

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

Electronically Filed
Feb 03 2022 02:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

LUIGY RICHARD LOPEZ-DELGADO,

Plaintiff,

vs.

Sup. Ct. Case No. 83885

Case No. CR18-1654

Dept. 9

THE STATE OF NEVADA,

Defendant.

RECORD ON APPEAL

VOLUME 5 OF 6

DOCUMENTS

APPELLANT

**Luigy Lopez-Delgado #1213684
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419**

RESPONDENT

**Washoe County District
Attorney's Office
Jennifer P. Noble, Esq. #9446
P.O. Box 30083
Reno, Nevada 89502-3083**

APPEAL INDEX
 SUPREME COURT NO: 83885
 DISTRICT CASE NO: CR18-1654
 LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
 DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
ACKNOWLEDGMENT BY DEFENDANT OF NRS 179D.460 AND NRS 176.0926	03-14-19	3	387-388
AMENDED INFORMATION	11-01-18	3	241-244
AMENDED ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	12-15-21	5	866
APPLICATION FOR ORDER TO PRODUCE PRISONER	10-12-21	5	776-777
APPLICATION FOR SETTING	09-25-18	2	37
APPLICATION FOR SETTING	11-13-18	3	250
APPLICATION FOR SETTING	10-12-21	5	775
CASE APPEAL STATEMENT	03-29-19	3	409-412
CASE APPEAL STATEMENT	12-03-21	5	828-829
CASE ASSIGNMENT NOTIFICATION	05-27-20	4	524-525
CERTIFICATE OF CLERK AND TRANSMITTAL	07-30-19	4	477
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	03-29-19	3	422
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	12-03-21	5	827
CONFIDENTIAL PSYCHOLOGICAL EVALUATION TO BE FILED UNDER SEAL	03-04-19	6	92-97
CORRECTED JUDGMENT OF CONVICTION	03-18-19	3	395-396
COURT NOTE – HEARING	12-18-18	3	302-303
COURT NOTE – HEARING	03-12-19	3	377-378
DOCUMENTS TO BE CONSIDERED AT SENTENCING	03-13-19	3	381-384
EX PARTE BILLING INVOICE FOR LEGAL FEES	03-02-21	6	98-100
EX PARTE BILLING INVOICE FOR LEGAL FEES	04-02-21	6	104-107
EX PARTE BILLING INVOICE FOR LEGAL FEES	05-04-21	6	111-114
EX PARTE BILLING INVOICE FOR LEGAL FEES	07-30-21	6	118-121
EX PARTE BILLING INVOICE FOR LEGAL FEES	11-02-21	6	125-128
EX PARTE BILLING INVOICE FOR LEGAL FEES	12-08-21	6	129-132
EX PARTE BILLING INVOICE FOR LEGAL FEES	01-04-22	6	136-139

APPEAL INDEX
SUPREME COURT NO: 83885
DISTRICT CASE NO: CR18-1654
LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING	06-11-20	4	540-543
GUILTY PLEA MEMORANDUM	12-13-18	3	267-274
INFORMATION	09-26-18	2	46-52
JUDGMENT OF CONVICTION	03-15-19	3	391-392
MINUTES – ARRAIGNMENT – 10-11-18	10-24-18	3	238
MINUTES – ARRAIGNMENT – 11-01-18	11-08-18	3	247
MINUTES – HEARING ON MOTION FOR NEW COUNSEL (YOUNG HEARING) – 11-29-18	12-05-18	6	22
MINUTES – MOTION – BAIL REDUCTION – 12-20-18	02-11-19	3	370
MINUTES – MOTION TO DISMISS – 11-02-21	11-05-21	5	815-816
MINUTES – MOTION TO SET TRIAL / ARRAIGNMENT ON SECOND AMENDED INFORMATION	12-17-18	3	288
MOTION FOR A STATUS CHECK	10-13-20	4	551-554
MOTION FOR APPOINTMENT OF COUNSEL	07-01-20	4	547-548
MOTION FOR BAIL REDUCTION	12-13-18	3	277-285
MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND DELIVERY OF RECORDS	05-12-20	4	501-504
MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND DELIVERY OF RECORDS	12-02-21	5	822-826
MOTION TO DISMISS COUNTS I, III, V, VII AND VIII	03-28-19	3	399-401
MOTION TO DISMISS IN PART	06-07-21	5	712-733
MOTION TO VACATE A. J.O.C. (0203), AND WITHDRAW A GUILT PLEA	05-13-20	4	507-514
NOTICE AND ORDER OF AUDIO / VISUAL HEARING	10-27-21	5	786-789
NOTICE OF APPEAL	03-29-19	3	407-408
NOTICE OF APPEAL	12-02-21	5	820-821
NOTICE OF BINDOVER	09-25-18	2	1
NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY	05-22-20	4	520-521

APPEAL INDEX
SUPREME COURT NO: 83885
DISTRICT CASE NO: CR18-1654
LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT	04-01-19	3	425-426
NOTICE OF ENTRY OF ORDER	12-10-21	5	842-851
NOTICE OF PROPOSED EXHIBITS SUBMITTED BY RESPONDENT FOR THE NOVEMBER 2, 2021, EVIDENTIARY HEARING	11-01-21	5	793-797
OPPOSITION TO DEFENDANT'S MOTION FOR BAIL REDUCTION	12-17-18	3	291-299
OPPOSITION TO MOTION TO DISMISS	07-06-21	5	746-750
OPPOSITION TO MOTION TO VACATE A J.O.C. AND WITHDRAW A GUILT PLEA	05-22-20	4	517-519
ORDER	03-28-19	3	404
ORDER	03-30-21	4	585-587
ORDER (1) DIRECTING THE STATE TO RESPOND (2) GRANTING MOTION FOR APPOINTMENT OF COUNSEL	01-04-21	4	561-563
ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	03-24-21	4	581
ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	04-28-21	4	698
ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	05-19-21	5	708
ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	08-17-21	5	765
ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	12-15-21	5	862
ORDER APPROVING ATTORNEY'S FEES (POST CONVICTION)	01-18-22	5	876
ORDER ENLARGING TIME	06-15-21	5	742
ORDER FOR ROUGH DRAFT TRANSCRIPTS	04-04-19	3	432
ORDER FOR ROUGH DRAFT TRANSCRIPTS	04-11-19	3	444
ORDER FOR TRANSCRIPT OF PROCEEDINGS	04-18-19	3	447
ORDER GRANTING DISCHARGE OF ATTORNEY	11-30-18	3	253
ORDER GRANTING MOTION TO DISMISS IN PART	11-04-21	5	804-811
ORDER TO PRODUCE PRISONER VIA SIMULTANEOUS AUDIO / VISUAL TRANSMISSION	10-14-21	5	781-782
ORDER TO SET HEARING	09-07-21	5	769-771
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	06-10-20	4	528-537

APPEAL INDEX
 SUPREME COURT NO: 83885
 DISTRICT CASE NO: CR18-1654
 LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
 DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
PRESENTENCE INVESTIGATION REPORT	02-28-19	6	70-91
PRETRIAL SERVICES ASSESSMENT REPORT	09-25-18	6	12-16
PRETRIAL SERVICES ASSESSMENT REPORT	09-28-18	6	17-21
PROCEEDINGS	09-25-18	2	2-36
RECOMMENDATION AND ORDER APPOINTING COUNSEL (POST CONVICTION)	02-24-21	4	570-571
RECOMMENDATION FOR PAYMENT OF INTERIM ATTORNEY'S FEES – POST CONVICTION	04-13-21	6	108-110
RECOMMENDATION FOR PAYMENT OF INTERIM ATTORNEY'S FEES – POST CONVICTION	05-08-21	6	115-117
RECOMMENDATION FOR PAYMENT OF INTERIM ATTORNEY'S FEES – POST CONVICTION	08-14-21	6	122-124
RECOMMENDATION FOR PAYMENT OF INTERIM ATTORNEY'S FEES – POST CONVICTION	12-13-21	6	133-135
RECOMMENDATION FOR PAYMENT OF INTERIM ATTORNEY'S FEES – POST CONVICTION	01-11-22	6	140-142
RECOMMENDATION OF ADMINISTRATOR FOR PAYMENT OF ATTORNEY FEES – POST CONVICTION	03-10-21	6	101-103
REQUEST FOR DISCOVERY PURSUANT TON RS 174.245	09-26-18	2	53-55
REQUEST FOR ROUGH DRAFT TRANSCRIPTS	03-29-19	3	413-415
REQUEST FOR SUBMISSION	12-19-18	3	306-307
REQUEST FOR SUBMISSION	02-01-21	4	566-567
REQUEST FOR SUBMISSION	07-08-21	5	754-755
REQUEST FOR SUBMISSION OF MOTION	10-26-20	4	557-558
REQUEST FOR TRANSCRIPT OF PROCEEDINGS	04-05-19	3	435-437
RESPONSE TO MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND DELIVERY OF RECORDS	12-03-21	5	833-835
RETURN OF NEF	09-25-18	2	38-39
RETURN OF NEF	09-25-18	2	42-43
RETURN OF NEF	09-25-18	2	44-45
RETURN OF NEF	09-26-18	2	56-67

APPEAL INDEX
SUPREME COURT NO: 83885
DISTRICT CASE NO: CR18-1654
LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	09-28-18	2	58-59
RETURN OF NEF	10-09-18	3	236-237
RETURN OF NEF	10-24-18	3	239-240
RETURN OF NEF	11-01-18	3	245-246
RETURN OF NEF	11-08-18	3	248-249
RETURN OF NEF	11-13-18	3	251-252
RETURN OF NEF	11-30-18	3	254-255
RETURN OF NEF	12-05-18	3	256-257
RETURN OF NEF	12-11-18	3	265-266
RETURN OF NEF	D12-13-18	3	275-276
RETURN OF NEF	12-14-18	3	286-287
RETURN OF NEF	12-17-18	3	289-290
RETURN OF NEF	12-17-18	3	300-301
RETURN OF NEF	12-18-18	3	304-305
RETURN OF NEF	12-19-18	3	308-309
RETURN OF NEF	12-23-18	3	327-328
RETURN OF NEF	12-25-18	3	337-338
RETURN OF NEF	12-26-18	3	339-340
RETURN OF NEF	01-02-19	3	358-359
RETURN OF NEF	01-07-19	3	368-369
RETURN OF NEF	02-11-19	3	371-372
RETURN OF NEF	02-28-19	3	373-374
RETURN OF NEF	03-04-19	3	375-376
RETURN OF NEF	03-12-19	3	379-380
RETURN OF NEF	03-13-19	3	385-386
RETURN OF NEF	03-14-19	3	389-390

APPEAL INDEX
SUPREME COURT NO: 83885
DISTRICT CASE NO: CR18-1654
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DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	03-15-19	3	393-394
RETURN OF NEF	03-18-19	3	397-398
RETURN OF NEF	03-28-19	3	402-403
RETURN OF NEF	03-28-19	3	405-406
RETURN OF NEF	03-29-19	3	416-417
RETURN OF NEF	03-29-19	3	418-419
RETURN OF NEF	03-29-19	3	420-421
RETURN OF NEF	03-29-19	3	423-424
RETURN OF NEF	04-01-19	3	427-428
RETURN OF NEF	04-04-19	3	430-431
RETURN OF NEF	04-04-19	3	433-434
RETURN OF NEF	04-05-19	3	438-439
RETURN OF NEF	04-08-19	3	442-443
RETURN OF NEF	04-11-19	3	445-446
RETURN OF NEF	04-18-19	3	448-449
RETURN OF NEF	04-25-19	4	472-473
RETURN OF NEF	07-30-19	4	475-476
RETURN OF NEF	07-30-19	4	478-479
RETURN OF NEF	01-07-20	4	481-482
RETURN OF NEF	02-11-20	4	485-486
RETURN OF NEF	02-19-20	4	490-491
RETURN OF NEF	03-17-20	4	498-500
RETURN OF NEF	05-12-20	4	505-506
RETURN OF NEF	05-13-20	4	515-516
RETURN OF NEF	05-22-20	4	522-523
RETURN OF NEF	05-27-20	4	526-527

APPEAL INDEX
 SUPREME COURT NO: 83885
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PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	06-10-20	4	538-539
RETURN OF NEF	06-11-20	4	544-545
RETURN OF NEF	07-01-20	4	549-550
RETURN OF NEF	10-26-20	4	559-560
RETURN OF NEF	01-04-21	4	564-565
RETURN OF NEF	02-01-21	4	568-569
RETURN OF NEF	02-24-21	4	572-574
RETURN OF NEF	03-02-21	4	575-577
RETURN OF NEF	03-11-21	4	578-580
RETURN OF NEF	03-24-21	4	582-584
RETURN OF NEF	03-30-21	4	588-590
RETURN OF NEF	04-02-21	4	591-593
RETURN OF NEF	04-08-21	4	692-694
RETURN OF NEF	04-14-21	4	695-697
RETURN OF NEF	04-28-21	4	699-701
RETURN OF NEF	04-14-21	5	702-704
RETURN OF NEF	05-10-21	5	705-707
RETURN OF NEF	05-19-21	5	709-711
RETURN OF NEF	06-07-21	5	734-736
RETURN OF NEF	06-07-21	6	739-741
RETURN OF NEF	06-15-21	5	743-745
RETURN OF NEF	07-06-21	5	751-753
RETURN OF NEF	07-08-21	5	756-758
RETURN OF NEF	07-30-21	5	759-761
RETURN OF NEF	08-16-21	5	762-764
RETURN OF NEF	08-17-21	5	766-768

APPEAL INDEX
SUPREME COURT NO: 83885
DISTRICT CASE NO: CR18-1654
LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	09-07-21	5	772-774
RETURN OF NEF	10-12-21	5	778-780
RETURN OF NEF	10-14-21	5	783-785
RETURN OF NEF	10-27-21	5	790-792
RETURN OF NEF	11-01-21	5	798-800
RETURN OF NEF	11-02-21	5	801-803
RETURN OF NEF	11-04-21	5	812-814
RETURN OF NEF	11-05-21	5	817-819
RETURN OF NEF	12-03-21	5	830-832
RETURN OF NEF	12-03-21	5	836-838
RETURN OF NEF	12-08-21	5	839-841
RETURN OF NEF	12-10-21	5	852-854
RETURN OF NEF	12-14-21	5	855-857
RETURN OF NEF	12-14-21	5	859-861
RETURN OF NEF	12-15-21	5	863-865
RETURN OF NEF	12-15-21	5	867-869
RETURN OF NEF	01-04-22	5	870-872
RETURN OF NEF	01-12-22	5	873-875
RETURN OF NEF	01-18-22	5	877-879
RETURN OF NEF	01-25-22	5	882-884
SEALED SUPPLEMENTAL PROCEEDINGS	09-25-18	6	1-11
SECOND AMENDED INFORMATION	12-11-18	3	258-264
SECOND CORRECTED JUDGMENT OF CONVICTION	04-08-19	3	440-441
STIPULATION FOR ENLARGEMENT OF TIME	06-07-21	5	737-738
SUBSTITUTION OF COUNSEL WITHIN PUBLIC DEFENDER'S OFFICE	09-25-18	2	40-41
SUPPLEMENT BRIEF	10-26-20	4	555-556

APPEAL INDEX
 SUPREME COURT NO: 83885
 DISTRICT CASE NO: CR18-1654
 LUIGY RICHARD LOPEZ-DELGADO vs STATE OF NEVADA
 DATE: FEBRUARY 3, 2022

PLEADING	DATE FILED	VOL.	PAGE NO.
SUPPLEMENTAL PETITION IN SUPPORT OF A WRIT OF HABEAS CORPUS (POST-CONVICTION)	04-08-21	4	594-691
SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT	06-22-20	4	546
SUPPLEMENTAL PROCEEDINGS	10-09-18	2	60-235
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	03-17-20	4	493
SUPREME COURT NOTICE OF TRANSFER TO COURT OF APPEALS	01-07-20	4	480
SUPREME COURT ORDER DIRECTING TRANSMISSION OF PRESENTENCE INVESTIGATION REPORT	07-30-19	4	474
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD AND REGARDING BRIEFING	01-25-22	5	880-881
SUPREME COURT ORDER OF AFFIRMANCE	02-19-20	4	487-489
SUPREME COURT ORDER OF AFFIRMANCE	03-17-20	4	494-497
SUPREME COURT RECEIPT FOR DOCUMENTS	04-04-19	3	429
SUPREME COURT RECEIPT FOR DOCUMENTS	12-14-21	5	858
SUPREME COURT REMITTITUR	03-17-20	4	492
THIRD CORRECTED JUDGMENT OF CONVICTION	02-11-20	4	483-484
TRANSCRIPT OF PROCEEDINGS – ARRAIGNMENT – NOV 1, 2018	12-23-18	3	310-326
TRANSCRIPT OF PROCEEDINGS – HEARING ON MOTION FOR NEW COUNSEL – NOV 29, 2018	12-25-18	3	329-336
TRANSCRIPT OF PROCEEDINGS – HEARING ON MOTION FOR NEW COUNSEL – NOV 29, 2018	12-25-18	6	23-69
TRANSCRIPT OF PROCEEDINGS – MOTION FOR BAIL REDUCTION – DEC 20, 2018	01-07-19	3	360-367
TRANSCRIPT OF PROCEEDINGS - MOTION TO SET TRIAL – DEC 13, 2018	01-02-19	3	341-357
TRANSCRIPT OF PROCEEDINGS – SENTENCING – MARCH 14, 2019	04-25-19	3	450-471

Return Of NEF**Recipients**

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ESQ.** - Notification received on 2021-05-04 14:49:04.398.

**KEVIN NAUGHTON,
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**DIV. OF PAROLE &
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Judge:

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05-04-2021:14:10:58

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05-04-2021:14:47:28

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Orrin Jeffrey Harris Johnson

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MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KEVIN P. NAUGHTON, ESQ. for STATE OF
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ORRIN JOHNSON, ESQ. for LUIGI RICHARD
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Judge:

HONORABLE SCOTT N. FREEMAN

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05-08-2021:20:58:28

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05-10-2021:08:26:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

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Krista Meier, Esq.

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DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KEVIN P. NAUGHTON, ESQ. for STATE OF
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ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

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1
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3
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5
6 IN AND FOR THE COUNTY OF WASHOE

7 LUIGY RICHARD LOPEZ-DELGADO,

8 Petitioner,

9 vs.

Case No. CR18-1654

10 STATE OF NEVADA,

Dept. No. 9

11 Respondent.
-----/

12
13 **ORDER APPROVING ATTORNEY'S FEES**
14 **(Post-Conviction)**

15 Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial
16 District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of
17 justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby
18 confirmed, approved and adopted as to the amount of \$1,610.00. This amount may not be the
19 same as the Administrator's recommendation. Counsel is notified that he may request a prove-
20 up hearing for any non-approved amounts before the Chief Judge of the District.

21 Counsel, Orrin J.H. Johnson, shall be reimbursed by the State of Nevada Public
22 Defender's Office attorney fees in the amount of \$1,610.00.

23 DATED this 19th day of May, 2021.

24 

25 **CHIEF DISTRICT JUDGE**
26

Return Of NEF**Recipients**

MARC PICKER, ESQ. - Notification received on 2021-05-19 13:53:28.283.

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ESQ.** - Notification received on 2021-05-19 13:53:28.365.

**ORRIN JOHNSON,
ESQ.** - Notification received on 2021-05-19 13:53:28.416.

**KEVIN NAUGHTON,
ESQ.** - Notification received on 2021-05-19 13:53:28.39.

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**NICKOLAS
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Judge:

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05-19-2021:13:52:21

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05-19-2021:13:52:56

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord Approving

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Judicial Asst. BWard

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NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

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LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

IN AND FOR THE COUNTY OF WASHOE

* * *

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

Case No. CR18-1654

vs.

Dept. No. 9

THE STATE OF NEVADA,

Respondent.

_____ /

MOTION TO DISMISS IN PART

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS, District Attorney, and Kevin Naughton, Appellate Deputy, and moves this Honorable Court to partially dismiss the Petition for Writ of Habeas Corpus (Post-Conviction) and the Supplemental Petition in Support of a Writ of Habeas Corpus (Post-Conviction) filed by Petitioner Luigy Richard Lopez-Delgado (hereinafter, "Petitioner"). This Motion is based on the pleadings and papers on file with this Court, and the following points and authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES**Procedural History**

The Petitioner was charged with numerous felonies in an Information filed September 26, 2018. At that time, the Petitioner was charged with two counts of Statutory Sexual Seduction by Person Age 21 or Older, a category B felony, punishable by one to ten years in prison; one count of Use or Permit Minor, Under Age 18, to Produce Pornography, a category A felony, punishable by life imprisonment with parole eligibility after five years; one count of Possess Visual Pornography of Person Under Age 16, First Offense, a category B felony, punishable by one to six years in prison; two counts of Lewdness With Child Older Than 14, a category B felony, punishable by one to ten years in prison; one count of Lure or Attempt to Lure a Child With the Use of Computer Technology to Engage in Sexual Conduct, a category B felony, punishable by one to ten years in prison; and one gross misdemeanor count of Attempting to Prevent or Dissuade a Witness from Testifying.

The Petitioner substantially reduced his potential exposure by entering into plea negotiations whereby he pled guilty to just three counts in exchange for a joint recommendation with the State for an aggregate sentence of 48 to 120 months imprisonment. See Guilty Plea Memorandum filed December 13, 2018. The Petitioner pled guilty to one count of Statutory Sexual Seduction by Person Age 21 or Older; one count of Possess Visual Pornography of Person Under Age 16, First Offense; and one count of Lewdness With Child Older Than 14. *Id.*

At sentencing, the parties adhered to the plea negotiations and recommended the agreed upon sentence. See Transcript of Proceedings, Sentencing, March 14, 2019. The Court imposed the sentences recommended by the parties but, instead of running them

all concurrently as the parties requested, the Court opted to run one of the counts consecutively for an aggregate sentence of 76 to 192 months imprisonment.

The Petitioner unsuccessfully appealed his sentence, alleging that the Court abused its discretion. The Court of Appeals rejected the Petitioner's contentions and entered an Order of Affirmance on February 18, 2020. *See Lopez-Delgado v. State*, Docket No. 78472-COA.

On June 10, 2020, the Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) ("Petition"). On October 26, 2020, the Petitioner filed a "Supplement Brief." Counsel was appointed for the Petitioner and filed a Supplemental Petition in Support of a Writ of Habeas Corpus (Post-Conviction) ("Supplemental Petition") on April 8, 2021. This Motion to Partially Dismiss follows.

Argument

The Petition, Supplement Brief, and Supplemental Petition set forth a number of grounds. The Petition appears to set forth between four and nine grounds for relief. The Supplement Brief is nearly incomprehensible but might set forth a ground on its own. And the Supplemental Petition sets forth three grounds for relief. There is a lack of consistent numbering both within and across all three of these pleadings (for instance the Petition lists "Ground one" three times while the Supplemental Petition uses letters to identify its assertions). To keep them all straight, the State will address each ground individually.

1. Applicable authorities

A district court reviews claims of ineffective assistance of trial counsel under *Strickland v. Washington*, 466 U.S. 668, 686-87 (1984); *see also Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Under *Strickland*, to prevail on a claim of

ineffective assistance of trial counsel, a petitioner must establish two elements: (1) counsel provided deficient performance, and (2) “the deficient performance prejudiced the defense.” Kirksey, 112 Nev. 987, 923 P.2d at 107. To prove deficient performance, a petitioner must show that counsel's performance fell below an objective standard of reasonableness. *Id.*

To prove prejudice, a petitioner must demonstrate “a reasonable probability that, but for counsel's errors, the result of the trial would have been different.” *Id.* at 988, 923 P.2d at 1107. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Counsel's performance is measured by an objective standard of reasonableness which takes into consideration prevailing professional norms and the totality of the circumstances. Strickland, 466 U.S. at 688; *accord*, Homick v. State, 112 Nev. 304, 913 P.2d 1280 (1996). An insufficient showing on either element of the Strickland standard requires denial of the claim. Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

The court's view of counsel's performance must be highly deferential, with every effort being taken to eliminate the distorting effects of hindsight. Strickland, 466 U.S. at 689, 691. In making a fair assessment of counsel's performance, the trial court must reconstruct the circumstances of counsel's challenged conduct and evaluate that challenged act or omission from counsel's perspective at the time, while remaining perfectly mindful that counsel is “strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* at 689-90. Accordingly, trial counsel's strategic or tactical decisions will be “virtually unchallengeable absent extraordinary circumstances.” Doleman v. State,

112 Nev. 843, 848, 921 P.2d 278, 280 (1996) *quoting* Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

A petitioner must demonstrate the facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence, and a district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference on appeal. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Habeas claims must consist of more than bare allegations, and an evidentiary hearing on a habeas petition is mandated only if a petitioner asserts specific factual allegations that, if true, would warrant relief and are not belied or repelled by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); Nika v. State, 124 Nev. 1272, 198 P.3d 839 (2008).

2. Ground one as set forth in the Petition at pages 3 and 4

As noted above, the Petition lists "Ground one" three times: at page 3, page 4, and page 6. The first two instances of "Ground one" appear to be related to one another but the third iteration makes different allegations entirely.

Ground one as set forth at pages 3 and 4 alleges, *inter alia*, that the Petitioner was "prejudiced at sentencing" because the Court disregarded the joint recommendation of the parties and ran two of his sentences consecutively to each other instead of concurrently as recommended by the parties. The Petitioner asserts that he was entitled to specific performance according to the "contract clause" and requests that he be re-sentenced in accordance with the terms of the plea negotiation.

This claim should be denied without a hearing. A judge is not a party to negotiations and is not bound to follow the negotiations of the parties. See Cripps v. State, 122 Nev. 764, 136 P.3d 1187 (2006). Moreover, the Petitioner was warned that the

Court was not bound by the parties' negotiations in the Guilty Plea Memorandum and that the Court alone would determine his sentence. *See* Guilty Plea Memorandum, p. 7. Additionally, the Petitioner's reliance on Santobello v. New York, 404 U.S. 257 (1971) for the proposition that the Court was bound to follow the negotiations of the parties is misplaced. As recognized by the Nevada Supreme Court, Santobello is "[t]he seminal United States Supreme Court decision regarding *the government's* breach of a plea agreement...." Echeverria v. State, 119 Nev. 41, 43, 62 P.3d 743, 745 (2003) (emphasis added). Because this ground fails to set forth a claim which would warrant relief, it should be denied without a hearing. *See* Nika, *supra*; Hargrove, *supra*.

3. Ground two as set forth in the Petition at page 3

The Petition lists "Ground two" on pages 3, 4, and 7. Each of the grounds appears to allege a different issue and thus, this Motion will deal with each separately.

Ground two as set forth at page 3 of the Petition asserts that the Court can vacate or modify a sentence "if the interest of justice so requires." The Petition cites NRS 176.555 in support of this contention. The Petition further alleges "[a] presumption of vindictiveness" because "the sentence was disproportionate excessive [sic]" and that the Petitioner was misadvised "about life time supervision concerning parole eligibility."

NRS 176.555 allows a court to correct an illegal sentence at any time. An illegal sentence is "one at variance with the controlling sentencing statute, or illegal in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided." Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Additionally, a motion to correct an illegal sentence is not governed by the habeas statutes and instead is its own "separate criminal proceeding." *Id.*, 112 Nev. at 709, 918 P.2d at 325. Thus, the inclusion of a claim

regarding an illegal sentence in a habeas petition is procedurally defective and this portion of the ground should be dismissed.

The rest of the claim should also be dismissed without an evidentiary hearing. It appears that the Petitioner seeks to allege that counsel was ineffective because he was “misadvised” about the effect of lifetime supervision as a sex offender on his parole eligibility. The Nevada Supreme Court has held that “Nevada’s sex offender registration and notification requirement is a collateral consequence of a guilty plea....” Nollette v. State, 118 Nev. 341, 347, 46 P.3d 87, 91 (2002). The Nollette court went on to hold that counsel was not ineffective for failing to advise the petitioner that he might lose his professional licenses as a result of his sex offender registration, *i.e.*, a collateral consequence; instead, the court held that “[w]e cannot say that a lawyer’s representation of a defendant rises to the level of constitutionally ineffective assistance based solely on an abstract claim that a particular consequence was significant: only advisements of direct consequences are required.” *Id.*, 118 Nev. at 349-50, 46 P.3d at 93. Moreover, the claim is bare and naked as it does not assert what or how counsel allegedly misadvised him. As a result, it should be denied without a hearing. See Nika, *supra*; Hargrove, *supra*.

4. Ground two as set forth in the Petition at page 4

This iteration of Ground two alleges that the Petitioner’s “guilty plea is invalid” because “counsel made no tactical decision to investigate.” The claim is wholly devoid of any information as to what counsel should have done to investigate or what counsel might have discovered in the course of such an investigation that would have caused the Petitioner not to enter his plea and instead opt for jury trial. Because this claim is

unsupported by any facts, it is naked and bare and must be denied without a hearing. See Nika, supra; Hargrove, supra.

5. Ground three as set forth in the Petition at page 5

This ground asserts that the Petitioner received ineffective assistance of counsel because “counsel failed to inform [him] he had a right to withdraw his plea for any fair and just reason before and after his sentencing, he should have proceeded to trial, there was no investigation, counsel never prepared for trial.” It also asserts that the Petitioner “was misadvized [sic]” and that “it was abouse [sic] of descretion [sic] for the court not to investigate into a conflict between attorney and [defendant].”

First, this ground is incorrect in its recitation of the law surrounding withdrawal of a guilty plea. A plea may be withdrawn before sentencing if it would be fair and just based upon the court’s review of the totality of the circumstances. Stevenson v. State, 131 Nev. 598, 603, 354 P.3d 1277, 1281 (2015). After sentence has been imposed, a post-conviction habeas petition takes the place of a motion to withdraw a guilty plea. See Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). After sentencing, a guilty plea may be withdrawn “to correct manifest injustice” or based upon an invalid guilty plea. Harris, 130 Nev. at 448, 329 P.3d at 628. The rule is not that a defendant has an unfettered right to withdraw his plea at any time for any fair and just reason. The Petition fails to identify at what stage of the proceedings he believes he could have sought to withdraw his plea. Additionally, the Petition fails to identify what “fair and just reason” the Petitioner would have had to seek withdrawal of his plea or what manifest injustice might exist now. Thus, it fails to set forth information that, if true, would entitle the Petitioner to relief and it should be denied without a hearing. See Nika, supra; Hargrove, supra.

This ground also sets forth the same vague and wholly unsupported contention that “there was no investigation” without identifying what counsel should have done to investigate or what an investigation would have uncovered that would have resulted in the Petitioner refusing to plead guilty (thereby substantially reducing his potential prison time) and instead insist on going to trial. Thus, it is similarly a naked and bare claim and should be dismissed without an evidentiary hearing. See Nika, *supra*; Hargrove, *supra*.

Finally, the Petitioner fails to explain what it means when he asserts that he “was misadvized [sic]” or what the conflict was between himself and counsel. This claim is wholly unsupported by any factual information that would entitle him to relief and it should be denied without an evidentiary hearing. See Nika, *supra*; Hargrove, *supra*.

6. Ground four as set forth in the Petition at page 5

This ground alleges that the Petitioner received ineffective assistance of counsel on appeal. The Petition claims that “grounds for requested relife [sic] where [sic] not raised on direct appeal.” The Petition fails to identify those grounds or explain why they would have resulted in relief. The Petitioner’s claim that the grounds are complex and he is therefore entitled to a direct appeal is unpersuasive. The complexity of potential issues on appeal is not justification in support of a direct appeal but instead are a qualitative description of potential issues. As this claim is bare and naked and unsupported by any facts, it should be denied without a hearing. See Nika, *supra*; Hargrove, *supra*.

7. Ground one as set forth in the Petition at page 6

This ground claims that the Petitioner’s guilty plea “was a manifest injustice,” that he should have proceeded to trial, and that at the time he did insist on going to trial.

Reading this ground charitably, it could be inferred that the Petitioner asserts that his plea was entered involuntarily or unknowingly and that he was coerced into pleading instead of going to trial. As a result, it appears that this ground might assert sufficient facts that, if true, would warrant relief and it should proceed to an evidentiary hearing.

8. Ground Two as set forth in the Petition at page 7

The Petition claims that counsel was ineffective for failing to make objections to the PSI. The Petitioner fails to identify what portions of the PSI were objectionable or how he was prejudiced as a result of their consideration by the court. As such, the claim is naked and bare and should be dismissed without an evidentiary hearing. See Nika, supra; Hargrove, supra. The claim is additionally procedurally barred by NRS 34.810(1)(a).

NRS 34.810(1) provides:

“The court shall dismiss a petition if the court determines that: (a) The petitioner’s conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.”

“The application of procedural bars is mandatory” unless a petitioner can demonstrate good cause and actual prejudice or by demonstrating actual innocence. Branham v. Baca, 134 Nev. 814, 815, 434 P.3d 313, 315 (Nev. App. 2018) *citing* State v. Eighth Judicial Dist. Court (Riker), 121 Nev., 225, 231, 112 P.3d 1070, 1074 (2005) and Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *see also* State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003). The legislature is free to impose reasonable limitations on the writ of habeas corpus, so long as they do not impair the traditional efficacy of the writ. Passanisi v. Director, Nevada Dep’t of Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).

The plain language of NRS 34.810(1)(a) demonstrates its applicability to the Petitioner's claim. NRS 34.810(1)(a) requires a district court to dismiss a petition if the petitioner pled guilty and the petition is not based on a claim related to the voluntariness or knowingness of their plea or the effective assistance of counsel as to their entry of plea. The statute's use of the word "shall" imposes a mandatory duty to act. See NRS 0.025(1)(d); see also Goudge v. State, 128 Nev. 548, 553, 287 P.3d 301, 304 (2012) ("This court has explained that, when used in a statute, the word 'shall' imposes a duty on a party to act and prohibits judicial discretion and, consequently, mandates the result set forth by the statute.") (citations omitted). Thus, the Court is required to apply the bar set forth at NRS 34.810(1)(a) pursuant to the language of the statute itself and pursuant to the mandatory duty to apply procedural bars as recognized in Branham, *supra*.

The application of NRS 34.810(1)(a) to limit claims has been recognized in several unpublished Nevada Supreme Court opinions. In Maestas v. State, the Nevada Supreme Court recognized that the petitioner's claim that his constitutional right to due process was violated by pretrial publicity "falls outside the scope of a postconviction habeas petition that challenges a judgment of conviction pursuant to a guilty plea." 422 P.3d 1233, n. 2 (Table), 2018 WL 3629443 n. 2 (Nev. July 26, 2018). In Mack v. State, the Nevada Supreme Court recognized that a guilty plea and an Alford plea limited the petitioner "to raising claims that the plea was entered involuntarily or unknowingly or without the effective assistance of counsel." 410 P.3d 981 (Table), 2018 WL 366896 *1 (Nev. January 10, 2018). Other cases also recognize the limited scope of claims available after a guilty plea. See e.g., Strohmeyer v. State, 450 P.3d 918 (Table), 2019 WL 5491702 (Nev. October 24, 2019); Bishop v. State, 438 P.3d 339 (Table), 2019 WL

1643779 (Nev. April 12, 2019); Birch v. State, 435 P.3d 1223 (Table), 2019 WL 1244773 (Nev. March 15, 2019); Edwards v. State, 435 P.3d 1229 (Table), 2019 WL 1255196 (Nev. March 19, 2019); State v. Patterson, 2020 WL 2521784 (Nev. May 15, 2020). Although not binding precedent, these cases can be considered as persuasive authority for the premise that the language of NRS 34.810(1)(a) means what it says on its face. NRAP 36(c)(3). When a defendant pleads guilty, he is limited to raising claims related to the voluntariness, knowingness, or the assistance of counsel provided in entering the plea. All other claims are barred.

Because the Petitioner pled guilty in this case, he is limited to raising claims pertaining to the voluntariness or knowingness of his plea and the effectiveness of counsel related to the plea. As this claim is directly related to the effectiveness of counsel at sentencing, it falls within the purview of the bar set forth at NRS 34.810(1)(a) and must be dismissed.¹

The claim also alleges that the Petitioner “had previously dismissed the Washoe P.D.” but that another public defender was simply appointed from the same office. The Petitioner fails to identify when any of this occurred, but the record reflects that the Washoe County Public Defender’s Office was in fact relieved from representing the Petitioner and the Alternate Public Defender’s Office was then appointed. It appears the

¹ It should be noted that the Court of Appeals issued an opinion in Gonzales v. State, 476 P.3d 84, 136 Nev. Adv. Op. 60 (Nev. App. October 1, 2020), confirming this interpretation of NRS 34.810(1)(a). However, the appellant in that case sought review by the Nevada Supreme Court and the Nevada Supreme Court vacated the Court of Appeals’ decision in an order filed on January 8, 2021, in docket number 78152. The case proceeded to oral argument before an en banc court on February 1, 2021, and the matter has been submitted for decision since that time. It is possible that decision will ultimately impact this interpretation of NRS 34.810(1)(a). However, as no opinion has been issued as of yet, the State respectfully submits that the plain language of NRS 34.810(1)(a) precludes this claim.

Petitioner might be confusing the Public Defender's Office and the Alternate Public Defender's Office. Either way, the claim is belied by the record and should be dismissed. See Nika, *supra*; Hargrove, *supra*.

9. Ground Three as set forth in the Petition at page 8

This version of Ground three claims that the Petitioner's plea was not entered knowingly, voluntarily, or intelligently. Although it fails to identify how or why the plea was not valid, out of an abundance of caution, this portion of the claim should be permitted to proceed to an evidentiary hearing.

This ground also appears to make some sort of allegation that favorable evidence may have been withheld.² The Petition does not identify what favorable evidence was not disclosed or how it would have impacted his decision to plead guilty. As a result, this is a bare and naked claim and should be dismissed without a hearing. See Nika, *supra*; Hargrove, *supra*.

10. Supplemental Brief

The Supplemental Brief is incomprehensible. The portion of the pleading that is not a string citation of legal authority or boilerplate material reads: "Further examination, see mental instability [...]. The plea is not valid (a manifest injustice)[...]." Assuming that the brief intends to claim that the Petitioner's plea was not valid because of some sort of mental instability at the time it was entered, it should proceed to an evidentiary hearing. This would be in line with conducting a hearing on similar grounds contained in the Petition.

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² The State cannot decipher this portion of the claim. It reads: "The decision process included the disclosure of all the facts "Brady" favorable [sic] See Kyles v. Whitly 115 S.Ct. 1555. It denied [sic] access to relevant information."

11. Ground B as set forth in the Supplemental Petition

The Supplemental Petition alleges that counsel was ineffective for failing to insist upon an inspection of the Petitioner's cellphone. It also stated that "[w]ithout actual or constructed possession of the child pornography photos the charges cannot be sustained." The Supplemental Petition conveniently elides several key facts in suggesting that there was no evidence of the Petitioner's possession of child pornography.

The State did possess evidence, which was provided to and reviewed by the Petitioner and his counsel, demonstrating that he possessed child pornography. At the preliminary hearing in this case, Washoe County Sheriff's Office Detective Arick Dickson testified that he reviewed Facebook messages between the Petitioner and the victim. Transcript of Proceedings, Monday, September 24, 2018 ("PHT"), pages 84-88. Detective Dickson was able to identify the Petitioner as the other party on those messages by matching up photographs to the Petitioner's social media profiles and matching the content of the messages to information consistent with the Petitioner and victim's activities. PHT 86-87.

Although the messages came from the victim's phone, they clearly show that the Petitioner received pornographic images of the 14-year-old child victim. The messages also show that the Petitioner made specific requests for certain types of pornographic photos. Detective Dickson identified a series of photos sent by the victim to the Petitioner on November 9, 2017, in response to the Petitioner's request for her to bend over while wearing a skirt and send him a picture. PHT 92. In response to the Petitioner's request, the victim sent pictures of herself bent over and displaying her buttocks and vagina. PHT 92-93. The Petitioner sent various responses to those

photos, including “mmmm” and “[f]uck, another like the last one but spread open more.” PHT 93. After sending another pornographic photo of herself, the victim asked if the Petitioner wanted her to send another. PHT 94. The Petitioner responded, “Yeah.” *Id.* The victim sent another photo showing her vagina. *Id.* When the victim asked the Petitioner if he liked the photos, he responded, “Yes, turned me on.” PHT 95.

In another set of messages on November 9, 2017, at 1:11 in the morning, the victim told the Petitioner, “I’m wet.” PHT 95. The Petitioner wrote, “Let me see.” PHT 96. In response, the victim sent a photograph of her vagina and the Petitioner responded, “I want it.” *Id.*

In another series of messages and photographs, the Petitioner directed the victim to send a photograph of her vagina to a third party and to then send him a screenshot showing that she did it. PHT 97-99. The screenshot that the victim sent to the Petitioner included a picture of her vagina. PHT 98.

Another series of messages started with the victim writing “please fuck my ass and pussy until I can’t walk.” PHT 99. The Petitioner asked the 14-year-old to “showm [sic] me.” *Id.* The victim then sent a photograph of her bare buttocks with her anus and vagina visible. *Id.*

The preliminary hearing transcript thus directly belies the Supplemental Petition’s assertion that the possession of child pornography charge could not have been sustained without an examination of the Petitioner’s phone. The messages that were identified as coming from the Petitioner included directions to the victim about what types of photos to send to him and to another person, requests for photos, and acknowledgement of receipt of pornographic photos. There was substantial evidence demonstrating that the Petitioner possessed pornographic images of a child. It is

unclear what an examination of the Petitioner's phone would have shown or how it would have changed these damning facts. As a result, counsel was not ineffective for failing to insist upon an examination of the Petitioner's own phone where there was substantial evidence from another source demonstrating the Petitioner's culpability. The claim is belied by the record and should be dismissed without an evidentiary hearing. See Nika, *supra*; Hargrove, *supra*.

12. Ground C as set forth in the Supplemental Petition

The Supplemental Petition claims that counsel was ineffective for failing to object to the prosecutor breaching the plea agreement at the time of sentencing. This claim is belied by the record and should be dismissed without a hearing.

The parties in this case agreed to "stipulate to recommend at sentencing a term of incarceration in the Nevada State Prison of 48-120 months on Count II, 28-72 months on Count IV, and 48-120 months on Count VI and that all counts run concurrent to one another." GPM, p. 5. In other words, the parties agreed to recommend a sentence that would result in the Petitioner serving 48-120 months in prison with all the counts running concurrently.

The Supplemental Petition claims that the prosecutor breached the plea negotiations by arguing at sentencing. It also boldly claims, without any legal authority in support, that once the Court stated its inclination "to sentence more harshly than the State's recommendation, it became the State's obligation to explain why the lower recommendation was appropriate." The Supplemental Petition asserts that counsel was ineffective for failing to object and apparently demanding that the State argue in mitigation.

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The Supplemental Petition’s reasoning is unsupported by the applicable case law and the record in this case. The Nevada Supreme Court has held that “a promise to recommend a sentence is not a promise to stand silent.” Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1261 (1999). “Where the state agrees to make a particular recommendation, the agreement, unlike an agreement to stand silent or make no recommendation, *does not by its terms restrict the state’s right to argue or present facts in favor of the sentence recommendation.*” Id. (emphasis added). However, a prosecutor “must refrain from either explicitly or implicitly repudiating the agreement.” Id. The Sullivan court recounts an example of a prosecutor violating the plea agreement by implicitly arguing that the court should disregard the plea agreement because it was made by the State without knowledge of the defendant’s criminal record. Sullivan, 115 Nev. at 389-90, 990 P.2d at 1262 *citing Kluttz v. Warden*, 99 Nev. 681, 669 P.2d 244 (1983). In Sullivan, the court held that the State did not breach the plea negotiations where the prosecutor complied with the plea agreement by recommending the agreed upon sentence and the prosecutor’s comments about Sullivan’s “criminal record and the circumstances of the instant offenses were clearly intended to support the sentencing recommendation that the state agreed to make.” 115 Nev. at 390, 990 P.2d at 1262.

In this case, the PSI recommended a sentence “in an aggregate both for less on the front end and more on the back end than [was] stipulated within the plea agreement.” Sentencing Transcript, p. 4, PSI p. 9 (recommending a term of 12-48 months on Count II, 12-36 months on Count IV, and 12-48 months on Count VI, all run consecutively for an aggregate recommendation of 36-132 months). Defense counsel commented on the fact that the PSI recommended a lower minimum sentence and a longer maximum sentence than the parties had agreed to recommend and also pointed

out that the psychosexual evaluation found that the Petitioner was not a high risk to reoffend and that he would thus be probation eligible but for the parties' recommendation. Sentencing Transcript, p. 4. Counsel also argued that the Petitioner did not have any criminal history and that "he's a young man" and "[t]here are a lot of factors that we believe you should take into account in determining what the appropriate and just sentence is." Sentencing Transcript, p. 5. Counsel added that the joint recommendation of the parties was just "one of those factors...." *Id.*

By the time it was the State's turn to present a sentencing argument, the Court had already seen the PSI's recommendation that differed from the parties' joint recommendation and heard from defense counsel who appeared to argue that the Court should consider any number of mitigating factors, including the Petitioner's youth, and that the joint sentencing recommendation was only one factor that the Court should consider.

The prosecutor sought to provide some context and additional factual information in support of the parties' joint recommendation. We know this because the prosecutor explicitly told the Court that was the reason for the argument:

THE COURT: Counsel, let me ask, you're going to stick with the agreement that you had.

MR. GRAHAM: I am, yes, your Honor.

THE COURT: All right.

MR. GRAHAM: Absolutely, I think 4 to 10 years on this case is an absolutely appropriate sentence. The reason I was going to argue is because Parole and Probation recommended less than that. And I wanted to provide the Court with information to show why a 4- to 10-year sentence would be appropriate.

Sentencing Transcript, pp. 5-6.

The Court then stated that “I’m inclined to go higher than that. So go ahead.”

Sentencing Transcript, p. 6. The prosecutor immediately responded by saying:

Okay. Thank you. *So the record is crystal clear, I’m not arguing for anything other than the stipulated sentence in this case.* But what I would like to let the Court know is that this is not two teenagers having sex. This is a case where the defendant was 23.

Id (emphasis added). The prosecutor also concluded his remarks by again reminding the Court that “I think that the defendant’s -- the proper and just sentence in this case would be the 4 to 10 years that the parties have stipulated to.” Sentencing Transcript, p. 15.

The record clearly shows that the prosecutor argued only in support of the agreed upon sentencing recommendation. The prosecutor stated his belief that it was necessary to offer argument because the PSI recommended a sentence with a lower minimum prison term than was recommended by the parties. The prosecutor reiterated three times that he was not asking the Court to impose anything other than the sentence agreed upon by the parties. When presented with the Court’s statement that it was “inclined to go higher,” the prosecutor sought to make the record “crystal clear” that “I’m not arguing for anything other than the stipulated sentence in this case.” Sentencing Transcript, p. 6. The Petitioner might not like some of the facts that the prosecutor presented, but they were not presented in a way to suggest that the State was unaware of the facts of the case at the time the negotiations were struck, as in Kluttz, or in any other way to suggest that the Court should deviate from the parties’ recommendation.

Additionally, if anyone implicitly suggested that the Court should deviate from the recommendation in this case, it was defense counsel who suggested that the

Petitioner's lack of criminal history and youth were important factors that the Court should consider in imposing sentence and that the parties' joint recommendation was only one factor. "[T]he state is not required to stand mute in the face of factual misstatements or withhold relevant information from the court." Sullivan, 115 Nev. at 388 n. 4, 990 P.2d at 1261, n. 4 (citation omitted). The prosecutor stayed within the bounds of the plea agreement, repeatedly expressed that he was not asking for any sentence other than what the parties had agreed to recommend, and provided factual information in support of the agreed upon sentence after the Court had heard a different, lower recommendation, and an implicit request from defense counsel to consider imposing something other than the agreed upon sentence. As a result, the prosecutor did not violate the terms of the plea agreement and counsel was not ineffective for failing to object. The record thus belies the Petitioner's claim that the State breached the plea agreement and does not show that he would be entitled to any relief. This claim should be denied without an evidentiary hearing. See Nika, *supra*; Hargrove, *supra*.

13. Ground D as set forth in the Supplemental Petition

The Supplemental Petition argues that counsel was ineffective for failing to argue on appeal that the State's "improper arguments led to a higher sentence." Again, the State did not make any improper argument at sentencing and thus, there was nothing to appeal. The State adopts the rationale set forth in section 12 above and suggests that this claim should also be denied without an evidentiary hearing. See Nika, *supra*; Hargrove, *supra*.

///

///

Conclusion

Portions of the Petition and Supplemental Brief, and the entirety of the Supplemental Petition, should be dismissed without an evidentiary hearing. The Petitioner sets forth grounds that are belied by the record, that would not entitle him to relief, are procedurally barred, or that are indecipherable. To the extent that the Petition and Supplemental Brief allege that the Petitioner's plea was not entered knowingly, voluntarily, or intelligently, those claims should proceed to an evidentiary hearing.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: June 7, 2021.

CHRISTOPHER J. HICKS
District Attorney

By /s/ Kevin Naughton
KEVIN NAUGHTON
Appellate Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on June 7, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Orrin J. H. Johnson, Esq.

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA

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A filing has been submitted to the court RE: CR18-1654

Judge:

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06-07-2021:10:28:20

Clerk Accepted:

06-07-2021:10:52:42

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Mtn Partial Dismissal

Filed By:

Kevin Naughton

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Nevada State Bar No. 15540
3 Orrin Johnson Law
A Division of Johnson Law Practice
4 611 Sierra Rose Drive, Ste. A
Reno, NV 89511
5 (775) 525-2560
Attorney for Petitioner
6

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

8 IN AND FOR THE COUNTY OF WASHOE

9
10 LUIGY RICHARD LOPEZ-DELGADO,

11 Petitioner,

Case No. CR18-1654

12 v.

Dept. No. 9

13 STATE OF NEVADA,

14 Respondent.
15

16 **STIPULATION FOR ENLARGEMENT OF TIME**

17 COMES NOW the Petitioner, LUIGY RICHARD LOPEZ-DELGADO, by and through his
18 attorney, Orrin J. H. Johnson, Esq., and the Plaintiff, STATE OF NEVADA, by and through its counsel,
19 Kevin Naughton, Deputy District Attorney, and hereby stipulate that the deadline for the Petitioner to
20 file an Opposition to the State's Motion to Dismiss in Part be extended to July 9, 2021.

21 This stipulation is entered into at the behest of both Petitioner and Respondent due to a
22 Petitioner's attorney being out of the office during the ordinary time for responding to a motion.

23 ///

24 ///

25 ///

26 ///

27 ///


28 ///

1 The undersigned counsel for the parties certify that this request is brought in good faith and is
2 not made merely for purposes of delay.

3 AFFIRMATION pursuant to NRS 239B.030: The undersigned do hereby affirm that this
4 document does not contain the social security number of any person.

5
6 DATED: 07JUN21

DATED: June 7, 2021

7
8 
9 ORRIN J. H. JOHNSON
Attorney for Petitioner

/s/ Kevin Naughton
KEVIN NAUGHTON
Attorney for Respondent

Orrin J. H. Johnson, Esq.
Orrin Johnson Law, a Division of Johnson Law Practice
611 Sierra Rose Drive, Ste. A, Reno, NV 89511
Tel.: (775) 737-9827; Fax: (775) 629-5503; Email: orrin@orrinjohnsonlaw.com

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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Stip Extension of Time

Filed By:

Orrin Jeffrey Harris Johnson

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NEVADA

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LOPEZ-DELGADO (TN)

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IN AND FOR THE COUNTY OF WASHOE

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

Case No. CR18-1654

Dept. No. 9

ORDER ENLARGING TIME

Based upon the Stipulation of the Petitioner, LUIGY RICHARD LOPEZ-DELGADO, by and through his attorney, Orrin J. H. Johnson, Esq., and the Plaintiff, STATE OF NEVADA, by and through its counsel, Kevin Naughton, Deputy District Attorney, and good cause appearing therefore,

IT IS HEREBY ORDERED that the deadline to file an Opposition to the State's Motion to Dismiss in Part in this case be enlarged to July 9, 2021.

DATED this 15th day of June, 2021.



DISTRICT COURT JUDGE

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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord Addressing Stipulation

Filed By:

Judicial Asst. BWard

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KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

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Nevada State Bar No. 15540
Orrin Johnson Law
A Division of Johnson Law Practice
611 Sierra Rose Drive, Ste. A
Reno, NV 89511
(775) 525-2560
Attorney for Petitioner

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

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

Case No. CR18-1654

Dept. No. IX

OPPOSITION TO MOTION TO DISMISS

COMES NOW the Petitioner, LUIGY LOPEZ-DELGADO, by and through his attorney ORRIN J. H. JOHNSON, Esq., and hereby files this OPPOSITION to the Respondent's Motion to Dismiss in the above-entitled case, where the Respondent is represented by the Washoe County District Attorney's Office.

Prior to getting into the substantive arguments, the following must be acknowledged. The bulk of the State's motion addresses the original pro per petition. The Supplemental Petition was intended to filter, consolidate, and clarify the original arguments made in that petition, not to simply add to them. While at the time we believed that was self-evident, it clearly was not, and the Supplemental Petition should have been much more clear in this regard.

Petitioner explicitly avers that the three grounds for relief that should be considered by this court are those noted in subsections B, C, and D of the Supplemental Petition filed April 8, 2021, which represent the consolidation of most of the arguments Petitioner was attempting to make while acting in pro per upon the filing of his original Petition. To the extent that any argument made in the original

1 petition falls outside the scope of those three listed grounds, they are hereby abandoned.

2 The grounds that remain will be addressed in turn.

3 B. Failure to Investigate

4 The State fully acknowledges that their evidence for Mr. Lopez-Delgado's "possession" of
5 inappropriate photos relied wholly on information found on the victim's phone. In the Supplemental
6 Petition, Petitioner used the information provided in the PSI because it was presented in the best
7 possible light from the State's perspective. Due to the fact that the alleged victim did not testify at
8 preliminary hearing, the problem with relying solely on her phone and not examining Mr. Lopez-
9 Delgado is even more clear.

10 Text messages, like any other document, must of course be authenticated to be admitted.
11 *Rodriguez v. State*, 128 Nev. 155, 161 (2012). "When there has been an objection to admissibility of a
12 text message, see NRS 47.040(1)(a), the proponent of the evidence must explain the purpose for which
13 the text message is being offered and provide sufficient direct or circumstantial corroborating evidence
14 of authorship in order to authenticate the text message as a condition precedent to its admission." *Id* at
15 162.

16 In *Rodriguez*, 10 of 12 text messages were determined to have been improperly admitted at a
17 trial, because as the court noted, "[A] person cannot be identified as the author of a text message based
18 solely on evidence that the message was sent from a cellular phone bearing the telephone number
19 assigned to that person because 'cellular telephones are not always exclusively used by the person to
20 whom the phone number is assigned.'" *Rodriguez* at 161, quoting *Commonwealth v. Koch*, 39 A.3d
21 996, 1005, 2011 PA Super 201 (Pa. Super. Ct. 2011).

22 And of course, *Rodriguez* is limited to the context of someone making a statement. Actual
23 possession is another matter (as more fully detailed in the Supplemental Petition) which should have
24 been more diligently investigated by counsel. A hearing will be helpful to the court to more fully
25 explore this claim.

26 C. Failure to Object to State's Breach of Plea Agreement

27 "In determining whether the prosecution has fulfilled its part of a plea bargain, the prosecution
28 is held to the most meticulous standards of both promise and performance." *Kluttz v. Warden*, Nev.

1 State Prison, 99 Nev. 681, 683 (1983). Even where the State ostensibly follows the black letter terms of
 2 an agreement, reversal is still required where the "spirit" of the agreement is violated. *Id* at 684.

3 The State also cited *Kluttz*, but without the above language that makes it so applicable here. The
 4 State's attempt to salvage the breach by relying on *Sullivan v. State* (115 Nev. 383 (1999)) is
 5 unavailing, as the facts in those cases as well as this one makes clear.

6 In *Kluttz*, as here, the Judge felt obliged to intervene during the State's argument, concerned that
 7 their comments were arguing for something above and beyond the agreed-upon recommendation even
 8 though the prosecutor ostensibly followed that recommendation. *Kluttz* at 683. In *Sullivan*, the
 9 appellant tried to argue that the prosecutor should have stood silent, even though the agreement allowed
 10 the State to argue for consecutive time rather than the concurrent time argued for by defense counsel, a
 11 situation wholly different than this one. *Sullivan* at 388. And *Sullivan* still limited the State to
 12 arguments which *supported* the agreement, and specifically reiterated that they may not "explicitly or
 13 implicitly repudiate[e] the agreement." *Id* at 389.

14 Rather obviously, *Kluttz* is far more applicable here. The State helpfully highlights the
 15 prosecutor's statements, made after Judge Polaha expressed concern that their arguments were risking
 16 breaching the agreement, and even after the judge expressed an intent to NOT follow the agreement:

17 Okay. Thank you. So the record is crystal clear, I'm not arguing for anything other than
 18 the stipulated sentence in this case. **But** what I would like to let the Court know is that
 19 this is not two teenagers having sex. This is a case where the defendant was 23.

20 Sentencing Transcript at 6 (emphasis added).

21 There is an old aphorism that anything said before the word "but" can be safely disregarded,
 22 which is what *Kluttz* is really all about in a nutshell. Even *Sullivan* requires that the State's arguments
 23 to be in actual support for the agreement. Given Judge Polaha's comments about being inclined to go
 24 higher than the joint recommendation, it simply doesn't wash that the prosecutor was legitimately
 25 concerned that he needed to argue against the lower PSI recommendations. Whether the prosecutor
 26 intended to or not, he very plainly violated the "spirit" of the agreement per *Kluttz*, and with respect to
 27 this issue, reversal and remand for a new sentencing is warranted. And given that breach and the
 28 subsequent higher sentence than was bargained for, the failure to object to the breach constituted
 ineffective assistance of counsel.

1 D. Failure to Raise the Plea Bargain Breach on Appeal

2 Here, the Respondent merely claims there was no breach, so there is nothing to appeal. But as
3 noted above, that argument is plainly belied by both the record in this case and long-settled law on the
4 State's obligation to meticulously adhere to both the letter and the spirit of any plea agreement.

5 Given the holdings in *Kluttz*, it's plain that the breach issue has merit, and that a different result
6 would have been likely on appeal had it been properly preserved and raised. That satisfies both
7 *Strickland v. Washington* (466 U.S. 668 (1984)) prongs for an ineffective assistance of appellate
8 counsel claim, and therefore, warrants either a reversal of the sentence or at the very least, an
9 opportunity to properly raise the issue on appeal.

10 **Conclusion**

11 Rather clearly, most particularly as it relates to the breach of the plea bargain issue, there is
12 sufficient information on the record alone to grant relief to Petitioner. Since that relief cannot be
13 granted without a hearing, however, and a hearing can more fully develop the issues presented here,
14 The State's Motion to Dismiss would be inappropriate, and therefore must be DENIED.

15
16 AFFIRMATION pursuant to NRS 239B.030: The undersigned does hereby affirm that this
17 document does not contain the social security number of any person.

18
19 DATED this 6th day of JULY, 2021.

20
21 By: 

22 ORRIN J. H. JOHNSON, Esq.
23 Attorney for the Petitioner
24 Nevada Bar No. 10629
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of Johnson Law Practice and that on this 6th day of July, 2021, I caused to be served a copy of the foregoing document, titled: **OPPOSITION TO MOTION TO DISMISS** by electronically filing said document addressed to:

Kevin Naughton
Washoe County District Attorney's Office
1 South Sierra Street
Reno, NV 89501

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid via USPS, addressed to:

Luigy Lopez-Delgado, #1213684
c/o LCC
1200 Prison Road
Lovelock, NV 89419



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07-06-2021:09:19:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Orrin Jeffrey Harris Johnson

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One South Sierra Street
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(775) 328-3200
districtattorney@da.washoecounty.us
Attorney for Respondent

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

* * *

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

Case No. CR18-1654

vs.

Dept. No. 9

THE STATE OF NEVADA,

Respondent.

_____ /

REQUEST FOR SUBMISSION

It is requested that the Motion to Dismiss in Part, filed on June 7, 2021, be submitted to the Court for decision.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: July 8, 2021.

CHRISTOPHER J. HICKS
District Attorney

By /s/ Kevin Naughton
KEVIN NAUGHTON
Appellate Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on July 8, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA

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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Request for Submission

Filed By:

Kevin Naughton

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Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

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DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KRISTA D. MEIER, ESQ.

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Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Notice

Filed By:

Krista Meier, 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:

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KRISTA D. MEIER, ESQ.

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

vs.

Case No. CR18-1654

STATE OF NEVADA,

Dept. No. 9

Respondent.
-----/

ORDER APPROVING ATTORNEY'S FEES
(Post-Conviction)

Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby confirmed, approved and adopted as to the amount of \$1,070.00. This amount may not be the same as the Administrator's recommendation. Counsel is notified that he may request a prove-up hearing for any non-approved amounts before the Chief Judge of the District.

Counsel, Orrin J.H. Johnson, shall be reimbursed by the State of Nevada Public Defender's Office attorney fees in the amount of \$1,070.00.

DATED this 17th day of August, 2021.



CHIEF DISTRICT JUDGE

Return Of NEF**Recipients**

MARC PICKER, ESQ. - Notification received on 2021-08-17 11:16:55.387.

KRISTA MEIER, ESQ. - Notification received on 2021-08-17 11:16:55.498.

ORRIN JOHNSON, ESQ. - Notification received on 2021-08-17 11:16:55.56.

KEVIN NAUGHTON, ESQ. - Notification received on 2021-08-17 11:16:55.53.

DIV. OF PAROLE & PROBATION - Notification received on 2021-08-17 11:16:55.446.

NICKOLAS GRAHAM, ESQ. - Notification received on 2021-08-17 11:16:55.415.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

08-17-2021:11:15:48

Clerk Accepted:

08-17-2021:11:16:22

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord Approving

Filed By:

Judicial Asst. BWard

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:

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KRISTA D. MEIER, ESQ.

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 Code: 3370
2
3
4

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

8 LUIGY RICHARD LOPEZ-DELGADO,

Case No.: CR18-1654

9 Petitioner,

Dept. No.: 9

10 v.

11 THE STATE OF NEVADA,

12 Respondent.
13
14

15 **ORDER TO SET HEARING**

16 The Court is in receipt of Respondent THE STATE OF NEVADA's (hereafter "the State")
17 Motion *to Dismiss in Part* filed on June 7, 2021. LUIGY RICHARD LOPEZ-DELGADO's
18 (hereafter "Petitioner") filed its *Opposition to Motion Dismiss* on July 6, 2021.

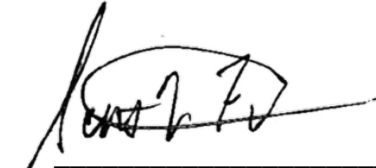
19 In his *Opposition to Motion to Dimiss*, the Petitioner, by and through counsel, admits that
20 any argument in the original petition that falls out of the scope of the subsections of B, C, and D of
21 the Supplemental Petition filed April 8, 2021 "are hereby abandoned." *Opp.* p. 2:1. As such, the
22 Court's review of the moving papers was reserved to the three remaining grounds of relief which
23 were; (1) the failure of the State to properly investigate the actual "possession" of inappropriate
24 photos found on the victims phone; (2) failure of the Petitioners counsel to object to the alleged
25 breach of the plea agreement on the part of the State; and (3) the failure of the Petitioner's counsel
26 to raise the alleged plea agreement breach on appeal.

27 Upon review of the moving papers, the Court finds an evidentiary hearing is appropriate on
28 the above motion, as confined to the remaining arguments that have not been abandoned by the
Petitioner.

1 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED Counsel and all
2 parties shall contact Department Nines' Judicial Assistant within fifteen (15) days to schedule a
3 hearing to occur within the next sixty (60) days.

4 IT IS SO ORDERED.

5 DATED this 7th day of September, 2021.

6 
7 _____
8 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 7th day of September, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

[NONE]

Further, I certify that on the 7th day of September, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

ORRIN JOHNSON, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)
KEVIN NAUGHTON, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
NICKOLAS GRAHAM, ESQ. for STATE OF NEVADA
MARC PICKER, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)



Judicial Assistant

Return Of NEF**Recipients**

MARC PICKER, ESQ. - Notification received on 2021-09-07 15:29:03.351.

**ORRIN JOHNSON,
ESQ.** - Notification received on 2021-09-07 15:29:03.475.

**KEVIN NAUGHTON,
ESQ.** - Notification received on 2021-09-07 15:29:03.443.

**DIV. OF PAROLE &
PROBATION** - Notification received on 2021-09-07 15:29:03.412.

**NICKOLAS
GRAHAM, ESQ.** - Notification received on 2021-09-07 15:29:03.381.

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

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

09-07-2021:15:28:00

Clerk Accepted:

09-07-2021:15:28:30

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord to Set

Filed By:

Judicial Asst. BWard

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:

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KRISTA D. MEIER, ESQ.

CODE No. 1250

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

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

Case No. CR18-1654

vs.

Dept. No. 9

THE STATE OF NEVADA,

Respondent.

_____ /

APPLICATION FOR SETTING

TYPE OF ACTION: Post-Conviction

MATTER TO BE HEARD: Evidentiary Hearing

DATE OF APPLICATION: October 12, 2021

COUNSEL FOR PETITIONER: Orrin Johnson, Esq.

COUNSEL FOR RESPONDENT: Kevin Naughton, Appellate Deputy

Setting at 10:00 a.m. on November 2, 2021 via Zoom.

CODE #1260
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200
districtattorney@da.washoecounty.us
Attorney for Respondent

IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

Case No. CR18-1654

vs.

Dept. No. 9

THE STATE OF NEVADA,

Respondent.

_____ /

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS,
District Attorney of Washoe County, by KEVIN NAUGHTON, Appellate Deputy, and
alleges as follows:

1. That the Petitioner, LUIGI RICHARD LOPEZ-DELGADO #1213684, is
presently incarcerated at the Lovelock Correctional Center, Lovelock, Nevada.
2. That the above LUIGI RICHARD LOPEZ-DELGADO #1213684 is scheduled
for an audio/visual post-conviction hearing before the Second Judicial District Court on
November 2nd, 2021, at 10:00 a.m.
3. Zoom Meeting Information: <https://washoecourts.zoom.us/j/98139758362>

WHEREFORE, Applicant prays that an Order be made ordering the audio/visual appearance of the said LUIGI RICHARD LOPEZ-DELGADO #1213684 before the Second Judicial District Court, and from time to time thereafter at such times and places as may be ordered and directed by the Court for such proceedings as thereafter may be necessary and proper in the premises and directing the execution of said Order by the Warden of Lovelock Correctional Center, Lovelock, Nevada.

AFFIRMATION

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

DATED: October 12, 2021.

CHRISTOPHER J. HICKS
District Attorney

By /s/KEVIN NAUGHTON
KEVIN NAUGHTON
Appellate Deputy

Return Of NEF**Recipients**

MARC PICKER, ESQ. - Notification received on 2021-10-12 16:44:47.774.

KRISTA MEIER, ESQ. - Notification received on 2021-10-12 16:44:48.144.

ORRIN JOHNSON, ESQ. - Notification received on 2021-10-12 16:44:48.5.

KEVIN NAUGHTON, ESQ. - Notification received on 2021-10-12 16:44:48.177.

DIV. OF PAROLE & PROBATION - Notification received on 2021-10-12 16:44:47.829.

NICKOLAS GRAHAM, ESQ. - Notification received on 2021-10-12 16:44:47.801.

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

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

10-12-2021:16:38:36

Clerk Accepted:

10-12-2021:16:44:13

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Application for Setting
Application Produce Prisoner

Filed By:

Kevin Naughton

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:

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KRISTA D. MEIER, ESQ.

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 CODE #3340
CHRISTOPHER J. HICKS
2 #7747
One South Sierra Street
3 Reno, Nevada 89501
(775) 328-3200
4 districtattorney@da.washoecounty.us
Attorney for Respondent

6 IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 ***

9 LUIGY RICHARD LOPEZ-DELGADO,

10 Petitioner,

Case No. CR18-1654

11 vs.

Dept. No. 9

12 THE STATE OF NEVADA,

13 Respondent.

14 _____/
15 ORDER TO PRODUCE PRISONER VIA SIMULTANEOUS AUDIO/VISUAL
16 TRANSMISSION

17 IT APPEARING to the satisfaction of the above-entitled Court that it is necessary
18 that the Petitioner above named, LUIGI RICHARD LOPEZ-DELGADO #1213684,
19 presently incarcerated in the Lovelock Correctional Center, Lovelock, Nevada, be
20 brought before the Second Judicial District Court for a post-conviction hearing in the
above-entitled action.

21 NOW, THEREFORE, IT IS HEREBY ORDERED that the Lovelock Correctional
22 Center, Lovelock, Nevada, with cooperative assistance from the Nevada System of
23 Higher Education bring the said LUIGI RICHARD LOPEZ-DELGADO #1213684 before
24 the Second Judicial District Court via simultaneous audio/visual transmission means on

1 November 2, 2021, at 10:00 a.m. for a post-conviction hearing in the above-entitled
2 action, via Zoom: <https://washoecourts.zoom.us/j/98139758362>

3 IT IS FURTHER ORDERED that it is not necessary for said LUIGI RICHARD
4 LOPEZ-DELGADO #1213684 to be physically located in Washoe County, Nevada,
5 during the post-conviction hearing.

6 IT IS FURTHER ORDERED that the Warden of the Lovelock Correctional
7 Center, Lovelock, Nevada, shall provide and make available a telephone for the duration
8 of the post-conviction hearing to allow LUIGI RICHARD LOPEZ-DELGADO #1213684
9 and his defense counsel ORRIN JOHNSON, ESQ., the ability to speak privately during
10 the hearing.

11 DATED this 14th day of October, 2021.

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13 _____
14 DISTRICT JUDGE
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Return Of NEF**Recipients**

MARC PICKER, ESQ. - Notification received on 2021-10-14 10:11:04.079.

**KRISTA MEIER,
ESQ.** - Notification received on 2021-10-14 10:11:04.504.

**ORRIN JOHNSON,
ESQ.** - Notification received on 2021-10-14 10:11:04.565.

**KEVIN NAUGHTON,
ESQ.** - Notification received on 2021-10-14 10:11:04.535.

**DIV. OF PAROLE &
PROBATION** - Notification received on 2021-10-14 10:11:04.138.

**NICKOLAS
GRAHAM, ESQ.** - Notification received on 2021-10-14 10:11:04.109.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

10-14-2021:10:09:50

Clerk Accepted:

10-14-2021:10:10:32

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord to Produce Prisoner

Filed By:

Judicial Asst. BWard

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:

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KRISTA D. MEIER, ESQ.

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

Vs.

THE STATE OF NEVADA,

Respondent.

Case No.: CR18-1654

Dept. No.: 9

NOTICE AND ORDER OF AUDIO/VISUAL HEARING

AN EVIDENTIARY HEARING IN THIS MATTER IS SET FOR

NOVEMBER 2, 2021 AT 10:00 A.M.

Consistent with the Declaration of Emergency in Nevada and to effectuate resulting Directives issued by Governor Steve Sisolak, as renewed and extended¹, and Second Judicial District Court Administrative Orders ("AOs"), as amended and extended, the hearing in this matter shall be held by audio/visual platform.

The hearing will be conducted pursuant to the Nevada Supreme Court Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment, Part IX.

¹ The Declaration of Emergency for COVID-19 and all Directives issued are available at: gov.nv.gov/News/Emergency_Orders/Emergency_Orders (last visited 6/21/2021). The AOs are available at: washoecourts.com/Main/AdminOrders (last visited 6/21/2021).

Details for the Zoom Webinar/Zoom Meeting hearing are attached hereto as Exhibit 1 to this Notice. In addition, to view and hear the proceedings counsel, parties, and the public (unless the hearing is closed to the public by rule, statute, or order) may access the Zoom link by accessing www.washoecourts.com, clicking on “Online Hearings and Public Access to Proceedings-Click Here,” scrolling down to Department 9, and clicking on the link for this matter.

Pursuant to issued AOs, the parties are reminded that although conducted on an audio/visual platform, a hearing is a formal proceeding and shall be conducted with proper decorum. Appropriate attire is required.

If any party intends to introduce exhibits during the hearing, the exhibits shall be E-filed with the Court **twenty-four (24) hours** prior to the hearing. The exhibits will include a cover sheet with the case caption and document title, "PROPOSED EXHIBIT[S] SUBMITTED BY [PARTY] FOR [DATE] HEARING." The proposed exhibits shall be sequentially numbered. E-filing documents for the hearing does not operate to admit the evidence nor does it preclude objections by any party, both of which will be addressed during the hearing.

Any party who objects to this hearing proceeding by audio/visual means, must E-file an objection entitled “[PARTY]’s OBJECTION TO CONDUCTING HEARING BY AUDIO/VISUAL PLATFORM,” with a contemporaneously E-filed Request for Submission of the objection no later than **twenty-four (24) hours** prior to the hearing. The Court may or may not vacate the hearing based on the objection. Unless and until an order is entered vacating this hearing, the matter will proceed as noticed.

IT IS SO ORDERED.

DATED this 27th day of October, 2021.

DISTRICT JUDGE

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EXHIBIT 1

ZOOM WEBINAR/ZOOM MEETING INFORMATION:

NOVEMBER 2, 2021 at 10:00 a.m.

<https://washoecourts.zoom.us/j/98139758362>

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 27th day of October, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

[NONE]

Further, I certify that on the 27th day of October, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

KRISTA MEIER, ESQ.

DIV. OF PAROLE & PROBATION

KEVIN NAUGHTON, ESQ. for STATE OF NEVADA

NICKOLAS GRAHAM, ESQ. for STATE OF NEVADA

ORRIN JOHNSON, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)

MARC PICKER, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)



Judicial Assistant

Return Of NEF**Recipients**

MARC PICKER, ESQ. - Notification received on 2021-10-27 17:09:54.512.

KRISTA MEIER, ESQ. - Notification received on 2021-10-27 17:09:54.596.

ORRIN JOHNSON, ESQ. - Notification received on 2021-10-27 17:09:54.659.

KEVIN NAUGHTON, ESQ. - Notification received on 2021-10-27 17:09:54.625.

DIV. OF PAROLE & PROBATION - Notification received on 2021-10-27 17:09:54.569.

NICKOLAS GRAHAM, ESQ. - Notification received on 2021-10-27 17:09:54.542.

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

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

10-27-2021:17:08:51

Clerk Accepted:

10-27-2021:17:09:23

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Notice of Hearing

Filed By:

Judicial Asst. BWard

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:

KRISTA D. MEIER, ESQ.

DIV. OF PAROLE & PROBATION

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CODE No. 2610
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200
districtattorney@da.washoecounty.gov
Attorney for Respondent

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

IN AND FOR THE COUNTY OF WASHOE

* * *

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

Case No. CR18-1654

vs.

Dept. No. 9

THE STATE OF NEVADA,

Respondent.

_____ /

**NOTICE OF PROPOSED EXHIBITS SUBMITTED BY RESPONDENT
FOR THE NOVEMBER 2, 2021 EVIDENTIARY HEARING**

Exhibit

Pages

- | | |
|--|---|
| 1) Notice of Document Received but not Considered by the Court,
filed 4-1-2019..... | 2 |
|--|---|

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: November 1, 2021.

CHRISTOPHER J. HICKS
District Attorney

By /s/ Kevin Naughton
KEVIN NAUGHTON
Appellate Deputy
Nevada Bar No. 12834

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on November 1, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Orrin Johnson, Esq.

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA

V5. 795

FILED
Electronically
CR18-1654
2021-11-01 08:21:17 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 872361

EXHIBIT 1

EXHIBIT 1

V5. 795

1 **CODE: 2528**
2
3
4

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

8 **STATE OF NEVADA,**

9 **Plaintiff,**

Case No. CR18-1654

10 **vs.**

Dept. No. 3

11 **LUIGI LOPEZ-DELGADO,**

12 **Defendant.**
13 _____/

14 **NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT**

15 **TO: District Attorney's Office and Defense counsel:**
16

17 Take notice that the attached document has been received unsolicited by the
18 Court. The Court has not reviewed the document. Further, the Court will not review the
19 document absent an affirmative request to do so from a party.

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21 ///

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25 ///

26 This document was considered by the Court only if initialed and dated by the
27 Judge below.
28

Date

Judges Initials

From Washoe County Jail
PLEASE RETURN BACK TO
THE COURTS OFFICE
ONCE COMPLETED

CR18-1654 D3

Inquiry

For 1720508: LUIGI LOPEZ-DELGADO WC H15 26 CPAN on 3/18/2019 9:59:09 AM
Dates and Times are presented in Pacific Time (US & Canada)

Issue ID: 14586516

Last Assigned to: None on 3/26/2019 9:19:38 AM

Last Status: Responded & Closed by CIV KANNISTO on 3/26/2019 9:19:38 AM

Courts

To Second judicial Reno District Court Dept 3, Polaha; this is regarding my sentencing, The only reason i went along with the plea deal was to get out of this sleazy jail and because nobody has won a sex case in trial under the hearsy laws. i dont recall sexual contact or pictures. I did not plan to argure expecting the 4to10 i stipulated to. since you gave me more, heres my grounds and defense for appeal; this so called victim was on a website and her profile said she was older than she was so i didnt intend to converse with a 15 year old girl. i was never found in possession of the pictures in this case, those pictures were found in the so called victims phone, my phone was taken and searched, none of those pictures or messages were found in my possession, ive had my phone stolen and a 3rd party could have easily been involved with those messages i dont recall sending, And theres no solid proof of sexual contact, its all "She said", MY DNA found in my RV does not prove sexual contact. she had told me she was raped beaten and threatened in Jan Evans by a staff member and NO investigation was was started regarding this, the sart rape kit test says she had blunt force trauma pointing to the exact time she was in jan evans (3rd party Sexual assault). Detectives stated she said she had lied about things thinking thats what wnted to be heard (Red flag grounds for cross examination). AGAIN I DO NOT RECALL sexual contact let alone to consenting, I WAS NOT FOUND IN POSSESSION of any pornography. theres no proof of me behind those messages but You guys have proof of her producing and distributing which she can be held accountable for in a higher court.

6 to 16 years for this Jerome? ill be institutionalized by then, you could have gave me a chance at probation but you chose to cost the state money, i see no honor in your judgement to warehouse and institutionalize humans instead of giving opportunity Jerome. FUCK YOU

Submitted by 1720508: LUIGI LOPEZ-DELGADO WC H15 26 CPAN on 3/18/2019 9:59:09 AM

Forwarded to Second Judicial District Court CR18-1654

Responded & Closed by CIV KANNISTO on 3/26/2019 9:19:38 AM

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

11-01-2021:08:21:17

Clerk Accepted:

11-01-2021:14:28:17

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Notice

- **Continuation

Filed By:

Kevin Naughton

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NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

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A filing has been submitted to the court RE: CR18-1654

Judge:

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Official File Stamp:

11-02-2021:16:30:18

Clerk Accepted:

11-02-2021:16:45:24

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Orrin Jeffrey Harris Johnson

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NEVADA

NICKOLAS J. GRAHAM, ESQ. for STATE OF
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DIV. OF PAROLE & PROBATION

MARC P. PICKER, ESQ. for LUIGI RICHARD
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1 Code: 3370
2
3
4

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

7
8 LUIGY RICHARD LOPEZ-DELGADO,

Case No.: CR18-1654

9 Petitioner,

Dept. No.: 9

10 v.

11 THE STATE OF NEVADA,

12 Respondent.
13
14

15 **ORDER GRANTING MOTION TO DISMISS IN PART**

16 The motions in this case came before this Court for oral argument on November 2, 2021. At
17 the time of the hearing, the Court was in receipt of Respondent THE STATE OF NEVADA's
18 (hereafter "the State") *Motion to Dismiss in Part* filed June 7, 2021; and Petitioner LUIGY
19 RICHARD LOPEZ-DELGADO's (hereafter "Petitioner") *Opposition to Motion to Dismiss* filed
20 July 6, 2021.

21 Upon review of the moving papers and oral argument, with good cause appearing, the Court
22 **GRANTS** the State's *Motion to Dismiss in Part*.

23 **BACKGROUND**

24 The Petitioner was charged with numerous felonies in an Information filed September 26,
25 2018. At that time, the Petitioner was charged with two counts of Statutory Sexual Seduction by
26 Person Age 21 or Older, a category B felony, punishable by one to ten years in prison; one count of
27 Use or Permit Minor, Under Age 18, to Produce Pornography, a category A felony, punishable by
28 life imprisonment with parole eligibility after five years; one count of Possess Visual Pornography

1 of Person Under Age 16, First Offense, a category B felony, punishable by one to six years in
2 prison; two counts of Lewdness With Child Older Than 14, a category B felony, punishable by one
3 to ten years in prison; one count of Lure or Attempt to Lure a Child With the Use of Computer
4 Technology to Engage in Sexual Conduct, a category B felony, punishable by one to ten years in
5 prison; and one gross misdemeanor count of Attempting to Prevent or Dissuade a Witness from
6 Testifying.

7 The Petitioner entered favorable plea negotiations whereby he pled guilty to three counts in
8 exchange for a joint recommendation with the State for an aggregate sentence of 48 to 120 months
9 imprisonment. Consequently, Petitioner pled guilty to one count of Statutory Sexual Seduction by
10 Person Age 21 or Older; one count of Possess Visual Pornography of Person Under Age 16, First
11 Offense; and one count of Lewdness With Child Older Than 14.

12 At sentencing, this Court specifically finds the parties adhered to the plea negotiations and
13 recommended the agreed upon sentence. The Court imposed the sentences recommended by the
14 parties but, instead of running them all concurrently as the parties requested, the Court opted to run
15 one of the counts consecutively for an aggregate sentence of 76 to 192 months imprisonment. The
16 Petitioner unsuccessfully appealed his sentence, alleging that the Court abused its discretion in
17 sentencing. The Court of Appeals rejected the Petitioner's contentions and entered an Order of
18 Affirmance on February 18, 2020. *See Lopez-Delgado v. State*, Docket No. 78472-COA.

19 On June 10, 2020, the Petitioner filed a *Petition for Writ of Habeas Corpus (Post-*
20 *Conviction)* ("Petition"). On October 26, 2020, the Petitioner filed a "Supplement Brief." Counsel
21 was appointed for the Petitioner and filed a *Supplemental Petition in Support of a Writ of Habeas*
22 *Corpus (Post-Conviction)* ("Supplemental Petition") on April 8, 2021.

23 On June 7, 2021, the State filed its *Motion to Dismiss in Part*. On July 6, 2021, Petitioner
24 filed his *Opposition*. In his *Opposition*, Petitioner abandoned all arguments set forth in his original
25 *Writ* and *Supplemental Writ* allowing the claims labeled as B, C, and D to remain. On November 2,
26 2021, the Court heard oral arguments on the motion and the Writ.

27 Prior to oral arguments, the Petitioner abandoned claim B, which was the failure to
28 investigate claim. This left only two claims ripe for this Court's review at the hearing. Those claims
are (C) failure of the Petitioners counsel to object to the alleged breach of the plea agreement on the

part of the State; and (D) the failure of the Petitioner’s counsel to raise the alleged plea agreement breach on appeal.¹

STANDARD OF REVIEW

A petitioner must demonstrate the facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence, and a district court’s factual findings regarding a claim of ineffective assistance of counsel are entitled to deference upon appeal. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); *see also Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Habeas claims must consist of more than bare allegations, and an evidentiary hearing on a habeas petition is mandated only if a petitioner asserts specific factual allegations that, if true, would warrant relief and *are not belied or repelled by the record*. *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984); *Nika v. State*, 124 Nev. 1272, 198 P.3d 839 (2008) (emphasis added).

A district court reviews claims of ineffective assistance of trial counsel under *Strickland v. Washington*, 466 U.S. 668, 686-87 (1984); *see also Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Under *Strickland*, to prevail on a claim of ineffective assistance of trial counsel, a petitioner must establish two elements: (1) counsel provided deficient performance, and (2) “the deficient performance prejudiced the defense.” *Kirksey*, 112 Nev. 987, 923 P.2d at 107. To prove deficient performance, a petitioner must show that counsel’s performance fell below an objective standard of reasonableness. *Id.*

To prove prejudice, a petitioner must demonstrate “a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” *Id.* at 988, 923 P.2d at 1107. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Counsel’s performance is measured by an objective standard of reasonableness which takes into consideration prevailing professional norms and the totality of the circumstances. *Strickland*, 466 U.S. at 688; *accord, Homick v. State*, 112 Nev. 304, 913 P.2d 1280 (1996). An insufficient showing on *either* element of the *Strickland* standard requires denial of the claim. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107 (emphasis added).

¹ The notations of “C” and “D” are derived from the Petitioner’s *Supplemental Petition*, and the State’s *Motion to Dismiss*, which directly addresses claims “C” and “D.”

1 When reviewing the record, the Court's view of counsel's performance must be highly
2 deferential, with every effort being taken to eliminate the distorting effects of hindsight. *Strickland*,
3 466 U.S. at 689, 691. In making a fair assessment of counsel's performance, the trial court must
4 reconstruct the circumstances of counsel's challenged conduct and evaluate that challenged act or
5 omission from counsel's perspective at the time, while remaining perfectly mindful that counsel is
6 “strongly presumed to have rendered adequate assistance and made all significant decisions in the
7 exercise of reasonable professional judgment.” *Id.* at 689-90. Accordingly, trial counsel's strategic
8 or tactical decisions will be “virtually unchallengeable absent extraordinary circumstances.”
9 *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (*quoting Howard v. State*, 106 Nev.
10 713, 722, 800 P.2d 175, 180 (1990)).

11 DISCUSSION

12 The two remaining claims for relief proffered by the Petitioner involve the foundational
13 claim that counsel at trial was ineffective for failing to object to the prosecutor allegedly breaching
14 the plea agreement at the time of sentencing. The second claim is that counsel was ineffective
15 because they failed to raise the breach of the plea agreement on appeal. As noted, the foundation of
16 both claims arise from whether the prosecutor breached the plea agreement during sentencing.
17 Upon review of the record, and after hearing oral arguments, this Court finds that the prosecutor did
18 not breach the plea agreement during the sentencing hearing. As such, the ineffective assistance of
19 counsel claim fails as there was nothing to object to at the time of sentencing, and thus nothing that
20 could have been appealed afterwards.

21 The parties in this case agreed to “stipulate to recommend at sentencing a term of
22 incarceration in the Nevada State Prison of 48-120 months on Count II, 28-72 months on Count IV,
23 and 48-120 months on Count VI and that all counts run concurrent to one another.” Motion, pg.
24 16:11-16 (*citing* GPM, p. 5). In sum, the parties agreed to recommend a sentence that would result
25 in the Petitioner serving 48-120 months in prison with all the counts running concurrently.

26 The Petitioner claimed in his supplemental petition that “once it became clear that Judge
27 Polaha was inclined to sentence more harshly than the State's recommendation, it became the State's
28 obligation to explain why the lower recommendation was appropriate...instead the State

1 aggressively continued to highlight aggravating factors, which in spite of the protestations of fealty
2 to the original recommendation, clearly was being used to justify a higher sentence.” *Supp.* pg.
3 7:22-26. Petitioner argued that the State proceeded to touch upon unnecessary facts that went
4 beyond the scope of the plea agreement which included “arguing against the recommendation
5 provided by Parole and Probation and scoffing at the psycho-sexual evaluation findings.” *Id.* pg.
6 8:1-2.

7 In his *Opposition*, Petitioner argues that “in determining whether the prosecution has
8 fulfilled its part of a plea bargain, the prosecution is held to the most meticulous standards of both
9 promise and performance.” *Kluttz v. Warden, Nev. State Prison*, 99 Nev. 681, 683 (1983). The
10 Court in *Kluttz* held that reversal is still required where the “spirit” of the agreement is violated. *Id.*
11 at 684. However, the Court finds that this argument is belied by the record and the totality of the
12 circumstances surrounding the arguments proffered by the State in the sentencing hearing. Neither
13 the agreement itself, nor its spirit were violated.

14 The Nevada Supreme Court has held that “a promise to recommend a sentence is not a
15 promise to stand silent.” *Sullivan v. State*, 115 Nev. 383, 389, 990 P.2d 1258, 1261 (1999). “Where
16 the state agrees to make a particular recommendation, the agreement, unlike an agreement to stand
17 silent or make no recommendation, does not by its terms restrict the state’s right to argue or present
18 facts in favor of the sentence recommendation.” *Id.* (emphasis added). However, a prosecutor “must
19 refrain from either explicitly or implicitly repudiating the agreement.” *Id.* In *Sullivan*, the court held
20 that the State did not breach the plea negotiations where the prosecutor complied with the plea
21 agreement by recommending the agreed upon sentence and the prosecutor’s comments about
22 Sullivan’s “criminal record and the circumstances of the instant offenses were clearly intended to
23 support the sentencing recommendation that the state agreed to make.” 115 Nev. at 390, 990 P.2d at
24 1262.

25 Here, the PSI recommended a sentence “in an aggregate both for less on the front end and
26 more on the back end than [was] stipulated within the plea agreement.” Sentencing Transcript, p. 4,
27 PSI p. 9 (recommending a term of 12-48 months on Count II, 12-36 months on Count IV, and 12-48
28 months on Count VI, all run consecutively for an aggregate recommendation of 36-132 months).
Defense counsel argued that “the psychosexual evaluation found that the Petitioner was not a high

1 risk to reoffend and that he would otherwise been statutorily eligible for probation but for the
2 parties' recommendation." Sentencing Transcript, p. 4. Counsel also argued that the Petitioner did
3 not have any criminal history; that "he's a young man;" and "[t]here are a lot of factors that we
4 believe you should take into account in determining what the appropriate and just sentence is."
5 Sentencing Transcript, p. 5. Counsel added that the joint recommendation of the parties was just
6 "one of those factors...." *Id.*

7 By the time that the State was able to make its argument, the Court had reviewed the PSI
8 report and had heard from Defense Counsel that it should consider several mitigating factors that
9 could potentially result in a sentence lower than agreed to by both parties as a result of the
10 recommendation contained in the PSI. The State sought to provide some context and additional
11 information in support of the parties' joint recommendation. The State explicitly told the Court that
12 was the reason for the argument:

13 **THE COURT:** Counsel, let me ask, you're going to stick with the agreement that
14 you had.

15 **MR. GRAHAM:** I am, yes, your Honor.

16 **THE COURT:** All right.

17 **MR. GRAHAM:** Absolutely, I think 4 to 10 years on this case is an absolutely
18 appropriate sentence. The reason I was going to argue is because Parole and
19 Probation recommended less than that. And I wanted to provide the Court with
20 information to show why a 4- to 10-year sentence would be appropriate.

21 Sentencing Transcript, pp. 5-6 (emphasis added).

22 The Court then stated that "I'm inclined to go higher than that. So go ahead." Sentencing
23 Transcript, p. 6. The prosecutor immediately responded by saying:

24 Okay. Thank you. So the record is crystal clear, I'm not arguing for anything other
25 than the stipulated sentence in this case. But what I would like to let the Court
26 know is that this is not two teenagers having sex. This is a case where the
defendant was 23.

27 *Id.* (emphasis added). The prosecutor also concluded his remarks by again reminding the Court that
28 "I think that the defendant's -- the proper and just sentence in this case would be the 4 to 10 years
that the parties have stipulated to." Sentencing Transcript, p. 15.

1 This record clearly shows that the State argued only to support the agreed upon sentencing
2 recommendation. The State argued as such because of a lower recommendation from the PSI report,
3 and Defense counsels' subsequent arguments. The Court finds that the State clearly stayed within
4 the bounds of the plea agreement. The State repeatedly expressed that it was not asking for any
5 sentence other than what the parties had agreed to recommend and provided factual information in
6 support of the agreed upon sentence after the Court had reviewed a different, lower
7 recommendation, and an implicit request from defense counsel to consider imposing something
8 other than the agreed upon sentence.

9 As a result, the prosecutor did not violate the terms or spirit of the plea agreement, and
10 counsel was not ineffective for failing to object. The record thus belies the Petitioner's claim that
11 the State breached the plea agreement and does not show that he would be entitled to any relief. As
12 such, this Court finds that counsel was not ineffective for failing to object to the sentencing
13 arguments made by the State, and this said counsel cannot be deemed ineffective for failing to argue
14 such a breach on appeal as there was nothing to appeal.

15 **CONCLUSION**

16 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that the State's
17 *Motion to Dismiss in Part* is GRANTED.

18 DATED this 4th day of November 2021.

19 
20 _____
21 DISTRICT JUDGE
22
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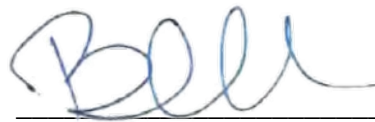
CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 4th day of November, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

[NONE]

Further, I certify that on the 4th day of November, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

KRISTA MEIER, ESQ.
ORRIN JOHNSON, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)
KEVIN NAUGHTON, ESQ. for STATE OF NEVADA
NICKOLAS GRAHAM, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
MARC PICKER, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)



Judicial Assistant

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

11-04-2021:14:38:32

Clerk Accepted:

11-04-2021:14:40:19

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord Grant Partial Dismissal

Filed By:

Judicial Asst. BWard

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NEVADA

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

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CASE NO. CR18-1654

STATE OF NEVADA VS. LUIGY RICHARD LOPEZ-DELGADO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

11/2/21
HON. SCOTT N.
FREEMAN
DEPT. NO. 9
G. Bartlett
(Clerk)
L. Stubbs
(Reporter)**MOTION TO DISMISS**

Hearing conducted via Zoom audiovisual conferencing.
Deputy D.A. Kevin Naughton represented the State.
Defendant was present with counsel, Orrin Johnson, Court
Appointed Attorney.

The Court made a record of the fact that this hearing was being held remotely because of the closure of the courthouse at 75 Court Street, in Reno, Washoe County, Nevada, due to the National and local emergency caused by COVID-19. The Court and all participants appeared via simultaneous audiovisual transmission. The Court was physically located in Washoe County, Nevada which was the site of the court session. At the direction of the Court, all participants stated their appearances and location.

Respective counsel acknowledged receipt of notice that the hearing was taking place pursuant to the Second Judicial District Court's Administrative Orders entered in 2020, and the Nevada Supreme Court Rules - Part IX governing appearances by simultaneous audiovisual transmissions, and counsel stated they had no objection to proceeding in this manner.

The Court further made a record of the fact that these proceedings are open to the public for viewing and listening through the webinar/meeting invitation located on the Court's website and directed that if at any time anyone who is participating in this matter cannot see or hear the other participants in this case, they are to inform the Court.

Counsel Johnson informed the Court that he will only be proceeding on the Breach of Plea Agreement claim and moved to admit exhibits A through M that are attached to the supplemental petition; no objection by counsel for State.

COURT ORDERED: Exhibits A through M are hereby admitted.
Counsel Naughton discussed the sentencing transcript and stated that the District Attorney did not ask for more time during argument and further discussed the exchange between Judge Polaha and the Deputy D.A.

Counsel Johnson stated that the DA did not urge the Court to follow the plea agreement and stated that the DA implicitly argued for more time.

COURT ORDERED: Motion to dismiss is under advisement.
Defendant was remanded to the custody of the Nevada Department of Corrections.

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MARC PICKER, ESQ. - Notification received on 2021-11-05 09:15:35.445.

**KRISTA MEIER,
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ESQ.** - Notification received on 2021-11-05 09:15:35.569.

**DIV. OF PAROLE &
PROBATION** - Notification received on 2021-11-05 09:15:35.506.

**NICKOLAS
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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

11-05-2021:09:14:29

Clerk Accepted:

11-05-2021:09:15:03

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk GBartlett

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ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

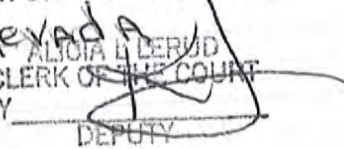
MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FILED

2021 DEC -2 PM 1:49

In The 2nd J. D. C. of Nevada
In and for Washoe county

ALICIA L. DERRID
CLERK OF THE COURT
BY 
DEPUTY

Luigi Delgado Prose
Petitioner

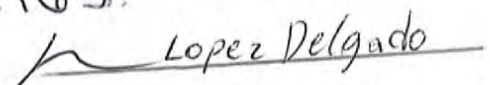
CASE; CR-18-1654
Dept. 9

Vs

State of Nevada
Respondent

Notice of Appeal

Notice is given that petitioner, pro se
hereby Appeals to the N.S.C. with All facts
finding conclusions of law herein. Habeas
Corpus was denied. (Nov 4th 2021).

This true and correct under penalty
of perjury N.R.S. 208.105.
11/28/2021  Lopez Delgado

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing N.O.A. to the below address(es) on this 28 day of November, 2021, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Attorney General
Ste 3900
555 E. Washington Ave
LV, NV. 89101

Kevin Naughton
Washoe County DA's Office
1 South Sierra St.
Reno NV 89501

L. Lopez Delgado
Luis Lopez Delgado #1213684
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

✓ In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding

N.O.A. filed in District Court Case No. CR181654 does not contain the social security number of any person.

Dated this 28 day of November, 2021.

Luis Lopez Delgado
Luis Lopez Delgado

✓ In Pro Se

Case No. CR 18 1694
 Dept. No. 9

FILED
 2021 DEC -2 PM 2:03
 ALICIA L. LEE
 CLERK OF THE COURT
 BY [Signature]

IN THE 2nd JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF Washoe

* * * * *

THE STATE OF NEVADA,)

Plaintiff,)

-vs-)

Luigi Lopez Delgado,)

Defendant.)

MOTION FOR WITHDRAWAL
 OF ATTORNEY OF RECORD
AND DELIVERY OF RECORDS

COMES NOW Defendant, Luigi Lopez Delgado ("Defendant"),
 in pro se, and submits his Motion for Withdrawal of Attorney of
 Records and Delivery of Records, moving the Court to order that
Orrin J.H. Johnson ("Counsel") be withdrawn as counsel of
 record herein, and that Counsel deliver to Defendant at the
 address below all files, documents, papers, records and personal
 property which are in Counsel's possession and control.

This motion is based upon NRS 7.055; SCR 46; RPC 1.16; the
 following points and authorities; and the attached affidavit.

POINTS AND AUTHORITIES

A party may discharge their attorney with or without cause,
Matter of Kaufman, 93 Nev. 452, 567 P.2d 957, 959 (1977), after
 which the attorney is obliged to conduct themselves in a manner
 protective of their client's interests, PRC 1.16(d). Such duty

1 includes "surrendering papers and property to which the client
2 is entitled." Id. See also NRS 7.055(1) (attorney who has been
3 discharged by client shall, upon demand, "immediately deliver to
4 the client" all files, papers and property which were prepared
5 for the client); SCR 46 (time of withdrawal).


6 Counsel's services are no longer required in this criminal
7 matter. Defendant has, pursuant to NRS 7.055(3), directed
8 Counsel to withdraw themselves and forward to him all case files
9 and materials related to this case; however, Counsel has failed
10 to comply. ~~See attached Affidavit of Withdrawal.~~ This failure
11 of Counsel not only fails to protect Defendant's interests as
12 required by RPC 1.16(d), but likewise disregards the mandates of
13 NRS 7.055(1).

14 Counsel has no lawful basis for withholding Defendant's
15 papers in this matter, as Defendant owes Counsel no fees upon
16 which Counsel could assert a lien against same. Michel v.
17 Eighth Jud. Dist. Court, 117 Nev. 145, 17 P.3d 1003, 1008 n. 2.
18 (2001). ~~See attached Affidavit.~~

19 CONCLUSION

20 For the reasons set forth above, the Court should order
21 Counsel to be withdrawn as counsel of record and should direct
22 Counsel to deliver to Defendant his papers and files in the
23 above-entitled case.

24 Dated this 28th day of November, 2021.

25 
26 Luigi Lopez Delgado # 1213684
27 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

28 Defendant In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORDS AND DELIVERY OF RECORDS to the below addresses on this 28 day of November, 2021, by placing same in the U.S. Mail via prison law library staff:

DISTRICT ATTORNEY
Washoe County
Kevin Naughton
1 South Sierra St
Reno, Nevada
89

Attorney For Plaintiff

Orrin J. H. Johnson
611 Sierra Rose Dr.
Suite A
Reno, Nevada
89 511

Former Counsel of Record

Luigi Lopez Delgado
Luigi Lopez Delgado #1213684
 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 ATTORNEY OF RECORDS AND DELIVERY OF RECORDS does not contain the social security number of any person.

Dated this 28 day of November, 2021.

Luigi Lopez Delgado
Luigi Lopez Delgado

Defendant In Pro Se

Exhibit Cover Page

EXHIBIT NUMBER _____

Case No. CR-18-1654

Dept. No. 9

IN THE 2nd JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Washoe

* * * * *

THE STATE OF NEVADA,

Plaintiff,

-vs-

ORDER

Luigi Lopez Delgado,

Defendant.

THIS MATTER, having been duly considered by the Court, it is hereby ORDERED that the Defendant's Motion for Withdrawal of Attorney of Record and Delivery of Records is hereby GRANTED.

Counsel Orrin J. H. Johnson shall be withdrawn as counsel of record and is directed to forthwith deliver to Defendant, at the Lovelock Correctional Center, all pleadings, papers, documents and other tangible personal property in and related to the above-entitled case which are in counsel's possession and control. Such mailing or other form of delivery is to be affected at counsel's expense.

IT IS SO ORDERED.

Dated this _____ day of _____, 20____.

District Court Judge

Code 1350

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

LUIGY RICHARD LOPEZ-DELGADO,

Plaintiff,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. CR18-1654

Dept. No. 9

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 3rd day of December, 2021, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 3rd day of December, 2021.

Alicia L. Lerud
Clerk of the Court
By /s/azamora
Amanda Zamora
Deputy Clerk

Code 1310

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

LUIGY RICHARD LOPEZ-DELGADO,

Plaintiff,

vs.

Case No. CR18-1654

THE STATE OF NEVADA,

Dept. No. 9

Respondent.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Luigy Lopez-Delgado.
2. This appeal is from an order entered by the Honorable Judge Scott Freeman.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Luigy Lopez-Delgado #1213684
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Jennifer P. Noble, Esq., SBN: 9446
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: NA

6. Appellant is represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on September 26th, 2018.
10. This is a criminal proceeding and the Appellant is appealing the Order Granting Motion to Dismiss in Part filed on November 4th, 2021.
11. The case has been the subject of a previous appeal to the Supreme Court.
Supreme Court No.: 78472
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 3rd day of December, 2021.

Alicia L. Lerud
Clerk of the Court
By: /s/ azamora
Amanda Zamora
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-03 09:59:35.661.
MARC PICKER, ESQ. - Notification received on 2021-12-03 09:59:35.574.
KRISTA MEIER, ESQ. - Notification received on 2021-12-03 09:59:36.566.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-03 09:59:36.261.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-03 09:59:36.092.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-03 09:59:35.628.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-03 09:59:35.602.

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

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-03-2021:09:58:28

Clerk Accepted:

12-03-2021:09:59:02

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Certificate of Clerk
Case Appeal Statement

Filed By:

Deputy Clerk AZamora

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

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-

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

The following people were served electronically:

KRISTA D. MEIER, ESQ.

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ.

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ORRIN J. H. JOHNSON, ESQ.
Nevada State Bar No. 10629
ALEXANDRA M. DYER, ESQ.
Nevada State Bar No. 15540
Orrin Johnson Law
A Division of Johnson Law Practice
611 Sierra Rose Drive, Ste. A
Reno, NV 89511
(775) 525-2560
Attorney for Petitioner

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

LUIGI RICHARD LOPEZ-DELGADO,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

Case No. CR18-1654

Dept. No. IX

**RESPONSE TO MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND
DELIVERY OF RECORDS**

COMES NOW ORRIN J. H. JOHNSON, Esq., attorney of record for Petitioner, LUIGI RICHARD LOPEZ-DELGADO, and hereby RESPONDS to the Mr. Lopez-Delgado's pro per Motion for Withdrawal of Attorney of Record and Delivery of Records.

This matter concluded with the issuance of an order from this court denying the Petition for a Writ of Habeas Corpus (Post-Conviction) alleging ineffective assistance of counsel. While there is obviously no objection to providing Petitioner with a copy of his file, we must note that contrary to the form motion filed with this court, no such request had been made to our office prior to the filing of this pro per motion.

///

///

///

///

1 A complete copy of Mr. Lopez-Delgado's file will be provided forthwith. Because there is no
2 inherent right to appointed counsel to appeal the denial of a post-conviction petition for habeas corpus
3 in a non-capital case (see generally *McKague v. Warden, Nevada State Prison*, 112 Nev. 159 (1996)),
4 the scope of undersigned counsel's appointment had already been concluded. Nevertheless, we have
5 no objection to Mr. Lopez-Delgado's motion for withdrawal of counsel to the extent it is not already
6 moot.

7
8 AFFIRMATION pursuant to NRS 239B.030: The undersigned does hereby affirm that this
9 document does not contain the social security number of any person.

10
11 DATED this 2nd day of DECEMBER, 2021.

12
13 By: 

14 ORRIN J. H. JOHNSON, Esq.
15 Attorney for the Petitioner
16 Nevada Bar No. 10629
17
18
19
20
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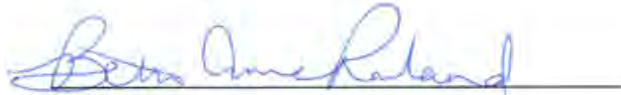
CERTIFICATE OF SERVICE

I certify that I am an employee of Johnson Law Practice and that on this 31st day of December, 2021, I caused to be served a copy of the foregoing document, titled: **RESPONSE TO MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND DELIVERY OF RECORDS** by electronically filing said document addressed to:

Kevin Naughton
Washoe County District Attorney's Office
1 South Sierra Street
Reno, NV 89501

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid via USPS, addressed to:

Luigy Lopez-Delgado, #1213684
c/o LCC
1200 Prison Road
Lovelock, NV 89419



Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-03 10:40:09.372.
MARC PICKER, ESQ. - Notification received on 2021-12-03 10:40:09.281.
KRISTA MEIER, ESQ. - Notification received on 2021-12-03 10:40:09.489.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-03 10:40:09.459.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-03 10:40:09.429.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-03 10:40:09.344.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-03 10:40:09.314.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
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-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-03-2021:10:32:24

Clerk Accepted:

12-03-2021:10:39:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Response

Filed By:

Orrin Jeffrey Harris Johnson

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

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KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ.

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-08 11:21:47.205.
MARC PICKER, ESQ. - Notification received on 2021-12-08 11:21:47.113.
KRISTA MEIER, ESQ. - Notification received on 2021-12-08 11:21:47.435.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-08 11:21:47.262.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-08 11:21:47.234.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-08 11:21:47.174.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-08 11:21:47.143.

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

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-08-2021:10:52:28

Clerk Accepted:

12-08-2021:11:20:23

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Orrin Jeffrey Harris Johnson

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The following people were served electronically:

KRISTA D. MEIER, ESQ.

KEVIN P. NAUGHTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ.

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 **CODE 2540**
2
3
4

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

8 **STATE OF NEVADA,**

9 **Plaintiff,**

Case No: CR18-1654

10 **vs.**

Dept. No: 9

11
12 **LUIGY RICHARD LOPEZ-DELGADO,**

13 **Defendant.**
14 _____/

15 **NOTICE OF ENTRY OF ORDER**
16

17 PLEASE TAKE NOTICE that of November 4, 2021, the Court entered a decision or
18 order in this matter, a true and correct copy of which is attached hereto.

19 Dated December 10, 2021.
20

21 _____
22 **ALICIA LERUD**

Clerk of the Court

23 _____
24 **/s/JBYE**

J. BYE-Deputy Clerk
25
26
27
28

CERTIFICATE OF SERVICE

Case No. CR18-1654

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on December 10, 2021, I electronically filed the Notice of Entry of Order with the Court System which will send a notice of electronic filing to the following:

KRISTA MEIER, ESQ.

KEVIN NAUGHTON, ESQ. for STATE OF NEVADA

JENNIFER NOBLE, ESQ.

NICKOLAS GRAHAM, ESQ. for STATE OF NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)

MARC PICKER, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)

I further certify that on December 10, 2021, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701-4717

Luigy Lopez-Delgado #1213684
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding document does not contain the personal information of any person.

Dated December 10, 2021.

/s/JBYE

J. BYE- Deputy Clerk

1 Code: 3370
2
3
4

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

8 LUIGY RICHARD LOPEZ-DELGADO,

Case No.: CR18-1654

9 Petitioner,

Dept. No.: 9

10 v.

11 THE STATE OF NEVADA,

12 Respondent.
13
14

15 **ORDER GRANTING MOTION TO DISMISS IN PART**

16 The motions in this case came before this Court for oral argument on November 2, 2021. At
17 the time of the hearing, the Court was in receipt of Respondent THE STATE OF NEVADA's
18 (hereafter "the State") *Motion to Dismiss in Part* filed June 7, 2021; and Petitioner LUIGY
19 RICHARD LOPEZ-DELGADO's (hereafter "Petitioner") *Opposition to Motion to Dismiss* filed
20 July 6, 2021.

21 Upon review of the moving papers and oral argument, with good cause appearing, the Court
22 **GRANTS** the State's *Motion to Dismiss in Part*.

23 **BACKGROUND**

24 The Petitioner was charged with numerous felonies in an Information filed September 26,
25 2018. At that time, the Petitioner was charged with two counts of Statutory Sexual Seduction by
26 Person Age 21 or Older, a category B felony, punishable by one to ten years in prison; one count of
27 Use or Permit Minor, Under Age 18, to Produce Pornography, a category A felony, punishable by
28 life imprisonment with parole eligibility after five years; one count of Possess Visual Pornography

1 of Person Under Age 16, First Offense, a category B felony, punishable by one to six years in
2 prison; two counts of Lewdness With Child Older Than 14, a category B felony, punishable by one
3 to ten years in prison; one count of Lure or Attempt to Lure a Child With the Use of Computer
4 Technology to Engage in Sexual Conduct, a category B felony, punishable by one to ten years in
5 prison; and one gross misdemeanor count of Attempting to Prevent or Dissuade a Witness from
6 Testifying.

7 The Petitioner entered favorable plea negotiations whereby he pled guilty to three counts in
8 exchange for a joint recommendation with the State for an aggregate sentence of 48 to 120 months
9 imprisonment. Consequently, Petitioner pled guilty to one count of Statutory Sexual Seduction by
10 Person Age 21 or Older; one count of Possess Visual Pornography of Person Under Age 16, First
11 Offense; and one count of Lewdness With Child Older Than 14.

12 At sentencing, this Court specifically finds the parties adhered to the plea negotiations and
13 recommended the agreed upon sentence. The Court imposed the sentences recommended by the
14 parties but, instead of running them all concurrently as the parties requested, the Court opted to run
15 one of the counts consecutively for an aggregate sentence of 76 to 192 months imprisonment. The
16 Petitioner unsuccessfully appealed his sentence, alleging that the Court abused its discretion in
17 sentencing. The Court of Appeals rejected the Petitioner's contentions and entered an Order of
18 Affirmance on February 18, 2020. *See Lopez-Delgado v. State*, Docket No. 78472-COA.

19 On June 10, 2020, the Petitioner filed a *Petition for Writ of Habeas Corpus (Post-*
20 *Conviction)* ("Petition"). On October 26, 2020, the Petitioner filed a "Supplement Brief." Counsel
21 was appointed for the Petitioner and filed a *Supplemental Petition in Support of a Writ of Habeas*
22 *Corpus (Post-Conviction)* ("Supplemental Petition") on April 8, 2021.

23 On June 7, 2021, the State filed its *Motion to Dismiss in Part*. On July 6, 2021, Petitioner
24 filed his *Opposition*. In his *Opposition*, Petitioner abandoned all arguments set forth in his original
25 *Writ* and *Supplemental Writ* allowing the claims labeled as B, C, and D to remain. On November 2,
26 2021, the Court heard oral arguments on the motion and the Writ.

27 Prior to oral arguments, the Petitioner abandoned claim B, which was the failure to
28 investigate claim. This left only two claims ripe for this Court's review at the hearing. Those claims
are (C) failure of the Petitioners counsel to object to the alleged breach of the plea agreement on the

part of the State; and (D) the failure of the Petitioner’s counsel to raise the alleged plea agreement breach on appeal.¹

STANDARD OF REVIEW

A petitioner must demonstrate the facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence, and a district court’s factual findings regarding a claim of ineffective assistance of counsel are entitled to deference upon appeal. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); *see also Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Habeas claims must consist of more than bare allegations, and an evidentiary hearing on a habeas petition is mandated only if a petitioner asserts specific factual allegations that, if true, would warrant relief and *are not belied or repelled by the record*. *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984); *Nika v. State*, 124 Nev. 1272, 198 P.3d 839 (2008) (emphasis added).

A district court reviews claims of ineffective assistance of trial counsel under *Strickland v. Washington*, 466 U.S. 668, 686-87 (1984); *see also Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Under *Strickland*, to prevail on a claim of ineffective assistance of trial counsel, a petitioner must establish two elements: (1) counsel provided deficient performance, and (2) “the deficient performance prejudiced the defense.” *Kirksey*, 112 Nev. 987, 923 P.2d at 107. To prove deficient performance, a petitioner must show that counsel’s performance fell below an objective standard of reasonableness. *Id.*

To prove prejudice, a petitioner must demonstrate “a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” *Id.* at 988, 923 P.2d at 1107. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Counsel’s performance is measured by an objective standard of reasonableness which takes into consideration prevailing professional norms and the totality of the circumstances. *Strickland*, 466 U.S. at 688; *accord, Homick v. State*, 112 Nev. 304, 913 P.2d 1280 (1996). An insufficient showing on *either* element of the *Strickland* standard requires denial of the claim. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107 (emphasis added).

¹ The notations of “C” and “D” are derived from the Petitioner’s *Supplemental Petition*, and the State’s *Motion to Dismiss*, which directly addresses claims “C” and “D.”

1 When reviewing the record, the Court's view of counsel's performance must be highly
2 deferential, with every effort being taken to eliminate the distorting effects of hindsight. *Strickland*,
3 466 U.S. at 689, 691. In making a fair assessment of counsel's performance, the trial court must
4 reconstruct the circumstances of counsel's challenged conduct and evaluate that challenged act or
5 omission from counsel's perspective at the time, while remaining perfectly mindful that counsel is
6 “strongly presumed to have rendered adequate assistance and made all significant decisions in the
7 exercise of reasonable professional judgment.” *Id.* at 689-90. Accordingly, trial counsel's strategic
8 or tactical decisions will be “virtually unchallengeable absent extraordinary circumstances.”
9 *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (*quoting Howard v. State*, 106 Nev.
10 713, 722, 800 P.2d 175, 180 (1990)).

11 DISCUSSION

12 The two remaining claims for relief proffered by the Petitioner involve the foundational
13 claim that counsel at trial was ineffective for failing to object to the prosecutor allegedly breaching
14 the plea agreement at the time of sentencing. The second claim is that counsel was ineffective
15 because they failed to raise the breach of the plea agreement on appeal. As noted, the foundation of
16 both claims arise from whether the prosecutor breached the plea agreement during sentencing.
17 Upon review of the record, and after hearing oral arguments, this Court finds that the prosecutor did
18 not breach the plea agreement during the sentencing hearing. As such, the ineffective assistance of
19 counsel claim fails as there was nothing to object to at the time of sentencing, and thus nothing that
20 could have been appealed afterwards.

21 The parties in this case agreed to “stipulate to recommend at sentencing a term of
22 incarceration in the Nevada State Prison of 48-120 months on Count II, 28-72 months on Count IV,
23 and 48-120 months on Count VI and that all counts run concurrent to one another.” Motion, pg.
24 16:11-16 (*citing* GPM, p. 5). In sum, the parties agreed to recommend a sentence that would result
25 in the Petitioner serving 48-120 months in prison with all the counts running concurrently.

26 The Petitioner claimed in his supplemental petition that “once it became clear that Judge
27 Polaha was inclined to sentence more harshly than the State's recommendation, it became the State's
28 obligation to explain why the lower recommendation was appropriate...instead the State

1 aggressively continued to highlight aggravating factors, which in spite of the protestations of fealty
2 to the original recommendation, clearly was being used to justify a higher sentence.” *Supp.* pg.
3 7:22-26. Petitioner argued that the State proceeded to touch upon unnecessary facts that went
4 beyond the scope of the plea agreement which included “arguing against the recommendation
5 provided by Parole and Probation and scoffing at the psycho-sexual evaluation findings.” *Id.* pg.
6 8:1-2.

7 In his *Opposition*, Petitioner argues that “in determining whether the prosecution has
8 fulfilled its part of a plea bargain, the prosecution is held to the most meticulous standards of both
9 promise and performance.” *Kluttz v. Warden, Nev. State Prison*, 99 Nev. 681, 683 (1983). The
10 Court in *Kluttz* held that reversal is still required where the “spirit” of the agreement is violated. *Id.*
11 at 684. However, the Court finds that this argument is belied by the record and the totality of the
12 circumstances surrounding the arguments proffered by the State in the sentencing hearing. Neither
13 the agreement itself, nor its spirit were violated.

14 The Nevada Supreme Court has held that “a promise to recommend a sentence is not a
15 promise to stand silent.” *Sullivan v. State*, 115 Nev. 383, 389, 990 P.2d 1258, 1261 (1999). “Where
16 the state agrees to make a particular recommendation, the agreement, unlike an agreement to stand
17 silent or make no recommendation, does not by its terms restrict the state’s right to argue or present
18 facts in favor of the sentence recommendation.” *Id.* (emphasis added). However, a prosecutor “must
19 refrain from either explicitly or implicitly repudiating the agreement.” *Id.* In *Sullivan*, the court held
20 that the State did not breach the plea negotiations where the prosecutor complied with the plea
21 agreement by recommending the agreed upon sentence and the prosecutor’s comments about
22 Sullivan’s “criminal record and the circumstances of the instant offenses were clearly intended to
23 support the sentencing recommendation that the state agreed to make.” 115 Nev. at 390, 990 P.2d at
24 1262.

25 Here, the PSI recommended a sentence “in an aggregate both for less on the front end and
26 more on the back end than [was] stipulated within the plea agreement.” Sentencing Transcript, p. 4,
27 PSI p. 9 (recommending a term of 12-48 months on Count II, 12-36 months on Count IV, and 12-48
28 months on Count VI, all run consecutively for an aggregate recommendation of 36-132 months).
Defense counsel argued that “the psychosexual evaluation found that the Petitioner was not a high

1 risk to reoffend and that he would otherwise been statutorily eligible for probation but for the
2 parties' recommendation." Sentencing Transcript, p. 4. Counsel also argued that the Petitioner did
3 not have any criminal history; that "he's a young man;" and "[t]here are a lot of factors that we
4 believe you should take into account in determining what the appropriate and just sentence is."
5 Sentencing Transcript, p. 5. Counsel added that the joint recommendation of the parties was just
6 "one of those factors...." *Id.*

7 By the time that the State was able to make its argument, the Court had reviewed the PSI
8 report and had heard from Defense Counsel that it should consider several mitigating factors that
9 could potentially result in a sentence lower than agreed to by both parties as a result of the
10 recommendation contained in the PSI. The State sought to provide some context and additional
11 information in support of the parties' joint recommendation. The State explicitly told the Court that
12 was the reason for the argument:

13 **THE COURT:** Counsel, let me ask, you're going to stick with the agreement that
14 you had.

15 **MR. GRAHAM:** I am, yes, your Honor.

16 **THE COURT:** All right.

17 **MR. GRAHAM:** Absolutely, I think 4 to 10 years on this case is an absolutely
18 appropriate sentence. The reason I was going to argue is because Parole and
19 Probation recommended less than that. And I wanted to provide the Court with
20 information to show why a 4- to 10-year sentence would be appropriate.

21 Sentencing Transcript, pp. 5-6 (emphasis added).

22 The Court then stated that "I'm inclined to go higher than that. So go ahead." Sentencing
23 Transcript, p. 6. The prosecutor immediately responded by saying:

24 Okay. Thank you. So the record is crystal clear, I'm not arguing for anything other
25 than the stipulated sentence in this case. But what I would like to let the Court
26 know is that this is not two teenagers having sex. This is a case where the
defendant was 23.

27 *Id.* (emphasis added). The prosecutor also concluded his remarks by again reminding the Court that
28 "I think that the defendant's -- the proper and just sentence in this case would be the 4 to 10 years
that the parties have stipulated to." Sentencing Transcript, p. 15.

1 This record clearly shows that the State argued only to support the agreed upon sentencing
2 recommendation. The State argued as such because of a lower recommendation from the PSI report,
3 and Defense counsels' subsequent arguments. The Court finds that the State clearly stayed within
4 the bounds of the plea agreement. The State repeatedly expressed that it was not asking for any
5 sentence other than what the parties had agreed to recommend and provided factual information in
6 support of the agreed upon sentence after the Court had reviewed a different, lower
7 recommendation, and an implicit request from defense counsel to consider imposing something
8 other than the agreed upon sentence.

9 As a result, the prosecutor did not violate the terms or spirit of the plea agreement, and
10 counsel was not ineffective for failing to object. The record thus belies the Petitioner's claim that
11 the State breached the plea agreement and does not show that he would be entitled to any relief. As
12 such, this Court finds that counsel was not ineffective for failing to object to the sentencing
13 arguments made by the State, and this said counsel cannot be deemed ineffective for failing to argue
14 such a breach on appeal as there was nothing to appeal.

15 **CONCLUSION**

16 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that the State's
17 *Motion to Dismiss in Part* is GRANTED.

18 DATED this 4th day of November 2021.

19 
20 _____
21 DISTRICT JUDGE
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 4th day of November, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

[NONE]

Further, I certify that on the 4th day of November, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

KRISTA MEIER, ESQ.

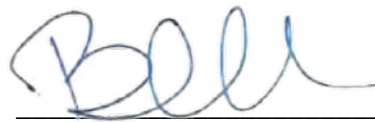
ORRIN JOHNSON, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)

KEVIN NAUGHTON, ESQ. for STATE OF NEVADA

NICKOLAS GRAHAM, ESQ. for STATE OF NEVADA

DIV. OF PAROLE & PROBATION

MARC PICKER, ESQ. for LUIGI RICHARD LOPEZ-DELGADO (TN)



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-10 10:45:12.107.
MARC PICKER, ESQ. - Notification received on 2021-12-10 10:45:12.018.
KRISTA MEIER, ESQ. - Notification received on 2021-12-10 10:45:12.187.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-10 10:45:12.16.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-10 10:45:12.133.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-10 10:45:12.078.
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-10-2021:10:44:07

Clerk Accepted:

12-10-2021:10:44:44

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk JBye

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NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

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Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-14 08:45:50.15.
MARC PICKER, ESQ. - Notification received on 2021-12-14 08:45:50.056.
KRISTA MEIER, ESQ. - Notification received on 2021-12-14 08:45:50.244.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-14 08:45:50.212.
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DIV. OF PAROLE & PROBATION - Notification received on 2021-12-14 08:45:50.12.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-14 08:45:50.089.

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-13-2021:19:56:59

Clerk Accepted:

12-14-2021:08:45:19

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

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Krista D. Meier

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ORRIN JOHNSON, ESQ. for LUIGI RICHARD
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The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

LUIGY RICHARD LOPEZ-DELGADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 83885
District Court Case No. CR181654

RECEIPT FOR DOCUMENTS

TO: Luigi Richard Lopez-Delgado
Washoe County District Attorney \ Jennifer P. Noble
Alicia L. Lerud, Washoe District Court Clerk ✓

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

12/09/2021 Appeal Filing Fee waived. Criminal. (SC)

12/09/2021 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day. (SC)

DATE: December 09, 2021

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-14 12:14:30.664.
MARC PICKER, ESQ. - Notification received on 2021-12-14 12:14:30.581.
KRISTA MEIER, ESQ. - Notification received on 2021-12-14 12:14:30.743.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-14 12:14:30.717.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-14 12:14:30.69.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-14 12:14:30.637.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-14 12:14:30.609.

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-14-2021:12:13:27

Clerk Accepted:

12-14-2021:12:13:59

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk AZamora

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NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

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

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

vs.

Case No. CR18-1654

STATE OF NEVADA,

Dept. No. 9

Respondent.
-----/

ORDER APPROVING ATTORNEY'S FEES
(Post-Conviction)

Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby confirmed, approved and adopted as to the amount of \$980.00. This amount may not be the same as the Administrator's recommendation. Counsel is notified that he may request a prove-up hearing for any non-approved amounts before the Chief Judge of the District.

Counsel, Orrin J.H. Johnson, shall be reimbursed by the State of Nevada Public Defender's Office attorney fees in the amount of \$980.00.

DATED this 16th day of December, 2021.



CHIEF DISTRICT JUDGE

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-15 12:15:26.688.
MARC PICKER, ESQ. - Notification received on 2021-12-15 12:15:26.591.
KRISTA MEIER, ESQ. - Notification received on 2021-12-15 12:15:26.805.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-15 12:15:26.777.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-15 12:15:26.724.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-15 12:15:26.652.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-15 12:15:26.621.

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

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-15-2021:12:14:15

Clerk Accepted:

12-15-2021:12:14:53

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord Approving

Filed By:

Judicial Asst. BWard

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NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

LUIGY RICHARD LOPEZ-DELGADO,

Petitioner,

vs.

Case No. CR18-1654

STATE OF NEVADA,

Dept. No. 9

Respondent.
-----/

AMENDED ORDER APPROVING ATTORNEY'S FEES
(Post-Conviction)

Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby confirmed, approved and adopted as to the amount of \$980.00. This amount may not be the same as the Administrator's recommendation. Counsel is notified that he may request a prove-up hearing for any non-approved amounts before the Chief Judge of the District.

Counsel, Orrin J.H. Johnson, shall be reimbursed by the State of Nevada Public Defender's Office attorney fees in the amount of \$980.00.

DATED this 15th day of December, 2021.



CHIEF DISTRICT JUDGE

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-15 13:21:50.334.
MARC PICKER, ESQ. - Notification received on 2021-12-15 13:21:50.235.
KRISTA MEIER, ESQ. - Notification received on 2021-12-15 13:21:50.434.
ORRIN JOHNSON, ESQ. - Notification received on 2021-12-15 13:21:50.4.
KEVIN NAUGHTON, ESQ. - Notification received on 2021-12-15 13:21:50.367.
DIV. OF PAROLE & PROBATION - Notification received on 2021-12-15 13:21:50.302.
NICKOLAS GRAHAM, ESQ. - Notification received on 2021-12-15 13:21:50.269.

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-15-2021:13:20:35

Clerk Accepted:

12-15-2021:13:21:16

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Amended Ord and/or Judgment

Filed By:

Judicial Asst. BWard

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NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
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JENNIFER NOBLE, ESQ. - Notification received on 2022-01-04 10:35:04.108.
MARC PICKER, ESQ. - Notification received on 2022-01-04 10:35:04.007.
KRISTA MEIER, ESQ. - Notification received on 2022-01-04 10:35:04.479.
ORRIN JOHNSON, ESQ. - Notification received on 2022-01-04 10:35:04.176.
KEVIN NAUGHTON, ESQ. - Notification received on 2022-01-04 10:35:04.141.
DIV. OF PAROLE & PROBATION - Notification received on 2022-01-04 10:35:04.074.
NICKOLAS GRAHAM, ESQ. - Notification received on 2022-01-04 10:35:04.042.

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

01-04-2022:10:16:41

Clerk Accepted:

01-04-2022:10:34:16

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Orrin Jeffrey Harris Johnson

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NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
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JENNIFER NOBLE, ESQ. - Notification received on 2022-01-12 08:45:52.083.
MARC PICKER, ESQ. - Notification received on 2022-01-12 08:45:51.664.
KRISTA MEIER, ESQ. - Notification received on 2022-01-12 08:45:52.208.
ORRIN JOHNSON, ESQ. - Notification received on 2022-01-12 08:45:52.178.
KEVIN NAUGHTON, ESQ. - Notification received on 2022-01-12 08:45:52.113.
DIV. OF PAROLE & PROBATION - Notification received on 2022-01-12 08:45:52.053.
NICKOLAS GRAHAM, ESQ. - Notification received on 2022-01-12 08:45:52.019.

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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

01-11-2022:20:06:36

Clerk Accepted:

01-12-2022:08:45:19

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Notice

Filed By:

Krista D. Meier

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1 CODE NO. 2777
2
3
4

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

8 LUIGY RICHARD LOPEZ-DELGADO,

9 Petitioner,

10 vs.

Case No. CR18-1654

11 STATE OF NEVADA,

Dept. No. 9

12 Respondent.
13 -----/

14 **ORDER APPROVING ATTORNEY'S FEES**
(Post-Conviction)

15 Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second
16 Judicial District Court's Model Plan to address ADKT 411, good cause appearing and
17 in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the
18 Administrator are hereby confirmed, approved and adopted as to the amount of
19 \$528.04. This amount may not be the same as the Administrator's recommendation.
20 Counsel is notified that he may request a prove-up hearing for any non-approved
21 amounts before the Chief Judge of the District.

22 Counsel, Orrin J.H. Johnson, shall be reimbursed by the State of Nevada Public
23 Defender's Office attorney fees in the amount of \$528.04.

24 DATED this 17th day of January, 2022.

25 
26 CHIEF DISTRICT JUDGE

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2022-01-18 08:22:35.014.
MARC PICKER, ESQ. - Notification received on 2022-01-18 08:22:34.919.
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ORRIN JOHNSON, ESQ. - Notification received on 2022-01-18 08:22:35.073.
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A filing has been submitted to the court RE: CR18-1654

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

01-18-2022:08:21:12

Clerk Accepted:

01-18-2022:08:21:59

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUIGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Ord Approving

Filed By:

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DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIGY RICHARD LOPEZ-DELGADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83885

FILED

JAN 21 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER DIRECTING TRANSMISSION OF RECORD
AND REGARDING BRIEFING*

Having reviewed the documents on file in this pro se appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order 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 include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g). Respondent need not file a response to any brief filed by appellant, unless ordered to do so by this court. NRAP

46A(c). This court generally will not grant relief without providing an opportunity to file a response. *Id.*

It is so ORDERED.

, C.J.

cc: Luigi Richard Lopez-Delgado
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2022-01-25 15:23:48.809.
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Judge:

HONORABLE SCOTT N. FREEMAN

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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS LUGY RICHARD LOPEZ-DELGADO
(TN)(D9)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

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NEVADA

DIV. OF PAROLE & PROBATION

ORRIN JOHNSON, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

MARC P. PICKER, ESQ. for LUIGI RICHARD
LOPEZ-DELGADO (TN)

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