

Electronically Filed
May 11 2021 01:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS

RESCH LAW, PLLC d/b/a Conviction Solutions

By: Jamie J. Resch

Nevada Bar Number 7154

2620 Regatta Dr., Suite 102

Las Vegas, Nevada, 89128

Telephone (702) 483-7360

Facsimile (800) 481-7113

Jresch@convictionsolutions.com

Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

APRIL PARKS,

Petitioner,

vs.

DWIGHT NEVEN, WARDEN, AND, THE STATE OF
NEVADA,

Respondents.

Case No.: A-19-807564-W

Dept. No: X

NOTICE OF APPEAL

Date of Hearing: N/A

Time of Hearing: N/A

Petitioner April Parks hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law, and Order Denying Petitioner Parks' Petition for Writ of Habeas Corpus (Post-Conviction) filed on April 12, 2021.

DATED this 4th day of May, 2021.

Submitted By:

RESCH LAW, PLLC d/b/a Conviction Solutions

By: 

JAMIE J. RESCH

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Resch Law, PLLC d/b/a Conviction Solutions and that, pursuant to N.R.C.P. 5(b), on May 4, 2021, I served a true and correct copy of the foregoing Notice of Appeal via first class mail in envelopes addressed to:

April Parks #1210454
Florence McClure Wm. Corr. Ctr.
4370 Smiley Rd.
Las Vegas, NV 89115

Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

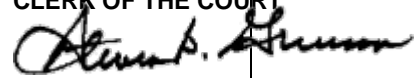
And electronic service was made this 4th day of May, 2021, by Electronic Filing Service to:

Clark County District Attorney's Office
Motions@clarkcountyda.com
PDmotions@clarkcountyda.com

Nevada Attorney General's Office
Mbongard@ag.nv.gov



An Employee of Conviction Solutions



ASTA

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Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

APRIL PARKS,

Petitioner,

vs.

DWIGHT NEVEN, WARDEN, AND, THE STATE OF
NEVADA,

Respondents.

Case No.: A-19-807564-W

Dept. No: X

CASE APPEAL STATEMENT

Date of Hearing: N/A

Time of Hearing: N/A

1. Name of appellant filing this case appeal statement: **April Parks.**
2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable Tierra Jones
Department X
Eighth Judicial District Court
200 Lewis Ave.
Las Vegas, NV 89155
3. Identify each appellant and the name and address of counsel for each appellant:

April Parks, Appellant, represented by:
Jamie J. Resch, Esq.
Nevada Bar No. 7154
Resch Law, PLLC d/b/a Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, NV 89128

4. Identify each respondent and the name and address of appellate counsel:

The State of Nevada, Respondent, represented by:

Steven Wolfson, Esq.
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

Aaron Ford, Esq.
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701

5. Indicate whether any attorney identified in response to question 3 or 4 is not licensed to practice law in Nevada. **All counsel stated above are licensed in Nevada.**
6. Indicate whether appellant was represented by appointed or retained counsel in district court: **Retained.**
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: **Retained.**
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: **N/A.**
9. Indicate the date proceedings commenced in the district court: **Indictment filed March 8, 2017.**
10. Provide a brief description of the nature of the action and the result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: **On March 8, 2017, Parks was indicted on some 270 felony counts of theft, perjury and related offenses. She accepted a plea deal and pled pursuant to Alford to five felonies. On January 4, 2019, she was sentenced to an aggregate term of 192 to 480 months in state prison. No direct appeal was filed. On December 27, 2019, Parks filed a petition for writ of habeas corpus.**

The District Court denied relief on the petition after an evidentiary hearing in an order dated April 12, 2021.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: **None known.**

12. Indicate whether this appeal involves child custody or visitation: **N/A.**

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: **N/A.**

DATED this 4th day of May, 2021.

Submitted By:

RESCH LAW, PLLC d/b/a Conviction Solutions

By: 
JAMIE J. RESCH
Attorney for Petitioner

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the foregoing Case Appeal Statement was made this 4th day of May, 2021, by Electronic Filing Service to:

Clark County District Attorney's Office

Motions@clarkcountyda.com

PDmotions@clarkcountyda.com

Nevada Attorney General's Office

Mbongard@ag.nv.gov



An Employee of Conviction Solutions

CASE SUMMARY

CASE NO. A-19-807564-W

April Parks, Plaintiff(s)
vs.
Dwight Neven, Defendant(s)

§
§
§
§
§

Location: **Department 10**
 Judicial Officer: **Jones, Tierra**
 Filed on: **12/27/2019**
 Case Number History:
 Cross-Reference Case Number: **A807564**

CASE INFORMATION

Related Cases

C-17-321808-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

04/12/2021 Other Manner of Disposition

Case Status: **04/12/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-807564-W
 Court Department 10
 Date Assigned 09/22/2020
 Judicial Officer Jones, Tierra

PARTY INFORMATION






		<i>Lead Attorneys</i>
Plaintiff	Parks, April	Resch, Jamie J. <i>Retained</i> 702-483-7360(W)
Defendant	Neven, Dwight	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)
	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

12/27/2019	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Parks, April <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i>
01/02/2020	 Motion for Order Filed By: Plaintiff Parks, April <i>Petitioner's Motion for Order Setting Schedule for Filing of Supplemental Petition</i>
01/02/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/03/2020	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
01/14/2020	 Ex Parte Order Filed By: Plaintiff Parks, April

CASE SUMMARY
CASE NO. A-19-807564-W

Ex Parte Order for Investigative Fees

09/30/2020



Supplemental

Filed by: Plaintiff Parks, April
Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)

09/30/2020



Exhibits

Filed By: Plaintiff Parks, April
Petitioner's Exhibits in Support of Supplement to Post-Conviction Writ of Habeas Corpus

12/31/2020



Answer

Filed By: Defendant Neven, Dwight; Defendant State of Nevada
Answer to Post -Conviction Petition for Writ of Habeas Corpus

01/25/2021



Reply

Filed by: Plaintiff Parks, April
Reply to State's Response to Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)

03/06/2021



Order

Transport Order

03/20/2021



Response

State's Response to Petitioner's Post-Conviction Petition for Writ of Habeas Corpus and Supplemental Petition for Writ of Habeas Corpus

03/23/2021



Ex Parte Order

Filed By: Plaintiff Parks, April
Ex Parte Order for Transcripts at State Expense After Evidentiary Hearing

04/12/2021



Order

Order Denying Petition for Writ of Habeas Corpus

04/13/2021



Transcript of Proceedings

Party: Plaintiff Parks, April
Recorder's Transcript of Proceedings re Evidentiary Hearing - Thursday, March 18, 2021

04/15/2021



Notice of Entry of Order

Filed By: Defendant State of Nevada
Notice of Entry of Order

04/22/2021



Transcript of Proceedings

Party: Plaintiff Parks, April
Recorder's Transcript of Proceedings re Writ of Habeas Corpus - Monday, February 22, 2021

05/04/2021



Notice of Appeal (Criminal)

Party: Plaintiff Parks, April
Notice of Appeal

05/04/2021







Case Appeal Statement

Filed By: Plaintiff Parks, April
Case Appeal Statement

HEARINGS

CASE SUMMARY

CASE NO. A-19-807564-W

02/11/2020	CANCELED Motion for Order (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated - Set in Error</i> <i>Petitioner's Motion for Order Setting Schedule for Filing of Supplemental Petition</i>
02/19/2020	Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Jones, Tierra) Matter Continued;
02/19/2020	Motion for Order (8:30 AM) (Judicial Officer: Jones, Tierra) <i>Petitioner's Motion for Order Setting Schedule for Filing of Supplemental Petition</i> Motion Granted; Petitioner's Motion for Order Setting Schedule for Filing of Supplemental Petition
02/19/2020	 All Pending Motions (8:30 AM) (Judicial Officer: Jones, Tierra) Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS...PETITIONER'S MOTION FOR ORDER SETTING SCHEDULE FOR FILING OF SUPPLEMENTAL PETITION Mr. Resch requested additional time to supplement briefing. There being no opposition, COURT ORDERED, Motion GRANTED. Supplemental Briefing DUE 9/30/20; State's Response DUE 12/31/20; Reply DUE 1/29/21 and hearing SET thereafter. 2/8/21 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS;</i>
02/08/2021	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Jones, Tierra) 02/08/2021, 02/22/2021 Matter Continued; Denied in Part; Journal Entry Details: <i>Arguments by counsel. Court accepted the Attorney Generals response on behalf of the State of Nevada. Following further arguments by counsel, Court stated its findings and ORDERED, petition DENIED as to grounds one and two. Court noted an evidentiary hearing is needed in regards to ground three. Court advised the Departments Judicial Executive Assistant will reach out to parties for scheduling of the evidentiary hearing. Counsel to arrange for Mr. Goldstein to be present for that hearing. ;</i> Matter Continued; Denied in Part; Journal Entry Details: <i>Court noted it was unable to finish reviewing the briefing and doesn't believe it's fair to hear arguments without having fully reviewed briefing. Upon Court's inquiry, Mr. Bongard had no objection to a continuance. Mr. Resch requested matter be continued for 45-60 days, as in response to ground 2 the State cited the Gonzalez case, which was vacated. Further, Mr. Resch indicated it was just argued to the Supreme Court and it might benefit this case to see what the decision is in that matter. Upon Court's inquiry, Mr. Bongard stated it will also be a close call whether or not the Court will want an Evidentiary Hearing on ground 3, therefore, based upon that maybe the arguments should be sooner, then conduct an Evidentiary Hearing, and after allow a chance for arguments or briefing and by that time decision he believes a decision on Gonzales would be out. Colloquy regarding parties availability. COURT ORDERED matter CONTINUED. CONTINUED TO: 02/22/2021 08:30 AM;</i>
03/18/2021	 Evidentiary Hearing (1:30 PM) (Judicial Officer: Jones, Tierra) Matter Heard; Journal Entry Details: <i>APPEARANCES CONTINUED: Parties present via video, through Bluejeans technology. Court noted this matter is on for the limited issue of whether or not deft. was denied her right to appeal. Mr. Resch advised he submitted the evidence electronically. Court so noted. Upon Court's inquiry, Deft. Waived the Attorney Client Privilege. Hearing held. Testimony and exhibits presented. (See worksheets). Following arguments, COURT ORDERED, a Decision will issue. NDC;</i>
03/29/2021	 Minute Order (3:15 PM) (Judicial Officer: Jones, Tierra) Minute Order - No Hearing Held; Journal Entry Details:

CASE SUMMARY

CASE NO. A-19-807564-W

Following review of the papers and pleadings on file herein, COURT ORDERED, Defendant's Petition for Writ of Habeas Corpus is DENIED. In Toston, the Nevada Supreme Court found that trial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so, and when the defendant expresses dissatisfaction with his conviction. *Toston v. State*, 127 Nev. 971 (2011). The court expressly acknowledged the potential for mischief with the second circumstance requiring trial counsel to file a direct appeal. *Id.* at 978. The Court went on to reason that the goal is to discern those clients who truly desire to appeal their conviction from those who are disappointed with their lot. *Id.* at 979. The Court further found that this is particularly important given that the burden is on the client to indicate to his attorney that he wishes to pursue an appeal. *Id.* The Court went on to state that trial counsel has a duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing on the information that counsel knew or should have known at the time. *Id.* Here, the testimony from Petitioner and Mr. Goldstein was that there was a discussion regarding how to proceed, at the jail, shortly after sentencing. Mr. Goldstein testified that the Petitioner never asked him to file an appeal, and Petitioner testified that she assumed she used the word appeal. Petitioner's request was then placed in writing when she wrote a letter to Mr. Goldstein inquiring about a sentence modification and again there was no mention of an appeal in said letter. Further, Exhibit 2 from the Evidentiary Hearing includes an open invitation for Petitioner to express any questions to Mr. Goldstein, and no follow-up was done from Petitioner after receipt of Exhibit 2. As such, Petitioner has failed to meet her burden of establishing that she indicated to her attorney that she wished to file an appeal. Further, taking the reasonable inference from the totality of the circumstances, Mr. Goldstein did not fail in his duties regarding filing a direct appeal. As such, Defendant's Petition for Writ of Habeas Corpus is DENIED. Defendant Dwight Nevin is ordered to file an Order consistent with the Court's findings within 10 days of receipt of this order. CLERK'S NOTE: The above minute order has been distributed to: MBongard@ag.nv.gov; 'jresch@convictionsolutions.com' hvp/3/29/21;

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-19-807564-W
Department 6

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
April Parks #1210454	Dwight Neven / State of Nevada
Florence McClure Wm. Corr. Ctr.	Florence McClure Wm. Corr. Ctr.
4370 Smiley Rd.	4370 Smiley Rd.
Las Vegas, NV 89115	Las Vegas, NV 89115
Attorney (name/address/phone):	Attorney (name/address/phone):
Jamie Resch	Steve Wolfson
Conviction Solutions	Clark County District Attorney
2620 Regatta Dr. #102	200 Lewis Ave.
Las Vegas, NV 89128	Las Vegas, NV 89155

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

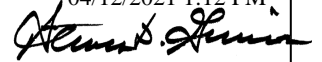
Business Court filings should be filed using the Business Court civil coversheet.

12-27-19

Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

ORDR
AARON D. FORD
Attorney General
MICHAEL J. BONGARD (Bar No. 007997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
1539 Avenue F, Suite 2
Ely, NV 89301
(775)289-1632 (phone)
(775)289-1653 (fax)
MBongard@ag.nv.gov
Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY NEVADA

APRIL PARKS,

Petitioner,

vs.

DWIGHT NEVEN,

Respondents.

Case No.: A-19-807564-W
Department X

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

On June 8, 2020, the matter came before the Court for an evidentiary hearing on Petitioner April Parks' Ground Three Claim-whether her trial counsel was ineffective for failing to file a notice of appeal. Petitioner appeared via Bluejeans from the Clark County Detention Center. Parks' Counsel, Jamie Resch, Esq., appeared via Bluejeans. Senior Deputy Attorney General Michael Bongard and Deputy District Attorney Jay Raman appeared via Bluejeans for Respondents. Parks and her trial counsel, Anthony M. Goldstein testified.

The Court summarizes the record in this case, and makes the following findings:

PETITIONER'S CONVICTION AND SENTENCE

The State charged Parks and her co-defendants with multiple counts, including theft, exploitation of an older/vulnerable person, and perjury in Eighth Judicial District Court Case Numbers C-17-321808-1 and C-18-329886-2. Parks entered into a plea agreement which called for her entering *Alford*¹ pleas to 2 counts

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

1 of exploitation of an older/vulnerable person, 2 counts of theft, and 1 count of perjury in C-17-321808-1 and
2 a single counsel of exploitation of an older/vulnerable person in C-18-329886-2. The plea agreement stated
3 that the sentences in the two cases would run concurrent to each other. The plea agreement also stated that
4 Parks rejected a stipulated sentence of 8 to 20 years—permitting the State to argue for a sentence higher than
5 the stipulated sentence.

6 Parks appeared with her attorney, Anthony Goldstein and entered her plea on October 5, 2018. After
7 determining that Parks had no questions after entering her plea, the Court found that Parks' plea was freely
8 and voluntarily entered. The Court set sentencing for January 4, 2019. The parties submitted sentencing
9 memorandums prior to the hearing.

10 On January 4, 2019, after the parties and several victims addressed the Court, the Court imposed an
11 aggregated sentence of a maximum term of 480 months and a minimum term of 192 months, and restitution
12 of \$559,205.32.

13 On January 30, 2019, the attorneys appeared before the Court regarding the restitution amount. An
14 amended judgment of conviction was filed on February 4, 2019, adjusting the restitution to \$554,397.71,
15 because a victim was listed twice. Parks did not file a notice of appeal.

16 **PETITIONER'S POST-CONVICTION PROCEEDINGS**

17 On December 27, 2019, Parks filed her initial counseled petition for writ of habeas corpus. Parks
18 filed a supplemental petition on September 30, 2020. Respondents filed their answer on December 31, 2020.
19 Parks filed her reply on January 25, 2021. The Court originally set the matter for a hearing on February 8,
20 2021, but continued the matter until February 22, 2021 in order to give the Court additional time to review
21 the briefing. On February 22, 2021, after hearing argument from counsel, denied Grounds 1 and 2 of the
22 petition and set an evidentiary hearing for Ground 3.

23 On March 18, 2021, the parties appeared via Bluejeans for an evidentiary hearing. After hearing
24 testimony from Ms. Parks and Anthony Goldstein, the Court took the matter under advisement. On March
25 29, 2021, the Court issued a minute order setting forth findings of fact and conclusions of law and denying
26 Ground 3.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient in that it (1) fell below an objective standard of reasonableness, and (2) resulted in prejudice such that there is a reasonable probability that, but for counsel's error, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. A petitioner must demonstrate the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Strickland applies to claims of ineffective assistance of counsel during the plea process. *Lafler v. Cooper*, 566 U.S. 156 (2012). In order to demonstrate that her trial counsel was ineffective, Parks must demonstrate (1) that counsel gave her constitutionally deficient advice; and (2) that she suffered prejudice as a result of following the advice. *Lafler*, 566 U.S. at 164.

The two-part test in *Strickland* also applies when a defendant alleges trial counsel was ineffective during sentencing. *Glover v. United States*, 531 U.S. 192, 203 (2001).

In *Toston v. State*, 127 Nev. 971, 267 P.3d 795 (2011), the Nevada Supreme Court addressed trial counsel's duty to advise a defendant about the right to a direct appeal. The Court found that when a conviction stems from a guilty plea, counsel is not constitutionally required to inform a defendant of the right to appeal "absent the defendant's inquiry about the right to appeal or the existence of a direct appeal claim that has a reasonable likelihood of success." *Id.*, at 973-74, 267 P.3d at 797. The Court in *Toston* found "[t]he burden is on the client to indicate to his attorney that he wishes to Pursue and appeal." *Id.*, at 979, 267 P.3d at 801, citing *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

Addressing Ground 1, the Court finds that in the written plea agreement Parks specifically rejected the stipulated sentence of 8-20 years. This rejection permitted the State to argue for a sentence in excess of the stipulated sentence.

Additionally, the Court finds that during the plea canvass, Parks specifically acknowledged that she rejected the stipulated sentence and understood that the State was free to argue for more than the stipulated sentence.

///

1 Finally, the record contains no evidence of constitutionally deficient advice by trial counsel that
2 Parks relied on to her detriment. *Lafler*, 566 U.S. at 164.

3 After reviewing the record from the sentencing hearing, the Court likewise denied Ground 2 without
4 an evidentiary hearing. The Court concludes that Parks was not prejudiced by any allegations that trial
5 counsel failed to object to allegedly improper argument or comments by the victims that addressed the Court.
6 The Court specifically rejected the arguments that Parks presented in her presentence memorandum, and
7 further finds that the seriousness of the allegations against Parks, rather than any allegedly improper
8 argument by the State or inappropriate comments by victims, merited the sentence imposed by the Court.
9 The Court when imposing sentence specifically rejected the recommendation in the Presentence
10 Investigation Report and imposed what the Court found was an appropriate sentence.

11 After hearing from both Petitioner and Mr. Goldstein at the evidentiary hearing, the Court finds that
12 there was a discussion between Petitioner and Mr. Goldstein on how to proceed after sentencing. Petitioner
13 testified that she assumed that she asked Goldstein to appeal. Mr. Goldstein testified that Petitioner never
14 asked him to file an appeal. After the meeting, Petitioner made a written request to Mr. Goldstein about seeking
15 a sentence modification, never mentioning or using the word appeal. Mr. Goldstein responded in writing to
16 Petitioner's letter. Mr. Goldstein's letter presents his summary of the discussion that took place and invites
17 Petitioner to address any further questions. The Court finds that Petitioner never replied to Mr. Goldstein's
18 letter.

19 The Court concludes that based upon the totality of the circumstances, the testimony at the
20 evidentiary hearing reflects that Mr. Goldstein complied with his constitutional duty to discuss Petitioner's
21 options after the imposition of sentence. The Court further finds that Mr. Goldstein did not fail to file a direct
22 appeal on behalf of petitioner.

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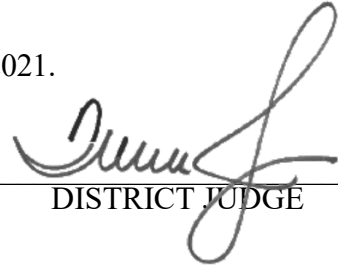
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1 Based upon the pleadings submitted in this case, the record, and the testimony and evidence from
2 the evidentiary hearing in this matter;

3 **IT IS THE ORDER OF THE COURT**, the Petitioner for Writ of Habeas Corpus in this matter is
4 **DENIED.** Dated this 12th day of April, 2021

5 DATED this _____ day of _____, 2021.

6 
7 _____
8 DISTRICT JUDGE

9 A28 692 DD9C 5EBC
10 Tierra Jones
11 District Court Judge

12
13 Submitted by:

14 /s/Michael J. Bongard
15 Senior Deputy Attorney General
16 Counsel for Respondents

17 Approved via Email 04/09/21

18 /s/ Jamie Resch
19 Jamie Resch, Esq.
20 Counsel for April Parks
21
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 April Parks, Plaintiff(s)

CASE NO: A-19-807564-W

7 vs.

DEPT. NO. Department 10

8 Dwight Neven, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/12/2021

15 Jamie Resch

jresch@convictionsolutions.com

16 Marsha Landreth

mlandreth@ag.nv.gov

17 Michael Bongard

mbongard@ag.nv.gov

18 Rikki Garate

rgarate@ag.nv.gov

19 Clark County DA

Motions@clarkcountyda.com

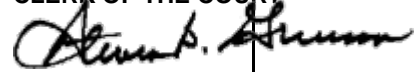
20 Clark County DA

PDmotions@clarkcountyda.com

21 Michael Bongard

mbongard@ag.nv.gov

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23
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25
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27
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NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

APRIL PARKS,

Petitioner,

Case No: A-19-807564-W

Dept. No: X

vs.

DWIGHT NEVEN; ET.AL.,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on April 12, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 15, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 15 day of April 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

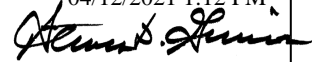
☒ The United States mail addressed as follows:

April Parks # 1210454
4370 Smiley Rd.
Las Vegas, NV 89115

Jamie J. Resch, Esq.
2620 Regatta Dr., Ste 102
Las Vegas, NV 89128

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk


CLERK OF THE COURT

ORDR
AARON D. FORD
Attorney General
MICHAEL J. BONGARD (Bar No. 007997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
1539 Avenue F, Suite 2
Ely, NV 89301
(775)289-1632 (phone)
(775)289-1653 (fax)
MBongard@ag.nv.gov
Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY NEVADA

APRIL PARKS,

Petitioner,

vs.

DWIGHT NEVEN,

Respondents.

Case No.: A-19-807564-W
Department X

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

On June 8, 2020, the matter came before the Court for an evidentiary hearing on Petitioner April Parks' Ground Three Claim-whether her trial counsel was ineffective for failing to file a notice of appeal. Petitioner appeared via Bluejeans from the Clark County Detention Center. Parks' Counsel, Jamie Resch, Esq., appeared via Bluejeans. Senior Deputy Attorney General Michael Bongard and Deputy District Attorney Jay Raman appeared via Bluejeans for Respondents. Parks and her trial counsel, Anthony M. Goldstein testified.

The Court summarizes the record in this case, and makes the following findings:

PETITIONER'S CONVICTION AND SENTENCE

The State charged Parks and her co-defendants with multiple counts, including theft, exploitation of an older/vulnerable person, and perjury in Eighth Judicial District Court Case Numbers C-17-321808-1 and C-18-329886-2. Parks entered into a plea agreement which called for her entering *Alford*¹ pleas to 2 counts

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

1 of exploitation of an older/vulnerable person, 2 counts of theft, and 1 count of perjury in C-17-321808-1 and
2 a single counsel of exploitation of an older/vulnerable person in C-18-329886-2. The plea agreement stated
3 that the sentences in the two cases would run concurrent to each other. The plea agreement also stated that
4 Parks rejected a stipulated sentence of 8 to 20 years—permitting the State to argue for a sentence higher than
5 the stipulated sentence.

6 Parks appeared with her attorney, Anthony Goldstein and entered her plea on October 5, 2018. After
7 determining that Parks had no questions after entering her plea, the Court found that Parks' plea was freely
8 and voluntarily entered. The Court set sentencing for January 4, 2019. The parties submitted sentencing
9 memorandums prior to the hearing.

10 On January 4, 2019, after the parties and several victims addressed the Court, the Court imposed an
11 aggregated sentence of a maximum term of 480 months and a minimum term of 192 months, and restitution
12 of \$559,205.32.

13 On January 30, 2019, the attorneys appeared before the Court regarding the restitution amount. An
14 amended judgment of conviction was filed on February 4, 2019, adjusting the restitution to \$554,397.71,
15 because a victim was listed twice. Parks did not file a notice of appeal.

16 **PETITIONER'S POST-CONVICTION PROCEEDINGS**

17 On December 27, 2019, Parks filed her initial counseled petition for writ of habeas corpus. Parks
18 filed a supplemental petition on September 30, 2020. Respondents filed their answer on December 31, 2020.
19 Parks filed her reply on January 25, 2021. The Court originally set the matter for a hearing on February 8,
20 2021, but continued the matter until February 22, 2021 in order to give the Court additional time to review
21 the briefing. On February 22, 2021, after hearing argument from counsel, denied Grounds 1 and 2 of the
22 petition and set an evidentiary hearing for Ground 3.

23 On March 18, 2021, the parties appeared via Bluejeans for an evidentiary hearing. After hearing
24 testimony from Ms. Parks and Anthony Goldstein, the Court took the matter under advisement. On March
25 29, 2021, the Court issued a minute order setting forth findings of fact and conclusions of law and denying
26 Ground 3.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient in that it (1) fell below an objective standard of reasonableness, and (2) resulted in prejudice such that there is a reasonable probability that, but for counsel's error, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. A petitioner must demonstrate the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Strickland applies to claims of ineffective assistance of counsel during the plea process. *Lafler v. Cooper*, 566 U.S. 156 (2012). In order to demonstrate that her trial counsel was ineffective, Parks must demonstrate (1) that counsel gave her constitutionally deficient advice; and (2) that she suffered prejudice as a result of following the advice. *Lafler*, 566 U.S. at 164.

The two-part test in *Strickland* also applies when a defendant alleges trial counsel was ineffective during sentencing. *Glover v. United States*, 531 U.S. 192, 203 (2001).

In *Toston v. State*, 127 Nev. 971, 267 P.3d 795 (2011), the Nevada Supreme Court addressed trial counsel's duty to advise a defendant about the right to a direct appeal. The Court found that when a conviction stems from a guilty plea, counsel is not constitutionally required to inform a defendant of the right to appeal "absent the defendant's inquiry about the right to appeal or the existence of a direct appeal claim that has a reasonable likelihood of success." *Id.*, at 973-74, 267 P.3d at 797. The Court in *Toston* found "[t]he burden is on the client to indicate to his attorney that he wishes to Pursue and appeal." *Id.*, at 979, 267 P.3d at 801, citing *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

Addressing Ground 1, the Court finds that in the written plea agreement Parks specifically rejected the stipulated sentence of 8-20 years. This rejection permitted the State to argue for a sentence in excess of the stipulated sentence.

Additionally, the Court finds that during the plea canvass, Parks specifically acknowledged that she rejected the stipulated sentence and understood that the State was free to argue for more than the stipulated sentence.

///

1 Finally, the record contains no evidence of constitutionally deficient advice by trial counsel that
2 Parks relied on to her detriment. *Lafler*, 566 U.S. at 164.

3 After reviewing the record from the sentencing hearing, the Court likewise denied Ground 2 without
4 an evidentiary hearing. The Court concludes that Parks was not prejudiced by any allegations that trial
5 counsel failed to object to allegedly improper argument or comments by the victims that addressed the Court.
6 The Court specifically rejected the arguments that Parks presented in her presentence memorandum, and
7 further finds that the seriousness of the allegations against Parks, rather than any allegedly improper
8 argument by the State or inappropriate comments by victims, merited the sentence imposed by the Court.
9 The Court when imposing sentence specifically rejected the recommendation in the Presentence
10 Investigation Report and imposed what the Court found was an appropriate sentence.

11 After hearing from both Petitioner and Mr. Goldstein at the evidentiary hearing, the Court finds that
12 there was a discussion between Petitioner and Mr. Goldstein on how to proceed after sentencing. Petitioner
13 testified that she assumed that she asked Goldstein to appeal. Mr. Goldstein testified that Petitioner never
14 asked him to file an appeal. After the meeting, Petitioner made a written request to Mr. Goldstein about seeking
15 a sentence modification, never mentioning or using the word appeal. Mr. Goldstein responded in writing to
16 Petitioner's letter. Mr. Goldstein's letter presents his summary of the discussion that took place and invites
17 Petitioner to address any further questions. The Court finds that Petitioner never replied to Mr. Goldstein's
18 letter.

19 The Court concludes that based upon the totality of the circumstances, the testimony at the
20 evidentiary hearing reflects that Mr. Goldstein complied with his constitutional duty to discuss Petitioner's
21 options after the imposition of sentence. The Court further finds that Mr. Goldstein did not fail to file a direct
22 appeal on behalf of petitioner.

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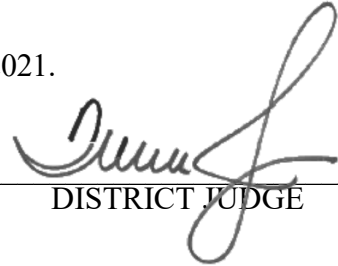
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1 Based upon the pleadings submitted in this case, the record, and the testimony and evidence from
2 the evidentiary hearing in this matter;

3 **IT IS THE ORDER OF THE COURT**, the Petitioner for Writ of Habeas Corpus in this matter is
4 **DENIED.** **Dated this 12th day of April, 2021**

5 DATED this _____ day of _____, 2021.

6 
7 _____
8 DISTRICT JUDGE

9 **A28 692 DD9C 5EBC**
10 **Tierra Jones**
11 **District Court Judge**

12
13 Submitted by:

14 /s/Michael J. Bongard
15 Senior Deputy Attorney General
16 Counsel for Respondents

17 Approved via Email 04/09/21

18 /s/ Jamie Resch
19 Jamie Resch, Esq.
20 Counsel for April Parks
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 April Parks, Plaintiff(s)

CASE NO: A-19-807564-W

7 vs.

DEPT. NO. Department 10

8 Dwight Neven, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/12/2021

15 Jamie Resch

jresch@convictionsolutions.com

16 Marsha Landreth

mlandreth@ag.nv.gov

17 Michael Bongard

mbongard@ag.nv.gov

18 Rikki Garate

rgarate@ag.nv.gov

19 Clark County DA

Motions@clarkcountyda.com

20 Clark County DA

PDmotions@clarkcountyda.com

21 Michael Bongard

mbongard@ag.nv.gov

22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 19, 2020

A-19-807564-W April Parks, Plaintiff(s)
vs.
Dwight Neven, Defendant(s)

February 19, 2020 8:30 AM All Pending Motions

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Louisa Garcia

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Resch, Jamie J. Attorney
 Westmeyer, Daniel Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...PETITIONER'S MOTION FOR ORDER SETTING SCHEDULE FOR FILING OF SUPPLEMENTAL PETITION

Mr. Resch requested additional time to supplement briefing. There being no opposition, COURT ORDERED, Motion GRANTED. Supplemental Briefing DUE 9/30/20; State's Response DUE 12/31/20; Reply DUE 1/29/21 and hearing SET thereafter.

2/8/21 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 08, 2021

A-19-807564-W April Parks, Plaintiff(s)
vs.
Dwight Neven, Defendant(s)

**February 08, 2021 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
Resch, Jamie J. Attorney

JOURNAL ENTRIES

- Court noted it was unable to finish reviewing the briefing and doesn't believe it's fair to hear arguments without having fully reviewed briefing. Upon Court's inquiry, Mr. Bongard had no objection to a continuance. Mr. Resch requested matter be continued for 45-60 days, as in response to ground 2 the State cited the Gonzalez case, which was vacated. Further, Mr. Resch indicated it was just argued to the Supreme Court and it might benefit this case to see what the decision is in that matter. Upon Court's inquiry, Mr. Bongard stated it will also be a close call whether or not the Court will want an Evidentiary Hearing on ground 3, therefore, based upon that maybe the arguments should be sooner, then conduct an Evidentiary Hearing, and after allow a chance for arguments or briefing and by that time decision he believes a decision on Gonzales would be out. Colloquy regarding parties availability. COURT ORDERED matter CONTINUED.

CONTINUED TO: 02/22/2021 08:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 22, 2021

A-19-807564-W	April Parks, Plaintiff(s)
	vs.
	Dwight Neven, Defendant(s)

February 22, 2021	8:30 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Jones, Tierra	COURTROOM: RJC Courtroom 14B
--------------------------------	-------------------------------------

COURT CLERK: Nylasia Packer

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Bongard, Michael J.	Attorney
	Resch, Jamie J.	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court accepted the Attorney Generals response on behalf of the State of Nevada. Following further arguments by counsel, Court stated its findings and ORDERED, petition DENIED as to grounds one and two. Court noted an evidentiary hearing is needed in regards to ground three. Court advised the Departments Judicial Executive Assistant will reach out to parties for scheduling of the evidentiary hearing. Counsel to arrange for Mr. Goldstein to be present for that hearing.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 18, 2021

A-19-807564-W April Parks, Plaintiff(s)
vs.
Dwight Neven, Defendant(s)

March 18, 2021 1:30 PM Evidentiary Hearing

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
Parks, April Plaintiff
Raman, Jay Attorney
Resch, Jamie J. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Parties present via video, through Bluejeans technology.

Court noted this matter is on for the limited issue of whether or not deft. was denied her right to appeal. Mr. Resch advised he submitted the evidence electronically. Court so noted. Upon Court's inquiry, Deft. Waived the Attorney Client Privilege. Hearing held. Testimony and exhibits presented. (See worksheets). Following arguments, COURT ORDERED, a Decision will issue.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****March 29, 2021**

A-19-807564-W April Parks, Plaintiff(s)
 vs.
 Dwight Neven, Defendant(s)

March 29, 2021 3:15 PM Minute Order

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, COURT ORDERED, Defendant s Petition for Writ of Habeas Corpus is DENIED. In Toston, the Nevada Supreme Court found that trial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so, and when the defendant expresses dissatisfaction with his conviction. Toston v. State, 127 Nev. 971 (2011). The court expressly acknowledged the potential for mischief with the second circumstance requiring trial counsel to file a direct appeal. Id. at 978. The Court went on to reason that the goal is to discern those clients who truly desire to appeal their conviction from those who are disappointed with their lot. Id. at 979. The Court further found that this is particularly important given that the burden is on the client to indicate to his attorney that he wishes to pursue an appeal. Id. The Court went on to state that trial counsel has a duty to file a direct appeal when the client s desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing on the information that counsel knew or should have known at the time. Id. Here, the testimony from Petitioner and Mr. Goldstein was that there was a discussion regarding how to proceed, at the jail, shortly after sentencing. Mr. Goldstein testified that the Petitioner never asked him to file an appeal, and Petitioner testified that she assumed she used the word appeal. Petitioner s request was then placed in writing when she wrote a letter to Mr. Goldstein inquiring about a sentence modification and again there was no mention of an appeal in said letter. Further, Exhibit 2 from the Evidentiary Hearing includes an open invitation for Petitioner to express any

questions to Mr. Goldstein, and no follow-up was done from Petitioner after receipt of Exhibit 2. As such, Petitioner has failed to meet her burden of establishing that she indicated to her attorney that she wished to file an appeal. Further, taking the reasonable inference from the totality of the circumstances, Mr. Goldstein did not fail in his duties regarding filing a direct appeal. As such, Defendant's Petition for Writ of Habeas Corpus is DENIED.

Defendant Dwight Nevin is ordered to file an Order consistent with the Court's findings within 10 days of receipt of this order.

CLERK'S NOTE: The above minute order has been distributed to:
MBongard@ag.nv.gov; 'jresch@convictionsolutions.com' hvp/3/29/21

CASE NO. A807564

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

APRIL PARKS,

Plaintiff(s),

vs.

DWIGHT NEVEN, WARDEN; THE STATE
OF NEVADA,

Defendant(s),

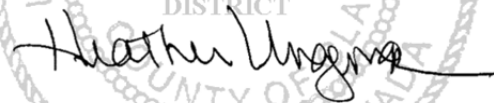
Case No: A-19-807564-W

Dept No: X

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 6 day of May 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk