

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMIE NUNN,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Nov 15 2021 02:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-835110-W

Docket No: 83660

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
SAMMIE NUNN #1226304,
PROPER PERSON
P.O. BOX 509
PIOCHE, NV 89043

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

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The District Court of Nevada
County of Clark

May 3, 2021

FILED

MAY 24 2021

John L. Williams
CLERK OF COURT

Sammie Nunn III
Petitioner,

Vs.

The State of Nevada
Respondent.

- Dept No. XVIII -

Civil Case No: 18PD0861

District Case No: C-18-336184-1

Supreme Court Case No: ~~2018012~~ 80121

Racial and Mental Bias claim for Discrimination -

Brady claim - Strickland Claim - New Evidence

POST-CONVICTION PETITION

FOR

A-21-835110-W
Dept. 21

WRIT OF HABEAS CORPUS

Petitioner, Sammie Nunn III (here in after referred to as "Nunn"), By And In Proper Persona. Hereby Files This Petition for Writ of Habeas Corpus. IN Response to New Evidence in the Petition for Writ of Habeas Corpus Pursuant to NRS Chapter 34. This Petition, including Points and Authorities, is Made upon the pleadings and papers on file, and any oral argument of victim and Counsel deemed necessary by the Court. Petitioner, Sammie Nunn, Alleges and can prove that he is being held in custody in violation of the fifth, sixth and fourteenth Amendments of the Constitution of the United States of America and articles I And IV of the Nevada Constitution. This Case was a Robbery Gone wrong where Nunn was not the original aggressor in either incident.

RECEIVED

MAY 06 2021

CLERK OF THE COURT

Page 2 of Habeas Corpus petition

Supporting Evidence

Department 18 or XV(1)

case # C-18-336184-1

3-3-2021

295 U.S. at 88). Principal among a prosecutor's duties is to provide a defendant with all material exculpatory and impeachment evidence prior to trial. This obligation recognizes the significant advantage the state has over an individual defendant in regard's to gathering information and seeks to level the playing field. We expect our government to fight fair and not deny a defendant evidence that could exculpate him or ameliorate the penalty he faces. Only by giving a defendant this evidence can the government ensure that "justice is done its citizens in courts." Brady, 373 U.S. at 87.

- Violation of Nunn's 5 and 14th Amendments right to Due process-

Prosecutor Megan Thomson learned information on June 6th 2019 that she knew the defendant did not know. She knew that Kerick Hines wanted to come to court and testify on behalf of the defense. The reason we know that defendant Nunn did not know this is because defendant Nunn asked the Judge Mary Kay Holthus to have his attorney disclose the Private conversations Mr Goldstein was having with Kerick Hines, the Alledge 2nd Victim in Court and the Court refused. It was only once Nunn signed said Plea Negotiation that Mr Goldstein, Megan Thomson and Judge Mary Kay Holthus held a bench conference discussing the subject at hand. Anthony Goldstein made it a point not to give defendant Nunn this information, and though it was his duty to disclose that information to Nunn, it was also Prosecuting District Attorney Megan Thomson's

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MAY 10 2021

CLERK OF THE COURT

FACTUAL STATEMENT

The Defendant pled guilty without the advice and assistance of a well prepared counsel. Defendant's counsel did an inadequate investigation preplea and he inadequately counseled Nunn during the preplea process. Defense counsel and Nunn had a very poor relationship and Nunn therefore tried to get the Court to appoint another defense counsel during the pretrial proceedings. (A.A. 15-20), (A.A. 38-49), (A.A. 50-52) The Court however initially denied Nunn's Motions for Alternate Counsel and did not grant Nunn another counsel until after he had already pled guilty and then it was too late. (A.A. 55), (A.A. 185)

Even though there had been a complete breakdown of communication between the Defendant and counsel, the Court did not grant his Motion for Alternate Counsel until after he plead guilty. The newly appointed counsel filed a Writ of Habeas Corpus alleging Defendant's plea was invalid, but the Writ was denied. (A.A. 76)

It is respectfully submitted the Court erred in denying the Petition and Motion to Withdraw Guilty Plea. Defendant had entered a hasty, unknowing and virtually uncounselled plea of guilty. Soon after the Defendant pled guilty, he tried to withdraw his plea by filing a Motion to Withdraw that plea of guilty. On November

5, 2019, the Court denied the Motion, finding that his plea was not invalid. (A.A. 218-222) The Court in its Findings of Facts stated there was no manifest injustice and the Court also disagreed with the Defendant's assertion of 'factually innocence.' (A.A. 221-222)

It is respectfully submitted however the record establishes Defendant's affidavit provided sufficient evidence or grounds for the guilty plea to be withdrawn. Defendant submits therefore his plea was involuntary and was not knowingly or intelligently made.

Soon after Defendant's Motion to Withdraw his guilty plea was denied, the State moved to revoke the Defendant's probation. (A.A. 226-232)

At the revocation hearing on November 14, 2018, the Defendant was not adequately prepared because of the lengthy conflict he had with his counsels. He therefore stipulated to revocation, feeling he had no choice. (A.A. 228) The Court revoked Defendant's probation without considering any mitigating evidence. Even though an abundance of mitigation existed, the Court never considered the factors which mitigated his conduct. It should be noted that in the Findings of Fact, Conclusions of Law and Order, the Court when revoking the Defendant noted the

Defendant had no further arrests. The Court actually modified Defendant's probation to 36 to 120 months. (A.A. 230)

Defendant submits, nevertheless, that the Court wrongly abused its discretion when it accepted the Defendant's stipulation and revoked his probation. It is respectfully submitted the Court should have considered the totality of the mitigating circumstances which existed including the Defendant's recent Motion to withdraw his plea which alleged his 'factual innocence.' The Court should have recognized the effect of the sustained conflict with his counsels as well as the other extensive mitigating circumstances in the record such as his mental problems. The Court therefore should have rejected the proposed Stipulated Revocation of Probation. Under all the facts and circumstances the revocation was not just and it is therefore respectfully submitted the Court abused its discretion when it revoked the Defendant. After revoking the Defendant's probation, Defendant was sentenced to 36 to 120 months. (A.A. 230)

...

...

...

1 or unavailable at trial. Id. at 327-328. The court must make its determination concerning the
2 petitioner's innocence "in light of all the evidence, including that alleged to have been illegally
3 admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have
4 been wrongly excluded or to have become available only after the trial." Id. at 328.

5
6 The meaning of actual innocence does not merely require a showing that a reasonable
7 doubt exists in the light of the new evidence, but rather that no reasonable juror would have found
8 the defendant guilty. It is not the district court's independent judgment as to whether reasonable
9 doubt exists; the standard requires the district court to make a probabilistic determination about
10 what reasonable, properly instructed jurors would do. Thus, a petitioner does not meet the
11 threshold requirement unless he persuades the district court that, in light of the new evidence, no
12 juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt. Id. at
13 329. The word "reasonable" in that formulation is not without meaning. Id. It must be presumed
14 that a reasonable juror would consider fairly all of the evidence presented. Id. It must also be
15 presumed that such a juror would conscientiously obey the instructions of the trial court requiring
16 proof beyond a reasonable doubt. Id.

17
18 Newly presented evidence may indeed call into question the credibility of the witnesses
19 presented at trial. Id. at 30. In such a case, the court may have to make some credibility
20 assessments. Id. Also, and more fundamentally, the focus of the inquiry is on the likely behavior
21 of the trier of fact. Id.

22
23 Courts have held that an evidentiary hearing regarding actual innocence is required where
24 the new evidence, "if credited," would show that it is more likely than not that no reasonable jury
25 would find the petitioner guilty beyond a reasonable doubt. See Berry v. State, 131 Nev. Adv. Op.
26 96, 363 P.3d 1148, 1155 (2015); and Coleman v. Hardy, 628 F.3d 314, 319-20 (7th Cir.2010)

character of the error, and [3] the gravity of the crime charged. *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000), citing *Leonard v. State*, 114 Nev. 1196, 1216, 969 P.2d 288, 301 (1998). *See also, Big Pond v. State*, 101 Nev. 1, 692 P.2d 1228 (1985).

Considering all these factors Defendant therefore urges the Court to reverse his conviction and the Order revoking probation based upon cumulative error.

CONCLUSION

The Defendant, Sammie Nunn, respectfully submits for all the reasons stated that the Order denying his Motion to Withdraw His Guilty Plea should be reversed. The Order revoking the Defendant's probation must also be reversed and this case should be remanded for such other relief as proper.

DATED this 26th day of June, 2020.

Respectfully submitted,

//s// Terrence M. Jackson
Terrence M. Jackson, Esquire
Law Office of Terrence M. Jackson
Nevada Bar No. 00854
624 South Ninth Street
Las Vegas, Nevada 89101
T: 702.386.0001 / F: 702.386.0085
terry.jackson.esq@gmail.com
Counsel for Appellant, *Sammie Nunn*

District Court State of Nevada
Clark County

- Supporting Evidence And Habeas Corpus Grounds

Sammye Nunn III
Appellant

Case No. C-18-336184-1

Dept No. XVIII

- Newly discovered evidence

V.

Habeas Corpus

The State of Nevada
Respondant

Racially [REDACTED] Motivated
Bas Claim BRADY CLAIM-Strickland CLAIM

"The prosecutions affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th Century structures against misrepresentation" by prosecutors. *Kyles v. Whitley*, 514 U.S. 419, 432, 115 S. Ct. 1555, 131 L. Ed 2d 490 (1995). As the Supreme Court recognized in 1935, a prosecutor is "the representative not of an ordinary party to controversy, but of a sovereignty... whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88, 65 S. Ct. 629, 79 L. Ed. 1314 (1935). In subsequent decisions, most notably *Brady*, the Court has consistently "underscored the 'special role played by the American prosecutor in the search for truth in criminal trials.'" *Banks v. Dretke*, 540 U.S. 668, 696, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004) quoting *Strickler v. Greene*, 527 U.S. 263, 281, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)). The supreme court has also repeatedly reaffirmed that *Brady* is one of the central bulwarks against injustice in our criminal justice system. The Court has stressed the central premise of *Brady*; even though an individual prosecutor may win a conviction, society as a whole loses when that conviction is wrong. Our system, therefore, places a "duty [on prosecutors] to refrain from improper methods calculated to produce a wrongful conviction." *Cone v. Bell*, 556 U.S. 449, 129 S. Ct. 1769, 1782, 173 L. Ed. 2d 701 (2009) (quoting *Berger*,

Duty and role to disclose evidence favorable to defendant.
 "A prosecutor has a duty under Brady to 'learn of any exculpatory evidence known to others acting on the government's behalf.'" Carriger v. Stewart, 132 F.3d 463, 479-80 (9th Cir. 1997), (en banc) (Prosecutor violated Brady when she did not turn over victim/witness Kerick Hines New Version of the events transpiring June 2nd 2018. There is now speculation that District Attorney Megan Thomson took Kerick Hines off the witness list for the Grand Jury indictment hearing because he did not fit her version of the events that would support a conviction. Did Megan Thomson Sabotage the fact finding process to secure grounds for probable cause at the Grand Jury indictment Phase? It Appears SO. "Where Jurisdiction is challenged it must be proven." Hagans v. Lavine 415 U.S. 528 at 553. "No sanction can be imposed absent Proof of Jurisdiction." Standard v. Olson 74 S. Ct 768, and "If any tribunal [court] finds Absence of Proof of Jurisdiction over person and subject matter, the Case must be dismissed".
 - Louisville RR v. Motley, 211 U.S. 149, 29 S. Ct. 42.
 violation of - Prosecutorial Misconduct - Brady claim
 5th & 4th Amendments - Jurisdictional Challenge - Ground 1 - 6th

When Prince Alidu testified for the state on November 2018, he knew if he did what the Prosecutor asked in the end he would receive a victims impact of \$22,000 dollars, this is a very large amount of money offered by the prosecution to a refugee from Ghana, Accra-Africa. The Clark County D.A.'s Office Bribed this witness to Commit Perjury Violating their Code of ethics by knowingly Presenting false

Testimony - HN23 and use of false Testimony HN17, failure to comply with an open-file policy, section 1623(a) of Title 18 makes it unlawful to knowingly make a false declaration under oath before a grand jury. United States v. McKenna 327 F. 3d 830, 838 (9th Cir. 2003). "It is clearly established law that 'a state may not knowingly use false evidence, including FALSE TESTIMONY TO OBTAIN A TAINTED CONVICTION...' Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959). Because the State clearly knew that there was a previous statement MADE UNDER OATH of the events Prosecuted in this case that would have exonerated defendant at the GRAND JURY Stage the State Violated Defendants 5, 6 and 14 amendments and Due Process Rights, therefore the State lacks Jurisdiction over defendant by failing to disclose this information from Case No. 18PD0861 (In The Justice Court of Las Vegas Township, County of Clark, STATE OF NEVADA) on June 19, 2018, to the Grand Jurors or the Defense for the Grand Jury Indictment hearing on Nov. 6, 2018. The reason the Second Victim didn't show up has always been a mystery to defendant. Until March 23 2021, defendant Sammie Lee Nunn III had never received his discovery from his prior Attorney Anthony Goldstein, so he was never afforded the opportunity to put together a proper Habeas Corpus Petition because of the prior conflict of irreconcilable differences and Unexcusable neglect of the conflict by the trial Court. Now that he has received the entire record, there is now ample supportive evidence that supports the State Suppressing the

**JC DEPARTMENT 7
CASE SUMMARY
CASE NO. 18PO0861**

Prince Alidu, Applicant
vs.
Sammie Nunn, Adverse Party(s)

Location: JC Department 7
Judicial Officer: Bennett-Haron, Karen P.
Filed on: 05/30/2018

CASE INFORMATION

Statistical Closures
06/20/2018 PO Denied with Hearing

Case Type: **Protective Order-Stalking and Harassment**

Case Status: 06/20/2018 Order Denied

This is the closest account of incident without Prince Alidu being drunk. This is before Megan Thomson Coached him to lie.

DATE

CASE ASSIGNMENT

Current Case Assignment
Case Number
Court
Date Assigned
Judicial Officer

18PO0861
JC Department 7
05/30/2018
Bennett-Haron, Karen P.

DA. Megan Thomson knew this existed and walked him in to lie to a panel of grand jurors and didn't even show them this public court document.

PARTY INFORMATION

Applicant Alidu, Prince

Pro Se
702-325-2142(H)

Adverse Party Nunn, Sammie

DATE

EVENTS & ORDERS OF THE COURT

INDEX

- | | |
|------------|---|
| 06/20/2018 | <input checked="" type="checkbox"/> Order Denying Protective Order
<i>Order Denied for Stalking and Harassment</i> |
| 06/19/2018 | <input checked="" type="checkbox"/> Protective Order Application (10:00 AM) (Judicial Officer: Bennett-Haron, Karen P.)
Events: 05/30/2018 Application for Order for Protection Against Stalking
05/30/2018 Protective Order Notice of Filing of Exhibit(s)
06/01/2018 Protective Order - Set for Hearing
Matter Heard;
Journal Entry Details:
<i>Matter on calendar for application for Temporary Protective Order - Denied;</i>
Parties Present: Applicant Alidu, Prince
Adverse Party Nunn, Sammie |
| 06/11/2018 | <input checked="" type="checkbox"/> Protective Order Return of Service
<i>Served Order Setting Hearing as to Sammie Nunn on 6/8/18</i> |
| 06/01/2018 | <input checked="" type="checkbox"/> Protective Order - Set for Hearing
<i>Order Setting Hearing</i> |
| 05/30/2018 | <input checked="" type="checkbox"/> Protective Order Notice of Filing of Exhibit(s)
Party: Applicant Alidu, Prince
<i>Exhibits</i> |
| 05/30/2018 | <input checked="" type="checkbox"/> Application for Order for Protection Against Stalking
Party: Applicant Alidu, Prince
<i>tpo</i> |

Second victim from coming to the Grand Jury hearing November 6, 2018, there is also Plain evidence that she kept the information of what "Kerick Hines", would say at trial and that he wanted to come to trial as a credible witness for the defense. Attorney Anthony Goldstein went on the record multiple times before trial set date to tell Judge Mary Kay Holthus and District Attorney Megan Thomson (at the bench I remind you!) that the witness's were all going to testify against Petitioner May 14 2019, May 23, 2019 and June 6, 2019. Case # C-18-336184-1 District Court transcripts. Matter of factly it wasn't until June 6, 2019 under pressure of the Judges bias behavior that Attorney Anthony Goldstein broke the news in order to get Judge Mary Kay Holthus to abide by A deal that the Petitioner would only take if the state and the judge agreed and accepted a stipulated underlying sentence of 2-5 years. She broke the stipulated agreement the next week. The conversation at the bench goes as follows: June 6 2019 C-18-336184-1 Mary Kay Holthus - Judge - or - Court: -

Court: "Are you currently under the influence of any drugs, medications, or alcoholic beverages right now?"

Nunn: "No ma'am."

Page 4 Lines 9-11 case # 336184 court Transcripts. I admitted to the court that I was not on my medication, meaning I wasn't in my right state of mind. Page 13 of court transcripts Lines 5-7 "Bench Conference," Court:

"What's his mental health issue? He Appears to have one."

Goldstein: "It's Terrible."

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 06 2019

BY, Dara Yorke
DARA YORKE, DEPUTY

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SAMMIE NUNN,
#2751864

Defendant.

CASE NO: C-18-336184-1

DEPT NO: XVIII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **BATTERY WITH USE OF A DEADLY WEAPON**
(Category B Felony - NRS 200.481 - NOC 50223), as more fully alleged in the charging
document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as
follows:

**PARTIES STIPULATE TO UNDERLYING
SENTENCE OF 2-5 YEARS IN NDOC**

The State has no opposition to probation. The State will not oppose Defendant's
release on house arrest after entry of guilty plea in District Court.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized
and/or impounded in connection with the instant case and/or any other case negotiated in
whole or in part in conjunction with this plea agreement.

I understand and agree that, if I fail to interview with the Department of Parole and
Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
by affidavit review, confirms probable cause against me for new criminal charges including

C-18-336184-1
GPA
Guilty Plea Agreement
4840882



W:\2018\2018F11438\18F11438-GPA-(NUNN_SAMMIE)-001.DOCX

024

Even though they knew Petitioner was off his medication and confirmed, on the record that his mental state was Terrible, instead of ordering a psychiatric evaluation for a mentally fragile defendant, they, feather-beddingly pushed their agenda:

The Court: "If it goes badly its-"

Ms. Thomson: "It's my fault".

Mr. Goldstein: "But you accepted his plea where that's--"

The Court: "-- I've accepted his plea--"

Mr. Goldstein: "-- We moved on to sentencing - the thing--"

The Court: "It wasn't a stipulated negotiation. It was just a no opposition to probation, so--"

Mr. Goldstein: "-- Well it wasn't a conditioned - it was stipulated but unconditioned."

✶ Petitioner is a common citizen and does not understand the legal lingo used here, but to a common citizen using a common dictionary, in the American Century Dictionary - the first meaning for Condition/condition/n. is 1- Stipulation, or term, or terms. Obviously my Attorney was not on my side, because he tried to trick me. Here is a further Assault on Petitioner's mental and legal capacity and blatant Coercion by the Court and its officials:

Ms. Thomson: "-- here's the one thing I'm going to kind of throw out there, is based on that plea, he should be O.R'd with house arrest today."

Mr. Goldstein: "He's not going to be approved for house Arrest anyway--"

Mr Goldstein had a great dismay for his client that was horrifying and appalling, the conflict was unequivocally the worst.

Was this a shared Racial Bias, was this all because Petitioner was simply a black man, that he didn't get to have the same benefits as a white person in the same situation, I don't know because I do not know these three in person or in public, but on the Record This is systemic ~~systemic~~ RACISM. But it gets even darker: Judge Mary Kay Holthus explains in this next line why Petitioner wasn't going to get a fair shake, she put it all out there, she tells the record and the World how she honestly felt, this is Racial Bias and systemic ~~systemic~~ Racism at its Core:

Page 14 Court Transcripts - Bench Conference - Case no. C-18-336184-1

★ The Court: Honestly, I didn't look at this for anything but Prison."

Mr. Goldstein: Yeah, well---everything--the game changed recently, so I guess that's why. I'm not going to argue.

— If petitioner was on trial for murder and the murdered victim walked in the courtroom, it wouldn't matter--her mind was set. Finally, the game changer, this is the reason the last chess move for this team of co-conspirators was for Goldstein not to argue at sentencing for defendant or go to trial for an innocent black man.

Goldstein: "Kerick Hines said Prince Alidu was drunk and popped up flashing on Sammie." ^{★ Aggressively initiated second encounter After life threatening first encounter.}

Ms. Thomson: "Oh, he would talk to you?"

Goldstein: "He called me a week ago."

Ms. Thomson: "Congratulations."

(Not once does he say that he was drunk or not credible.)

Goldstein: This would've been his testimony had this gone to trial."

STATE BAR OF NEVADA



July 25, 2018

Sammie Nunn, #2751864
Clark County Detention Center
330 S. Casino Center Boulevard
Las Vegas, NV 89101

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

Re: Grievance / Anthony Goldstein, Esq.
Reference No. OBC19-0860

www.nvbar.org

Dear Mr. Nunn:

The Office of Bar Counsel has considered your latest grievance to the State Bar of Nevada regarding attorney Anthony Goldstein in connection with your ongoing criminal case.

Court records show that *State of Nevada vs. Sammie Nunn*, Case No. C336184, remains pending in Eighth Judicial District Court. Your grievance involves issues which, at this time, should be addressed in the appropriate judicial setting.

The Office of Bar Counsel and the disciplinary boards of the State Bar are not substitutes for the court system. Therefore, this grievance has been dismissed. No further action shall be taken in this matter.

If a court makes written findings which clearly establish attorney misconduct, please re-submit that information for our reconsideration.

Sincerely,

Phillip J. Pattee
Assistant Bar Counsel

PJP/bkm

1 Las Vegas, Nevada, Tuesday, August 6, 2019

2
3 [Hearing began at 9:02 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie
5 Nunn, C336184.

6 MR. GOLDSTEIN: Anthony Goldstein for the Defendant;
7 he is present in custody, Your Honor.

8 THE COURT: Can I have counsel approach?

9 [Bench Conference]

10 THE COURT: What are we doing with this? Is he
11 competent?

12 MR. GOLDSTEIN: Hard to tell because he goes in and out
13 of competency in my opinion. It depends on the condition,
14 depends on his mood. I can't – I don't know if the letter is
15 malingering effort to look more, to go back into competency or not.
16 I really don't know.

17 I thought about re-evaluating him for competency, but I
18 don't know – it's a permanent – he's not – I don't think he's ever
19 going to get normal, unfortunately.

20 THE COURT: Are you all going to file any opposition to
21 any of this?

22 MR. LEXIS: No.

23 THE COURT: Megan doesn't care?

24 MR. LEXIS: Megan doesn't care.

25 THE COURT: Initially, on basis, he got – is there any –

1 anything to any of this that these – included in the letter. Are there
2 witnesses? Are there people that –

3 MR. GOLDSTEIN: Judge, I've talked to people – I did a lot
4 on this case. I talked to people --

5 THE COURT: Okay, this is all recorded, let's make a –

6 MR. GOLDSTEIN: -- I'm trying to -- I spoke with several
7 witnesses, they were at the mini mart to where in that area he gave
8 me the names for.

9 THE COURT: Some names and numbers?

10 MR. GOLDSTEIN: Yes. Somewhere in that letter, it said
11 something about -- I submit this is not believable. Yeah, I talked to a
12 person, I'm not going to say his name, but I talked to a person, and
13 there's no way that person is credible. I interviewed that person
14 myself over the phone. They said they were there and it was very
15 clear that that person wasn't credible, wouldn't be a valuable
16 witness in any way, shape, or form. Seemed to be a friend of
17 Sammie's who may or may have not actually been there, but the
18 testimony would have been worthless at the trial; probably worked
19 against Sammie in trial.

20 I talked to the people who worked at the mini mart store.
21 Sammie says; oh, they're going to stand up for me. They're going
22 to stand with the guy, so it doesn't matter what they're going to do.
23 They weren't witnesses to this, and I went to the store personally to
24 talk to the manager in some other -- it's a mini mart on Twain and
25 Swenson. I went there and talked to these people. They're not,

1 they weren't there. They didn't see it. They didn't have the
2 videotape anymore. By the time I got on the case, they didn't have
3 any --

4 THE COURT: Does he have the video? Have you checked
5 his phone? Didn't he say something about he downloaded a video
6 on his phone and it's in his property?

7 MR. GOLDSTEIN: He's never mentioned that to me.

8 THE COURT: Maybe then --

9 MR. GOLDSTEIN: -- I wasn't his first lawyer on the case.
10 Jen Waldo had him first, but I -- he's never mentioned it to me.

11 THE COURT: -- the only information is they don't really
12 think there's a basis to dismiss you, it's not going to have the same
13 with every attorney, but I'm going to ask him, you know, about --
14 and if there's a video on his phone, can you access that in his
15 property and look at it?

16 MR. GOLDSTEIN: It might not be in his property. Metro
17 might have confiscated it, but either way it's out there. If there's a
18 phone --

19 THE COURT: Can we follow-up with it?

20 MR. GOLDSTEIN: -- out there, you can sign an order --

21 THE COURT: Okay.

22 MR. GOLDSTEIN: -- but I doubt that exists. Seems like
23 that's something he would've mentioned to me.

24 THE COURT: But that's -- you know, that's why it's an
25 easy --

1 MR. GOLDSTEIN: Correct.
2 THE COURT: -- easy follow-up; and then we'll go ahead
3 and reset that other one? Yeah?
4 MR. LEXIS: Sounds good, Judge.
5 THE COURT: Thank you for all your assistance Mr. Lexis.
6 I appreciate it.
7 MR. LEXIS: Hope I get a response to this.
8 THE COURT: I know. Okay.
9 [Bench Conference Concluded]
10 THE COURT: Okay, this is Mr. Nunn's motion to dismiss
11 counsel and appoint counsel. I think we've kind of addressed this
12 previously.
13 THE DEFENDANT: We -- when we addressed it, Your
14 Honor, we never counting back -- to fully air out the inquiry.
15 So, there were some things that Mr. Goldstein was
16 supposed to do, and you gave him about a month to do the things,
17 and he didn't fulfill any of the things that he needed to do.
18 THE COURT: What was he supposed to do?
19 THE DEFENDANT: He's was supposed to interview
20 witnesses.
21 THE COURT: Okay, Mr. Goldstein, have you interviewed
22 the witnesses?
23 MR. GOLDSTEIN: Several, Your Honor; two that worked
24 at the mini mart outside of which this took place, and one witness
25 whose name is escaping me right now. He put me in contact with,

1 who is allegedly an eyewitness, and I spoke – personally spoke with
2 that person. I didn't find that person – my opinion was that person
3 would not have been a beneficial witness for the Defense in the
4 trial, Your Honor.

5 THE COURT: Okay, so he did that.

6 MR. GOLDSTEIN: And I told Sammie that already, that I
7 had spoken to that person too.

8 THE DEFENDANT: He did not, Your Honor, and he doesn't
9 have any record from a prior investigator who has done that.

10 MR. GOLDSTEIN: I went there myself personally, Your
11 Honor.

12 THE DEFENDANT: I don't know if he's supposed to go
13 personally and talk to witnesses without anything that's on the
14 record. These things that he hasn't done, pushing me – push me
15 into a corner to take the deal instead of not being prepared for trial
16 because practically – personally I'm innocent, and I didn't need – I
17 didn't want to take that deal, but he kind of forced me into a corner
18 by telling me he's not going to use eyewitnesses; by telling me he's
19 not going to use the victim that wanted to come forward and
20 express exactly what happened.

21 I actually have new evidence of a statement that a victim
22 made because they seen me when I was out. I didn't want to be a
23 part of anything, so I whipped out a phone and started recording
24 right then; and these things need to be addressed. I think we need
25 to air this out and have an evidentiary hearing.

1 There's more things he didn't do. For the record, he did
2 talk to Kirra Tyme [phonetics] you said?

3 MR. GOLDSTEIN: I'm sorry.

4 THE DEFENDANT: You said you talked to Kirra Tyme
5 [phonetics]?

6 MR. GOLDSTEIN: I don't recall the name, that was the
7 second named victim.

8 THE DEFENDANT: Second name victim, they're victims
9 right? He didn't tell me the details of the conversation, of him
10 talking to Kirra Tyme [phonetics]. He said he talk to them,
11 something, something.

12 But I asked him; well, what was the conversation about,
13 and he said we're not going to get into this right now. These are
14 things that I needed to know before trial in order to be prepared to
15 see exactly what my outcome would be, for the simple fact, that I
16 know I'm -- I know I'm innocent because I didn't do anything. The
17 first incident when I protected myself, I gave him a --

18 MR. GOLDSTEIN: And I'd advise the Defendant not to talk
19 about the facts of the case right now, in case, for future purposes
20 this could come back to haunt him.

21 THE COURT: Here's where we are Mr. Nunn, the only
22 thing that's in front of me is the motion to dismiss counsel --

23 THE DEFENDANT: Yes ma'am.

24 THE COURT: -- all of this other stuff --

25 THE DEFENDANT: Yes.

1 THE COURT: -- may be the subject of something else, but
2 it's not on for today. Today all I can do is address your counsel,
3 and I'm not finding any basis to appoint alternative counsel. You
4 are free to represent yourself --

5 THE DEFENDANT: I can't -- if I can represent myself I'd
6 rather do that than deal with the consequences that has already
7 come behind having him as my counsel.

8 MR. GOLDSTEIN: Your Honor, we should keep in mind
9 that that was -- mine was the second deal that he took. His previous
10 attorney, he pled and was pending sentencing when Judge Togliatti
11 appointed me, I filed a motion to withdraw his plea, which Judge
12 Togliatti granted, and then this is the second time -- mine was
13 affected with the second guilty plea agreement he went through.
14 Mine was a much better offer than the first one because it was -- on
15 paper it was for probation, Your Honor, so -- to say that I forced
16 him, I mean he had already taken an arguably worst deal months
17 prior to that before I even was involved with the case so, this
18 doesn't really comport with the facts, Your Honor.

19 THE DEFENDANT: And that -- that issue was because I
20 was -- I was coerced. The DA thought that I had 11 felonies, so she
21 said either you take this deal or I'm going to file a habitual criminal
22 on you, and so I said, I don't have another felonies, I actually have
23 zero felonies, and I've never been a felon in my entire life, so the
24 reason --

25 MR. GOLDSTEIN: That was basis for the motion to

1 withdraw plea, but that was again in the past.

2 THE DEFENDANT: Yeah, yeah, and so we went forward
3 because they didn't want to pull my real record up until the PSI
4 came back, and the PSI came back before sentencing and it proved
5 that I have zero felonies.

6 THE COURT: Okay so what's the issue with it? I mean yes
7 it's zero felonies, you've entered your plea. You were given
8 probation, and now you're on for revocation of probation so, that's
9 all in the past.

10 THE DEFENDANT: Yeah, and I want to withdraw the plea,
11 he's telling me no.

12 THE COURT: Okay, well you don't have a motion
13 pending to do that, so if –

14 THE DEFENDANT: I'm asking my attorney to put in the
15 motion because you guys aren't going to put in a motion unless my
16 attorney puts in; this is going to be a copy that goes to my attorney
17 because I've tried this before, so –

18 MR. GOLDSTEIN: Your Honor, I visited him a couple
19 times, many times. Most –

20 THE DEFENDANT: And I've asked you to withdraw the
21 plea.

22 MR. GOLDSTEIN: -- right, and I don't believe – I pled him,
23 so I know that there's no legal grounds. I'm very confident that he
24 was aware of all –

25 THE DEFENDANT: Newly discovered evidence is legal

1 grounds.

2 MR. GOLDSTEIN: I'm very confident he was aware of
3 everything he was signing, and he was very -

4 THE DEFENDANT: There's a brand new statement from
5 the victim. There's new grounds.

6 MR. GOLDSTEIN: -- I'm just trying to talk.

7 THE COURT: Can you let Mr. Goldstein please?

8 THE DEFENDANT: Sure.

9 MR. GOLDSTEIN: I specifically addressed his points about
10 withdrawing his plea. I can only file motions that I believe there's a
11 legal basis for. I pled him. I visited him many times before he pled.
12 I talked to him after he pled. There's the whole issue of his getting
13 into that transitional housing that I worked on for a long long time,
14 with a lot of different people. I know, Your Honor, that - I'm
15 confident that it was a clean plea. I don't find any legal basis. I'm
16 not going to file a motion when I don't think there's any merit, so
17 that's - he and I fully discussed this. I visited him multiple times.

18 THE DEFENDANT: So what happens with conflict of
19 interest when it comes to that issues? And on top of that, I wasn't -
20 I wasn't disclosed on my appeal rights. There was one -

21 THE COURT: Okay this is way - this is way outside of
22 where we are -

23 THE DEFENDANT: Okay that's fine -

24 THE COURT: - we're strictly here to reset the revocation.

25 THE DEFENDANT: -- I'm saying that I'm having ineffective

1 assistance of counsel, and the things that I want to move forward
2 on with my case, my attorney is not moving on with it, and he's
3 telling me no. I'm not doing this, I'm not doing that. I have no time
4 to do that, I have no time to do –

5 THE COURT: That's not what he's saying. He said he
6 doesn't see a legal basis, and he's – he's

7 THE DEFENDANT: -- okay we can try. We can at least try,
8 and there is a legal basis.

9 THE COURT: No that's not -- that's not how this works.
10 That's not how -- let's just throw stuff up and stick it out there –

11 THE DEFENDANT: I didn't say throw stuff up –

12 THE COURT: -- and stick up there whether we believe in it
13 or not.

14 THE DEFENDANT: -- but, but how about this, how about
15 an evidentiary hearing to see if the new evidence is –

16 THE COURT: No. There's no basis.

17 THE DEFENDANT: -- there's no basis? New evidence isn't
18 a basis?

19 THE COURT: What's the new evidence?

20 THE DEFENDANT: The new evidence is a video of the
21 victim confessing.

22 THE COURT: Where's that?

23 MR. GOLDSTEIN: Judge, I've never heart of it until very
24 recently.

25 THE DEFENDANT: It's on my property on my phone. It's

1 **PET**
2 **MARISA BORDER, ESQ.**
3 **Nevada Bar No. 8381**
4 **400 South 4th Street, Suite 650**
5 **Las Vegas, NV 89101**
6 **Telephone: (702) 900-5114**
7 **Facsimile: (702) 577-2304**
8 **Email: mborderlaw@gmail.com**
9 **Attorneys for Defendant**
10 **SAMMIE NUNN**

- Evidence -
Your Stop Employee
Endalkachew Mekonnen
found in one week by
different Counsel.

DISTRICT COURT

CLARK COUNTY NEVADA

11 **THE STATE OF NEVADA,**

12 **Plaintiff,**

13 **vs.**

14 **SAMMIE NUNN,**

15 **Defendant.**

Case No.: C-18-336184-1

Dept. No.: XVIII

**POST-CONVICTION PETITION FOR
WRIT OF HABEAS CORPUS**

Date of hearing: November 5, 2019

Time of hearing: 9:00am

16
17
18 Petitioner, SAMMIE NUNN (hereinafter referred to as "Nunn"), by and through his
19 counsel of record, MARISA BORDER, ESQ., hereby files this Post-Conviction Petition for Writ
20 of Habeas Corpus Pursuant to NRS Chapter 34. This Petition, including the following Points and
21 Authorities, is made upon the pleadings and papers already on file, and any evidentiary hearing
22 and oral argument of counsel deemed necessary by the Court.
23
24
25
26

1 Petitioner, SAMMIE NUNN, alleges that he is being held in custody in violation of the
2 Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States of America, and
3 Articles I and IV of the Nevada Constitution.

4 DATED this 9th day of October, 2019.
5

6
7 By: /s/ Marisa Border
8 MARISA BORDER, ESQ.
9 Nevada Bar No.: 8381
400 South 4th Street, Suite 650
10 Las Vegas, NV 89101
Attorney for Petitioner
11 SAMMIE NUNN

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. STATEMENT OF FACTS**

14 In the instant case Nunn was charged after a grand jury proceeding with Battery with Use
15 of a Deadly Weapon Resulting in Substantial Bodily Harm occurring on May 27, 2018 and Battery
16 with Use of a Deadly Weapon occurring on June 3, 2018. The following facts are pertaining
17 specifically to the events on May 27, 2018 and the case as laid out by witness testimony at the
18 grand jury.

19 Prince Alidu testified that he was at the Your Stop shop on May 27, 2018. GJ Vol 1, page
20 16, line 14-15. At that time, he stated that he was approached by Sammie Nunn who was asking
21 for 50 cents. GJ Vol 1, page 16, line 16-17. Alidu told Nunn that he did not have the 50 cents to
22 give him. GJ Vol 1, page 16, line 17. After that, Nunn started calling him names and eventually
23 Nunn walked away. GJ Vol 1, page 17, lines 4-7. Alidu testified that a few minutes later Nunn
24 returned with a tool in his hand. GJ Vol 1, page 17, lines 7-10. The tool was identified as a nine
25 to twelve inch pair of pliers. GJ Vol 1, page 17, lines 15-16 and page 18, lines 1-2. In response
26 to the States question, Alidu testified that Nunn then hit him in the face with the pliers. GJ Vol 1,
page 18, lines 4-9.

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1 **II. PROCEDURAL HISTORY**

2 After numerous court appearances regarding Nunn's competency and a Motion to Dismiss
3 Counsel, which was granted, a Guilty Plea Agreement was entered into on June 6, 2019.
4 Sentencing was held on June 11, 2019 where in Nunn was granted an opportunity on probation.
5 Subsequently, a probation violation report was filed. On August 20, 2019 the Court allowed Mr.
6 Goldstein to withdraw and appointed undersigned counsel to explore possible issues to substantiate
7 a Motion to Withdraw the Guilty Plea Agreement.
8

9 **III. GROUND FOR RELIEF**

10 **CLAIM ONE: NEW EVIDENCE, IN ADDITION TO THE EVIDENCE PRESENTED**
11 **AT THE GRAND JURY, PERSUASIVELY DEMONSTRATES NUNN**
12 **WAS ACTING IN SELF DEFENSE AND THEREFORE INNOCENT**
13 **OF THE CHARGES STEMMING FROM MAY 27, 2018. AS SUCH,**
14 **NUNN IS IMPRISONED IN VIOLATED ON HIS RIGHT TO DUE**
15 **PROCESS UNDER THE FIFTH AND FOURTEENTH**
16 **AMENDMENTS.**

17 In Schlup v. Delo, the United States Supreme Court found that the standard a habeas
18 petitioner must meet to establish a claim of actual innocence to overcome the procedural bars
19 requires a petitioner to show that "a constitutional violation has probably resulted in the
20 conviction of one who is actually innocent." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851,
21 867, 130 L. Ed. 2d 808 (1995). To establish the requisite probability, the petitioner must show
22 that it is more likely than not that no reasonable juror would have convicted him in the light of
23 the new evidence. Id. The petitioner thus is required to make a stronger showing than that needed
24 to establish prejudice.

25 In assessing the adequacy of a petitioner's showing, the district court is not bound by the
26 rules of admissibility that would govern at trial. Instead, the emphasis on "actual innocence"
allows the court to also consider the probative force of relevant evidence that was either excluded

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1 or unavailable at trial. Id. at 327-328. The court must make its determination concerning the
2 petitioner's innocence "in light of all the evidence, including that alleged to have been illegally
3 admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have
4 been wrongly excluded or to have become available only after the trial." Id. at 328.

5
6 The meaning of actual innocence does not merely require a showing that a reasonable
7 doubt exists in the light of the new evidence, but rather that no reasonable juror would have found
8 the defendant guilty. It is not the district court's independent judgment as to whether reasonable
9 doubt exists; the standard requires the district court to make a probabilistic determination about
10 what reasonable, properly instructed jurors would do. Thus, a petitioner does not meet the
11 threshold requirement unless he persuades the district court that, in light of the new evidence, no
12 juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt. Id. at
13 329. The word "reasonable" in that formulation is not without meaning. Id. It must be presumed
14 that a reasonable juror would consider fairly all of the evidence presented. Id. It must also be
15 presumed that such a juror would conscientiously obey the instructions of the trial court requiring
16 proof beyond a reasonable doubt. Id.

17
18 Newly presented evidence may indeed call into question the credibility of the witnesses
19 presented at trial. Id. at 30. In such a case, the court may have to make some credibility
20 assessments. Id. Also, and more fundamentally, the focus of the inquiry is on the likely behavior
21 of the trier of fact. Id.

22
23 Courts have held that an evidentiary hearing regarding actual innocence is required where
24 the new evidence, "if credited," would show that it is more likely than not that no reasonable jury
25 would find the petitioner guilty beyond a reasonable doubt. See Berry v. State, 131 Nev. Adv. Op.
26 96, 363 P.3d 1148, 1155 (2015); and Coleman v. Hardy, 628 F.3d 314, 319-20 (7th Cir.2010)

1 (holding that within the context of 28 U.S.C. § 2254(e)(2)(B) an evidentiary hearing "should be
2 granted if it could enable a habeas applicant to prove his petition's factual allegations, which, if
3 true, would entitle him to federal habeas relief"); *Jaramillo v. Stewart*, 340 F.3d 877, 883 (9th
4 Cir.2003) (remanding for an evidentiary hearing to resolve whether the evidence proffered to
5 show actual innocence was credible because that "evidence if credible, and considered in light of
6 all the evidence, demonstrate[d] that it [was] more likely than not that no reasonable juror would
7 have convicted [the petitioner] of the charged offenses"); *Amrine v. Bowersox*, 128 F.3d 1222,
8 1229 (8th Cir.1997) (providing petitioner made a sufficient showing to require an evidentiary
9 hearing on his actual innocence allegation because, "if credited, his evidence could establish
10 actual innocence").

12 **New Evidence Discovered**

13 *X The witnesses NickName is Brook*
14 *He works At YourStop Liquor store at night.*
15 When released on probation Nunn learned of a new witness to the events transpiring on
16 May 27, 2018. This new witness, Endalkachew Mekonnen, was found and interviewed by
17 undersigned counsel's investigator Mark Preusch. Mr. Mekonnen informed investigator Preusch
18 that he was present at the Your Stop Liquor and watched the interaction between Mr. Alidu and
19 Nunn. Mr. Mekonnen stated that Mr. Alidu was the primary aggressor and he aggressively
20 walked towards Nunn. Nunn continuously backed up to avoid a confrontation. It was only once
21 *with his friends too.*
22 backed into a corner that Nunn reacted by swinging a wrench at Mr. Alidu.

23 *- X His Government Name was unknown -*
24 This witness was unknown to defendant Nunn and his attorney at the time the Guilty Plea
25 Agreement was entered into. As such, based upon this new evidence, Nunn is requesting an
26 evidentiary hearing and possible withdraw of his guilty plea.

Based on the foregoing, Nunn submits that he is actually innocent of Battery with Deadly
Weapon Resulting in Substantial Bodily Harm. When reviewing all the evidence, it is more likely

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1 than not that no reasonable juror would have convicted Nun of the charged offense on May 27,
2 2019. Accordingly, justice demands that this Court grant Nunn a new trial. In the alternative,
3 Nunn respectfully requests an evidentiary hearing to resolve any factual disputes.

4 CONCLUSION

5 Based on the foregoing, Nunn's conviction is unconstitutional under the federal and state
6 constitutions for the reason stated herein. Good cause exists for consideration of these claims. Mr.
7 Nunn's judgment of conviction must therefore be vacated.

8 The Nevada Supreme Court has held that a post-conviction habeas petitioner "is entitled
9 to a post-conviction evidentiary hearing when he asserts claims supported by specific factual
10 allegations not belied by the record that, if true, would entitle him to relief." McConnell, 125 Nev.
11 243, 212 P.3d at 314. In the instant matter, Nunn has asserted a claim, which, based on the
12 foregoing, is clearly supported by specific factual allegations that would entitle him to relief. If
13 not immediately granted, alternatively, this Court should grant Nunn an evidentiary hearing to
14 resolve his claims of actual innocence.

15 DATED this 9th day of October, 2019.

16
17
18
19 /s/ Marisa Border
20 MARISA BORDER, ESQ.
21 Nevada Bar No. 8381
22 400 South 4th Street, Suite 650
23 Las Vegas, NV 89101
24 Attorney for Petitioner
25 SAMMIE NUNN

26 DECLARATION

Under the penalty of perjury, the undersigned declares that she is the appointed counsel for
the petitioner named in the foregoing Petition and knows the contents thereof; that the pleading is

Ground 2

Ineffective Assistance of Counsel - Strickland Claim Violation of Sixth Amendment.

In order to establish ineffective assistance of counsel, a petitioner must prove both deficient performance by his counsel and prejudice caused by that deficiency. To demonstrate deficient performance Nunn must show that his counsel's performance "fell below an objective standard of reasonableness" based on "the facts of the particular case [and] viewed as of the time of counsel's conduct." *Strickland v. Washington*, 466 U.S. 668, 688-90, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In order to establish prejudice Nunn "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient enough to undermine confidence in the outcome." Nunn has shown that he meets both prongs on this inquiry for this claim. Now we have read through portions of the transcripts for counsel's deficient performance so let's theorize how exactly a different outcome was possible:

- MAY 27, 2018 -

- A YourStop Employee by the name of Endalkachew Mekonnen was found and interviewed by Attorney Marisa Border's investigator Mar Preusch. Mr. Mekonnen informed investigator Preusch that he was present at the YourStop Liquor and watched the interaction between Mr. Alidu and Nunn. Mr. Mekonnen stated that Mr. Alidu was the primary Aggressor and he aggressively walked towards Nunn. Nunn continuously backed up to avoid a confrontation. It was only once backed into a corner that Nunn reacted by swinging a wrench at ~~Mr.~~ Mr. Alidu. - In Case No. 18PO0861 Transcripts Prince Admits he was with Charry Mukena and his baby mother Dominique - Also in

in these transcripts on page 11 Lines 16-23 Nunn shows the court a facebook message he received from Charry Mukema one week before the incident took place:

Mr. Nunn: You got it.

The Court: Okay. I guess I don't get it. When I see you I am going to knock you out, bitch, on money gang?

Mr. Nunn: Yeah, so that's his friend threatening me.

The Court: That ain't got nothing to do with nothing.

Mr. Nunn: That is the friend he was with that he was coming up to me with.

The Court: Okay. So this implies that there is -- Motive.

2nd Incident — June 2nd 2018 — 2nd Deadly encounter —

Back to court transcripts from June 6 2019 case #C-18-336184-1

Goldstein — "Kerick Hines said Prince Alidu was drunk and popped up flashing on Sammie."

Transcripts - case No. 18PO0861 June 19, 2018

Prince Alidu — "He pulled a gun on me."

The Court — "Why didn't he shoot you?"

Mr. Alidu — "I don't know."

The Court — "He pulled it and walked away?"

Mr. Alidu — "Police was called."

The Court — "He pulled a gun on you and you pulled out your phone and called the police?"

Mr. Alidu — "I did."

The Court — "Wow. That's rare. And you didn't even get shot or anything?"

Mr. Alidu — "I'm surprised he didn't shoot me."

The Court — "He didn't try and stop you from calling the police or anything?"

Mr. Alidu — "No. I walked away."

Petitioner has been incarcerated for 3 years and still hasn't broken a law.

1 LAS VEGAS, CLARK COUNTY, NV, TUES., JUNE 19, 2018

2 10:45 A.M.

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: Prince Alidu versus Sammie
6 Nunn. And Prince Alidu will be over here and Sammie
7 Nunn will be over here.

8 Gentlemen, please remain standing so that
9 you can be sworn in by the clerk.

10 (Whereupon, all parties having been first
11 duly sworn to testify to the truth, the whole truth
12 and nothing but the truth testified as follows:)

13 THE CLERK: Please state your name for the
14 record.

15 MR. ALIDU: Prince Alidu.

16 MR. NUNN: Sammie Nunn.

17 THE CLERK: You may be seated.

18 THE COURT: So, Prince Alidu, why are we
19 here?

20 You had some stitches or something was
21 placed. You had an incident involving some
22 stitches?

23 MR. ALIDU: Yes, ma'am, and I got some
24 pictures here and a police report so you can look at
25 it.

1 I'm like I don't even care about you.

2 THE COURT: Well, you know what, I think

3 because they were visiting you --

4 MR. NUNN: No, we were at the store.

5 THE COURT: Oh, I see.

6 MR. NUNN: Yeah. It had nothing to do

7 with me. We at the store now. At my house talking

8 crap about me. They don't even come to my house no

9 more. We had a fall out.

10 THE COURT: You all fell out?

11 MR. NUNN: Me and my friends, we fell

12 out. So that night, we wasn't even cool like that.

13 So he got -- probably had a big old misunderstanding

14 while we over there talking crap.

15 That's on you, brother.

16 THE COURT: So he wanted to come for you

17 for that?

18 MR. NUNN: Oh, man, yeah.

19 THE COURT: So you wasn't having that?

20 MR. NUNN: No, it was ~~it was a~~ grab,

21 motion, punch, hit.

22 THE COURT: Okay. I got you.

23 MR. NUNN: Yeah. And there was more

24 people there. I was by myself. He had his people

25 there so --

1 MR. ALIDU: Your Honor, may I speak,
2 please?
3 THE COURT: Uh-huh.
4 MR. ALIDU: I been in this country so
5 long.
6 THE COURT: You been what?
7 MR. ALIDU: In America for so long. I
8 never disrespect nobody. He's good of lying. That
9 is why everything is in a court of law.
10 THE COURT: Where you from?
11 MR. ALIDU: I'm from Ghana.
12 THE COURT: Ghana. What part?
13 MR. ALIDU: Accra.
14 THE COURT: Accra. So you here and you
15 feel disrespected. You confront him and then you all
16 end up having a fight?
17 MR. ALIDU: Never, never confront this
18 boy.
19 THE COURT: Never, never?
20 MR. ALIDU: Never.
21 THE COURT: Never. He just walked up
22 off --
23 MR. ALIDU: He was just like me or
24 somebody else, he jump in it. That is in the police
25 report right there. He went home. He came back.

1 THE COURT: Hold up, because you don't get
2 to talk too much.

3 MR. NUNN: Okay.

4 MR. ALIDU: He went home and came back
5 before I realize that's what it is in my face.

6 THE COURT: I understand. So you and one
7 of his friends got into it and he jumped in?

8 MR. ALIDU: I don't even deal with his
9 friends. I don't know who is his friends. I don't
10 know what he's talking about. I go out, I see
11 people.

12 THE COURT: Why did he out of the clear
13 blue decide to hit you upside the head one day?

14 MR. ALIDU: The way it started, there is a
15 lady that I was talking to. Then he jump in. He
16 said, what did you say to that lady? I said, I never
17 said nothing.

18 I don't even know that lady's name. I
19 don't know his name in the police report. So then he
20 came in and said, what did you say to the lady? I
21 didn't say nothing to the lady. Then that was it.
22 Then he got upset before I see him disappear. The
23 next 15 minutes he came back.

24 THE COURT: And just out of the clear
25 blue --

1 MR. ALIDU: Out of the clear blue.
2 THE COURT: -- hit you upside the head?
3 MR. ALIDU: I don't know if Your Honor got
4 this.
5 THE COURT: I don't have that.
6 MR. ALIDU: Look at my witness. That is
7 my witness right there that night.
8 THE COURT: I got it.
9 You got your message, you got your
10 Facebook stuff?
11 MR. NUNN: Yeah, yeah. You want to see
12 it? This is the friend he was with that night.
13 THE COURT: I don't need an editorial
14 version. Let me see what is on there.
15 You want to see what he's showing me? Do
16 you want to see that before I see it?
17 MR. ALIDU: Okay.
18 THE COURT: Are you all still neighbors?
19 MR. NUNN: He's my neighbor. I been
20 trying to get another apartment. He knows where I
21 stay at.)
22 THE COURT: Why does everybody want to
23 tell me the whole --
24 (Overlapping speakers.)
25 THE COURT: All that talking, I missed

1 your thing. You got to reset it up now. I just
2 asked you one question. Are you all still
3 neighbors?

4 MR. NUNN: Yeah, we still neighbors.

5 THE COURT: That's it.

6 MR. NUNN: I just didn't get to say
7 nothing about the second police incident.

8 THE COURT: Okay, well, in a minute, but
9 what did I tell you from the beginning? You have
10 potentially some cases coming up against you and
11 whatever you say can be used against you. So I am
12 trying to be very careful about not having you make
13 any statements that could be used against you, you
14 know what I mean.

15 MR. NUNN: You got it.

16 THE COURT: Okay. I guess I don't get
17 it. "When I see you I am going to knock you out,
18 bitch, on money, game?" Money gang is a Las Vegas Gang

19 MR. NUNN: Yeah, so that's his friend --

20 THE COURT: That ain't got nothing to do
21 with nothing.

22 MR. NUNN: That is the friend he was with
23 that he was coming up to me with.

24 THE COURT: Okay. So this implies that
25 there is -- this doesn't address the issue that he's

*His witness
A week before incident
A Charly MUKENA
Threatened me some time
in march on
facebook*

1 pissed off because your mom or somebody exposed his
2 sexual preference.

3 MR. NUNN: No, she was already gone four
4 hours after that. So I was already going back to the
5 store on my own.

6 THE COURT: You're saying the reason that
7 he jumped you or tried to jump you was because he's
8 mad about some stuff that your mom had said about
9 him, and I am saying -- then I look and I see that
10 there is some kind of Facebook reference but the
11 Facebook does not verify or support what your mom is
12 saying. Do you see what I'm saying?

13 MR. NUNN: I see what you're saying.
14 Okay.

He Never denies this on the record.

15 THE COURT: So, Mr. Alidu, I have to be
16 honest with you, I have a hard time believing that
17 this was just unprovoked.

18 MR. ALIDU: It is, ma'am.

19 THE COURT: I know you are going to tell
20 me that and you're really good at it, but I don't
21 believe that because I've lived long enough to know
22 folks just normally -- unless there is something --
23 but usually there is something that provokes folks to
24 hit other people. And I am trying to understand what
25 it was and I don't know that you like what's being

1 said about you.

2 And you travel in a pack and so -- you
3 know what I'm saying. So whenever you see him, it
4 seems to me as though he's the one that's going to be
5 on the losing end. If I was him, I'd be carrying too
6 because I never know when you going to come with your
7 folks.

8 MR. ALIDU: I'm just by myself.

9 THE COURT: No, you're --

10 MR. ALIDU: I got a few friends.

11 THE COURT: -- with at least two, three
12 other folks when you walk to the liquor store, when
13 you go to the other places.

14 MR. ALIDU: Not true.

15 THE COURT: You guys live Twain and
16 Swenson. It ought to be true if it is not because
17 you don't want to walk out there at night.

18 MR. ALIDU: I don't go out looking for
19 trouble. I walk by myself.

20 THE COURT: It's a trouble area, but
21 you're usually going to be with your folks; right?

22 MR. ALIDU: I don't have no folks. Just
23 me. When I go outside I don't hide for anybody.

24 THE COURT: Even this report that you have
25 given me doesn't support that, does not support it.

First Habeas Corpus

11-5-2019

Supporting evidence from Your Stop Liquor Store
employee Endalkachew Mekonnen

1 (holding that within the context of 28 U.S.C. § 2254(e)(2)(B) an evidentiary hearing "should be
2 granted if it could enable a habeas applicant to prove his petition's factual allegations, which, if
3 true, would entitle him to federal habeas relief"); *Jaramillo v. Stewart*, 340 F.3d 877, 883 (9th
4 Cir.2003) (remanding for an evidentiary hearing to resolve whether the evidence proffered to
5 show actual innocence was credible because that "evidence if credible, and considered in light of
6 all the evidence, demonstrate[d] that it [was] more likely than not that no reasonable juror would
7 have convicted [the petitioner] of the charged offenses"); *Amrine v. Bowersox*, 128 F.3d 1222,
8 1229 (8th Cir.1997) (providing petitioner made a sufficient showing to require an evidentiary
9 hearing on his actual innocence allegation because, "if credited, his evidence could establish
10 actual innocence").

11 12 **New Evidence Discovered**

13
14 When released on probation Nunn learned of a new witness to the events transpiring on
15 May 27, 2018. This new witness, Endalkachew Mekonnen, was found and interviewed by
16 undersigned counsel's investigator Mark Preusch. Mr. Mekonnen informed investigator Preusch
17 that he was present at the Your Stop Liquor and watched the interaction between Mr. Alidu and
18 Nunn. Mr. Mekonnen stated that Mr. Alidu was the primary aggressor and he aggressively
19 walked towards Nunn. Nunn continuously backed up to avoid a confrontation. It was only once
20 backed into a corner that Nunn reacted by swinging a wrench at Mr. Alidu.

21
22 This witness was unknown to defendant Nunn and his attorney at the time the Guilty Plea
23 Agreement was entered into. As such, based upon this new evidence, Nunn is requesting an
24 evidentiary hearing and possible withdraw of his guilty plea.

25 Based on the foregoing, Nunn submits that he is actually innocent of Battery with Deadly
26 Weapon Resulting in Substantial Bodily Harm. When reviewing all the evidence, it is more likely

Prince Alidu started both incidents

Steven D. Grierson

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

12:00

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12:00

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THE STATE OF NEVADA,

)

)

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Plaintiff,

)

)

7

vs.

)

GJ No. 18AGJ145X

)

DC No. C336184

8

SAMMIE NUNN,

)

)

9

Defendant.

)

)

12:00

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11

12

Taken at Las Vegas, Nevada

13

Tuesday, November 6, 2018

14

11:05 a.m.

12:00

15

16

17

18

REPORTER'S TRANSCRIPT OF PROCEEDINGS

19

12:00

20

VOLUME 1

21

22

23

24

12:00

25

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON NOVEMBER 6, 2018

2

3 RUSSELL WALKER, Foreperson

4 CAROLYN JORDAN, Deputy Foreperson

12:00 5 RACHEL TABRON, Secretary

6 MICHELE CRINE, Assistant Secretary

7 JOHN ASSELIN

8 KATHY COX

9 THERESA GAISSE

12:00 10 DAWN HERSHEY

11 MICHAEL HOLLINGSWORTH

12 STACI HOLLINGSWORTH

13 CHRISTOPHER KERCEL

14 SHARON KLINCK

12:00 15 JAMES MCGREGOR

16 ERIN SCHAPER

17 ROBERT TURNER

18 MARYLEE WHALEN

19 AMY YONESAWA

12:00 20

21 Also present at the request of the Grand Jury:

22 Megan Thomson, Chief Deputy District Attorney

23

24

25

*I would like to call all
these people back with the
New and suppressed evidence
and do this Lawfully*

12:00

1

INDEX OF WITNESSES

2

Examined

3

4

TY VESPERAS

6

12:00

5

NICOLETTE HAWKINS

11

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PRINCE ALIDU

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- where is Kenick Hines
or Charry Mukena -

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RA. Megan Thomson took them
off the list this is why they
didn't show up to testify - she
falsely made a false conviction.
Thank God I got the record.
Where are the list of YourStop Employees?
She Sabataged evidence that was relevant
to defendants innocence. for a Tainted Conviction.

The evidence points out that it was Prince Aldu who was the one starting trouble that could potentially kill or threaten to kill Sammie Nunn. It also proves that Sammie Nunn was just simply coming or going from the convenience store when attacked by Prince Aldu and his friends, Prince Aldu was also morally wrong to his friends which is why they didn't want anything to do with the case, its one thing putting a man in prison who deserves it, but when you put an innocent man behind bars who doesn't it would make you not want to comply with prosecutors, why? because if the truth comes out they themselves can potentially be prosecuted also, which puts the prosecution in an displeasing light for their witnesses.

Duty to retreat.- State v. Grimmer, 33 Nev. 531, 112 P. 273, 1910 Nev. Lexis 37 (1910), stands for the proposition that Nevada does not require a person to retreat when he reasonably believes that he is about to be attacked with deadly force.

Culverson v. State, 106 Nev. 484, 797 P.2d 238, 1990 Nev. Lexis 103 (1990). A person who is not the original aggressor, has no duty to retreat before using deadly force, if a reasonable person in the position of the nonaggressor would believe that his assailant is about to kill him or cause him serious bodily harm. Culverson v. State, 106 Nev. 484, 797 P.2d 238, 1990 Nev. Lexis 103 (1990). - N.R.S. 200.275 states:

Justifiable infliction or threat of bodily injury not punishable:
In addition to any other circumstances recognized as justification at common law, the infliction or threat of bodily injury is justifiable and does not constitute Mayhem, Battery or Assault, if done under circumstances which would justify homicide.

NRS. 200.200. Killing in self Defense. —

If a person kills in self-defense, it must appear that:

1. The danger was so urgent and pressing that, in order to save ones own life, or to prevent the person from receiving great bodily harm, the killing of the other was absolutely necessary; and
2. The person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given. C&P 1911, § 137; RL 1912, § 6402; CL 1929, § 10084. Nunn Back away until he was in a corner.

■ NRS 200.120 "Justifiable Homicide" defined; no duty to retreat under certain circumstances - (1) Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. (2) A person is not required to retreat before using deadly force as provided in subsection (1) if the person: A) Is not the original aggressor; B) Has the right and/or a right to be present at location where deadly force is used; and C) Is not actively engaged in conduct in furtherance of criminal activity at the time deadly force is used. C&P 1911, § 129; RL 1912 § 6394; CL 1929, § 10076; 1983 P 518; 2011, ch. 59 § 1, p. 265. A killing in ~~in~~ necessary self defense is justifiable and not punishable in any manner. Kelso v. State, 95 Nev. 37, 588 P.2d 1035, 1979 Nev. LEXIS 522, Cert. denied, 442 U.S. 921, 99 S. Ct. 2846, 61 L. Ed. 2d 289 (1979). Prince Alidu was not killed, he only suffered a minor laceration from first incident, he was not touched in any other incident, he says so himself under oath June 19, 2018.

1 CASE NO.

2 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
3 COUNTY OF CLARK, STATE OF NEVADA

4 -oOo-

5
6 PRINCE ALIDU,)

7 Applicant,)

8 vs.)

9 SAMMIE NUNN,)

10 Adverse Party.)
11

COPY
CASE NO. 18PO0861

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13
14

15 BEFORE THE HON. KAREN BENNETT-HARON

16 JUSTICE OF THE PEACE

17 Tuesday, June 19, 2018

18 10:45 A.M.
19

20 APPEARANCES:

21 For the Applicant: In Pro Per

22 For the Adverse Party: In Pro Per
23

24
25 Reported by: SHAWN E. OTT, CCR NO. 577

1 MR. ALIDU: You see the second incident,
2 too, though; right?

3 THE COURT: Hold up, hold up.

4 MR. ALIDU: Look at the second incident.

5 MR. NUNN: My girlfriend was with me the
6 next time.

7 THE COURT: I don't have a second
8 incident. Is that something you want me to look at?

9 MR. ALIDU: Yeah, I think you got the
10 paperwork.

11 THE COURT: I have the issue about the
12 flyers and the fight at the liquor store. I'm not
13 sure -- I am not sure I'm seeing anything else.

14 This is the paperwork that you gave me --
15 battery with use of a deadly weapon, and it just has
16 the victim's information guide. It circles the
17 Convention Center Area Command, but it doesn't tell
18 me anything about what happened.

19 MR. ALIDU: That is the second incident.

20 THE COURT: This is a cover sheet that's
21 provided to you when you file a police report but it
22 doesn't give me the specifics of --

23 MR. ALIDU: The police looking into it.

24 THE COURT: They very well may be, but
25 there is nothing written down here that would help me

1 understand when you say the second incident.
2 So what is the second incident?
3 MR. ALIDU: He pulled a gun on me.
4 THE COURT: He pulled a gun on you?
5 MR. ALIDU: Yes.
6 THE COURT: For no reason?
7 MR. ALIDU: A different night again for no
8 reason.
9 THE COURT: Didn't have anything to do
10 with the beef at that liquor store?
11 MR. ALIDU: Nothing to do with the liquor
12 store.
13 THE COURT: So what happened? He just
14 walked up to you out of the clear blue?
15 MR. ALIDU: He just walk up to me and pull
16 a gun.
17 THE COURT: What time was it?
18 MR. ALIDU: That's about to nighttime or
19 in the morning.
20 THE COURT: Did he pull it, or did he show
21 it to you?
22 MR. ALIDU: He pull it.
23 THE COURT: And then why didn't he shoot
24 you? Usually because, you know, they say don't pull
25 one if you ain't ready to shoot. So why didn't he

1 shoot you?

2 MR. ALIDU: I don't know.

3 THE COURT: He pulled it and walked away?

4 MR. ALIDU: Police was called.

5 THE COURT: He pulled a gun on you and you

6 pulled out your phone and called the police?

7 MR. ALIDU: I did.

8 THE COURT: Wow. That is rare. And you

9 didn't even get shot or anything?

10 MR. ALIDU: I'm surprised he didn't shoot

11 me.

12 THE COURT: He didn't try to stop you from

13 calling the police or anything?

14 MR. ALIDU: No. I walk away.

15 THE COURT: You walked away from the gun?

16 MR. ALIDU: I walk away, and I got

17 witness.

18 THE COURT: So you weren't really scared?

19 MR. ALIDU: No --

20 THE COURT: Because you had your boys

21 there.

22 MR. ALIDU: Like you said, shoot me then.

23 This boy right here -- ma'am, I am just being honest

24 with you, I would never let him touch me again.

25 That's why I'm doing this, to protect myself and

↑
motive to be at Grand Jury indictment
hearing he put the reason
on the record

16

1 protect him.

2 THE COURT: You going to protect him now
3 too.

4 MR. ALIDU: Because anytime I'm going out
5 somewhere now, I'm watching where I am going. I'm
6 trying to move at the same time too because I never
7 bother him, I never touch him. I'm doing this the
8 right way. That's why police protection order *but he tried with a gang. Money Gang.*
9 against him to make sure that nobody going to come
10 after me.

11 THE COURT: But it also helps you be in a
12 position that if you do do something to him you don't
13 end up getting in trouble. *← motive*

14 MR. NUNN: Yeah.

15 THE COURT: Hold up. Did you --

16 MR. NUNN: No, no, no, I didn't do
17 anything.

18 THE COURT: Well, he pulled a gun on you.
19 You walked away and called the police. I have never
20 heard about people who get -- you know, if somebody
21 pulls a gun, normally you do what they say do, not
22 what you want to do, but you weren't even worried
23 about it.

24 MR. ALIDU: Unless you want to scare me
25 for that now.

1 THE COURT: He scared you. You think you
2 thought you were scared, you walked away and called
3 the police.

4 MR. ALIDU: I did.

5 THE COURT: You weren't really scared.

6 MR. ALIDU: I got to do what I do.

7 THE COURT: Yeah, you do got to do what
8 you got to do, but you don't have to do what you got
9 to do based on what people say, you know what I'm
10 saying.

11 You guys are grown men. You should know
12 how to handle yourselves. You guys live in the same
13 community. You probably going to be there for a
14 minute so everybody going to have to stand on their
15 own two, and neither one of you are exempt from the
16 police coming after you.

17 And you are in a situation where, even
18 though you've been here for a long time, there is a
19 likelihood that you could not be if you continue --
20 if you put yourself in a vulnerable situation.

21 *★ like locking up an innocent man*
So I get why you are doing this, but I'm
22 not going to let you do this like this. Okay.

23 So we going to call it a day today;
24 right? You all are going to let whatever beef is
25 going on, let it go, and I am not granting a

1 temporary protective order, and if there are cases
2 filed against this gentleman or against you, you all
3 will be able to litigate them in criminal court.

4 In the meantime I would suggest that you
5 both go your separate ways and don't get into this
6 thing with the groups, that having friends contact
7 friends and all that, because it's going to come back
8 to you now that you have got a history of being in
9 court.

10 Do you understand what I'm saying?

11 MR. NUNN: Yes, ma'am.

12 THE COURT: Thank you very much,
13 gentlemen. Have a good day.

14 -ooo-

15 Prince didn't let it go, I'm in Prison!
wow.

16 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED
17 TRANSCRIPT OF PROCEEDINGS.

18

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20


Shawn E. Ott, CCR No. 577

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25

1 that.

2 MR. GOLDSTEIN: -- there's more of it -- yeah that's
3 probably about right.

4 MS. THOMSON: That's -- that's basically -- and then there
5 was some interaction between some girl; but the short version
6 being, the Defendant has always said it's self-defense. The victim
7 has always said it was completely a random attack, but when I have
8 the problem of two very inconsistent versions of events with the
9 Your Stop Liquor firearm incident, it created a position where if I'm
10 standing in front a jury, I'm having to say completely believe him
11 on this one but, you know, that one you make your decision, and
12 that's certainly worth probation.

13 MR. GOLDSTEIN: And I can tell the Court that I spoke with
14 Kerick Hines about a week ago. He's the main victim on one of the
15 counts --

16 MS. THOMSON: Oh, he would talk to you?

17 MR. GOLDSTEIN: -- he called me about a week ago.

18 MS. THOMSON: Congratulations.

19 MR. GOLDSTEIN: He says the victim was -- I don't
20 remember which incident that Kerick Hines was at; he literally didn't
21 show up for Grand Jury. [unintelligible] inquiry.

22 MS. THOMSON: He was the one who was at the firearm
23 one.

24 MR. GOLDSTEIN: He says Prince was drunk and started
25 popping flash to Sammie, that would've been his testimony had

and plotting the prosecutor
for this attorney with the judge
conviction

Prosecuting D.A.
at took credible witness
lost to grand jury
because he didn't testify
for a conviction

Why didn't anyone
tell this into
to defendant
his relevant
to his guilt or
innocence!

Prince Alida started both
incidents

1 this case gone to trial. This is the named victim on - I don't
2 remember which case, but -

3 MS. THOMSON: It's the firearm one.

4 MR. GOLDSTEIN: -- the firearm one. So, it's -

5 THE COURT: What's his mental health issue? He appears
6 to have one.)

7 MR. GOLDSTEIN: (It's terrible) His - I'm in good contact

8 with his mother who lives in Oakland. If he gets probation, he's
9 going to go live with his mother in Oakland. I spoke with her as
10 recently as last week. He [unintelligible] mental health. I don't
11 know - was from an acute injury, TDI.

12 THE COURT: All right. Can you give me something that I
13 can order as a special condition? Can you look into something -
14 can you do mental health court or something that makes me feel
15 more protected.

16 MR. GOLDSTEIN: He's really trying to go to Oakland - I
17 mean as soon as possible to go live with his mom. I mean
18 interstate compact, so when - right away.

19 THE COURT: Well does she have a program there that I
20 can agree that he can go to?

21 MR. GOLDSTEIN: I don't know when the last time he went
22 there was, but his mom has lived forever I know. His mom has
23 lived there forever, and I can only assume there's some kind of - he
24 has doctors out there because he used to live there; but I can ask if
25 there's any kind of program.

Why is she switching the subject, they just told her some exculpatory evidence? Violation of Brady process 5th and Due 14th amendments. No latencies. Why does she need to feel protected from? What is she hiding?

My mental health was not in proper shape to sign a deal.

200.200. Killing in self-defense.

If a person kills another in self-defense, it must appear that:

1. The danger was so urgent and pressing that, in order to save the person's own life, or to prevent the person from receiving great bodily harm, the killing of the other was absolutely necessary; and

2. The person killed was the assailant, or that the slayer had really and in good faith, endeavored to decline any further struggle before the mortal blow was given.

C&P 1911, § 137; RL 1912, § 6402; CL 1929, § 10084.

NOTES TO DECISIONS

Burden of proof to show self-defense. Since self-defense negates elements of murder, a defendant so accused in this state cannot be required to carry the burden of proving self-defense by a preponderance of the evidence. *Kelso v. State*, 95 Nev. 37, 588 P.2d 1035, 1979 Nev. LEXIS 522, cert. denied, 442 U.S. 921, 99 S. Ct. 2846, 61 L. Ed. 2d 289 (1979).

A killing in necessary self-defense is justifiable and not punishable in any manner. *Kelso v. State*, 95 Nev. 37, 588 P.2d 1035, 1979 Nev. LEXIS 522, cert. denied, 442 U.S. 921, 99 S. Ct. 2846, 61 L. Ed. 2d 289 (1979).

No "imperfect self-defense" theory. In this state there is no "imperfect self-defense" theory that would reduce a murder charge to one of voluntary manslaughter; thus, an honest, but unreasonable belief in the necessity for self-defense does not negate malice and does not result in a reduction of the degree of the offense. *Hill v. State*, 98 Nev. 295, 647 P.2d 370, 1982 Nev. LEXIS 454 (1982).

Mutual combat. Where the defendant voluntarily entered into mutual combat, neither the defense of self-defense nor the no-retreat rule was relevant, and such instructions given improperly benefitted defendant. *Wilmeth v. State*, 96 Nev. 403, 610 P.2d 735, 1980 Nev. LEXIS 604 (1980).

Self-defense where the defendant is the original assailant. The rule of law declaring that a person assailed need not retreat is based upon the assumption that he is not at fault in commencing the encounter; if he is at fault in bringing on the encounter, before he can justify the killing it must appear that he had in good faith endeavored to decline any further struggle before the mortal blow was given. *State v. Robison*, 54 Nev. 56, 6 P.2d 433, 1931 Nev. LEXIS 50 (1931).

Duty to retreat. *State v. Grimmer*, 33 Nev. 531, 112 P. 273, 1910 Nev. LEXIS 37 (1910), stands for the proposition that Nevada does not require a person to retreat when he reasonably believes that he is about to be attacked with deadly force. *Culverson v. State*, 106 Nev. 484, 797 P.2d 238, 1990 Nev. LEXIS 103 (1990).

A person who is not the original aggressor, has no duty to retreat before using deadly force, if a

nvcode

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reasonable person in the position of the nonaggressor would believe that his assailant is about to kill him or cause him serious bodily harm. *Culverson v. State*, 106 Nev. 484, 797 P.2d 238, 1990 Nev. LEXIS 103 (1990).

Battered woman syndrome jury instructions. The lack of consistency among the various self-defense instructions together with the failure to give an instruction regarding the relationship between a person's state of mind and the battered woman syndrome constituted error, and even though the defendant was not convicted of first degree murder, the error of failure to properly instruct the jury was not harmless. *Boykins v. State*, 2000 Nev. LEXIS 17, 116 Nev. 171, 995 P.2d 474 (2000).

Jury instructions must not merely recite statute. Although jury instructions included a recitation of this section, district court erred in refusing defendant's specific instruction on apparent danger and limiting the defendant to the theory of actual danger. The instructions may have misled the jury into concluding that the defendant's actions were not justified even if they found that he thought he saw a weapon brandished by the victim but was mistaken in that belief. *Runion v. State*, 2000 Nev. LEXIS 126, 116 Nev. 1041, 13 P.3d 52 (2000).

RESEARCH REFERENCES

Admissibility of evidence as to other's character or reputation for turbulence on question on self-defense by one charged with assault or homicide. 1 A.L.R.3d 571.

Relationship with assailant's wife as provocation depriving defendant of right of self-defense. 9 A.L.R.3d 933.

Unintentional killing or injury to third person during attempted self-defense. 55 A.L.R.3d 620.

Withdrawal, after provocation of conflict, as reviving right of self-defense. 55 A.L.R.3d 1000.

Accused's right, in homicide case, to have jury instructed as to both unintentional shooting and self-defense. 15 A.L.R.4th 983.

~~327 F.3d at 831~~ Burden of Proof to Show Self-Defense-

- Since self-defense negates elements of murder, a defendant so accused in this state cannot be required to carry the burden of proving self-defense by a preponderance of evidence. *Kelso v. State*, 95 Nev. 37, 588 P.2d 1035, 1979 Nev. LEXIS 522, Cert. denied, 442 U.S. 921, 99 S. Ct. 2846, 61 L. Ed. 2d 289 (1979).- once Petitioner can show that he is not the initiator to the encounter - Hence, Brady material purposely held back by the court - June 6, 2019 - Then petitioner does not have to prove self-defense beyond or even by a preponderance of evidence. OBVIOUSLY Petitioner was prejudiced by Counsel's deficient performance.

- Good CAUSE - Racially Motivated Bias - Claim 3 - Good Cause - - Fundamental Miscarriage of Justice -

Because of the long relationship between Anthony Goldstein, Megan Thomson and former Prosecutor Mary Kay Holthus, their personal relationship was put above the interest of the court, because of this long 20 year relationship the Petitioner was ~~and~~ prejudiced of having a bias judge, counsel and D.A. and they together obstructed the due administration of justice Under Title 18 U.S.C. § 1503 By corruptly influencing, obstructing, impeding, and endeavoring to corruptly influence obstruct and impede the due administration of justice. By knowingly giving Grand Jury testimony that was intentionally evasive, false, and misleading Under Title 18 U.S.C. § 1503, ~~and~~ making these false statements were relevant to an issue under the Grand Jury's Consideration." *McKenna*, 327 F.3d at 831. ② By Corruptly influencing, obstructing, impeding and endeavoring to corruptly influence, obstruct and impede the due administration of justice by: Suppressing Material Evidence, in violation of due process. Due to this evidence being material either to guilt or

Page 12

or punishment, suppression by prosecution of evidence favorable to accused upon request violates due process, irrespective of good faith or bad faith of prosecution. *Brady v. Maryland* 63 S. Ct. 1194 (1963). *United States v. Bagley* 105 S. Ct. 3375 (1985). *Roberts v. State* 881 P.2d 1 (Nev. 1994) and *Hornick v. State* 913 P.2d 1280 (Nev. 1996). Government's failure to assist defense by disclosing information that might have been helpful in conducting cross-examination amounts to a constitutional violation only if it deprives the defendant of a fair trial; constitutional error occurs and conviction must be reversed, only if evidence is material in the sense that suppression undermines confidence in the outcome of the trial, as stated in *Roberts v. State* 881 P.2d 1 (Nev. 1994).

The defendant in this case as every other case in the United States is entitled to a fair and impartial trial. The defendant is aware he has the right to the inspection of all exculpatory evidence in the possession of the prosecution for the defendant's counsel not to file any pretrial motions, writs or petitions denied the defendant a fair trial and gave rise to counsel's ineffectiveness.

Petitioner has just recently received his file 3-23-2021 and did not know of the suppressed evidence or extent of trial counsel conflict. He received his file from Terrence Jackson esq. with which he did not have one single conflict for the entire year. Terrence Jackson was Petitioner's Appellate counsel and recognized the damage that was extremely preventable by trial court if bias prejudice did not infect this case, due to judicial neglect.

There are 3 witnesses for defendant that allege his innocence - Charry Mukena - who initiated the threat on facebook messenger one week before first incident took place - Read by Judge Karen Bennet Haron In Case No. 18PO0861 Transcripts. - Charry Mukena is also the same person who was with Prince Alidu May 27 2018 when Petitioner was Aggressively approached and chased into a corner and assaulted - Seen by Your Stop Employee - Endalkachew Mekonnen, Page 13-1

This is Brook He works at night

Terrence M. Jackson, Esquire
Attorney at Law

624 South Ninth Street Las Vegas, NV 89101
T: (702) 386-0001 / F: (702) 386-0085

March 17, 2021

Confidential Law Office Mail
Sammie Nunn, ID# 1226304
Three Lakes Conservation Center [TLCC]
Post Office Box 208
Indian Springs, NV 89070-0208
Open Only in Inmate's Presence

Re: Request for release of legal file

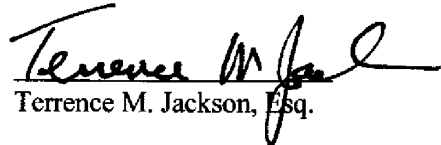
Dear Mr. Sammie Nunn:

Your mother called me on March 16, 2021, telling me you wanted your appeal file including all the appellate record. Please send me a request for the record in writing. Your mother also told me that you wanted me to do some further legal work for you. I can not do that. Having taken your case to the Nevada Supreme Court and having received their written opinion, that concludes my appointed work for you.

I will now be happy to release the entire file to you. I will ask you to sign the return the release of file form when you receive this letter and then mail it back to me. You must understand that once I have sent you the file I will not be able to do anything further in your case.

Although I cannot represent you further, I advise you that if you wish to do further appeals in your case, that you should contact the Federal Public Defender office in Las Vegas, Nevada, and possibly they can assist you in filing a Writ in Federal Court. Their address is 411 E. Bonneville, Suite 250, LV, NV, 89101, phone # 702.388.6577.

Sincerely,


Terrence M. Jackson, Esq.

Randy

Enc.: File Release Form;
self addressed stamped envelope
cc: file

the Second witness.-We can easily Pull up the threat of violence this group sent to Petitioner Sammie Nunn by subpoena to facebook from March to May 27 2018 of Charry Mukena's facebook messenger account-the evidence is everywhere and that is why Charry Mukena was never brought forward on this case: This evidence was also suppressed by Prosecutors. The third witness is obviously Kerick Hines Kerick Hines (unknowingly to Petitioners knowledge or to evidence turned over by DA's office) wanted to come forward and Testify for the defense, and Again, Petitioner would have never known, if Appellate Attorney Terrance M. Jackson (Great Attorney by the way) hadn't listened to Petitioners request and given him the recorded Court transcripts. With a mere slip of the words and pressure to uphold a stipulated Plea agreement, an environment formed which, relaxed each Participant Present at that bench conference, to openly disclose for the first time, on the record, Kerick Hines, intent and role that he would play at Trial. Kerick Hines is Prince's Best friend! So him suggesting or confirming that Prince Alidu was drunk and lied to the police officers that night, kills the entire case, it kills him as a Credible Victim-because he was drunk, in the first incident also-theres an over whelming possibility, that he lied then, to the Police officers also. Petitioner is incarcerated, by the mere words, of, a known drunken, liar. It is time to ~~release~~ release said Kidnapped Petitioner, falsely Arrested Petitioner, falsely convicted Petitioner, for the sake of God Himself being witness to all things that have come forward in the real light of the evidence used in the proper way to administer Justice. If you look at the Grand Jury line up of witnesses, you will see for yourself that D.A. Megan Thomson Purposely took Kerick Hines off of the list, which means by law he couldn't show up-What did she know? There Also isnt a place for Charry Mukena, what a way to labor make a Conviction.

There is not one single attorney who gives petitioner his full discovery on the record except for Terrance Jackson 3-23-2021 and Appellate Attorney Terrance Jackson made a record and had Petitioner sign a discovery disclosure stating he got the record. Professional, to say the least. The State merely wants to keep Petitioner incarcerated because they simply do not personally like the Petitioner, but manipulating the legal system to deliver punishment to a person who does not fit the legal criteria of the penalty is illegal and is the basis for a tort action with grounds on steroids with merit. Furthermore, When D.A. Megan Thomson told Attorney Anthony Goldstein, "Congratulations" after finding out that he was in touch with Kerick Hines, she admitted on the record, that Kerick Hines held evidence which was not favorable to the Prosecution of Petitioner. Judge Mary Kay Holthus just sat there, without a care in the world about defendants rights to exculpatory evidence, showing ~~inherent~~ inherent bias toward Defendant Nunn, and also to her role to uphold the Constitution of Nevada and the United States. Is she fit to be a Judicial officer? I'll leave that to the Judicial Committee through a Judicial Complaint.

Where a Petitioner is procedurally barred and the Petitioner cannot demonstrate 'good cause', the district court may never the less reach the merits of any constitutional claims if the petitioner demonstrates that failure to consider those constitutional claims would result in a fundamental miscarriage of justice. Pellegrini, 117 Nev. at 887, 34 P. 3d at 537. A fundamental miscarriage of justice requires "A Colorable Showing" that the Petitioner "is actually innocent of the crime or is ineligible for the death penalty." id. This generally requires the Petitioner to present new evidence of his innocence. House v. Bell, 547 U.S. 518, 53637, Page 15

Steven D. Grierson

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

CASE NO. C-18-336184-1

6 Plaintiff,

7 vs.

DEPT. NO. XVIII

8 SAMMIE NUNN,

9 Defendant.

10
11 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

12
13 TUESDAY, MAY 14, 2019

14
15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
16 **MOTION TO DISMISS COUNSEL**

17
18 **APPEARANCES:**

19 For the Plaintiff:

ALICIA A. ALBRITTON
Chief Deputy District Attorney

20
21
22 For the Defendant:

ANTHONY M. GOLDSTEIN, ESQ.

23
24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, MAY 14, 2019, 9:08 A.M.

2 * * * * *

3 THE CLERK: Page 8, State of Nevada versus Sammie Nunn,
4 C336184.

5 MR. GOLDSTEIN: Your Honor, Anthony Goldstein for the defendant.
6 He's here in custody.

7 THE COURT: Hello, what's going on?

8 MR. GOLDSTEIN: Your Honor, this is the defendant's second motion
9 of this nature. He was found incompetent, came back competent, filed this shortly
10 thereafter. I can address the matter set forth in the motion if you'd like.

11 THE COURT: Okay.

12 MR. GOLDSTEIN: I mean, I've visited him, I don't know how many
13 times, many times. I've personally visited the alleged crime scene and spoke with
14 the manager, tried to get a copy of the video tape, tried to interview employees. I've
15 talked about plea bargains with him many, many times, including with Ms. Thomson,
16 who's not here. She's out – not coming today, but it's her case.

17 I'm not really sure about some of the other claims he's making. I don't
18 understand a good portion of the motion, Your Honor, but I've done what I can. I'm
19 the second attorney on the case. He had Ms. Waldo prior to me. I'm sure the file
20 indicates what happened with his previous attorney, but everything's moving
21 forward, Your Honor, from my end anyway.

22 THE COURT: Mr. Nunn, here's the reality; you have an excellent
23 attorney assigned to you. I don't see anything in your motion. I'm not – I'm not sure
24 – I'm not even sure really what you're complaining about, frankly.

25 THE DEFENDANT: Okay, what I'm complaining about is there's

1 evidence that, basically, I didn't do the crime. He said that it doesn't exist. My mom
2 came down and got the transcripts from the Court. I gave him the transcripts, then
3 he told me he hasn't looked at them. Then after he told me he had looked at them,
4 he said that he don't know about them, and then he pulled it up on his phone. I
5 mean, we're having a failure to communicate.

6 MR. GOLDSTEIN: Yeah, that's true.

7 THE DEFENDANT: We haven't –

8 MR. GOLDSTEIN: I actually emailed it to Ms. Thomson last week
9 because she asked me for it, so I had it. There was a miscommunication. I agree
10 about that, but there is a transcript, yeah.

11 THE DEFENDANT: We haven't – we haven't brought that transcript
12 into evidence. On top of that, we haven't gone over the Grand Jury –

13 THE COURT: The transcript is already in the record. So it's not trial
14 time –

15 THE DEFENDANT: It's not –

16 THE COURT: – there's no evidence in right now.

17 THE DEFENDANT: It's not – it's not in the record as far as this case.
18 It's a TPO hearing that was done outside of this case. So he –

19 THE COURT: Well, it's not time to bring in evidence here. It's – the
20 trial isn't until June.

21 THE DEFENDANT: Yeah, that's fine. He also – we haven't gone over
22 any other evidence or talked about any of the other transcripts or the Grand Jury
23 indictment transcripts. I don't think that we should be able to just wait 'til trial and
24 then start going over everything.

25 THE COURT: Okay, well –

1 THE DEFENDANT: I think I have – I need a fair chance at trial. On top
2 of that, he haven't – he hasn't given – or called back my mom. She calls him all the
3 time.

4 THE COURT: He is not required to call back your mom.

5 THE DEFENDANT: That's fine, but I –

6 MR. GOLDSTEIN: And I've spoke with his mom.

7 THE DEFENDANT: – but I – but I granted her to be able to get
8 information from him.

9 MR. GOLDSTEIN: Your mom in Oakland, right?

10 THE DEFENDANT: He doesn't – he doesn't answer the phone for me
11 at all, so I stopped trying to call. We haven't – we haven't – we also haven't had any
12 contact visits. I mean, there's a lot, there's a lot. We're not getting anywhere.

13 MR. GOLDSTEIN: If you want me to respond to it. I spoke with his
14 mom.

15 THE COURT: Please, I do.

16 MR. GOLDSTEIN: She's in Oakland, California, right, Sammie?

17 THE DEFENDANT: And also –

18 MR. GOLDSTEIN: Prior to recommending him for – or request to he be
19 evaluated for competency, I spoke with his mom. She doesn't have any information
20 about the case. She wasn't involved in any way, but I spoke with her about him a
21 while back. There hasn't been any reason to talk to his mom recently, so I haven't.

22 THE DEFENDANT: Also, we called the store that he claimed that he
23 went to go talk to the employees and all that stuff; nobody's seen him, heard of him,
24 or anything. The owner at the store doesn't know what he's talking about. The
25 witness, Brook, he actually works there. I had a witness on my side of somebody

1 that works there, and Brook hasn't talked to him, been interviewed by anybody, he's
2 waiting. He's like, if somebody was going to interview me, I'm sitting here, I work
3 here every night, you know what I'm saying, I'm sitting here, it's a 24-hour store,
4 you could come anytime and interview me. He hasn't been to the store. I mean – I
5 mean, I know you might buying a little of his crap that he's trying to give you, but he
6 hasn't done anything.

7 MR. GOLDSTEIN: Your Honor, November 13th, 2018, I went to 820
8 East Twain, which is the Your Stop store. I spoke with a manager by the name of
9 A.J. and asked if there's any video.

10 THE DEFENDANT: A.J., what's –

11 MR. GOLDSTEIN: I gave –

12 THE DEFENDANT: – his real name?

13 MR. GOLDSTEIN: He gave me the name of A.J. I didn't –

14 THE DEFENDANT: That doesn't make any sense.

15 MR. GOLDSTEIN: I didn't check his birth certificate, but –

16 THE DEFENDANT: You haven't been down there. That's not –

17 THE COURT: Excuse me.

18 THE DEFENDANT: – his real name.

19 THE COURT: Somebody's speaking, you don't speak over them,

20 okay?

21 THE DEFENDANT: He just spoke over me.

22 THE COURT: He did not. I asked him to answer the question.

23 MR. GOLDSTEIN: And I gave my card to Fidel, the manager, on
24 November 13th, in case anything popped up. So I went to the store, not that that
25 was in doubt, but –

1 THE DEFENDANT: You're –
2 MR. GOLDSTEIN: Whether he believes me – or whether the defendant
3 believes me or not is a different issue, Your Honor, but I'm doing my job. And,
4 again, I'm –
5 THE DEFENDANT: We called down –
6 MR. GOLDSTEIN: – just not sure what his – all of his complaints are all
7 about. I've done all this work personally.
8 THE COURT: And I appreciate it. I don't see any grounds here to
9 dismiss counsel.
10 Here are your options, Mr. Nunn: You may – are free to retain your
11 own counsel, hopefully by the trial date – the trial date is June 17th – or if you
12 choose, you can proceed on your own, but you'd be required to undergo a Faretta
13 canvass, and I will tell you, you don't want to represent yourself. It's not a good
14 idea. You have a right to.
15 THE DEFENDANT: If you're giving me the option to represent myself
16 or have this guy represent me –
17 THE COURT: Or retain another attorney.
18 THE DEFENDANT: – I will represent myself.
19 THE COURT: Okay, we will – you need to think about it and do a little
20 research.
21 THE DEFENDANT: I don't wanna think. I've been thinking for –
22 THE COURT: Well, I don't have –
23 THE DEFENDANT: I've been here over a year.
24 MR. GOLDSTEIN: Sammie, don't interrupt the Judge.
25 THE COURT: What part of stop don't you get, okay?

1 THE DEFENDANT: I've been a whole year. You don't think I've
2 thought about this?

3 THE COURT: I'm just going to give you a – I want you to ask around
4 and consider whether you're certain you want to have a Faretta canvass and
5 represent yourself, okay. I don't have time to do it today and I don't want to do it
6 without you having done some research and thought about it. Representing yourself
7 is huge, so we're going to put it –

8 THE DEFENDANT: Getting time in the penitentiary for something you
9 haven't done is huge.

10 THE COURT: Okay. I'm going to pass this for – what's our next
11 available that's good?

12 THE DEFENDANT: This guy sucks, man. That's on the record.

13 MR. GOLDSTEIN: Knock it off.

14 THE COURT: You know what, perhaps if you would show a little more
15 respect.

16 THE DEFENDANT: Respect.

17 THE CLERK: May 23rd.

18 THE COURT: Okay, May 23rd.

19 MR. GOLDSTEIN: Your Honor, I'll go visit him prior to that and go over
20 Nevada Supreme Court Rule 253 with him, which goes over self-representation,
21 okay.

22 THE COURT: I appreciate that. Thank you.

23 ///

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THE DEFENDANT: I don't know why you didn't just grant my motion. I
don't get along with him.

PROCEEDING CONCLUDED AT 9:15 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
video recording of this proceeding in the above-entitled case.


LARA CORCORAN
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

2

3

4

DISTRICT COURT
CLARK COUNTY, NEVADA

5

THE STATE OF NEVADA,

6

Plaintiff,

7

vs.

8

SAMMIE NUNN,

9

Defendant.

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11

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

12

13

THURSDAY, MAY 23, 2019

14

15

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
MOTION TO DISMISS COUNSEL**

16

17

APPEARANCES:

18

19

For the Plaintiff:

MEGAN THOMSON

Chief Deputy District Attorney

20

21

22

For the Defendant:

ANTHONY M. GOLDSTEIN, ESQ.

23

24

25

RECORDED BY: YVETTE SISON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, MAY 23, 2019, 10:31 A.M.

2 * * * * *

3 THE CLERK: State of Nevada versus Sammie Nunn, C336184.

4 MR. GOLDSTEIN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. GOLDSTEIN: Anthony Goldstein for the defendant. He's here in
7 custody. Your Honor, just briefly, we're on for a Faretta canvass. The State gave
8 me a new and improved offer yesterday afternoon, which I consider very fair. I
9 conveyed it to the defendant today. He rejected that offer, specifically, battery with
10 use of a deadly weapon. The State would not oppose probation. It would also
11 agree to an OR with house arrest after entry of plea.

12 I guess the issue is he doesn't have a house right now, so he might not
13 be able to get released anyway, so he rejected that offer and he wants to go forward
14 with the Faretta canvass this morning. Last week I visited him after our hearing,
15 went over Nevada Supreme Court Rule 253 with him and went over Faretta and all
16 matters relating to self-representation, so he should be ready to go forward with the
17 canvass today, Your Honor.

18 THE COURT: That's what you want to do?

19 THE DEFENDANT: That's what I'm being forced to do here.

20 THE COURT: You're not being forced to do anything. You have an
21 excellent attorney that the State is providing you free of charge. If – I can't make
22 you, although I can tell you that – I guess there's one of – Mr. Hudson will tell you,
23 he went to trial on his own the first time and was convicted of everything, and the
24 he went with counsel the next time and they were able to get it down to one charge,
25 but you can do what you want to do. So what do you want to do?

Coercion Judge Mary Kay Holtz is trying
to convince me by using someone who lost at trial to
deter my own judgement. No talks of innocence or guilty
or even subpoenaing witnesses or trial counsel
Conflict free conduct. 135

1 THE DEFENDANT: I would like to get alternate counsel?
2 THE COURT: You're free to hire counsel.
3 THE DEFENDANT: I'm indigent.
4 THE COURT: There – you have a – like I said, you have a good
5 counsel there. There's nothing in your motion that warrants alternate counsel. So
6 do you want to – you want to consider the offer? *She's coercing me to take the plea or go to trial*
7 THE DEFENDANT: Do I – do I have a right to have my evidence? *I with bad counsel and conflicts*
8 mean, because there was video tapes in the beginning, there was witnesses.
9 THE COURT: I'm certain that Mr. Goldstein will get all of the discovery
10 if it gets – is it –
11 THE DEFENDANT: *✓* I don't even have the discovery. I've had him for
12 eight months. I don't have discovery in either case. All I have is the Grand Jury
13 indictment transcript. *✓ The Trial was in two weeks*
14 THE COURT: Okay, well, your trial is still almost a month away. I'm
15 assuming you – do you have everything you need, Mr. Goldstein?
16 MR. GOLDSTEIN: I've sent it to him. I mean, it's possible when he
17 went up to – when he was found incompetent, it's possible that some of the items
18 got misplaced somewhere in transport, but he has everything for sure. I mean, I've
19 given it to him. Whether it's been misplaced by him or in transport, I don't know, but
20 he has everything, or at least at one point he's –
21 THE COURT: Can you –
22 MR. GOLDSTEIN: – had everything.
23 THE COURT: Can you re-give it to him?
24 MR. GOLDSTEIN: Sure.
25 THE COURT: All right, let's put this on next week, status check the

1 discovery, and then we'll do your Faretta then, okay. And you can think about it as
2 well, in the meantime, make sure.

3 THE DEFENDANT: Okay. Oh, for the record, I know – I came out here
4 to Nevada as an electrician. I'm a journeyman. I came out here just to work at
5 Tesla. I worked at Tesla for a year, did a great job at doing commission and selling
6 parts and then making sure that things went right. And when I – when they
7 transferred me back to Las Vegas I rented an apartment for a year, which the lease
8 was just up while I've been incarcerated. I paid the money upfront. So I don't have a
9 place to live, so I can't – I don't know about taking house arrest. I don't have
10 anybody out here. I'm just out here for work.

11 THE COURT: All right. Well, why don't you talk with Mr. Goldstein and
12 have Mr. Goldstein talk with the State and see if – what they could work out, if
13 anything, okay?

14 THE DEFENDANT: Okay.

15 THE COURT: Mr. Goldstein, stay on another week and just see if –
16 see if there's anything you can do with the kinks of that deal maybe.

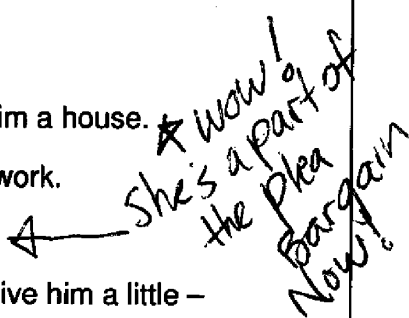
17 MR. GOLDSTEIN: It's Megan –

18 MS. THOMSON: It was already a modified down from the prior offer.
19 I'm not going anymore off of that.

20 MR. GOLDSTEIN: It's Megan's case. I –

21 THE COURT: Well, or maybe you can find him a house.

22 THE DEFENDANT: Well, I gotta go back to work.

23 MR. GOLDSTEIN: Find him a house. Okay. 

24 THE COURT: I'll allow – Ms. – I'm going to give him a little –

25 MR. GOLDSTEIN: Spanish Trail or where – anywhere specific?

1 THE COURT: I'm just going to give him – I'm going to just give him a
2 little time just to – will you guys approach?
3 (Conference at the Bench)
4 MR. GOLDSTEIN: Sorry about that.
5 THE COURT: That's all right. I just – I mean if that's the sticking point
6 if he wants the deal, but it's an –
7 MS. THOMSON: I – here's –
8 THE COURT: – impossibility, then it seems silly not to do it, right?
9 MS. THOMSON: My offer from pretty much go has been like right to
10 argue. Mr. Goldstein gave me some stuff. I'm willing to let him out with house
11 arrest, but he's attacked this man twice. He sent people to tell him that he'll be killed
12 if he comes to court. I'm not releasing him without house arrest. I don't –
13 THE COURT: Oh, no, I get it.
14 MS. THOMSON: That's unfortunate for him, but that's, frankly, not my
15 problem.
16 THE COURT: But –
17 MR. GOLDSTEIN: He's not a great candidate for like one of those
18 temporary housings because of his general attitude, but I can try and get him into –
19 like I don't think he's going to stay a like a mission-type place, like a, you know,
20 rescue-mission-type place. He's –
21 THE COURT: Yeah.
22 MR. GOLDSTEIN: I can try. And he doesn't have a drug problem
23 either that I'm aware of, so this isn't a drug case, it's a –
24 MS. THOMSON: It's just an attitude problem.
25 MR. GOLDSTEIN: – mental-health-issue case. I mean, some of it's his

There is no proof of this. This violates my right to due process for witness tampering.

Proof she doesn't like me personally

1 fault, some of it's mental health issues.

2 MS. THOMSON: Right.

3 MR. GOLDSTEIN: But it's not a drug case, so I can't – he won't be

4 accepted into any kind of like, you know, Salvation-Army-type place because he

5 doesn't have a drug problem. So he's – *← so I'm credible, I'm not on drugs or alcohol*

6 MS. THOMSON: I'm not trying to be a dick, I just –

7 THE COURT: No, I totally get it. I'm – I was just – if that was what was

8 holding it up, I was trying to think of how we can structure house arrest without a

9 house. *← She's suppose to be non bias She's with the prosecution She's Prosecuting me, I haven't even taken plea*

10 MR. GOLDSTEIN: It's – and it's also no opp probation, so he'll try and

11 leave the State as soon as possible, once – if he gets probation because the deal is

12 no opp now. Megan was very flexible when it come – when it came to that, but it's

13 the house arrest thing, which I asked yesterday and she said no about the regular,

14 so fair enough. It was – she came down fairly. I say it was fair.

15 MS. THOMSON: Thanks, I think so too.

16 THE COURT: Well, I guess technically I'm not supposed to get

17 involved in this. I'm like, all right – *← Exactly you're not why did you show bias,*

18 MR. GOLDSTEIN: That's okay. *✓*

19 THE COURT: – already have, so. But I mean, I – we could maybe

20 facilitate a faster sentencing date for him if – you know, if you do – if you did the deal

21 – he took the deal but couldn't get out, but maybe *we could – insinuates they are a team prosecuting me and not allowing me to present evidence*

22 MS. THOMSON: Do we have a PSI?

23 MR. GOLDSTEIN: No.

24 MS. THOMSON: Okay. I didn't remember how early he –

25 MR. GOLDSTEIN: No.

1 MS. THOMSON: – moved to a trial. Are you sure? Let me go get my
2 file. You stay here.

3 MR. GOLDSTEIN: Because he got – if you read the file, I only got on
4 this because he had some very serious issues with Ms. Waldo. Did you read that?

5 THE COURT: No.

6 MR. GOLDSTEIN: Judge Togliatti was aware of it.

7 MS. THOMSON: Oh, maybe we don't. Maybe we have one in the –
8 what case –

9 MR. GOLDSTEIN: He told psychologists that he had ideations of killing
10 his attorney, which was at the time, Ms. Waldo.

11 THE COURT: Oh my God.

12 MR. GOLDSTEIN: So she withdrew, obviously –

13 MS. THOMSON: One time.

14 MR. GOLDSTEIN: – and I got appointed, and he's just very up and
15 down. I mean, but that's not confidential, that's – that was all on the record and
16 that's why I was appointed to begin with. It wasn't a serious threat, but it's still – you
17 know, it –

18 MS. THOMSON: Bam.

19 MR. GOLDSTEIN: Oh, we do have a PSI. So for other reasons, I got
20 appointed and then withdrew his guilty plea, which –

21 MS. THOMSON: Now we have to see if it's his.

22 MR. GOLDSTEIN: – Judge Togliatti granted, so that's why we kind of
23 went back to square one. But Megan is smarter than me, she noticed there was a
24 PSI made after his first plea.

25 MS. THOMSON: So the only thing is we'd have to kind of waive

1 defects because it's the PSI from the information, not including both for when it was
2 indicted.

3 MR. GOLDSTEIN: Yeah, but that's easy.

4 MS. THOMSON: But that –

5 MR. GOLDSTEIN: There's a PSI from six months ago.

6 MS. THOMSON: Yeah.

7 THE COURT: Well, let's put it on for next week. Let me know what's
8 going on. At least I'm going to have to give victims the opportunity to speak and
9 stuff.

10 MR. GOLDSTEIN: Yeah.

11 THE COURT: So we wouldn't –

12 MR. GOLDSTEIN: He's around too.

13 THE COURT: – be able to something sooner, like that day, unless we
14 call and the victim says she doesn't – they don't want to come, because we're not
15 going to do the plea, obviously, now.

16 MR. GOLDSTEIN: We couldn't – well, I have the GPA, but we couldn't
17 do it now. Well, I'll talk to him.

18 THE COURT: I don't see – well –

19 MR. GOLDSTEIN: This is all new, so.

20 MS. THOMSON: Yeah, I didn't think about the fact that this existed –

21 MR. GOLDSTEIN: Okay.

22 MS. THOMSON: – until –


23 MR. GOLDSTEIN: Yeah, we can come back in a week or whatever,
24 that's fine.

25 THE COURT: You want to do that?

1 MR. GOLDSTEIN: You got a lot going on to hear anyway today.
2 THE COURT: I do.
3 MR. GOLDSTEIN: When Rabb comes up you'll have more going on.
4 THE COURT: I don't know what's going on over there, but –
5 MR. GOLDSTEIN: It's a rough group today.
6 THE COURT: All right.
7 MR. GOLDSTEIN: Thank you.
8 (Conference at the Bench concluded)
9 MR. GOLDSTEIN: Based on our conversation at the bench, Your
10 Honor, I'll talk to Mr. Nunn for a few moments. You can trail this if you need.
11 THE COURT: Okay.
12 (Matter recalled at 11:16 a.m.)
13 THE CLERK: State of Nevada versus Sammie Nunn, C336184.
14 THE COURT: Have you talked to him?
15 MR. GOLDSTEIN: Yes, and I gave him a copy of the PSI that he
16 requested. If we could come back in a week? I want to go over to visit him again.
17 I'll go over the GPA. I don't know where he's at in accepting the deal, but I just – if
18 we come back in a week, hopefully we can get him potentially pled and sentenced
19 next week.
20 THE COURT: Okay.
21 MR. GOLDSTEIN: I'll speak with Ms. Thomson as well.
22 THE COURT: All right. If you guys are going to want to go forward with
23 sentencing next week, get me what I need and –
24 MR. GOLDSTEIN: We'll keep your staff looped in.
25 THE COURT: – make sure you come in with the victim understanding

*This was not a current
PSI
There was false
information
on it.
WOW*

*The judge is all in I haven't
pleaded to anything but in
her bias eyes I'm
guilty.*

1 that that could be happening.
2 MS. THOMSON: Yes.
3 THE COURT: Please. Okay.
4 THE CLERK: May 30th, 9 a.m.
5 THE COURT: It's for possible negotiations and possible sentencing.
6 PROCEEDING CONCLUDED AT 11:17 A.M.
7 *****
8 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
9 video recording of this proceeding in the above-entitled case.
10 
11 LARA CORCORAN
12 Court Recorder/Transcriber
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Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SAMMIE NUNN,

12 Defendant.

CASE#: C-18-336184-1

DEPT. XVIII

13
14 *The Judge* BEFORE THE HONORABLE MARY KAY HOLTHUS,

15 *→* DISTRICT COURT JUDGE

16 THURSDAY, JUNE 6, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **STATUS CHECK: POSSIBLE NEGOTIATIONS OR SENTENCING**

19
20 APPEARANCES:

21 For the State:

Prosecutor
22 *X* MEGAN THOMSON, ESQ.
Deputy District Attorney

23 For the Defendant:

my Attorney
24 *→* ANTHONY GOLDSTEIN, ESQ.

25 RECORDED BY: YVETTE SISON, COURT RECORDER

read the transcripts

144

1 Las Vegas, Nevada, Thursday, June 6, 2019

2
3 [Hearing began at 9:53 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie
5 Nunn, C336184.

6 MR. GOLDSTEIN: Your Honor, Anthony Goldstein for the
7 Defendant; he's present in custody. I just submitted a GPA that the
8 Defendant has already signed.

9 THE COURT: What are the negotiations?

10 MR. GOLDSTEIN: Your Honor, today, the Defendant will
11 plead guilty to battery with use of a deadly weapon; that's a
12 Category B Felony. The State will not oppose probation. The GPA
13 also states that the State will not oppose the Defendant's release on
14 house arrest after entry of plea, however, we have a PSI from a
15 related case that we're asking the Court to use today, so if you'd
16 like, we can go forward with sentencing the Defendant today.

17 In addition, Your Honor, we're stipulating to an underlying
18 sentence of 2 to 5, which we interlineated; and both Ms. Thomson
19 and I initialed that change in Court today.

20 MS. THOMSON: That's correct.

21 MR. GOLDSTEIN: So, on lines 21 and 22, when it first OR
22 after – OR with house arrest after entry of plea, that's moot,
23 assuming the Court is going to sentence the Defendant today.

24 THE COURT: You know, here's my issue with that; I – I
25 don't – especially on violent PSI –

Different facts in old
PSI

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MR. GOLDSTEIN: Can we approach?

THE COURT: Yes.

[Bench Conference]

THE COURT: Oh, oh, oh is the PSI the same offense?

MS. THOMSON: Yes, it is.

MR. GOLDSTEIN: It's the same case.

THE COURT: Okay.

MS. THOMSON: Yes, he waived up, and then I indicted
and added another case to this but -

THE COURT: It's all good then. *And it wasn't*

MR. GOLDSTEIN: And he entered a plea and
subsequently Judge Togliatti -

MS. THOMSON: Yeah.

THE COURT: Okay. That's fine. I just wanted - if he ends
up in prison, I want to make sure they have the underlying.

MS. THOMSON: It's a different case number because I
indicted in between -

*And Different case
facts also*

THE COURT: All good.

MS. THOMSON: -- but it's not a different case.

THE COURT: All good. We're good. Thank you.

[Bench Conference Concluded]

THE COURT: Okay. Mr. Nunn, is that your understanding
of the negotiations?

THE DEFENDANT: Yes ma'am.

THE COURT: What's your full name?

1 THE DEFENDANT: Sammie Nunn [unintelligible] –
2 THE COURT: How old are you?
3 THE DEFENDANT: I'm 29.
4 THE COURT: How far did you go in school?
5 THE DEFENDANT: Vocational.
6 THE COURT: Do you read, write, and understand the
7 English language?
8 THE DEFENDANT: Yes ma'am.
9 THE COURT: Are you currently under the influence of any
10 drug, medication, or alcoholic beverage right now?
11 THE DEFENDANT: No ma'am.
12 THE COURT: Do you understand the proceedings that are
13 happening here today?
14 THE DEFENDANT: Yes ma'am.
15 THE COURT: Have you received a copy of the
16 information charging you with battery with use of a deadly
17 weapon?
18 THE DEFENDANT: Yes ma'am.
19 THE COURT: Do you understand the charges contained in
20 the information?
21 THE DEFENDANT: Yes ma'am.
22 THE COURT: Have you discussed this case with your
23 attorney?
24 THE DEFENDANT: Yes ma'am.
25 THE COURT: As to the charge set forth in the information

1 how do you plead, guilty or not guilty?
2 THE DEFENDANT: Guilty.
3 THE COURT: Are you making this plea freely and
4 voluntarily?
5 THE DEFENDANT: Yes ma'am.
6 THE COURT: Has anyone forced or threatened you or
7 anyone close to you to get you to enter this plea?
8 THE DEFENDANT: No ma'am.
9 THE COURT: Has anyone made you promises other than
10 what is contained in the guilty plea agreement to get you to enter
11 this plea?
12 THE DEFENDANT: No ma'am.
13 THE COURT: I have before me a written plea agreement.
14 Have you signed this plea agreement?
15 THE DEFENDANT: Yes ma'am.
16 THE COURT: Is that your signature on page 5?
17 THE DEFENDANT: Yes ma'am.
18 THE COURT: Before you signed it, did you read it and
19 discuss it with your attorney?
20 THE DEFENDANT: Yes ma'am.
21 THE COURT: Do you understand everything contained in
22 this agreement?
23 THE DEFENDANT: Yes ma'am.
24 THE COURT: Do you understand the constitutional rights
25 you're giving up by entering this plea of guilty?

1 THE DEFENDANT: Yes ma'am.

2 THE COURT: Do you understand the appellate rights that
3 you are giving up by entering this plea of guilty?

4 THE DEFENDANT: Yes ma'am.

5 THE COURT: Do you understand if you are not a United
6 States Citizen, that entering a plea of guilty may have immigration
7 consequences including deportation?

8 THE DEFENDANT: Yes ma'am.

9 THE COURT: Do you understand the range of punishment
10 is from 2 to 10 years in the Nevada Department of Corrections and
11 you may also be fined up to \$10,000?

12 THE DEFENDANT: Yes ma'am.

13 THE COURT: Do you understand that whether or not you
14 receive probation is strictly up to me?

15 THE DEFENDANT: Yes ma'am.

16 THE COURT: And that sentencing is up to me including
17 whether the counts will run consecutive or concurrent?

18 THE DEFENDANT: Yes ma'am.

19 THE COURT: And no one can promise you probation,
20 leniency, or any special treatment?

21 THE DEFENDANT: Yes ma'am.

22 THE COURT: Are you pleading guilty in truth and in fact
23 because you did – between May 27, 2018 and June 3, 2018 here in
24 Clark County, Nevada, willfully, unlawfully, and feloniously use
25 force or violence upon Prince Alidu with use of a deadly weapon,

1 that being a firearm and/or 12-inch pair of pliers, by hitting Prince
2 Alidu in the head with a firearm or striking him with the pliers?

3 THE DEFENDANT: Yes ma'am.

4 THE COURT: Is that sufficient for the State?

5 MS. THOMSON: Yes, Your Honor.

6 MR. GOLDSTEIN: Your Honor, before you accept the plea,
7 you asked the question about is he under the influence of any
8 drugs. He is definitely taking prescribed medications from the
9 Detention Center Medical Staff. He's very lucid today. I have no - I
10 visited him twice since the last hearing, Your Honor. He
11 understands the terms of the deal, and I just want to clarify for the
12 record that he is taking prescribed medications from the Detention
13 Center Staff.

14 THE COURT: Do they help you understand things better?

15 THE DEFENDANT: Yes ma'am.

16 THE COURT: Okay. Do you have any questions you
17 would like to ask me or your attorney before I accept your plea? Do
18 you have any question for anybody?

19 THE DEFENDANT: No ma'am.

20 THE COURT: Okay. The Court finds the Defendant's plea
21 of guilty is freely and voluntarily made and that the Defendant
22 understands the nature of his offense and the consequences of his
23 plea and, therefore, accepts his plea of guilty.

24 This matter is referred to the Department of Parole and
25 Probation -

1 MS. THOMSON: It doesn't need to be.

2 THE COURT: -- no it's not, it's undone. Okay. That's
3 accepted. Thank you. This is a right to argue?

4 MR. GOLDSTEIN: No op *[sic]* probation.

5 MS. THOMSON: It is the no op *[sic]* probation. It had
6 been a right to argue, I believe, on the original negotiation that he
7 was permitted to withdraw his plea, and that is the PSI from the fact
8 pattern. The only difference now is the no op *[sic]* probation from
9 the State's perspective.

10 THE COURT: All right. Counsel approach.

11 *Very* → [Bench Conference] ← *Important*
12 THE COURT: I'm going to make a record of the no op *[sic]*
13 probation before I move to go along with it. I'm not inclined to go
14 along with no op *[sic]* probation.

15 MR. GOLDSTEIN: In the GPA, he accepted it.

16 MS. THOMSON: So, what happened is I obtained --

17 THE COURT: No, they're not opposing it but that doesn't
18 mean I'm giving it --

19 MR. GOLDSTEIN: Oh I know. *what?*

20 THE COURT: -- so I wanted to give you the heads up
21 before we do the sentencing, that when I've got P&P
22 recommending a 3 to 10 and when I look at it, it appears to be -- my
23 recollection is that it was an unprovoked pretty vicious attack.

24 MR. GOLDSTEIN: I think we can --

25 MS. THOMSON: That's obviously our perspective. But

*Here perspective is suppose to align with
the facts good or bad.*

at the bench is on the record
He didn't know talking

Facts

So why force me into a deal?

but forced didn't my attorney believe I was into WHIP? answers.

1 your perspective is different – well his perspective, I don't know
2 about yours. His perspective is certainly different. We can address
3 them or given if the Court wants –

4 → MR. GOLDSTEIN: You want it right now or on the record?

5 THE COURT: This is on the record.

6 MR. GOLDSTEIN: Okay –

7 THE COURT: But you could – I mean we can do it anyway;
8 I'm just telling you right now that I'm going to need something else
9 before you going to convince me that probation is appropriate.

10 MR. GOLDSTEIN: Okay, I can have that. The main reason
11 is there was a restraining order hearing between this defendant and
12 the named victim, Prince Alidu. Judge Bennett-Heron presided
13 over it. The victim, Prince Alidu – I mean I emailed you the –

14 MS. THOMSON: Yeah.

15 MR. GOLDSTEIN: -- his statements were very
16 inconsistent. Judge Bennett -- and I can show it to you if you want,
17 didn't believe anything Prince was saying. So I think that was part
18 of the reason the State decided to lower its offer, because Prince
19 came into court, gave conflicting factual accounts of the encounters
20 and then also the Judge was saying things like – I don't know
21 verbatim but –

22 MS. THOMSON: -- I –

23 → MR. GOLDSTEIN: -- how can I believe he did this? Why is
24 – how is the Court going to believe sir that did this and this?

25 MS. THOMSON: -- my –

5. How is a
perspective
irrelevant?

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MR. GOLDSTEIN: This was on the record during a –

MS. THOMSON: -- my modification of the offer, I want to be very clear, had nothing to do with Judge Bennett's perspective because that frankly was irrelevant to me.

The – when I indicted the case, there had been a second case that was outstanding, so our case here is the one with the wrench – what – this packet that you have. There was another case that's out in the system, but where he -- the victim indicated that he had been at a convenient store, the same Your Stop Liquor, with a friend of his, who throughout was uncooperative; would not talk to us, would not do anything, like literally hung up on our investigator, kind of like not talk to us.

The victim told police that he was there with a friend, that the friend knew the Defendant, but that he didn't know the defendant; however, I think that was a secondary incident – my recollection is the date was later –

MR. GOLDSTEIN: [unintelligible] –

MS. THOMSON: -- then he realized who it was, that the Defendant without reason came up, pulled a gun, made some statement to his friend that was threatening and then pistol whipped him, and that he was bleeding, knocked unconscious, then he was able to get up and called the police.

In the TPO hearing, he said that he never lost consciousness. When the Defendant pulled the gun, that he immediately called police. He doesn't make any reference to being

1 pistol whipped at all. Obviously, that gave me concern because
2 when you have such very inconsistent statements as to one
3 incident, then that creates a problem when we're setting a trial on --

4 THE COURT: Well isn't that this incident?

5 MS. THOMSON: I think that's the right incident isn't it?

6 THE COURT: The pistol whipping is this one.

7 MR. GOLDSTEIN: They're like three days apart in the
8 same location. I didn't represent him for that initial --

9 THE COURT: No but, I mean this offense is -- this is the --

10 MS. THOMSON: Oh, you're right it is.

11 THE COURT: -- he pulled a gun, threatened him, pistol
12 whipped him --

13 MS. THOMSON: You're right.

14 THE COURT: -- on top of the head; \$22,000 in
15 medications.

16 MS. THOMSON: So, the other incident was the victim,
17 from his perspective, the allegations is he's walking down the
18 street, minding his own business, defendant comes up to him and
19 hits him with a wrench. When the police arrived, the Defendant is
20 still in the area, and he does in fact have a wrench. Defendant tells
21 police upon the scene and has been consistent throughout in his
22 rendition that he was with -- he was by himself. The victim was
23 with friends. They came up and jumped him because at some
24 point, the Defendant's mother said -- basically told the community
25 the victim is gay; correct me if anything is wrong generally about

1 THE COURT: Well I'm just – I don't – I'm not going to just
2 release him to the streets. I need something in place.
3 MS. THOMSON: Can mom –
4 THE COURT: Honestly, I didn't look at this for anything
5 but prison.
6 MR. GOLDSTEIN: Okay.
7 THE COURT: I gotta be – you know, I didn't realize it was
8 a – it was a no op *[sic]* probation. My notes indicate it was a right to
9 argue. P&P is recommending 3 to 10. I really wasn't –
10 MR. GOLDSTEIN: Yeah well –
11 THE COURT: – fashioning anything.
12 MR. GOLDSTEIN: -- everything – the game changed
13 recently, so I guess that's why.
14 THE COURT: Well, and that's all fine, I'll go along with it,
15 if you give me something other than releasing him to the streets
16 and hoping he goes –
17 MR. GOLDSTEIN: Can you give me a minute –
18 THE COURT: -- I need something –
19 MR. GOLDSTEIN: -- give me a minute to see what he has –
20 what we can set up in Oakland, and I'll – what he – if he has a
21 doctor in Oakland or hospital or whatever he's been going to;
22 because I don't know what his status is. I didn't –
23 THE COURT: -- I was thinking giving – well that's why I
24 was going to give you a week to prepare for this.
25 MR. GOLDSTEIN: -- can I talk to him right now?

1 THE COURT: You can.

2 MR. GOLDSTEIN: -- I can get ahold of the mom probably
3 just to -- a list -- I'm not getting ready to -- I'm not going to argue. I
4 just want to see if we can get it resolved this morning somehow
5 with him because he really wants to go, and his mom wants him to
6 come soon and I --

7 MS. THOMSON: Can mom --

8 THE COURT: I know but --

9 MR. GOLDSTEIN: -- didn't promise anything, but I made it
10 clear that I thought he was going to get out on the street today.

11 THE COURT: -- he can't go because he's going to have to
12 go to P&P. He's going to have to do interstate compact.

13 MR. GOLDSTEIN: A few days here, and then I told him he
14 was going to be here a week -- and he had people in Court. They're
15 not here today, but they were here last week; his friends or family
16 he was going to stay with for the few days until he gets transferred.

17 THE COURT: Well then you bring somebody in here that I
18 can house arrest him to -- I mean I don't know -- I gotta -- I'm not
19 going to put him in the streets.

20 MR. GOLDSTEIN: Okay.

21 THE COURT: And I don't care what he says this morning.

22 MR. GOLDSTEIN: Fair enough. I'll talk to him.

23 THE COURT: I don't mean to be --

24 MR. GOLDSTEIN: You're doing your job, it's fine. I'll just
25 -- let me -- just give me a second before we continue it. Let me just

1 talk to him and see what I can come up with.
2 THE COURT: Okay.
3 MS. THOMSON: Thank you.
4 [Bench Conference Concluded]
5 THE COURT: You want to trail this a little bit?
6 MR. GOLDSTEIN: I appreciate that.
7 THE COURT: Okay.
8 [Case trailed at 10:07 a.m.]
9 [Case recalled at 10:26 a.m.]
10 THE COURT CLERK: State of Nevada versus Sammie
11 Nunn, C336184.
12 MR. GOLDSTEIN: Thank you for recalling the case. Can
13 we approach?
14 THE COURT: Yes.
15 [Bench Conference]
16 MR. GOLDSTEIN: I talked to the mom. She's in Oakland.
17 The Defendant left Oakland to move here last Summer, right before
18 – in May or June of last year. He has treatment with Dr. Stanburg
19 [phonetics] at Kaiser Permanente Hospital in Oakland, not far from
20 the house. He has a set doctor –
21 THE COURT: But you haven't told me how you're getting
22 him there –
23 MR. GOLDSTEIN: I asked mom –
24 THE COURT: -- and where he is here.
25 MR. GOLDSTEIN: -- he gets there. I asked mom -- she can

1 wire him money to get him from here to there after he's approved,
2 assuming he's approved for interstate compact.

3 In the meantime, there are -- there have been people in his
4 previous hearings. They're not here today, local friends of his --

5 THE COURT: Bring the people here that will stand up and
6 I can release him to them kind of thing, and house arrest --

7 MR. GOLDSTEIN: Okay.

8 THE COURT: -- whatever.

9 MR. GOLDSTEIN: Totally fair. Can we do Tuesday?

10 THE COURT: Yes.

11 MR. GOLDSTEIN: Yeah Tuesday.

12 THE COURT: Okay.

13 MS. THOMSON: I don't want to be difficult. Is this some --
14 that sentencing something where the Court feels like it would be
15 best if I'm him here or are we all comfortable --

16 MR. GOLDSTEIN: Say that again?

17 MS. THOMSON: -- is it something where it's best if I'm
18 him here or are we all comfortable with just the calendar deputy?

19 THE COURT: I prefer you be here but --

20 MS. THOMSON: Okay.

21 THE COURT: -- if you can't be --

22 MS. THOMSON: Okay.

23 THE COURT: -- I mean as long as I -- I mean I have the
24 reasons on the record so that --

25 MS. THOMSON: Yeah.

1 THE COURT: -- if it goes badly it's --
2 MS. THOMSON: It's my fault.
3 MR. GOLDSTEIN: But you accepted his plea where that's
4 --
5 THE COURT: -- I've accepted his plea --
6 MR. GOLDSTEIN: -- we moved on to sentencing -- the
7 thing --
8 THE COURT: -- I've accepted his plea, yes. We're just --
9 MR. GOLDSTEIN: Okay.
10 THE COURT: -- continuing the sentencing.
11 MR. GOLDSTEIN: That's fine. I just want to make sure.
12 THE COURT: Yes.
13 MR. GOLDSTEIN: You were going to ask that, so I helped
14 you.
15 MS. THOMSON: Yes and -- based upon that --
16 THE COURT: And it wasn't a stipulated negotiation. It
17 was just a no op [sic] so --
18 MS. THOMSON: -- and --
19 MR. GOLDSTEIN: -- well it wasn't a conditioned -- it was
20 stipulated but unconditioned.
21 THE COURT: -- well --
22 MS. THOMSON: -- here's the one thing I'm going to kind
23 of throw out there, is based upon that guilty plea, he should be
24 OR'd with house arrest today.
25 MR. GOLDSTEIN: He's not going to get approved for

they broke
the plea
Agreement

Wow →

1 house arrest anyway –
2 MS. THOMSON: Oh okay.
3 MR. GOLDSTEIN: So, you're right but –
4 MS. THOMSON: Okay.
5 THE COURT: -- and again that's your deal –
6 MS. THOMSON: I know.
7 THE COURT: -- between the two of you.
8 MR. GOLDSTEIN: -- understood Judge, understood. Okay
9 –
10 THE COURT: Tuesday?
11 MR. GOLDSTEIN: -- if we can put it on Tuesday. Tuesday
12 is on for calendar call, I'm not sure if we vacated it when you first
13 called it.
14 THE COURT: Yes, we're going to – we'll vacate the trial
15 date.
16 MS. THOMSON: Thank you.
17 MR. GOLDSTEIN: And calendar call, and we'll just make it
18 a status check, and I'll get people her.
19 THE COURT: Get me something.
20 MR. GOLDSTEIN: I will. Understood.
21 MS. THOMSON: Okay.
22 THE COURT: All right. Thank you.
23 MS. THOMSON: Thank you.
24 [Bench Conference Concluded]
25 THE COURT: All right. We're going to continue this until

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Tuesday for sentencing, and trial date vacated.

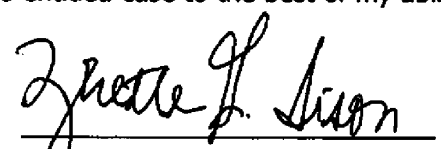
THE COURT CLERK: June 11th, 9 a.m.

THE COURT: Thank you.

[Hearing concluded at 10:28 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Yvette G. Sison
Court Recorder/Transcriber

126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006), *Schlup v. Delo*, 513 U.S. 298, 316, 115 S. Ct. 851, 130 L. Ed. 2d. 808 (1995), *Schlup*, 513 U.S. at 327 ("The petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence."); *Pellegrini*, 117 Nev. at 387, 34 P.3d at 537 (citing *Schlup*, 513 U.S. at 327. Where a defendant discovered new evidence contradicting witnesses statements to the police after he pled guilty, his claim of 'newly discovered evidence' is a "fair and just reason" for the withdrawal of the guilty plea under Federal Rules of Criminal Procedure, Rule 11; the fact that the plea was voluntary could not count against his attempt to withdraw it.

- Further Misconduct by the State -

- Manufacturing Evidence -

- The Three False Documents -

In this case you have 3 false documents and 4 if you count Prince Alidu's medical records. The first was the States attempt to Coerce Petitioner with a Plea Negotiation August 24, 2018 when the State threatened Petitioner with 100 years in State Prison if he did not take Plea deal in Case No G-18-334308-1 Dept IX under Jennifer Togliati - Judicial officer Clark County. The State using an outdated risk assessment database, Slandered Petitioner in open Court and told the Court and then Petitioners Attorney Jennifer Waldo that Petitioner had 11 felony Convictions and 8 misdemeanor Convictions. Petitioner and then Attorney Jennifer Waldo fought each other tooth and nail about these convictions until she walk off the case. When Petitioner explained the situation to a psychiatric Provider who Counseled Nunn and was asking why he needed more medication he told her the above story when she asked him how it made him feel he said Im not violent but it makes you feel like killing, here I am

Page 16

locked up for something I didn't do facing over a hundred years in habitual criminal treatment on each charge and she's forcing me to plead guilty, all I asked her to do was run my NCIC Federal scope. This conversation about my mental health was confidential information because I did not say I was going to kill her, I said how the situation made me feel to get medication to help me not feel that way towards my attorney. The next attorney Anthony Goldstein didn't believe me either until I blurted it out to Judge Togliati and she had the State ordered to run my NCIC. Once the NCIC came back it confirmed I had zero felonies and Judge Jennifer Togliati allowed me to withdraw my plea because the State produced false documents claiming false information about my criminal history. The PSI that was used for this conviction was also struck for having false information related to my criminal history. This same PSI was used in the conviction I am now serving time on, somehow D.A. Megan Thomson still had it a year later and illegally used it in the new charging indictment with Mary Kay Holthus June 6 2019. The third false document is the Grand Jury transcripts. District Attorney Megan Thomson stops at nothing to get a conviction, she goes as low as she can possibly go. Even though there were plenty of witnesses, and prior court recorded transcripts of what had happened, she doctored up the grand jury witness list, cut off every single witness and even a victim and brought in a known drunk off the streets who is known for lying—as told by his best friend Kerick Hines and witness Endalkachew Mekonnen. The victim was so drunk the night of the first incident that the hospital kept him in overnight, not from the injury but for alcohol poisoning. His blood alcohol level was .228 four times over the limit to drive. That is legally incoherently drunk. (According to toxicology report of Dr. Mark A. Maceo) and she suppressed that information from the Grand Jury. The Night was a

1 **DECLARATION OF ANTHONY M. GOLDSTEIN, ESQ.,**
2 **IN SUPPORT OF MOTION TO WITHDRAW PLEA**
3

4 STATE OF NEVADA)
5) ss.
6 COUNTY OF CLARK)

7
8 I, ANTHONY M. GOLDSTEIN, ESQ., Attorney at Law, after being
9 duly sworn as an officer of the Court, depose and state as
10 follows:
11
12

13 1. I have been a duly licensed attorney in the state of Nevada
14 since 2001 and the Court appointed me to represent indigent
15 Defendant SAMMIE NUNN in the present matter.

16 2. After the Honorable Judge Jennifer Togliatti appointed me
17 to represent Defendant in the present case, I reviewed the case
18 file provided to me by defendant's previous counsel. Further, I
19 visited Defendant at the Clark County Detention Center to
20 discuss the case with him.
21

22 3. After becoming abreast of the case, I contacted Chief
23 Deputy District Attorney Megan Thomson, Esq. and asked her to
24 run defendant's SCOPE and NCIC to confirm his criminal record.

25 ///

1 4. Ms. Thomson duly ran Defendant's NCIC and SCOPE and
2 confirmed that in fact Defendant only had one prior felony
3 conviction. Therefore, Defendant was not eligible for habitual
4 criminal treatment under NRS 207.010.

5 5. A review of the Nevada Pretrial Risk Assessment that
6 Justice Court staff prepared regarding Defendant indicates that
7 defendant has eleven prior gross misdemeanors or felonies.
8 However, one of the listed offenses indicates "GM", so the form
9 facially appears to convey that Defendant has one gross
10 misdemeanor and ten felonies. A copy of the Nevada Pretrial
11 Risk Assessment form is attached hereto as Exhibit 2.
12

13 6. In my professional opinion, counsel typically rely on the
14 information set forth in the Nevada Pretrial Risk Assessment
15 forms in advising their clients.

16 7. Based upon my conversation with Defendant and review of the
17 case, Defendant did not freely and voluntarily enter his plea
18 since at the time, he was under the wrongful impression that he
19 was eligible for habitual criminal treatment pursuant to NRS
20 207.010.

21 ///

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1 8. Based on the foregoing, I believe that good cause exists
2 for the Court to allow Defendant to withdraw the plea that he
3 entered herein on August 24th, 2018.
4
5

6 **YOUR DECLARANT STATES NOTHING FURTHER.**
7

8 DATED: September 19, 2018 By: /s/ Anthony M. Goldstein
9 Declarant Anthony M. Goldstein
10 **ATTORNEY FOR DEFENDANT**
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CONCLUSION

Based on the foregoing, Defendant respectfully submits that that the Court should grant this motion to withdraw plea and set this matter for a jury trial.

LAW OFFICES OF ANTHONY M. GOLDSTEIN

Dated: September 19, 2018 By: /s/ Anthony M. Goldstein
Anthony M. Goldstein, Esq.
Nevada Bar #7721
2421 Tech Center Court
Suite 100
Las Vegas, Nevada 89128
Phone: (702) 796-1114
Fax: (702) 796-1115
ATTORNEY FOR DEFENDANT

Exhibit 1

Steven D. Grierson

1 INFM
STEVEN B. WOLFSON
2 Clark County District Attorney
Nevada Bar #001565
3 MEGAN THOMSON
Chief Deputy District Attorney
4 Nevada Bar #011002
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 Attorney for Plaintiff

7 I.A. 08/24/18 DISTRICT COURT
10:00 AM CLARK COUNTY, NEVADA
8 J. WALDO, ESQ.

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-18-334308-1

11 -vs-

DEPT NO: IX

12 SAMMIE NUNN, #2751864
13 Defendant.

INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That SAMMIE NUNN, the Defendant(s) above named, having committed the crime of
20 BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481 -
21 NOC 50223), on or about the 2nd day of June, 2018, within the County of Clark, State of
22 Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
23 and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and

24 //

25 //

26 //

27 //

28 //


EXHIBIT "1"

W:\2018\2018F1143R\18F11438-INFM-(NUNN_SAMMIE)-001.DOCX

1 feloniously use force or violence upon the person of another, to wit: PRINCE ALIDU, with
2 use of a deadly weapon, to wit: a handgun, by striking said PRINCE ALIDU on or about the
3 head with said handgun.

4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY


8 MEGAN THOMSON
9 Chief Deputy District Attorney
10 Nevada Bar #011002

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26
27 18F11438X/jc/L4
28 LVMPD EV#180602004287
(TK3)

Exhibit 2

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: 7/12/2018

Assessor: Yvette Anderson

County: Clark

Defendant's Name: Sammie Nunn

DOB:
8/10/1989

AGE: 28

Case/Booking #: 18F11438X

Dept. #: 3

Address:

Contact Phone #:

of Current Charges: 3

City: PENDING VERIFICATION

State: Zip:

Most Serious Charge: Battery WDW

Total Bail at booking: 100,000.00

SCORING ITEMS

SCORE

1. Does the Defendant Have a Pending Pretrial Case at Booking?	
Yes If yes, list case # and jurisdiction: see below	2
2. Age at First Arrest (Include juvenile arrests)	First Arrest Date 7-29-05
20 yrs and under	2
3. Prior Misdemeanor Convictions (past 10 years)	
Six or more	2
4. Prior Felony/Gross Misd. Convictions (past 10 years)	
One or more	1
5. Prior Violent Crime Convictions (past 10 years)	
Two or more	2
6. Prior FTAs (past 24 months)	
Two or more FTA Warrants	2
7. Substance Abuse (past 10 years)	
Prior multiple arrests-drug use or poss/alcohol/drunkenness	2
8. Mitigating Verified Stability Factors (limit of -2 pts. total deduction)	
If 1, 2 and 3 not applicable	0
TOTAL SCORE:	13

Risk Level: Higher Risk, 13 Points

OVERRIDE?: ☐ Yes ☒ No

Override Reason(s):

If Other, explain:

Final Recommended Risk Level:

☐ LOW ☐ MODERATE ☒ HIGHER

Supervisor/Designee Signature _____

Date: 7/12/2018

18F11438X
NPR
Nevada Risk Assessment Tool
8672040



Revised 8.2017

Manufactured Record
Doctored by the State Prosecutors office
I have no felonies

Felony convictions: 11

Sammie Nunn

YEAR	STATE	CHARGE
11	WA	ASSAULT
11	WA	ASSAULT
11	WA	ASSAULT
08	WA	TVWOOC
08	WA	OBST PO
08	WA	INTERFERENCE W/RPT DOMESTIC VIOL (GM)
08	WA	OBST PO
08	WA	ASSAULT
08	WA	ASSAULT
07	WA	POSS DANG DRUG W/O RX
06	WA	OBST PO

Misdemeanor Convictions: 8

FTAS: 4

Detainers: NONE

**Pending Cases: IC 18F12864X JC3 IAP 7-13-18
18F09747X JC2 8-28-18 STATUS CHECK
18F11438X JC3 7-13-18 AWH
17F18625X JC3 9-18-18 STATUS CHECK PG MISD DRUGS ITS**

Revised 8.2017

1 **CERTIFICATE OF SERVICE BY FACSIMILE AND EMAIL**
2
3

4 I hereby certify that on September 19, 2018,

5 I transmitted a true and correct copy of
6
7

8 **MOTION TO WITHDRAW PLEA**
9
10

11 in the above captioned matter, via facsimile and email,
12 to the following recipient(s):
13
14
15

16 Office of the District Attorney
17 pdmotions@clarkcountyda.com
18 (702) 455-2294
19
20

21 By: /s/ Anthony M. Goldstein
22 Anthony M. Goldstein, Esq.
23
24
25

Steven D. Grierson

MWPL

Anthony M. Goldstein, Esq. (Nevada Bar #7721)

LAW OFFICES OF ANTHONY M. GOLDSTEIN

2421 Tech Center Court

Suite 100

Las Vegas, Nevada 89128

Phone: (702) 796-1114

Fax: (702) 796-1115

ATTORNEY FOR DEFENDANT

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

SAMMIE NUNN (#2751864),

Defendant.

)

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Case #: C-18-334308-1

Dept. : IX

MOTION TO WITHDRAW PLEA

Date of Hearing: _____

Time of Hearing: _____

MOTION TO WITHDRAW PLEA

///

///

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///

///

1 Anthony M. Goldstein, Esq., court-appointed attorney for
2 indigent Defendant SAMMIE NUNN, respectfully requests that the
3 above entitled matter be placed on calendar so that Defendant
4 may submit a motion to withdraw the plea of "Guilty" that
5 Defendant entered on August 24th, 2018.

6
7
8
9 **LAW OFFICES OF ANTHONY M. GOLDSTEIN**

10
11 DATED: September 19, 2018 By: /s/ Anthony M. Goldstein
12 Anthony M. Goldstein, Esq.
13 Nevada Bar #7721
14 2421 Tech Center Court
15 Suite 100
16 Las Vegas, Nevada 89128
17 Phone: (702) 796-1114
18 Fax: (702) 796-1115
19 **ATTORNEY FOR DEFENDANT**
20
21
22
23
24
25

1
2 NOTICE OF MOTION TO WITHDRAW PLEA
3
4

5 **TO THE DISTRICT ATTORNEY OF CLARK COUNTY, NEVADA:**
6

7 The above entitled matter is to be placed on calendar in
8 Department IX of the District Court of Clark County, Nevada,
9 at the following date and time:
10
11

12 **October 09, 2018 9:00 AM**
13
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1 Having considered the, "Motion to Withdraw Plea" that
2 Anthony M. Goldstein, Esq., court-appointed counsel for indigent
3 Defendant SAMMIE NUNN, filed herein on September 19th, 2018, and
4 the, "State's Opposition to Defendant's Motion to Withdraw Plea"
5 that the State filed herein on September 29th, 2018, and after
6 presiding over hearings in open court on said motion on October
7 9th, 2018, and October 16th, 2018, and with the Court's finding
8 good cause appearing,

9
10
11 **THE COURT ORDERS** that defendant's, "Motion to Withdraw
12 Plea" is granted and hereby strikes and/or vacates the, "Guilty"
13 plea that Defendant entered via the, "Guilty Plea Agreement"
14 filed herein on August 24th, 2018.

15
16 DATED: OCT 19 2018

[Signature]
DISTRICT COURT JUDGE
for JENNIFER P. TOGLIATTI

17
18
19 Respectfully Submitted By:

20 *[Signature]*
21 Anthony M. Goldstein, Esq.
22 Nevada State Bar #7721
23 **LAW OFFICES OF ANTHONY M. GOLDSTEIN**
24 2421 Tech Center Court
25 Suite 100
Las Vegas, Nevada 89128
Phone: (702) 796-1114
Fax: (702) 796-1115
ATTORNEY FOR DEFENDANT

*Proof of malicious prosecution
from the beginning
chasing
a conviction*

05/28/18
0131

SUNRISE HOSPITAL AND MEDICAL CENTER
3186 S MARYLAND PKY, LAS VEGAS, NV 89109
RPT LAB DISCHARGE SUMMARY RPT w/o Pathology

PAGE 1

D.P. Marmaduke, MD-Laboratory Director, D.P. Marmaduke, MD-Director Point of Care Lab

PATIENT: ALIDU, PRINCE ACCT #: D00118407584 LOC: D.ERI U #: D002459320
AGE/SEX: 60/M ROOM: REG: 05/27/18
RPO DR: Macedo, Mark A DO STATUS: DEP ER RED: DIS:

*** TOXICOLOGY ***

DRUG SCREEN

Date	Time	05/27/18	0539	Reference	Units
ALCOHOL BLOOD	228	H	(NONE DETECTED)	ng/dL	

3 times the driving impaired limit
He was EXTREMELY DRUNK
AND INCOHERANT

228
You can't drive over .08 and its really
.06 because .08 is the Maximum and is
still suspect limit.

Patient: ALIDU, PRINCE Age/Sex: 60/M Acct: D00118407584 Unit: D002459320

Patient: ALIDU, PRINCE
Unit#: D002459320
Date: 05/27/18
Acct#: D00118407584

1. No intracranial mass, hemorrhage, or evidence to indicate acute cortical-based infarct.
Impression By: SCHRI - Richard A. Schwartz M.D.

CTs were interpreted by the radiologist.
Laboratory studies reviewed and considered in the medical decision-making.

Portions of this section were transcribed by ACTUB-QUINTANA, JESSI on 05/27/18 at 0729

Procedures

Laceration Management #1

Time 0734

Procedure Performed by ED physician

Consent/Setup/Site Prep Verified correct patient, Informed consent provided, Consent from patient, Time-out performed, Hand hygiene observed, Stand sterile technique

(X) Location of Wound

left buccal region

(X) Wound Length (cm) 6

Local Anesthesia Lidocaine 1%

Wound Preparation Normal saline

(X) Debridement None

Irrigation Copious

Foreign Body Explore/Removal Explored for foreign body

Repair Skin 5-0 ethylon

Sutures - Skin 10

Closure Layers 1

Suture Technique Simple

Post-Procedure/Complications Antibiotic oint applied, No complications, Condition improved, Tolerated procedure well, Patient stable

Portions of this section were transcribed by ACTUB-QUINTANA, JESSI on 05/27/18 at 0729

Re-Evaluation & MDM

Free Text MDM Notes

Free Text MDM Notes

60-year-old male presents after assault. Patient awake, alert, and no distress. Workup unremarkable, patient sustained facial laceration on his left cheek, but otherwise no other

X

X

X

X

X

X

he was not hit in the head - he was hit in the cheek - this is not a vicious attack. This is self defense not punishable under Nevada law.

This is a WARNING shot not meant to hurt him just back him up - No distress! My Intent was not to hurt him.

This is not the sign of a violent attack. He was only hit once. To back him and his co-assailants up.

I had to create a way to escape.

Patient: ALIDU, PRINCE

MRN: D002459320 Encounter: D00118407584

Page 6 of 8

blurr to him and he probably really doesnt know what happened. That is why it is important to be in an area where witnesses can see you at night, just in case a drunk or a drug user Attacks you with his friends.

The fourth false document was his medical bill. Prince Alidu is covered by Medicare and his MRN # is: D002459320. His insurance payed his medical bill. Why would the State charge a victims impact or restitution in a self defense case.

Defendant submits, as in any plea negotiation, the court had a duty to scrutinize the fairness of the terms of the negotiation to determine if the negotiation settlement was fair and just and then decide whether the negotiation settlement was overreaching in any way, or violated due process, or was otherwise unfair. It is respectfully submitted the Court had the duty and the power to reject an unfair plea agreement. see, Federal Rules of CRIMINAL Procedure § 11(c)(4) allowing a court to reject a plea agreement in certain cases. See also, NRS 174.035, and the ABA Standards: The Function of a Trial Judge, § 4.1, 4.2.

CLAIM FOUR

- NEWLY DISCOVERED EVIDENCE -

New evidence in contradiction to the evidence presented to the evidence presented to the Grand Jury, covered throughout this Documented Habeas Corpus, Persuasively Demonstrates Petitioner Nunn was acting in self defense justified under Nevada Law ~~200~~ NRS 200.200. Since Nunn has NOT BROKEN ANY Nevada law stemming from incidents on May 27, 2018 and through June 2nd 2018 he is therefore innocent of the charges. As such SAMMIE NUNN III is Held unlawfully and IS IMPRISONED IN VIOLATION OF his RIGHT TO DUE PROCESS UNDER The FIFTH AND FOURTEENTH AMENDMENTS AND RIGHT TO CONFLICT FREE

COUNSEL UNDER HIS SIXTH AMENDMENT RIGHT AND CRUEL
AND UNUSUAL PUNISHMENT UNDER HIS EIGHTH AMENDMENT.

**SUNRISE HOSPITAL AND MEDICAL
CENTER**

ALIDU, PRINCE

118407584

05/27/2018

DOB: 07/07/1957

MR#: D002459320

60 y M

- This is a scam!*
- \$22,000 medical bill why He has insurance*
8. **Medicare Patient Certification and Assignment of Benefit.** I certify that any information I provide in applying for payment under Title XVIII ("Medicare") or Title XIX ("Medicaid") of the Social Security Act is correct. I request payment of authorized benefits to be made on my behalf to the hospital or hospital-based physician by the Medicare or Medicaid program.
9. **Private Room.** I understand and agree that I am (or Guarantor is) responsible for any additional charges associated with the request and/or use of a private room.
10. **Outpatient Medicare Patients.** Medicare does not provide coverage for "self-administered drugs" or drugs that you normally take on your own, with only a few limited exceptions. If you get self-administered drugs that aren't covered by Medicare Part B, we may bill you for the drug. However, if you are enrolled in a Medicare Part D Drug Plan, these drugs may be covered in accordance with Medicare Part D Drug Plan enrollment materials. If you pay for these self-administered drugs, you can submit a claim to your Medicare Part D Drug Plan for a possible refund.
11. **Communications About My Healthcare.** I authorize my healthcare information to be disclosed for purposes of communicating results, findings, and care decisions to my family members and others I designate to be responsible for my care. I will provide those individuals with a password or other verification means specified by the hospital. I agree I may be contacted by the Provider or an agent of the Provider or an independent physician's office for the purposes of scheduling necessary follow-up visits recommended by the treating physician.
12. **Consent to Telephone Calls for Financial Communications.** I agree that, in order for you, or your EBO Servicers and collection agents, to service my account or to collect any amounts I may owe, I expressly agree and consent that you or your EBO Servicer and collection agents may contact me by telephone at any telephone number I have provided or you or your EBO Servicer and collection agents have obtained or, at any number forwarded or transferred from that number, regarding the hospitalization, the services rendered, or my related financial obligations. Methods of contact may include using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable.
13. **Consent to Email or Text Usage for Discharge Instructions and Other Healthcare Communications.** If at any time I provide the Providers an email or text address at which I may be contacted, I consent to receiving discharge instructions and other healthcare communications at the email or text address I have provided or you or your EBO Servicer have obtained or, at any text number forwarded or transferred from that number. These discharge instructions may include, but not be limited to: post-operative instructions, physician follow-up instructions, dietary information, and prescription information. The other healthcare communications may include, but are not limited to communications to family or designated representatives regarding my treatment or condition, or reminder messages to me regarding appointments for medical care.

Medicare Registration Number.

Patient: ALIDU, PRINCE

MRN: D002459320

Encounter: D00118407584

Page 5 of 10



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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

THE STATE OF NEVADA,

)

8

Plaintiff,

)

CASE NO. C-18-336184-1

9

vs.

)

DEPT. XVIII

10

SAMMIE NUNN,

)

11

Defendant.

)

Transcript of Proceedings

12

)

13

14

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

15

SENTENCING

16

TUESDAY, JUNE 11, 2019

17

18

APPEARANCES:

19

FOR THE STATE:

LAURA J. GOODMAN

20

Deputy District Attorney

21

FOR DEFENDANT:

ANTHONY M. GOLDSTEIN, ESQ.

22

23

24

25

RECORDED BY: YVETTE SISON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 11, 2019, 9:12 A.M.

2

3 THE CLERK: State of Nevada versus Sammie Nunn,
4 C336184.

5 MR. GOLDSTEIN: Judge, Anthony Goldstein for the
6 defendant. He's here in custody.

7 THE COURT: What'd we come up with?

8 MR. GOLDSTEIN: Your Honor, we have -- your concern
9 which we talked about both on the record and the bench last week
10 was if Your Honor sees fit to grant the defendant probation,
11 basically follow the deal and give him probation, looking for a
12 residence for him to stay at. I've been in contact with his
13 mother a million times in Oakland. She made an arrangement with
14 One Day at a Time, it's a local we'll call it a halfway house.
15 Ashley Dickson, she's here in court today, she provided me with
16 the information from this facility. It's a local -- she's
17 placed defendants at this facility from this courthouse, as well
18 as North Las Vegas, in the past. She could provide whatever
19 details the Court needs. It's just basically a local residence,
20 sober, and designed for inmates in Mr. Nunn's situation with
21 these types of issues. And she's prepared to answer any
22 questions.

23 THE COURT: Can we house arrest him there?

24 MR. GOLDSTEIN: What's that?

25 THE COURT: Can we put him on house arrest there?

1 MR. GOLDSTEIN: You can ask Ms. Dickson. I just met
2 Ms. Dickson this morning. We have communicated via text and
3 email, but this is the first time I've met her, Your Honor,
4 moments ago. If you have any questions, ask -- I think she's
5 prepared to answer any questions you might have.

6 THE COURT: Is he able to be on house arrest at your
7 program?

8 MS. DICKSON: To be honest, we've never had anyone on
9 house arrest there. We do groups each day. So if he would
10 -- you want him to come to those, he can, he cannot, it's up to
11 you. If he can't leave the house and he has on a bracelet,
12 then, I mean, he'll know the rules, and we'll help him follow
13 them.

14 THE COURT: What's the name of the program?

15 MS. DICKSON: One Day at a Time.

16 THE COURT: And how long is the program?

17 MS. DICKSON: We recently opened in October.

18 THE COURT: And so how long would he be there?

19 MS. DICKSON: He can be there as long as he chooses
20 to.

21 THE COURT: Well, I thought the plan was to get him to
22 his family.

23 MR. GOLDSTEIN: This is the local residence here
24 that's transitioning him from in custody at the Clark County
25 Detention Center to moving with his mother in Oakland. There's

1 going to be a --

2 THE COURT: Pending the --

3 MR. GOLDSTEIN: Interstate compact.

4 THE COURT: -- interstate compact.

5 MR. GOLDSTEIN: Yeah. This is -- I don't know how

6 long the interstate compact is going to take with California. It

7 could be a couple days or a couple weeks. We don't know yet.

8 But --

9 THE COURT: What if they don't take him?

10 MR. GOLDSTEIN: It would be -- in a case like this,

11 Your Honor, it would be unlikely they wouldn't take him.

12 THE COURT: Okay.

13 MR. GOLDSTEIN: Is it possible? Yeah. But I've never

14 seen a situation like that where especially California denies

15 interstate compact. But this provides him with sort of

16 transitional housing until the paperwork's clear for him to go

17 with his mother in California and resume his -- I mentioned his

18 doctor's name from Kaiser in Oakland last week when we were in

19 court.

20 THE COURT: So does he -- does he have doctors here,

21 as well?

22 MR. GOLDSTEIN: Sammie -- he went to Stein when he was

23 found incompetent for this case. So the doctors here were at

24 Stein.

25 Did you go to Stein, or Lakes Crossing?

1 THE DEFENDANT: Stein.

2 MR. GOLDSTEIN: It was Stein. So he doesn't have
3 doctors here, but, again, it's doctor Stanberg [phonetic], I
4 think his name was or her name was, in Oakland who's his primary
5 mental health care physician at Kaiser in Oakland.

6 THE COURT: So what other -- what do you offer at the
7 program, or is it just monitoring basically?

8 MS. DICKSON: It's a transitional living home, but
9 also he can receive therapy services there. We do that twice a
10 week, and also group three times a week, and biofeedback also
11 twice a week. But he can come and get all of those services as
12 he chooses to.

13 THE COURT: And is somebody paying for that? How does
14 that get --

15 MS. DICKSON: His insurance pays for it.

16 THE COURT: It does. Okay.

17 And I believe we put the reasons for the negotiation
18 on the record last time. Did we not?

19 MR. GOLDSTEIN: At the bench, which was on the record.
20 So, yes.

21 THE COURT: And we still have no contact with the
22 victim; correct? Is that your understanding?

23 MR. GOLDSTEIN: No. The victim -- are you talking
24 about for victim speaker purposes, or for --

25 MS. GOODMAN: For victim speaker, that's correct, Your

1 Honor.

2 MR. GOLDSTEIN: I think he was -- he's been
3 cooperating. He's testified a couple of times in the case, but
4 I don't -- I can't speak to the victim whether Megan talked to
5 him about speaking today.

6 MS. GOODMAN: With regards to speaking at sentencing,
7 yes, we haven't talked to him. We haven't had any contact with
8 the victim for that purpose.

9 THE COURT: What is the restitution of this?

10 MR. GOLDSTEIN: Medical bills for the victim.

11 THE COURT: 22,042. Is that right?

12 MS. GOODMAN: That is correct. And I should note --
13 and, Judge, in all candor, the Victims of Crime did agree to pay
14 the 5,000. There just haven't been any payments from the victim
15 -- to the victim yet of that 5,000.

16 THE COURT: All right. Mr. Nunn, you want to -- we
17 haven't done anything yet, have we?

18 MR. GOLDSTEIN: I'm sorry?

19 THE COURT: We haven't done anything, have we, because
20 I wasn't --

21 MR. GOLDSTEIN: You accepted his plea last Thursday.
22 And you were going to -- it was possible for you to sentence him
23 that same day because you had the PSI, but you wanted to address
24 the residency issue.

25 THE COURT: All right. Anything else from the State?

1 MS. GOODMAN: No, Your Honor. I'll submit it on the
2 negotiations.

3 THE COURT: Okay. Mr. Nunn, is there anything else
4 you want to tell me before I pronounce sentence or your attorney
5 speaks?

6 THE DEFENDANT: No.

7 MR. GOLDSTEIN: Your Honor, I'm just going to ask the
8 Court to follow the negotiation. I know there's some hesitancy
9 on behalf of the Court, but I think when Mr. Nunn is properly
10 medicated and getting his -- following his doctors' advice, he
11 gets along in society just fine. Hopefully his paperwork with
12 the interstate compact will clear quickly, and he'll be under
13 the watchful eye of his mother in Oakland, who I'm in very good
14 contact with. We've exchanged -- we've spoken several times
15 since this past Thursday, Your Honor. I know she's planning on
16 keeping an eye on Sammie like she has in the past, and hopefully
17 he'll start to conform better once his medication and his mental
18 health treatment gets back on track.

19 THE COURT: Can you all approach.

20 (Bench conference)

21 THE COURT: Not only I don't [unintelligible] the
22 probation part, but I don't really love the suspended sentence
23 part, either. Is there a reason that it was so low?

24 MR. GOLDSTEIN: No. Well, yes.

25 THE COURT: I mean, I'm giving him a chance to do

1 better, but if he doesn't do better, then maybe he can't do
2 better. Do you know what I'm saying? Historically he's got
3 issues.

4 MR. GOLDSTEIN: We worked out the suspended sentence
5 in court on Thursday, you see we interlineated it to 2 to 5. I
6 would be ecstatic if you gave him probation. And if you want to
7 raise the underlying, that's your call, but -- I mean
8 everything's your call, but, you know, I wouldn't --

9 THE COURT: I get it. I'm going to raise it to 48 to
10 120. So -- okay.

11 MR. GOLDSTEIN: Thanks for the heads up.

12 THE COURT: Yep.

13 MR. GOLDSTEIN: Thank you.

14 (End of bench conference)

15 THE COURT: Anything else?

16 According to the laws of the State of Nevada this
17 Court does now sentence you to confinement in the Nevada
18 Department of Prisons for a maximum term of 120 months, with a
19 minimum parole eligibility of 48 months.

20 I am going to -- that's in addition to the \$25
21 administrative assessment, \$150 DNA fee, and a DNA
22 administrative assessment.

23 I am pursuant to negotiations going to suspend that
24 sentence for a period of probation not to exceed 5 years with
25 the standard conditions.

1 Additionally, you are to have no alcohol whatsoever,
2 you're also going to be subject to special conditions that you
3 are to remain on house -- you're to be released only to the One
4 Day program.

5 Can I do that? Do they have somebody to come get him?
6 Or P&P for transport to. How about that? That's what I'm going
7 to do.

8 MR. GOLDSTEIN: Ms. Dickson's not here anymore, Your
9 Honor, so I can't ask her about the --

10 THE COURT: All right. He's to be released only to
11 P&P for transportation to the One Day at a Time program, where
12 he's to remain on house arrest until he can be interstate
13 compacted to California, where his mom is.

14 Also, to complete a mental health evaluation or just
15 to stay being treated on the evaluation that he currently has.

16 Taking any medications that's required.

17 Curfew's probably not necessary, but I'll give them
18 the power to do that if they need it.

19 Mr. Nunn, do you work?

20 THE DEFENDANT: Yeah. I'm an electrician.

21 THE COURT: Okay.

22 THE DEFENDANT: I kind of need to go to work.

23 THE COURT: Okay. Well, to the extent that it all
24 works, full-time employment, 16 hours of community service or
25 school.

1 THE DEFENDANT: So the house arrest --
2 MR. GOLDSTEIN: I'll answer your question.
3 THE COURT: Anything else we can -- that I need?
4 MS. GOODMAN: Not from the State, Your Honor.
5 THE COURT: No contact with the victim.
6 MR. GOLDSTEIN: And just if I could just clarify your
7 sentence for the defendant's benefit. There was an agreement
8 between us, the defense and the State, for an underlying
9 sentence of 2 to 5, with an [unintelligible] to probation. You
10 chose to give him probation, but she exercised her discretion to
11 raise the underlying sentence; instead of a 2 to 5, it's a 4 to
12 10.
13 So we agreed to it, but that's not binding on the
14 Judge, and the Judge --
15 THE DEFENDANT: And I have to do house arrest on top
16 of me doing the 4 to 10?
17 THE COURT: You're not doing the 4 to 10 as long as
18 you get out and stay out of trouble. If you stay in your
19 counseling and stay on your meds and don't hurt anybody or break
20 any laws, then you won't have to do the 4 to 10. You're just
21 going to be on house arrest until we can get you to your mom
22 where you can get back with your doctor in California and get
23 the treatment.
24 If you get in trouble, though, you're going to go to
25 prison for 10 years.

1 THE DEFENDANT: But I'm not going to be able to do the
2 groups or anything?

3 THE COURT: You're going to be at the house. I'm
4 ordering you to the treatment program there. Okay?

5 THE DEFENDANT: But the deal I signed was a 2 to 5,
6 and an OR upon sentencing.

7 THE COURT: You did.

8 THE DEFENDANT: Those are the reasons I took the deal.

9 THE COURT: Well, I understand that, but you also -- I
10 didn't make any promises. I'm giving you probation. My
11 inclination was actually to put you in prison for 3 to 10 like
12 P&P was recommending. Okay? So I'm going along with the deal
13 to try and help you get your act together better for the long
14 run, but that's the trade off. If you want to just do the 3 to
15 10 right now, I'll give it to you.

16 THE DEFENDANT: Can I take the deal back?

17 MR. GOLDSTEIN: For a second time? No, Your Honor. I
18 mean, I'll talk to him about it, but --

19 THE COURT: Okay. That'll be the order.

20 MR. GOLDSTEIN: Thank you.

21 THE CLERK: Judge, does he [inaudible] restitution?

22 THE COURT: Oh, yeah. I'm so sorry. Restitution in
23 the amount of \$22,042 payable to -- huh?

24 THE CLERK: I'm sorry.

25 THE COURT: What do you need?

1 THE CLERK: I was going to ask who it's payable to.

2 THE COURT: Prince Alidu.

3 MR. GOLDSTEIN: His name is Prince Alidu, A-L-I-D-U.

4 (Court recessed at 9:24 a.m., until 9:55 a.m.)

5 THE CLERK: State of Nevada versus Sammie Nunn,
6 C336184.

7 THE COURT: Sorry to call you back here, but I have
8 some real concerns. Your client has not been able to control
9 himself in a courtroom filled with marshals and where I've just
10 given him probation. I'm wondering how I'm supposed to feel
11 comfortable sending him out in the community on a probation
12 grant.

13 And I'm wondering if maybe he doesn't want that and
14 maybe he'd prefer just to go to prison, because that would make
15 me feel more comfortable at this moment.

16 MR. GOLDSTEIN: Your Honor, I understand your
17 concerns. I just spoke with him. I mean, his -- he doesn't
18 understand that probation is a privilege and he's fortunate to
19 get it in this case based on Your Honor's comments when we were
20 at the bench last week basically saying you're planning to send
21 him to prison and probably would be doing so if it weren't all
22 the efforts --

23 THE COURT: For the maximum period of time, by the
24 way.

25 MR. GOLDSTEIN: Right. On behalf of his mom, Ashley

1 Dickson, and all these other people who are out there trying to
2 work for him, me, but that's my job. All these other people are
3 trying to work for him and a lot of people -- there was a lot of
4 parts in motion to get him that place to stay. And he
5 apparently doesn't appreciate it, but I hope that he gets that
6 probation's a privilege and he could very well be going to High
7 Desert instead of his mother's house in Oakland over the next
8 few days.

9 So I spoke with him. He talked about withdrawing his
10 plea because you didn't follow the negotiation to the letter.
11 My opinion that's not a valid legal basis to withdraw his plea.
12 If that were the case 99 --

13 THE COURT: It's not even an opinion, it's actually
14 the law, but, okay.

15 MR. GOLDSTEIN: It is. And 99 percent of people
16 sitting in the box would want to withdraw their plea if the
17 judge didn't follow exactly the negotiations. So it's not in
18 any way, shape, or form a legal basis. If he wants to ask the
19 Court to appoint a lawyer to look in to see whether that
20 constitute legal grounds, you could appoint him, just like I was
21 appointed to withdraw his previous plea when there was the issue
22 with his previous lawyer, but I hope he gets -- kind of gets
23 with the program at this point, and realizes if he steps out of
24 line to his probation officer, he's just going to prison.
25 There's no other option. If he's disrespectful to anybody in

1 the system, whether it's here or in California, he's going to do
2 a 4 to 10. That's where he's sitting right now.

3 THE COURT: Do you want probation or not?

4 THE DEFENDANT: Yeah.

5 THE COURT: Are you going to control yourself and be
6 respectful and do what you're supposed to do?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. Thank you for coming back, Mr.
9 Goldstein.

10 MR. GOLDSTEIN: Of course, Your Honor.

11 THE COURT: Good luck, Mr. Nunn.

12 THE PROCEEDINGS CONCLUDED AT 9:57 A.M.

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22 ATTEST: I do hereby certify that I have truly and correctly
23 transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.

24

25



JILL HAWKINS, Court Recorder

Steven D. Grierson

1 RTRAN

2
3 more evidence of innocence
4 Actual evidence of Kerick Hines
5 on video telling what happened
6 DISTRICT COURT evidence was
7 CLARK COUNTY, NEVADA suppressed

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SAMMIE NUNN,

12 Defendant.

CASE#: C-18-336184-1

DEPT. XVIII

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS,

15 DISTRICT COURT JUDGE

16 TUESDAY, AUGUST 6, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **MOTION TO DISMISS COUNSEL AND APPOINT ALTERNATE**
19 **COUNSEL/STATUS CHECK: RESET REVOCATION OF PROBATION**

20 APPEARANCES:

21 For the State:

CHAD LEXIS, ESQ.

22 Deputy District Attorney

23
24 For the Defendant:

ANTHONY GOLDSTEIN, ESQ.

25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 also on Facebook, all over Facebook, it's brand new --
2 THE COURT: Okay, well I'm not going on Facebook.
3 THE DEFENDANT: -- okay, it's on my phone, in my
4 property.
5 THE COURT: Is it somewhere Mr. Goldstein can access?
6 THE DEFENDANT: Oh he can go get my phone off my
7 property as soon as he wants to. It's --
8 MR. GOLDSTEIN: This is the first I've heard of his phone
9 with exculpatory evidence --
10 THE DEFENDANT: -- actually --
11 MR. GOLDSTEIN: -- after however long I mentioned it so.
12 THE DEFENDANT: -- it's not, because --
13 MR. GOLDSTEIN: Perhaps in the letter.
14 THE DEFENDANT: -- it's actually -- it's in the motion to
15 dismiss counsel. I wrote it in the motion.
16 THE COURT: Correct, and that's what he's saying. It's the
17 first he's heard of it.
18 THE DEFENDANT: He visited me when the motion was
19 already in, so it's not the first time he's heard of it, and we've had
20 time to talk about it, but he just got up and left the visiting room.
21 THE COURT: I'm going to -- how long do you need to take
22 a look at this? I'll sign an order to release the phone to you for the
23 purpose of viewing the phone to follow-up on the new evidence.
24 MR. GOLDSTEIN: Exculpatory video on his phone that
25 someone else took? It's that what I'm hearing?

1 THE DEFENDANT: I know you want to --

2 MR. GOLDSTEIN: I just want to make sure I get the right
3 phone from the right person.

4 THE DEFENDANT: -- I know we're going through a issue,
5 but these are legal things, and we're in court.

6 MR. GOLDSTEIN: Okay. What type of phone is it? I'll talk
7 to him about what type of phone it is before I send the order, Your
8 Honor.

9 THE COURT: Mr. Goldstein is trying to help you, so
10 disrespecting isn't working for me okay.

11 THE DEFENDANT: I'm just trying to get through the deal --

12 THE COURT: If that's how you're dealing with him.

13 THE DEFENDANT: -- I'm trying to get through the legal
14 parts ma'am.

15 THE COURT: Well you're not being super successful. I
16 would suggest that you be respectful to the person whose trying to
17 help you out here. *He did everything to try not to help me*

18 THE DEFENDANT: Yes ma'am.

19 THE COURT: He's going to go over to your property, get
20 your phone out, and take a look and see if there's something there.
21 If there's something there, we'll come back and talk about it. If
22 there's not, we're going to go ahead and set the revocation hearing.

23 If you'd like to represent yourself at that point, I'll do a
24 Faretta Canvass and you can do that. For now though, he's going
25 to go ahead and take a look at that.

1 THE DEFENDANT: That's awesome. Thank you. Should I
2 sit down now or --

3 THE COURT: You can sit, yes.

4 THE DEFENDANT: Thank you.

5 THE COURT: Logistically, I don't -- not sure how this is
6 going to work.

7 MR. GOLDSTEIN: I'll visit the Defendant ASAP. I'll give
8 you the order once I find out -- *She means how they can hide it,*

9 THE COURT: Okay.

10 MR. GOLDSTEIN: -- once I find out details about the
11 phone. I'll try and get the phone from property. It's different from
12 getting it from CCDC versus from the evidence vault. Usually it's a
13 little bit smoother through CCDC if I have your order so --

14 THE COURT: Okay.

15 MR. GOLDSTEIN: It would also be quicker if the DA signs
16 off on the order. So I'll submit it to Ms. Thomson, it's her case.
17 Usually that makes things smoother, because they like to call
18 somebody from the DA's Office just to verify everything --

19 THE COURT: Okay.

20 MR. GOLDSTEIN: -- so I'll do all that to find this video.

21 THE COURT: And then you'll just look at it. *I needed him to make
a copy - not just look at it. WOW!*

22 THE DEFENDANT: And I would also like the DA to look at
23 it, everybody to have it. I want the --

24 THE COURT: I am positive, beyond positive, if there is
25 exculpatory evidence on your phone --

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THE DEFENDANT: Yes ma'am.

THE COURT: -- Mr. Goldstein will go run it to Mr.
Thomson, I promise.

THE DEFENDANT: Thank you, Judge, thank you.

MR. GOLDSTEIN: I'll sprint.

THE COURT: Right. I know you will.

MR. GOLDSTEIN: Could we do two weeks please, Your
Honor?

THE COURT: Sure.

THE COURT CLERK: August 20th at 9 a.m.

MR. GOLDSTEIN: Thank you.

THE COURT: Thank you.

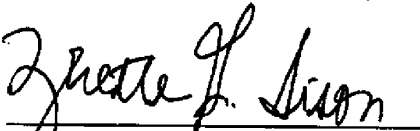
THE DEFENDANT: Thank you, Your Honor.

THE COURT: You're welcome.

[Hearing concluded at 9:16 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my ability.


Yvette G. Sison
Court Recorder/Transcriber



1 TRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 SAMMIE NUNN,

11 Defendant.

CASE NO. C-336184-1

DEPT. XVIII

12
13 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

14 **AUGUST 20, 2019**

15 **RECORDER'S TRANSCRIPT OF HEARING RE**

16 **MOTION TO DISMISS COUNSEL AND APPOINT ALTERNATIVE COUNSEL /**
17 **STATUS CHECK**

18 **APPEARANCES:**

19 For the Plaintiff:

MEGAN S. THOMSON, ESQ.
Deputy District Attorney

21 For the Defendant:

ANTHONY GOLDSTEIN, ESQ.
Deputy Public Defender

23 For the Defendant: [appointed counsel]

MARISA BORDER, ESQ.

24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 TUESDAY, AUGUST 20, 2019 AT 9:37 A.M.

2
3 THE COURT CLERK: Page 17, State of Nevada versus Sammie Nunn, C-
4 336184.

5 MR. GOLDSTEIN: Anthony Goldstein for the Defendant, Your Honor. He's
6 here in custody.

7 THE COURT: Okay. This was – we're gonna –

8 MR. GOLDSTEIN: You signed an order –

9 THE COURT: Did you get a chance to look at the phone?

10 MR. GOLDSTEIN: I have the phone. I've reviewed the evidence that the
11 Defendant wanted me to. I – the individual depicted on the phone I had spoke –
12 personally spoken with a couple of months ago, I don't know the exact date but I
13 received a call from this individual a couple of months ago telling me very – I mean,
14 basically the same information. There's a couple of videos on here. But I was
15 aware of – this person, he's a – there are two originally named victims, this was
16 Cara Kines, the other one was named Prince Alidu. This was Cara who I spoke with
17 a couple of months ago long before the Defendant entered his plea in this case. He
18 contacted my office then I mentioned that in court at a previous hearing as well. So,
19 I was able to watch this since the last hearing. It doesn't change my opinion; it
20 doesn't change the state of evidence at all because again I spoke with this person
21 personally –

22 THE DEFENDANT: Your Honor –

23 MR. GOLDSTEIN: -- sometime before that. So, I –

24 THE DEFENDANT: It changes the evidence because – I mean, Cara Kines
25 [phonetics] has admitted that I didn't do the crime and that they actually chased me

1 down. The evidence is on the phone and he's not willing to bring the evidence
2 forward. Also, Prince Alidu had -- had filed a temporary protective order on me and
3 Judge [indecipherable].

4 MR. GOLDSTEIN: We addressed this in depth previously, Your Honor.

5 THE DEFENDANT: Yeah. And he also admitted that I didn't do the crime
6 and his story actually corroborates -- but he added something about a pistol which
7 Cara Kines faithfully states I didn't -- I had no physical -- this evidence needs to
8 come to light, all these things need to come forward.

9 THE COURT: Okay. Well, it sounds to me like Mr. Goldstein was already
10 aware of it and --

11 THE DEFENDANT: He wasn't aware of it.

12 THE COURT: -- and the reality is we're at revocation, you've already pled
13 guilty. So, if there are other vehicles to file this you're gonna have to look at those.

14 THE DEFENDANT: What are the --

15 THE COURT: We're just here to -- I'm not here to advice you, I'm just here to
16 set a revocation. So, we're gonna go ahead and re-set the revocation --

17 THE DEFENDANT: So -- so, me and --

18 THE COURT: As a favor --

19 THE DEFENDANT: -- me and my attorney are having a conflict of interest in
20 bringing this evidence forward. If he was already aware of the evidence why didn't it
21 come forward --

22 THE COURT: He just explained that it didn't change anything.

23 THE DEFENDANT: It does change --

24 THE COURT: He was aware of it, he spoke to those people. He spoke to --

25 THE DEFENDANT: He did --

1 THE COURT: You –
2 THE DEFENDANT: -- not -- he did not --
3 THE COURT: -- you can't talk --
4 THE DEFENDANT: -- set a meeting.
5 THE COURT: -- over me. You can't talk --
6 THE DEFENDANT: He didn't set a meeting.
7 THE COURT: He talked to those people, he's represented he's talked --
8 THE DEFENDANT: He didn't --
9 THE COURT: -- to these people --
10 THE DEFENDANT: -- talk to them.
11 THE COURT: You took a plea so -- I mean --
12 THE DEFENDANT: What --
13 THE COURT: -- that's kind of where we are.
14 THE DEFENDANT: -- what -- what is the evidence that he talked to them?
15 Can you show me some evidence --
16 THE COURT: I'm not showing you --
17 THE DEFENDANT: -- where Anthony --
18 THE COURT: -- anything.
19 THE DEFENDANT: -- Goldstein talked to -- talked to --
20 THE COURT: I'm not gonna --
21 THE DEFENDANT: -- talked to --
22 THE COURT: -- show you anything.
23 THE DEFENDANT: -- talked to --
24 THE COURT: We're gonna go ahead and re-set the revocation. We're
25 gonna re-set it for a revocation hearing. If you want to hire your own counsel --

1 THE DEFENDANT: There's also --
2 THE COURT: -- you may do that.
3 THE DEFENDANT: -- there's also a new witness his name is Andolfachu
4 Nikonen [phonetics], he works at the Your Stop Liquor store.
5 THE COURT: Mr. Nunn --
6 THE DEFENDANT: His number is 702 881-92 --
7 MR. GOLDSTEIN: I haven't heard --
8 THE DEFENDANT: -- 93.
9 MR. GOLDSTEIN: -- this name before, Your Honor, but --
10 THE DEFENDANT: He hasn't talked to Andolfachu Nikonen [phonetics]
11 neither. This is -- Mr. Goldstein --
12 MR. GOLDSTEIN: I would remember --
13 THE DEFENDANT: -- isn't doing --
14 MR. GOLDSTEIN: -- speaking to somebody --
15 THE DEFENDANT: -- his job.
16 MR. GOLSTEIN: -- named -- whatever the name was. This is the first of even
17 hearing of the name --
18 THE DEFENDANT: His name is --
19 MR. GOLDSTEIN: -- standing here in court today.
20 THE DEFENDANT: -- Andolfochu [phonetics], I have his number, he works at
21 Your Stop Liquor store at night. This is -- this is readily accessible information for
22 Mr. Goldstein.
23 MR. GOLDSTEIN: And as I told the Court, I personally went to Your Stop,
24 spoke with the manager. The employee --
25 THE DEFENDANT: [indecipherable] hasn't worked there in over a year. You

1 got that from the police report.

2 MR. GOLDSTEIN: I spoke with [indecipherable]. We've gone over this, Your
3 Honor. I personally went there and spoke --

4 THE COURT: Will you guys approach?

5 MR. GOLDSTEIN: -- with the manager of the store.

6 THE DEFENDANT: You haven't talked to [indecipherable]. I'm giving you
7 evidence.

8 [Bench conference]

9 THE COURT: All right. Mr. Nunn, I am going to have counsel appointed to
10 you for the limited purpose to see if you have any grounds upon which you could file
11 a motion to withdraw your guilty plea. That's what you're telling me you want to do,
12 correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Mr. Goldstein, if -- he'll be back on later after this is
15 done but for the moment you're gonna get a attorney to look into it.

16 THE DEFENDANT: I appreciate it.

17 THE COURT: Who's next? Continued for Ms. Border to be appointed.

18 MS. BORDER: I'm here -- I'm here, Your Honor.

19 THE COURT: Oh. I didn't see you.

20 MR. GOLDSTEIN: And I have the phone, Your Honor. Since Ms. Border is
21 here now I'll just give it to her and I'll give her the rest of discovery later.

22 THE COURT: We're actually at a revo stage, but he had filed a motion -- Mr.
23 Nunn had filed a motion to discharge his attorney. And so there's all this new
24 evidence and has been sending numerous letters and motions. One of the things
25 he had said was that he had a phone in property that had exculpatory video on it. I

The Phone
with the
Confession
that Kerik
Hines, Prince
Alud's best
friend says
Prince lied
and everybody knows.

1 asked Mr. Goldstein to take a look at it, he's done that. He's made his record that
2 he didn't see anything, but in any event I suppose you can all talk about it.
3 You are appointed pre-revocation hearing to look into whether he has
4 any legal basis upon which to withdraw his guilty plea before we proceed to
5 revocation.
6 MS. BORDER: And just for the record, I do have the phone in my
7 possession. Okay.
8 THE COURT: So, how long do you need, Ms. Border, to –
9 MS. BORDER: Are we able to pass this until September 5th?
10 THE COURT: We are.
11 MS. BORDER: Okay. That's two weeks, a little over two weeks.
12 THE COURT: Sure. And that'll just be the status check. And if you find
13 grounds then we can set a briefing schedule if you –
14 MS. BORDER: Yeah. That's fine.
15 THE COURT: Or you file or whatever. Okay.
16 MS. BORDER: Okay.
17 THE COURT: All right. Mr. Nunn, Ms. Border will be over to see you.
18 THE DEFENDANT: Thank you.
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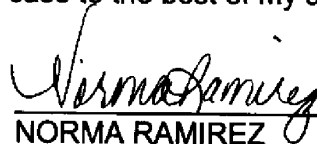
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THE COURT CLERK: September 5th at 9:00 a.m.

[Proceedings concluded at 9:49 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-18-336184-1

DEPT. XVIII

10 vs.

11 SAMMIE NUNN,

12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS,
15 DISTRICT COURT JUDGE

16 THURSDAY, SEPTEMBER 5, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **STATUS CHECK: MOTION TO WITHDRAW GUILTY PLEA**
19 **AGREEMENT**

20 APPEARANCES:

21 For the State:

ASHLEY LACHER, ESQ.
Deputy District Attorney

22
23
24 For the Defendant:

MARISA BORDER, ESQ.

25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Thursday, September 5, 2019

2
3 [Hearing began at 9:08 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie
5 Nunn, C336184.

6 THE COURT: Ms. Border did you get a chance to look at
7 the phone and –

8 MS. BORDER: Your Honor, I've reviewed the mass
9 amounts of underlying discovery, spoken to Mr. Goldstein
10 regarding his defenses and his conversations with Mr. Nunn. I do
11 have the phone in possession now. I just need an additional week
12 to go through some things with Mr. Nunn himself. There was
13 another witness that I'd like to try and make contact with.

14 So this was a status check just to see if there was a basis
15 to file a motion. Are we able to –

16 THE COURT: Are you still not sure if there's a basis or are
17 we continuing it to see if there's a basis and then going to set a
18 briefing schedule? If so, what are we doing?

19 MS. BORDER: -- yes.

20 THE COURT: You want just a week.

21 MS. BORDER: I would rather do the week –

22 THE COURT: Right.

23 MS. BORDER: -- because if there's not a basis then –

24 THE COURT: Okay.

25 MS. BORDER: Thank you.

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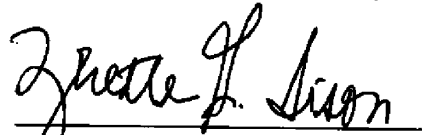
THE COURT CLERK: September 12th at 9 a.m.

MS. BORDER: Thank you.

[Hearing concluded at 9:09 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SAMMIE NUNN,

12 Defendant.

CASE#: C-18-336184-1

DEPT. XVIII

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS,
15 DISTRICT COURT JUDGE

16 THURSDAY, SEPTEMBER 12, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **STATUS CHECK: MOTION TO WITHDRAW GUILTY PLEA**
19 **AGREEMENT**

20 APPEARANCES:

21 For the State:

HETTY WONG, ESQ.
Deputy District Attorney

22
23
24 For the Defendant:

DANIEL GILLIAM, ESQ.

25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Thursday, September 12, 2019

2
3 [Hearing began at 10:46 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie
5 Nunn, C336184.

6 THE COURT: Where are we on this? Do you know? Did
7 she say?

8 MR. GILLIAM: Good Morning, Judge, Dan Gilliam, #92 67
9 on behalf of Ms. Border for Mr. Nunn. Judge, my understanding is,
10 according – from Ms. Border, a briefing schedule needs to be made.

11 THE COURT: Okay. You talk to Ms. Border, and she's
12 going to go ahead and put together a motion for you right?

13 THE DEFENDANT: I haven't talked to her about it, but can
14 you explain to me what that means?

15 THE COURT: That means – remember that you wanted to
16 withdraw your guilty plea?

17 THE DEFENDANT: Yes ma'am.

18 THE COURT: And I appointed Ms. Border to look into – if
19 you have a basis –

20 THE DEFENDANT: Yes ma'am.

21 THE COURT: She must think that there's something
22 worth filing at least, so she's going to do it – prepare a motion to
23 withdraw guilty plea, then the State will respond, and then she'll
24 reply, then we'll set it for argument.

25 THE DEFENDANT: Oh.

1 THE COURT: Okay?

2 THE DEFENDANT: Thank you.

3 THE COURT: Yes. She say how long she wants? I'm going
4 to keep the original letter in the file, left side, and then – you all
5 want copies?

6 THE MARSHAL: We need to recall page 20.

7 THE COURT: Wait, we need a briefing schedule. How long
8 does she want to file? Do you know?

9 MR. GILLIAM: Can we have 30 days please?

10 THE COURT: So, 30 days for opening.

11 THE COURT CLERK: That'll be October 10th.

12 THE COURT: State, you want two weeks to respond?

13 MS. WONG: Please.

14 THE COURT CLERK: October 24th.

15 MR. GILLIAM: Judge, she probably will not want to reply,
16 but if the Court wants to give her time to do one, she can.

17 THE COURT: All right. We'll give her a week to reply.

18 THE COURT CLERK: October 31st.

19 THE COURT: And then the next date for hearing.

20 THE COURT CLERK: November 5th at 9 a.m.

21 THE COURT: And that will be just for the hearing and the
22 motion to withdraw guilty plea. If it's denied, we'll set a sentencing
23 date after that so that the State can let the victims know if they want
24 to appear, okay; but I'm not going to plan to go forward in
25 sentencing unless somebody calls me ahead of time. Is that it?

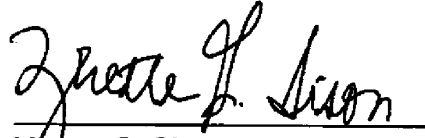
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MR. GILLIAM: Judge, thank you.

[Hearing concluded at 10:49 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Yvette G. Sison
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-18-336184-1

DEPT. XVIII

10 vs.

11 SAMMIE NUNN,
12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS,
15 DISTRICT COURT JUDGE

16 TUESDAY, NOVEMBER 5, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **MOTION TO WITHDRAW GUILTY PLEA**

19
20 APPEARANCES:

21 For the State:

JOHN JONES, ESQ.
Deputy District Attorney

22
23 For the Defendant:

MARISA BORDER, ESQ.

24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday November 5, 2019

2
3 [Hearing began at 11:15 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie
5 Nunn, C336184.

6 MS. BORDER: Good Morning present with Ms. Nunn,
7 who is in custody – Mr. Nunn, who is in custody.

8 MR. JONES: And John Jones on behalf of the State; and
9 Your Honor, I did reach out to your law clerk –

10 THE COURT: I'm sorry, what page?

11 MS. BORDER: It's 21, Your Honor.

12 MR. JONES: It's 21, Sammie Nunn.

13 THE COURT: Yes.

14 MR. JONES: And Your Honor, I reached out to your law
15 clerk because originally, the Defense in this case was talking about
16 filing a motion to withdraw a guilty plea, and I think they realized
17 procedurally, a writ of habeas corpus was probably best avenue in
18 which to challenge what their challenging. So, they did file a writ.

19 We filed a response. Today is the status check on the
20 motion to withdraw guilty plea, in which the Defendant did not file;
21 11/26 is when the writ is scheduled.

22 So, I emailed just to see what was happening today, and I
23 didn't know if Your Honor is ready to decide the writ today, I think
24 we're ready to at least argue. I think we're both are just going to
25

1 submit; but if you want to pass it to 11/26, that's fine with us as
2 well.

3 THE COURT: I'm ready. Mr. Nunn, you ready to go
4 forward?

5 THE DEFENDANT: I'm ready.

6 THE COURT: All right.

7 MS. BORDER: And yes, Your Honor, Mr. Jones was
8 correct in that I – upon further reflection realized that because of it
9 was post-sentencing that it probably was required to be called a
10 writ, so with that information in hand, I did file the writ.

11 I think that everything including the facts learned from the
12 investigator, the potential new witness that would come forward at
13 a jury trial, if granted, the relief requested, that this does rise to the
14 level required for the writ hearing, and we would be submitting on
15 the writ, asking for him to be able to withdraw the guilty plea.

16 MR. JONES: And Your Honor, the question is – just
17 briefly, manifest injustice; and according to the Defendant's
18 arguments, Your Honor, they're asserting a factual, excuse me, self-
19 defense, which is not a factual deficiency, thus we don't have a
20 legal insufficiency here, Judge, and you should deny the
21 Defendant's petition for a writ of habeas corpus.

22 THE COURT: I am going to deny the petition. I don't see
23 that the plea was not freely and voluntarily entered. This wasn't a
24 jury trial, this was actually a guilty plea, with a self-defense issue –
25 actually in a sense, I'm not even sure we get there, but in any event,

1 I do not find manifest injustice, and I'm going to deny it based on
2 the State's opposition. If you guys would prepare the findings and
3 order, I'd appreciate it.

4 MS. BORDER: So, Your Honor, this was kind of an odd
5 juncture in that he was back on a probation revocation. Did we –

6 THE COURT: Okay – right, right. We need to reset the
7 revocation.

8 MS. BORDER: And does that go back to the original
9 attorney?

10 THE COURT: Yes.

11 MS. BORDER: Okay.

12 THE COURT: It should.

13 MS. BORDER: I don't recall who that was, if it was the
14 Public Defender's Office or if it was Mr. Goldstein.

15 MR. JONES: It was Mr. Goldstein.

16 THE DEFENDANT: It was Goldstein. Because he didn't –
17 he didn't talk to the new witness. There was a – there's a new
18 witness – I don't know –

19 MS. BORDER: And the new witness was the one that was
20 the basis for the writ that we had filed.

21 THE DEFENDANT: Right and the new witness submitted
22 an affidavit stating what's happening, and that's what we were
23 supposed to be here for today.

24 THE COURT: And that's – that's what I just ruled on. I
25 don't find that there's sufficient information there for me to make a

1 finding of manifest injustice, which is what I would have to find in
2 order to allow you to withdraw your plea at this point, so.

3 THE DEFENDANT: Did you read over the affidavit?

4 THE COURT: I did. I read everything. I did.

5 THE DEFENDANT: So –

6 THE COURT: So, my question is we need to set this back
7 for revocation, probation hearing, and I think we put Mr. Goldstein
8 back on it because you were just on for a limited purpose, correct?

9 MS. BORDER: That was my understanding, Your Honor.

10 THE DEFENDANT: -- so Your Honor, even though I was
11 being attacked, that's not manifest injustice?

12 THE COURT: Even though what?

13 THE DEFENDANT: Even though – if I was being attacked,
14 and I had to defend myself, that's not manifest injustice?

15 THE COURT: That's – you mixed up the standards, but
16 I've already ruled on that, so let's just set the revocation hearing.
17 Do we need to bring Mr. Goldstein back in before we set it?

18 MR. JONES: If you want to set it, and as long as you
19 notify Mr. Goldstein, if the Court will, I'll notify the officer to be
20 present on the date that you set.

21 THE COURT: Okay.

22 THE DEFENDANT: Do I – what's the next process in this?
23 Do I go to a higher court or what happens after you dismiss it?

24

25

1 THE COURT: Talk to Mr. Goldstein about it. Right now,
2 you're going to come back here on a revocation to see if we're
3 going to revoke your probation.

4 MS. BORDER: And Your Honor, for Mr. Nunn, I will
5 provide him the writ, the response, and the order with the Court's
6 ruling, so it's crafted a little more clear when you go through it with
7 Mr. Goldstein.

8 THE DEFENDANT: Yeah, I still don't understand what's --
9 why. If somebody provoked me and chased me down and put their
10 hands on me --

11 THE COURT: You pled guilty. You pled guilty, Mr. Nunn --

12 THE DEFENDANT: -- but that was --

13 THE COURT: -- and once you plead guilty, there are
14 certain things the law says --

15 THE DEFENDANT: -- what about factual --

16 THE COURT: -- you have to show certain things which I
17 found you have not shown under the law.

18 THE DEFENDANT: -- I showed factual innocence.

19 THE COURT: Well, I disagree, but you could -- you can
20 appeal that.

21 THE DEFENDANT: I showed factual innocence.

22 THE COURT: Like I said, I disagree, but you can appeal
23 that.

24 THE DEFENDANT: Can we argue the facts?

25 THE COURT: No.

1 THE DEFENDANT: I mean, ain't this what the hearing is
2 for?
3 THE COURT: We're done.
4 MS. BORDER: And just to be clear Mr. Nunn, the facts
5 that would be argued are in the writ –
6 THE COURT: Right.
7 MS. BORDER: -- that the Court has viewed, so –
8 THE DEFENDANT: Do you mind if I get a copy?
9 THE COURT: She's going to give you a copy of
10 everything; that's what she just said.
11 MS. BORDER: Everything.
12 THE DEFENDANT: Okay.
13 THE COURT: I know all the facts. I know what you're
14 alleging, I'm simply saying –
15 THE DEFENDANT: It's not what I'm alleging. It's what the
16 witness is alleging.
17 THE COURT: I understand you have a witness, and like I
18 said, that doesn't make a finding of factual innocence, especially
19 when you got a self-defense so; and you pled guilty.
20 THE DEFENDANT: I pled guilty without having the
21 opportunity to have all the witnesses available.
22 THE COURT: Well, you didn't say I'm pleading guilty
23 because I don't have all the witnesses. You pled guilty, and so that
24 kicks in a certain standard.
25

1 THE DEFENDANT: And I also pled guilty to a 2 to 5 and
2 you gave me a 4 to 10; and I have no criminal history. I only got
3 misdemeanors .
4 THE COURT: There must have been a reason, I don't
5 know what it was.
6 THE DEFENDANT: I don't know what the reason was.
7 THE COURT: Well we –
8 THE DEFENDANT: It was you going off the old witness –
9 the witness statements, that's why this was so big because you
10 read the witness' statement, and you gave me a 4 to 10, and these
11 are – this is what actually happened.
12 THE COURT: All right, well I suspect that we'll revisit that
13 at the time of your revocation hearing, and then I'll have more
14 information on that part of it. Right now, I've just got the writ in
15 front of me.
16 THE DEFENDANT: So, the reason I'm going to prison or
17 getting house arrest or whatever – if that – if the reason that that
18 happened changed, you're still just going to go like it never like –
19 THE COURT: I don't –
20 THE DEFENDANT: -- like you never heard the true story
21 behind what happened?
22 THE COURT: -- I'm not understanding what you're saying
23 but –
24 THE DEFENDANT: Something separate happened than
25 what I pled guilty to.

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THE COURT: -- I can only change sentencing if there's a problem. Talk to Mr. Goldstein. If he thinks that there's a motion to be filed, he'll file it. Okay, revocation hearing --

THE COURT CLERK: I need to set a revocation hearing date, so when would you like that?

MR. JONES: Court's pleasure. At this point, I don't have the officer here, so I'll email him. If there's an issue, I'll bring it to the Court's and Mr. Goldstein's attention.

THE COURT CLERK: November 14th, 9 a.m., for revocation.

THE COURT: Okay. We'll be back here next Thursday.

[Hearing concluded at 11:24 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber

Appellant did not fully understand his plea. (RAB, p. 14) (See also, O.B. 14)

This was not a new claim on appeal. This claim had been raised in the pretrial Motion to Dismiss and to Withdraw Counsel. (See, A.A. 38-49) (See, O.B. 14) The State wrongly presumes that the mere affirmations by a defendant during the plea canvas, that he understood most of his rights and that he had services of counsel were alone sufficient to establish his waiver was knowing and intelligent. *Patton v. Warden*, 91 Nev. 1, 530 P.2d 107 (1975).

There exists substantial case law that the mere incantations of proper responses to a standard plea canvas is insufficient to establish a plea is voluntary. *See, for example, Wilkins v. Bowersox*, 145 F.3d 1006 (8th Cir.1998). The Court must look to the totality of circumstances to determine if a plea was voluntary. *See, Freese v. State*, 116 Nev. 1097, 13 P.3d 442 (2000), *McConnell v. State*, 125 Nev. 243, 212 P.3d 307 (2009). Looking at the totality of circumstances, Defendant submits his plea was not a knowing and intelligent waiver of his rights.

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT ACCEPTED APPELLANT'S "STIPULATION" TO REVOCATION OF HIS PROBATION AS PART OF A PLEA NEGOTIATION.

It is respectfully submitted that Appellant was compelled to "stipulate" to

revocation as part of his plea negotiations. The Court erred because it did not consider meaningful existing mitigation evidence that would have been grounds for not automatically revoking his probation by stipulation.

Defendant submits, as in any plea negotiation, the Court had a duty to scrutinize the fairness of the terms of the negotiation to determine if the negotiated settlement was fair and just and then decide whether the negotiated settlement was overreaching in any way, or violated due process, or was otherwise unfair. It is respectfully submitted the Court had the duty and the power to reject an unfair plea agreement. *See, Federal Rules of Criminal Procedure* § 11(c)(4) allowing a court to reject a plea agreement in certain cases. *See also*, NRS 174.035, and the ABA Standards: The Function of a Trial Judge, § 4.1, 4.2.

The Court in this case, without any scrutiny of the agreement or apparently any awareness of possible mitigating circumstances, merely rubber-stamped the stipulation which resulted in the Defendant's revocation of probation. There was no hearing in this case where the Appellant could have presented mitigating evidence. Since revocation of probation is not supposed to be automatic, it is respectfully submitted that the District Court abused its discretion by not requiring an adversary hearing where the Defendant could have exercised his constitutional right to

subpoena witnesses, *Chambers v. Mississippi*, 410 U.S. 284 (1973). Defendant was denied his right to confront and cross examine witnesses against him, as guaranteed by the Sixth Amendment.

Defendant had a liberty interest in getting a fair hearing at a revocation hearing. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). The denial of his constitutional rights to a fair due process hearing should be considered reversible error.

III. THE CUMULATIVE ERROR REQUIRES REVERSAL OF APPELLANT'S CONVICTION.

It is respectfully submitted Appellant demonstrated cumulative error in this case. The State claims there were not "multiple errors" in this case which require relief. (RAB, p. 19) Appellant however submits that the District Court abused its discretion in two different ways and each of those abuses of discretion should be considered separate error that should be cumulated for review.

The State cites *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000), for the relevant factors to consider in evaluating any claim of cumulative error: "(1) whether the issue of guilt was close; (2) the quantity and character of error; and (3) the gravity of the crime(s) charged." *Id.* 17 (RAB, p. 20)

The State argued because the Defendant pled guilty the issue of guilt wasn't

close. (RAB, p. 20) That argument wrongly presumes the plea is valid. The State does admit the Defendant's category B crimes were serious felonies. (RAB, p. 20) It is respectfully submitted the abuses of discretion were each of great enough significance that the errors should be cumulated.

CONCLUSION

Appellant respectfully submits the Court should carefully consider all the prior pleadings, including all pretrial motions, Appellant's Opening Brief and Appellant's Reply Brief as well as Respondent's Answering Brief and find that the District Court erred when it denied Defendant's Motion to Withdraw His Guilty Plea.

Nothing in Respondent's Answering Brief, such as the argument this Court had no jurisdiction, should cause this Honorable Court to do anything other than issue an Order reversing Appellant's conviction and remanding the case to the District Court for further proceedings. The Defendant should have been allowed to withdraw his plea under the totality of circumstances. This is especially true because the State would not have been prejudiced. *Hart v. State*, 116 Nev. 558 (2000).

DATED this 1st day of October, 2020.

Respectfully submitted,

//s// Terrence M. Jackson

Terrence M. Jackson, Esquire

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SAMMIE NUNN,

12 Defendant.

CASE#: C-18-336184-1

DEPT. XVIII

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS,
15 DISTRICT COURT JUDGE

16 TUESDAY, NOVEMBER 26, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF**
19 **HABEAS CORPUS**

20 APPEARANCES:

21 For the State:

MEGAN THOMSON, ESQ.
Deputy District Attorney

22
23 For the Defendant:

ANTHONY GOLDSTEIN, ESQ.

24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, November 26, 2019

2
3 [Hearing began at 9:05 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie Nunn,
5 C336184.

6 MR. GOLDSTEIN: Your Honor, Anthony Goldstein for the
7 Defendant. He's in custody, but he was a refusal today.

8 THE COURT: Okay.

9 MR. GOLDSTEIN: My suggestion is he has a – he filed a
10 motion to dismiss me. He's already been sentenced; you've already
11 revoked him.

12 THE COURT: Correct.

13 MR. GOLDSTEIN: He filed a notice of appeal on his own, I
14 believe last week, and he also filed on his own a motion to dismiss me
15 and appoint alternate appellate counsel. I think that's on in about two
16 weeks. Maybe we could set the hearing on that same date – this
17 hearing, continued to that same date or advance the other motion
18 forward, it's up to you. I just thought to throw them on the same date.

19 THE COURT: Yes, we'll put it to that date. Is that good?

20 THE COURT CLERK: Yes.

21 THE COURT: Perfect. Thank you.

22 THE COURT CLERK: December 17th at 9 a.m.

23 THE COURT: Thanks.

24
25 [Hearing concluded at 9:06 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-18-336184-1

DEPT. XVIII

10 vs.

11 SAMMIE NUNN,

12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS,
15 DISTRICT COURT JUDGE

16 TUESDAY, DECEMBER 17, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF**
19 **HABEAS CORPUS/MOTION TO WITHDRAW COUNSEL AND**
20 **MOTION TO APPOINT APPELLATE COUNSEL**

21 APPEARANCES:

22 For the State:

JOHN JONES, ESQ.
Deputy District Attorney

23 For the Defendant:

24 ANTHONY GOLDSTEIN, ESQ.

25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, December 17, 2019

2
3 [Hearing began at 9:27 a.m.]

4 THE COURT CLERK: State of Nevada versus Sammie
5 Nunn, C336184.

6 MR. GOLDSTEIN: Your Honor –

7 MR. JONES: John Jones on behalf of the State.

8 MR. GOLDSTEIN: -- the Defendant is not here. He's in the
9 Nevada Department of Corrections. I think there was an order to
10 transport. I saw one on Odyssey, but he was supposed to be here
11 and that's why we passed it to today, but for whatever reason he's
12 not here. He's got a pro se petition – post-conviction petition on;
13 also, a motion to appoint appellate counsel for the appeal that he
14 filed on his own.

15 THE COURT: When were we last here?

16 MR. JONES: Your Honor, we were last here on 11/26, but
17 I'll note –

18 THE COURT: I know that he refused to be transported that
19 day.

20 MR. GOLDSTEIN: He was also found incompetent for a
21 while and this case has kind of a – I want to say tortured history, but
22 it's been around a bit. You appointed --

23 THE COURT: Oh, I know.

24 MR. GOLDSTEIN: – he's had multiple attorneys on the
25 case, Your Honor. He tried to withdraw his plea. You appointed

1 Ms. Border for that. I came back on eventually, but that's -- and he
2 filed everything, all his post-conviction matters on his own.

3 MR. JONES: And Your Honor, I'll note that the calendar
4 does say it's on for post-conviction writ of habeas corpus. But if
5 you recall, this was set on 11/5. Ms. Border was here. We argued
6 on the writ, and it was decided on that day. I show it was denied,
7 and we went ahead and set the revo for 11/14.

8 On 11/14, you modified and revoked the Defendant,
9 modified to a 36 to 120, and the case was closed. For some reason,
10 it was still on 11/26. I don't know why; but that was the original writ
11 date that we moved forward to 11/5, and for some reason my
12 procedural history is wrong, please correct me, but I show the writ
13 has already been denied. In fact, that's why we went ahead and
14 proceeded with the revocation.

15 THE COURT: That -- I do recall that all now, actually. I
16 mean I remember doing something and then proceeding and
17 setting the revo.

18 MR. JONES: In fact, it's on 11/5 that Mr. Goldstein was re-
19 appointed for purposes of the revo. Ms. Border withdrew because
20 you had decided the writ.

21 [Colloquy -- The Court and the clerk]

22 THE COURT: She says it was the motion to withdraw
23 guilty plea that was denied.

24 MR. JONES: Well, it was originally supposed to be a
25 motion to withdraw guilty plea, but remember Ms. Border, after

1 thinking about what is the most appropriate vehicle decided to file a
2 writ of habeas corpus instead. So, she never filed a motion to
3 withdraw – I don't believe she filed a motion to withdraw, I believe
4 she just filed a post-conviction writ. She filed that on October 10th.

5 THE COURT: You're right, yes. You did have that the writ
6 was denied, correct? She shows it got continued.

7 MR. JONES: The writ?

8 THE COURT: The writ because he wasn't – are you
9 looking at the 11/5?

10 [Colloquy – The Court and the clerk]

11 THE COURT: Okay, it's effectively – it's really not – we
12 didn't hear a motion to withdraw guilty plea.

13 MR. JONES: Because I don't believe a motion to
14 withdraw guilty plea was ever filed in this case. It was actually a
15 writ that was filed.

16 THE COURT: It was a writ to withdraw guilty plea. I
17 mean, I think that's what you probably heard. Do you see a motion
18 to withdraw guilty plea filed?

19 [Colloquy - The Court and the clerk]

20 THE COURT: Okay, we're going to just – we'll have to go
21 ahead and correct whatever it is we corrected. It doesn't appear
22 that there's ever been a motion to withdraw a guilty plea filed. The
23 only thing that we have filed and the thing that was argued was the
24 Defendant's post-conviction petition, which was heard and denied
25 on the 5th. Has an order already been done as well?

1 MR. JONES: I referred it to Appeals, Your Honor, for an
2 order to be done. I don't know if they had done it yet, but I will
3 make a note that they need to get the order to you ASAP.

4 THE COURT: Okay, that was on today, but we're just
5 going to correct the record. It had been previously ruled on. So,
6 that's that.

7 With respect to the motion to withdraw counsel, I don't
8 see any reason we can't let you off right? Is there a reason Mr.
9 Jones?

10 MR. JONES: We're taking no position on his motion to
11 withdraw counsel.

12 MR. GOLDSTEIN: Can we approach on this one?

13 THE COURT: Yes, please.

14 [Bench Conference]

15 THE COURT CLERK: It just says; Court ordered motion
16 denied based on his opposition, and the minute order that he
17 [unintelligible] --

18 THE COURT: Okay, so we're clarifying -- I don't know that
19 matters.

20 MR. JONES: Because I think it was on calendar call for a
21 motion to withdraw, but instead -- because that's what Marisa said
22 she was going to file --

23 THE COURT: Right.

24 MR. JONES: -- but she ended up filing a writ, and I think
25 that's where the confusion is.

1 THE COURT CLERK: Yeah, I think that hearing was for a
2 motion –
3 MR. JONES: Yeah but we actually argued the writ
4 instead, and I think that's why.
5 THE COURT: Do you need anything else to fix that?
6 THE COURT CLERK: No, I'll just do [unintelligible] –
7 THE COURT: See Dara wasn't here, otherwise that
8 wouldn't have happened.
9 THE COURT CLERK: -- [unintelligible] exactly what motion
10 it was -- [unintelligible] --
11 MR. JONES: Should we pull the minutes just to see -- I
12 mean pull the transcript just to be safe.
13 THE COURT: I feel -- I feel confident. You feel confident?
14 MR. GOLDSTEIN: I wasn't here for that, so I don't really
15 know. It was Marisa's thing.
16 THE COURT: Oh.
17 MR. JONES: I have -- there was like 10-foot halo around
18 me.
19 MR. GOLDSTEIN: Here's why the motion to dismiss is
20 tricky; because he -- as trial counsel, I have an obligation to pursue
21 even pointless, meritless appeals --
22 THE COURT: Correct.
23 MR. GOLDSTEIN: -- the problem is he filed a federal civil
24 lawsuit naming me and other people as the Defendant. So he's --
25 which I haven't been served with and people do that sometimes.

1 So, there's a conflict -- there might be a conflict. I am his trial
2 counsel, and you do not have a duty to appoint a separate appellate
3 counsel. He doesn't have the right to choose his own appellate
4 counsel, but at the same time there is a Federal lawsuit pending, so
5 it's possible that he is going to claim that I have a conflict because
6 he has sued me civilly.

7 THE COURT: Let me ask you this, if I don't grant your
8 motion to withdraw --

9 MR. GOLDSTEIN: Well it's his -- it's his motion to dismiss,
10 not my motion -- just to --

11 THE COURT: -- that's what I meant, if I don't grant his
12 motion to --

13 MR. GOLDSTEIN: -- I could file a motion --

14 THE COURT: -- then what do you do?

15 MR. GOLDSTEIN: -- I could file a motion to withdraw
16 based on the civil lawsuit. I was hoping he would be here in court
17 today so I could speak with him.

18 THE COURT: Want me to put -- let's just not do anything
19 and we'll bring him back.

20 MR. JONES: Can we do it after New Year?

21 MR. GOLDSTEIN: Yeah.

22 MR. JONES: When is your appellate deadline?

23 MR. GOLDSTEIN: I need to look that up. I was going to --

24 THE COURT: Are you going to go ahead and file it
25 anyway?

1 MR. GOLDSTEIN: I'm going to have to – until I'm
2 withdrawn from the case; I mean I have to get permission from the
3 Supreme Court to withdraw from that now. So, it's all – it gets all
4 crazy –

5 THE COURT: Have you filed it?

6 MR. GOLDSTEIN: -- I haven't filed anything yet.

7 THE COURT: Okay.

8 MR. GOLDSTEIN: Because I'm still looking at deadlines,
9 and also that he'd be here so that we can kind of work things out to
10 see what his plan was. I don't even know what the basis of it is.

11 THE COURT: Do you want to go ahead and file it? Do you
12 want – do want to check and see the deadlines so that we know
13 when we have to bring him down by. Are you just going to go
14 ahead and file it anyway –

15 MR. GOLDSTEIN: I would –

16 THE COURT: -- and we just set it in 30, what do you want
17 to do?

18 MR. GOLDSTEIN: My suggestion would be setting it in 30
19 days or three weeks or whatever, some time after the New Years,
20 and I'll check deadlines between now and then. I can get extensions
21 if necessary, under these circumstances from the Supreme Court.

22 THE COURT: Okay.

23 MR. GOLDSTEIN: It's just kind of a mess because
24 [unintelligible] –

25 THE COURT: All right. Let's get him here.

1 MR. GOLDSTEIN: Yeah that's -
2 THE COURT: He likes to be here.
3 [Bench Conference Concluded]
4 THE COURT: All right. We're going to continue this. We
5 did a - the State did an order to transport. Mr. Nunn, I think needs
6 to shed some light on some of this stuff. I'm not sure why he wasn't
7 brought, so we'll pass it 30 and ask the State to do another order
8 and maybe see what - if they could figure out what happened
9 today. I suppose he could've refused right? He did last time.
10 MR. JONES: Do you want to put by any means necessary,
11 because it sounds like we need to address this.
12 THE COURT: We do need to. Let's give him one more
13 time.
14 MR. JONES: Okay.
15 THE COURT: I don't - I mean - we don't know that to be
16 true, so if you - next time if he doesn't come, and he's refused, and
17 you find out that he's refused this time, then we'll do that; 30 days.
18 THE COURT CLERK: January 14th at 9 a.m.
19 MR. GOLDSTEIN: Thank you, Your Honor.
20 THE COURT CLERK: And that's the motion to withdraw
21 counsel?
22 THE COURT: That is the motion to withdraw counsel; and
23 actually, it's to a point - he wants to appoint appellate counsel.
24 [Hearing concluded at 9:36 a.m.]
25 * * * * *



1 **SUPP**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No.: 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 terry.jackson.esq@gmail.com
9 *Counsel for Sammie Nunn*

8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

8 **SAMMIE NUNN,**
9 **#1226304**
10 Defendant / Petitioner,
11 v.
12 **STATE OF NEVADA,**
13 Plaintiff/ Respondent.

Case No.: **C-18-336184-1**

Dept. No.: **XVIII**

HEARING REQUESTED

14 **SUPPLEMENTARY MOTION FOR EVIDENTIARY HEARING FOR *PRO PER***
15 **PETITION FOR SAMMIE NUNN FOR HABEAS CORPUS RELIEF**

16 COMES NOW the Defendant/ Petitioner, SAMMIE NUNN, by and through his newly
17 appointed counsel, TERRENCE M. JACKSON, ESQ., and respectfully requests this Honorable
18 Court to allow filing of Supplemental Points and Authorities in Support of Habeas Corpus Relief
19 to Defendant Nunn's *Pro Per* Petition for Writ of Habeas Corpus filed on January 24, 2020, by
20 requesting an evidentiary hearing for his Writ of Habeas Corpus.

21 As grounds for this Motion, counsel states that he was just appointed to represent Mr.
22 Sammie Nunn on February 18, 2020. Counsel further states that reviewing Defendant's *Pro Per*
23 Petition, counsel believes that it alleges sufficient material facts that an evidentiary hearing is
24 required because there are material facts in dispute. This Motion is further based upon the
25 accompanying Points and Authorities incorporated herein.

26 Respectfully submitted this 10th day of March, 2020.

27 /s/ Terrence M. Jackson
28 **TERRENCE M. JACKSON, ESQ.**
Nevada Bar No.: 00854
terry.jackson.esq@gmail.com
Counsel for Sammie Nunn

1 POINTS AND AUTHORITIES

2
3 In *Marshall v. State*, 110 Nev. 1328, 885 P.2d 603 (1994), the Nevada Supreme Court
4 reversed *Marshall's* conviction because he was denied an evidentiary hearing on post-conviction.
5 The Court there stated:

6 "When a petition for post-conviction relief raises claims
7 supported by specific factual allegations which, if true, would entitle
8 the petitioner to relief, the petitioner is entitled to an evidentiary
9 hearing unless those claims are repelled by the record." *Hargrove v.*
10 *State*, 100 Nev. 498, 686 P.2d 222 (1984). *Id.* 1331

11 Although the Court rejected many of Marshall's claims as meritless, it found the issue of
12 insufficiency of the evidence presented to the grand jury supporting the possession of controlled
13 substance charge to have merit and reversed those counts stating:

14 "At most, the state presented evidence that appellant
15 frequented an apartment that was rented to his brother and that
16 appellant stored some of his personal belongings in the apartment.
17 This evidence is not sufficient to establish that appellant, rather than
18 one of the numerous other persons who frequented the apartment,
19 possessed the cocaine and the marijuana the police found. Appellate
20 counsel was ineffective for failing to raise this issue on appeal and
21 counsel's failure prejudiced appellate. *Warden v. Lyons*, 100 Nev.
22 430, 683 P.2d 504 (1984), *cert. den.*, 471 U.S. 1004 (1985). The
23 district court erred in refusing to provide appellant an evidentiary
24 hearing on this issue and in denying appellant relief."

25 "Because the record on appeal establishes that appellant was
26 improperly convicted of the possession charges, we reverse
27 appellant's judgment of conviction on these charges and we vacate
28 the sentence imposed with respect to those convictions." *Id.* 1333.
(Emphasis added)

29 It is respectfully submitted that in this case Defendant, as in *Marshall, supra*, has raised
30 factual claims which, if true, entitle him to an evidentiary hearing. Defendant also directs the Court

1 to *Hatley v. State*, 100 Nev. 214 (1984), where the Supreme Court reversed stating:

2 "The district court, however, refused to conduct an evidentiary hearing and summarily denied
3 appellant's petition.

4 We conclude that it was error for the district court to deny the
5 petition without first holding an evidentiary hearing. It is well settled
6 that when "a petition for post-conviction relief contains allegations of
7 facts outside the record which, if true, would entitle the petitioner to
8 relief, an evidentiary hearing thereon is required." (Emphasis added)

9 Defendant in his *Pro Per* Petition has clearly alleged his 'factual innocence' and deserves a
10 hearing on his claims. To deny him a full hearing will lead to reversal of his conviction.

11 Respectfully submitted this 10th day of March, 2020.

12
13 /s/ Terrence M. Jackson
14 TERRENCE M. JACKSON, ESQ.
15 Nevada Bar No.: 00854
16 Law Office of Terrence M. Jackson
17 624 South Ninth Street
18 Las Vegas, NV 89101
19 T: 702-386-0001 / F: 702-386-0085
20 terry.jackson.esq@gmail.com

21 *Counsel for Sammie Nunn*
22
23
24
25
26
27
28

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SAMMIE NUNN,)

Case No.: C-18-336184-1

4 #1226304)

5 Defendant / Petitioner,)

Dept. No.: XVIII

6 v.)

7)
8 STATE OF NEVADA,)

9)
10 Plaintiff/ Respondent.)

11 NOTICE OF HEARING

12 Please be advised that the Defendant's Supplementary Motion for Evidentiary Hearing for
13 Pro per Petition for Habeas Corpus Relief in the above-entitled matter is set for hearing as follows:

14 Date:

15 Time:

16 Location: RJC Courtroom 3F
17 Regional Justice Center
200 Lewis Avenue
18 Las Vegas, NV 89101

19 Note: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial
20 District Court Electronic Filing System, the movant requesting a hearing must serve this notice on
the party by traditional means.

21 By: /s/ Ila C. Wills
22 Assistant to T. M. Jackson, Esq.

23 CERTIFICATE OF SERVICE

24 I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion
25 Rules, a copy of this Notice of Hearing was electronically served to all registered users on this case
26 in the Eighth Judicial District Court Electronic Filing System.

27 By: /s/ Ila C. Wills
28 Assistant to T. M. Jackson, Esq.

1 CERTIFICATE OF SERVICE

2
3 I hereby certify that I am an assistant to Terrence M. Jackson, Esq., I am a person competent
4 to serve papers and not a party to the above-entitled action and on the 10th of March, 2020, I served
5 a copy of the foregoing Defendant/Petitioner, SAMMIE NUNN'S, SUPPLEMENTARY MOTION
6 FOR EVIDENTIARY HEARING FOR PRO PER PETITION FOR HABEAS CORPUS RELIEF
7 as follows:

8 [X] Via Electronic Service (CM/ECF) to the Eighth Judicial District Court and by United States
9 first class mail to the Nevada Attorney General and Petitioner/Appellant as follows:

10
11 STEVEN B. WOLFSON
12 Clark County District Attorney
13 steven.wolfson@clarkcountyda.com
14

JOHN T. NIMAN
Clark County Deputy D.A. - Criminal
john.niman@clarkcountyda.com

15 SAMMIE NUNN
16 ID# 1226304
17 High Desert State Prison
18 Post Office Box 650
19 Indian Springs, NV 89070-0650
20
21
22
23

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

24 By: /s/ Ila C. Wills
25 Assistant to T. M. Jackson, Esq.
26
27
28

ARGUMENT

I. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA. DENIAL OF THIS MOTION WAS MANIFESTLY UNJUST.

The District Court denied Defendant's Motion to Withdraw Plea after argument on November 5, 2019, issuing an Order finding that the plea was valid. (A.A. 76) He submits the District Court Order incorrectly denied Defendant's Motion to Withdraw His Plea because Defendant's plea was not a knowing, voluntary and intelligent waiver and under the totality of circumstances the plea was manifestly unjust. Defendant in his pleading had made a credible assertion of his factual innocence and he was entitled to an evidentiary hearing on those claims.

A. There Was Insufficient Pretrial Investigation and Preparation Preplea and Inadequate Attorney Client Counseling Concerning Possible Defenses.

In this case, it is respectfully submitted defense counsel was ineffective investigating the facts and preparing preplea. *Strickland* requires at least minimal investigation. *Strickland v. Washington*, 466 U.S. 668 (1984), *Id.* 691. Defendant also directs the court to such cases as *Bustos v. White*, 521 F.3d 321 (4th Cir.2018); *Premo*

v. Moore, 562 U.S. 115 (2011); *Raysor v. United States*, 647 F.3d 491 (2d Cir.2011); *Smith v. Mahoney*, 611 F.3d 978 (9th Cir.2010); *United States v. Mooney*, 497 F.3d 397 (4th Cir.2007); *Dando v. Yukins*, 461 F.3d 791 (6th Cir.2006); *United States v. Keller*, 902 F.2d 1391 (9th Cir.1990); *Iaea v. Sunn*, 800 F.2d 861 (9th Cir.1986); and *Fields v. Gibson*, 277 F.3d 1203 (10th Cir. 2002). Each of these cases held guilty pleas should be overturned because of counsel's failure to prepare adequately before the plea. Defendant submits the facts in this case are also compelling for setting aside the Defendant's guilty plea and the Defendant therefore urges this Honorable Court to find that the District Court erred when it denied the Defendant's Motion to Withdraw his plea.

In this case Defendant Sammie Nunn also submits that he never adequately consulted with his counsel before the plea. He never received an adequate explanation of all the rights of a defendant. He never received informed advice on the strength of the prosecution's case, as well as any possible defenses the Defendant may have had. *See, Von Moltke v. Gillies*, 332 U.S. 708 (1948); *Libretti v. United States*, 516 U.S. 29 (1995).

Because of defense counsel's failure to adequately assist Defendant with

necessary investigation preplea, his plea in this case must be considered to have been both unknowing and unintelligent and therefore invalid. Defendant argued in his Motion to Withdraw, filed immediately after his sentencing, that his attorney never adequately counseled him about possible defenses. Defendant felt he had no choice but to plead guilty. If counsel had competently investigated potential or even adequately discussed viable defenses with Defendant, Defendant would not have felt compelled to plead guilty.

B. Under the Totality of Circumstances Defendant's Plea of Guilty Was Involuntary.

In order to be constitutionally valid, a guilty plea must be knowingly and voluntarily entered. *Love v. State*, 99 Nev. 147, 659 P.2d 876 (1983). *See also, Bryant v. State*, 102 Nev. 268 (1986); *Baal v. State*, 106 Nev. 69, 787 P.3d 391 (1990).

Even though a plea of guilty is considered to be presumptively valid, *Wynn v. State*, 96 Nev. 673, 615 P.2d 946 (1980), Defendant submits in this case that he easily met his burden of proof and shows that the instant plea is not valid for numerous reasons. The Defendant has had a lengthy history of mental problems. He was committed to Rawson-Neal Psychiatric Hospital in January of 2019 and not discharged until April of 2019. (A.A. 09-11), (A.A. 122-125) The Defendant

unfortunately did not ever have a good relationship with his counsel. He attempted to express his concerns to the Court many times. (A.A. 15-20), (A.A. 38-49), (A.A. 50-52), (A.A. 88-90) It is respectfully submitted that counsel's failure to effectively investigate and prepare with his client before the plea aggravated Defendant's concerns. Defendant's waiver of his right to trial must be strictly construed because the totality of circumstances suggest his plea was neither intelligent or voluntary.

C. Denial of the Defendant's Motion to Withdraw Guilty Plea Was Manifestly Unjust Because the Defendant Made a Credible Assertion of Factual Innocence.

The assertion that Defendant has a 'credible factual innocence' claim combined with his allegations of involuntariness and lack of full understanding at his plea make this a strong case for reversal. NRS 176.165 allows a guilty plea to be set aside to correct a manifest injustice. A fundamental miscarriage of justice occurs when the defendant can assert that he has been harmed in such a way that it is unfair to bind him to his plea.

D. Substantial Doubt as to Defendant's Competency at Time of the Plea Is an Important Factor Supporting Withdrawal of Defendant's Plea of Guilty.

Defendant submits a significant factor in the totality of circumstances

surrounding his plea of guilty was his reduced mental capacity. It is respectfully submitted even though he was adjudged competent on April 12, 2019, (A.A. 12-13) Defendant had just been released from Rawson-Neal Psychiatric Hospital after he had a previous competency evaluation on January 18, 2019, where it had been determined Defendant was not competent to stand trial under NRS 178.425. (A.A. 08)

Despite the subsequent finding of competency on April 12, 2019, Defendant submits there were still many red flags suggesting his competency was still a serious issue when he pled guilty a few days after being released from the mental hospital in April of 2019. (A.A. 14)

Because it was such a short time interval since he had been released from a psychiatric facility, it is respectfully submitted counsel should have been extremely cautious about pushing a reluctant, mentally fragile, Defendant to take a deal. Because of Defendant's antagonistic behavior, counsel should have considered filing another Motion for Competency and asked for another short continuance before Defendant pled guilty. The Court should have delayed his plea *sua sponte* without a motion from counsel. Mr. Nunn's actions just before his decision to plead could be considered at best equivocal. His actions suggested he was in a state of borderline

competency, if not in a highly irregular or irrational state of mind.

Again, considering the totality of the circumstances, it is apparent Defendant Nunn entered a hasty, ill advised plea which occurred after he just got out of a mental hospital, and while he was greatly dissatisfied with his appointed counsel. Not surprisingly, just a few days after he entered that plea and was sentenced, he sought to withdraw the plea. (A.A. 217-226)

In *Melchor-Gloria v. State*, 99 Nev.174, 660 P.2d 109 (1983), the Nevada Supreme Court held that issue of whether a defendant was competent to enter a plea is governed by a reasonable doubt standard. Defendant respectfully submits there was clearly a reasonable doubt as to Defendant's competency to plead guilty in this case and therefore he should have been able to withdraw that plea.

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REVOKED THE DEFENDANT'S PROBATION, WRONGLY ACCEPTING DEFENDANT'S STIPULATION WITHOUT FULLY CONSIDERING MITIGATING EVIDENCE AVAILABLE IN THE RECORD.

Defendant concedes that revocation of probation must be reviewed under a

discretionary standard. The Nevada Supreme Court noted in *Lewis v. State*, 90 Nev. 436, 529 P.2d 796 (1974):

“In considering the standard to be applied in revoking probation, the law is well established that revocation of probation is within the exercise of the trial court’s broad discretionary power and such an action will not be disturbed in the absence of a clear showing of abuse of that discretion. *Pickens v. State of Texas*, 497 F.2d 981, 982 (5th Cir. 1974); *United States v. Lara*, 472 F.2d 128, 129 (9th Cir. 1972); 18 U.S.C.A. 3651 (the equivalent federal statute to NRS 176.215).

Evidence beyond a reasonable doubt is not required to support a court’s discretionary order revoking probation. The evidence and facts must reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.” *Pickens v. State of Texas*, *supra*; *Bernal-Zazueta v. United States*, 225 F.2d 64, 68 (9th Cir. 1955). *Id.* 438 (Emphasis added)

The Defendant, acting without adequate understanding of his rights regarding his conviction, or his rights to challenge the revocation, chose to stipulate to the facts of the revocation. (A.A. 227-232) The Court wrongly accepted the Stipulation of the Defendant and revoked him. The Defendant was then sentenced to 12 to 36 months. (A.A. 230)

Defendant now argues that the conviction in this case, no.: C-18-336184-1, should have been found to be invalid, because the plea was invalid. (See, Argument 1) Therefore the Defendant should not have been revoked and then incarcerated.

The Court having erred in proceeding on the revocation then erred by not having a meaningful hearing where witnesses could present evidence. There was abundant evidence of mitigation available to the Court and counsel. It is therefore respectfully submitted the Court abused its discretion when it revoked the Defendant by Stipulation. The revocation Order should therefore be reversed. (A.A. 78-79)

**III. THE ACCUMULATION OF ERROR IN THIS CASE REQUIRES
REVERSING DEFENDANT'S CONVICTION AND SETTING ASIDE
HIS UNLAWFUL CONVICTION AND REVERSING THE WRONGFUL
REVOCATION OF PROBATION.**

The multiple errors in this case led to Defendant's conviction being wrongly sustained despite his attempt to withdraw his invalid plea. That then led to the wrongful revocation of probation.

The accumulation of errors in this case require reversal of the Judgment of Conviction and his unlawful incarceration following the revocation of his probation.

It can be argued that even considered separately, the errors which occurred were of such a magnitude that they each require reversal. But it is clear, when viewed cumulatively, the case for reversal is overwhelming. *Daniel v. State*, 119 Nev. 498, 78 P.3d 890 (2003). *See also, Sipsas v. State*, 102 Nev. at 123, 216 P.2d at 235 (1986), stating: "The accumulation of error is more serious than either isolated breach, and resulted in the denial of a fair trial."

The substantive issues in this appeal are related. The denial of the Motion to Withdraw the Guilty Plea led to the revocation. This led to a substantial sentence. The Defendant has suffered a serious punishment of imprisonment. Defendant was denied a zealous, competent defense at each critical stage of the case, that is, the preplea investigation and preparation and at the revocation hearing when his liberty was at stake.

Prejudice may result from the cumulative impact of multiple errors. *Cooper v. Fitzharris*, 586 F.2d 1325, 1333 (9th Cir. 1978) (*en banc*), cert. denied, 440 U.S. 970; *Harris by and through Ramseyer v. Wood*, 61 F.3d 1432 (9th Cir. 1995).

It has been held that relevant factors to consider in evaluating a claim of cumulative error are [1] whether the issue of guilt is close, [2] the quantity and

Steven D. Grierson

1 **REQT**

2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No.: 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 terry.jackson.esq@gmail.com
9 *Counsel for Sammie Nunn*

6 **EIGHTH JUDICIAL DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 **STATE OF NEVADA,**

9 **Plaintiff,**

10 **v.**

11 **SAMMIE NUNN,**
12 **#1226304,**
13 **Defendant.**

Case No.: **C-18-336184-1**

Dept. No.: **XVIII**

HEARING REQUESTED

14 **DEFENSE REQUEST FOR APPOINTMENT OF INVESTIGATOR**

15
16 COMES NOW the Defendant, SAMMIE NUNN, by and through counsel, TERRENCE M.
17 JACKSON, ESQ., and moves this Court to enter an Order appointing an investigator to assist
18 counsel to aid Defendant in his *pro per* Petition for Writ of Habeas Corpus filed on January 24,
19 2020, set for hearing on June 16, 2020.

20 This Motion is further based upon the accompanying Points and Authorities incorporated
21 herein and such further facts as will come before the Court on a hearing of this Motion.

22 Respectfully submitted this 17th day of April, 2020.

23 /s/ Terrence M. Jackson

24 **TERRENCE M. JACKSON, ESQ.**
25 Nevada Bar No.: 00854
26 Law Office of Terrence M. Jackson
27 624 South Ninth Street
28 Las Vegas, NV 89101
T: 702.386.0001 / F: 702.386.0085
terry.jackson.esq@gmail.com
Counsel for Sammie Nunn

1 **POINTS AND AUTHORITIES**

2
3 The Defendant in his *Pro Per* Petition filed on January 24, 2020, alleges he is "factually
4 innocent" of the charge of battery with a deadly weapon. The Defendant claims that an eye witness
5 to the altercation, Mr. McConnell, will testify that the Defendant was acting lawfully in self-defense
6 during the alleged incident.

7 An investigator is needed to subpoena this eyewitness to testify at the evidentiary hearing set
8 for June 16, 2020 at 9:00 a.m. *Ake v. Oklahoma*, 470 U.S. 68 (1985) and *Widdis v. State*, 968 P.2d
9 1165 (1998), provides an indigent should have necessary expert services. Wherefore, Defendant
10 respectfully requests he be granted an investigator to interview and subpoena the witness necessary
11 for the evidentiary hearing on June 16, 2020.

12 Respectfully submitted this 17th day of April, 2020.

13
14
15 /s/ Terrence M. Jackson

16 TERRENCE M. JACKSON, ESQ.

17 Nevada Bar No.: 00854

18 Law Office of Terrence M. Jackson

19 624 South Ninth Street

20 Las Vegas, NV 89101

21 T: 702-386-0001 / F: 702-386-0085

22 terry.jackson.esq@gmail.com

23
24 *Counsel for Sammie Nunn*

character of error, and[3] the gravity of the crime charged. *Mulder v. State*, 116 Nev. 1, 17, 992, P.2d 845, 854-55 (2000).

CONCLUSION

The Defendant, Sammie Nunn, respectfully submits for all the reasons stated herein that the defendant's conviction should be reversed, based on the foregoing. Nunn's conviction is unconstitutional under federal and state constitutions. Good cause exists for consideration of these claims. Mr Nunn's judgement of conviction must therefore be vacated.

The Nevada Supreme Court has held that a Post-Conviction Habeas Petitioner "is entitled to a post-conviction Evidentiary Hearing when he asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief." *McConnell*, 125 Nev. 243, 212 P.3d at 314. In the instant matter, Nunn has asserted a claim, which, based on the foregoing, is clearly supported by specific factual allegations that would entitle him to relief. If not immediately granted, alternatively, this court should grant Nunn an evidentiary hearing to resolve his claims of actual innocence.

Sad Declarations Declarant subject to the Penalty of Perjury.

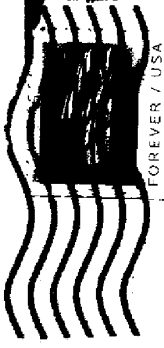
Dated May 3, 2021


Petitioner

Sammie Nunn III
Printed Name

Sammie Nunn #1226304
SDCC
P.O. Box 208
Indian Springs, NV 89070

LAS VEGAS NV 890
5 MAY 2021 PM 3 L



PLEASE PRESS FIRMLY

Steven D Giverson
Clerk of the Court
200 Lewis Avenue
3rd floor
Las Vegas, NV 89155-1160

89101-530000

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Sammie Nunn,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-21-835110-W
Department 21

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on May 24, 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 7th day of SEPTEMBER, 2021, at the hour of 1:30 o'clock for further proceedings.

Dated this 24th day of May, 2021



District Court Judge
EF9 B4F 155C 28C4
Tara Clark Newberry
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5	
6 Sammie Nunn, Plaintiff(s)	CASE NO: A-21-835110-W
7 vs.	DEPT. NO. Department 21
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.

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
known addresses on 5/25/2021

16 Sammie Nunn	#1226304
	SDCC
17	P.O. Box 208
18	Indian Springs, NV, 89070
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 JOHN NIMAN
6 Deputy District Attorney
7 Nevada Bar #014408
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 SAMMIE NUNN,
10 #2751864

Petitioner,

-vs-

CASE NO: A-21-835110-W

DEPT NO: XXI

13 THE STATE OF NEVADA,

14 Respondent.

15 **STATE'S RESPONSE TO PETITIONER'S PRO PER**
16 **THIRD PETITION FOR WRIT OF HABEAS CORPUS**

17 DATE OF HEARING: SEPTEMBER 7, 2021
18 TIME OF HEARING: 1:30 PM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the
20 attached Points and Authorities in Response to Petitioner's Pro Per Third Petition for Writ of
21 Habeas Corpus.

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

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\\CLARKCOUNTYDA.NET\CRM\CASE2\2018\269\54\201826954C-RSPN-(SAMMIE NUNN)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 14, 2018, Sammie Nunn (hereinafter "Petitioner") was charged by way
4 of Indictment with one count of BATTERY WITH USE OF A DEADLY WEAPON
5 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481) and
6 one count of BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS
7 200.481) for his actions on or between May 27, 2018 and June 3, 2018.

8 On June 6, 2019, pursuant to a Guilty Plea Agreement ("GPA"), Petitioner pled guilty
9 to one count of BATTERY WITH USE OF A DEADLY WEAPON. As part of the GPA, the
10 parties agreed that the State would not oppose probation, and would not oppose Petitioner's
11 release on house arrest after the entry of Petitioner's plea. The parties also stipulated to an
12 underlying sentence of two (2) to five (5) years in the Nevada Department of Corrections
13 ("NDOC"). GPA at 1. The Court canvassed Petitioner and accepted Petitioner's guilty plea.

14 On June 11, 2019, Petitioner was adjudged guilty and was sentenced to a minimum of
15 forty-eight (48) to one hundred twenty (120) months in NDOC. Petitioner's sentence was
16 suspended, and Petitioner was placed on probation for a term not to exceed five (5) years.
17 Petitioner was also placed on house arrest.

18 On July 10, 2019, a Violation Report was filed, indicating Petitioner had violated the
19 terms of his probation by failing to abide by the curfew restrictions and by consuming
20 controlled substances. While the revocation proceedings were ongoing, on July 15, 2019,
21 Petitioner filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. Petitioner's
22 Motion to Dismiss Counsel was granted, for the limited purpose of having alternate counsel to
23 determine whether there were grounds to withdraw Petitioner's guilty plea.

24 On October 10, 2019, Petitioner filed a Post-Conviction Petition for Writ of Habeas
25 Corpus (his "first Petition"). In his first Petition, Petitioner raised a single argument: a new
26 witness, E. Mekonnen, could testify to Petitioner's actual innocence. First Petition at 5-6. The
27 State filed its Response to Petitioner's first Petition on October 16, 2019. The Court denied
28 Petitioner's first Petition on November 5, 2019.

1 On November 14, 2019, the Court conducted a hearing regarding the revocation of
2 Petitioner's probation. Following arguments by the parties, the Court found that Petitioner
3 violated his probation and revoked the same. The Court modified Petitioner's sentence of
4 imprisonment to thirty-six (36) to one hundred twenty (120) months in NDOC. The Court gave
5 Petitioner five hundred ten (510) days credit for time served. Petitioner's Amended Judgment
6 of Conviction was filed on November 18, 2019.

7 On November 21, 2019, Petitioner noticed his appeal from his Amended Judgment of
8 Conviction. On March 5, 2021, the Nevada Court of Appeals affirmed Petitioner's Amended
9 Judgment of Conviction. Remittitur issued on March 31, 2021.

10 On January 24, 2020 (while his direct appeal was pending), Petitioner filed his second
11 Post-Conviction Petition for Writ of Habeas Corpus (his "second Petition"). The State filed its
12 Response and Motion to Dismiss that second Petition on February 25, 2020. On March 10,
13 2020, Petitioner – through counsel – filed a "Supplementary Motion for Evidentiary Hearing."
14 The State filed its Response to that Supplementary Motion on March 31, 2020.

15 On April 29, 2021, Petitioner filed a Notice of Appeal, referencing the Court's denial
16 of Petitioner's first Petition on November 5, 2019. The Nevada Supreme Court dismissed
17 Petitioner's appeal as untimely on May 21, 2021. Remittitur issued on June 17, 2021.

18 On May 10, 2021, Petitioner filed another Notice of Appeal, alleging that he had
19 expired his sentence, and asking the Nevada Supreme Court to release him from custody. The
20 Nevada Supreme Court dismissed that appeal on May 26, 2021, citing a lack of any appealable
21 order. Remittitur issued on June 22, 2021.

22 On May 24, 2021, Petitioner filed his third Post-Conviction Petition for Writ of Habeas
23 Corpus (his "third Petition"). The State now responds, as follows:

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1 **STATEMENT OF FACTS**

2 On May 27, 2018, Prince Alidu (the "Victim") was at Your Stop Liquor, a convenience
3 store, when he was approached by Petitioner, who asked Victim for fifty (50) cents. Grand
4 Jury Transcript, Tuesday, November 6, 2018 ("GJT") at 16. Victim told Petitioner he did not
5 have the money, after which Petitioner's female friend angrily approached Victim. Id.
6 Petitioner then came back to Victim and called him names. Id. at 17. Victim asked Petitioner
7 to leave him alone, and Petitioner left to the nearby apartment complex. Id. A few minutes
8 later, however, Petitioner came back with a tool in his hand. Id. Victim described the tool as
9 being approximately one foot long. Id. at 17-18. Petitioner hit Victim in the face with the tool,
10 resulting in significant bleeding and an eventual scar. Id.

11 Officer Vesperas was in the area of Your Stop Liquor on May 27, 2018, when he was
12 flagged down by a pedestrian. GJT at 6-7. That pedestrian directed Vesperas's attention to
13 another individual down the street. Id. at 7. The individual to which Vesperas was directed had
14 a foot-long wrench in his hand. Id. Vesperas identified that individual as Petitioner. Id. at 8.

15 Petitioner told Vesperas that he had been attacked and had hit an attacker with the
16 wrench. GJT at 8. However, Vesperas did not notice any injuries that would require medical
17 attention, and Petitioner did not complain of any such injuries. Id. at 9.

18 Officer Hawkins also responded to the area of Your Stop Liquor on May 27, 2018. GJT
19 at 11. Hawkins came into contact with Victim, who was bleeding from his head. Id. at 12.
20 Victim identified Petitioner to Hawkins at the scene of the interaction. Id.

21 On June 3, 2018, Victim was again outside Your Stop Liquor when he was approached
22 by Petitioner. GJT at 20. At this encounter, Petitioner pulled out a handgun and again hit the
23 Victim over the head. Id. at 21.

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ARGUMENT

I. THE INSTANT PETITION IS PROCEDURALLY BARRED

A. Petitioner's Third Petition is Time-Barred Under NRS 34.726

Pursuant to NRS 34.726(1), "a Petition that challenges the validity of a judgment or sentence must be filed *within 1 year of the entry of the judgment of conviction...*" (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing Petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a Habeas Petition that was filed two days late despite evidence presented by the Defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to consider whether a Defendant's post-conviction Petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction Habeas Petitions is mandatory," noting:

Habeas Corpus Petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

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1 Id. Additionally, that Court noted that procedural bars "cannot be ignored [by the district court]
2 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
3 has granted no discretion to the district courts regarding whether to apply the statutory
4 procedural bars; the rules *must* be applied.

5 Petitioner's Judgment of Conviction was filed on June 20, 2019. While Petitioner *did*
6 challenge his Amended Judgment of Conviction via appeal, that challenge dealt with the
7 propriety of Petitioner's revocation from probation – it did not challenge the validity of
8 Petitioner's conviction – therefore, the one-year time-bar began to run at the time Petitioner's
9 original Judgment of Conviction was filed. As such, Petitioner had until June 20, 2020, to file
10 a timely post-conviction Habeas Petition. NRS 34.726. The instant Petition was not filed until
11 May 24, 2021, nearly a full year after Petitioner's time had expired. Therefore, pursuant to
12 NRS 34.726, Petitioner's Third Petition is untimely, and should be dismissed.

13 **B. Petitioner's Claims are Successive, or Constitute an Abuse of the Writ**

14 NRS 34.810(2) explains:

15 A second or successive Petition *must* be dismissed if the Judge or Justice
16 determines that it fails to allege new or different grounds for relief and that the
17 prior determination was on the merits or, if new and different grounds are
18 alleged, the Judge or Justice finds that the failure of the Petitioner to assert those
grounds in a prior Petition constituted an abuse of the Writ.

19 (emphasis added). Second or successive Petitions are Petitions that either fail to allege new or
20 different grounds for relief and the grounds have already been decided on the merits or that
21 allege new or different grounds but a Judge or Justice finds that the Petitioner's failure to assert
22 those grounds in a prior Petition would constitute an abuse of the Writ. Second or successive
23 Petitions will only be decided on the merits if the Petitioner can show good cause and
24 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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1 The Nevada Supreme Court has stated: "Without such limitations on the availability of
2 post-conviction remedies, prisoners could Petition for relief in perpetuity and thus abuse post-
3 conviction remedies. In addition, meritless, successive and untimely Petitions clog the court
4 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
5 The Nevada Supreme Court recognizes that "[u]nlike initial Petitions which certainly require
6 a careful review of the record, successive Petitions may be dismissed based solely on the face
7 of the Petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
8 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
9 the Writ to wait to assert it in a later Petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
10 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

11 As stated *supra*, this is Petitioner's *third* post-conviction Habeas Petition. Each of
12 Petitioner's first two Petitions were previously adjudicated on the merits; therefore, the instant
13 Petition is successive, and must be dismissed. NRS 34.810(2). Further, to the extent that
14 Petitioner raises new claims that were not raised in Petitioner's earlier Petitions, Petitioner's
15 third Petition amount to an abuse of the Writ, and must likewise be dismissed. Id.

16 Because the instant Petition is successive and/or an abuse of the Writ, this Court need
17 not reach the merits of the instant Petition, and should instead summarily dismiss the same.

18 **C. Petitioner's Claims are Subject to the Law of the Case Doctrine**

19 "The law of a first appeal is law of the case on all subsequent appeals in which the facts
20 are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
21 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the
22 case cannot be avoided by a more detailed and precisely focused argument subsequently made
23 after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of
24 the case doctrine, issues previously decided on direct appeal may not be reargued in a Habeas
25 Petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing McNelson v. State, 115
26 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

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1 In the instant Petition, Petitioner raises a number of claims that have previously been
2 rejected. First, Petitioner raises a claim under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194
3 (1963), alleging that the State withheld the record of Victim's civil proceeding against
4 Petitioner. See Third Petition at "3"- "4".¹ However, this claim is substantially the same as
5 Petitioner's claim raised in his second Petition. See Second Petition at 2-7 (quoting transcripts
6 from Victim's civil proceeding against Petitioner, and alleging that Petitioner was unaware of
7 the same at the time he agreed to the GPA). Therefore, as this substantive claim has already
8 been rejected, it is barred by the law of the case doctrine, and should be dismissed here.

9 Petitioner proceeds to include various allegations of ineffective assistance of – and
10 irreconcilable differences with – plea counsel. Third Petition at "8." However, these
11 allegations have previously been raised, and have been rejected. See, e.g., Second Petition at
12 11-12. As those claims were previously adjudicated, they cannot be re-raised in the instant
13 Petition, merely couched in a different way. Hall, 91 Nev. at 316, 535 P.2d at 799.

14 Petitioner also includes a claim of a "fundamental miscarriage of justice." Third Petition
15 at "12." However, that phrase is exclusive to claims of actual innocence – which Petitioner has
16 expressly raised, and which has been rejected, as part of Petitioner's Second Petition. See
17 Second Petition at 8-10. Therefore, this claim is likewise barred by the law of the case doctrine
18 and res judicata.²

19 **D. Petitioner's Claims Fall Outside the Scope of Habeas Review**

20 Under NRS 34.810(1),

21 The court *shall* dismiss a Petition if the court determines that:

22 (a) The Petitioner's conviction was upon a plea of guilty or guilty but
23 mentally ill and the Petition is not based upon an allegation that the plea was
24 involuntarily or unknowingly entered or that the plea was entered without
effective assistance of counsel.

25 ...
unless the court finds both cause for the failure to present the grounds and actual
prejudice to the Petitioner.

26
27 ¹ The State references the pages as labeled by Petitioner, as the organization of the instant Petition renders
citation to the actual page numbers unreliable.

28 ² Furthermore, the State would note that, by Petitioner's own legal standard, Petitioner's claim falls short, as a
claim of actual innocence requires "new evidence"; however, the evidence upon which Petitioner relies is not
new. Compare Third Petition at "16" with Second Petition at 8-10.

1 (emphasis added).

2 Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a
3 guilty plea and claims of ineffective assistance of trial and appellate counsel must first be
4 pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct
5 appeal must be pursued on direct appeal, or they will be *considered waived in subsequent*
6 *proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis
7 added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222
8 (1999)). “A court must dismiss a Habeas Petition if it presents claims that either were or could
9 have been presented in an earlier proceeding, unless the court finds both cause for failing to
10 present the claims earlier or for raising them again and actual prejudice to the Petitioner.”
11 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by
12 Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond
13 the scope of Habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29
14 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

15 Petitioner readily acknowledges that he pled guilty. See, e.g., Third Petition at 2.
16 Therefore, pursuant to statute, the only claims available for post-conviction review include
17 allegations that the guilty plea was not knowingly and voluntarily entered into, and ineffective
18 assistance of plea counsel. NRS 34.810(1)(a). However, Petitioner raises a number of claims
19 that do not fall under these categories: first, Petitioner alleges prosecutorial misconduct
20 throughout the plea process. See Third Petition at “4.” He also alleges Court error and/or bias.
21 See id. at “7.” Petitioner includes a claim of a “fundamental miscarriage of justice.” See id. at
22 “12.” Petitioner also lists claims of “further misconduct by the State,” “manufacturing
23 evidence,” and “three false documents.” Id. at “16.” Petitioner finally makes a claim of “new
24 evidence.” Id. at “18.” None of these claims deal with the validity of the guilty plea, nor do
25 they touch upon plea counsel’s effectiveness.³

26
27 ³ To the extent that this Court determines that any of these claims does, in fact, touch upon the permissible
28 allegations under NRS 34.810(1), the State would note that Petitioner’s guilty plea has already been expressly
upheld on review. See Findings of Fact, Conclusions of Law, and Order, filed on November 20, 2019 (in Case
No. C-18-336184-1) at 2-4.

1 Because Petitioner's claims fall outside the limited scope of Habeas review, the State
2 respectfully submits they should be dismissed.

3 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE⁴**

4 To establish good cause, a Petitioner must show that an impediment external to the
5 defense prevented his compliance with the applicable procedural rule. Clem v. State, 119 Nev.
6 615, 621, 81 P.3d 521, 525 (2003). An example of a qualifying impediment might be where
7 the factual or legal basis for the claim was not reasonably available at the time of the procedural
8 default. Id. The Clem Court explained that Petitioners "cannot attempt to manufacture good
9 cause[.]" Id. at 621, 81 P.3d at 526. Other examples of good cause include interference by
10 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,
11 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). To find good cause there must be a "substantial
12 reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
13 506 (2003) (internal quotation omitted).

14 Petitioner does not attempt to substantively argue good cause according to the legal
15 standard. Instead, Petitioner merely interjects the words "good cause" when labeling his
16 various claims. See, e.g., Third Petition at "12." To the extent that Petitioner seeks to rely on
17 his allegedly "new evidence" to establish good cause, the State would note that this evidence
18 has previously been referenced by Petitioner. Furthermore, Petitioner does not assert *that* this
19 evidence was not reasonably available at the time he filed any of his earlier proceedings, much
20 less does he specify *how* it was unavailable. See generally, Third Petition.

21 Because Petitioner cannot demonstrate good cause, Petitioner cannot overcome the
22 procedural bar to the instant Petition, and the same should be dismissed.

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28 ⁴ In order to conserve judicial resources, the State will only address whether Petitioner has shown good cause;
however, if this Court finds Petitioner has established good cause, the State respectfully requests an opportunity
to address whether Petitioner can demonstrate prejudice.

1 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

2 The Nevada Supreme Court has held that if a Petition can be resolved without
3 expanding the record, then no Evidentiary Hearing is necessary. Marshall v. State, 110 Nev.
4 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231. A
5 Defendant is entitled to an Evidentiary Hearing if his Petition is supported by specific factual
6 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
7 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
8 Nev. 498, 503, 686 P.2d 222, 225 (holding that “[a] Defendant seeking post-conviction relief
9 is not entitled to an Evidentiary Hearing on factual allegations belied or repelled by the
10 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
11 existed at the time the claim was made.” Mann at 354, 46 P.3d at 1230 (2002). It is improper
12 to hold an Evidentiary Hearing simply to make a complete record. See Riker, 121 Nev. at 234,
13 112 P.3d at 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial
14 Judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an
15 incorrect basis for an Evidentiary Hearing.”).

16 The instant Petition is procedurally barred pursuant to NRS 34.810(2). Petitioner has
17 failed to demonstrate good cause to overcome the procedural bar. Because the instant Petition
18 is procedurally barred under various statutory rules, the State respectfully submits this Court
19 must dismiss the instant Petition; therefore, there is no reason to conduct an Evidentiary
20 Hearing.

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1 **CONCLUSION**

2 For the forgoing reasons, the State respectfully requests that Petitioner's Pro Per Third
3 Petition for Writ of Habeas Corpus be DISMISSED as procedurally barred, and Petitioner's
4 Request for Evidentiary Hearing be DENIED.

5 DATED this 6th day of July, 2021.

6 Respectfully submitted,

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

10 BY /s/ John Niman
11 JOHN NIMAN
12 Deputy District Attorney
13 Nevada Bar #014408

14 **CERTIFICATE OF MAILING**

15 I hereby certify that service of the above and foregoing was made this 6th day of July,
2021 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 SAMMIE NUNN, BAC# 1226304
17 SOUTHERN DESERT CORRECTIONAL CENTER
18 P. O. BOX 208
INDIAN SPRINGS, NV 89070

19 BY /s/ E. Goddard
20 E. Goddard
21 Secretary - District Attorney's Office
22
23
24
25
26

27 18F09747X/erg/L-4
28



**DISTRICT COURT
CLARK COUNTY, NEVADA

Sammie Nunn, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

Case No.: A-21-835110-W

Department 21

NOTICE OF HEARING

Please be advised that the Plaintiff's Amended Supplementary Motion to Amended Second Habeas Corpus Filed within One Year of JOC on January 24, 2020 in the above-entitled matter is set for hearing as follows:

Date: September 28, 2021

Time: 1:30 PM

Location: RJC Courtroom 16C
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JOHN NIMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #14408**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

9 **SAMMIE NUNN,**
10 **#2751864**

Petitioner,

11 **-vs-**

12 **THE STATE OF NEVADA,**

13 **Respondent.**

CASE NO: A-21-835110-W

DEPT NO: XXI

14 **STATE'S RESPONSE AND MOTION TO STRIKE AMENDED SUPPLEMENTARY**
15 **MOTION TO AMENDED SECOND HABEAS CORPUS FILED WITHIN ONE**
16 **YEAR OF JUDGMENT OF CONVICTION ON JANUARY 24, 2020**

17 **DATE OF HEARING: SEPTEMBER 28, 2021**
18 **TIME OF HEARING: 1:30 PM**

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the
20 attached Response and Motion to Strike Defendant's "Amended Supplementary Motion To
21 Amended Second Habeas Corpus Filed Within one Year of Judgment of Conviction On
22 January 24, 2020" ("Amended Motion").

23 This Motion 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.

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20 Nevada Supreme Court dismissed that appeal on May 26, 2021, citing a lack of any appealable
21 order. Remittitur issued on June 22, 2021.

22 On May 24, 2021, Petitioner filed his third Post-Conviction Petition for Writ of Habeas
23 Corpus (his "Third Petition"). The State responded on July 6, 2021.

24 On August 27th, 2021, Defendant filed the instant Amended Motion. The State's
25 response, and motion to strike the Amended Motion, follows.

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I. DEFENDANT'S AMENDED MOTION SHOULD BE STRIKEN

After a defendant files a Petition for Writ of Habeas Corpus, if the Petition is not summarily dismissed, the Court may order the State to respond to the Petition. NRS 34.745. If a petitioner requests counsel, and the Court appoints counsel, counsel may file a supplement to the Petition within 30 days. NRS 34.750(3) The State may file a response to the supplemental Petition within 15 days. Id. A petitioner may respond if the State files a motion to dismiss within 15 days of service of the motion to dismiss. NRS 34.750(4). No further pleadings may be filed except as ordered by the court. NRS 34.750(5).

Petitioner filed his Petition on May 24, 2021. The State responded on July 6, 2021. Counsel has not been appointed in this matter, and the State did not file a motion to dismiss the action. Therefore, no further pleadings may be filed except as ordered by this Court. The Court has not ordered, and Petitioner has neither sought nor been granted permission to file, any responsive pleading to the State's response to the Petition.

Even assuming the State's invocation of the procedural bars in its Response were construed as a motion to dismiss, the pleading was mailed to Petitioner on July 6, 2021, and he did not respond until August 16, 2021 (at the earliest). State's Response at 12 (Certificate of Mailing); Amended Motion at 1 (Dated August 16, 2021 but filed August 27, 2021.) Assuming the earlier date controls, Petitioner "responded" 41 days after the State's Response was mailed, well outside of the 15 days permitted by statute.

Accordingly, the Amended Motion should be stricken as it is not permitted pursuant to statute.

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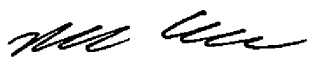
1 **CONCLUSION**

2 For the forgoing reasons, the State respectfully requests that Petitioner's Amended
3 Motion be STRICKEN.

4 DATED this 1st day of September, 2021.

5 Respectfully submitted,


6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #1565

9 BY  for
10 JOHN NIMAN
11 Deputy District Attorney
12 Nevada Bar #14408

13 **CERTIFICATE OF MAILING**

14 I hereby certify that service of the above and foregoing was made this 1st day of
15 September, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 SAMMIE NUNN, NDC #1226304
17 PIOCHE CONSERVATION CAMP (PCC)
18 1 HARDTIMES RD.
19 P.O. BOX 509
20 PIOCHE, NV, 89043

21 BY 
22 Secretary for the District Attorney's Office
23
24
25
26
27

28 18F09747X/JN/ckb/L4

Heather L. Hines
CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JOHN NIMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #014408**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **SAMMIE NUNN,**
10 **#2751864**

11 **Petitioner,**

CASE NO: A-21-835110-W

12 **-vs-**

DEPT NO: XXI

13 **THE STATE OF NEVADA,**

14 **Respondent.**

15 **FINDINGS OF FACT, CONCLUSIONS OF**
16 **LAW AND ORDER**

17 **DATE OF HEARING: SEPTEMBER 7, 2021**
18 **TIME OF HEARING: 1:30 PM**

19 **THIS CAUSE** having come on for hearing before the Honorable TARA CLARK-
20 **NEWBERRY**, District Judge, on the 7th day of September, 2021, the Petitioner not being
21 present, proceeding in pro per, the Respondent being represented by STEVEN B. WOLFSON,
22 Clark County District Attorney, by and through LAURA GOODMAN, Chief Deputy District
23 Attorney, and the Court having considered the matter, including briefs, transcripts, and
24 documents on file herein, now therefore, the Court makes the following findings of fact and
25 conclusions of law:

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On June 6, 2019, pursuant to a Guilty Plea Agreement (“GPA”), Petitioner pled guilty to one count of BATTERY WITH USE OF A DEADLY WEAPON. As part of the GPA, the parties agreed that the State would not oppose probation and would not oppose Petitioner’s release on house arrest after the entry of Petitioner’s plea. The parties also stipulated to an underlying sentence of two (2) to five (5) years in the Nevada Department of Corrections (“NDOC”). GPA at 1. The Court canvassed Petitioner and accepted Petitioner’s guilty plea.

On July 10, 2019, a Violation Report was filed, indicating Petitioner had violated the terms of his probation by failing to abide by the curfew restrictions and by consuming controlled substances. While the revocation proceedings were ongoing, on July 15, 2019, Petitioner filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. Petitioner's Motion to Dismiss Counsel was granted, for the limited purpose of having alternate counsel to determine whether there were grounds to withdraw Petitioner's guilty plea.

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1 On November 14, 2019, the Court conducted a hearing regarding the revocation of
2 Petitioner's probation. Following arguments by the parties, the Court found that Petitioner
3 violated his probation and revoked the same. The Court modified Petitioner's sentence of
4 imprisonment to thirty-six (36) to one hundred twenty (120) months in NDOC. The Court gave
5 Petitioner five hundred ten (510) days credit for time served. Petitioner's Amended Judgment
6 of Conviction was filed on November 18, 2019.

7 On November 21, 2019, Petitioner noticed his appeal from his Amended Judgment of
8 Conviction. On March 5, 2021, the Nevada Court of Appeals affirmed Petitioner's Amended
9 Judgment of Conviction. Remittitur issued on March 31, 2021.

10 On January 24, 2020 (while his direct appeal was pending), Petitioner filed his second
11 Post-Conviction Petition for Writ of Habeas Corpus (his "second Petition"). The State filed its
12 Response and Motion to Dismiss that second Petition on February 25, 2020. On March 10,
13 2020, Petitioner – through counsel – filed a "Supplementary Motion for Evidentiary Hearing."
14 The State filed its Response to that Supplementary Motion on March 31, 2020.

15 On April 29, 2021, Petitioner filed a Notice of Appeal, referencing the Court's denial
16 of Petitioner's first Petition on November 5, 2019. The Nevada Supreme Court dismissed
17 Petitioner's appeal as untimely on May 21, 2021. Remittitur issued on June 17, 2021.

18 On May 10, 2021, Petitioner filed another Notice of Appeal, alleging that he had
19 expired his sentence, and asking the Nevada Supreme Court to release him from custody. The
20 Nevada Supreme Court dismissed that appeal on May 26, 2021, citing a lack of any appealable
21 order. Remittitur issued on June 22, 2021.

22 On May 24, 2021, Petitioner filed his third Post-Conviction Petition for Writ of Habeas
23 Corpus (his "Third Petition"). The State responded on July 6, 2021.

24 On August 27th, 2021, Defendant filed the instant Amended Motion. The
25 State's responded, and moved to strike the Amended Motion, on September 1, 2021. On
26 September 7, 2021, this Court decided the Third Petition and Amended Motion as follows.

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1 **FACTUAL FINDINGS**

2 On May 27, 2018, Prince Alidu (the "Victim") was at Your Stop Liquor, a convenience
3 store, when he was approached by Petitioner, who asked Victim for fifty (50) cents. Grand
4 Jury Transcript, Tuesday, November 6, 2018 ("GJT") at 16. Victim told Petitioner he did not
5 have the money, after which Petitioner's female friend angrily approached Victim. Id.
6 Petitioner then came back to Victim and called him names. Id. at 17. Victim asked Petitioner
7 to leave him alone, and Petitioner left to the nearby apartment complex. Id. A few minutes
8 later, however, Petitioner came back with a tool in his hand. Id. Victim described the tool as
9 being approximately one foot long. Id. at 17-18. Petitioner hit Victim in the face with the tool,
10 resulting in significant bleeding and an eventual scar. Id.

11 Officer Vesperas was in the area of Your Stop Liquor on May 27, 2018, when he was
12 flagged down by a pedestrian. GJT at 6-7. That pedestrian directed Vesperas's attention to
13 another individual down the street. Id. at 7. The individual to which Vesperas was directed had
14 a foot-long wrench in his hand. Id. Vesperas identified that individual as Petitioner. Id. at 8.

15 Petitioner told Vesperas that he had been attacked and had hit an attacker with the
16 wrench. GJT at 8. However, Vesperas did not notice any injuries that would require medical
17 attention, and Petitioner did not complain of any such injuries. Id. at 9.

18 Officer Hawkins also responded to the area of Your Stop Liquor on May 27, 2018. GJT
19 at 11. Hawkins came into contact with Victim, who was bleeding from his head. Id. at 12.
20 Victim identified Petitioner to Hawkins at the scene of the interaction. Id.

21 On June 3, 2018, Victim was again outside Your Stop Liquor when he was approached
22 by Petitioner. GJT at 20. At this encounter, Petitioner pulled out a handgun and again hit the
23 Victim over the head. Id. at 21.

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1 ANALYSIS

2 **I. THE THIRD PETITION IS PROCEDURALLY BARRED**

3 Pursuant to NRS 34.726(1), "a Petition that challenges the validity of a judgment or
4 sentence must be filed *within 1 year of the entry of the judgment of conviction...*" (Emphasis
5 added). The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
6 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
7 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
8 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
9 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

10 The one-year time limit for preparing Petitions for post-conviction relief under NRS
11 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
12 the Nevada Supreme Court rejected a Habeas Petition that was filed two days late despite
13 evidence presented by the Defendant that he purchased postage through the prison and mailed
14 the Notice within the one-year time limit.

15 Furthermore, the Nevada Supreme Court has held that the District Court has a *duty* to
16 consider whether a Defendant's post-conviction Petition claims are procedurally barred. State
17 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
18 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
19 conviction Habeas Petitions is mandatory," noting:

20 Habeas Corpus Petitions that are filed many years after conviction are an
21 unreasonable burden on the criminal justice system. The necessity for a
22 workable system dictates that there must exist a time when a criminal conviction
is final.

23 Id. Additionally, that Court noted that procedural bars "cannot be ignored [by the District
24 Court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
25 Court has granted no discretion to the District Courts regarding whether to apply the statutory
26 procedural bars; the rules *must* be applied.

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1 Petitioner's Judgment of Conviction was filed on June 20, 2019. While Petitioner *did*
2 challenge his Amended Judgment of Conviction via appeal, that challenge dealt with the
3 propriety of Petitioner's revocation from probation – it did not challenge the validity of
4 Petitioner's conviction – therefore, the one-year time-bar began to run at the time Petitioner's
5 original Judgment of Conviction was filed. As such, Petitioner had until June 20, 2020, to file
6 a timely post-conviction Habeas Petition. NRS 34.726. The instant Petition was not filed until
7 May 24, 2021, nearly a full year after Petitioner's time had expired. Therefore, pursuant to
8 NRS 34.726, Petitioner's Third Petition is untimely, and should be dismissed absent a showing
9 of good cause and prejudice.

10 **A. Petitioner's Claims are Successive, or Constitute an Abuse of the Writ**

11 NRS 34.810(2) explains:

12 A second or successive Petition *must* be dismissed if the Judge or Justice
13 determines that it fails to allege new or different grounds for relief and that the
14 prior determination was on the merits or, if new and different grounds are
15 alleged, the Judge or Justice finds that the failure of the Petitioner to assert those
16 grounds in a prior Petition constituted an abuse of the Writ.

16 (emphasis added). Second or successive Petitions are Petitions that either fail to allege new or
17 different grounds for relief and the grounds have already been decided on the merits or that
18 allege new or different grounds, but a Judge or Justice finds that the Petitioner's failure to
19 assert those grounds in a prior Petition would constitute an abuse of the Writ. Second or
20 successive Petitions will only be decided on the merits if the Petitioner can show good cause
21 and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

22 The Nevada Supreme Court has stated: "Without such limitations on the availability of
23 post-conviction remedies, prisoners could Petition for relief in perpetuity and thus abuse post-
24 conviction remedies. In addition, meritless, successive and untimely Petitions clog the Court
25 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
26 The Nevada Supreme Court recognizes that "[u]nlike initial Petitions which certainly require
27 a careful review of the record, successive Petitions may be dismissed based solely on the face
28 of the Petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,

1 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
2 the Writ to wait to assert it in a later Petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
3 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

4 As stated *supra*, this is Petitioner's *third* post-conviction Habeas Petition. Each of
5 Petitioner's first two Petitions were previously adjudicated on the merits; therefore, the instant
6 Petition is successive, and must be dismissed. NRS 34.810(2). Further, to the extent that
7 Petitioner raises new claims that were not raised in Petitioner's earlier Petitions, Petitioner's
8 third Petition amount to an abuse of the Writ and must likewise be dismissed. Id.

9 Because the instant Petition is successive and/or an abuse of the Writ, this Court need
10 not reach the merits of the instant Petition and summarily dismisses the same.

11 **B. Petitioner's Claims are Subject to the Law of the Case Doctrine**

12 "The law of a first appeal is law of the case on all subsequent appeals in which the facts
13 are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
14 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the
15 case cannot be avoided by a more detailed and precisely focused argument subsequently made
16 after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of
17 the case doctrine, issues previously decided on direct appeal may not be reargued in a Habeas
18 Petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing McNelson v. State, 115
19 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

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1 In the instant Petition, Petitioner raises a number of claims that have previously been
2 rejected. First, Petitioner raises a claim under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194
3 (1963), alleging that the State withheld the record of Victim's civil proceeding against
4 Petitioner. See Third Petition at "3"- "4".¹ However, this claim is substantially the same as
5 Petitioner's claim raised in his second Petition. See Second Petition at 2-7 (quoting transcripts
6 from Victim's civil proceeding against Petitioner, and alleging that Petitioner was unaware of
7 the same at the time he agreed to the GPA). Therefore, as this substantive claim has already
8 been rejected, it is barred by the law of the case doctrine and is dismissed here.

9 Petitioner proceeds to include various allegations of ineffective assistance of – and
10 irreconcilable differences with – plea counsel. Third Petition at "8." However, these
11 allegations have previously been raised, and have been rejected. See, e.g., Second Petition at
12 11-12. As those claims were previously adjudicated, they cannot be re-raised in the instant
13 Petition, merely couched in a different way. Hall, 91 Nev. at 316, 535 P.2d at 799.

14 Petitioner also includes a claim of a "fundamental miscarriage of justice." Third Petition
15 at "12." However, that phrase is exclusive to claims of actual innocence – which Petitioner has
16 expressly raised, and which has been rejected, as part of Petitioner's Second Petition. See
17 Second Petition at 8-10. Therefore, this claim is likewise barred by the law of the case doctrine
18 and res judicata.²

19 C. Petitioner's Claims Fall Outside the Scope of Habeas Review

20 Under NRS 34.810(1),

21 The Court *shall* dismiss a Petition if the Court determines that:

22 (a) The Petitioner's conviction was upon a plea of guilty or guilty but
23 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.

24 ... unless the Court finds both cause for the failure to present the grounds and actual
25 prejudice to the Petitioner.

26 ¹ The Court references the pages as labeled by Petitioner, as the organization of the instant Petition renders
27 citation to the actual page numbers unreliable.

28 ² Petitioner fails to demonstrate actual innocence, as a claim of actual innocence requires "new evidence";
however, the evidence upon which Petitioner relies is not new. Compare Third Petition at "16" with Second
Petition at 8-10.

1 (emphasis added).

2 Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a
3 guilty plea and claims of ineffective assistance of trial and appellate counsel must first be
4 pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct
5 appeal must be pursued on direct appeal, or they will be *considered waived in subsequent*
6 *proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis
7 added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222
8 (1999)). “A Court must dismiss a Habeas Petition if it presents claims that either were or could
9 have been presented in an earlier proceeding, unless the Court finds both cause for failing to
10 present the claims earlier or for raising them again and actual prejudice to the Petitioner.”
11 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by
12 Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond
13 the scope of Habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29
14 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

15 Petitioner readily acknowledges that he pled guilty. See, e.g., Third Petition at 2.
16 Therefore, pursuant to statute, the only claims available for post-conviction review include
17 allegations that the guilty plea was not knowingly and voluntarily entered into, and ineffective
18 assistance of plea counsel. NRS 34.810(1)(a). However, Petitioner raises a number of claims
19 that do not fall under these categories: first, Petitioner alleges prosecutorial misconduct
20 throughout the plea process. See Third Petition at “4.” He also alleges Court error and/or bias.
21 See id. at “7.” Petitioner includes a claim of a “fundamental miscarriage of justice.” See id. at
22 “12.” Petitioner also lists claims of “further misconduct by the State,” “manufacturing
23 evidence,” and “three false documents.” Id. at “16.” Petitioner finally makes a claim of “new
24 evidence.” Id. at “18.” None of these claims deal with the validity of the guilty plea, nor do
25 they touch upon plea counsel’s effectiveness.³

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28 ³ Moreover, Petitioner’s guilty plea has already been expressly upheld on review. See Findings of Fact, Conclusions of Law, and Order, filed on November 20, 2019 (in Case No. C-18-336184-1) at 2-4.

1 Because Petitioner's claims fall outside the limited scope of Habeas review, they are
2 summarily dismissed.

3 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE**

4 To establish good cause to overcome the procedural bars, a Petitioner must show that
5 an impediment external to the defense prevented his compliance with the applicable procedural
6 rule. Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). An example of a qualifying
7 impediment might be where the factual or legal basis for the claim was not reasonably
8 available at the time of the procedural default. Id. The Clem Court explained that Petitioners
9 "cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Other examples of
10 good cause include interference by State officials and the previous unavailability of a legal or
11 factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). To find good
12 cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State,
13 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotation omitted).

14 Petitioner does not attempt to substantively argue good cause according to the legal
15 standard. Instead, Petitioner merely interjects the words "good cause" when labeling his
16 various claims. See, e.g., Third Petition at "12." To the extent that Petitioner seeks to rely on
17 his allegedly "new evidence" to establish good cause, the evidence is not new and has been
18 referenced in Petitioner's previous pleadings. Furthermore, Petitioner does not assert *that* this
19 evidence was not reasonably available at the time he filed any of his earlier proceedings, much
20 less does he specify *how* it was unavailable. See generally, Third Petition.

21 Because Petitioner cannot demonstrate good cause, Petitioner cannot overcome the
22 procedural bar to the instant Petition, and the Petition is dismissed.

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1 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

2 The Nevada Supreme Court has held that if a Petition can be resolved without
3 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
4 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231. A
5 Defendant is entitled to an evidentiary hearing if his Petition is supported by specific factual
6 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
7 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
8 Nev. 498, 503, 686 P.2d 222, 225 (holding that “[a] Defendant seeking post-conviction relief
9 is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”).
10 “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at
11 the time the claim was made.” Mann at 354, 46 P.3d at 1230 (2002). It is improper to hold an
12 evidentiary hearing simply to make a complete record. See Riker, 121 Nev. at 234, 112 P.3d
13 at 1076 (2005) (“The District Court considered itself the ‘equivalent of . . . the trial Judge’ and
14 consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for
15 an evidentiary hearing.”).

16 The instant Petition is procedurally barred for the reasons previously stated. Petitioner
17 has failed to demonstrate good cause to overcome the procedural bars. Because the instant
18 Petition is procedurally barred under various statutory rules, there is no reason to conduct an
19 evidentiary hearing.

20 **IV. DEFENDANT’S AMENDED MOTION IS STRIKEN**

21 After a Defendant files a Petition for Writ of Habeas Corpus, if the Petition is not
22 summarily dismissed, the Court may order the State to respond to the Petition. NRS 34.745. If
23 a Petitioner requests counsel, and the Court appoints counsel, counsel may file a supplement
24 to the Petition within 30 days. NRS 34.750(3) The State may file a response to the
25 supplemental Petition within 15 days. Id. A Petitioner may respond if the State files a motion
26 to dismiss within 15 days of service of the motion to dismiss. NRS 34.750(4). No further
27 pleadings may be filed except as ordered by the Court. NRS 34.750(5).

28 ///

1 Petitioner filed his Petition on May 24, 2021. The State responded on July 6, 2021.
2 Counsel has not been appointed in this matter, and the State did not file a motion to dismiss
3 the action. Therefore, no further pleadings may be filed except as ordered by this Court. The
4 Court has not ordered, and Petitioner has neither sought nor been granted permission to file,
5 any responsive pleading to the State's response to the Petition.

6 Even assuming the State's invocation of the procedural bars in its Response were
7 construed as a motion to dismiss, the pleading was mailed to Petitioner on July 6, 2021, and
8 he did not respond until August 16, 2021 (at the earliest). State's Response at 12 (Certificate
9 of Mailing); Amended Motion at 1 (Dated August 16, 2021 but filed August 27, 2021.)
10 Assuming the earlier date controls, Petitioner "responded" 41 days after the State's Response
11 was mailed, well outside of the 15 days permitted by statute.

12 Accordingly, the Amended Motion is stricken as it is not permitted pursuant to statute.

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DATED this day of September, 2021.

Dated this 20th day of September, 2021

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

28B 778 BD1B 3237
Tara Clark Newberry
District Court Judge

CERTIFICATE OF MAILING

SAMMIE NUNN, BAC# 1226304
SOUTHERN DESERT CORRECTIONAL CENTER
P. O. BOX 208
INDIAN SPRINGS, NV 89070

BY /s/ E. Goddard
E. Goddard
Secretary - District Attorney's Office

18F09747X/erg/L-4

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Sammie Nunn, Plaintiff(s) CASE NO: A-21-835110-W
7 vs. DEPT. NO. Department 21
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/20/2021

16 Department XXI Dept21LC@clarkcountycourts.us
17
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21
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23
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28



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 SAMMIE NUNN,

6 Petitioner,

Case No: A-21-835110-W

Dept No: XXI

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on September 20, 2021, the court entered a decision or order in this matter,
12 a 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 September 23, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 23 day of September 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:
Clark County District Attorney's Office
23 Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:
25 Sammie Nunn # 1226304
P.O. Box 509
26 Pioche, NV 89043

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather L. Himm
CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JOHN NIMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #014408**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **SAMMIE NUNN,**
10 **#2751864**

11 **Petitioner,**

CASE NO: A-21-835110-W

12 **-vs-**

DEPT NO: XXI

13 **THE STATE OF NEVADA,**

14 **Respondent.**

15 **FINDINGS OF FACT, CONCLUSIONS OF**
16 **LAW AND ORDER**

17 **DATE OF HEARING: SEPTEMBER 7, 2021**
18 **TIME OF HEARING: 1:30 PM**

19 **THIS CAUSE** having come on for hearing before the Honorable TARA CLARK-
20 **NEWBERRY**, District Judge, on the 7th day of September, 2021, the Petitioner not being
21 present, proceeding in pro per, the Respondent being represented by STEVEN B. WOLFSON,
22 Clark County District Attorney, by and through LAURA GOODMAN, Chief Deputy District
23 Attorney, and the Court having considered the matter, including briefs, transcripts, and
24 documents on file herein, now therefore, the Court makes the following findings of fact and
25 conclusions of law:

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On June 6, 2019, pursuant to a Guilty Plea Agreement (“GPA”), Petitioner pled guilty to one count of BATTERY WITH USE OF A DEADLY WEAPON. As part of the GPA, the parties agreed that the State would not oppose probation and would not oppose Petitioner’s release on house arrest after the entry of Petitioner’s plea. The parties also stipulated to an underlying sentence of two (2) to five (5) years in the Nevada Department of Corrections (“NDOC”). GPA at 1. The Court canvassed Petitioner and accepted Petitioner’s guilty plea.

On July 10, 2019, a Violation Report was filed, indicating Petitioner had violated the terms of his probation by failing to abide by the curfew restrictions and by consuming controlled substances. While the revocation proceedings were ongoing, on July 15, 2019, Petitioner filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. Petitioner's Motion to Dismiss Counsel was granted, for the limited purpose of having alternate counsel to determine whether there were grounds to withdraw Petitioner's guilty plea.

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1 On November 14, 2019, the Court conducted a hearing regarding the revocation of
2 Petitioner's probation. Following arguments by the parties, the Court found that Petitioner
3 violated his probation and revoked the same. The Court modified Petitioner's sentence of
4 imprisonment to thirty-six (36) to one hundred twenty (120) months in NDOC. The Court gave
5 Petitioner five hundred ten (510) days credit for time served. Petitioner's Amended Judgment
6 of Conviction was filed on November 18, 2019.

7 On November 21, 2019, Petitioner noticed his appeal from his Amended Judgment of
8 Conviction. On March 5, 2021, the Nevada Court of Appeals affirmed Petitioner's Amended
9 Judgment of Conviction. Remittitur issued on March 31, 2021.

10 On January 24, 2020 (while his direct appeal was pending), Petitioner filed his second
11 Post-Conviction Petition for Writ of Habeas Corpus (his "second Petition"). The State filed its
12 Response and Motion to Dismiss that second Petition on February 25, 2020. On March 10,
13 2020, Petitioner – through counsel – filed a "Supplementary Motion for Evidentiary Hearing."
14 The State filed its Response to that Supplementary Motion on March 31, 2020.

15 On April 29, 2021, Petitioner filed a Notice of Appeal, referencing the Court's denial
16 of Petitioner's first Petition on November 5, 2019. The Nevada Supreme Court dismissed
17 Petitioner's appeal as untimely on May 21, 2021. Remittitur issued on June 17, 2021.

18 On May 10, 2021, Petitioner filed another Notice of Appeal, alleging that he had
19 expired his sentence, and asking the Nevada Supreme Court to release him from custody. The
20 Nevada Supreme Court dismissed that appeal on May 26, 2021, citing a lack of any appealable
21 order. Remittitur issued on June 22, 2021.

22 On May 24, 2021, Petitioner filed his third Post-Conviction Petition for Writ of Habeas
23 Corpus (his "Third Petition"). The State responded on July 6, 2021.

24 On August 27th, 2021, Defendant filed the instant Amended Motion. The
25 State's responded, and moved to strike the Amended Motion, on September 1, 2021. On
26 September 7, 2021, this Court decided the Third Petition and Amended Motion as follows.

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1 **FACTUAL FINDINGS**

2 On May 27, 2018, Prince Alidu (the "Victim") was at Your Stop Liquor, a convenience
3 store, when he was approached by Petitioner, who asked Victim for fifty (50) cents. Grand
4 Jury Transcript, Tuesday, November 6, 2018 ("GJT") at 16. Victim told Petitioner he did not
5 have the money, after which Petitioner's female friend angrily approached Victim. Id.
6 Petitioner then came back to Victim and called him names. Id. at 17. Victim asked Petitioner
7 to leave him alone, and Petitioner left to the nearby apartment complex. Id. A few minutes
8 later, however, Petitioner came back with a tool in his hand. Id. Victim described the tool as
9 being approximately one foot long. Id. at 17-18. Petitioner hit Victim in the face with the tool,
10 resulting in significant bleeding and an eventual scar. Id.

11 Officer Vesperas was in the area of Your Stop Liquor on May 27, 2018, when he was
12 flagged down by a pedestrian. GJT at 6-7. That pedestrian directed Vesperas's attention to
13 another individual down the street. Id. at 7. The individual to which Vesperas was directed had
14 a foot-long wrench in his hand. Id. Vesperas identified that individual as Petitioner. Id. at 8.

15 Petitioner told Vesperas that he had been attacked and had hit an attacker with the
16 wrench. GJT at 8. However, Vesperas did not notice any injuries that would require medical
17 attention, and Petitioner did not complain of any such injuries. Id. at 9.

18 Officer Hawkins also responded to the area of Your Stop Liquor on May 27, 2018. GJT
19 at 11. Hawkins came into contact with Victim, who was bleeding from his head. Id. at 12.
20 Victim identified Petitioner to Hawkins at the scene of the interaction. Id.

21 On June 3, 2018, Victim was again outside Your Stop Liquor when he was approached
22 by Petitioner. GJT at 20. At this encounter, Petitioner pulled out a handgun and again hit the
23 Victim over the head. Id. at 21.

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1 ANALYSIS

2 **I. THE THIRD PETITION IS PROCEDURALLY BARRED**

3 Pursuant to NRS 34.726(1), "a Petition that challenges the validity of a judgment or
4 sentence must be filed *within 1 year of the entry of the judgment of conviction...*" (Emphasis
5 added). The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
6 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
7 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
8 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
9 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

10 The one-year time limit for preparing Petitions for post-conviction relief under NRS
11 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
12 the Nevada Supreme Court rejected a Habeas Petition that was filed two days late despite
13 evidence presented by the Defendant that he purchased postage through the prison and mailed
14 the Notice within the one-year time limit.

15 Furthermore, the Nevada Supreme Court has held that the District Court has a *duty* to
16 consider whether a Defendant's post-conviction Petition claims are procedurally barred. State
17 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
18 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
19 conviction Habeas Petitions is mandatory," noting:

20 Habeas Corpus Petitions that are filed many years after conviction are an
21 unreasonable burden on the criminal justice system. The necessity for a
22 workable system dictates that there must exist a time when a criminal conviction
is final.

23 Id. Additionally, that Court noted that procedural bars "cannot be ignored [by the District
24 Court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
25 Court has granted no discretion to the District Courts regarding whether to apply the statutory
26 procedural bars; the rules *must* be applied.

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1 Petitioner's Judgment of Conviction was filed on June 20, 2019. While Petitioner *did*
2 challenge his Amended Judgment of Conviction via appeal, that challenge dealt with the
3 propriety of Petitioner's revocation from probation – it did not challenge the validity of
4 Petitioner's conviction – therefore, the one-year time-bar began to run at the time Petitioner's
5 original Judgment of Conviction was filed. As such, Petitioner had until June 20, 2020, to file
6 a timely post-conviction Habeas Petition. NRS 34.726. The instant Petition was not filed until
7 May 24, 2021, nearly a full year after Petitioner's time had expired. Therefore, pursuant to
8 NRS 34.726, Petitioner's Third Petition is untimely, and should be dismissed absent a showing
9 of good cause and prejudice.

10 **A. Petitioner's Claims are Successive, or Constitute an Abuse of the Writ**

11 NRS 34.810(2) explains:

12 A second or successive Petition *must* be dismissed if the Judge or Justice
13 determines that it fails to allege new or different grounds for relief and that the
14 prior determination was on the merits or, if new and different grounds are
15 alleged, the Judge or Justice finds that the failure of the Petitioner to assert those
16 grounds in a prior Petition constituted an abuse of the Writ.

16 (emphasis added). Second or successive Petitions are Petitions that either fail to allege new or
17 different grounds for relief and the grounds have already been decided on the merits or that
18 allege new or different grounds, but a Judge or Justice finds that the Petitioner's failure to
19 assert those grounds in a prior Petition would constitute an abuse of the Writ. Second or
20 successive Petitions will only be decided on the merits if the Petitioner can show good cause
21 and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

22 The Nevada Supreme Court has stated: "Without such limitations on the availability of
23 post-conviction remedies, prisoners could Petition for relief in perpetuity and thus abuse post-
24 conviction remedies. In addition, meritless, successive and untimely Petitions clog the Court
25 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
26 The Nevada Supreme Court recognizes that "[u]nlike initial Petitions which certainly require
27 a careful review of the record, successive Petitions may be dismissed based solely on the face
28 of the Petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,

**PLEADING
CONTINUES
IN NEXT
VOLUME**