

BENNETT G. GRIMES 1098810
WILLIAM STREET STATE PRISON PROSE
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89400.

IN THE SUPREME COURT OF THE
STATE OF NEVADA

EX PARTE

BENNETT G. GRIMES,

NO. 84023

APPELLANT PROSE,

VS.

THE STATE OF NEVADA,

RESPONDENT.

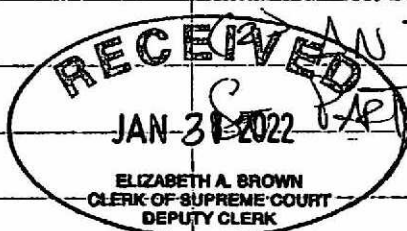
FILED

CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

APPLICANT'S MOTION FOR
APPOINTMENT OF COUNSEL

TO THE HONORABLE JUDGE,
TERRACORRE, RONALD D., C.J.
OF SAID COURT:

COMES NOW BENNETT G. GRIMES PROSE,
APPLICANT IN THE ABOVE ENTITLED AND
NUMBERED CAUSE, AND REQUESTS THIS
COURT TO APPOINT COUNSEL TO REPRESENT
HIM IN PERFECTING AN APPLICATION IN
THE NEVADA SUPREME COURT (1) A BRIEF
THAT COMPLIES WITH NEVADA RULE OF
APPELLATE PROCEDURE (NRAP) 28(a)³², OR
AN INFORMAL BRIEF FORM FOR PRO
PARTIES. NRAP 31(a)(1).



(1)

22-03309

I AM WRITING IN REFERENCE TO THE ABOVE CASE NUMBER, IN WHICH I AM A PRO SE LITIGANT. WHERE I FILED A MOTION TO CORRECT AN ILLEGAL SENTENCE ON MY FORFEIT IN THE EIGHTH JUDICIAL COURT OCTOBER 26, 2021. DISTRICT ATTORNEY, HILARY DEANth 12395 DRAFTED THE RESPONDENT'S ORDER DENYING BENNETT G. GRIMES, APPELLANT'S PRO SE MOTION TO MODIFY, CORRECT AND/OR VACATE AN ILLEGAL SENTENCE, IT'S ORDER SIGNED BY MICHELLE LEAVITT, 589 187 2FOE 2440, DISTRICT COURT JUDGE, ON DECEMBER 8, 2021. HEARING HELD ON NOVEMBER 10, 2021.

GRIMES FILED A REPLY TO THE DISTRICT ATTORNEY'S RESPONSE. IT WAS RECEIVED NOVEMBER 8, 2021 IN THE DISTRICT COURT. NOTICE OF APPEAL PRO SE, DOCKETED IN THE SUPREME COURT ON JANUARY 4, 2022.

WHEN AN IMPROPER SENTENCE IS THE SOLE BASIS OF THE COMPLAINT NO VACATION OR ADJUNCTION IS NECESSARY SINCE JUSTICE MAY BE DONE BY CORRECTION OF THE SENTENCE. DIXON V. STATE, 83 NEU. 120, 424 P.2d 100 (1967); LEBBY V. STATE, 82 NEU.

183, 414 P.2d 592 (1966); OSBORNE V. STATE, 82 NEU. 342, 418 P.2d 812 (1966).

TRIAL COUNSEL'S FAILURE TO INVESTIGATE APPELLANT'S PRIORS BEING A PART OF PLEA NEGOTIATION, THAT ARE ACTUALLY MISDEMEANORS, WHERE APPELLANT DID NOT HAVE A CORRECT COMPREHENSION OF THE LAW, BASED ON A CONSTITUTIONALLY INFIRM GUILTY PLEA. BECAUSE A CONSTITUTIONALLY INVALID CONVICTION CANNOT BE USED TO ENHANCE A SENTENCE UNDER A HABITUAL OFFENDER STATUTE. UNITED STATES V. TUCKER, 404 U.S. 443, 448-49, 30 L. Ed 2d 592, 92 S.Ct 589 (1972); MYERS, *id* BROWN V. MYERS, 137 F.3d 1154, 1158 (9TH CIR 1998).

COUNSEL COULD HAVE AT LEAST PRESENTED SOME ARGUMENT BASED UPON THE PRESENTENCE REPORT. COUNSEL PRESENTED NO EVIDENCE AT THE PENALTY PHASE AND VIRTUALLY NO ARGUMENT. SUTTA V. STEWART, 140 F.3d 1263; HENDRICKS V. CALDERON, 70 F.3d 1032, 1043-44 (9TH CIR 1995); CORRELL V. STEWART, 137 F.3d 1404 (9TH CIR 1998); FERLAUGH V. STEWART, 129 F.3d 1027 (9TH CIR 1997).

DUE TO MY INCARCERATION AND
INDIGENCE, IN ACCORDS TO MRAP 34(g),
OF THE RECORD ON APPEAL, I WOULD LIKE
TO REQUEST ASSISTANCE ACCORDING TO
ALL PRO SE COMPLAINTS HAVE A CONSTITUTIONAL
RIGHT TO ASSISTANCE, ENTITLED BY LAW.
SEE. NEWELL V. SAUSER, 64 F.3d 1416
(9th CIR 1995); WOLFF V. McDONNELL, 418
US 539, 41 LEd 2d 935, 94 S.Ct. 2963
(1974); JOHNSON V. AVERY, 393 483, 21
LEd 2d 718 89 S.Ct 747 (1969).

AFTER HAVING NOW REVIEWED THE
MOTION, AND IN THE INTEREST OF JUSTICE, THIS
COURT FINDS THE APPLICANT'S MOTION FOR
APPOINTMENT OF COUNSEL IS HEREBY APPROVED/
DENIED IN THE INTEREST OF JUSTICE.

ORDER ON APPLICANT'S MOTION TO APPOINT COUNSEL
IT IS THEREFORE ORDERED, THAT ATTORNEY
_____, IS HEREBY APPOINTED TO
REPRESENT APPLICANT.

IT IS FURTHER ORDERED, THAT THE CLERK
OF THIS COURT IS TO MAIL A COPY OF THIS
ORDER TO APPLICANT AND SAID COUNSEL.

SIGNED AND ENTERED THIS _____
DAY OF _____, 2022.

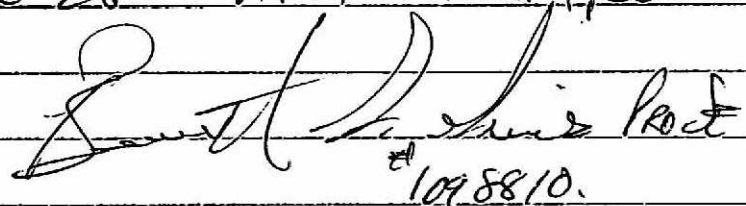
PRESIDING JUDGE

UNSWORN DECLARATION

UNDER BOTH FEDERAL (28 U.S.C. § 1746) AND STATE LAW (CIVIL PRACTICE & REMEDIES CODE OFFENDERS MAY USE AN UNSWORN DECLARATION UNDER PENALTY OF PERJURY IN PLACE OF A WRITTEN DECLARATION, VERIFICATION, CERTIFICATION, OATH, OR AFFIDAVIT SWORN BEFORE A NOTARY PUBLIC.

"MY NAME IS BENNETT G. GRIMES, MY DATE OF BIRTH IS 08/30/1979, MY NDOC NUMBER IS 1098810, I AM PRESENTLY INCARCERATED IN MISSISSIPPI DEPT STATE PRISON. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON THE 26TH DAY OF JANUARY, 2022.


#1098810.

CERTIFICATE OF SERVICE

I, ~~THE~~ UNDERSIGNED, HEREBY CERTIFY
THAT ON THIS 26TH DAY OF JANUARY, 2022,
I SERVED A TRUE AND ACCURATE COPY OF
THE FOREGOING: "MOTION TO APPOINT
COUNSEL" UPON:

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 S. CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701

CC: ATTORNEY GENERAL / CARSON CITY
CLARK COUNTY DISTRICT ATTORNEY
EIGHTH DISTRICT COURT CLERK

CASE NO. 84023


BENNETT G. GRIMES 1096810
HDSP. P.O. BOX 650
INDIAN SPRINGS, NV. 89072.