

NOASC

JULIAN GREGORY, ESQ.
Nevada Bar No. 11978

LAW OFFICE OF JULIAN GREGORY, L.L.C.

411 South Sixth Street

Las Vegas, NV 89101

T: (702) 625-1183

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E: Julian@jglawlv.com

Attorney for Deshaun Lewis

Electronically Filed
Dec 20 2021 02:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DESHAUN JAMES LEWIS,

Petitioner,

Case No.

A-21-838960-W

Dep't No.

III

vs.

CALVIN JOHNSON, WARDEN; and THE STATE OF NE-
VADA,

Respondents.

NOTICE OF APPEAL

Notice is hereby given that Deshaun Lewis, by and through counsel Julian Gregory, appeals from the denial of the Petition for Writ of Habeas Corpus (Post-Conviction) in the above-entitled case.

DATED this 13 of December, 2021.

/s/ Julian Gregory

JULIAN GREGORY, ESQ.

LAW OFFICE OF JULIAN GREGORY, L.L.C.

Attorney for Deshaun Lewis

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CERTIFICATE OF SERVICE

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on December 13, 2021, I served the foregoing document and all attachments on the parties or counsel listed below:

Steven B. Wolfson
Clark County District Attorney's Office

Via e-mail
motions@clarkcountydak.com

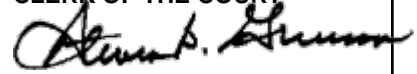
/s/ Julian Gregory
JULIAN GREGORY, ESQ.
LAW OFFICE OF JULIAN GREGORY, L.L.C.
Attorney for Deshaun Lewis

AFFIRMATION

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Julian Gregory
Julian Gregory, Esq.

12-13-21
Date



ASTA

JULIAN GREGORY, ESQ.
Nevada Bar No. 11978
LAW OFFICE OF JULIAN GREGORY, L.L.C.
411 South Sixth Street
Las Vegas, NV 89101
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E: Julian@jglawlv.com
Attorney for Deshaun Lewis

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DESHAUN JAMES LEWIS,

Petitioner,

vs.

CALVIN JOHNSON, WARDEN; and THE STATE OF
NEVADA,

Respondents.

Case No. A-21-838960-W
Dep't No. III

CASE APPEAL STATEMENT

- 1) Name of appellant filing this case appeal statement:** Deshaun Lewis
- 2) Identify the judge issuing the decision, judgment, or order appealed from:**
Monica Trujillo, Department III, Eighth Judicial District Court
- 3) Identify each appellant and the name and address of counsel for each appellant:** Appellant Deshaun Lewis; Counsel Julian Gregory, Law Office of Julian Gregory, 411 S. 6th St., Las Vegas, NV 89101
- 4) Identify each respondent and the name and address of appellate counsel for each:** Respondents Calvin Johnson and the State of Nevada, Counsel Steven B. Wolfson, Clark County District Attorney, 200 Lewis Ave., Las Vegas, NV 89155; Aaron D. Ford, Nevada State Attorney General, 100 N. Carson St., Carson City, NV 89701
- 5) Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):** No

- 1 **6) Indicate whether appellant was represented by appointed or retained**
2 **counsel in the district court:** Retained
- 3 **7) Indicate whether appellant is represented by appointed or retained counsel**
4 **on appeal:** Retained
- 5 **8) Indicate whether appellant was granted leave to proceed in forma pauperis,**
6 **and the date of entry of the district court order granting such leave:** No
- 7 **9) Indicate the date the proceedings commenced in the district court (e.g., date**
8 **complaint, indictment, information, or petition was filed):** 8/4/2021
- 9 **10) Provide a brief description of the nature of the action and result in the**
10 **district court, including the type of judgment or order being appealed and**
11 **the relief granted by the district court:** Post-conviction habeas petition filed
12 following convictions for (1) child abuse, neglect, or endangerment resulting in
13 substantial bodily harm; and (2) child abuse, neglect, or endangerment; denied by
14 district court, this appeal follows.
- 15 **11) Indicate whether the case has previously been the subject of an appeal to or**
16 **original writ proceeding in the Supreme Court and, if so, the caption and**
17 **Supreme Court docket number of the prior proceeding:** No
- 18 **12) Indicate whether this appeal involves child custody or visitation:** No
- 19 **13) If this is a civil case, indicate whether this appeal involves the possibility of**
20 **settlement:** N/A
- 21
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DATED this 13 of December, 2021.

/s/ Julian Gregory

JULIAN GREGORY, ESQ.

LAW OFFICE OF JULIAN GREGORY, L.L.C.

Attorney for Deshaun Lewis

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Clark County District Attorney's Office

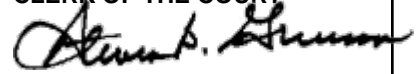
Via e-mail
motions@clarkcountydak.com

/s/ Julian Gregory
JULIAN GREGORY, ESQ.
LAW OFFICE OF JULIAN GREGORY, L.L.C.
Attorney for Deshaun Lewis

AFFIRMATION

Pursuant to NRS 239B.030, this document contains no social security numbers.

<u>/s/ Julian Gregory</u>	<u>12-13-21</u>
Julian Gregory, Esq.	Date



REQT

JULIAN GREGORY, ESQ.
Nevada Bar No. 11978
LAW OFFICE OF JULIAN GREGORY, L.L.C.
411 South Sixth Street
Las Vegas, NV 89101
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F: (702) 302-4286
E: Julian@jglawlv.com
Attorney for Deshaun Lewis

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DESHAUN JAMES LEWIS,

Petitioner,

vs.

CALVIN JOHNSON, WARDEN; and THE STATE OF
NEVADA,

Respondents.

Case No. A-21-838960-W
Dep't No. III

REQUEST FOR TRANSCRIPTS

TO: Rebeca Gomez
Court Recorder
Department III
Eighth Judicial District Court
200 Lewis Ave.
Las Vegas, NV 89155

Please take notice that Deshaun Lewis, the Petitioner in the above-entitled case, by and through counsel Julian Gregory, requests the preparation of transcripts of the proceedings held before Department III of the Eighth Judicial District Court, as follows:

JUDGE: Hon. Monica Trujillo, Department III

DATES: September 27, 2021.

PORTIONS: All, including voir dire examination, opening statements, closing arguments, and reading of jury instructions.

COPIES: 3 (1 original, 2 to counsel, certificate of service with Nevada Supreme Court pursuant to NRAP 9(c)(2)).

This notice requests a transcript of only those portions of the district court proceedings that counsel reasonably and in good faith believes are necessary to determine

1 whether appellate issues are present. Voir dire examination of jurors, opening statements,
2 and closing arguments of trial counsel, and the reading of jury instructions shall not be
3 transcribed unless specifically requested above.

4
5 DATED this 13 of December, 2021.

6 /s/ Julian Gregory

7 JULIAN GREGORY, ESQ.

8 **LAW OFFICE OF JULIAN GREGORY, L.L.C.**

9 Attorney for Deshaun Lewis
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Rebeca Gomez
Court Recorder
Eighth Judicial District Court

Steven B. Wolfson
Clark County District Attorney's Office

/s/ Julian Gregory
JULIAN GREGORY, ESQ.
LAW OFFICE OF JULIAN GREGORY, L.L.C.
Attorney for Deshaun Lewis

Pursuant to NRS 239B.030, this document contains no social security numbers.

12-13-21

Date _____

CASE SUMMARY

CASE NO. A-21-838960-W

Deshaun Lewis, Plaintiff(s)
vs.
Calvin Johnson, Warden, Defendant(s)

§
§
§
§
§

Location: **Department 3**
 Judicial Officer: **Trujillo, Monica**
 Filed on: **08/04/2021**
 Case Number History:
 Cross-Reference Case Number: **A838960**

CASE INFORMATION

Related Cases
 C-17-325725-1 (Writ Related Case)
Statistical Closures
 11/16/2021 Other Manner of Disposition

Case Type: **Writ of Habeas Corpus**
 Case Status: **11/16/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-838960-W
 Court Department 3
 Date Assigned 08/05/2021
 Judicial Officer Trujillo, Monica

PARTY INFORMATION

Plaintiff **Lewis, Deshaun James**

Lead Attorneys

Gregory, Julian
Retained
 702-650-1183(W)

Defendant **Calvin Johnson, Warden**
Nevada State of






Wolfson, Steven B
Retained
 702-671-2700(W)

DATE







EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

08/04/2021	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Lewis, Deshaun James <i>[1] Petition for Writ of Habeas Corpus (Post-Conviction)</i>
08/04/2021	 Initial Appearance Fee Disclosure Filed By: Plaintiff Lewis, Deshaun James <i>[2] Initial Appearance Fee Disclosure</i>
08/05/2021	 Notice of Department Reassignment <i>[3] Notice of Department Reassignment</i>
08/31/2021	 Response <i>[4] State s Response to Defendant s Petition for Writ Of Habeas Corpus (Post-Conviction)</i>
09/07/2021	 Order for Production of Inmate <i>[5] Order for Production of Inmate</i>
11/16/2021	

CASE SUMMARY
CASE NO. A-21-838960-W

	 Findings of Fact, Conclusions of Law and Order <i>[6] Findings of Fact, Conclusions of Law and Order</i>
11/17/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Nevada State of <i>[7] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
12/13/2021	 Notice of Appeal (Criminal) Party: Plaintiff Lewis, Deshaun James <i>[8] Notice of Appeal</i>
12/13/2021	 Case Appeal Statement Filed By: Plaintiff Lewis, Deshaun James <i>[9] Case Appeal Statement</i>
12/13/2021	 Request Filed by: Plaintiff Lewis, Deshaun James <i>[10] Request for Transcripts</i>
<u>HEARINGS</u>	
09/27/2021	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i> Denied; Journal Entry Details: <i>Mr. Gregory indicated he would submit on the pleadings with the exception of inquiring in this situation what circumstances might allow for an Evidentiary Hearing as it was a plea taken by the prior District Court Judge and it was an rogue attorney essentially coercing a plea. Mr. Gregory stated that without an Evidentiary Hearing he didn't see how anyone could get any kind of relief. Upon Court's inquiry, Mr. Gregory indicated that without subpoena power and without being able to take testimony from prior counsel he didn't see how they could ever have a plea agreement withdrawn. Ms. Jobe argued the State's position was that it should be summarily denied as the Guilty Plea Agreement the Deft. signed indicated the State would limit its argument to a cap of 15 years and he was sentenced under that range by the Court; the Court could have gone above that but it stayed within the parameters of what the State could argue for and what was contained in Guilty Plea Agreement, therefore, that strengthens the State's position that there was no basis for him to get out of the plea. COURT FINDS there were no specific findings in the record that would indicated anything was coerced; the guilty plea canvass as well as the Guilty Plea Agreement belie any indication that occurred with the specific questions about the potential sentencing ranges, the idea that sentencing was solely up to the Court and that there could be no other promises. COURT FINDS in regards to the issue of the 85% promise of getting probation, whether or not that happened the Court believes it is appropriate for attorneys based on their experience to give indications of what they believe a Judge would do; the fact the Deft. was canvassed on whatever his attorney said and any other promises made outside the agreement or discussion with the Court would not be followed, it did not meet the Strickland standard. COURT FINDS there were no specific acts that could articulate this was an involuntary or unknowing plea, therefore, ORDERED petition DENIED. State DIRECTED to prepare the Findings of Fact and Conclusions of Law in line with their opposition. ;</i>

DATE	FINANCIAL INFORMATION	
	Plaintiff Lewis, Deshaun James	
	Total Charges	270.00
	Total Payments and Credits	270.00
	Balance Due as of 12/14/2021	0.00

DISTRICT COURT CIVIL COVER SHEET

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

CASE NO: A-21-838960-W
Department 26

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Deshaun Lewis	Calvin Johnson, Warden; and
	The State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):
Julian R. Gregory	District Attorney Steven Wolfson, Esq.
411 South Sixth Street	200 Lewis Ave.
Las Vegas, NV 89101	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.

8/04/2021

Date

/s/ Julian Gregory

Signature of initiating party or representative

See other side for family-related case filings.

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHELLE JOBE
Chief Deputy District Attorney
Nevada Bar #010575
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DESHAUN JAMES LEWIS,
#7036167
Defendant.

CASE NO: **A-21-838960-W**
(C-17-325725-1)
DEPT NO: **III**

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: **SEPTEMBER 27, 2021**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable MONICA TRUJILLO, District Judge, on the 27th day of SEPTEMBER, 2021; Petitioner present in custody, represented by JULIAN GREGORY, ESQ.; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHELLE JOBE, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

//

//

PROCEDURAL HISTORY

1
2 1. Deshaun James Lewis was charged by way of Information with two counts of
3 child abuse, neglect, or endangerment resulting in substantial bodily harm (Category B Felony
4 – NRS 200.508.1) and two counts of child abuse, neglect, or endangerment (Category B
5 Felony – NRS 200.508.1) for events occurring between November 1, 2015, and October 2,
6 2016.

7 2. Petitioner pled guilty on November 13, 2019, to one count of child abuse,
8 neglect, or endangerment resulting in substantial bodily harm (Category B Felony – NRS
9 200.508.1) and one count of child abuse, neglect, or endangerment (Category B Felony – NRS
10 200.508.1). Petitioner signed a Guilty Plea Agreement that was filed with the Court. The Court
11 then canvassed Petitioner on the terms and consequences of his guilty plea, as well as his
12 waiver of his right to trial and other Constitutional rights, and his desire to enter the plea.

13 3. The court offered Petitioner an opportunity to ask questions. He affirmed in the
14 GPA as well that all his questions were answered by his attorney: “My attorney has answered
15 all my questions regarding this plea agreement and its consequences to my satisfaction and I
16 am satisfied with the services provided by my attorney.” GPA at ^{6.}~~7~~. Further, Petitioner’s written
17 GPA said, “I have discussed the elements of all the original charges against me with my
18 attorney and I understand the nature of the charges against me.” GPA at ^{5.}~~6~~. “I have discussed
19 with my attorney any possible defenses, defense strategies, and circumstances which might be
20 in my favor.” GPA at ^{5.}~~6~~.

21 4. Petitioner’s attorney, as an officer of the court, affirmed to the Court that he
22 reviewed the GPA with his client. GPA at 7. The GPA clearly states no promises made outside
23 the GPA would be honored. GPA at ^{4.}~~5-6~~. It also states Petitioner entered his agreement
24 knowingly and voluntarily. GPA at 5-6. The Court revisited these points during the plea
25 canvass. Pleas Canvass Transcript, pp. 2-~~7~~. 8.

26 5. During the canvass, Petitioner repeatedly stated he wished to enter into the
27 negotiations with the State and that he did not want to go to trial. Plea Transcript, pp. 3-5.

28 //

1 6. On August 10, 2020, Petitioner was sentenced to 60-180 months in the Nevada
2 Department of Corrections for Count One and 28-72 months for Count Two, to run
3 concurrently to Count 1. Petitioner received two days credit for time served. The Judgment of
4 Conviction was filed on August 11, 2020. Petitioner did not file a direct appeal.

5 7. This Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel
6 followed on August 4, 2021. Petitioner claims he was coerced into pleading guilty by his
7 attorney. Petitioner alleges his lawyer told him there was an 85% chance he would be
8 sentenced to probation. Petitioner alleges his lawyer was ineffective.

9 **FINDINGS OF FACT**

10 1. The Court, after reviewing the transcripts, the Guilty Plea Agreement,
11 Petitioner's pleadings, and the argument of counsel, finds there were no facts presented to
12 indicate Defendant's plea of guilty was coerced in any way.

13 2. As to the claim about the statement quantifying Defendant's chances at
14 probation, though there is no proof that such a statement was made, even if it were, the Court
15 notes that it is appropriate for an attorney to provide advice as to what the Court may do based
16 on the attorney's experience. The Court finds that in this instance, the alleged statement
17 involving was not a promise or guarantee of probation.

18 3. The Court further finds there is nothing in the record, pleadings, or argument, to
19 indicate Defendant's plea was either unwilling, unknowing, or involuntary. The record reflects
20 that during the plea canvass, Petitioner affirmatively asked the Court to accept his plea.

21 4. Petitioner's claim can be resolved without expanding the record. Marshall, 110
22 Nev. at 1331, 885 P.2d at 605. There is no factual basis before the Court to indicate the plea
23 was coerced, or was unwilling or unknowingly entered into.

24 **CONCLUSIONS OF LAW**

25 1. All of the claims raised in the instant Petition are conclusory, bare, and naked
26 assertions suitable for summary denial. Hargrove v. State, 100 Nev. 498, 686 P.2d 222;
27 Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987). Defendant Petitioner failed to show that
28 his plea was involuntarily or unknowingly entered or that the plea was entered without

1 effective assistance of counsel under NRS 34.810. Petitioner also failed to show his counsel's
2 advice regarding his guilty plea or potential sentence was objectively unreasonable, resulting
3 in a deficiency that affected the outcome of the plea negotiation process under Gonzales v.
4 State, 136 Nev. Adv. Op. 60 (Nev. App. 2020).

5 2. There is no legal basis for granting an evidentiary hearing. State v. Eighth
6 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005); Marshall v. State, 110
7 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231.

8 3. Petitioner's claim regarding his attorney's purported "85%" statement goes to a
9 subjective state of mind of defense counsel and was not a promise or guarantee of probation.
10 Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

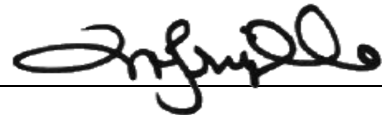
11 4. The absence of any facts to indicate the plea was coerced does not require an
12 evidentiary hearing. Hargrove, 100 Nev. at 502.

13 5. The claims by Petitioner do not meet the Strickland standard for ineffective
14 assistance of counsel. Petitioner cannot show prejudice because he cannot show that if his
15 attorney had advised him otherwise, he would have taken his chances at trial rather than plead
16 guilty. Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); McNelson v. State,
17 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999).

18 ORDER

19 **THEREFORE, IT IS HEREBY ORDERED** that the Petition for Post-Conviction
20 Relief, and request for an evidentiary hearing, shall be, and is denied.


21 Dated this 16th day of November, 2021

22 

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #001565

F48 OCB DF82 92A1
Monica Trujillo
District Court Judge

25 BY

26 
MICHELLE JOBE
27 Chief Deputy District Attorney
Nevada Bar #010575

28 MYJ/hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Deshaun Lewis, Plaintiff(s)

CASE NO: A-21-838960-W

7 vs.

DEPT. NO. Department 3

8 Calvin Johnson, Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/16/2021

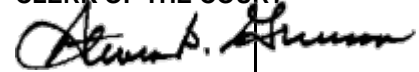
16 DA SVU

DASVUTeam@clarkcountynv.com

17 Julian Gregory

julian@jglawlv.com

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NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DESHAUN LEWIS,

Petitioner,

vs.

CALVIN JOHNSON, WARDEN,

Respondent,

Case No: A-21-838960-W

Dept No: III

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on November 16, 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 November 17, 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 17 day of November 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:

Deshaun Lewis # 1236703	Julian Gregory, Esq.
P.O. Box 650	411 S. Sixth St.
Indian Springs, NV 89070	Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHELLE JOBE
Chief Deputy District Attorney
Nevada Bar #010575
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

PROCEDURAL HISTORY

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12 waiver of his right to trial and other Constitutional rights, and his desire to enter the plea.

13 3. The court offered Petitioner an opportunity to ask questions. He affirmed in the
14 GPA as well that all his questions were answered by his attorney: “My attorney has answered
15 all my questions regarding this plea agreement and its consequences to my satisfaction and I
16 am satisfied with the services provided by my attorney.” GPA at ^{6.}~~7~~. Further, Petitioner’s written
17 GPA said, “I have discussed the elements of all the original charges against me with my
18 attorney and I understand the nature of the charges against me.” GPA at ^{5.}~~6~~. “I have discussed
19 with my attorney any possible defenses, defense strategies, and circumstances which might be
20 in my favor.” GPA at ^{5.}~~6~~.

21 4. Petitioner’s attorney, as an officer of the court, affirmed to the Court that he
22 reviewed the GPA with his client. GPA at 7. The GPA clearly states no promises made outside
23 the GPA would be honored. GPA at ^{4.}~~5-6~~. It also states Petitioner entered his agreement
24 knowingly and voluntarily. GPA at 5-6. The Court revisited these points during the plea
25 canvass. Pleas Canvass Transcript, pp. 2-~~7~~. 8.

26 5. During the canvass, Petitioner repeatedly stated he wished to enter into the
27 negotiations with the State and that he did not want to go to trial. Plea Transcript, pp. 3-5.

28 //

1 6. On August 10, 2020, Petitioner was sentenced to 60-180 months in the Nevada
2 Department of Corrections for Count One and 28-72 months for Count Two, to run
3 concurrently to Count 1. Petitioner received two days credit for time served. The Judgment of
4 Conviction was filed on August 11, 2020. Petitioner did not file a direct appeal.

5 7. This Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel
6 followed on August 4, 2021. Petitioner claims he was coerced into pleading guilty by his
7 attorney. Petitioner alleges his lawyer told him there was an 85% chance he would be
8 sentenced to probation. Petitioner alleges his lawyer was ineffective.

9 **FINDINGS OF FACT**

10 1. The Court, after reviewing the transcripts, the Guilty Plea Agreement,
11 Petitioner's pleadings, and the argument of counsel, finds there were no facts presented to
12 indicate Defendant's plea of guilty was coerced in any way.

13 2. As to the claim about the statement quantifying Defendant's chances at
14 probation, though there is no proof that such a statement was made, even if it were, the Court
15 notes that it is appropriate for an attorney to provide advice as to what the Court may do based
16 on the attorney's experience. The Court finds that in this instance, the alleged statement
17 involving was not a promise or guarantee of probation.

18 3. The Court further finds there is nothing in the record, pleadings, or argument, to
19 indicate Defendant's plea was either unwilling, unknowing, or involuntary. The record reflects
20 that during the plea canvass, Petitioner affirmatively asked the Court to accept his plea.

21 4. Petitioner's claim can be resolved without expanding the record. Marshall, 110
22 Nev. at 1331, 885 P.2d at 605. There is no factual basis before the Court to indicate the plea
23 was coerced, or was unwilling or unknowingly entered into.

24 **CONCLUSIONS OF LAW**

25 1. All of the claims raised in the instant Petition are conclusory, bare, and naked
26 assertions suitable for summary denial. Hargrove v. State, 100 Nev. 498, 686 P.2d 222;
27 Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987). Defendant Petitioner failed to show that
28 his plea was involuntarily or unknowingly entered or that the plea was entered without

1 effective assistance of counsel under NRS 34.810. Petitioner also failed to show his counsel's
2 advice regarding his guilty plea or potential sentence was objectively unreasonable, resulting
3 in a deficiency that affected the outcome of the plea negotiation process under Gonzales v.
4 State, 136 Nev. Adv. Op. 60 (Nev. App. 2020).

5 2. There is no legal basis for granting an evidentiary hearing. State v. Eighth
6 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005); Marshall v. State, 110
7 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231.

8 3. Petitioner's claim regarding his attorney's purported "85%" statement goes to a
9 subjective state of mind of defense counsel and was not a promise or guarantee of probation.
10 Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

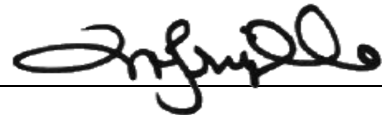
11 4. The absence of any facts to indicate the plea was coerced does not require an
12 evidentiary hearing. Hargrove, 100 Nev. at 502.

13 5. The claims by Petitioner do not meet the Strickland standard for ineffective
14 assistance of counsel. Petitioner cannot show prejudice because he cannot show that if his
15 attorney had advised him otherwise, he would have taken his chances at trial rather than plead
16 guilty. Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); McNelson v. State,
17 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999).

18 ORDER

19 **THEREFORE, IT IS HEREBY ORDERED** that the Petition for Post-Conviction
20 Relief, and request for an evidentiary hearing, shall be, and is denied.


21 Dated this 16th day of November, 2021

22 

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #001565

F48 0CB DF82 92A1
Monica Trujillo
District Court Judge

25 BY

26 
MICHELLE JOBE
27 Chief Deputy District Attorney
Nevada Bar #010575

28 MYJ/hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Deshaun Lewis, Plaintiff(s)

CASE NO: A-21-838960-W

7 vs.

DEPT. NO. Department 3

8 Calvin Johnson, Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/16/2021

16 DA SVU

DASVUTeam@clarkcountynv.com

17 Julian Gregory

julian@jglawlv.com

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Writ of Habeas Corpus

COURT MINUTES

September 27, 2021

A-21-838960-W Deshaun Lewis, Plaintiff(s)
vs.
Calvin Johnson, Warden, Defendant(s)

September 27, 2021 08:30 AM Petition for Writ of Habeas Corpus (Post-Conviction)

HEARD BY: Trujillo, Monica COURTROOM: RJC Courtroom 11C

COURT CLERK: Bracamontez-Munguia, Carina

RECORDER: Gomez, Rebeca

REPORTER:

PARTIES PRESENT:

Calvin Johnson, Warden	Defendant
Julian Gregory	Attorney for Plaintiff
Michelle Y. Jobe	Attorney for Defendant

JOURNAL ENTRIES

Mr. Gregory indicated he would submit on the pleadings with the exception of inquiring in this situation what circumstances might allow for an Evidentiary Hearing as it was a plea taken by the prior District Court Judge and it was an rogue attorney essentially coercing a plea. Mr. Gregory stated that without an Evidentiary Hearing he didn't see how anyone could get any kind of relief. Upon Court's inquiry, Mr. Gregory indicated that without subpoena power and without being able to take testimony from prior counsel he didn't see how they could ever have a plea agreement withdrawn. Ms. Jobe argued the State's position was that it should be summarily denied as the Guilty Plea Agreement the Deft. signed indicated the State would limit its argument to a cap of 15 years and he was sentenced under that range by the Court; the Court could have gone above that but it stayed within the parameters of what the State could argue for and what was contained in Guilty Plea Agreement, therefore, that strengthens the State's position that there was no basis for him to get out of the plea. COURT FINDS there were no specific findings in the record that would indicated anything was coerced; the guilty plea canvass as well as the Guilty Plea Agreement belie any indication that occurred with the specific questions about the potential sentencing ranges, the idea that sentencing was solely up to the Court and that there could be no other promises. COURT FINDS in regards to the issue of the 85% promise of getting probation, whether or not that happened the Court believes it is appropriate for attorneys based on their experience to give indications of what they believe a Judge would do; the fact the Deft. was canvassed on whatever his attorney said and any other promises made outside the agreement or discussion with the Court would not be followed, it did not meet the Strickland standard. COURT FINDS there were no specific acts that could articulate this was an involuntary or unknowing plea, therefore, ORDERED petition DENIED. State DIRECTED to prepare the Findings of Fact and Conclusions of Law in line with their opposition.

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; REQUEST FOR TRANSCRIPTS; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

DESHAUN JAMES LEWIS,

Plaintiff(s),

vs.

CALVIN JOHNSON, WARDEN; STATE OF NEVADA,

Defendant(s),


Case No: A-21-838960-W

Dept No: III

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 14 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk