

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD SMITH,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Dec 07 2021 01:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-833992-W
Related Case C-20-3463301-1
Docket No: 83498

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
CLIFFORD SMITH #1235854,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

A-21-833992-W

**Clifford Smith, Plaintiff(s)
vs.
State of Nevada, Defendant(s)**

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	12/07/2021	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	12/07/2021	DISTRICT COURT MINUTES	47 - 48
1	08/19/2021	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	28 - 36
1	08/24/2021	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	37 - 46
1	05/05/2021	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	18 - 19
1	05/04/2021	PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)	1 - 17
1	06/18/2021	STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	20 - 27

FILED

MAY 04 2021

CLERK OF COURT

Case No. C-20-346330-1
Dept. No. 6

IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

Clifford B. Smith
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-21-833992-W
Dept. 6

STATE of Nevada
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Three Lakes Conservation County Camp
2. Name and location of court which entered the judgment of conviction under attack: Las Vegas Nevada Clark County
3. Date of judgment of conviction: July 13, 2020
4. Case number: C-20-346330-1 Department VI
5. (a) Length of sentence: Three to eight year sentence

RECEIVED

APR 26 2021

CLERK OF THE COURT

1 (b) If sentence is death, state any date upon which execution is scheduled:....

2 6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

3 Yes No ☒

4 If "yes," list crime, case number and sentence being served at this time:

5

6

7 7. Nature of offense involved in conviction being challenged: *Attempt to Robbery*

8

9 8. What was your plea? (check one)

10 (a) Not guilty

11 (b) Guilty ☒

12 (c) Guilty but mentally ill

13 (d) Nolo contendere

14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a
15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was
16 negotiated, give details:

17

18 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

19 (a) Jury

20 (b) Judge without a jury ☒

21 11. Did you testify at the trial? Yes No ☒

22 12. Did you appeal from the judgment of conviction? Yes No ☒

23 13. If you did appeal, answer the following:

24 (a) Name of court:

25 (b) Case number or citation:

26 (c) Result:

27 (d) Date of result:

28 (Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not: *I was misled, Coerce,*
2 *Compel To Take a plea that was not in my best interest*
3 *I didn't have proper knowledge of the law at that time*

4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: *Clerk County*

8 (2) Nature of proceeding: *Motion to Modification but the courts*
9 *Wouldn't file*

10 (3) Grounds raised: *Illegal plea agreement, and ineffectual*
11 *Counsel, the courts made a mistake in the P.S.I*
12 *and ds result should have ~~been~~ renegotiate the plea agreement*

13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

14 (5) Result: *Ø*

15 (6) Date of result: *Ø*

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17 (b) As to any second petition, application or motion, give the same information:

18 (1) Name of court: *Ø*

19 (2) Nature of proceeding: *Ø*

20 (3) Grounds raised: *Ø*

21 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

22 (5) Result: *Ø*

23 (6) Date of result: *Ø*

24 (7) If known, citations of any written opinion or date of orders entered pursuant to such result: *None*

25 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
26 them on a separate sheet and attach.
27
28

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any
2 petition, application or motion?

3 (1) First petition, application or motion? Yes No ☒

4 Citation or date of decision: \emptyset

5 (2) Second petition, application or motion? Yes No ☒

6 Citation or date of decision: \emptyset

7 (3) Third or subsequent petitions, applications or motions? Yes No ☒

8 Citation or date of decision: \emptyset

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in
12 length.) \emptyset

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same: *No court has heard any ground,*
17 *this is my first time raising this issue*

18 (b) The proceedings in which these grounds were raised: \emptyset

19
20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.) \emptyset

23
24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not
28 exceed five handwritten or typewritten pages in length.) \emptyset

1
2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the
5 petition. Your response may not exceed five handwritten or typewritten pages in length.)

6 *I didn't know
any better and I am not a Attorney and I later found out I was trick*

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes No ☒

9 If yes, state what court and the case number: *Ø*

10 *Ø*
11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal: *Attorney Adam Gill*

13
14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No ☒

16 If yes, specify where and when it is to be served, if you know:

17
18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
20 supporting same.

21 *Violation of my eighth amendment right
cruel and unusual punishment, ineffective assistance
22 of Counselor, violation of my due process,*

Clifford RAY Smith

Defendant

Hon. Jacqueline Bluth

VS

CASE NO 21-346330-1

STATE OF NEVADA

Plaintiff

Please
file and
Return a
Copy

Date of hearing

Time of hearing

1. Comes Now Defendant, proceeding in proper person hereby motion this Honorable Court, Pursuant to statute

NRS 176.165 AND NRS 176.555.

2. This motion is based upon papers and pleading and the facts herein.
3. The District Attorney did not adequately inform me as a defendant the full consequences of my plea. he did falsely, and/or fabricate untrue assumption about my record that he intentionally threaten me to plead guilty, by telling me and showing four (4) convictions that was only two (2).
4. Said conviction was considered a type, which are two (2) convictions written twice.
5. The convictions were Burglary (F), Breaking and entering (F) which is only two convictions.

6. The District Attorney had four (4) convictions listed, and the types convictions and/or untrue, materially untrue convictions of the third case of Burglary (F) had a made up case Number, the Alleged 4th (4th) charge and/or conviction which was Breaking And Entering also had made up case Number.

7. Such false charges and/or convictions were used by the District Attorney to force defendant by threatening him to plead guilty by telling defendant, that he will be charged with the habitual offender if he don't plead guilty. The District Attorney used false convictions that did force a plea.

8. After being force to plea, and before the defendant was sentence, the PSI had to be collected, based on the materially untrue, false, fabricated charges/conviction of:

A. Burglary (F) 3rd

B. Breaking And Entering 4th

9. This show that defendant was not Adequately informed and/or correctly inform of the true status of his criminal convictions, AND forced to plead guilty under fraudulent circumstances after Presentence Investigation report was collected.

10. The records in this case verify all the allegations that support a withdrawal of his guilty plea. And such records will prove that I defendant was forced to plea, and when such materially untrue assumptions were collected, there was nothing done and the plea created a manifest of injustice that support the setting aside the conviction and allowing to withdraw the guilty plea.

11. And base on the hearing circumstances, this court should consider a modification of my sentence, and such would be based on the fraudulent action of the district attorney, and of

12. Defendant would ask this honorable court not to perceive this request to be pointing the finger at the district attorney or this court and saying "you were wrong for allowing such actions to occur. Defendant is merely requesting that the reconsider the sentence, and pronounce that such sentence, base of the plea was illegal.

Brief in support thereof

Pursuant to NRS 176.165. After sentencing, the court may set aside a judgment of conviction and permit a withdrawal of a plea. Failure to adequately inform a defendant of the full consequences of his plea creates manifest injustice which would be corrected by withdrawal of plea. Meyer v. State 603 P2d 1666 (1979 Nev) and Little v. Warden 34 P3d 540 (Nev 2001)

CONTINUE OF

BRIEF IN SUPPORT THEREOF

Being threaten, and force to take A Plea by claiming and making you believe that you will be subjected to Habitual Criminal if you do not sign the Plea, but in reality you do not have the four (4) felonies at all. They did... intentionally use a untrue assumption about defendant's records that force him to except A Plea, and such failure of the Prosecution to adequately and/or correctly give proper information before telling him he will be charge with the four time felony of Habitual Offender if he do not Plead guilty.

In this case the district Attorney created a materially untrue assumption or a mistake that force A plea of guilty, and the plea of guilty worked to my extreme detriment. See State v. State 787 P2d 396, 106 Nev 75 (1990) Also see Edwards v. State 918 P2d 321, 324, 1112 Nev 704 (1996) Defendant is arguing that his original PST report consisted of untrue assumption about his record that had him Plead guilty, such plea of guilty was based on false-fabricated lies created by the District Attorney. And sense the

The plea of guilty was based on untrue material assumption, such mistake is not in accord with the constitutional considerations underlying the sentencing process. The United States Supreme Court has expressly held that where a sentence was based on a mistake about your criminal records, whether caused by carelessness or design, is inconsistent with due process of law. See *Townsend v. Burke*, 736, 741, 68 S.Ct. 1252, 92 L.Ed.2d 169 (1949). Defendant's sentence clearly establishes that it was based on criminal record, and the plea was based on a false perception of his criminal

record. Therefore, these are the grounds for the withdrawal of plea. If the plea itself creates a miscarriage of justice, the sentence is illegal on its face. Therefore, the facial legality of the sentence is illegal. See *State v. Dick*, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1994).

Wherefore, this Honorable Court should allow the withdrawal of his sentence and/or modify sentence based on the District Attorney's illegal actions of creating false untrue convictions that was used to force a guilty plea that was obtained by fraudulent means. Such plea should be withdrawn, and/or a modification of sentence

could be considered. It is this court choice to do what they choose, AND if this honorable court follow the laws of NRS, AND Meyer V- State Id at 1066. Such withdrawal of Plea, AND or modification of sentence, would be the correct thing to do.

The proof of the untrue assumption about my record, is also in PSI Report. Also the threat is clear, and the fabrication, see PSI Report at Page (2) Plea Negotiation. They clearly state. Additionally agree not to seek habitual criminal treatment. Such is proof of the threat and the material untrue fact, assumption presented by the District Attorney. This court has inherent authority.

Declaration

I declare under the Penalty of Perjury that all of the foregoing is true and correct pursuant to NRS 29 AIO. 53.045, 202.165 and 28 USC 1746

Dated [REDACTED] 4-19-2021

x Clifford @Smith

YEAR	STATE	CHARGE
OR	NV	CONSP POSS DRUGS NOT INTRO INTO COMMERCE
OR	NV	BREAKE AND ENTER
OR	NV	THEFT
OR	NV	THEFT
OR	NV	BREAKE AND ENTER

2000 28

Typo "2" prior not
four

THE UNIVERSITY OF CHICAGO PRESS

look
PRESENTENCE INVESTIGATION REPORT
CLIFFORD SMITH
CC#: C-20-346330-1

Page 4

REVIEW FACTS
OLD P.S

Active Arrest Warrants:

Warrant#: 4625520 **Issued:** 02-26-20
Jurisdiction: Las Vegas Municipal Court **Charges:** Drive Without a Driver's License (M)
Extraditable: Clark County only **Bail Amount:** \$748.00

Adult:

Arrest Date:	Offense:	Disposition:
01-15-03 Akron, OH Akron PD	1. Misrepresenting Identity (M) 2. Theft (M)	03-CR-00474 01-23-03: Convicted of Count 1 - Misrepresenting Identity (M), and Count 2 - Theft (M), 90 days jail; 82 days suspended with 8 days CTS
08-27-03 Akron, OH Akron PD	Domestic Violence Menace (M)	03-CR-09905 08-28-03: Convicted of Domestic Violence Menace (M) (2 Counts), 30 days jail with 3 days CTS
06-24-05 Akron, OH Akron PD	1. Burglary (F) 2. Breaking and Entering (F)	05-CR-07338 09-15-05: Convicted of Count 1 - Breaking and Entering (F) and Count 2 - Attempt Grand Theft (F), 18 months probation
06-19-07 Akron, OH Akron PD	Theft (M)	07-CR-07175 06-21-07: Convicted of Theft (M), 90 days jail, 87 days suspended with 3 days CTS
07-02-07 Akron, OH Akron PD	1. Breaking and Entering (F) 2. Theft (F)	05-CR 062299 07-06-07: Convicted of Count 1 - Breaking and Entering (F), and Count 2 - Theft (F), 6 months confinement with 107 days CTS

look

**PRESENTENCE INVESTIGATION REPORT
CLIFFORD SMITH
CC#: C-20-346330-1**

*REVIEW FACTS
New p-s*

Page 4

Active Arrest Warrants:

Warrant#: 4625520	Issued: 02-26-20
Jurisdiction: Las Vegas Municipal Court	Charges: Drive Without a Driver's License (M)
Extraditable: Clark County only	Bail Amount: \$748.00

Adult:

Arrest Date:

01-15-03
Akron, OH
Akron PD

Offense:

1. Misrepresenting Identity (M)
2. Theft (M)

Disposition:

03-CR-00474
01-23-03: Convicted of Count 1 -
Misrepresenting Identity (M), and
Count 2 - Theft (M). 90 days jail; 82
days suspended with 8 days CTS

08-27-03
Akron, OH
Akron PD

Domestic Violence Menace (M)

03-CR-09905
08-28-03: Convicted of Domestic
Violence Menace (M) (2 Counts). 30
days jail with 3 days CTS

06-24-05
Akron, OH
Akron PD

1. Burglary (F)
2. Breaking and Entering (F)

to not 4

05-CR-07338
09-15-05: Convicted of Count 1
Breaking and Entering (F) and Count
2 - Attempt Grand Theft (F). 18
months probation
07-06-07: 6 months confinement

06-19-07
Akron, OH
Akron PD

Theft (M)

07-CR-07175
06-21-07: Convicted of Theft (M). 90
days jail. 87 days suspended with 3
days CTS

PRESENTENCE INVESTIGATION REPORT
CLIFFORD SMITH
CC#: C-20-346330-1

Page 8

IX. PLEA NEGOTIATIONS

The State agrees to make no recommendation at sentencing. Additionally, the State agrees not to seek habitual criminal treatment. The State agrees that the maximum sentence will not exceed eight (8) years. Further, the State has no opposition to bail being lowered to \$5,000.00 with mid-level electronic monitoring upon entry of plea.

X. FEES AND NEVADA REVISED STATUTE REQUIREMENTS

Administrative Assessment: \$25.00	Chemical/Drug Analysis: N/A	DNA: Taken 12-30-08
DNA Admin Assessment: \$3.00	Attorney Fee: N/A	
Domestic Violence Fee: N/A	Extradition: N/A	Psychosexual Fee: N/A
Mandatory Fine: N/A	Mandatory Prison/Probation: N/A	

Per NRS 176.145 effective July 1, 2020, the Division is no longer to contain on the report of any presentence investigation certain information, including: (1) a recommendation of a minimum term and a maximum term of imprisonment, other term of imprisonment, a fine, or both a fine and term of imprisonment; and (2) if the Division deems appropriate, a recommendation that the defendant undergo a program of regimental discipline. Therefore, this information has been removed from the report per statute.

☒ Pursuant to NRS 249B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

☐ Pursuant to NRS 249B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Per the Nevada Revised Statutes, any changes to factual allegations in the Presentence Investigation Report may be ordered by the court within 180 days of the entry of Judgement of Conviction. The prosecuting attorney and defendant must agree to correct the contents.

The information used in the Presentence Investigation Report may be utilized reviewed by federal, state and/or local agencies for the purpose of prison classification, program eligibility and parole consideration.

Should the court consider granting probation pursuant to a program of intensive supervision pursuant to NRS 176A.440, the Division requests the court to consider the following factors in making that determination:

- Intensive supervision with electronic monitoring may only be utilized if the *defendant* is capable of paying the daily fee for the electronic monitoring.
 - The monitoring fee ranges from \$9.00 to \$18.50 per day depending on factors such as alcohol monitoring, GPS, or radio frequency versus cellular connectivity.
 - This fee is payable from the defendant directly to the electronic monitoring vendor.
- Placement of the defendant on a term of intensive supervision may conflict with the level of supervision established by the risk assessment required under NRS 213.1078, which states:

BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at ~~High Desert State Prison~~ Three Lakes Conservation Camp on the 19 day of the month of April, 2021.

* T.L.V.C.C.
~~High Desert State Prison~~
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

* T.L.V.C.C.
~~High Desert State Prison~~
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-20-346330-1 Does not contain the social security number of any person.

* T.L.V.C.C.
~~High Desert State Prison~~
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Clifford Smith, hereby certify pursuant to N.R.C.P. 5(b), that on this 19 day of the month of April, 2021, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Three Lakes Conservation Camp

~~Warden High Desert State Prison~~
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

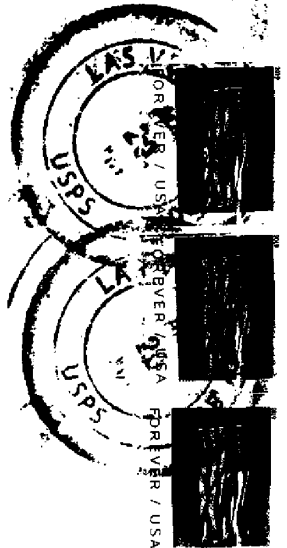
*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

-10-

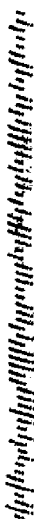
Clifford Smith # 1235854
Clifford Smith 1235854

Clifford Smith #1035854
T.L.V.C. P.O. Box 208
Indian Springs NV 89070-0208



To the: Clark & the Court
300 Lewis Ave
Las Vegas NV. 89101

5510188000 0075



SOUTHERN DESERT
CORRECTIONAL CENTER

OUTGOING MAIL

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Clifford Smith,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-21-833992-W
Department 6

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on May 05, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 30th day of June, 2021, at the hour of

9:30 a.m.

_____ o'clock for further proceedings.

Dated this 5th day of May, 2021

J. Bluth

District Court Judge

kj

**1BB B0A 0E6B 9D5B
Jacqueline M. Bluth
District Court Judge**

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 Clifford Smith, Plaintiff(s)	CASE NO: A-21-833992-W
6 vs.	DEPT. NO. Department 6
7 State of Nevada, Defendant(s)	

8

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 5/6/2021

16 Clifford Smith	#1235854
	TLVCC
	P.O. Box 208
	Indian Springs, NV, 89018

17
18
19
20
21
22
23
24
25
26
27
28



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 KAREN MISHLER
6 Chief Deputy District Attorney
7 Nevada Bar #13730
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

9 CLIFFORD SMITH,
10 #2681698

Petitioner,

-vs-

12 THE STATE OF NEVADA,

13 Respondent.

CASE NO: A-21-833992-W

C-20-346330-1

DEPT NO: VI

15 **STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS**
16 **CORPUS (POST-CONVICTION)**

17 DATE OF HEARING: JUNE 30, 2021
18 TIME OF HEARING: 11:00AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of
22 Habeas Corpus (Post-Conviction).

23 This response is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 //

27 //

28 //

//

\\CLARKCOUNTYDA.NET\CRM\CASE2\2020\003\40\202000340C-RSPN-(CLIFFORD SMITH)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 23, 2020, the State charged Clifford Smith (hereinafter "Petitioner") by way
4 of Information with one count of Attempt Robbery (Category B Felony – NRS 200.380,
5 193.330). The next day, Petitioner pleaded guilty to the one count and signed a Guilty Plea
6 Agreement. Pursuant to the negotiations, the State agreed to make no recommendation at
7 sentencing and agreed to not seek habitual criminal treatment. The State also agreed the
8 maximum sentence will not exceed eight years and did not oppose Petitioner's bail being
9 lowered to \$5,000.00 with mid-level electronic monitoring upon entry of plea.

10 On May 27, 2020, Petitioner and his counsel appeared at sentencing and informed this
11 Court there were issues with the Presentence Investigation Report (PSI) and requested a
12 continuance. On July 13, 2020, this Court noted it reviewed the Supplemental PSI that
13 corrected the previous errors, and adjudicated Petitioner guilty of Attempt Robbery. This Court
14 sentenced Petitioner to a minimum of thirty-six months and a maximum of ninety-six months
15 in the Nevada Department of Corrections (NDOC). Petitioner received one hundred ninety-
16 three days credit for time served. The Judgment of Conviction was filed on July 17, 2020.

17 On May 4, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
18 Conviction) (hereinafter "Petition"). The State's Response follows.

19 **ARGUMENT**

20 Petitioner claims that he was forced to plead guilty because the District Attorney's
21 Office threatened him by using "materially untrue convictions" to make it appear he was
22 eligible for habitual criminal treatment. Petition, at 1-5. However, the claims raised in the
23 instant Petition are conclusory, bare, and naked assertions that should be summarily dismissed.
24 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

25 Dismissal of a petition is mandatory if "[t]he petitioner's conviction was upon a plea of
26 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea
27 was involuntarily or unknowingly entered or that the plea was entered without effective
28 assistance of counsel." NRS 34.810(1)(a). The Nevada Court of Appeals recently considered

1 the types of ineffective assistance of counsel claims that are permissible pursuant to this statute
2 and concluded that NRS 34.810 *only* permits claims of ineffective assistance of counsel that
3 challenge the validity of the guilty plea. Gonzales v. State, 136 Nev. Adv. Op. 60 (Nev. App.
4 2020). “[A] petitioner must allege specific facts demonstrating both that counsel’s advice (or
5 failure to give advice) regarding the guilty plea was objectively unreasonable and that the
6 deficiency affected the outcome of the plea negotiation process.” Id. Further, when a
7 conviction is the result of a guilty plea, to demonstrate prejudice, a petitioner “must show that
8 there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty
9 and would have insisted on going to trial.” Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102,
10 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985)).

11 Here, Petitioner claims that the District Attorney’s Office forced him to plead guilty by
12 using “false convictions that did force a plea.” Petition, at 2. Petitioner’s only support for this
13 assertion is his PSI, which was not prepared by the District Attorney’s Office and was not
14 prepared until after Petitioner entered his guilty plea. Petitioner also claims that the District
15 Attorney threatened to charge him as a habitual offender. Petition, at 2. However, the State
16 never filed a Notice of Intent to Seek Habitual Criminal Treatment. The only mention of
17 habitual criminal treatment is the Guilty Plea Agreement, which states, “Additionally, the State
18 agrees not to seek habitual criminal treatment.” Guilty Plea Agreement, January 24, 2020, at
19 1. Thus, it is unclear how Petitioner was forced by the District Attorney to enter a guilty plea
20 because he feared habitual criminal treatment, when the State agreed not to seek it.

21 Furthermore, the record demonstrates that counsel brought the errors in Petitioner’s PSI
22 to the court’s attention before his sentencing. Court Minutes, May 27, 2020. After counsel
23 brought these errors to the court’s attention, a new supplemental PSI was filed prior to
24 sentencing, correcting the number of prior felonies to 2. See Court Minutes, July 13, 2020;
25 Supplemental PSI, prepared July 1, 2020. Even with two prior felonies, Petitioner was eligible
26 to be sentenced under the small habitual statute. See NRS 207.010(1)(a). However, the errors
27 were fixed to represent Petitioner’s correct number of prior felonies, and Petitioner was not
28 forced into any negotiations by the State.

1 Petitioner also requests this Court allow him to withdraw his plea because his plea was
2 based on a "miscarriage of justice," while simultaneously asking this Court to modify his
3 sentence. Petition, at 5.¹ These two requests are mutually exclusive. If this Court allows him
4 to withdraw his plea, then this Court is unable to sentence him because the court can only
5 sentence a defendant that has either pled guilty or been found guilty at trial.

6 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
7 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
8 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the
9 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,
10 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
11 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
12 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

13 To determine whether a guilty plea was voluntarily entered, the Court will review the
14 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
15 P.2d at 367. A proper plea canvass should reflect that:

16 [T]he defendant knowingly waived his privilege against self-
17 incrimination, the right to trial by jury, and the right to confront his
18 accusers; (2) the plea was voluntary, was not coerced, and was not the
19 result of a promise of leniency; (3) the defendant understood the
consequences of his plea and the range of punishments; and (4) the
defendant understood the nature of the charge, i.e., the elements of
the crime.

20 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
21 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
22 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
23 107, 107 (1975).

24 This standard requires the court accepting the plea to personally address the defendant
25 at the time he enters his plea in order to determine whether he understands the nature of the

26 ¹ Petitioner also claims cruel and unusual punishment, ineffective assistance of counsel, and violation of due process. Id.
27 He mentions these claims, but never addresses them again and fails to make any factual allegations regarding these
28 claims. It is defendant's responsibility to plead specific factual allegations, and defendant cannot rely on conclusory
claims for relief. NRS 34.735; Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117
Nev. 609, 621, 28 P.3d 498, 507 (2001)).

1 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
2 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
3 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
4 formal setting, such as that occurring between an official sitting in judgment of an accused at
5 plea. Id. However, the Court need not conduct a ritualistic oral canvass. State v. Freese, 116
6 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
7 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
8 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
9 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
10 1463, 1470 (1970).

11 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
12 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
13 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
14 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
15 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
16 that a defendant lacked standing to challenge the validity of a plea agreement because he had
17 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
18 468, 477, 958 P.2d 91, 96 (1998).

19 Furthermore, the Nevada Supreme Court has explained:

20 [A] guilty plea represents a break in the chain of events which has
21 preceded it in the criminal process. When a criminal defendant has
22 solemnly admitted in open court that he is in fact guilty of the offense
23 with which he is charged, he may not thereafter raise independent
claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

24 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
25 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
26 constitutional claims based on events occurring prior to the entry of the plea[], except those
27 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
28 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only

1 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
2 the effectiveness of counsel.”).

3 Here, Petitioner’s claim that his plea was coerced is belied by the record. First,
4 Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his
5 GPA, which stated:

6 VOLUNTARINESS OF PLEA

7 I have discussed the elements of all the original charge(s) against me
8 with my attorney and I understand the nature of the charge(s) against
me.

9 I understand that the State would have to prove each element of the
10 charge(s) against me at trial.

11 I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor.

12 All of the foregoing elements, consequences, rights, and waiver of
13 rights have been thoroughly explained to me by my attorney.

14 I believe that pleading guilty and accepting this plea bargain is in my
best interest, and that trial would be contrary to my best interest.

15 **I am signing this agreement voluntarily, after consultation with**
16 **my attorney, and I am not acting under duress or coercion or by**
17 **virtue of any promises of leniency except those set forth in this**
agreement.

18 I am not now under the influence of any intoxicating liquor, a
19 controlled substance or other drug which would in any manner impair
my ability to comprehend or understand this agreement or the
proceedings surrounding my entry of this plea.

20 My attorney has answered all my questions regarding this plea
21 agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

22 Guilty Plea Agreement, January 24, 2020, at 4-5 (emphasis added).

23 Therefore, based on Petitioner’s Guilty Plea Agreement, his claim is belied by the
24 record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his
25 plea is necessary to correct a manifest injustice—especially because Petitioner entered his plea
26 before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

27 Petitioner is also not entitled to a modification of his sentence. Petition, at 5. In general,
28 a district court lacks jurisdiction to modify a sentence once the defendant has started serving

1 it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other
2 grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court does
3 have inherent authority to correct, vacate or modify a sentence where the defendant can
4 demonstrate the sentence violates due process because it is based on a materially untrue
5 assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards
6 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108
7 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due
8 process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).
9 The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in
10 scope to sentences based on mistaken assumptions about a defendant's criminal record which
11 work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

12 Here, Petitioner has failed to show that the Court sentenced him under a materially
13 untrue assumption or mistake of fact. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d
14 at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Petitioner has not presented any argument
15 or evidence that his sentence is facially illegal. This request is not based on a materially untrue
16 assumption or mistake of fact that has worked to his extreme detriment to give the Court any
17 reason to modify his sentence because the error in his PSI was corrected prior to sentencing.
18 Therefore, this Court should not modify Petitioner's sentence.

19 CONCLUSION

20 Based on the foregoing, the State respectfully requests Petitioner's Petition for Writ of
21 Habeas Corpus (Post-Conviction) be DENIED.

22 DATED this 18th day of June, 2021.

23 Respectfully submitted,

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

26 BY Karen Mishler for
27 KAREN MISHLER
28 Chief Deputy District Attorney
Nevada Bar #13730

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of June 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Clifford Smith
Three Lakes Valley Conservation Camp
#1235854
P.O. Box 208
Indian Springs, NV, 89070

BY


Secretary for the District Attorney's Office

20F00126X/KM/clh/L3

Heather Shuman
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CLIFFORD SMITH,
#2681698

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-833992-W

C-20-346330-1

DEPT NO: VI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JUNE 30, 2021
TIME OF HEARING: 11:00AM

THIS CAUSE having come on for hearing before the Honorable JACQUELINE M. BLUTH, District Judge, on the 30th day of June, 2021, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through YU MENG, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

//

//

//

//

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On January 23, 2020, the State charged Clifford Smith (hereinafter "Petitioner") by way
4 of Information with one count of Attempt Robbery (Category B Felony – NRS 200.380,
5 193.330). The next day, Petitioner pleaded guilty to the one count and signed a Guilty Plea
6 Agreement. Pursuant to the negotiations, the State agreed to make no recommendation at
7 sentencing and agreed to not seek habitual criminal treatment. The State also agreed the
8 maximum sentence will not exceed eight years and did not oppose Petitioner's bail being
9 lowered to \$5,000.00 with mid-level electronic monitoring upon entry of plea.

10 On May 27, 2020, Petitioner and his counsel appeared at sentencing and informed this
11 Court there were issues with the Presentence Investigation Report (PSI) and requested a
12 continuance. On July 13, 2020, this Court noted it reviewed the Supplemental PSI that
13 corrected the previous errors, and adjudicated Petitioner guilty of Attempt Robbery. This Court
14 sentenced Petitioner to a minimum of thirty-six months and a maximum of ninety-six months
15 in the Nevada Department of Corrections (NDOC). Petitioner received one hundred ninety-
16 three days credit for time served. The Judgment of Conviction was filed on July 17, 2020.

17 On May 4, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
18 Conviction) (hereinafter "Petition"). The State filed its Response on June 18, 2021. Following
19 a hearing on June 30, 2021, this Court now finds and concludes as follows:

20 **AUTHORITY**

21 Petitioner claims that he was forced to plead guilty because the District Attorney's
22 Office threatened him by using "materially untrue convictions" to make it appear he was
23 eligible for habitual criminal treatment. Petition, at 1-5. However, the claims raised in the
24 instant Petition are conclusory, bare, and naked assertions that should be summarily dismissed.
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

26 Dismissal of a petition is mandatory if "[t]he petitioner's conviction was upon a plea of
27 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea
28 was involuntarily or unknowingly entered or that the plea was entered without effective

1 assistance of counsel.” NRS 34.810(1)(a). The Nevada Court of Appeals recently considered
2 the types of ineffective assistance of counsel claims that are permissible pursuant to this
3 statute, and concluded that NRS 34.810 *only* permits claims of ineffective assistance of counsel
4 that challenge the validity of the guilty plea. Gonzales v. State, 136 Nev. Adv. Op. 60 (Nev.
5 App. 2020). “[A] petitioner must allege specific facts demonstrating both that counsel’s advice
6 (or failure to give advice) regarding the guilty plea was objectively unreasonable and that the
7 deficiency affected the outcome of the plea negotiation process.” Id. Further, when a
8 conviction is the result of a guilty plea, to demonstrate prejudice, a petitioner “must show that
9 there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty
10 and would have insisted on going to trial.” Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102,
11 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985)).

12 Here, Petitioner claims that the District Attorney’s Office forced him to plead guilty by
13 using “false convictions that did force a plea.” Petition, at 2. Petitioner’s only support for this
14 assertion is his PSI, which was not prepared by the District Attorney’s Office and was not
15 prepared until after Petitioner entered his guilty plea. Petitioner also claims that the District
16 Attorney threatened to charge him as a habitual offender. Petition, at 2. However, the State
17 never filed a Notice of Intent to Seek Habitual Criminal Treatment. The only mention of
18 habitual criminal treatment is the Guilty Plea Agreement, which states, “Additionally, the State
19 agrees not to seek habitual criminal treatment.” Guilty Plea Agreement, January 24, 2020, at
20 1. Thus, it is unclear how Petitioner was forced by the District Attorney to enter a guilty plea
21 because he feared habitual criminal treatment, when the State agreed not to seek it.

22 Furthermore, the record demonstrates that counsel brought the errors in Petitioner’s PSI
23 to the court’s attention before his sentencing. Court Minutes, May 27, 2020. After counsel
24 brought these errors to the court’s attention, a new supplemental PSI was filed prior to
25 sentencing, correcting the number of prior felonies to 2. See Court Minutes, July 13, 2020;
26 Supplemental PSI, prepared July 1, 2020. Even with two prior felonies, Petitioner was eligible
27 to be sentenced under the small habitual statute. See NRS 207.010(1)(a). However, the errors
28

1 were fixed to represent Petitioner's correct number of prior felonies, and Petitioner was not
2 forced into any negotiations by the State.

3 Petitioner also requests this Court allow him to withdraw his plea because his plea was
4 based on a "miscarriage of justice," while simultaneously asking this Court to modify his
5 sentence. Petition, at 5.¹ These two requests are mutually exclusive. If this Court allows him
6 to withdraw his plea, then this Court is unable to sentence him because the court can only
7 sentence a defendant that has either pled guilty or been found guilty at trial.

8 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
9 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
10 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the
11 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,
12 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
13 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
14 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

15 To determine whether a guilty plea was voluntarily entered, the Court will review the
16 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
17 P.2d at 367. A proper plea canvass should reflect that:

18 [T]he defendant knowingly waived his privilege against self-
19 incrimination, the right to trial by jury, and the right to confront his
20 accusers; (2) the plea was voluntary, was not coerced, and was not the
21 result of a promise of leniency; (3) the defendant understood the
22 consequences of his plea and the range of punishments; and (4) the
23 defendant understood the nature of the charge, i.e., the elements of
24 the crime.

25 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
26 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in

27 ¹ Petitioner also claims cruel and unusual punishment, ineffective assistance of counsel, and violation of due process. Id.
28 He mentions these claims, but never addresses them again and fails to make any factual allegations regarding these
claims. It is defendant's responsibility to plead specific factual allegations, and defendant cannot rely on conclusory
claims for relief. NRS 34.735; Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117
Nev. 609, 621, 28 P.3d 498, 507 (2001)).

1 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant
4 at the time he enters his plea in order to determine whether he understands the nature of the
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
8 formal setting, such as that occurring between an official sitting in judgment of an accused at
9 plea. Id. However, the Court need not conduct a ritualistic oral canvass. State v. Freese, 116
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
14 1463, 1470 (1970).

15 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
16 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
17 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
18 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
19 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
20 that a defendant lacked standing to challenge the validity of a plea agreement because he had
21 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
22 468, 477, 958 P.2d 91, 96 (1998).

23 Furthermore, the Nevada Supreme Court has explained:

24 [A] guilty plea represents a break in the chain of events which has
25 preceded it in the criminal process. When a criminal defendant has
26 solemnly admitted in open court that he is in fact guilty of the offense
27 with which he is charged, he may not thereafter raise independent
28 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
2 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
5 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
6 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
7 the effectiveness of counsel.”).

8 Here, Petitioner’s claim that his plea was coerced is belied by the record. First,
9 Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his
10 GPA, which stated:

11 VOLUNTARINESS OF PLEA

12 I have discussed the elements of all the original charge(s) against me
13 with my attorney and I understand the nature of the charge(s) against
me.

14 I understand that the State would have to prove each element of the
15 charge(s) against me at trial.

16 I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor.

17 All of the foregoing elements, consequences, rights, and waiver of
18 rights have been thoroughly explained to me by my attorney.

19 I believe that pleading guilty and accepting this plea bargain is in my
best interest, and that trial would be contrary to my best interest.

20 **I am signing this agreement voluntarily, after consultation with**
21 **my attorney, and I am not acting under duress or coercion or by**
22 **virtue of any promises of leniency except those set forth in this**
agreement.

23 I am not now under the influence of any intoxicating liquor, a
24 controlled substance or other drug which would in any manner impair
my ability to comprehend or understand this agreement or the
proceedings surrounding my entry of this plea.

25 My attorney has answered all my questions regarding this plea
26 agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

27 Guilty Plea Agreement, January 24, 2020, at 4-5 (emphasis added).
28

1 Therefore, based on Petitioner's Guilty Plea Agreement, his claim is belied by the
2 record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his
3 plea is necessary to correct a manifest injustice—especially because Petitioner entered his plea
4 before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

5 Petitioner is also not entitled to a modification of his sentence. Petition, at 5. In general,
6 a district court lacks jurisdiction to modify a sentence once the defendant has started serving
7 it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other
8 grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court does
9 have inherent authority to correct, vacate or modify a sentence where the defendant can
10 demonstrate the sentence violates due process because it is based on a materially untrue
11 assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards
12 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108
13 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due
14 process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).
15 The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in
16 scope to sentences based on mistaken assumptions about a defendant's criminal record which
17 work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

18 Here, Petitioner has failed to show that the Court sentenced him under a materially
19 untrue assumption or mistake of fact. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d
20 at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Petitioner has not presented any argument
21 or evidence that his sentence is facially illegal. This request is not based on a materially untrue
22 assumption or mistake of fact that has worked to his extreme detriment to give the Court any
23 reason to modify his sentence because the error in his PSI was corrected prior to sentencing.
24 Accordingly, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED.

25 //

26 //

27 //

28 //

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
3 shall be, and it is, hereby denied.

4 ~~DATED this 22 day of July, 2021.~~

Dated this 19th day of August, 2021

5
6 
DISTRICT JUDGE

NH kj

7 STEVEN B. WOLFSON
8 Clark County District Attorney
Nevada Bar #001565

1F9 6B5 64A0 EA1A
Jacqueline M. Bluth
District Court Judge

9 BY 

10 KAREN MISHLER
11 Chief Deputy District Attorney
Nevada Bar #13730

Yu meng #14741
for

12
13
14 **CERTIFICATE OF SERVICE**

15 I certify that on the 22nd day of July, 2021, I mailed a copy of the foregoing
16 proposed Findings of Fact, Conclusions of Law, and Order to:

17 CLIFFORD SMITH, BAC #1235854
18 THREE LAKES VALLEY C.C.
19 PO BOX 208
INDIAN SPRINGS, NV 89070

20 BY 

Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 KM/mah/L3

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Clifford Smith, Plaintiff(s)

CASE NO: A-21-833992-W

7 vs.

DEPT. NO. Department 6

8 State of Nevada, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

5 CLIFFORD SMITH,

6 Petitioner,

Case No: A-21-833992-W

Dept No: VI

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on August 19, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 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 August 24, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 24 day of August 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Clifford Smith # 1235854
26 P.O. Box 208
Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather Shuman
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CLIFFORD SMITH,
#2681698

Petitioner,

CASE NO: A-21-833992-W

-vs-

C-20-346330-1

THE STATE OF NEVADA,

DEPT NO: VI

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JUNE 30, 2021
TIME OF HEARING: 11:00AM

THIS CAUSE having come on for hearing before the Honorable JACQUELINE M. BLUTH, District Judge, on the 30th day of June, 2021, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through YU MENG, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

//

//

//

//

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On January 23, 2020, the State charged Clifford Smith (hereinafter "Petitioner") by way
4 of Information with one count of Attempt Robbery (Category B Felony – NRS 200.380,
5 193.330). The next day, Petitioner pleaded guilty to the one count and signed a Guilty Plea
6 Agreement. Pursuant to the negotiations, the State agreed to make no recommendation at
7 sentencing and agreed to not seek habitual criminal treatment. The State also agreed the
8 maximum sentence will not exceed eight years and did not oppose Petitioner's bail being
9 lowered to \$5,000.00 with mid-level electronic monitoring upon entry of plea.

10 On May 27, 2020, Petitioner and his counsel appeared at sentencing and informed this
11 Court there were issues with the Presentence Investigation Report (PSI) and requested a
12 continuance. On July 13, 2020, this Court noted it reviewed the Supplemental PSI that
13 corrected the previous errors, and adjudicated Petitioner guilty of Attempt Robbery. This Court
14 sentenced Petitioner to a minimum of thirty-six months and a maximum of ninety-six months
15 in the Nevada Department of Corrections (NDOC). Petitioner received one hundred ninety-
16 three days credit for time served. The Judgment of Conviction was filed on July 17, 2020.

17 On May 4, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
18 Conviction) (hereinafter "Petition"). The State filed its Response on June 18, 2021. Following
19 a hearing on June 30, 2021, this Court now finds and concludes as follows:

20 **AUTHORITY**

21 Petitioner claims that he was forced to plead guilty because the District Attorney's
22 Office threatened him by using "materially untrue convictions" to make it appear he was
23 eligible for habitual criminal treatment. Petition, at 1-5. However, the claims raised in the
24 instant Petition are conclusory, bare, and naked assertions that should be summarily dismissed.
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

26 Dismissal of a petition is mandatory if "[t]he petitioner's conviction was upon a plea of
27 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea
28 was involuntarily or unknowingly entered or that the plea was entered without effective

1 assistance of counsel.” NRS 34.810(1)(a). The Nevada Court of Appeals recently considered
2 the types of ineffective assistance of counsel claims that are permissible pursuant to this
3 statute, and concluded that NRS 34.810 *only* permits claims of ineffective assistance of counsel
4 that challenge the validity of the guilty plea. Gonzales v. State, 136 Nev. Adv. Op. 60 (Nev.
5 App. 2020). “[A] petitioner must allege specific facts demonstrating both that counsel’s advice
6 (or failure to give advice) regarding the guilty plea was objectively unreasonable and that the
7 deficiency affected the outcome of the plea negotiation process.” Id. Further, when a
8 conviction is the result of a guilty plea, to demonstrate prejudice, a petitioner “must show that
9 there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty
10 and would have insisted on going to trial.” Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102,
11 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985)).

12 Here, Petitioner claims that the District Attorney’s Office forced him to plead guilty by
13 using “false convictions that did force a plea.” Petition, at 2. Petitioner’s only support for this
14 assertion is his PSI, which was not prepared by the District Attorney’s Office and was not
15 prepared until after Petitioner entered his guilty plea. Petitioner also claims that the District
16 Attorney threatened to charge him as a habitual offender. Petition, at 2. However, the State
17 never filed a Notice of Intent to Seek Habitual Criminal Treatment. The only mention of
18 habitual criminal treatment is the Guilty Plea Agreement, which states, “Additionally, the State
19 agrees not to seek habitual criminal treatment.” Guilty Plea Agreement, January 24, 2020, at
20 1. Thus, it is unclear how Petitioner was forced by the District Attorney to enter a guilty plea
21 because he feared habitual criminal treatment, when the State agreed not to seek it.

22 Furthermore, the record demonstrates that counsel brought the errors in Petitioner’s PSI
23 to the court’s attention before his sentencing. Court Minutes, May 27, 2020. After counsel
24 brought these errors to the court’s attention, a new supplemental PSI was filed prior to
25 sentencing, correcting the number of prior felonies to 2. See Court Minutes, July 13, 2020;
26 Supplemental PSI, prepared July 1, 2020. Even with two prior felonies, Petitioner was eligible
27 to be sentenced under the small habitual statute. See NRS 207.010(1)(a). However, the errors
28

1 were fixed to represent Petitioner's correct number of prior felonies, and Petitioner was not
2 forced into any negotiations by the State.

3 Petitioner also requests this Court allow him to withdraw his plea because his plea was
4 based on a "miscarriage of justice," while simultaneously asking this Court to modify his
5 sentence. Petition, at 5.¹ These two requests are mutually exclusive. If this Court allows him
6 to withdraw his plea, then this Court is unable to sentence him because the court can only
7 sentence a defendant that has either pled guilty or been found guilty at trial.

8 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
9 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
10 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the
11 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,
12 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
13 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
14 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

15 To determine whether a guilty plea was voluntarily entered, the Court will review the
16 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
17 P.2d at 367. A proper plea canvass should reflect that:

18 [T]he defendant knowingly waived his privilege against self-
19 incrimination, the right to trial by jury, and the right to confront his
20 accusers; (2) the plea was voluntary, was not coerced, and was not the
21 result of a promise of leniency; (3) the defendant understood the
22 consequences of his plea and the range of punishments; and (4) the
23 defendant understood the nature of the charge, i.e., the elements of
24 the crime.

25 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
26 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in

27 ¹ Petitioner also claims cruel and unusual punishment, ineffective assistance of counsel, and violation of due process. Id.
28 He mentions these claims, but never addresses them again and fails to make any factual allegations regarding these
claims. It is defendant's responsibility to plead specific factual allegations, and defendant cannot rely on conclusory
claims for relief. NRS 34.735; Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117
Nev. 609, 621, 28 P.3d 498, 507 (2001)).

1 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant
4 at the time he enters his plea in order to determine whether he understands the nature of the
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
8 formal setting, such as that occurring between an official sitting in judgment of an accused at
9 plea. Id. However, the Court need not conduct a ritualistic oral canvass. State v. Freese, 116
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
14 1463, 1470 (1970).

15 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
16 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
17 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
18 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
19 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
20 that a defendant lacked standing to challenge the validity of a plea agreement because he had
21 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
22 468, 477, 958 P.2d 91, 96 (1998).

23 Furthermore, the Nevada Supreme Court has explained:

24 [A] guilty plea represents a break in the chain of events which has
25 preceded it in the criminal process. When a criminal defendant has
26 solemnly admitted in open court that he is in fact guilty of the offense
27 with which he is charged, he may not thereafter raise independent
28 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
2 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
5 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
6 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
7 the effectiveness of counsel.”).

8 Here, Petitioner’s claim that his plea was coerced is belied by the record. First,
9 Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his
10 GPA, which stated:

11 VOLUNTARINESS OF PLEA

12 I have discussed the elements of all the original charge(s) against me
13 with my attorney and I understand the nature of the charge(s) against
me.

14 I understand that the State would have to prove each element of the
15 charge(s) against me at trial.

16 I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor.

17 All of the foregoing elements, consequences, rights, and waiver of
18 rights have been thoroughly explained to me by my attorney.

19 I believe that pleading guilty and accepting this plea bargain is in my
best interest, and that trial would be contrary to my best interest.

20 **I am signing this agreement voluntarily, after consultation with**
21 **my attorney, and I am not acting under duress or coercion or by**
22 **virtue of any promises of leniency except those set forth in this**
agreement.

23 I am not now under the influence of any intoxicating liquor, a
24 controlled substance or other drug which would in any manner impair
my ability to comprehend or understand this agreement or the
proceedings surrounding my entry of this plea.

25 My attorney has answered all my questions regarding this plea
26 agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

27 Guilty Plea Agreement, January 24, 2020, at 4-5 (emphasis added).
28

1 Therefore, based on Petitioner's Guilty Plea Agreement, his claim is belied by the
2 record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his
3 plea is necessary to correct a manifest injustice—especially because Petitioner entered his plea
4 before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

5 Petitioner is also not entitled to a modification of his sentence. Petition, at 5. In general,
6 a district court lacks jurisdiction to modify a sentence once the defendant has started serving
7 it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other
8 grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court does
9 have inherent authority to correct, vacate or modify a sentence where the defendant can
10 demonstrate the sentence violates due process because it is based on a materially untrue
11 assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards
12 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108
13 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due
14 process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).
15 The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in
16 scope to sentences based on mistaken assumptions about a defendant's criminal record which
17 work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

18 Here, Petitioner has failed to show that the Court sentenced him under a materially
19 untrue assumption or mistake of fact. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d
20 at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Petitioner has not presented any argument
21 or evidence that his sentence is facially illegal. This request is not based on a materially untrue
22 assumption or mistake of fact that has worked to his extreme detriment to give the Court any
23 reason to modify his sentence because the error in his PSI was corrected prior to sentencing.
24 Accordingly, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED.

25 //

26 //

27 //

28 //

1 ORDER

2 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
3 shall be, and it is, hereby denied.

4 ~~DATED this 22 day of July, 2021.~~

Dated this 19th day of August, 2021


5 
6 DISTRICT JUDGE

NH kj

7 STEVEN B. WOLFSON
8 Clark County District Attorney
Nevada Bar #001565

1F9 6B5 64A0 EA1A
Jacqueline M. Bluth
District Court Judge

9 BY

10 
11 KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730

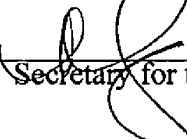
Yu meng #14741
for

12
13
14 CERTIFICATE OF SERVICE

15 I certify that on the 22nd day of July, 2021, I mailed a copy of the foregoing
16 proposed Findings of Fact, Conclusions of Law, and Order to:

17 CLIFFORD SMITH, BAC #1235854
18 THREE LAKES VALLEY C.C.
19 PO BOX 208
INDIAN SPRINGS, NV 89070

20 BY


Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 KM/mah/L3

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Clifford Smith, Plaintiff(s)

CASE NO: A-21-833992-W

7 vs.

DEPT. NO. Department 6

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 30, 2021

A-21-833992-W	Clifford Smith, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

June 30, 2021	11:00 AM	Petition for Writ of Habeas Corpus
----------------------	-----------------	---

HEARD BY: Bluth, Jacqueline M.

COURTROOM: RJC Courtroom 10C

COURT CLERK: Kristen Brown

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Meng, Yu	Attorney
-----------------	----------	----------

JOURNAL ENTRIES

- Petitioner s Petition for Writ of Habeas Corpus is hereby DENIED. Petitioner claims that he was forced to plead guilty because the District Attorney s Office threatened him by using materially untrue convictions to make it appear he was eligible for habitual criminal treatment. However, the claims raised in the instant Petition are conclusory, bare, and naked assertions that should be summarily dismissed. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Dismissal of a petition is mandatory if 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. NRS 34.810(1)(a).

Here, Petitioner claims that the District Attorney s Office forced him to plead guilty by using false convictions that did force a plea. Petitioner s only support for this assertion in his PSI, which was not prepared by the District Attorney Office and was not prepared until after Petitioner entered his guilty plea. Petitioner also claims that the District Attorney threatened to charge him as a habitual offender. However, the State never filed notice a Notice of Intent to Seek Habitual Criminal Treatment. The only mention of habitual criminal treatment is the Guilty Plea Agreement, which

PRINT DATE: 12/07/2021

Page 1 of 2

Minutes Date: June 30, 2021

states, Additionally, the State agrees not to seek habitual criminal treatment. Guilty Plea Agreement, January 24, 2020, at 1. Thus, it is unclear how Petitioner was forced by the District Attorney to enter a guilty plea because he feared habitual criminal treatment, when the State agreed not to seek it.

Furthermore, the record demonstrates that counsel brought the errors in Petitioner PSI to the Court's attention before his sentencing. Court Minutes, May 27, 2020. After counsel brought these errors to the court's attention, a new supplemental PSI was filed prior to sentencing, correcting the number of prior felonies to 2. See Court Minutes, July 13, 2020; Supplemental PSI, prepared July 1, 2020. Even with two prior felonies, Petitioner was eligible to be sentenced under the small habitual statute. See NRS 207.010(1)(a). However, the errors were fixed to represent Petitioner's correct number of prior felonies, and Petitioner was not forced into any negotiations by the State.

Petitioner's claim that his plea was coerced is belied by the record. Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his GPA. See Guilty Plea Agreement, January 24, 2020, at 4-5. Therefore, based on Petitioner's Guilty Plea Agreement, his claim is belied by the record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his plea is necessary to correct a manifest injustice especially because Petitioner entered his plea before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

Petitioner is also not entitled to a modification of his sentence. In general, a district court lacks jurisdiction to modify a sentence once the defendant has started serving it. However, a district court does have inherent authority to correct, vacate or modify a sentence where the defendant can demonstrate the sentence violates due process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. Not every mistake or error during sentencing gives rise to a due process violation. The Nevada Supreme Court has emphasized that a motion to modify sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the extreme detriment of the defendant. *Edwards*, 112 Nev. at 708, 918 P.2d at 325.

Here, Petitioner has failed to show that the Court sentenced him under a materially untrue assumption or mistake of fact. See NRS 176.555. Petitioner has not presented any argument or evidence that his sentence is facially illegal. This request is not based on a materially untrue assumption or mistake of fact that has worked to his extreme detriment to give the Court any reason to modify his sentence because the error in his PSI was corrected prior to sentencing. Accordingly, Petitioner's Petition for Writ of Habeas Corpus is DENIED. State to submit a proposed order.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated December 6, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 48.

CLIFFORD R. SMITH,

Plaintiff(s),

vs.

STATE OF NEVADA,

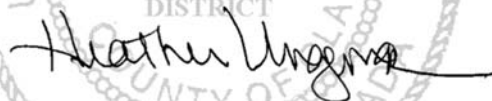
Defendant(s),

Case No: A-21-833992-W
Related Case C-20-346330-1
Dept. No: XVII

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 7 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

