RESULT, COURT PAPERWORK.
 6 A VALID AND SIMILAR ANALOGOUS AUTHORITY IS FOUND
 7 IN BRAGEN V. POINDEXTER, 249 F.3d 476 (2001) IN THAT
 8 CASE IT IS DISCUSSING PROSECUTORIAL VINDICTIVENESS, THAT
 9 IS NOT THE EXACT SITUATION HERE (BUT IS BORDERLINE). IN
 10 IT THE COURTS RULED IN RESPONSE TO A MOTION CLAIMING
 11 THE MISCONDUCT "IF THE GOVERNMENT FAILS TO PRESENT
 12 EVIDENCE SUFFICIENT TO REBUT [PRESUMPTION OF PROSECUTORIAL
 13 VINDICTIVENESS STANDS AND] THE COURT MUST FIND IT
 14 TO BE MERITORIOUS." (EMPHASIS [] ADDED)

15 "CONVICTION OBTAINED BY KNOWING USE OF PERJURED
 16 TESTIMONY IS FUNDAMENTALLY UNFAIR, AND MUST BE SET
 17 ASIDE IF THERE IS ANY REASONABLE LIKELIHOOD THAT
 18 FALSE TESTIMONY/EVIDENCE/COMMENTS COULD HAVE AFFECTED
 19 THE JUDGEMENT OF THE TRIER" GRISBY V. BLODGETT,
 20 180 F.3d 365 (1997)

21 UNDER RCP RULE 11 TO INQUIRE INTO THE FACTS
 22 IS A CONTINUING DUTY, AND CAN NOT IGNORE REALITIES
 23 ONCE FACTS COME TO THEIR ATTENTION WHICH INDICATES
 24 THAT EARLIER RELIANCE WAS MISPLACED" RCP Rule 11.

25 "REVERSAL OF CONVICTION AND VACATING OF THE
 26 CHARGES WHEN PROSECUTION FAILS TO PROVIDE DEFENSE
 27 WITH EXCULPATORY EVIDENCE... IS REQUIRED IF OMITTED
 28 EVIDENCE, WHEN EVALUATED IN CONTEXT OF THE ENTIRE

1 RECORD, CREATES A REASONABLE DOUBT AS TO DEFENDANT'S
2 GUILT THAT DID NOT OTHERWISE EXIST." PEOPLE V.
3 HERNANDEZ, 686 P.2d 1325 (1984)

4 IN QUOTING ADA HATLESTAD HIS ENTIRE BASIS FOR
5 REQUESTING THE COURTS DENY THE MOTION IS " SINCE
6 DUNCKLEY'S MOTION FAILS TO ALLEGE PROPER GROUNDS
7 JUSTIFYING A MODIFICATION OF HIS LAWFUL SENTENCE,
8 HIS MOTION SHOULD BE DENIED" (Pg. 2 LINE 7, 8)

9 I RESPECTFULLY ASK FOR THE COURTS TO FORGIVE
10 ME AS I AM NOT A LEGAL SCHOLAR. AT NO POINT HAVE
11 I CLAIMED SUCH, SO I REQUEST A LITTLE LEWAY IN THE
12 FOLLOWING REBUTAL TO THAT ARGUMENT. BUT I WAS
13 UNDER THE ASSUMPTION THAT "THE PROSECUTOR'S DUTY
14 IS TO NEVER MERELY CONVICT, BUT TO SEE THAT
15 JUSTICE IS DONE, BY SEEKING TRUTH OF THE MATTER AND
16 TO ENSURE THAT THE JURY TRIES THE CASE SOLEY
17 ON THE BASIS OF ACTUAL FACTS PRESENTED TO THEM"
18 PEOPLE V. MARTIN, 686 P.2d 1351

19 "PROSECUTOR DOES NOT REPRESENT AN ENTITY
20 WHOSE INTERESTS INCLUDE WINNING AT ALL COSTS,
21 PROSECUTOR'S CLIENT IS SOCIETY, WHICH SEEKS JUSTICE NOT
22 VICTORY" US V DOE, 860 F.2d 488 (1988)
23 "PROSECUTOR'S PRIMARY DUTY IS NOT TO CONVICT
24 BUT TO SEE THAT JUSTICE IS DONE" SUPREME COURT
25 RULES, RULE 181 SUBSECTION 3.

26 "PROSECUTOR MAY NOT BRING CRIMINAL CHARGES
-4- 27 AGAINST AN INDIVIDUAL UNLESS SUPPORTED BY PROBABLE
28 CAUSE, AND ONCE CHARGES ARE INSTITUTED, MUST

1 REVEAL TO THE COURTS ANY INFORMATION WHICH NEGATES
2 EXISTANCE OF PROBABLE CAUSE" PEOPLE V. TREVINO, 704 P.2d
3 719, 217 CAL RPT 652, 39 C.3d 667 (1985).

4 TO SIMPLY CLAIM "HEY I'M INNOCENT TRUST ME"
5 WOULD BE AN ABSURD ATTEMPT TO JUSTIFY THE
6 GRANTING OF THE MOTION. EXCEPT THAT IS NOT THE
7 CASE. ACTUAL AND FACTUAL INNOCENCE IS CLAIMED ALONG
8 WITH THE INTENTIONAL MISREPRESENTATION OF THE
9 CRIMINAL HISTORY -> DETRIMENT RESULT. OVER AND OVER
10 THE COURTS STATE 'DUTY TO SEE JUSTICE IS DONE'.

11 WITH THE STATES DISMISSAL OF THE 'EFFORT' TO
12 REBUT THE EVIDENCE SIMPLY BECAUSE "DEFENDANT HAS
13 FAILED TO MEET THE GROUNDS."

14 I AM NOT A LEGAL SCHOLAR AS I STATED
15 BEFORE BUT I HAVE A STRANGE BELIEF THAT IF
16 EVIDENCE COMES FOWARD THAT PROVES THE INNOCENCE
17 OF A CONVICTED INDIVIDUAL BEYOND A REASONABLE
18 DOUBT. JUSTICE DEMANDS IT BE CORRECTED. YET THE
19 STATE INSTEAD HAS CHOSEN TO HIDE BEHIND A 'TECHN-
20 ICALITY' FORGETTING IT HAS A DUTY TO CORRECT THE
21 RECORD.

22 ALSO "A CLAIM OF ACTUAL INNOCENCE REQUIRES
23 FACTUAL INNOCENCE... AND IN CASES WHERE THE GOVERN-
24 MENT HAS FORGONE MORE SERIOUS CHARGES... THE
25 CLAIM OF ACTUAL/FACTUAL INNOCENCE AND EVIDENCE
26 MUST EXTEND TO THOSE AS WELL" BOUSLEY V. US,
- 5- 27 118 S.Ct 1604, 523 U.S. 614. DEFENDANT HAS PROVEN
28 ACTUAL/FACTUAL INNOCENCE TO ALL CHARGES.

1 THE OVERWHELMING EVIDENCE THAT HAS BEEN IN
2 THE STATES POSSESSION FOR ONE HUNDRED AND
3 NINTY-EIGHT DAYS (198), AND TO BE TECHNICAL THE
4 STATE HAD IN ITS POSSESSION EXCULPATORY EVIDENCE THAT
5 PROVES THE COMPLETE INNOCENCE OF DEFENDANT. THEY
6 HAD IT ALL FOR NINE HUNDRED AND TEN DAYS (910)
7 (DATE OF DNA RESULT 5/21/07 TO PRESENT) AT NO TIME
8 HAS THE STATE PRESENTED THESE DOCUMENTS FOR
9 THE COURTS CONSIDERATION. NOR HAS IT PROVIDED A
10 CORRECTION IN THE LAST 198 DAYS, NOT EVEN IN A
11 OPPOSITION. IT PROVES THAT THERE IS NO EXCUSE OR
12 INVALID OBJECTION TO THE CLAIM OF ACTUAL INNOCENCE.
13 THE STATES 'OPPOSITION' IS WHOLLY WITHOUT MERIT.

14 TO HIDE THE INTENTIONAL CONVICTION OF AN
15 INNOCENT MAN IS EQUALLY APPALING AS IS TO
16 IGNORE AND HIDE BEHIND 'GROUNDS' AFTER THE
17 DOCUMENTS PROVE SUCH. TO ALLOW IT TO BE UN-
18 CORRECTED IS THE EXACT OPPOSITE TO SEEKING THAT
19 JUSTICE IS DONE. ESPECIALLY WHEN ALL THE EVIDENCE
20 PROVES NOT GUILTY BEYOND A REASONABLE DOUBT. SUCH
21 AS TO DEMAND THE CORRECTION OF THIS MANIFEST
22 INJUSTICE.

23 "IF THE GOVERNMENT, POLICE AND PROSECUTORS
24 COULD ALWAYS BE TRUSTED TO DO THE RIGHT
25 THING, THERE WOULD BE NO NEED FOR THE BILL
26 OF RIGHTS" US V. US DISTRICT COURT FOR CENTRAL CAL,
27 858 F.2d 534 (1988)

28 (PLEASE SEE WASHOE COUNTY DA SEAL TRUTH / JUSTICE V3. 387

1 IT IS WITH HUMBLE RESPECT, THAT THE DEFENDANT,
2 BRENDAN DUNCKLEY REQUESTS THAT THE COURTS ALLOW
3 LEEWAY IN ITS DECISION. TO ALSO CONSIDER OTHER
4 APPROPRIATE REMEDY, OUTSIDE THE ORIGINAL 'GROUNDS'
5 NEEDED TO MEET A MODIFICATION OF SENTENCE. TO FIND
6 THAT WITH THE STATES FAILURE TO PRESENT EVEN A
7 SCINTILLA OF REBUTAL EVIDENCE, THAT ITS OPPOSITION
8 BE FOUND TO BE WITHOUT MERIT.

9 REMEDY JUSTIFIABLE IN THIS CASE WOULD BE
10 THE COMPLETE VACATING OF THE ORDER OF CONVICTION
11 FILED ON CASE NUMBER CR071728. ALSO TO INCLUDE
12 ALL CHARGES BROUGHT FORWARD BY THE STATE OF NEVADA ON
13 APRIL 16, 2007. SINCE THE ORIGINAL CHARGES FOR RUC
14 2007-033884. WERE DISMISSED ON JULY 2, 2007 AND
15 BOUND OVER TO CR071728. ALL CHARGES BE ALSO
16 REMOVED FROM RECORD PER NRS. 179A.160.

17 THE STATE HAS CONTINUALLY SHOWN THAT THEY HAVE
18 ABSOLUTELY NO EVIDENCE TO SUPPORT A CONVICTION. ESPECIALLY
19 IF THE CONVICTION/DEAL RESTS ON HIGHLY SUSPECT EVIDENCE. AND
20 ALL EVIDENCE ACTUALLY PRESENTED PROVES INNOCENCE AND
21 THE VINDICTIVE INCARCERATION OF A US CITIZEN KNOWN
22 TO BE INNOCENT. THE STATES ENTIRE 'OPPOSITION' IS
23 CLEARLY DEFECTIVE AND SERIOUSLY FLAWED.

24 SO IN THE INTREST OF JUSTICE, DEFENDANT, REQUESTS
25 THE IMMEDIATE RELEASE FROM CUSTODY OF NDOC. AND
26 RESTORATION OF ALL LIBERTIES AND CONSTITUTIONAL RIGHTS.
-7- 27 TO ALLOW A KNOWN INNOCENT MAN TO RETURN TO
28 HIS FAMILY.

1 IN ADDITION TO THE GROUNDS MET BY THE
2 MOTION FILED ON JULY 8, 2009 AND RESPONSE
3 DATED NOVEMBER 9, 2009, DEFENDANT ALSO Humbly
4 REQUESTS PER DANIELS V. STATE, 956 P.2d 111, 114
5 NEV. 261 (1998) "AS A MATTER OF APPARENT FIRST
6 IMPRESSION, DEFENDANT SEEKING DISMISAL OF ALL
7 CHARGES BASED ON STATES FAILURE TO PRESENT
8 EVIDENCE MUST SHOW THAT EVIDENCE WAS
9 "MATERIAL" AND THE FAILURE OF THE STATE TO GATHER/
10 PRESENT THE EVIDENCE WAS THE RESULT OF MERE
11 NEGLIGENCE, GROSS NEGLIGENCE OR, A BAD FAITH ATTEMPT
12 TO PREJUDICE THE DEFENDANT."
13 "A PROSECUTOR SHOULD NOT INTENTIONALLY AVOID
14 PURSUIT OR INTRODUCTION OF EVIDENCE BECAUSE HE OR
15 SHE BELIEVE IT WILL DAMAGE THE PROSECUTOR'S CASE
16 OR AID THE ACCUSED." AMERICAN BAR ASSOCIATION CODE OF
17 STANDARDS - (STANDARD 3-3.11)

18 ALL ACTIONS OF THE STATE, EVIDENCE, LACK OF REBUTAL
19 DOCUMENTS ALL WARRANT A FULL VACATING OF ALL CHARGES, IN
20 ADDITION TO ANY OTHER REMEDIES THE COURT SEES FIT TO
21 AWARD TO CORRECT THIS MISCARriage OF JUSTICE.

22 AFFIRMATION PURSUANT TO NRS 239B.030

23 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING
24 DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY OF ANY PERSON

25
26 DATED NOVEMBER 19, 2009

27 

28 BRENDAN DUNCLEY #1023236 V3. 389
PRO PER

CERTIFICATE OF MAILING

PURSUANT TO NRCP 5(6), I HEREBY CERTIFY
THAT I BRENDAN DUNCLEY, DEFENDANT, DID DEPOSIT
INTO US MAIL A SEALED ENVELOPE ADDRESSED AS
follows: By Submitting Letters to Lovelock Correctional
Center Prison Staff for mailing.



BRENDAN DUNCLEY (#1023236)

Second Judicial District Court

Clerk of Courts

P.O. BOX 30083

Reno, Nevada 89520-3083

Washoe County District Attorney

% Gary Hatlestad

P.O. BOX 30083

Reno, Nevada 89520-3083

1 **CODE 3370**
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5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**
14 _____ /

15 **ORDER**

16 On July 8, 2009, the Defendant filed a Motion for Modification of Sentence.
17 On October 27, 2009, the Court ordered the State to respond to the Motion for Modification
18 of Sentence within ten (10) days of the date of the Order. On November 4, 2009, the State
19 filed an Opposition to the Motion for Modification of Sentence. On November 13, 2009, the
20 Defendant filed a Response to the State's Opposition to the Motion for Modification of
21 Sentence. On November 25, 2009, the Motion for Modification of Sentence was formally
22 submitted to the Court for decision.

23 Mr. Dunckley contends that his sentence should be modified because he is
24 innocent, and his convictions, albeit based on guilty pleas, were the result of
25 "perjured...false facts."
26

27 A motion to correct an illegal sentence may only challenge the facial legality
28 of the sentence: either the court was without jurisdiction to impose a sentence or the
sentence was imposed in excess of the statutory maximum. *Edwards v. State*, 112 Nev.

1 704, 708, 918 P.2d 321, 324 (1996). "A motion to correct an illegal sentence 'presupposes
2 a valid conviction and may not, therefore, be used to challenge alleged errors in
3 proceedings that occur prior to the imposition of sentence'" *id.* (quoting *Allen v. United*
4 *States*, 495 A.2d 1145, 1149 (D.C. 1985)). A motion to modify a sentencing "is limited in
5 scope to sentences based on mistaken assumptions about a defendant's criminal record
6 which work to the defendant's extreme detriment." *id.* A motion to modify or correct a
7 sentence that raises issues outside the very narrow scope of issues permissible may be
8 summarily denied. *id.* At 708-09 n.2.

9 Thus, since Mr. Dunckley's motion fails to allege proper grounds to grant a
10 modification of his sentence, his motion must be denied.

11 The Court, having reviewed the pleadings filed herein, and arguments
12 presented, and with good cause appearing and in the interests of justice finds as follows:
13

14 IT IS HEREBY ORDERED that Motion for Modification of Sentence is
15 DENIED.

16 Dated this 9 day of February, 2010.

17
18 
19 DISTRICT JUDGE
20
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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 10th day of February, 2010, I deposited in the county mailing system, a true copy of the attached document, addressed to:

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Via U.S. Postal Service

I hereby certify that on the 10th day of February, 2010, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Deputy District Attorney



Marci L. Stone

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 02-10-2010:10:59:38
Clerk Accepted: 02-10-2010:10:59:47
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Order...
Filed By: Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

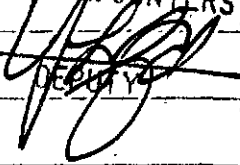
BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

FILED

10 FEB 17 AM 11:28

HOWARD W. CONYERS

BY



1 BRENDAN DUNCKLEY (#1023236)

2 LOVELOCK CORRECTIONAL CENTER

3 200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF

7 NEVADA IN AND FOR THE COUNTY OF WASHOE

8

9 THE STATE OF NEVADA, CASE NO: CR07-1728

10 v. PLAINTIFF

DEPT. NO: 4

11 BRENDAN DUNCKLEY,

12 DEFENDANT, /

13

14 REQUEST FOR SUBMISSION

15

16 IT IS REQUESTED THAT DEFENDANT'S MOTION FOR MODIFI-

17 CATION OF SENTENCE, FILED ON JULY 8, 2009, BE SUBMITTED TO THE

18 COURT FOR DECISION.

19

THE MOTION WAS FILED ON JULY 8, 2009, A SIMILAR REQUEST

20 WAS FILED ON NOVEMBER 25, 2009. AFTER A MEETING ON TUESDAY

21 FEBRUARY 9, 2009 WITH COUNSEL ROBERT STORY, IT WAS CONFIRMED

22 HE WAS APPOINTED TO REPRESENT DEFENDANT IN CASE CR07P1728,

23 THIS MOTION IS UNDER CASE NO: CR07-1728.

24 IN THE INTREST OF JUSTICE, AND DUE TO THE EXTREME

(1) 25 WEIGHT OF EVIDENCE, PROVING PROSECUTORIAL MISCONDUCT

CR07-1728
STATE VS BRENDAN DUNCKLEY (3 Pages
District Court 02/17/2010 11:28 AM
Washoe County
3860
TJ nbf

1 INTENTIONAL MISREPRESENTATION OF THE DEFENDANT'S CRIMINAL
2 HISTORY, WITHHOLDING CRUCIAL SCIENTIFIC EVIDENCE FROM BEING
3 INTRODUCED AND CONSIDERED BY THE COURTS. TO INTENTIONALLY
4 COMMENT ON THE RECORD OF ALLEGATIONS THE STATE KNEW TO
5 BE FALSE.

6 AS PER DCR 13 (3) A TIME LIMIT OF TEN (10) DAYS TO
7 FILE A RESPONSE, NO CONTACT OR ACKNOWLEDGEMENT OF THE FILING,
8 WITH THE FILING OF THE SUBMISSION REQUEST ON NOVEMBER 25,
9 2009, THE STATE AGREED THE ORIGINAL MOTION WAS FILED ON
10 JULY 8, 2009.

11 IT WAS A TOTAL OF ONE-HUNDRED AND FORTY-NINE (149)
12 DAYS FROM FILE DATE TO SUBMISSION OF RESPONSE. THEN THE
13 OPPOSITION FAILED TO ADEQUATELY DISPUTE ANY OF THE DOCUMENTED
14 EVIDENCE PROVIDED. NOW A TOTAL OF TWO-HUNDRETS AND FORTY-SEVEN
15 (247) DAYS THIS MOTION HAS BEEN FILED AND AWAITING A DECISION.
16 WITH OVERWHELMING EVIDENCE PROVING MASSIVE CASE OF
17 PROSECUTORIAL MISCONDUCT, BRADY VIOLATION, AND INTENTIONAL MISREP-
18 RESENTATION OF DEFENDANT'S CRIMINAL HISTORY AND BEHAVIOR.

19 A SPEEDY DECISION IN THIS MATTER IS HEREBY REQUESTED
20 AND SUBMITTED.

21 AFFIRMATION PURSUANT TO NRS. 239B.030

22

23 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING
24 DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF
(2) 25 ANY PERSON.

1

2 DATED: FEBRUARY 10, 2010

3

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5

Brendan Dunchley

6

7

BRENDAN DUNCKLEY (#1023236)

8

LOVELOCK CORRECTIONAL CENTER

9

1200 PRISON ROAD

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LOVELOCK, NEVADA 89419

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DEFENDANT - PRO PER

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(REQUEST FOR SUBMISSION)

DC-9900015049-020
CRO7-1728 BRENDAN DUNCKLEY (D 1 Page
STATE VS BRENDAN DUNCKLEY (D 1 Page
District Court 02/17/2010 11:28 AM
Washoe County
NDC

CODE: 1360

BRENDAN DUNCKLEY #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

DEFENDANT In Pro Se

FILED

10 FEB 17 AM 11:28

HOWARD W. CONYERS

BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,)Case No. CRO7-1728PLAINTIFF,)Dept. No. 4

-VS-

BRENDAN DUNCKLEY,)DEFENDANT.)CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the
preceeding REQUEST FOR Submission
to the below address(es) on this 10th day of FEBRUARY,
2010, by placing same into the hands of prison staff for
posting in the U.S. Mail:

CLERK OF THE COURT - 2nd Judicial District
DEPT. 4
P.O. Box 30083
RENO, Nevada 89520-3083

Attorney For DEFENDANT PRO PER / Clerk.

(X) check for additional address(es) below

GARY HANSTAD
% W.C.D.A.
P.O. Box 30083
RENO, NEVADA 89520-3083

ATTORNEY FOR PLAINTIFF (STATE)

Brendan Dunckley
BRENDAN DUNCKLEY #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

DEFENDANT In Pro Se

V3. 398

CR07-1728
STATE VS BRENDAN DUNCKLEY (2 Pages
District Court 03/01/2010 03:31 PM
Washoe County 2515
DOC

CODE \$2515

BRENDAN DUNCKLEY #1023236

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Plaintiff In Pro Se

FILED

10 MAR -1 PM 3:31

HOWARD W. CONYERS

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,)Case No. CR07-1728

Plaintiff,)

Dept. No. 4

-vs-)

THE STATE OF NEVADA)

Defendant___.)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, BRENDAN DUNCKLEY, in
pro se, hereby appeals to the Nevada Supreme Court the MOTION FOR

MODIFICATION OF SENTENCE, filed

JULY 8, 2009 ☒ (check if applicable) and DECISION FOR MOTION

FOR MODIFICATION OF SENTENCE (RECEIVED on 2/15/10), filed

FEBRUARY 10, 2010, in the above-entitled Court, the Honorable Judge C.

STEINHEIMER.

Dated this 22nd day of FEBRUARY, 2010.

Brendan DunckleyBRENDAN DUNCKLEY #1023236

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Plaintiff In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 22nd day of FEBRUARY, 2010, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCF 5(b):

WASHOE COUNTY DISTRICT ATTORNEY
% GARY HATLESTAD (ADA)
P.O. Box 30083
RENO, NEVADA, 89520-3083

&

CLERK OF THE COURTS
SECOND JUDICIAL DISTRICT COURT
% DEPT. 4.
P.O. Box 30083
RENO, NV, 89520-3083

Brendan Dinchley
BRENDAN DINCKLEY #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

PLAINTIFF In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL - MOTION FOR MODIFICATION OF SENTENCE filed in District Court Case No. CRO7-1728 does not contain the social security number of any person.

Dated this 22nd day of FEBRUARY, 2010.

Brendan Dinchley
BRENDAN DINCKLEY 1023236

PLAINTIFF In Pro Se

1 **Code 1310**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **THE STATE OF NEVADA,**

13 **Respondent.**
14 _____/

15 **CASE APPEAL STATEMENT**

- 16 1. Brendan Dunckley is the Appellant.
17 2. This appeal is from the Order Denying Motion for Modification of Sentence
18 filed on February 10, 2010 by the Honorable Connie J. Steinheimer.
19 3. The parties in District Court consisted of The State of Nevada, Plaintiff, and
20 the Brendan Dunckley, Defendant.
21 4. The parties in the Nevada Supreme Court consist of Brendan Dunckley,
22 Appellant, and The State of Nevada, Respondent.
23 5. Counsel on appeal consists of:

24 Brendan Dunckley, #1023236, Appellant in Proper Person
25 Lovelock Correctional center
26 1200 Prison Road
Lovelock, NV 89419

27 Gary Hatlestad, Esq., Deputy District Attorney, Attorney for Respondent
28 Washoe County District Attorney's Office
P.O. Box 30083

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Reno, NV 89520

6. Appellant represented himself in Proper Person in District Court.
7. Appellant is representing himself in Proper Person on appeal.
8. Fee not applicable in this case.
9. Proceedings commenced by the filing of an Information on July 12, 2007.

Dated this 1st day of March, 2010.

HOWARD W. CONYERS
CLERK OF THE COURT

By: /s/ Teresa Prince
Deputy Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-01-2010:16:39:59
Clerk Accepted: 03-01-2010:17:02:45
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Case Appeal Statement
Filed By: Teresa Prince

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

1 **Code 1350**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **THE STATE OF NEVADA,**

13 **Respondent.**
14 _____/

15
16 **CERTIFICATE OF CLERK**

17 I hereby certify that the attached documents submitted electronically are
18 certified copies of the original pleadings on file with the Second Judicial District Court, in
19 accordance with the Nevada Rules of Appellate Procedure, NRAP 3(e).

20 Dated this 2nd day of March, 2010.

21 **HOWARD W. CONYERS**
22 **CLERK OF THE COURT**

23
24 By: /s/ Teresa Prince
25 Deputy Clerk
26
27
28

1 **Code 1365**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **THE STATE OF NEVADA,**

13 **Respondent.**
14 _____/

15
16 **CERTIFICATE OF TRANSMITTAL**

17 I hereby certify that this Notice of Appeal and other required documents
18 (certified copies pursuant to NRAP 3(e), were electronically filed from the Second Judicial
19 District Court to the Nevada Supreme Court.

20 Dated this 2nd day of March, 2010.

21 **HOWARD W. CONYERS**
22 **CLERK OF THE COURT**

23
24 By: /s/ Teresa Prince
25 Deputy Clerk
26
27
28

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-02-2010:07:23:44
Clerk Accepted: 03-02-2010:07:23:57
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Certificate of Clerk
Certificate of Transmittal
Filed By: Teresa Prince

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ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. DUNCKLEY (BRENDAN) VS. STATE.
Date: Tuesday, March 02, 2010 12:33:17 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Case Title: DUNCKLEY (BRENDAN) VS. STATE
Docket Number: 55545
Case Category: Criminal Appeal
District Court Information: CR07-1728, THE STATE OF NEVADA VS. BRENDAN DUNCKLEY

Submitted by: Washoe Co Clerk
Date Submitted: Mar 02 2010 07:34 a.m.
Official File Stamp: Mar 02 2010 12:32 p.m.
Document Category: Notice of Appeal Documents
Document Title: NOTICE OF APPEAL

Filing Status: **Accepted and Filed**

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-02-2010:13:42:41
Clerk Accepted: 03-02-2010:13:43:15
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Supreme Ct Accept - eFile Doc
Filed By: Teresa Prince

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GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

FILED

2010 MAR -3 AM 9:26

FORWARDED BY CONTENTS

BY 88 COUNTY

BRENDAN DUNCKLEY(*1023236)

LOVELOCK CORRECTIONAL CENTER

200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

9

THE STATE OF NEVADA,

10

PLAINTIFF

CASE NO: CRO7-1728

11

VS.

DEPT. NO:

4

12

BRENDAN DUNCKLEY,

13

DEFENDANT, /

14

15

MOTION FOR WITHDRAWAL OF GUILTY PLEA

16

17

COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND

18

SUBMITS TO THIS COURT HIS MOTION FOR WITHDRAWAL OF

19

GUILTY PLEA MEMORANDUM, ENTERED ON MARCH 6, 2008.

20

THIS MOTION IS MADE BASED ON THE COURT'S INHERENT

21

AUTHORITY AND THE DEFENDANT'S RIGHT TO WITHDRAW A

22

GUILTY PLEA TO CORRECT A MANIFEST INJUSTICE, UNDER,

23

NRS. 176.165. ALL PAPERS, PLEADINGS AND DOCUMENTS

24

ON FILE HEREIN; AND THE FOLLOWING POINTS AND

25

AUTHORITY.

26

1

POINTS AND AUTHORITYSUPPORTING FACTS

A "MANIFEST INJUSTICE" JUSTIFYING WITHDRAWAL OF GUILTY PLEA IS ONE THAT IS OBVIOUS, DIRECTLY OBSERVABLE, OVERT, NOT OBSCURE. THE FOUR INDICIA OF MANIFEST INJUSTICE GENERALLY RECOGNIZED BY STATE COURTS, FOR PURPOSE OF A MOTION TO WITHDRAW A GUILTY PLEA, ARE: 1) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL; 2) PLEA WAS NOT RATIFIED BY THE DEFENDANT, OR THE DEFENDANT'S AGENT; 3) INVOLUNTARY PLEA; OR, 4) VIOLATION OF PLEA AGREEMENT BY THE PROSECUTION.

LET THE RECORD SHOW THIS MOTION WILL PROVE THAT A MANIFEST INJUSTICE HAS INDEED OCCURED IN THIS CASE. ON MARCH 6, 2008 A 'GUILTY PLEA MEMORANDUM' WAS INTRODUCED AND ACCEPTED BY THE COURTS IN REFERENCE OF CASE NUMBER CRO7-1728, THE STATE OF NEVADA VS. BRENDAN DUNKLEY. ON THE SAME DATE A GUILTY PLEA 'CANVASS' WAS PERFORMED BY JUDGE CONNIE STEINHEIMER.

SPECIAL NOTICE SHOULD BE ON PAGE 4; 10 OF THE GUILTY PLEA MEMORANDUM, IN IT, IT STATES: "THAT I AM NOT ELEHIBLE FOR PROBATION UNLESS PSYCHOSEXUAL EVALUATION IS COMPLETED..." REFERRING TO COUNT II ATTEMPTED SEXUAL ASSAULT. ON PAGE 5; 2 - IN REFERENCE TO COUNT I LEWDNESS WITH A CHILD UNDER 14 "ORIGINAL COUNT I AND ALLOW ME THE OPPORTUNITY TO QUALIFY FOR PROBATION, WHICH WOULD OTHERWISE BE UNAVAILABLE.

1 AT THE HEARING ON MARCH 6, 2008 UPON ACCEPTANCE
2 OF THE GUILTY PLEA, THE FOLLOWING QUESTIONS AND COMMENTS
3 WERE MADE BY JUDGE CONNIE STEINHEIMER. ON PAGE 6; 18-
4 19: "DO YOU HAVE ANY QUESTIONS ABOUT THE MODIFICATION
5 TO THE TYPED DOCUMENT?" REFERRING TO PGS, 4; 25, 5; 2
6 ALLOWING PROBATION TO BE A POSSIBLE SENTENCING OPTION.
7 ALSO ON PAGE 10; 9-12: "NOW, DO YOU UNDERSTAND THAT
8 PROBATION IS NOT AVAILABLE ON THESE CHARGES UNLESS
9 YOU ARE CERTIFIED BY A PROFESSIONAL PURSUANT TO NRS
10 176.139, NOT TO REPRESENT A HIGH RISK TO REOFFEND
11 AS TO BOTH COUNTS."

12 ALSO AT THE HEARING, ON MARCH 6, 2008, DEFENSE ATTORNEY
13 DAVID O'MARA REFERRED TO PROBATION BEING A SENTENCING
14 OPTION WHEN HE STATED: "YOUR HONOR, THERE'S BEEN NEGOTIATIONS
15 WITH THE DISTRICT ATTORNEY'S OFFICE TO SET THIS
16 OUT FIVE TO SIX MONTHS SO THAT MR. DUNCKLEY CAN GET
17 SEXUAL OFFENDER THERAPY DURING THAT PERIOD OF TIME. AND
18 BASICALLY THE D.A. IS GIVING HIM EVERY OPPORTUNITY TO TRY
19 TO QUALIFY FOR PROBATION AND TO DO THINGS THAT WILL
20 BE BENEFICIAL FOR HIM TO PRESENT TO YOU AT SENTENCING.
21 (PAGE 12; 24 TO PG 13; 7)

22 FURTHER INFERENCE THAT PROBATION WAS IN FACT AN
23 AVAILABLE SENTENCING POSSIBILITY, PROVIDED DEFENDANT KEEPS
24 HIS END OF THE "CONTRACT" WAS ADA VILORIA COMMENTING ON
25 MARCH 6, 2008 - PG. 13; 8-14: "YOUR HONOR, MY AGREEMENT

1 IS JUST TO SEE IF THIS DEFENDANT IS WORTHY OF ANY
2 TYPE OF GRANT OF PROBATION, WHETHER HE CAN EARN IT OR
3 NOT. I WANT TO SEE WHAT HE DOES BETWEEN NOW AND THEN
4 SO I DO NOT OBJECT TO ANY TYPE OF CONTINUANCE THAT
5 MR. O'MARA IS ASKING FOR TO SET OUT THE SENTENCING
6 DATE."

7 ON AUGUST 5, 2008 THE IDEA OF PROBATION BEING
8 ALLOWED FOR THE CRIMES AS ACCEPTABLE SENTENCING OPTION,
9 DEFENSE ATTORNEY CONTINUED THIS 'FARSE' ON Pg. 4; 10, 11: " I
10 WANT TO MAKE THE COURT AWARE OF THE FACT THAT PROBA-
11 TION IN BOTH THESE CHARGES IS AVAILABLE IN THIS CASE."
12 THEN Pg. 6; 2, 3: "GRANT MR. DUNKLEY THE OPPORTUNITY TO BE ON
13 PROBATION FOR BOTH THESE CHARGES." (Pg 7; 6, 7, Pg 10; 3) Pg 10; 14
14 "SO HE DOES QUALIFY FOR PROBATION." AND FINALLY ON Pg 8; 12,
15 13: "I RESPECTFULLY REQUEST THAT YOU ALLOW FOR PROBATION."

16 ASSISTANT DISTRICT ATTORNEY VILORIA ON AUGUST 5, 2008
17 STATED ON PAGE 12; 11, 12: "STATE'S CONCERN ARE THAT THE
18 COMMUNITY HAVE TO BE SAFE. AND IF BRENDAN DUNKLEY
19 IS GIVEN PROBATION, IT WILL NOT BE." ANAMITLY FIGHTING
20 AND ARGUING AGAINST ANY TYPE OF PROBATION BEING AWARDED.
21 ALSO SPECIFICALLY ON PAGE 27; 18, 19: JUDGE STEINHEIMER
22 STATED: "I KNOW YOU PLED TO SOMETHING THAT ALLOWS
23 FOR A LESSER SENTENCE, BUT IT DOES NOT ALLOW FOR
24 PROBATION." (EMPHASIS ADDED) PROBATION FOR NRS 201.230 OR
25 NRS 193.330 IS NOT EVEN ALLOWED IN SENTENCING GUIDELINES

ARGUMENTS

"A PLEA AGREEMENT IS CONSTRUED ACCORDING TO WHAT THE DEFENDANT REASONABLY UNDERSTOOD WHEN HE OR SHE ENTERED THE PLEA" SULLIVAN V. STATE, 96 P.3d 761, 120 NEV. 537, 2008 WL 2566743 (1999); GUNN V. IGNACIO, 263 F.3d 965 (NEV. 2001).

"TO DETERMINE WHETHER A PLEA BARGAIN IS VIOLATED, THE COURT MUST LOOK AT WHAT THE PARTIES HAD REASONABLY UNDERSTOOD TO BE THE TERMS OF THE AGREEMENT, AND TYPICALLY THE GOVERNMENT MUST BEAR RESPONSIBILITY FOR ANY LACK OF CLARITY IN THOSE TERMS, BECAUSE THEY HAD CRAFTED THE AGREEMENT" US V. JOHNSON, 199 F.3d 1015 120 S.Ct. 2206, 530 US 1207, 147 L.Ed2d. 239 (1999)

"DISTRICT JUDGE'S ACCEPTANCE OF DEFENDANT'S GUILTY PLEA TO A CRIME OF SEXUAL ASSAULT WAS FATALLY DEFECTIVE BECAUSE RECORD DOES NOT INDICATE THAT DEFENDANT WAS INFORMED THAT SEXUAL ASSAULT WAS NOT A PROBATIONABLE OFFENSE." MEYER V. STATE, 603 P.2d 1066, 95 NEV. 885. (NEV. 1979)

"ACCEPTANCE OF GUILTY PLEA IS FATALLY DEFECTIVE IF RECORD DOES NOT AFFIRMATIVELY SHOW THAT DEFENDANT WAS INFORMED THAT PROBATION IS NOT AVAILABLE... ACCEPTANCE OF A GUILTY PLEA WITHOUT DEFENDANT BEING INFORMED THAT PROBATION IS NOT AVAILABLE REQUIRES THAT DEFENDANT

1 BE ALLOWED TO WITHDRAW HIS GUILTY PLEA "SKINNER
2 V. STATE, 930 P.2d 748, 113 Nev. 49 (NEV. 1997)

3 ONE OF THE FOUR INDICIA TO ESTABLISH A "MANIF-
4 EST INJUSTICE" IS A INVOLUNTARY PLEA. SINCE A VALID
5 ENTRANCE AND ACCEPTANCE OF A PLEA THAT IS BOTH
6 KNOWINGLY AND VOLUNTARY REQUIRES THAT DEFENDANT
7 BE FULLY AND ACCURATLY INFORMED OF BOTH THE CRIMES
8 AND THE TRUE SENTENCING GUIDELINES FOR SUCH CRIMES.

9 "REQUIREMENT OF VOLUNTARY GUILTY PLEA IS THAT
10 THE PLEA BE ENTERED WITH UNDERSTANDING OF CONSEQUENCES
11 OF PLEA, INCLUDING POSSIBLE RANGE OF PUNISHMENT, IS NOT
12 MET WHEN A DEFENDANT IS EXPRESSLY GIVEN MISINFORMATION
13 BY THE STATE OR DISTRICT COURT AT TIME OF ENTRY OF HIS
14 PLEA TO EFFECT THAT MANDATORY MINIMUM SENTENCE HE
15 MIGHT RECEIVE IS MUCH LESS THAN WHAT IS ACTUALLY POSSIBLE
16 UNDER THE STATUTE... RECORDS SHOW IT DID NOT AFFIRM-
17 ATIVELY DEMONSTRATE FULL UNDERSTANDING BY DEFENDANT OF
18 CONSEQUENCES OF PLEA, AND THUS DID NOT REFLECT THAT
19 PLEA WAS ENTERED KNOWINGLY AND VOLUNTARY." SIEBRA V.

20 STATE, 691 P.2d 431, 100 NEV. 614 (NEV. 1984)

21 "ANY DOUBT AS TO WHETHER PLEA WAS VOLUNTARY MUST
22 BE RESOLVED IN FAVOR OF THE DEFENDANT" STATE V. SCHUMER,
23 973 P.2d 230, 293 MONT. 54. (MONT. 1999)

24 THE RECORD IS CLEAR. NOT AT ANY POINT DID
25 ADA VILORIA, DAVID O'MARA NOR JUDGE STEINHEIMER CORRECT

1 THE INFORMATION IN REGARDS TO PROBATION BEING A
2 OPTION. AT NO POINT DID THE "OFFICERS OF THE STATE / COURT"
3 STATE TO THE DEFENDANT THAT NRS. 201.230 AND NRS
4 193.330 DONT EVEN ALLOW FOR PROBATION TO EVEN
5 BE CONSIDERED. THUS INTENTIONALLY MISINFORMING THE
6 DEFENDANT, AND FALSELY IMPLYING, AND LEADING DEFENDANT
7 TO BELIEVE PROBATION WAS AVAILABLE. WITH THE NUMEROUS
8 COMMENTS AND REFERENCE TO SUCH BY ADA VILORIA, DAVID
9 O'MARA AND JUDGE STEINHEIMER ON MARCH 6, 2008 AND
10 AUGUST 5, 2008.

11 WHEN ADA VILORIA FOUGHT AT SENTENCING FOR
12 NOT GRANTING PROBATION (Pg 12;12) AND Pg 14;12,13: "WE
13 CREATED THIS ALLEGATION OR THIS PLEA BARGAIN SO THAT
14 THIS DEFENDANT COULD ASK YOU FOR PROBATION". THE
15 CONTINUAL FACT THAT PROBATION IS NOT EVEN AVAILABLE
16 BY LAW, BUT THAT WAS KEPT 'HIDDEN' ALLOWING THE
17 DEFENDANT TO BELIEVE IF HE KEPT HIS END OF THE
18 'CONTRACT' HE WOULD 'QUALIFY FOR PROBATION'. (SEE
19 SULLIVAN V. STATE & GUNN V. IGNACIO) THEREFORE MEETING
20 THE REQUIRED 'INDICIA' OF NUMBER 3 - INVOLUNTARY PLEA.

21 AS STATED THE COMMENTS AND MISINFORMATION
22 WAS NOT JUST INVOLVING ADA VILORIA SOLEY. BUT IT
23 ALSO INCLUDED DEFENSE ATTORNEY DAVID C. O'MARA,
24 "ENTERING A PLEA UPON MISTAKEN LEGAL ADVICE
25 THAT NO DEFENSE TO MISCONDUCT EXISTS, ESTABLISHES FAIR

1 AND JUST REASON TO WITHDRAW PLEA." HANSEN V. STATE,
2 824 P.2d 1384 (ALASKA 1992)
3 BY NOT ONLY NOT CORRECTING THE RECORD, BUT
4 TO ADVISE AND ALLOW DEFENDANT TO SIGN AND ENTER
5 A PLEA OF GUILTY, WITH THE FULL KNOWLEDGE HE THINKS
6 PROBATION IS AN OPTION. A BELIEF AND UNDERSTANDING
7 THAT ALONG WITH ADA VILORIA, DEFENSE ATTORNEY O'MARA
8 CONTINUALLY COMMENTED ON AND REFERED TO. SUCH ADVICE
9 WOULD NEVER HAVE BEEN GIVEN BY A DEFENSE ATTORNEY
10 WHO WAS TRULY WORKING AS AN ADVISORY TO THE STATE.
11 HIS 'ADVICE' AND COMMENTS INCOURAGING THE MISINFORMATION
12 AND FARSE ON PART OF THE STATE FELL BELOW A BAR
13 OF STANDARDS ATTORNEY'S HOLD THEMSELVES TO. THE BASIC
14 AND FULL KNOWLEDGE OF THE CRIME IS A 'BASIC/BEGINNER'
15 REQUIREMENT OF A COMPETANT ATTORNEY. DAVID O'MARA HAS
16 PROVEN HE WAS NOT ACTING AND ADVISING HIS CLIENT IN
17 A COMPETANT WAY. HIS MISADVICE AND DECEPTION PREJUDICED
18 THE DEFENDANT LEADING HIM TO PLEAD GUILTY. BY HIS IN-
19 COMPETANT PREJUDICIAL ADVICE /ACTION, BOTH 'PRONGS' OF
20 STRICKLAND V. WASHINGTON HAVE BEEN MET. YET ANOTHER 'INDICIA' OF
21 NUMBER 1) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL. A VALID
22 'MANIFEST INJUSTICE' TO ALLOW REVERSAL /WITHDRAWAL OF PLEA.
23 "THE BEST COURSE OF ACTION FOR THE DISTRICT COURTS
24 DURING PLEA CANVASS IS TO AFFIRMATIVELY STATE THAT
25 PROBATION IS NOT A SENTENCING OPTION FOR THE CHARGED CRIME"

1 RIKER V. STATE, 905 P.2d 706, 111 NEV. 1316 (NEV. 1995)

2 THE DISTRICT COURT HAS IN ITS DISCRETION AND
3 POWER TO GRANT THE DEFENDANT'S MOTION TO WITHDRAW
4 HIS GUILTY PLEA FOR ANY SUBSTANTIAL REASON IF IT IS
5 JUST AND FAIR. INTENTIONAL MISREPRESENTATION OF THE
6 LAW AND STATUTES, INCLUDING THE STATUTE OF SENTENCING,
7 STRUCTURE IS A STRONG AND VALID REASON TO ALLOW THE
8 WITHDRAWAL OF PLEA.

9 "COUNSEL'S DELIBERATE MISREPRESENTATION CONCERNING
10 SENTENCING, THAT INDUCES A GUILTY PLEA IS A VALID AND
11 JUST CAUSE CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL"
12 PEOPLE V. DIGUGLIELMO, 33 P.3d 1248 (COLO. 2001)

13 THIS 'COUNSEL' CAN REFER TO BOTH DEFENSE AND
14 PROSECUTING ATTORNEYS. SINCE BOTH HAVE A DUTY AS OFFICERS
15 OF THE COURT TO SEEK JUSTICE. IN THE DEFENDANT'S IMME-
16 DIATE CASE AND THE RECORD SHOW THAT IT IS SO
17 OBVIOUS, DIRECTLY OBSERVABLE, AND BOTH OVERT AND NOT
18 OBSCURE THAT SUCH MISINFORMATION WAS INFACIT INTENTIONAL
19 INTENTIONAL WITH THE INTENT TO INDUCE A GUILTY PLEA.

20 BUT IN SUCH A CASE 'INDUCE' IS INCORRECT WORD. COERSION
21 IS MORE APPROPRIATE. THE ONLY REASON WOULD BE
22 THAT 'COUNSEL' DID NOT KNOW PROBATION WAS NOT AVAILABLE.
23 THAT IS FAR FROM LIKELY TO BE THE CASE HERE.

24 NRS. 176.165 STATES: "... TO CORRECT A MANIFEST
25 INJUSTICE, THE COURT AFTER SENTENCING MAY SET ASIDE THE

1 JUDGEMENT OF CONVICTION, AND PERMIT THE DEFENDANT
2 TO WITHDRAW HIS PLEA." (RULE OF CRIM. PROC. RULE 11(H)(1))
3 PURSUANT TO BRYANT V. STATE WHEN A DEFENDANT
4 BRINGS FOWARD A MOTION TO WITHDRAW A GUILTY PLEA
5 THE TRIAL COURT HAS A DUTY TO REVIEW THE ENTIRE RECORD
6 TO DETERMINE WHETHER THE PLEA IS VALID. ESPECIALLY IF
7 THE DEFENDANT CAN PROVE A CREDIABLE CLAIM OF
8 FACTUAL INNOCENCE, AND LACK OF PREJUDICE TO THE STATE.
9 ALSO THE STATE VIOLATED THE 'PLEA BARGAIN' TO EST
10 ABLISH NUMBER 4) VIOLATION OF PLEA BARGAIN BY PROSECUTOR.
11 WITH THE GUILTY PLEA BEING CONSTRUED AND GOVERNED
12 UNDER CONTRACT LAW NOT CRIMINAL, THE STATE BREACHED IT
13 BY MEANS OF FRAUD. SINCE ADA VILORIA CREATED AND GENERATED
14 THE GUILTY PLEA MEMORANDUM, SHE KNEW IT WAS FALSE AND
15 INVALID, BECAUSE SHE KNEW THAT THE STATE LAW RESTRICTS
16 THE CONSIDERATION OF PROBATION FOR THE CRIMES CHARGED.
17 BY HER ACTIONS AND COMMENTS AT THE HEARINGS SHE
18 INTENTIONALLY COMMITTED FRAUD BY ENTERING / INTRODUCING
19 A CONTRACT UNDER FALSE PRETENSE, THEREFORE UNDER
20 CONTRACT LAW VOIDING THE 'CONTRACT'. ALSO A TRUE AND
21 JUST MANIFEST INSJUSTICE ALLOWING WITHDRAWAL OF GUILTY PLEA.
22 " IF MISINFORMATION AS TO SENTENCE EXISTS IT RENDERS
23 A GUILTY PLEA INVOLUNTARY MADE, AND IT MUST BE VACATED,
24 EVEN IF THE ACTUAL SENTENCE IMPOSED WAS WITHIN THE PERIMETER".
25 TAYLOR V. WARDEN, NSP, 607 P.2d 587, 96 NEV. 272 (NEV. 1980)

1 SINCE A MOTION TO WITHDRAW A PLEA IS INCIDENT
2 TO PROCEEDINGS IN TRIAL COURT AND IS THEREFORE NOT
3 SUBJECT TO STATUTORY TIME LIMITATIONS APPLICABLE TO
4 A PETITION FOR WRIT OF HABEAS CORPUS.

5 "WHEN STATE ENTERS INTO A PLEA AGREEMENT IT
6 IS HELD TO THE MOST METICULOUS STANDARDS OF BOTH
7 PROMISE AND PREFORMANCE, VIOLATIONS OF TERMS OR OF
8 "SPIRIT" OF PLEA BARGAIN REQUIRES AN IMMEDIATE REVERSAL"
9 CITI V STATE, 807 P.2d 724, 107 NEV. 89 (NEV. 1991): &
10 STATZ V. STATE, 944 P.2d 813, 113 NEV. 987 (NEV. 1997)

11

12 CONCLUSION

13

14 THE REVIEW OF BOTH THE RECORD AND THIS MOTION
15 IT IS CLEAR THAT THE DEFENDANT WAS INFACIT INTENTION-
16 ALLY MISINFORMED, BY BEING LED TO BELIEVE PROBATION WAS
17 A VALID SENTENCING OPTION, BY ADA VILORIA, DAVID O'MARA AND
18 EVEN JUDGE STEINHEIMER STATING PROBATION WAS AN
19 OPTION, AND NOT AFFIRMATIVELY STATING TO DEFENDANT
20 IT IS NOT AN OPTION, ACTUALLY THERE WAS TWENTY-THREE
21 DIRECT REFERENCES TO PROBATION BEING AN OPTION. SUCH
22 BEHAVIOR SHOWS SUCH MISINFORMATION INVALIDATES THE
23 PLEA MAKING IT BOTH NOT KNOWINGLY GIVEN NOR VOLUNTARY.

24 AS MENTIONED IN THIS MOTION DEFENDANT HAS
25 PROVEN NOT ONE, NOT TWO BUT THREE OF THE FOUR INDICIA.

26

1 ALLOWING REVERSAL OF GUILTY PLEA. MORE THAN SATISFIED
2 THE PICTURE OF A "MANIFEST INJUSTICE" AS PER NRS. 176.165.
3 WHEN A DEFENDANT ENTERS INTO A PLEA AGREEMENT
4 THAT INCLUDES AS A MATERIAL ELEMENT A REFERENCE
5 FOR AN ILLEGAL SENTENCE, THE GUILTY PLEA IS INVALID.
6 AND MUST BE VACATED. BECAUSE THE BASIS THAT THE
7 DEFENDANT ENTERED THE PLEA INCLUDED THE IMPERMISSIBLE
8 INDUCEMENT OF AN ILLEGAL SENTENCE, PROBATION, WHICH
9 IS NOT AN OPTION, LEGALLY. NO SOUND PUBLIC POLICY
10 SUPPORTS ALLOWING A DEFENDANT TO BARGAIN FOR AN
11 ILLEGAL SENTENCE. THUS SUCH A PLEA AGREEMENT CAN
12 NOT BE ALLOWED TO STAND.

13 SINCE PROPER INTERPRETATION OF A PLEA AGREEMENT
14 IS A QUESTION OF LAW: IT IS NOT JUST BASED ON THE
15 SUBJECTIVE UNDERSTANDINGS OF THE DEFENDANT, BUT RATHER
16 ON THE MEANING A REASONABLE PERSON WOULD HAVE
17 ATTACHED TO IT UNDER THE CIRCUMSTANCES. WHEN A
18 PARTY ATTEMPTS TO FASHION A SENTENCE TO INDUCE A
19 GUILTY PLEA, THAT IN ITSELF IS CONTRARY TO LAW, SUCH
20 A PLEA MUST BE REGARDED AS INVALID AND INVOLUNTARY.

21 VIOLATIONS OF A PLEA BARGAIN BY AN OFFICER OF
22 THE STATE SUCH AS ADA VILORIA, DAVID O'MARA AND
23 EVEN JUDGE STEINHEIMER RAISES THE NECESSITY TO PROTE
24 CT THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT, AS A
25 REMEDY, ALLOWING WITHDRAWAL OF GUILTY PLEA.

1 THE REMEDY FOR THIS, BREACH, COERCION, INTENTIONAL
2 MISREPRESENTATION, MANIFEST INJUSTICE IS THAT THE
3 DEFENDANT BE ALLOWED TO WITHDRAW HIS GUILTY PLEA,
4 BY ALLOWING SUCH TO ALSO ALLOW DEFENDANT TO RETURN
5 TO STATUS OF NOT GUILTY. REQUIRING THE STATE TO PROVE
6 HIS GUILT BEYOND A REASONABLE DOUBT, AND UNTIL
7 SUCH TIME BE CONSIDERED INNOCENT.

8 SINCE THE PLEA WAS INFECT NOT ENTERED KNOW-
9 INGLY NOR VOLUNTARY, THE MOTION AND RECORD ESTABLISH
10 THAT PLEA OF GUILTY WAS CONSTITUTIONALLY INVALID.
11 THE DEFENDANT ASKS THAT HE BE ALLOWED TO RETURN
12 TO THE STATUS OF NOT GUILTY.

13 DEFENDANT ALSO REQUESTS THAT WITH THE WITHDRAWAL
14 OF HIS GUILTY PLEA, RETURN TO NOT GUILTY STATUS, THAT THE
15 ORDER OF CONVICTION ENTERED ON AUGUST 11, 2008 BE
16 REVERSED AND CONVICTIONS BE VACATED.

17 IN THE INTEREST OF JUSTICE AND AS ATTORNEY
18 PRO PER FOR CASE NUMBER: CR07-1728, IN ACCORD
19 WITH DCR 13(3) A IMMEDIATE DECISION IS REQUESTED.
20 FOR "JUSTICE DELAYED IS CLEARLY JUSTICE DENIED." DOUGAN
21 V. GUSTAVENSON, 835 P.2d 795, 799, 108 NEV. 517 (NEV. 1992)
22 IF TEN (10) DAYS PASS FROM SERVICE OF THIS MOTION TO
23 THE STATE, AND NO OPPOSITION IS FILED BY THE STATE,
24 DEFENDANT REQUESTS THAT SUCH FAILURE TO
25 OPPOSE THE MOTION FOR WITHDRAWAL OF GUILTY PLEA,

1 BE VIEWED AND CONSTRUED AS AN ADMISSION BY THE
2 STATE THAT THE MOTION IS MERITORIOUS AND AS
3 A CONSENT TO GRANTING THE SAME, AND ANY
4 OTHER RELIEF YOUR HONOR SEES FIT TO GRANT
5 DEFENDANT.

6

7

8 DATED THIS 26TH DAY OF FEBRUARY, 2010

9

10

11

Brendan Dunchley

12

13

BRENDAN DUNCHLEY # 1023236

14

LOVELOCK CORRECTIONAL CENTER

15

1200 PRISON ROAD

16

LOVELOCK, NEVADA 89419

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25

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CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR WITHDRAWAL OF GUILTY PLEA to the below address(es) on this 26th day of FEBRUARY, 2010, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY DISTRICT ATTORNEY

% GARY HARESTAD

P.O. Box 30083

RENO NEVADA 89520-3083

&

CLERK OF THE COURTS

SECOND JUDICIAL DISTRICT

% DEPT 4.

P.O. Box 30083

RENO, NEVADA 89520-3083

Brendan Dinchley

BRENDAN DUNCKLEY #1023256

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

DEFENDANT In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR WITHDRAWAL OF GUILTY PLEA filed in District Court Case No. CR07-1722 does not contain the social security number of any person.

Dated this 26th day of FEBRUARY, 2010.

Brendan Dinchley

BRENDAN DUNCKLEY

DEFENDANT In Pro Se

V3. 424

CR07-1728

24

FILED

Electronically

03-04-2010:09:34:29 AM

Howard W. Conyers

Clerk of the Court

Transaction # 1356985

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55545

District Court Case No. CR071728

RECEIPT FOR DOCUMENTS

TO: Brendan Dunckley #1023236
Attorney General/Carson City and Catherine Cortez Masto, Attorney
General
Washoe County District Attorney and Gary H. Hatlestad, Deputy District
Attorney
✓ Howard W. Conyers , District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/02/10 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.
03/02/10 Filing Fee Waived: Criminal.

DATE: March 02, 2010

Tracie Lindeman, Clerk of Court

V3. 424

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-04-2010:09:34:29
Clerk Accepted: 03-04-2010:09:36:23
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Michelle Purdy

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The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

CR07-1728
DC-9900015337-047
STATE VS. BRENDAN DUNKLEY (7 Pages)
District Court 03/04/2010 02:36 PM
Washoe County 4105
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FILED

10 MAR -4 PM 2:36

HOWARD W. CONYERS

BY

DEPUTY

1 BRENDAN DUNKLEY #1023236
2 LOVELOK CORRECTIONAL CENTER
3 1200 PRISON ROAD
4 LOVELOK, NEVADA 89419
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE
7 OF NEVADA IN AND FOR THE COUNTY OF WASHOE
8

9 THE STATE OF NEVADA,
10 PLAINTIFF,
11 VS.

CASE NO.: CR07-1728
DEPT. NO.: 4

12 BRENDAN DUNKLEY,
13 DEFENDANT,
14

15 SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA
16

17 COMES NOW, DEFENDANT, BRENDAN DUNKLEY, IN THIS
18 SUPPLEMENT TO HIS MOTION TO WITHDRAW GUILTY PLEA.

19 AS STATED PRIOR, A GUILTY PLEA MEMORANDUM WAS ENTERED
20 AND THE GUILTY PLEA ENTERED ON MARCH 6, 2008. IN THE
21 MOTION IT IS A STRONG ARGUMENT THAT PROBATION WAS OFFERED,
22 AS A VALID SENTENCING OPTION.

23 THIS FACT IS CONFIRMED IN THE STATE CASE FILED WITH
24 THE NEVADA SUPREME COURT CASE NUMBER 52383. THE RESPOND-
25 ANT (STATE) HAS HELPED TO CONFIRM AND SOLIDIFY THE NEED TO

26 ALLOW WITHDRAWAL OF GUILTY PLEA, UPON INTENTIONAL MISREPRESENTATION.

27 PLEASE NOTE ON PAGE 1; 12 OF "RESPONDANT'S ANSWERING BRIEF" IN
28 CASE 52383: "PROBATION WAS AVAILABLE FOR EACH OFFENSE;" Pg 4; 17, 18:
29 "UNDER LAW EXISTING AT TIME PROBATION WAS AVAILABLE;" Pg 5; 23:
30 "MISTAKEN ABOUT IT'S AVAILABILITY;" AND Pg 6; 1-4(b): "WAS FULLY AWARE THAT
31 PROBATION WAS AVAILABLE IF DUNKLEY WAS CERTIFIED AS NOT REPRESENTING
32 A HIGH RISK TO REOFFEND, THIS TOPIC (PROBATION) CAME UP IN THE
33

1 GUILTY PLEA MEMORANDUM, AT THE CHANGE OF PLEA HEARING, AND AT
2 SENTENCING HEARING."

3 DEFENSE ATTORNEY STATED IN HIS "OPENING BRIEF" FOR CASE
4 NUMBER: 52383, ON PAGE 4; 26: "ADVISE THE COURT THAT MR. DUNCKLEY
5 WAS ELIGIBLE FOR PROBATION;" PG. 7; 12: "FAILED TO CONSIDER NEVADA LAWS
6 AT TIME CRIMES WERE COMMITTED;" PG. 8; 27-9; 2: "IN THIS CASE, MR.
7 DUNCKLEY GAVE UP SEVERAL OF HIS CONSTITUTIONAL RIGHTS BY PLEADING
8 GUILTY TO OFFENSES THAT PROVIDED FOR PROBATION." THIS FACT IS OF
9 EXTREME IMPORTANCE, THIS WILL BE ADDRESSED AGAIN LATER.

10 THE SUPREME COURT IN ITS AFFIRMATION STATED ON PAGE 2: "THAT
11 DESPITE THE PSI REPORT'S FAILURE TO EXPLICITLY STATE THAT DUNCKLEY
12 WAS ELIGIBLE FOR PROBATION, THE DISTRICT COURT WAS INFORMED OF HIS
13 ELIGIBILITY." AND ON PAGE 3: "THE DISTRICT COURT WAS EXPLICITLY INFORMED
14 THAT PROBATION WAS AN OPTION IN THE GUILTY PLEA MEMORANDUM, DURING
15 THE PLEA HEARING, AND DURING SENTENCING."

16 PROBATION WAS A POSSIBLE SENTENCING OPTION PER THE "OFFER," BY
17 THE STATE. EXCEPT FOR THE FACT THAT THE STATE NEVER SPECIFIED THAT THE
18 SENTENCING GUIDELINES OF 1997 WOULD APPLY. IF THAT IS THE CASE IT IS
19 EXTREMELY IMPORTANT TO NOTICE IN 1997. EFFECTIVE OCTOBER 1, 1997,
20 PROBATION WAS NO LONGER A VALID SENTENCING OPTION.

21 AS NOTES SPECIFICALLY IN THE FOLLOWING "HISTORICAL AND
22 STATUTORY NOTES FOR NRS 201.230." NOTICE IN "LAWS 1997, C. 524 EFFECTIVE
23 DATE OCTOBER 1, 1997, "... DELETED FORMER SUBSECS. 2 THROUGH 6, WHICH RELATED TO
24 THE PAROLE AND PROBATION OF VIOLATORS..." STRIKING AND REMOVING SUBSECS 2-
25 6 OF LAW 1997, C. 641, EFFECTIVE DATE JULY 17, 1997. IN 1999, C. 105 EFFECTIVE
26 MAY 11, 1999, IT CORRECTED THE CLERICAL ERROR ON NRS 201.230 (1997) BEING
27 UNDER SUBSEC 2(b) A PROBATIONABLE OFFENSE, WHICH IT WAS NOT.

28 SO IN FACT OF LAW AND AS PER NEVADA REVISED STATUTE 201.230
29 IN OCTOBER 1, 1997 AND AFTER, PROBATION IS NOT A SENTENCING OPTION THAT CAN
30 BE CONSIDERED BY A DISTRICT COURT JUDGE IN REGARDS TO SENTENCING.

31 SINCE THE ALLEGED OFFENSE OCCURED BETWEEN 8/14/98 AND 8/13/00,
32 PROBATION IS NOT AVAILABLE. AND SINCE THE DEFENDANT WAS INFORMED
33

1 MISINFORMED AND IT IS NOT AVAILABLE, THE GUILTY PLEA CAN NOT
2 BE CONSIDERED TO HAVE BEEN ENTERED KNOWINGLY OR VOLUNTARY.

3 "MISINFORMATION AS TO SENTENCE RENDERS A GUILTY PLEA INVOLU-
4 NTARY MADE, IT MUST BE VACATED ... "TAYLOR V. WARDEN, N.S.P., 607 P.2d 587
5 96 NEV. 272 (NEV. 1980)

6 "DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE FEDERAL
7 CONSTITUTION AND OF THE STATE CONSTITUTION PROTECT DEFENDANT FROM BEING
8 SENTENCED BASED ON MISINFORMATION." STATE V. WINKLE, 60 P.3d 465, 313 MONT.
9 111 (MONT. 2002); STATE V. MASON, 82 P.3d 903, 319 MONT. 117 (MONT. 2003); STATE V
10 PHILLIPS, 159 P.3d 1078, 337 MONT. 248 (MONT. 2007); HIRT V. STATE, 206 P.3d 908
11 350 MONT. 162 (MONT. 2009)

12 "WHEN A PLEA AGREEMENT IS INVOLUNTARY BASED ON MISINFORMATION
13 ABOUT THE STANDARD RANGE OF THE SENTENCE, DEFENDANT'S RIGHT TO CHOOSE
14 TO EITHER SPECIFICALLY ENFORCE THE PLEA AGREEMENT OR TO WITHDRAW
15 THE PLEA IS NOT LIMITED TO THE SITUATION WHERE THE DEFENDANT IS
16 INFORMED OF A STANDARD RANGE AND SUBSEQUENTLY BECOMES AWARE THAT
17 THE RANGE IS GREATER; RATHER, THE REMEDY IS TRIGGERED WHEN THE DEFENDANT
18 ENTERS A PLEA THAT IS BASED ON MISINFORMATION." STATE V. MOUN, 29 P.3d 734
19 108 WN. APP. 59. (WASH APP. DIV. 3 2001)

20 THERE IS ABSOLUTELY NO QUESTION AS TO WHETHER PROBATION
21 WAS A FACTOR IN CONSIDERING WHETHER TO PLEAD OR TO NOT ENTER A
22 PLEA.

23 DEFENDANT GAINED ABSOLUTELY NOTHING FROM THIS 'DEAL'. BUT
24 GAVE UP SO MUCH. UPON FULL REVIEW THERE IS NO EXCUSE FOR ADA
25 VILORIA'S ACTIONS, TO INTENTIONALLY PRESENT A 'DEAL' SHE KNEW TO
26 BE BASED ON FALSE PREMISE, A LEGAL SMOKE AND MIRRORS. ADD
27 TO THAT THE OBVIOUS CONSTITUTIONAL MAGNITUDE OF HER OTHER
28 ACTIONS. TO WITHHOLD KEY EVIDENCE. IN THIS CASE, THAT WOULD HAVE
29 AFFECTED THE DECISION TO PLEAD OUT OR GO TO TRIAL.

30 WITHHOLDING THE DNA TEST FROM DEFENSE FOR NINE
31 MONTHS, RESULTS THAT UNCONDITIONALLY CLEAR THE DEFENDANT
32 OF COMMITTING ANY TYPE OF SEXUAL ASSAULT ON JESSICA V3. 428
33

1 OR ANY OTHER.

2 SUCH ACTIONS ALL ADD UP TO A VALID, STRONG, JUST AND
3 FAIR REASONS TO ALLOW WITHDRAWAL OF GUILTY PLEA. THE ONLY
4 PARTY PREJUDICED IN THIS MATTER IS THE DEFENDANT, A STATE THAT
5 WOULD CONTINUE IF THE MOTION TO WITHDRAW GUILTY PLEA IS DENIED.

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8
9 DATED THIS 1ST DAY OF MARCH, 2010

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13 *Brendan Dunchley*

14
15 BRENDAN DUNCHLEY #1023236

16 LOVELOCK CORRECTIONAL CENTER

17 1200 PRISON ROAD

18 LOVELOCK, NEVADA 89419

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20 DEFENDANT PRO PER
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HISTORICAL AND STATUTORY NOTES
NRS. 201.230

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4 - LAWS 1997, C. 455, APPLICABLE ONLY TO OFFENSES COMMITTED
5 ON OR AFTER OCT, 1, 1997, IN SUBSEC. 1, INCREASED THE PUNISH-
6 MENT TO A CATEGORY A FELONY, WITH A TERM OF IMPRISONMENT
7 OF LIFE WITH THE POSSIBILITY OF PAROLE, WITH ELIGIBILITY FOR
8 PAROLE AFTER 10 YEARS. THE PUNISHMENT HAD PREVIOUSLY BEEN
9 THAT OF A CATEGORY B FELONY, WITH THE A TERM OF IMPRISONMENT
10 BETWEEN 2 AND 10 YEARS.

11 - LAWS 1997, C. 524, EFFECTIVE OCTOBER 1, 1997, DELETED THE SUBSEC.
12 1 DESIGNATION, AND DELETED FORMER SUBSECS. 2 THROUGH 6, WHICH
13 RELATED TO THE PAROLE OR PROBATION OF VIOLATORS OF THIS SECTION.

14 - LAWS 1997, C. 641, EFFECTIVE JULY 17, 1997, REWROTE SUBSEC. 2,
15 INSERTING SUBSECS. 3 THROUGH 6 AND INCORPORATING FORMER PAR (b)
16 OF SUBSEC. 2 IN SUBSEC. 6. SUBSEC. 2 FORMERLY READ:

17 "2. A PERSON CONVICTED OF VIOLATING ANY OF THE PROVISIONS
18 OF SECTION 1 MUST NOT BE:

19 "(a) PAROLED UNLESS A BOARD CONSISTING OF:

20 "(1) THE ADMINISTRATOR OF THE MENTAL HYGIENE AND MENTAL
21 RETARDATION DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES;

22 "(2) THE DIRECTOR OF THE DEPARTMENT OF PRISONS; AND

23 "(3) A PSYCHOLOGIST LICENSED TO PRACTICE IN NEVADA OR
24 A PSYCHIATRIST LICENSED TO PRACTICE MEDICINE IN NEVADA, CERTIFYS
25 THAT THE PERSON SO CONVICTED WAS UNDER OBSERVATION WHILE CONF-
26 INED IN AN INSTITUTION OF THE DEPARTMENT OF PRISONS AND IS
27 NOT A MENACE TO THE HEALTH, SAFTY OR MORALS OF OTHERS. FOR
28 THE POUPOSE OF THIS PARAGRAPH, THE ADMINISTRATOR AND DIRECTOR
29 MAY EACH DESIGNATE A PERSON TO REPRESENT HIM ON THE BOARD."

30 "(b) BE RELEASED ON PROBATION UNLESS A PSYCHOLOGIST
31 LICENSED TO PRACTICE IN NEVADA OR A PSYCHIATRIST LICENSED TO
32 PRACTICE MEDICINE IN NEVADA CERTIFIES THAT THE PERSON SO
33 CONVICTED IS NOT A MENACE TO THE HEALTH, SAFTY OR MORALS OF OTHERS"

1 LAWS 1999, C. 105, EFFECTIVE MAY 11, 1999, RATIFIED TECHNICAL
2 CORRECTIONS TO SECTIONS OF NRS, AND MULTIPLE AMENDMENTS OF
3 SECTIONS OF NRS, CORRECTING CERTAIN EFFECTIVE DATES, AND
4 MADE CERTAIN OTHER CORRECTIONS IN STATUTES.

5 - LAW 2003, C. 461, § 2, REWROTE THIS SECTION WHICH
6 PREVIOUSLY READ:

7 "A PERSON WHO WILLFULLY AND LEWDLY COMMITS ANY
8 LEWD OR LASCIVIOUS ACT, OTHER THAN ACTS CONSTITUTING THE CRIME
9 OF SEXUAL ASSAULT, UPON OR WITH THE BODY, OR ANY PART OR
10 MEMBER THEREOF, OF A CHILD UNDER THE AGE OF 14 YEARS, WITH
11 THE INTENT OF AROUSING, APPEALING TO, OR GRATIFYING THE LUST OR
12 PASSIONS OR SEXUAL DESIRES OF THAT PERSON, OR OF THAT CHILD, IS
13 GUILTY OF A CATEGORY A FELONY AND SHALL BE PUNISHED BY
14 IMPRISONMENT IN STATE PRISON FOR LIFE WITH THE POSSIBILITY OF
15 PAROLE, WITH ELIGIBILITY FOR PAROLE BEGINNING WHEN A MINIMUM
16 OF 10 YEARS HAS BEEN SERVED, AND MAY BE FURTHER PUNISHED
17 BY A FINE OF NOT MORE THAN \$10,000."

18 - LAWS 2005, C. 507, § 33, AMENDED THE SECTION BY RE -
19 WRITING SUBSEC. 2, WHICH PRIOR THERETO READ AS FOLLOWS:

20 "2. EXCEPT AS OTHERWISE PROVIDED IN SUBSEC. 3, A PERSON
21 WHO COMMITS LEWDNESS WITH A CHILD IS GUILTY OF A CATEGORY A
22 FELONY AND SHALL BE PUNISHED BY IMPRISONMENT IN THE STATE PRISON
23 FOR:

24 "(a) LIFE WITH THE POSSIBILITY OF PAROLE, WITH ELIGIBILITY FOR
25 PAROLE BEGINNING AFTER 10 YEARS HAS BEEN SERVED, AND MAY BE FURTHER
26 PUNISHED BY A FINE OF NOT MORE THAN \$10,000; OR,

27 "(b) A DEFINITE TERM OF 20 YEARS, WITH ELIGIBILITY FOR PAROLE
28 AFTER A MINIMUM OF 2 YEARS HAS BEEN SERVED, AND MAY FURTHER
29 BE PUNISHED BY A FINE OF NOT MORE THAN \$10,000.

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing SUPPLEMENTAL TO MOTION FOR WITHDRAWAL OF PEA to the below address(es) on this 1st day of MARCH, 2010, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY D.A.
% GARY HATLESTAD
P.O. Box 30083
RENO, NEVADA 89520-3083

S

CLERK OF THE COURT
SECOND JUDICIAL DISTRICT
% DEPT. 4,
P.O. Box 30083
RENO, NEVADA 89520-3083

Brendan Dunchley
BRENDAN DUNKLEY #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

DEFENDANT In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO WITHDRAWAL OF GUILTY PLEA 'SUPPLEMENTAL' filed in District Court Case No. CR07-1728 does not contain the social security number of any person.

Dated this 2nd day of MARCH, 2010.

Brendan Dunchley
BRENDAN DUNKLEY

DEFENDANT In Pro Se

CR07-1728

D4

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

Electronically

03-18-2010:01:28:05 PM

Howard W. Conyers

Nevada State Court

Transaction # 1382922

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55545

FILED

MAR 16 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

Having reviewed the documents on file in this proper person appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). The clerk of the district court shall have 90 days from the date of this order within which to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall not include any physical, non-documentary exhibits or the original documentary exhibits filed in the district court, but copies of documentary exhibits submitted in the district court proceedings shall be transmitted as part of the record on appeal. The record shall also include any presentence investigation reports submitted in this matter in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

It is so ORDERED.

Paragon C.J.

cc: Brendan Dunckley
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk✓

V3. 433

10-06-899

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-18-2010:13:28:05
Clerk Accepted: 03-18-2010:13:30:57
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Supreme Ct Order Directing
Filed By: Michelle Purdy

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DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

FILED

10 MAR 22 PM 4:50

HOWARD W. CONYERS
BY *[Signature]*

CR07-1728
STATE VS. BRENDAN DUNCKLEY (3 Pages
District Court 03/22/2010 04:50 PM
Washoe County 3860
SATTINCH

BRENDAN DUNCKLEY #1023236

LOVELOCK CORRECTIONAL CENTER

1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF

7 NEVADA IN AND FOR THE COUNTY OF WASHOE

8

9 THE STATE OF NEVADA,

10

PLAINTIFF,

CASE NO: CR07-1728

11

VS.

DEPT. NO:

4

12

BRENDAN DUNCKLEY,

13

DEFENDANT,

14

15

REQUEST FOR SUBMISSION OF MOTION

16

17

IT IS REQUESTED THAT PURSUANT TO DCR 13 (3) WHICH

18

STATES IN PART:

19

" WITHIN 10 DAYS AFTER SERVICE OF THE MOTION THE OPPOSING

20 PARTY SHALL SERVE AND FILE HIS MOTION IN WRITTEN OPPOSITION

21 THERETO, TOGETHER WITH A MEMORANDUM OF POINTS AND AUTHORITY

22 AND SUPPORTING AFFIDAVITS. IF ANY STATING FACTS SHOWING WHY THE

23 MOTION SHOULD BE DENIED. FAILURE OF THE OPPOSING PARTY TO SERVE

24 AND FILE HIS MOTION, AND HIS WRITTEN OPPOSITION MAY BE CONSTRUED

25 AS AN ADMISSION THAT THE MOTION IS MERITORIOUS AND A CONSENT

26

1 TO GRANTING THE SAME "

2 THAT THE MOTION FOR WITHDRAWAL OF GUILTY PLEA AND THE
3 SUPPLEMENTAL TO THE MOTION FOR WITHDRAWAL OF GUILTY PLEA,
4 WHICH WAS FILED AND SERVED ON THE THIRD (3RD) DAY OF
5 MARCH, 2010, IN CASE NUMBER CRO7-1728.

6 IT IS ALSO REQUESTED THAT PER DCR13(3) SINCE THE STATE
7 "OPPOSING PARTY" HAS FAILED TO RESPOND, OPPOSE OR BRING FORTH
8 ANY REASON OR ARGUMENT AS TO WHY THIS MOTION SHOULD BE
9 DENIED, IT BE DEEMED TO BE FULLY MERITORIOUS.

10 SINCE THE MOTION IS IN FULL 'SCOPE' OF THE 'MANIFEST
11 INJUSTICE' DESCRIBED IN NRS 176.165 ALLOWING THE COURTS TO
12 GRANT WITHDRAWAL OF A GUILTY PLEA AFTER SENTENCE HAS BEGUN.
13 SEVERE MISINFORMATION PERTAINING TO SENTENCE BY RECORD OF
14 ONE HUNDRED AND TWELVE (112) TIMES PROBATION WAS MENTIONED IN
15 DIRECT CONFLICT OF NRS 201.230 LAWS 1997 C. 524. THE MOTION
16 IS FULLY SUPPORTED BY SIGNIFICANT CASE LAW REQUIRING THIS
17 COURT TO ACT.

18 IT IS THEREFORE REQUESTED THAT DUE TO THE SUBSTANTIAL
19 SUPPORT AND 'FOUNDATION' PROVIDED, THE STATES FAILURE TO SHOW WHY
20 THIS MOTION SHOULD BE DENIED THAT THIS COURT GRANT THE
21 MOTION IN ITS ENTIRETY.

22 THEREFORE IT IS REQUESTED THE FOLLOWING REMEDY:

23 IT IS ORDERED THAT THE DEFENDANT, BRENDAN DUNCLEY IN
24 CASE NUMBER: CRO7-1728, BE ALLOWED TO WITHDRAW HIS GUILTY
25 PLEA AGREEMENT ENTERED ON MARCH 6, 2008 IN THE ABOVE REFERENCED

1 CASE.

2 IT IS FURTHER ORDERED, THAT DEFENDANT, BRENDAN DUNCKLEY BE
3 RETURNED TO THE STATE OF NOT GUILTY, WHERE HE FOUND HIMSELF PRIOR
4 TO HIS ENTRANCE OF THE GUILTY PLEA.

5 IT IS FURTHER ORDERED, THAT SINCE NO PREJUDICE AGAINST THE
6 STATE EXISTS IN THE WITHDRAWAL OF THE GUILTY PLEA AGREEMENT THAT
7 REVERSAL OF ORDER OF CONVICTION IN CASE: CR07-1728 BE GRANTED.

8 IT IS FURTHER ORDERED, THAT THE DEFENDANT HAS RETURNED TO
9 THE STATUS OF INNOCENT, UNTIL THE STATE PROVES HIS GUILT BEYOND A
10 REASONABLE DOUBT.

11 IT IS FURTHER ORDERED, THAT DEFENDANT BE ALLOWED TO POST A
12 BAIL IN CASE NO: CR07-1728, AS WAS THE CASE PRIOR TO ENTRANCE
13 OF HIS GUILTY PLEA, UP UNTIL SENTENCING COMMENCED ON AUGUST 5,
14 2008.

15 THE UNDERSIGNED CERTIFIES THAT A FULL AND TRUE COPY OF THIS REQUEST
16 HAS BEEN MAILED TO ALL COUNSEL OF RECORD

17

18 DATED THIS 18TH DAY OF MARCH, 2010

19

Brendan Dunckley

20

BRENDAN DUNCKLEY (DEFENDANT PRO SE)

21 IT IS SO ORDERED:

22

JUDGE CONNIE STEINHEIMER

23

DATE

24

25

26

1 **CODE 3370**
2
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**
14 _____/

15 **ORDER**

16 On July 8, 2009, the Defendant filed a Motion for Modification of Sentence.
17 On October 27, 2009, the Court ordered the State to respond to the Motion for Modification
18 of Sentence within ten (10) days of the date of the Order. On November 4, 2009, the State
19 filed an Opposition to the Motion for Modification of Sentence. On November 13, 2009, the
20 Defendant filed a Response to the State's Opposition to the Motion for Modification of
21 Sentence. On November 25, 2009, the Motion for Modification of Sentence was formally
22 submitted to the Court for decision. On February 10, 2010, the Court entered an Order
23 Denying the Motion for Modification of Sentence. On February 17, 2010, the Motion for
24 Modification of Sentence was again formally submitted to the Court for Decision.

25 The Court, having reviewed the pleadings filed herein, and a decision having
26 already been made on the Motion for Modification of Sentence,
27
28

1 IT IS HEREBY ORDERED that Motion for Modification of Sentence shall not
2 be considered again and the decision rendered by this Court on February 10, 2010,
3 remains in effect.

4 Dated this 10 day of ^{April}~~March~~, 2010.

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6
7 Connie J. Steinheimer
8 DISTRICT JUDGE
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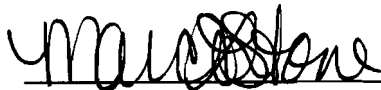
CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 12th day of April, 2010, I electronically filed the Order Denying Defendant's Order with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney

I further certify that on the 12th day of April, 2010, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service, a true copy of the same, addressed to:

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419



Marci L. Stone

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 04-12-2010:09:26:20
Clerk Accepted: 04-12-2010:09:27:34
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Order...
Filed By: Marci Trabert

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GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

1 **CODE 3370**
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5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**
14 _____ /

15 **ORDER**

16 On February 10, 2010, an Order Denying Motion for Modification of Sentence
17 was filed. On March 1, 2010, the Defendant filed a Notice of Appeal to the Supreme
18 Court. On March 3, 2010, the Defendant filed a Motion to Withdraw Guilty Plea. On
19 March 4, 2010, the Defendant filed a Supplemental Motion to Withdraw Guilty Plea. On
20 March 22, 2010, the Defendant formally submitted the Motion to Withdraw Guilty Plea to
21 the Court for decision.

22 The Court, having reviewed the pleadings filed herein, finds that at this time it
23 is inappropriate to render a decision on the Motion to Withdraw Guilty Plea based on the
24 case having been appealed to the Supreme Court for review.

25 Therefore, with good cause appearing and in the interests of justice,

26 **IT IS HEREBY ORDERED** that the decision on the Motion to Withdraw Guilty
27
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///

1 Plea is stayed pending the outcome of the appeal to the Supreme Court. Once a decision
2 has been rendered by the Supreme Court, the Motion to Withdraw Guilty Plea may be
3 resubmitted to the Court for decision.

4 Dated this 23rd day of April, 2010.

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7 Connie J. Steinheimer
8 DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 23rd day of April, 2010, I electronically filed the Order to set Oral Arguments on Motion for Discovery with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney

I further certify that on the 26th day of April, 2010, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true and correct copy of the same to the following:

Robert Story, Esq.
Attorney at Law
245 E. Liberty Street, Ste. 530
Reno, Nevada 89501

Brendan Dunckley
Inmate no. 1023236
1200 Prison Road
Lovelock, Nevada 89419

Marci L. Stone
Marci L. Stone

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 04-23-2010:16:16:49
Clerk Accepted: 04-23-2010:16:17:10
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Order...
Filed By: Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

1 **Code 1350**
2
3
4
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **THE STATE OF NEVADA,**

13 **Respondent.**
14 _____/

15 **CERTIFICATE OF CLERK – RECORD ON APPEAL**
16

17 I hereby certify that the attached documents submitted electronically are
18 certified copies of the original pleadings on file with the Second Judicial District Court, in
19 accordance with the Nevada Rules of Appellate Procedure, NRAP 11(2)(b).

20 Dated this 9th day of June, 2010.

21 HOWARD W. CONYERS
22 CLERK OF THE COURT

23 By: /s/ Teresa Prince
24 Deputy Clerk
25
26
27
28

1 **Code 1365**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **THE STATE OF NEVADA,**

13 **Respondent.**
14 _____/

15 **CERTIFICATE OF TRANSMITTAL – RECORD ON APPEAL**

16 I hereby certify that this Record on Appeal containing seven volumes are
17 certified copies pursuant to NRAP 11(2)(b), and were electronically filed from the Second
18 Judicial District Court to the Nevada Supreme Court or through the file transfer process
19 (FTP).

20 Dated this 9th day of June, 2010.

21 **HOWARD W. CONYERS**
22 **CLERK OF THE COURT**

23
24 By: /s/ Teresa Prince
25 Deputy Clerk
26
27
28

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 06-09-2010:11:41:44
Clerk Accepted: 06-09-2010:11:42:23
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Certificate of Clerk
Certificate of Transmittal
Filed By: Teresa Prince
You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

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BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

Electronically
06-09-2010:02:17:55 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533249

From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. No. 55545.
Date: Wednesday, June 09, 2010 12:57:23 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number: 55545
Case Category: Criminal Appeal

Submitted by: Washoe Co Clerk
Date Submitted: Jun 09 2010 12:34 p.m.
Official File Stamp: Jun 09 2010 12:56 p.m.
Document Category: Record on Appeal Document
Document Title: RECORD ON APPEAL - VOLUME 1 - INDEX/DOCKET SHEET
Filing Status: Accepted and Filed

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Electronically
06-09-2010:02:17:55 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533249

From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. No. 55545.
Date: Wednesday, June 09, 2010 12:57:49 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number: 55545
Case Category: Criminal Appeal

Submitted by: Washoe Co Clerk
Date Submitted: Jun 09 2010 12:36 p.m.
Official File Stamp: Jun 09 2010 12:57 p.m.
Document Category: Record on Appeal Document
Document Title: RECORD ON APPEAL - VOLUME 2 - DOCUMENTS
Filing Status: Accepted and Filed

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Electronically
06-09-2010:02:17:55 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533249

From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. No. 55545.
Date: Wednesday, June 09, 2010 12:59:49 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number: 55545
Case Category: Criminal Appeal

Submitted by: Washoe Co Clerk
Date Submitted: Jun 09 2010 12:37 p.m.
Official File Stamp: Jun 09 2010 12:58 p.m.
Document Category: Record on Appeal Document
Document Title: RECORD ON APPEAL - VOLUME 3 - DOCUMENTS
Filing Status: Accepted and Filed

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Electronically
06-09-2010:02:17:55 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533249

From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. No. 55545.
Date: Wednesday, June 09, 2010 1:01:49 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number: 55545
Case Category: Criminal Appeal

Submitted by: Washoe Co Clerk
Date Submitted: Jun 09 2010 12:38 p.m.
Official File Stamp: Jun 09 2010 12:59 p.m.
Document Category: Record on Appeal Document
Document Title: RECORD ON APPEAL - VOLUME 5 - MINUTES
Filing Status: Accepted and Filed

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Electronically
06-09-2010:02:17:55 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533249

From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. No. 55545.
Date: Wednesday, June 09, 2010 1:01:49 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number: 55545
Case Category: Criminal Appeal

Submitted by: Washoe Co Clerk
Date Submitted: Jun 09 2010 12:39 p.m.
Official File Stamp: Jun 09 2010 01:00 p.m.
Document Category: Record on Appeal Document
Document Title: RECORD ON APPEAL - VOLUME 6 - EXHIBITS
Filing Status: Accepted and Filed

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From: efiling@nvcourts.nv.gov
To: [Prince, Teresa](#)
Subject: Acceptance of Electronic Document. No. 55545.
Date: Wednesday, June 09, 2010 1:01:49 PM

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number: 55545
Case Category: Criminal Appeal

Submitted by: Washoe Co Clerk
Date Submitted: Jun 09 2010 12:40 p.m.
Official File Stamp: Jun 09 2010 01:00 p.m.
Document Category: Record on Appeal Document
Document Title: RECORD ON APPEAL - VOLUME 7 - CERTIFICATES OF
CLERK AND TRANSMITTAL

Filing Status: Accepted and Filed

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***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 06-09-2010:14:17:55
Clerk Accepted: 06-09-2010:14:18:55
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Supreme Ct Accept - eFile Doc
Supreme Ct Accept - eFile Doc
Supreme Ct Accept - eFile Doc
Supreme Ct Accept - eFile Doc
Supreme Ct Accept - eFile Doc
Supreme Ct Accept - eFile Doc
Filed By: Teresa Prince

You may review this filing by clicking on the following link to take you to your cases.

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-

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The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA

KELLI VILORIA, ESQ.

V3. 457
CR07-1728
D4

FILED
Electronically
06-16-2010:01:02:35 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1546203

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55545
District Court Case No. CR071728

RECEIPT FOR DOCUMENTS

TO: Brendan Dunckley #1023236
Attorney General/Carson City and Catherine Cortez Masto, Attorney
General
Washoe County District Attorney and Gary H. Hatlestad, Deputy District
Attorney
Howard W. Conyers , District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

06/11/10	Filed Record on Appeal (Copy). Volume 4 (SEALED) PSI Report.
06/11/10	Processing status update: Submitted for decision on record.

DATE: June 11, 2010

Tracie Lindeman, Clerk of Court

V3. 457

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 06-16-2010:13:02:35
Clerk Accepted: 06-16-2010:13:03:02
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Michelle Purdy

You may review this filing by clicking on the following link to take you to your cases.

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-

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The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

V3. 459 code
3860

CR07-1728
DC-9900017821-028
STATE VS BRENDAN DUNCKLEY (2 Pages
District Court 06/17/2010 11:20 AM
Washoe County 3860
noc

CR07-1728

pt. No. 4

FILED

10 JUN 17 AM 11:20

HON. J. J. BOWERS

BY

Second Judicial District Court
State of Nevada, Washoe County

THE STATE OF NEVADA,

Plaintiff,

VS.

BRENDAN DUNCKLEY

Defendant.

REQUEST FOR SUBMISSION
OF MOTION

It is requested that the motion for WITHDRAWAL OF GUILTY PLEA & SUPPLEMENTAL
OF MOTION FOR WITHDRAWAL OF GUILTY PLEA

_____, which was filed on the 1st day
of MARCH 8 MARCH 3, 2010, in the above-entitled matter be submitted to
the Court for decision.

The undersigned attorney certifies that a copy of this request has been mailed to all counsel of record.

DATED this 25th day of MAY, 2010.

Brendan Dunckley
BRENDAN DUNCKLEY #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

DEFENDANT In Pro Se

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

REQUEST FOR SUBMISSION OF MOTION -

MOTION FOR WITHDRAWAL OF GUILTY PLEA & SUPPLEMENTAL
(Title of Document)

filed in case number: CR 07-1728

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 6/11/10

Brendan Dunchley
(Signature)

BRENDAN DUNCHLEY
(Print Name) #623236

DEFENDANT PRO PER
(Attorney for)

1 **CODE 3370**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR07-1728

11 **vs.**

Dept. No. 4

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**
14 _____/

15 **ORDER**

16 On February 10, 2010, an Order Denying Motion for Modification of Sentence
17 was filed. On March 1, 2010, the Defendant filed a Notice of Appeal to the Supreme
18 Court. On March 3, 2010, the Defendant filed a Motion to Withdraw Guilty Plea. On
19 March 4, 2010, the Defendant filed a Supplemental Motion to Withdraw Guilty Plea. On
20 March 22, 2010, the Defendant formally submitted the Motion to Withdraw Guilty Plea to
21 the Court for decision. On April 23, 2010, an Order was entered staying the decision on
22 the Motion to Withdraw Guilty Plea until a decision had been rendered by the Supreme
23 Court. On June 17, 2010, the Defendant again formally submitted the Motion for Withdraw
24 of Plea to the Court for decision

25 The Court, having reviewed the pleadings filed herein, finds that it continues
26 to be inappropriate to render a decision on the Motion to Withdraw Guilty Plea based on
27 the case having been appealed to the Supreme Court for review.
28

Therefore, with good cause appearing and in the interests of justice,

1 IT IS HEREBY ORDERED that the decision on the Motion to Withdraw Guilty
2 Plea is stayed pending the outcome of the appeal to the Supreme Court. Once a decision
3 has been rendered by the Supreme Court, the Motion to Withdraw Guilty Plea may be
4 resubmitted to the Court for decision.

5 Dated this 7 day of July, 2010.

6
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8 Connie J. Steinheimer
9 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

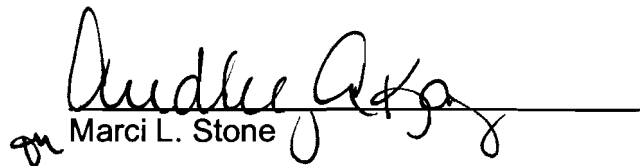
I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 8 day of July, 2010, I electronically filed the Order with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Gary Hatlestad Esq.
Chief Deputy District Attorney

I further certify that on the 8 day of July, 2010, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service, a true copy of the same, addressed to:

Robert Story, Esq.
Attorney at Law
245 E. Liberty Street, Ste. 530
Reno, Nevada 89501

Brendon Dunckley
Inmate no. 1023236
1200 Prison Road
Lovelock, Nevada 89419


Marci L. Stone

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 07-08-2010:13:48:12
Clerk Accepted: 07-08-2010:13:51:28
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Order...
Filed By: Audrey Kay

You may review this filing by clicking on the following link to take you to your cases.

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DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

FILED

DC-9900018516-008
CR07-1728 BRENDAN DUNCKLEY (7 Pages
STATE VS BRENDAN DUNCKLEY (7 Pages
District Court 07/14/2010 09:37 AM
Washoe County 4105
DOC

BRENDAN DUNCKLEY (#1023236)

10 JUL 14 AM 9:30

LOVELOCK CORRECTIONAL CENTER

HOWARD T. MYERS

1200 PRISON ROAD

BY

LOVELOCK, NEVADA 89419

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

PLAINTIFF,

CASE NUMBER: CR07-1728

VS.

DEPT. NUMBER: 4

BRENDAN DUNCKLEY,

DEFENDANT.

SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA.

COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, IN PROPER PERSON, SUBMITS
TO THIS HONORABLE COURT, AN OFFICIAL TRUE AND CORRECT COPY OF A LETTER
SENT TO THE HONORABLE JUDGE CONNIE STEINHEIMER ON MAY 25, 2010. A TRUE
AND CORRECT COPY WAS ALSO SENT TO ALL ATTORNEYS OF RECORD IN PRO-
TECTION AGAINST EX-PARTE COMMUNICATION.

THE FOLLOWING IS THE ABOVE REFERENCED LETTER IN ITS ENTIRETY.
FORMATED TO BE FILED WITH THE CLERK, AS AN OFFICIAL PART OF THE
RECORD, TO BE USED IN CONSIDERATION AS TO WHY A DECISION IS BOTH
REQUESTED AND NECESSARY, IN REGARDS TO THIS DEFENDANT'S MOTION TO WITHDRAWAL
OF GUILTY PLEA, FILED ON MARCH 1, 2010. ALSO IN DIRECT REFERENCE TO ORDER TO
STAY DECISION FILED ON APRIL 23, 2010. THE LETTER READS AS FOLLOWS:

"
1 DEAR JUDGE STEINHEIMER,

2 I UNDERSTAND AND APPRECIATE YOUR 'RULING' FILED ON APRIL
3 23, 2010 IN REGARDS TO THE MOTION TO WITHDRAW GUILTY PLEA FILED ON MARCH
4 1, 2010 AND THE SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA.

5 "IN YOUR ORDER IT STATED: 'THAT THE COURT, HAVING REVIEWED THE
6 PLEADINGS FILED HEREIN, FINDS THAT AT THIS TIME IT IS INAPPROPRIATE TO
7 RENDER A DECISION ON THE MOTION TO WITHDRAW GUILTY PLEA BASED ON THE
8 CASE HAVING BEEN APPEALED TO THE SUPREME COURT FOR REVIEW.'

9 "THERE IS ONE SERIOUS CONCERN I HAVE IN REGARDS TO THIS
10 'ORDER'. THE MOTION BEFORE THE SUPREME COURT 'FOR REVIEW' IS BASED ON
11 THE COURTS DENIAL OF THE MOTION FOR MODIFICATION OF SENTENCE, 'A
12 COMPLETELY DIFFERENT MOTION, ONE THAT WAS FILED AND SUBMITTED PURSUANT
13 TO NRS, ALLOWING YOUR COURT TO HAVE JURISDICTION TO CORRECT /MODIFY
14 A SENTENCE IF IT IS BASED ON MISINFORMATION PERTAINING TO MY CRIMINAL
15 HISTORY, LEADING TO THE 'EXTREME DETRIMENT' OF THE DEFENDANT. THE MOTION
16 FILED TO YOUR COURT FOR SUBMISSION ON MARCH 22, 2010 WAS A
17 MOTION TO WITHDRAW A GUILTY PLEA, A COMPLETELY SEPERATE MOTION, WITH
18 ENTIRELY DIFFERENT SCOPE.

19 "THE MOTION FOR WITHDRAWAL OF GUILTY PLEA WAS SUPPORTED BY SUB-
20 STANTIAL DOCUMENTATION WARRENTING A GRANTING OF THE MOTION IN ITS
21 ENTIRETY, THE MOTION ESTABLISHED AND PROVED BEYOND A REASONABLE DOUBT
22 THAT THE REQUIRED MANIFEST INJUSTICES HAVE INDEED OCCURED.

23 "AS THE SUPPLEMENTAL TO THE MOTION SHOWED, THAT AS OF OCTOBER 1,
24 1997, PER LAWS 1997 C.524, PROBATION WAS DELETED FROM THE STATUTE OF
25 NRS 201.230, AND IN CONNECTION TO TAYLOR V. WARDEN, N.S.P.; SIERRA V. STATE;
26 SKINNER V. STATE; MEYER V. STATE; SULLIVAN V. STATE; AND GUNN V. IGNACIO; THE
27 MOTION REQUIRES A ACCEPTANCE AND AN IMMEDIATE REVERSAL OF CONVICTION.

1 "ANOTHER FACT IS THAT IN RELATION TO DCR 13(3) THE STATE FAILED
2 TO FILE AN OPPOSITION AS TO WHY THE MOTION SHOULD BE DENIED, AND AS
3 SUCH THE 'SILENCE' OF THE STATE SHOULD BE VIEWED AS AN ADMISSION OF
4 GUILT AND AS A CONSENT TO GRANTING THE SAME. YOU SEE, THERE IS
5 ABSOLUTLY NO WAY THE STATE CAN ARGUE OR FIGHT THE MOTION, SINCE IT IS
6 OVERWHELMINGLY SUPPORTED BY THE LAW AND STATUTES, AS WELL AS
7 SUPPORTED BY SUBSTANTIAL CASE LAW.

8 "YOUR HONOR, WITH ALL DUE RESPECT, I DO RESPECT YOUR 'CAUTIOUS'
9 DECISION, BUT I RESPECTFULLY ASK YOU TO RENDER A DECISION. THERE IS
10 SUBSTANTIAL EVIDENCE PROVING THAT THE MOTION SHOULD NOT ONLY BE
11 GRANTED, BUT ALSO THAT THE ENTIRE CASE RECORD PROVES ACTUAL AND
12 FACTUAL INNOCENCE.

13 "YOUR ORDER STATES THAT "IN THE INTEREST OF JUSTICE," THAT PHRASING IS
14 OF EXTREME IMPORTANCE SO I TOO WILL USE IT ALSO. IN THE INTEREST OF
15 JUSTICE, SINCE THE STATE HAS CONTINUALLY FAILED TO PROVE, ESTABLISH
16 ANY TYPE OF GUILT, AND ALL THE ACTUAL EVIDENCE THAT EXISTS PROVES
17 THAT IT IS IMPOSSIBLE FOR ME TO HAVE COMMITTED ANY OF THE CHARGES
18 FILED AGAINST ME. THE EVIDENCE NOT ONLY PROVES INNOCENCE BEYOND A
19 REASONABLE DOUBT TO THE 'AMENDED' CHARGES, BUT ALSO TO THE ORIGINAL
20 CHARGES.

21 "JESSICA CLAIMED THAT A PENIS WAS SHOVED INTO HER MOUTH AND
22 I WAS CHARGED WITH SEXUAL ASSAULT, THE ENTIRE CONVICTION TO THE
23 CHARGE AND ACCUSATION IS SOLEY BASED ON HER TESTIMONY, AND HER
24 TESTIMONY ALONE. THERE CAN BE NO IGNORING THE FACT THAT THE STATE
25 HAD THE RESULTS OF THE DNA SWABS OBTAINED ON THE NIGHT IN QUESTION AND
26 NEVER INTRODUCED IT AS EVIDENCE. THE RESULTS WAS NOT ONLY RELEVANT, BUT
27 NECESSARY TO PROVE MY INNOCENCE, IT SAYS: "NO FOREIGN DNA TO SOURCE,

1 BRENDAN DUNCKLEY, WAS OBTAINED FROM THE GENITAL SWABS."

2 "ASHLEY CLAIMED THAT BETWEEN AUGUST 14, 1998 - AUGUST 13, 1999
3 WE HAD CONSENSUAL SEX, AFTER SPENDING THE NIGHT AT MY HOME IN
4 RENO, IN MY FORD TAURUS. AGAIN THE ONLY EVIDENCE IN THIS CASE WAS
5 THE TESTIMONY OF ASHLEY. WHEN I HAVE GIVEN YOUR COURT AND THE STATE
6 IRS PAPERWORK, DMV REGISTRATION, COLLEGE TRANSCRIPTS, RPD REPORTS, COURT
7 PAPERWORK SERVING ME AT MY RESIDENCY IN FRESNO, CALIFORNIA ON 8/16/99,
8 AND MADERA COUNTY PAPERS. ALL PROVING I DID NOT EVEN LIVE IN RENO UNTIL
9 2000. SINCE ASHLEY STATED WITH CERTAINTY SHE WAS 12, AS DID KELLI A.
10 VILORIA IT IS IMPOSSIBLE TO HAVE DONE IT.

11 "SO, IN THE INTEREST OF JUSTICE, I HAVE BEEN OVERLY PATIENT GIVING
12 THE STATE COUNTLESS CHANCES TO CORRECT THIS GROSS MISJUSTICE, AND IT
13 HAS NOT OCCURED. AS I HAVE STATED BEFORE I HAVE NO DOUBT THAT THIS
14 CASE WILL BE REVERSED. THROUGHOUT THIS ENTIRE PROCESS I HAVE REPEATEDLY
15 MENTIONED AND SAID THAT THE STATE HAS CONTINUALLY WITHHELD
16 CRUCIAL AND RELEVANT INFORMATION TO ENSURE UNFAIR AND UNJUST
17 PROCEEDINGS. THIS IS A WONDERFUL OPPORTUNITY TO CORRECT THIS GROSS
18 MISCARRIAGE OF JUSTICE, AND I WOULD PREFER IT BE YOUR COURT THAT
19 REVERSES IT. IN THE INTEREST OF JUSTICE, A DEFENDANT SUCH AS MYSELF
20 HAVING PROVED ACTUAL AND FACTUAL INNOCENCE TO ALL THE CHARGES. THE
21 OBVIOUS CORRECTION IS IN YOUR POWER AND ALSO AT YOUR DISCRETION TO
22 VACATE AND DISMISS ALL THE CHARGES RELATED TO CRO7-1728 WITH PREJUDICE.

23 "SINCE THE STATE KNEW EVEN PRIOR TO EVEN THE PRELIMINARY HEARING
24 THAT IT WAS IMPOSSIBLE FOR ME TO HAVE COMMITTED THE CRIMES AS ACCUSED
25 BY THE "VICTIMS." BUT INSTEAD OF CORRECTING THE RECORD, THEY CHOSE TO
26 IGNORE, HIDE AND DISREGARD ALL THE ACTUAL EVIDENCE PROVING MY
27 INNOCENCE. IT IS ON YOU TO DO WHAT IS RIGHT AND JUST.

1 "IT SHOULD BE NOTED THAT A COPY OF THIS ENTIRE LETTER HAS
 2 BEEN SENT TO ADA. G. HATLESTAD, ATTORNEY ROBERT STORY, NEVADA ATTORNEY GEN
 3 NEVADA SUPREME COURT C.S., KOLO 8, KRNV ~~KTNV~~, RENO GAZETTE AND THE NEVADA
 4 BAR ASSOCIATION. ALSO SINCE THIS LETTER IS IN DIRECT REFERENCE TO CRO7-172
 5 AND THE MOTION IN WHICH I AM LISTED AS DEFENDANT IN PROPER PERSON ON RECORD
 6 SINCE I AM REPRESENTED BY MR. ROBERT STORY IN CRO7 P. 1728 FOR THE PET-
 7 ITION FOR WRIT OF HABEAS CORPUS ONLY, THIS LETTER IS VALID.

8 "I EMPLOYE YOU, YOUR HONOR TO HELP ME. AS THE EVIDENCE FOR THE INSTANT
 9 MOTION PROVES, THE OVERWHELMING, DOCUMENTED EVIDENCE IN THE PETITION, I AM
 10 AN INNOCENT MAN. A INNOCENT MAN WHO WAS DECEIVED BY AN INCOMPETANT
 11 ATTORNEY, PROSECUTED BY AN OVERZEALOUS DISTRICT ATTORNEY, PRESSURED BY
 12 COMMUNITY OUTRAGE DUE TO BRIANNA DENNISON. ALL I ASK YOUR HONOR IS
 13 TO ALLOW THE OVERWHELMING EVIDENCE TO SPEAK FOR ITSELF. TO BE
 14 RETURNED TO THE FAMILY I WAS RIPPED AWAY FROM. THIS RELIEF IS ENTIRELY
 15 WITHIN YOUR POWER, TO DO SO BEFORE ANOTHER COURT RULES AND
 16 DECIDES TO DO JUST THAT.

17 "AS I HAVE STATED AT THE OUTSET OF THIS LETTER, I DO UNDERSTAND AND
 18 APPRECIATE YOUR 'CAUTIOUS' DECISION, BUT IN THE INTREST OF JUSTICE, PLEASE
 19 ALLOW ME TO GO HOME WHERE I TRULY BELONG. IN THE LEAST PLEASE
 20 GRANT MY MOTION SO THAT I MAY HAVE MY 'DAY IN COURT'.

21 "I AM MORE THAN CONFIDENT THAT THE SUPREME COURT JUSTICES WILL UNDERSTAND
 22 AND COMMEND YOU FOR TAKING THE STEPS TO ENSURE THAT JUSTICE IS TRULY DONE.

23 "THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO SEND YOU THIS LETTER. I AM
 24 SURE, AS I AM SURE ALL THE OTHER RECIPIENTS OF THIS LETTER, THAT YOU WILL DO
 25 WHAT IS RIGHT AND ENSURE AN INNOCENT MAN RETURNS TO HIS WIFE AND CHILDREN.

26 "I LOOK FOWARD TO YOUR HELP IN RESOLVING THIS SITUATION AND CORRECT
 27 THIS MISCARRIAGE OF JUSTICE AND MANIFEST INJUSTICE."

1 THE SUPPLEMENTAL IN CONSIDERATION AND INCLUDED LETTER IS
2 HEREBY SUBMITTED TO THIS HONORABLE COURT, FOR CONSIDERATION
3 AFFIRMATION PURSUANT TO NRS239B.030

4 IT IS AFFIRMED BY THE UNDERSIGNED THAT THE PRECEEDING
5 DOCUMENT ENTITLED SUPPLEMENTAL IN CONSIDERATION OF MOTION
6 TO WITHDRAW GUILTY PLEA, FILED IN DISTRICT COURT CASE NO:
7 CR07-1728, DOES NOT CONTAIN THE SOCIAL SECURITY
8 NUMBER OF ANY PERSONS.

9
10
11 SUBMITTED THIS 8TH DAY OF JULY, 2010

12
13 *Brendan Dunkley*
14 BRENDAN DUNKLEY #1023236

15 LOVELOCK CORRECTIONAL CENTER

16 1200 PRISON ROAD

17 LOVELOCK, NEVADA 89419

18
19 DEFENDANT IN PROPER PERSON
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I DO CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE
3 PRECEEDING: SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW
4 GUILTY PLEA, TO THE BELOW ADDRESS(ES) ON THIS 8TH DAY OF
5 JULY, 2010, BY PLACING SAME INTO THE HANDS OF PRISON
6 STAFF FOR POSTING IN THE U.S. MAIL:

7
8 ADA. G. HARLESTAD

CLERK OF THE COURT

9 % W. C. D. A.

2ND JUDICIAL DISTRICT

10 P.O. Box 30083

P.O. Box 30083

11 RENO, NEVADA 89520-3083

RENO, NEVADA 89520-3083

12
13
14 Brendan Dunchley15
16 BRENDAN DUNCHLEY #1023236

17 LOVELOCK CORRECTIONAL CENTER

18 1200 PRISON ROAD

19 LOVELOCK, NEVADA 89419

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21 DEFENDANT IN PRO PER
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FILED

Electronically

09-16-2010:08:50:28 AM

IN THE SUPREME COURT OF THE STATE OF NEVADA

Edward A. Conyers

Clerk of the Court

Transaction # 1721484

No. 55545

BRENDAN DUNCKLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CR07-1728
4

FILED

SEP 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERKORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to modify sentence.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

In his motion filed on July 8, 2009, appellant claimed that he was innocent and requested the court vacate his conviction. Appellant failed to demonstrate that the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). We therefore conclude that the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

[Signature], J.
Hardesty

[Signature], J.
Douglas

[Signature], J.
Pickering

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Connie J. Steinheimer, District Judge
Brendan Dunckley
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 09-16-2010:08:50:28
Clerk Accepted: 09-16-2010:08:54:30
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Supreme Court Order Affirming
Filed By: Lori Matheus

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY
STATE OF NEVADA
KELLI VILORIA, ESQ.

BRENDAN DUNCKLEY #1023236

LOVELOCK CORRECTIONAL CENTER

1200 PRISON ROAD

LOVELOCK, NEVADA 89419

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

PLAINTIFF,

CASE No.: CR07-1728

VS.

DEPT. NO.: 4

BRENDAN DUNCKLEY,

DEFENDANT, /

MOTION TO SUBMIT MOTION TO WITHDRAW GUILTY PLEA AND ALSO

DEFENDANT'S SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA

COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, IN PROPER PERSON AND
HEREBY, FORMALLY SUBMITS HIS MOTION TO WITHDRAW HIS GUILTY PLEA AND
HIS SUPPLEMENTAL MOTION TO WITHDRAW HIS GUILTY PLEA, FOR DECISION, BY
THIS HONORABLE COURT.

ON APRIL 23, 2010 AND AGAIN ON JULY 8, 2010, THIS COURT ENTERED AN
ORDER STAYING THE DECISION ON THE ABOVE MENTIONED MOTION, UNTIL
SUCH TIME THAT A DECISION HAS BEEN MADE BY THE SUPREME COURT OF
NEVADA, ON APPEAL TO THE DENIAL OF THIS DEFENDANT'S MOTION FOR
MODIFICATION OF SENTENCE.

ON SEPTEMBER 9, 2010, THE SUPREME COURT OF NEVADA RETURNED A

1 DECISION OF AFFIRMATION, DENYING DEFENDANT'S MOTION FOR MODIFI
2 CATION OF SENTENCE, THEREFORE PURSUANT TO THIS HONORABLE COURTS
3 ORDER DATED JULY 8, 2010:

4 " IT IS HEREBY ORDERED THAT THE DECISION ON THE MOTION
5 TO WITHDRAW GUILTY PLEA IS STAYED PENDING THE OUTCOME
6 OF THE APPEAL TO THE SUPREME COURT. ONCE A DECISION
7 HAS BEEN RENDERED BY THE SUPREME COURT, THE MOTION TO
8 WITHDRAW GUILTY PLEA MAY BE RESUBMITTED TO THE COURT
9 FOR DECISION."
10

11 AS SUCH, SINCE THE MOTION TO WITHDRAW GUILTY PLEA WAS ORIGINALLY
12 SUBMITTED ON MARCH 3, 4, 2010 AND A MOTION TO SUBMIT FOR DECISION ON
13 MARCH 22, 2010, AND HAVING SERVED THE STATE WITH ALL DOCUMENTS,
14 THE STATE FAILED TO RESPOND PURSUANT TO DCR 13(3).

15 SO IN THE INTREST OF JUSTICE, SINCE THE STATE HAVING HAD ADEQUATE
16 TIME TO SUBMIT ITS MOTION TO OPPOSE AND DENY, TO BE SPECIFIC TO
17 DATE A TOTAL OF NINCY-THREE (93) DAYS. (3/4/10 - 9/13/10). THE OBVIOUS LACK
18 OF ANY ARGUMENT AS TO WHY THIS DEFENDANT'S MOTION TO WITHDRAW
19 GUILTY PLEA SHOULD BE DENIED, MUST BE VIEWED AS AN ADMISSION
20 OF GUILT, AND A CONSENT TO THE GRANTING OF THE MOTION IN IT'S
21 ENTIRETY, AND AS DCR 13(3) STATES IN PART:

22 " FAILURE OF THE OPPOSING PARTY TO SERVE AND FILE HIS MOTION
23 [WITHIN 10 DAYS] AND HIS WRITTEN OPPOSITION, [SUCH ACTION] MAY
24 BE CONSTRUED AS AN ADMISSION THAT THE MOTION IS MERITORIOUS
25 AND A CONSENT TO GRANTING OF THE MOTION IN IT'S ENTIRETY (EMPHASIS ADDED).

26 IN SUPPORT OF THIS LACK OF ACTION ON PART OF THE STATE, THIS DEFENDANT
27 HUMBLU DIRECTS THIS COURTS ATTENTION TO THE COURTS DECISION IN
28

1 KRESSMAN V. SHANGLE, (548 P.2d 691, 92 NEV. 216) (1976):

2 "WHERE RESPONDANT FAILED TO ANSWER BRIEF / MOTION AND
3 OFFERED NO EXPLANATION FOR FAILURE TO DO SO. SUCH UN-
4 EXPLAINED OMISSION WOULD BE TREATED AS A CONFESSION
5 OF ERROR."

6 SO WITH THERE BEING NO VALID ARGUMENT AS TO WHY THIS DEFENDANT'S
7 MOTION TO WITHDRAW HIS GUILTY PLEA SHOULD BE DENIED, AND DUE TO
8 THE OBVIOUS SCIENCE IN THE MATTER BY THE STATE IN A AFFIRMATIVE
9 OBJECTION, THERE IS GOOD FAITH REASON, AND IN THE INTEREST OF
10 JUSTICE THAT THIS DEFENDANT PRAY FOR ALL THE RELIEF SOUGHT OUT
11 IN THE ORIGINAL MOTION, INCLUDING HIS SUPPLEMENTAL, AND ANY OTHER
12 RELIEF THIS HONORABLE COURT DEEMS NECESSARY TO GRANT IN THE
13 INTEREST OF JUSTICE.

14 THIS DEFENDANT HEREBY SUBMITS THIS MOTION TO SUBMIT ABOVE REF-
15 ERENCED MOTIONS FOR THIS COURTS CONSIDERATION AND RENDERING A DECISION.

16

17 HUMBLY SUBMITTED THIS 14TH DAY OF SEPTEMBER, 2010

18

19

Brendan Dunchley # 1023236

20

BRENDAN DUNCKLEY

21

LOVELOCK CORRECTIONAL CENTER

22

1200 PRISON ROAD

23

LOVELOCK NEVADA 89419

24

25

DEFENDANT IN PRO PER.

26

27

28

1 CERTIFICATE OF SERVICE BY MAIL

2 I DO CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF FOREGOING
3 MOTION TO SUBMIT MOTION TO WITHDRAW GUILTY PLEA AND ALSO DEFENDANT'S
4 SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA, TO THE BELOW ADDRESS(ES) ON
5 THIS 14TH DAY OF SEPTEMBER, 2010, BY PLACING SAME IN THE U.S. MAIL
6 VIA PRISON LAW LIBRARY STAFF, PURSUANT TO NRCP 5 (b):

7 CLERK OF THE COURTS
8 SECOND JUDICIAL DISTRICT
9 P.O. BOX 30083
RENO, NEVADA 89520-3083

WASHOE COUNTY DISTRICT ATTORNEY
% GARY HATLESTAD
P.O. BOX 30083
RENO, NEVADA 89520-3083

10 Brendan Dunchley

11 BRENDAN DUNCKLEY #1023236
12 LOVELOCK CORRECTIONAL CENTER
13 1200 PRISON ROAD
LOVELOCK, NEVADA 89419
14 DEFENDANT IN PRO PER.

15 AFFIRMATION PURSUANT TO NRS 239B.030

16 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING DOCUMENT FILED
17 IN DISTRICT COURT CASE NO. CR07-1728 DOES NOT CONTAIN THE SOCIAL
18 SECURITY NUMBER OF ANY PERSON.

19 DATED THIS 14TH DAY OF SEPTEMBER, 2010

20
21 Brendan Dunchley

22 BRENDAN DUNCKLEY #1023236
23 DEFENDANT IN PRO PER.
24
25
26
27
28