IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 29 2022 08:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DAMIEN ALEXANDER PHILLIPS,
A/K/A TRAVIS ALEXANDER PHILLIPS,
Appellant(s),

vs.

THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS,
Respondent(s),

Case No: A-21-831976-W

Docket No: 84115

RECORD ON APPEAL
VOLUME
1

ATTORNEY FOR APPELLANT
DAMIEN PHILLIPS #1212760,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

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

A-21-831976-W Damien Phillips, Plaintiff(s) vs. Nevada Department of Correction, Defendant(s)

I N D E X

VOLUME:	PAGE NUMBER:
1	1 - 246
2	247 - 491
3	492 - 736
4	737 - 750

A-21-831976-W Damien Phillips, Plaintiff(s)
vs.
Nevada Department of Correction, Defendant(s)

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
1	3/30/2021	Application to Proceed Informa Pauperis (Confidential)	79 - 83
2	10/13/2021	Application to Proceed Informa Pauperis (Confidential)	481 - 487
3	1/18/2022	Case Appeal Statement	731 - 732
4	3/28/2022	Certification of Copy and Transmittal of Record	
4	3/28/2022	District Court Minutes	748 - 750
2	8/21/2021	Findings of Fact, Conclusions of Law and Order	427 - 450
3	3/22/2022	Findings of Fact, Conclusions of Law and Order (Continued)	733 - 736
4	3/22/2022	Findings of Fact, Conclusions of Law and Order (Continuation)	737 - 739
1	5/25/2021	Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative for Appearing by Telephonic or Video Conferences	118 - 126
1	8/4/2021	Motion for Amended Habeas Corpus (Post Conviction) (Continued)	138 - 246
2	8/4/2021	Motion for Amended Habeas Corpus (Post Conviction) (Continuation)	247 - 425
2	10/13/2021	Motion for Appointment of Counsel; Request for Evidentiary Hearing	476 - 479
1	3/30/2021	Motion to Appoint Counsel	75 - 78
1	3/30/2021	Motion to Preserve All Evidence on Case #C-18-335500-1 (Federalize)	73 - 74
3	1/13/2022	Notice of Appeal	727 - 730

A-21-831976-W Damien Phillips, Plaintiff(s)
vs.
Nevada Department of Correction, Defendant(s)

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
2	8/24/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Order	451 - 475
4	3/23/2022	Notice of Entry of Findings of Fact, Conclusions of Law and Order	740 - 747
1	4/7/2021	Notice of Hearing	91 - 91
1	3/30/2021	Notice of Motion	84 - 84
1	3/30/2021	Notice of Motion	85 - 85
1	5/25/2021	Notice of Motion	117 - 117
1	7/8/2021	Notice of Motion	127 - 137
2	8/4/2021	Notice of Motion	426 - 426
2	10/13/2021	Notice of Motion	480 - 480
1	4/1/2021	Order for Petition for Writ of Habeas Corpus	86 - 87
1	4/28/2021	Order for Production of Inmate Damien Alexander Phillips, aka, Travis Alexander Phillips, BAC #1212760	92 - 94
1	4/1/2021	Order to Proceed In Forma Pauperis (Confidential)	88 - 90
2	10/13/2021	Petition for Writ of Habeas Corpus (Postconviction) (Continued)	488 - 491
3	10/13/2021	Petition for Writ of Habeas Corpus (Postconviction) (Continuation)	492 - 726
1	3/30/2021	Petitioner for Writ of Habeas Corpus (Postconviction)	1 - 72
1	5/25/2021	State's Response to Petition For Writ of Habeas Corpus (Post-Conviction); Motion to Preserve Evidence; and Motion to Appoint Counsel	95 - 116

Case No. C-18-335500-1
Dept. No. XXI

FILED
MAR 30 2021
CLERK OF COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

DAMIEN A. PHILLIPS (PRO-SE)
Petitioner,

v.

NEV. DEPT. OF CORRECTIONS
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)

A-21-831976-W
Dept. 23

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: HIGH DESERT STATE PRISON, IN INDIAN SPRINGS, NV.

2. Name and location of court which entered the judgment of conviction under attack: 8TH JUDICIAL DISTR. COURT IN CLARK COUNTY, NV.

3. Date of judgment of conviction: MAY 2020

4. Case number: C-18-335500-1

5. (a) Length of sentence: 24-TO-80 YRS

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

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes ..... No .....✓

If "yes," list crime, case number and sentence being served at this time: .....N/A.....

.....

.....

7. Nature of offense involved in conviction being challenged: .....N/A.....

.....

8. What was your plea? (check one)

(a) Not guilty .....✓

(b) Guilty .....

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

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

.....

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

(a) Jury .....✓

(b) Judge without a jury .....

11. Did you testify at the trial? Yes .....No .....✓

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

13. If you did appeal, answer the following:

(a) Name of court: .....NEVADA SUP. COURT.....

(b) Case number or citation: .....78270.....

(c) Result: .....CONVICTION AFFIRMED.....

(d) Date of result: .....FILED MARCH 18, 2020.....

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

14. If you did not appeal, explain briefly why you did not: N/A

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

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

(a) (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No ✓

(5) Result: N/A

(6) Date of result: N/A

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

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

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No ✓

(5) Result: N/A

(6) Date of result: N/A

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

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

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

(1) First petition, application or motion? Yes ..... No ..✓..

Citation or date of decision: ..N/A.....

(2) Second petition, application or motion? Yes ..... No ..✓..

Citation or date of decision: ..N/A.....

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

Citation or date of decision: ..N/A.....

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

.....

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

(a) Which of the grounds is the same: ..YES, IT WAS THE ISSUES WITHIN SENTENCING

.....

(b) The proceedings in which these grounds were raised: ..NEW SENTENCING HRNG., DUE TO ERRONEOUS J.O.C.

.....

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

.....

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

Procedural History

Phillips and other co-defendants were arrested on August 9th, 2018 for several Bank Robberies, along with other counts/charges.

Phillips invoked his 60 day speedy trial rights and the court complied.

Phillips was found guilty in December of 2018. Phillips appealed, and the conviction was affirmed with finality on May 6th, 2020.

Phillips now brings this instant petition.

U.S. Const. 5th, 6th, 14th Amend. - INEFFECTIVE ASSISTANCE OF COUNSEL (Federalize)

Pursuant To: JONES -V- WOOD, 114 F 3d. 1002 (1997) and, STRICKLAND -V- WASHINGTON, 466 U.S. 668 (1984) PHILLIPS Asserts Here THAT; "To Establish A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, A PARTY MUST PROVE THAT (1) HIS COUNSELS PERFORMANCE WAS DEFICIENT AND (2) THE DEFICIENT PREJUDICED THE DEFENSE. A COUNSEL'S PERFORMANCE IS DEFICIENT IF, CONSIDERING ALL THE CIRCUMSTANCES, IT FALLS BELOW AN OBJECTIVE STANDARD OF REASONABLENESS MEASURED UNDER PREVAILING PROFESSIONAL NORMS."

AND,

"IN Connection WITH AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM PREJUDICE IS SHOWN WHEN THERE IS A REASONABLE PROBABILITY THAT, ABSENT Counsel's ERRORS, THE FACTFINDER WOULD HAVE HAD A REASONABLE DOUBT RESPECTING GUILT."

PHILLIPS, URGES THAT IN REGARDS TO THE SECTIONS MENTIONED HEREIN, THIS PETITIONS, ITS PLAIN & CLEAR THAT COUNSEL'S ERRORS CAUSED PHILLIPS TO HAVE AN UNFAIR TRIAL, BASED ON THE REASONS ALREADY MENTIONED HERE.

PHILLIPS URGES THE COURT to VACATE THE ENTIRE CONVICTION OR GRANT PETITIONER A NEW TRIAL, OR AN EVIDENTIARY HEARING.

U.S CONST. 6TH AM. - INEFFECTIVE ASSISTANCE OF COUNSEL (FEDERALIZE)

HERE PHILLIPS NOW BRINGS THIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. UNDER STRICKLAND -V- WASHINGTON, 466 US. 668 (1984). PHILLIPS DOES DISPLAY SEVERAL WAYS IN WHICH HIS TRIAL COUNSEL WAS INEFFECTIVE.

(a). - FAILURE TO INVESTIGATE MR. PHILLIPS' CASE IN THE PRE TRIAL STAGES (HOMICK -V- STATE, 913 P. 2d 1280, BIG POND -V- STATE, 692 P. 2d 1288, LOVE -V- STATE, 109 NEV. 1136 (1993)

(b). - TRIAL COUNSEL FAILED TO PRESENT A MEANINGFUL DEFENSE AT TRIAL. CHAMBERS -V- MISSISSIPPI, 410 U.S. 284 (1993)

(C). - TRIAL COUNSEL FAILED TO MOVE TO SEVER PHILLIPS' CHARGES FROM ANTHONY BARR'S CHARGES AND THE CASE ITSELF.

(d). - TRIAL COUNSEL FAILED TO MOVE FOR A DNA TEST OF THE CLOTHING ITEMS, AND OTHER ITEMS POLICE IMPOUNDED.

(e). - TRIAL COUNSEL FAILED TO HAVE THE BB GUN FINGER-PRINTED.

(f). - TRIAL COUNSEL FAILED TO THOROUGHLY EXPLAIN THE PLEA BARGAIN TO PHILLIPS, BECAUSE IT'S POSSIBLE PHILLIPS MAY HAVE ACCEPTED THE PLEA DEAL.

(g). - TRIAL COUNSEL FAILED TO CHALLENGE THE FATALLY FLAWED COMPLAINT.

(h). - TRIAL COUNSEL FAILED TO OBJECT TO ERRONEOUS JURY INSTRUCTION #, "THE REASONABLE DOUBT JURY INSTRUCTIONS."

(i) TRIAL COUNSEL FAILED TO NOTICE THAT PHILLIPS' "J.O.C." WAS ERRONEOUS.

(J).- TRIAL COUNSEL FAILED TO PUT COURT ON NOTICE OF ALIBI WITNESSES, AND FAILED TO CALL ALIBI WITNESSES.

(K).- TRIAL COUNSEL FAILED TO SHARE DISCOVERY INFORMATION WITH PHILLIPS.

(L).- TRIAL COUNSEL FAILED TO INVESTIGATE SEARCH WARRANTS AND PHILLIPS' 4TH AM VIOLATION CLAIMS

(M). TRIAL COUNSEL FAILED TO OBJECT TO PROSECUTIONS LEADING QUESTIONS AT PRELIM AND TRIAL.

UNDER STRICKLAND -V- WASHINGTON, 466 U.S. 668 (1984), MR. PHILLIPS URGES THAT HIS CONVICTION MUST BE REVERSED.

PURSUANT TO THE U.S. CONSTITUTION, 6TH AM.- RIGHT TO COUNSEL- THE ACCUSED SHALL ENJOY THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN ALL CRIMINAL PROSECUTIONS.

(Q).- PHILLIPS CLAIMS THAT HIS TRIAL COUNSEL FAILED TO DUTIFULLY INVESTIGATE ALL OF THE COUNTS TO THE TWENTY-THREE COUNT CRIMINAL COMPLAINT.

HOW?
BECAUSE PHILLIPS BELIEVES THAT THERE WERE EXTRA COUNTS ON HIS COMPLAINT THAT DID NOT PERTAIN TO [redacted] PHILLIPS AT ALL (SUCH AS THE DISSUADING A WITNESS).

PHILLIPS ALSO ASSERTS THAT HAD HIS TRIAL COUNSEL KEITH BROWER WENT AND INTERVIEWED PHILLIPS' [redacted] ALIBI WITNESSES AND CALLED THEM TO TESTIFY ON PHILLIPS' BEHALF THEN IT COULD'VE PRODUCED A DIFFERENT RESULT AT TRIAL.

By Mr. Brower not calling Phillips' Defense WITNESSES THEN IT HINDERED PHILLIPS' U.S. CONST.- 6TH AMENDMENT - RIGHT TO COMPULSORY CLAUSE; By not CALLING ANY OF PHILLIPS' Witnesses. U.S. -V- SIMPSON, 992 F. 2d 1224 (1993). THIS WOULD'VE CHANGED THE OUTCOME AT TRIAL, SO PHILLIPS URGES THE COURT TO REVERSE HIS CONVICTION.

(b). - PHILLIPS CLAIMS THAT MR. BROWER FAILED TO PUT FORTH ANY DEFENSE AT TRIAL BY NOT CALLING THE ALIBI WITNESSES. PHILLIPS URGES THAT ACCORDING TO CHAMBERS -V- MISSISSIPPI, 410 U.S. 284, THAT THIS CALLS FOR A REVERSAL OF CONVICTION IN LINE WITH THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

(C¹).- PHILLIPS CLAIMS HERE THAT IT AFFECTED HIS RIGHT TO A FAIR TRIAL SINCE PHILLIPS AND BARR WERE TRIED TOGETHER. ALTHOUGH PHILLIPS BELIEVES IT WAS A MISJOINDER, PHILLIPS' TRIAL COUNSEL DIDN'T MOVE TO SEVER THE CO-DEFENDANTS. THE REASON PHILLIPS BELIEVES THAT THE CO-DEFENDANTS SHOULD HAVE BEEN SEVERED IS THAT PHILLIPS CLAIMS HE DID NOT PARTICIPATE IN EACH AND EVERY BANK ROBBERY. SO SOME OF THESE BANK ROBBERY COUNTS PHILLIPS SAT ON TRIAL FOR DID ACTUALLY PREJUDICE PHILLIPS. ALSO, ACCORDING TO CHARTIER -V- STATE BEING THAT TWO SEPERATE CONTRADICTING [redacted] THEORIES COULD ARISE. SO PHILLIPS CASE MUST BE REVERSED BASED ON HOW MR. BROWER'S DEFICIENT PERFORMANCE DID PREJUDICE PHILLIPS.

(C²).- PHILLIPS ASSERTS THAT BY MR. BROWER FAILING TO MOVE FOR SEVERANCE OF THE CHARGES, IT CAUSED PHILLIPS TO BE PREJUDICED AT THE JOINT TRIAL DUE TO THE JOINT [redacted] CHARGES OF ROBBERIES IN WHICH PHILLIPS ~~CLA~~ CLAIMS HE IS ACTUALLY INNOCENT OF. PHILLIPS WAS HELD TO ANSWER FOR CHARGES UNRELATED TO HIM. THIS DID OBSCURE THE CHARGES AGAINST PHILLIPS, AND IT IS UNCERTAIN [redacted] AS FAR AS IF THE JURY'S VERDICT WAS UNANIMOUS. U.S. -V- MOLONEY, 287 F. 3d. 236, AND U.S -V- SAVOIRES, 430 F. 3d 376, U.S. -V- McDERMOTT, 245 F. 3d 133. PHILLIPS CLAIMS THERES NO EVIDENCE LINKING HIM TO COUNTS 10 (4), 6, 7, 9, 10, 12 & 13.

• DNA AND CLOTHING, SUNGLASSES, HATS.

(d.) - PHILLIPS' TRIAL COUNSEL HAS ALSO FAILED TO EXAMINE ITEMS OF EVIDENCE THAT COULD'VE PROVED TO BE EXCULPATORY TO PHILLIPS HAD MR. BROWER HAD THE CLOTHING ITEMS AND SUNGLASSES THE POLICE GATHERED FROM THE RAIDS, DNA TESTED. THE DNA TEST WOULD REVEAL THAT PHILLIPS' DNA ISN'T ON [redacted] THOSE EVIDENTIARY ARTICLES.

AND,

SINCE PHILLIPS' DNA ISN'T ON THE ARTICLES MR. PHILLIPS IS CONFIDENT THAT THOSE EVIDENCIARY ARTICLES WOULD EXCULPATE PHILLIPS TO THE COUNTS THAT THE CLOTHING ITEMS ARE CONNECTED TO.

PHILLIPS URGES THAT THOSE CLOTHING ITEMS WERE NEVER WORN BY HIM. THE FORENSIC TESTING WOULD'VE PROVED PHILLIPS' INNOCENCE. AND THE DNA TEST WOULD PRODUCE NEWLY DISCOVERED EVIDENCE. PHILLIPS NOW REQUESTS A DNA TEST.

• FINGER PRINTS AND THE PNEUMATIC AIR PISTOL

(e). - PHILLIPS' TRIAL COUNSEL FAILED TO HAVE THE BB Gun FINGERPRINTED, AND TESTED, AND PHILLIPS ASSERTS THAT HAD THE BB Gun BEEN FINGERPRINTED THEN IT WOULDN'T SHOW PHILLIPS' FINGER PRINTS OR DNA

HAD MR. BROWER HAD THE PNEUMATIC AIR PISTOL FINGERPRINTED AND THE RESULTS CAME BACK NEGATIVE THEN THE RESULTS AT TRIAL [redacted] WOULD HAVE BEEN DIFFERENT

PHILLIPS URGES THAT HIS TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO PROPERLY PREPARING TO CONFRONT THIS EVIDENCE.

PHILLIPS ALSO ASSERTS THAT HIS TRIAL COUNSEL FAILED TO ADDRESS THIS PNEUMATIC GUN ISSUE IN TRIAL ON THE QUESTIONS OF:

- WHAT EVIDENCE IS THERE TO LINK PHILLIPS TO A GUN OR BOMB?
- WAS THE PNEUMATIC GUN EVEN OPERABLE?
- IS A PNEUMATIC GUN OR TOY GUN OR WATER GUN REALLY A DEADLY WEAPON (ACCORDING TO THE LAW)?

IF PHILLIPS' TRIAL COUNSEL WOULD'VE ADDRESSED THESE VERY IMPORTANT QUESTIONS THEN IT COULD'VE RESULTED IN OVER HALF OF PHILLIPS' CURRENT SENTENCE BEING NULL, VOID, AND NON EXISTENT.

A CHARGE OF ROBBERY IS ONE THING, BUT TO ILLEGALLY ADD A DEADLY WEAPON TO EACH COUNT CHANGED THE ENTIRE DYNAMICS OF THE CASE BECAUSE IT CHANGES THE ELEMENTS THAT HAVE TO MEET UP WITH THE AGGRAVATORS. ALSO, IT CHANGED THE VERDICT FORMS, and ALSO CHANGES THE SENTENCES PHILLIPS RECIEVED. AND All OF THIS IS BECAUSE OF FAISELY ADDED AGGRAVATORS. - SEE BENNETT -V- 8TH JUD. DIST. CT., 121 P. 3d. 605 (2005).

SINCE MR. BROWER FAILED TO ADDRESS THESE ISSUES IT AFFECTED PHILLIPS' RIGHT TO A FAIR TRIAL AND PHILLIPS' CONVICTION SHOULD BE REVERSED, AND A NEW TRIAL SHOULD BE AWARDED.

(F') PHILLIPS URGES HERE THAT HIS TRIAL COUNSEL WAS INEFFECTIVE WHEN MR. BROWER FAILED TO THOROUGHLY EXPLAIN TO PHILLIPS, THE DETAILS AND COLLATERAL EFFECTS OF IF PHILLIPS DOES/DOES NOT ACCEPT THE PLEA BARGAIN. MCMANN -V- RICHARDSON, 397 U.S. 759.

(2) PHILLIPS WAS OFFERED SEVERAL DEALS THROUGH OUT THE DURATION OF THE CASE. PHILLIPS LEARNED THAT MR. BROWER DIDN'T COMMUNICATE ALL OF THE DEALS TO HIM THAT THE STATE OFFERED.

(3) PHILLIPS ASSERTS THAT TRIAL COUNSEL DIDN'T DISCLOSE CERTAIN EVIDENCE TO HIM IN ORDER TO INFLUENCE [redacted] WHAT DECISION PHILLIPS MAKES.

MR. BROWER'S NEGLIGENCE DURING THE PLEA BARGAIN [redacted] PROCESS DID VIOLATE PHILLIPS' DUE PROCESS OF LAWS PURSUANT TO U.S. CONST. 5TH AND 14TH AM.

(G). - U.S CONST. 5th, 6th, and 14th AM - DUE PROCESS OF LAWS. TRIAL COUNSEL FAILED TO CHALLENGE THE FATALLY FLAWED COMPLAINT.

PHILLIPS CLAIMS THAT MR. BROWER FAILED TO OBJECT TO THE DEFICIENCIES WITHIN THE COMPLAINT IN WHICH THERE WERE SEVERAL

SUCH AS:

① FAILURE TO GIVE NOTICE

② DOUBLE JEOPARDY

③ IT VIOLATED "SEPARATION OF POWERS" CLAUSE WHEN THE STATE COMBINED TWO [redacted] STATUTES TO MAKE UP ONE CHARGE.

(h). - TRIAL COUNSEL FAILED TO OBJECT TO THE WORDS ADDED TO [redacted] THE REASONABLE DOUBT JURY INSTRUCTIONS.

PHILLIPS URGES THAT ACCORDING TO NRS 175.211 THAT ITS ONLY ONE REASONABLE DOUBT INSTRUCTION TO BE GIVEN TO A JURY, THE JURY, ANY JURY IN THE STATE OF NEVADA.

MR. BROWER FAILED TO OBJECT AND CALL OUT THE ERROR. CAGE -V- LOISIANA, 498 U.S. 34

MR. BROWER'S ERROR'S AFFECTED PHILLIPS' RIGHT TO DUE PROCESS, AND RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS, THIS CASE SHOULD BE REVERSED. CAGE -V- LOUISIANA, 498 U.S. 34

[redacted] (1). TRIAL COUNSEL FAILED [redacted] TO NOTIFY: PHILLIPS, THE JUDGE, AND THE STATE (THOSE ARE THE PARTIES).

PHILLIPS BELIEVES THAT HIS JUDGEMENT OF CONVICTION ERRORS SHOULD'VE BEEN DISCOVERED AND OBJECTED TO BY COUNSEL. YET SINCE COUNSEL DIDN'T FIGURE IT OUT, THE COURT, SUA SPONTE, RESENTENCED PHILLIPS. MR BROWER WAS INEFFECTIVE FOR NOT RECOGNIZING THAT ALTHOUGH MR. PHILLIPS

WAS SENTENCED TO 30-100 YEARS, BUT THE J.O.C. REFLECTED 45-150 YEARS, AND ALTHOUGH THE COURT "SUA SPONTE" CORRECTED THIS ERROR IT DID STILL HAVE AN EFFECT ON PHILLIPS.

HOW?

BECAUSE PHILLIPS' J.O.C. READ OFF A CHARGE THAT PHILLIPS WASN'T CHARGED WITH ("DISSUADING A WITNESS"). PHILLIPS WAS MISTAKENLY SENTENCED FOR THIS CRIME WHEN HE WASN'T EVER CHARGED WITH IT, AND WASN'T SUPPOSED TO BE CONVICTED OF IT AT ALL. AND SO IT ULTIMATELY HINDERED HIS RIGHT TO A FAIR TRIAL SINCE THE JURY THOUGHT HE DID IT, AND HE GOT SENTENCED FOR IT.

AND, THE NEVADA SUPREME COURT MISTAKENLY BELIEVED THAT PHILLIPS DISSUADED A WITNESS (SEE EXHIBIT = ORDER OF AFFIRMATION). THE NEVADA SUPREME COURT LISTS IT IN THE OPINION.

HOWEVER, PHILLIPS ASSERTS HERE THAT IT VIOLATED HIS U.S. CONST. RIGHT TO DUE PROCESS OF LAWS, AND RIGHT TO AN IMPARTIAL JURY BECAUSE IT VERY WELL DID PREJUDICE PHILLIPS AT TRIAL FOR THE JURY TO BELIEVE THAT PHILLIPS THREATENED WITNESSES.

IT PREJUDICED PHILLIPS TO HAVE ANY OF HIS ORIGINAL, OR, AMENDED J.O.C., OR NEV. SUP. CT. CASE # 78270 AFFIRMANCE ORDER TO REFLECT THAT PHILLIPS WASN'T TRIED OR CONVICTED OF IT ALL.

ALTHOUGH THIS COULD BE WROTE OFF AS A CLERICAL ERROR, THE POINT IS IT TAINTED PHILLIPS'

JURY. SO PHILLIPS SO PHILLIPS' TRIAL COUNSEL SHOULD'VE BROUGHT THIS UP AT SENTENCING. AND APPELLANT COUNSEL, MS. STEWART, WAS ALSO INEFFECTIVE FOR NOT ADDRESSING THIS POINT HINDERING PHILLIPS' RIGHT TO U.S. CONST. 5th, 6th, AND 14th AM. (DUE PROCESS, RIGHT TO FAIR TRIAL, RIGHT TO EQUAL PROTECTION OF LAWS.).

(J).- TRIAL COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO PUT THE COURT ON NOTICE ABOUT PHILLIPS' ALIBI WITNESSES, AND THE FAILURE TO CALL THE ALIBI WITNESSES TO TESTIFY.

U.S. CONST. 6TH AM.- IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT... TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR.

- WASHINGTON -V- TEXAS, 388 U.S. 14 (1967)
- CHAMBERS -V- MISSISSIPPI, 410 U.S. 284 (1973)

PHILLIPS URGES THAT HAD TRIAL COUNSEL ACTUALLY CALLED HIS ALIBI WITNESSES (SEE EXHIBIT "A" AFFIDAVIT OF WITNESSES), THEN THEY WOULD HAVE TESTIFIED TO THE FOLLOWING: (SEE STATEMENTS ATTATCHED TO AFFIDAVITS).

PHILLIPS URGES THAT THIS EVIDENCE COULD'VE PRODUCED A DIFFERENT RESULT. AT TRIAL

(K).- PHILLIPS URGES THAT THE ERRORS OF TRIAL COUNSEL AND COUNSEL'S FAILURE TO REVEAL THE

DISCOVERY TO PHILLIPS IN ORDER FOR PHILLIPS TO BE ABLE TO LEGITIMATELY PARTICIPATE IN HIS OWN DEFENSE.

PHILLIPS CLAIMS HERE THAT HE HAS AN ABSOLUTE RIGHT TO PARTICIPATE IN HIS OWN DEFENSE, SO HIS ATTORNEY SHOULD'VE HONORED PHILLIPS' EFFORTS TO AID AND ASSIST IN THE CASE, AND AS A RESULT IT CAUSED A MINOR BREAKDOWN IN COMMUNICATION BETWEEN MR. PHILLIPS AND MR. BROWER.

(L). - U.S. CONST. 4th, 5th, AND 14th AM.² THE US CONST FOURTH AMENDMENT WHICH PROTECTS THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS AGAINST UNREASONABLE SEARCH AND SEIZURE. THIS ALSO AFFECTS DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS. (FEDERALIZE)

PHILLIPS NOW ASSERTS HERE THAT THE EVIDENCE SEIZED WAS INADMISSIBLE FRUIT OF THE POISONOUS TREE!

EARLY ON IN THIS CASE, HENDERSON POLICE OBTAINED A WARRANT TO INSTALL A GPS TRACKING DEVICE ONTO AN UNREGISTERED MERCURY GRAND MARQUIS. AROUND AUGUST OF 2018.

PHILLIPS CLAIMS THAT IT'S OUTSIDE THE SCOPE OF THE WARRANTS EXPRESSED GUIDLINES ON THE MANNER OF WHERE THE POLICE ENCROACHED ON PRIVATE PROPERTY TO INSTALL THE GPS. THE WARRANT DOESN'T AUTHORIZE POLICE TO INSTALL THE GPS ON THE VEHICLE WHILE ON PRIVATE PROPERTY.

PHILLIPS ALSO URGES THAT SINCE THE TRACKING DEVICE WAS ILLEGALLY INSTALLED, AND THAT ALL SUBSEQUENT EVIDENCE OBTAINED THEREBY AFTERWARDS WAS INADMISSIBLE IN COURT AND IT VIOLATED PHILLIPS' DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS. WHICH SHOULD REQUIRE PHILLIPS TO BE GRANTED A NEW TRIAL.

(M). - TBD

U.S. CONST.

5th, 6th, 14th AMENDMENTS

BRADY -VS- MARYLAND, 373 U.S. 83

U.S. CONST. 5, 6, 14TH AMENDMENT.
DUE PROCESS OF LAWS, RIGHT TO A FAIR TRIAL.
EQUAL PROTECTION OF LAWS. (FEDERALIZE)

DISCOVERY MATERIALS

PHILLIPS, ASSERTS HERE THAT THE PROSECUTION FAILED TO PROVIDE HIM WITH THE EXCULPATORY EVIDENCE THAT do EXIST IN THIS CASE.

(A) PHILLIPS, URGES THAT UNDER BRADY-V-MARYLAND, 373 U.S. 83 THAT HE WAS ENTITLED TO ANY FORENSIC REPORTS OF TEST RESULTS. SUCH AS: DNA TESTING OF clothing, HATS, SUN GLASSES, ETC., ALSO; FINGERPRINT RESULTS ON THE PNEUMATIC GUN, ALSO; ANY AND ALL INTERVIEWS AND STATEMENTS, DEALS Made WITH JAKARI MILLER.

(B).- PHILLIPS, SEEKS THE EVIDENCE OF THE PROOF OF OTHER SUSPECTS AROUND THE HEIGHT OF 5"5, ROBBING BANK. "[redacted]"

PHILLIPS, ALSO SEEKS THE POLICE'S C.A.D. REPORT OF WHEN THE ROBBERIES WERE FIRST CALLED IN TO THE HENDERSON POLICE.

(C).- PHILLIPS, PRESENTS A MOTION HERE IN, "A MOTION TO PRESERVE" ALL EVIDENCE, FOR ALL APPELLATE AND POST-CONVICTION PURPOSES. THIS INCLUDES: STATEMENTS OF WITNESSES, ALL PHOTOS, VIDEO SURVELLIANCE, DNA REPORTS, FINGERPRINTS TESTS, PLEA BARGAINS MADE WITH ANYONE, CAD REPORTS, JURY VENIRE PANELS STATISTICS, clothing ITEMS, THE PNEUMATIC GUN, HATS, SUNGLASSES, AND ALL EVIDENCE SEIZED OUT OF THE RED GRAND MARQUIS MERCURY. ANY AND ALL PAYMENTS MADE TO WITNESSES.

U.S. CONST.
5TH, 6TH, 14TH, AMENDMENTS
FATALLY FLAWED COMPLAINT

U.S. CONST. 5TH, 6TH, 14TH AM. - DUE PROCESS OF LAWS RIGHT TO A FAIR TRIAL, EQUAL PROTECTION OF LAWS. (FEDERALIZE)

FATALLY FLAWED COMPLAINT

PHILLIPS, CLAIMS HERE THAT THE FATALLY FLAWED COMPLAINT VIOLATED HIS U.S. CONST. DUE PROCESS OF LAWS. BECAUSE, OF VARIOUS REASONS. SUCH AS:

(a). THE COMPLAINT WAS VAGUE AND LACKED SPECIFICITY

(b). FAILURE TO GIVE PROPER NOTICE

(c). THE BLANKET CONSPIRACY CHARGES VIOLATED BRAVERMAN -V- U.S. 317 U.S. 49

(d). PHILLIPS, WAS FALSELY CHARGED, CONVICTED, SENTENCED FOR DISSUADING A WITNESS.

PHILLIPS, URGES THAT HIS CASE SHOULD BE REVERSED BASED UPON THESE ISSUES.

(a). BILL OF PARTICULARS. = PHILLIPS, CLAIMS THAT IT VIOLATED HIS DUE PROCESS OF LAW, AND RIGHT TO A FAIR TRIAL, WHEN HIS COMPLAINT WASN'T SPECIFIC. SINCE THE COMPLAINT LACKED SPECIFICS. IT BLENDED ALL OF THE COUNTS TO THE CASE TO THE POINT THAT IT CONFUSED THE JURY. THIS SHOWS IN HOW THE FALSE CHARGES OF DISSUADING A WITNESS, WOUND UP ON PHILLIPS, J.O.C.

(b). PHILLIPS, COMPLAINT IS FATALLY FLAWED BECAUSE IT FAILED TO DISPLAY EXACTLY WHO DID WHAT. THE VAGUENESS DOESN'T GIVE PHILLIPS, A PROPER NOTICE OF WHAT HE ALONE IS TO DEFEND AT TRIAL. INSTEAD THE COMPLAINT USES ALL INTERCHANGE-ABLE, DISJUNCTIVE LANGUAGE.

NRS. 173.075(1), U.S. -V- DuBo, 186 F.3d 1177 (1999) = IF THE INDICTMENT IS FATALLY FLAWED THE THE DEFENDANT NEED NOT SHOW PREJUDICE FROM THE FLAW TO OBTAIN REVERSAL.

(b). - continued - The Failure To Include The Element of Willfulness Renders An Indictment Constitutionally Defective, And It Is Not Amenable To Harmless Error Review. - (See, Exhibit "B" = Complaint)

(c). - Phillips, claims That The State Used A Blanket Conspiracy Charge Here In This Case. Under Braverman -Vs- U.S. 317 U.S. 49, Phillips, Right To Due Process of Law, Was Violated Because In Phillips, Case The State Used One Conspiracy To Cover A Twenty Three Count Indictment, Which Is Alleged To Have Occurred over A Three Week Period. Which Means That The State claims That It Was A Three Week Long Conspiracy That Embodied Several Conspiracies Since Its Several Crimes Here. Phillips, Convictions Can't Stand Under The Braverman Rule. Because One Conspiracy Doesn't Automatically Entail Several Different Conspiracies. This Is A Structural Error, And It Violates Phillips, U.S. Const. 5, 6, 14th Am. So The Entire Conviction Must Be Reversed For A New Trial. (See, Exhibit "B")

(d). - Phillips, claims Here That His U.S. Const. Right To Due Process Was Violated, BY The State Falsely Charging, Convicting, Sentencing Phillips, For Dissuading A Witness. Because Initially Phillips, Original J.O.C. Did Reflect This Charge of Count 23, And A Subsequent

(d).-(CONT.)- CONVICTION, AND SENTENCE. PHILLIPS, NOW URGES THAT ITS EVIDENT THAT THERE WERE SEVERAL ERRORS OF A MAGNITUDE OF STRUCTURAL ERROR.

As for PARTS (a),(b),(c)- SEE, STATE -Vs- 6TH Jud. Dist. Ct., 114 NEV. 739, NORTON -Vs- Dist. Ct., 128 NEV. 922, BARREN -V- STATE, 99 NEV. 661, JENNINGS -V- STATE, 116 NEV. 488 (2000) STATE -V- HANCOCK, 114 NEV. 161

IT SEEMS HERE THAT THE STATE ABUSED THE PROCESS, IN ITS USE OF THE CONSPIRACY CHARGES.

HOW?

BECAUSE, THE PROSECUTION ROLLED MANY CONSPIRACY THEORIES INTO ONE CONSPIRACY THEORY BECAUSE IN THE TWENTY THREE COUNT INDICTMENT IT SPANS OUT OVER A PERIOD OF APPROX. THREE WEEKS. PHILLIPS, ASSERTS HERE THAT UNDER THE BRAVERMAN RULE, THAT ILLEGAL & UNCONSTITUTIONAL TO CHARGE, CONVICT A DEFENDANT IN SUCH A MANNER WITHOUT SHOWING THE AGREEMENT ELEMENT OF EACH CONSPIRACY. U.S. -V- ALERTA, 96 F. 3d 1230 (1996) THE CONVICTION MUST BE REVERSED!

U.S. CONST.

5th, 6th, 14th AMENDMENTS

DUE PROCESS OF LAWS, RIGHT OF TRIAL TO IMPARTIAL JURY = (FAIR TRIAL)

ACTUALLY INNOCENT ON COUNTS 1, 2, 3, 4

U.S. CONST. 5th, 6th, 14th AMEND.
DUE PROCESS OF LAW, RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS. (FEDERALIZE)
ACTUAL INNOCENCE ON COUNTS 1, 2, 3, 4

PHILLIPS, ASSERTS HERE THAT THERE WAS INSUFFICIENT EVIDENCE TO PROVE COUNTS 3 & 4, ON THE JULY 17th, 2018. BANK ROBBERY. IN THIS INCIDENT THERE WAS ONLY ONE BANDIT, AND PHILLIPS, URGES THAT HE WAS NOT THE 'LONE BANDIT. THEREFORE, PHILLIPS, URGES THAT THIS CONVICTION UPON HIM WAS THE RESULT OF A PREJUDICIAL SPILLOVER OF EVIDENCE. THIS VIOLATED PHILLIPS RIGHT TO A FAIR TRIAL, AND DUE PROCESS OF LAWS. PHILLIPS ALSO URGES THAT SINCE COUNTS 1 & 2, IS PART AND PARCEL OF COUNTS 3 & 4, THEN THAT MEANS THAT PHILLIPS, IS ACTUALLY INNOCENT ON COUNTS 1, 2, 3, 4. AND THESE CONVICTIONS SHOULD BE VACATED! BECAUSE, IT VIOLATES U.S. CONST. 5th, 6th, 14th AM. DUE PROCESS OF LAW, RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS. U.S. -V- SHIPSEY, 363 F.3d 962 (9th CIR. 2004

U.S. CONST. 5th, 6th, 14th AMENDMENTS.....

ACTUALLY INNOCENT OF COUNTS # 14

U.S. CONST. 5TH, 6TH, 14TH AM. (FEDERALIZE)
RIGHT TO A FAIR TRIAL, DUE PROCESS OF LAWS

ACTUAL INNOCENT OF COUNT 14

PHILLIPS, CLAIMS THAT HE IS FALSELY CHARGED WITH A BURGLARY ON COUNT 14. BURGLARY! PHILLIPS, DOES IT DISPUTE THAT HE WENT INSIDE THE SMITH'S GROCERY MARKET. BUT HOWEVER, WHILE INSIDE THE MARKET PHILLIPS didn't do ANYTHING. NOTHING! NO ATTEMPTED CRIME, NO ACTUAL CRIME. DEBATING ON BUYING SOMETHING, BUT DIDN'T AND HE LEFT

AND, SO

PHILLIPS, IS ACTUALLY INNOCENT OF THIS COUNT. THE 3-TO-10 YEAR SENTENCE PHILLIPS, RECEIVED MUST BE VACATED, AND PHILLIPS, SHOULD BE RESENTENCED MINUS THE COUNT 14. IN ORDER TO AVOID A FUNDAMENTAL MISCARRIAGE OF JUSTICE

NRS 175.211

U.S. CONST. 5TH, 6TH, 14TH AM. - DUE PROCESS OF LAW. RIGHT TO A FAIR TRIAL, AND, EQUAL PROTECTION OF LAWS. (FEDERALIZE).

"THE REASONABLE DOUBT JURY INSTRUCTION"

NRS 175.211

PHILLIPS, ASSERTS HERE THAT THE COURT ERRED IN ADDING WORDS, PARAGRAPHS ONTO THE REASONABLE DOUBT JURY INSTRUCTION.

HOW?

BECAUSE IN PHILLIPS, JURY INSTRUCTIONS, THE COURT ADDED THE PRESUMPTION OF INNOCENCE INSTRUCTION ONTO THE REASONABLE DOUBT INSTRUCTION, AND SO NOW PHILLIPS, BELIEVES THAT ACCORDING TO NRS 175.211, THAT THE REASONABLE DOUBT JURY INSTRUCTION IS TO STAND ALONE.

UPON INSPECTION OF NRS 175.211, THERE IS ONLY TO BE ONE REASONABLE DOUBT JURY INSTRUCTION GIVEN IN NEVADA.

HOWEVER,

IN ANALYZING PHILLIPS, TRIAL JURY INSTRUCTIONS, (SEE, EXH. "C") IT'S CLEAR THAT THE COURT DID VIOLATE NRS 175.211 BY ADDING ONTO THE JURY INSTRUCTION FOR REASONABLE DOUBT IN NEVADA.

THEREFORE,

PHILLIPS, IS ULTIMATELY ENTITLED TO A NEW TRIAL, SINCE IT VIOLATED HIS U.S. CONST. RIGHTS 5TH, 6TH, 14TH AM., THE RIGHT TO DUE PROCESS OF LAWS, THE RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS, BECAUSE LEGISLATURE CONSTRUCTED THE STATUTORY LANGUAGE OF THE INSTRUCTION, SO AS NOT TO CONFUSE ANY JURY.

PURSUANT TO: CAGE -V- LOUISIANA, 498 U.S. 39, IN RE: WINSHIP, 397 U.S. 358 (1970) - THE 14TH AM. PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED.

THIS REASONABLE DOUBT STANDARD "PLAYS A VITAL ROLE IN THE AMERICAN SCHEME OF CRIMINAL PROCEDURE": WINSHIP, 397 U.S. 363.

AMONGST OTHER THINGS,
"IT IS A PRIME INSTRUMENT FOR REDUCING THE RISK OF CONVICTIONS RESTING ON FACTUAL ERROR".

AND SO,

AS ANYONE CAN SEE HERE, THAT THERE ARE DEFINITELY FACTUAL DISCREPANCIES IN MR. PHILLIPS, CASE!

THEREFORE,
THIS CASE SHOULD BE OVERTURNED IMMEDIATELY.

U.S. CONST.

CRUEL & UNUSUAL PUNISHMENT

U.S. CONST. 5th, 6th, 14th, 8th AM. (FEDERAL LAW)
IT WAS CRUEL & UNUSUAL PUNISHMENT TO ENHANCE PHILLIPS FOR THE DEADLY WEAPON ON COUNTS 4, 6, 7, 9, 10, 12, 13, 16, 17.

SEE, EXHIBITS "D", "E", "F"

(a). - PHILLIPS, URGES HERE THAT IT WAS CRUEL & UNUSUAL PUNISHMENT TO SENTENCE PHILLIPS, TO A DEADLY WEAPON ENHANCEMENT FOR COUNTS 4, 6, 7, 9, 10, 12, 13, 16, 17, ACCORDING TO BERRY -Vs- STATE, 125 NEV. 265 (2009), BROOKS -V- STATE 124 NEV. 203

PHILLIPS, CLAIMS HERE THAT HE WAS INCORRECTLY CHARGED WITH DEADLY WEAPON ENHANCERS BECAUSE IT WASN'T EVER ANY DEADLY WEAPON USED, SEEN, OR ALLEGED IN COUNTS 4, 6, 7, 9, 10, 12, 13. THIS MAKES PHILLIPS, ACTUALLY INNOCENT HERE. THEREFORE, PHILLIPS, URGES THAT THE DEADLY WEAPON ENHANCEMENT FOR THOSE COUNTS MUST BE VACATED SINCE THESE ALLEGATIONS PREVENTED PHILLIPS FROM HAVING A FAIR TRIAL.

(b). - PHILLIPS, CLAIMS THAT ALTHOUGH IT WAS A TOY GUN FOUND, A PNEUMATIC PISTOL, HOWEVER THE GUN WAS INOPERABLE. AND SO THE JURY MISTAKENLY FOUND THAT IT WAS A DEADLY WEAPON USED.

(c). - PHILLIPS, URGES HERE THAT THE DEADLY WEAPON ENHANCEMENTS ARE ILLEGAL BECAUSE UNDER NRS 193.165(4). THE WAY THE DEADLY WEAPON IS ALLEGED IN THIS CASE IT MAKES IT AN ELEMENT TO THE CRIME, AND SO THIS does INVALIDATE SECTIONS 1, 2, 3. PHILLIPS, REQUESTS A NEW TRIAL

U.S. CONST.
1ST AMENDMENT

U.S. Const. 1st Amendment
Right Of Access To The Courts. (federalize)

Phillips, urges here that his 1st Amend. Const. right is being hindered.

How?

Because the right of access to the courts and the right to assistance, which means that prison officials failed to assist the prisoner in bringing legal action to fruition. (I.E. - this writ of habeas corpus).

Nevada Dept. of Corrections, is denying Phillips access to the law library. Prison officials here at High Desert State Prison, right now during the coronavirus pandemic have made it so impossible to attend the law library that it is basically non-existent. In turn, this makes it impossible to do legal research, and certify pertinent legal mail! Thereby violating Phillips, due process.

Phillips, urges here that the court will order a mandate upon Nev. Dept. of Corr. to give, provide Phillips, access to the prison law library. In order to maintain this litigation, for this petition for writ of habeas corpus. Phillips, requests at least five hours per week for law library access. Pursuant to: Bounds -vs- Smith 430 U.S. 817 (1977)

U.S. CONST.
4th AMENDMENT RIGHTS

U.S. CONST. 4th, 5th, 14th AM. = THE U.S. CONST, FOURTH AMEND. WHICH PROTECTS THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES. THIS ALSO AFFECTS DUE PROCESS OF LAWS, AND EQUAL PROTECTION OF LAWS. (FEDERALIZE)

U.S. -V- JONES, 565 U.S. 400 (2012)

PETITIONER PHILLIPS, NOW ASSERTS HERE THAT THE EVIDENCE SEIZED WAS INADMISSIBLE FRUIT OF THE POISONOUS TREE!

EARLY ON IN THIS CASE HENDERSON POLICE OBTAINED A WARRANT TO INSTALL A GPS TRACKING DEVICE ONTO THE VEHICLE OF ANTHONY BARR, AROUND AUGUST, 2018.

THE TRACKING DEVICE did GET INSTALLED. YET PHILLIPS, URGES THAT WHILE THE WARRANT did HAVE A DEGREE OF LEGITIMACY TO IT. BUT IT WAS INSTALLED WHILE PETITIONER AND BARR, WAS AT THE CIRCUS CIRCUS MANOR (WHICH IS PRIVATE PROPERTY). AND PHILLIPS, URGES THAT THERE'S SIMILARITIES IN THIS AND THE JONES CASE.

PHILLIPS, CLAIMS THAT IT'S OUTSIDE THE SCOPE OF THE WARRANTS EXPRESS GUIDELINES ON THE MANNER OF WHERE THE POLICE INTRUDED ON PRIVATE PROPERTY TO INSTALL THE GPS. THE WARRANT DOESN'T AUTHORIZE POLICE TO INSTALL THE GPS ON THE VEHICLE WHILE ON PRIVATE PROPERTY.

PHILLIPS, ALSO URGES THAT SINCE THE TRACKING DEVICE WAS ILLEGALY INSTALLED, AND THAT ALL SUBSEQUENT EVIDENCE OBTAINED THEREBY AFTERWARDS WAS INADMISSIBLE IN COURT AND IT VIOLATED PHILLIPS, DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS. WHICH SHOULD REQUIRE PHILLIPS, TO BE GRANTED A NEW TRIAL.

CUMULATE ERROR.

PHILLIPS, ASSERTS HERE THAT PURSUANT TO: VALDEZ-V-STATE, 196 P.3d 465, IT IS CUMULATIVE ERROR INVOLVED HERE. PHILLIPS, URGES THAT THE MANY U.S. CONST. VIOLATIONS, ARE SO NUMEROUS, AND EGREGIOUS THAT IT AFFECTED THE TOTALITY of PHILLIPS, PROCEEDINGS UP INTO THIS POINT. AND SO THE ENTIRE CASE SHOULD BE REVERSED.

CONCLUSIONS

HEREIN THIS PETITION FOR WRIT OF HABEAS CORPUS MR. PHILLIPS, HAS RAISED MANY STRUCTURAL ERROR GROUNDS, AND MANY REVERSIBLE ERROR GROUNDS.

AND SO,

IN ACCORDANCE WITH THE CONSTITUTIONAL FAIRNESS, AND THE ADHERENCE TO THE IMPERATIVE CASELAW DECISIONS CITED HEREIN, PHILLIPS, do URGE THE COURT TO REVERSE THE ENTIRE CONVICTION, AND REMAND FOR A NEW TRIAL.

CERTIFICATE OF SERVICE BY MAILING

I, Damien A. Phillips, hereby certify, pursuant to NRCP 5(b), that on this ___ day of MARCH, 2021, I mailed a true and correct copy of the foregoing, "HABEAS CORPUS (POST CONVICTION)" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Clerk of the Court
Clark County District Court
200 Lewis Ave
3rd Floor
Las Vegas, NV. 89155

The Warden, HDSP
High Desert State Prison
Post Office Box 650
Indian Springs, NV. 89070

THE WARDEN, HDSP
22010 COLD CREEK RD
INDIAN SPRINGS, NV. 89070

NEVADA ATTORNEY GENERAL
100 NORTH CARSON ST.
CARSON CITY, NV. 89701

CC:FILE

DATED: this 1st day of MARCH, 2021.

Damien A. Phillips #1212760
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

to Proceed informal pauperis
(Title of Document)

filed in District Court Case number C-18-335500-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

I am [illegible]
Signature

3/1/2021
Date

Damien A. Phillips #1212760
Print Name

Self
Title

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

EXECUTED at **High Desert State Prison** on the 1st day of the month of MARCH, 2021.

Damien A. Phillips #1212760
*

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

VERIFICATION

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

Damien A. Phillips #1212760
*

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

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-18-339500-1 Does not contain the social security number of any person.

Damien A. Phillips #1212760
*

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

CERTIFICATE OF SERVICE BY MAIL

I, Damien A. Phillips, hereby certify pursuant to N.R.C.P. 5(b), that on this ____ day of the month of _____, 20___, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

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

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

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

Damien A. Phillips #1212760
*

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

* Print your name and NDOC back number and sign

Damien A. Phillips #1212760

EXHIBIT "B"

THE COMPLAINT

Electronically Filed
10/23/2018 12:34 PM
Steven D. Grierson
CLERK OF THE COURT

Exhibit 5A

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #009182
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 10/24/18
10:00 AM
K. BROWER, ESQ.

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS, aka Travis Alexander Phillips, #8437103

Defendant.

CASE NO: C-18-335500-1

DEPT NO: XXI

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That DAMIEN ALEXANDER PHILLIPS, the Defendant(s) above named, having committed the crimes of **CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480 - NOC 50445), CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147), BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426), ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138), ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 200.471, 193.167 - NOC 50202); CARRYING CONCEALED PNEUMATIC GUN**

COUNT 4 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or SABRINA MARIE HENDERSON did on or about July 17, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of AMIE CARR, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of AMIE CARR, with use of a deadly weapon, to wit: a pneumatic gun and/or a deadly weapon, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

COUNT 5 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 23, 2018 willfully, unlawfully, and feloniously enter a building, owned or occupied by U.S. BANK, located at 10565 S. Eastern Avenue, Henderson, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a pneumatic gun and/or a deadly weapon, during the commission of the crime and/or before leaving the structure; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 6 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 23, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of MELANIE TERADA, or in his or her presence, by means of

COUNT 8 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 31, 2018 willfully, unlawfully, and feloniously enter a building, owned or occupied by BANK OF THE WEST, located at 701 N. Valle Verde Drive, Henderson, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a pneumatic gun and/or an explosive device and/or a deadly weapon, during the commission of the crime and/or before leaving the structure; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 31, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of NUR BEGUM, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of NUR BEGUM, with use of a deadly weapon, to wit: a pneumatic gun and/or an explosive device and/or a deadly weapon, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling,

//

//

more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 12 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about August 6, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of SUNNY CORTNER, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of SUNNY CORTNER, with use of a deadly weapon, to wit: a pneumatic gun and/or a deadly weapon, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 13 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about August 6, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of MEGHAN ZITZMANN, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of

feloniously enter building, owned or occupied by U.S. BANK, located at 801 E. Charleston Boulevard, Las Vegas, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a pneumatic gun, a deadly weapon, during the commission of the crime and/or before leaving the structure; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 16 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON, and/or MELISSA SUMMLEARS, did on or about August 9, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of JADA COPELAND, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of JADA COPELAND, with use of a deadly weapon, to wit: a pneumatic gun, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

//

//

the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 19 – ASSAULT WITH A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON, and/or MELISSA SUMMLEARS, did on or about August 9, 2018 willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: MICHAEL IRISH, with use of a deadly weapon, to wit: a pneumatic gun, by displaying and/or pointing a gun at and/or toward MICHAEL IRISH while demanding he get on the ground; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 20 – ASSAULT WITH A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON, and/or MELISSA SUMMLEARS, did on or about August 9, 2018 willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: UNNAMED CUSTOMER, with use of a deadly weapon, to wit: a pneumatic gun, by displaying and/or pointing a gun at and/or toward UNNAMED CUSTOMER while demanding he get on the ground; Defendants being criminally liable under one or more of the following

//

COUNT 23 - PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION

Defendant ANTHONY TERRELL BARR did on or about August 9, 2018, did then and there willfully, unlawfully, and feloniously, by intimidation or threats, prevent or dissuade, or hinder or delay JASZMINE MOORHEAD, from reporting a crime to law enforcement by threatening said JASMINE MOORHEAD that if she tells anybody about what they were doing her life would be over.

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

BY _____
RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #009182

Names of witnesses known to the District Attorney's Office at the time of filing this information are as follows:

NAME	ADDRESS
BEGUM, NUR	C/O DISTRICT ATTORNEY'S OFFICE
CARR, AMIE	C/O DISTRICT ATTORNEY'S OFFICE
CORTNER, SUNNY	C/O DISTRICT ATTORNEY'S OFFICE
CUSTODIAN OF RECORDS	Henderson Detention Center Communications
CUSTODIAN OF RECORDS	Henderson Detention Center Records
CUSTODIAN OF RECORDS	HPD COMMUNICATIONS
CUSTODIAN OF RECORDS	HPD RECORDS
EBERT, J.	HPD P#1358
GRITTON, CHELSEY	11238 Fiesole St, LV, NV
LIPPISCH, K.	HPD P#1710
MONES, MARY GRACE	C/O DISTRICT ATTORNEY'S OFFICE
ORELLANA, ALEX	10565 S. Eastern Ave, Henderson, NV

EXHIBIT C

REASONABLE DOUBT JURY INSTR

INSTRUCTION NO. 41

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

EXHIBIT "D"

ORIGINAL Judgement of conviction

Electronically Filed
2/27/2019 11:03 AM
Steven D. Grierson
CLERK OF THE COURT

JOC

Exhibit 53

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS aka Travis Alexander Phillips
#8437103

Defendant.

CASE NO. C-18-335500-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNTS 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7, 9, 10, 12, 13, 16 and 17 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNTS 18, 19 and 20 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 21 – ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF

☐ Nolle Prosequi (before trial)
☐ Dismissed (after diversion)
☐ Dismissed (before trial)
☐ Guilty Plea with Sent (before trial)
☐ Transferred (before/during trial)
☐ Other Manner of Disposition

Bench (Non-Jury) Trial
☐ Dismissed (during trial)
☐ Acquittal
☐ Guilty Plea with Sent. (during trial)
☐ Conviction

AGE OR OLDER (Category B Felony) in violation of NRS 200.471, 193.167; COUNT 22 – CARRYING CONCEALED PNEUMATIC GUN (Category C Felony) in violation of NRS 202.350; and COUNT 23 – PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION (Category D Felony) in violation of NRS 199.305; the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1 and 2 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNTS 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7, 9, 10, 12, 13, 16 and 17 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNTS 18, 19 and 20 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 21 – ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony) in violation of NRS 200.471, 193.167; COUNT 22 – CARRYING CONCEALED PNEUMATIC GUN (Category C Felony) in violation of NRS 202.350; and COUNT 23 – PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION (Category D Felony) in violation of NRS 199.305; thereafter, on the 29th day of January, 2019, the Defendant was present in court for sentencing with counsel KEITH BROWER, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $250.00 Indigent Defense Civil Assessment Fee and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA

Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC); **COUNT 2** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 1; **COUNT 3** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon; **COUNT 5** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 3; **COUNT 6** – a MAXIMUM of a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 4; **COUNT 7** –a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 5; **COUNT 8** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 5; **COUNT 9** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole

Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 7; **COUNT 10** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 9; **COUNT 11** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 8; **COUNT 12** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 10; **COUNT 13** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 12; **COUNT 14** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 11; **COUNT 15** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 14; **COUNT 16** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED

TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 13; **COUNT 17** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 16; **COUNT 18** – a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 15; **COUNT 19**- a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 18; **COUNT 20**- a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 19; and **COUNT 21** – a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 20; with ONE HUNDRED SEVENTY-FOUR (174) DAYS credit for time served. The AGGREGATE TOTAL sentence is ONE HUNDRED (100) YEARS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF THIRTY (30) YEARS.

DATED this 25 day of February, 2019.

for VALERIE ADAIR
DISTRICT COURT JUDGE

EXHIBIT "E"

AMENDED JUDGEMENT of CONVICTION

Electronically Filed
5/6/2020 2:04 PM
Steven D. Grierson
CLERK OF THE COURT

AJOC

Exhibit 7B

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS aka
Travis Alexander Phillips
#8437102

Defendant.

CASE NO. C-18-335500-1

DEPT. NO. XXI

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 4, 6, 7, 9, 10, 12, 13, 16, and 17 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 18, 19 and 20 –

USJR Statistical Closure: Other Manner of Disposition

ASSAULT WITH A DEADLY WEAPN (Category B Felony) in violation of NRS 200.471, of COUNT 21 – ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category C Felony) in violation of NRS 202.350; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 4, 6, 7, 9, 10, 12, 13, 16, and 17 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 18, 19 and 20 – ASSAULT WITH A DEADLY WEAPN (Category B Felony) in violation of NRS 200.471, of COUNT 21 – ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category C Felony) in violation of NRS 202.350; thereafter, on the 29th day of January, 2019, the Defendant was present in court for sentencing with counsel KEITH C. BROWER, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $250.00 Indigent Defense Civil Assessment Fee, and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant is SENTENCED as follows: **COUNT 1** - THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC); **COUNT 2** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT

with COUNT 1; **COUNT 3** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 2; **COUNT 4** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 3; **COUNT 5** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 3; **COUNT 6** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONSECUTIVE to COUNT 4; **COUNT 7** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONSECUTIVE to COUNT 6; **COUNT 8** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 5; **COUNT 9** - a MAXIMUM of ONE HUNDRED TWENTY

(120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONSECUTIVE to COUNT 7; **COUNT 10** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 9; **COUNT 11** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 8;. **COUNT 12** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 10; **COUNT 13** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 12; **COUNT 14** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of

Corrections (NDC), CONCURRENT with COUNT 11; **COUNT 15** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 14; **COUNT 16** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 13; **COUNT 17** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with 16; **COUNT 18** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 15; **COUNT 19** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 18; **COUNT 20** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 19; **COUNT 21** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, plus a CONSECUTIVE term of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS for Victim Over

60 Years of Age, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 17; with ONE HUNDRED SEVENTY-FOUR (174) DAYS credit for time served as of January 29, 2019. The AGGREGATE TOTAL sentence is EIGHTY (80) YEARS MAXIMUM with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) YEARS.

IT IS HEARBY ORDERED by the COURT per minute order dated April 30, 2020 the Judgment of Conviction filed on February 27, 2019 and the Amended Judgment of Conviction filed on March, 30, 2020 have been STRICKEN from the record and this new original Judgment of Conviction has been prepared and filed in this case.

THEREAFTER, a clerical error having been discovered, the Amended Judgment of Conviction reflects the following correction: **the correct spelling of the Defendant's Name DAMIEN ALEXANDER PHILLIPS.**

~~DATED this 6th day of May, 2020.~~

Valerie Adair

VALERIE ADAIR TW
DISTRICT COURT JUDGE

EXHIBIT "F"

ORDER of AFFIRMANCE

Exhibit 6C

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIEN ALEXANDER PHILLIPS,
A/K/A TRAVIS ALEXANDER PHILLIPS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78270

FILED

MAR 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary,[1] conspiracy to commit robbery, six counts of burglary while in possession of a deadly weapon, nine counts of robbery with use of a deadly weapon, three counts of assault with a deadly weapon, assault with a deadly weapon of victim 60 years of age or older, carrying a concealed pneumatic gun, and preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. Eighth Judicial District Court, Clark County; Douglas Smith,[2] Judge.

Damien Phillips and Anthony Barr robbed a string of Las Vegas banks in July and August 2018. Phillips robbed the first bank—a U.S. Bank on Paseo Verde in Henderson—alone, but Barr joined him for the

[1]The judgment of conviction states that Phillips was convicted of "counts 1 and 2 – conspiracy to commit burglary," which appears to be a clerical error as count 2 was conspiracy to commit robbery. We direct the district court to enter a corrected judgment of conviction fixing this clerical error.

[2]Judge Valerie Adair presided over the trial.

subsequent four banks: a U.S. Bank on Eastern Avenue, a Bank of the West on North Valley Verde, a U.S. Bank inside of a Smith's Food and Drug on South Valley Verde, and a U.S. Bank on Charleston. During each of the first four robberies, Phillips or Barr or both presented the bank tellers with a note demanding money and threatening to use "a weapon," "a gun," and/or "a bomb" in order to secure compliance. Officers began tracking Phillips and Barr following the fourth robbery. Immediately prior to the fifth robbery, officers observed Phillips and Barr briefly enter a busy Smith's store that housed a U.S. Bank; there was a bulge in Barr's waistband that suggested a firearm. The pair then proceeded to the U.S. Bank on Charleston, where Phillips and Barr robbed the bank at gunpoint. Officers apprehended them as they fled from the fifth robbery. A jury found Phillips guilty on 21 counts, including burglary related to the Smith's he entered immediately before the fifth robbery (count 14). The jury also found Phillips guilty of using a deadly weapon in the commission of each of the crimes.

On appeal, Phillips contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on counts 3 and 4 regarding the robbery of the Paseo Verde branch, the deadly weapon enhancement on counts 3-14 regarding the first four robberies, and the burglary conviction on count 14 regarding the Smith's. We disagree.

Evidence is sufficient to support a verdict if, "viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hager v. State*, 135 Nev., Adv. Op 34, 447 P.3d 1063, 1070 (2019), *quoting Middleton v. State*, 114 Nev. 1089, 1103, 968 P.2d 296, 306 (1998) (internal quotation marks omitted). Circumstantial evidence may support a conviction. *Collman v. State*, 116 Nev. 687, 711, 7 P.3d 426,

441 (2000). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

Here, the jury could reasonably infer from the evidence presented at trial that Phillips committed these crimes. *See* NRS 193.165(1); NRS 200.380(1); NRS 205.060(1). As to counts 3 and 4, U.S. Bank provided video surveillance of the robbery at the Paseo Verde branch, and witnesses identified Phillips as the suspect who robbed that bank.[3] Moreover, officers tied the suspect in the first robbery to one suspect in the second robbery based upon his clothing, notably his glasses, and a witness testified that those glasses belonged to Phillips. It was for the jury to weigh that evidence, which we conclude provided sufficient grounds for the verdict on those counts.

As to the deadly weapon enhancement on counts 3-14, this court has broadly construed NRS 193.165(1), *see State v. Dunckhurst*, 99 Nev. 696, 697, 669 P.2d 243, 243 (1983), and explained that a defendant need not activate a weapon during the crime to receive a deadly weapon enhancement, *see Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979). Even where the victim does not actually see the weapon, a deadly weapon enhancement will be warranted if the evidence overall suggests the defendant used a deadly weapon to facilitate the crime. *See Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976). Here, although the victims in the first four robberies did not observe a weapon, the evidence as

---

[3]We have carefully reviewed the record and considered Phillips' arguments regarding the video surveillance, and conclude that the evidence as a whole supports that the witnesses identified Phillips as the suspect who robbed the Paseo Verde branch.

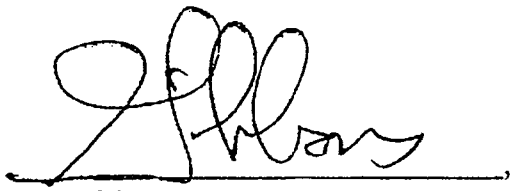
a whole supports the deadly weapon enhancement. Phillips and Barr threatened the bank tellers with use of a weapon, generally a gun, to facilitate those robberies, and during one robbery, Phillips placed a bag on the counter and indicated it contained a bomb. During the burglary at the Smith's, officers observed that Barr had a bulge in his waistband, and immediately after leaving the Smith's, Phillips and Barr robbed a bank at gunpoint. Officers found guns in the getaway car and in another car owned by Phillips. This is sufficient evidence by which the jury could determine that Phillips used a gun or other deadly weapon during each of the robberies.

Finally, as to count 14 regarding the Smith's burglary, the evidence established that Phillips and Barr parked in an apartment complex behind a Smith's that contained a U.S. Bank, observed the busy area before entering, and were inside only a short time. As noted above, officers observed a bulge in Barr's waistband indicating the presence of a firearm. Phillips and Barr proceeded to rob a U.S. Bank at gunpoint immediately after leaving the Smith's. This evidence, although circumstantial, supports an inference that Phillips and Barr entered the Smith's with intent to commit a robbery, *see* NRS 205.060(1), and no evidence was adduced at trial to demonstrate that Phillips and Barr entered the store for another purpose. Accordingly, there was sufficient evidence by which a rational juror could find Phillips guilty of burglary on count 14. *See*

Sheriff v. Stevens, 97 Nev. 316, 317-18, 630 P.2d 256, 257 (1981) (explaining the crime of burglary is complete once the defendant enters the building with the intent to commit a felony).

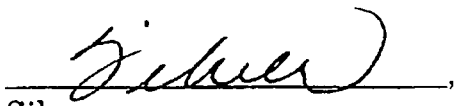
Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons

_____, J.
Stiglich



_____, J.
Silver

cc: Chief Judge, Eighth Judicial District Court
Hon. Valerie Adair, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIEN ALEXANDER PHILLIPS, A/K/A
TRAVIS ALEXANDER PHILLIPS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78270
District Court Case No. C335500

Exhibit 7A

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 14, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):
Douglas Smith
Sandra L. Stewart
Clark County District Attorney \ Jonathan VanBoskerck, Deputy District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on _____.

_____
District Court Clerk

DAMIEN A PHILLIPS #1212760
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV. 89070

Hasler
PRIORITY MAIL
03/18/2021
US POSTAGE $007.70
ZIP 89101
011E12650515

3762

Clerk Of the Court
200 Lewis Ave 3rd Fl.
Las Vegas, NV. 89155

72

PRIORITY® MAIL
UNITED STATES POSTAL SERVICE
Visit us at usps.com

Label 107R, January 2008

RECEIVED
MAR 2 3 2021
CLERK OF THE COURT

P.O. BOX 650
INDIAN SPRINGS, NV.
89070

FILED
MAR 30 2021
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

DAMIEN PHILLIPS (PRO-SE)

-VS-

STATE OF NEVADA,

DIST. CASE# A-21-831976-W
Dept. 23

(FEDERALIZE)

MOTION TO PRESERVE ALL EVIDENCE IN CASE # C-18-335500.

COMES NOW THIS INSTANT MOTION INTO THIS HONORABLE COURT. THIS IS A PRO-SE MOTION FROM DAMIEN PHILLIPS. THIS IS A MOTION TO PRESERVE ALL EVIDENCE IN CASE # C-18-335500-1.

MR. PHILLIPS, BEGS OF THIS HONORABLE COURT TO PLEASE ORDER THE STATE TO PRESERVE THE FOLLOWING ARTICLE OF EVIDENTIARY SIGNIFICANCE IN THIS CASE. THOSE ITEMS ARE:

ANY & ALL WITNESS STATEMENTS.
ALL PHOTOS IN CONNECTION TO THE CASE
ALL VIDEO SURVELLIANCE
ALL FORENSIC REPORTS: (DNA, FINGERPRINT EVID.)
ANY PLEA BARGAINS MADE WITH ANYONE.
ALL C.A.D. REPORTS WHILE POLICE HAVE
THE JURY VENIRE PANEL, STATISTIC
ALL CLOTHING ITEMS.

THE PNEUMATIC GUN
ALL HATS, SUNGLASSES, GLOVES.
ALL EVIDENCE SEIZED FROM THE GRAND MARQUIS
ANY PAYMENTS MADE TO WITNESSES.

PHILLIPS, CONCLUDES THAT HIS CASE IS STILL ON-GOING, AND IN THE POST-CONVICTION STAGES. AND SO IN ALL ACCORDANCE WITH THE DUE PROCESS STANDARDS OF AN ON-GOING CASE THAT THE EVIDENCE BE PRESERVED.

AFFIDAVIT

I, DAMIEN A. PHILLIPS DO DECLARE UNDER THE PENALTY OF PERJURY THAT THE AFOREMENTIONINGS ARE TRUE, AND CORRECT, TO THE BEST OF MY KNOWLEDGE. DATED THIS 1ST DAY OF MARCH, 2021

DAMIEN A PHILLIPS

DAMIEN A. PHILLIPS
121760 /In Propria Persona
Post Office Box 650 (HDSP)
Indian Springs, Nevada. 89018

FILED
MAR 30 2021
CLERK OF COURT

7

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA
PLAINTIFF

vs.

DAMIEN A. PHILLIPS
DEFENDANT

Case No. A-21-831976-W
Dept. No Dept. 23
Docket _____

MOTION TO APPOINT COUNSEL

DATE OF HEARING:_____

TIME OF HEARING:_____

COMES NOW the Defendant DAMIEN A. PHILLIPS, in proper persona and moves this court for an Order granting him counsel in the proceeding action.

This motion is made and based upon all papers and pleadings on file herein and attached points and authorities.

Dated this 1ST day of MARCH, 2021.

Respectfully Submitted,

RECEIVED
MAR 23 2021
CLERK OF THE COURT

POINTS AND AUTHORITIES

NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition; response to dismiss.

"If the Court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the Court may appoint counsel to represent the petitioner."

NRS 171.188 Procedure for appointment of attorney for indigent defendant.

"Any defendant charged with a public offense who is an indigent may, be oral statement to the District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to represent him."

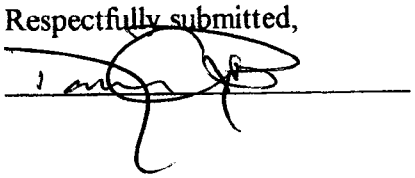
NRS 178.397 Assignment of counsel.

"Every defendant accused of a gross misdemeanor or felony who is financially unable to obtain counsel is entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the court through appeal, unless he waives such appointment."

WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to allow him the assistance that is needed to insure that justice is served.

Dated this 1ST day of MARCH, 2021.

Respectfully submitted,



CERTIFICATE OF SERVICE BY MAILING

I, DAMIEN PHILLIPS, hereby certify, pursuant to **NRCP** 5(b) that on this 1ST day of MARCH, 2021, I mailed a true and correct copy of the foregoing "MOTION TO APPOINT COUNSEL" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, Fully prepaid, addressed as follows:

CLERK OF THE COURT
200 LEWIS AVE
3RD FLOOR
LAS VEGAS, NV. 89155

DATED: THIS 1ST day of MARCH, 2021

DAMIEN A. PHILLIPS
#212760 /In Propria Persona
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada. 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION

TO APPOINT COUNSEL
(Title of Document)

filed in District Court Case number C-335500-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

3/1/2021
Date

DAMIEN PHILLIPS
Print Name

SELF
Title

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
79 - 83
WILL FOLLOW VIA
U.S. MAIL

DAMIEN A. PHILLIPS
1212760 / In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

FILED
MAR 30 2021
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA
PLAINTIFF

vs.

DAMIEN A. PHILLIPS
DEFENDANT

Case No. A-21-831976-W
Dept No. Dept. 23
Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that DEFENDANT, DAMIEN A. PHILLIPS will come on for hearing before the above-entitled Court on the ____ day of _____, 20___, at the hour of ____ o'clock ___. M. In Department ___, of said Court.

CC:FILE

DATED: this 1ST day of MARCH, 2021.

BY: DAMIEN A. PHILLIPS #1212760
/In Propria Personam

RECEIVED
MAR 23 2021
CLERK OF THE COURT

Damien A. Phillips
1127360 / In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

FILED
MAR 30 2021
CLERK OF COURT

7

DISTRICT COURT
CLARK COUNTY, NEVADA

Damien Alexander Phillips
Plaintiff

vs.

The Warden, HDSP
Defendant

Case No. A-21-831976-W
Dept No. Dept. 23
Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Damien Alexander Phillips will come on for hearing before the above-entitled Court on the ____ day of _____, 20___, at the hour of ____ o'clock ___. M. In Department ___, of said Court.

CC:FILE

DATED: this 1st day of MARCH, 2021.

BY: Damien Phillips
Damien A. Phillips #1127360
/In Propria Personam

Electronically Filed
04/01/2021 5:14 PM
CLERK OF THE COURT

PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

Damien Phillips,

Petitioner,

vs.

Nevada Department of Correction,

Respondent,

Case No: A-21-831976-W
Department 23

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on March 30, 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 June, 20 21, at the hour of 11:00 o'clock for further proceedings.

Dated this 1st day of April, 2021

District Court Judge
739 23F 9B7C FB43
Jasmin Lilly-Spells
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Damien Phillips, Plaintiff(s) vs. Nevada Department of Correction, Defendant(s)	CASE NO: A-21-831976-W DEPT. NO. Department 23

AUTOMATED CERTIFICATE OF SERVICE

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

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/2/2021

Damien Phillips	#1212760 HDSP P.O. Box 650 Indian Springs, NV, 89070

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
88 - 90
WILL FOLLOW VIA
U.S. MAIL

Electronically Filed
4/7/2021 10:56 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Damien Phillips, Plaintiff(s) vs. Nevada Department of Correction, Defendant(s)	Case No.: A-21-831976-W Department 23

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion(s) 1) Plaintiff is Motion to Appoint Counsel 2) Plaintiff's Motion to Preserve Evidence, in the above-entitled matter is set for hearing as follows:

Date: June 07, 2021

Time: 11:00 AM

Location: RJC Courtroom 12D
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

Electronically Filed
04/28/2021 6:15 PM
CLERK OF THE COURT

OPI
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #009182
200 Lewis Avenue
Las Vegas, Nevada, 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, #8437103,

Defendant.

CASE NO. A-21-831976-W

DEPT NO. XXIII

ORDER FOR PRODUCTION OF INMATE DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, BAC #1212760

DATE OF HEARING: 06/07/2021
TIME OF HEARING: 11:00 AM

TO: NEVADA DEPARTMENT OF CORRECTIONS; and

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through RICHARD SCOW, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS shall be, and is, hereby directed to produce DAMIEN ALEXANDER PHILLIPS, aka,

Travis Alexander Phillips, Defendant in Case Number A-21-831976-W, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said DAMIEN ALEXANDER PHILLIPS, aka,

Travis Alexander Phillips is currently incarcerated in the NEVADA DEPARTMENT OF CORRECTIONS located in Clark County, Nevada, and his presence will be required in Las Vegas, Nevada, commencing on 06/07/2021, at the hour of 11:00 o'clock AM and continuing until completion of the prosecution's case against the said Defendant.

IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County, Nevada, shall accept and retain custody of the said DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips in the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or in the alternative shall make all arrangements for the transportation of the said DAMIEN ALEXANDER PHILLIPS, aka,

Travis Alexander Phillips to and from the Nevada Department of Corrections facility which are necessary to insure the DAMIEN ALEXANDER PHILLIPS, aka,

Travis Alexander Phillips's appearance in Clark County pending completion of said matter, or until further Order of this Court.

DATED this _____ day of April, 2021.

Dated this 28th day of April, 2021

DISTRICT JUDGE

6CA 28C FB4D 9CE3
Jasmin Lilly-Spells
District Court Judge

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

BY /s/ *Richard Scow*
RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #009182

zm/L5

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Damien Phillips, Plaintiff(s)	CASE NO: A-21-831976-W
vs.	DEPT. NO. Department 23
Nevada Department of Correction, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

Electronically Filed
5/25/2021 8:31 AM
Steven D. Grierson
CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DAMIEN ALEXANDER PHILLIPS,
#8437103

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-831976-W

DEPT NO: XXIII

STATE'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION);
MOTION TO PRESERVE EVIDENCE;
and
MOTION TO APPOINT COUNSEL

DATE OF HEARING: June 7, 2021
TIME OF HEARING: 11:00 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Motion to Preserve Evidence, and Motion to Appoint Counsel.

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

//

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 23, 2018, DAMIEN ALEXANDER PHILLIPS (hereinafter "Petitioner") was charged by way of Information with CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony – NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); and ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony – NRS 200.471, 193.167) for actions on or between July 17, 2018 and August 6, 2018.

On December 3, 2018, Petitioner's case proceeded to trial before a jury. After eight (8) days of trial, the jury its Verdict as follows: Count 1 – Guilty of Conspiracy to Commit Robbery; Count 2 – Guilty of Conspiracy to Commit Robbery; Count 3 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 4 – Guilty of Robbery with Use of a Deadly Weapon; Count 5 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 6 – Guilty of Robbery with Use of a Deadly Weapon; Count 7 – Guilty of Robbery with Use of a Deadly Weapon; Count 8 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 9 – Guilty of Robbery with Use of a Deadly Weapon; Count 10 – Guilty of Robbery with Use of a Deadly Weapon; Count 11 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 12 – Guilty of Robbery with Use of a Deadly Weapon; Count 13 – Guilty of Robbery with Use of a Deadly Weapon; Count 14 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 15 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 16 – Guilty of Robbery with Use of a Deadly Weapon; Count 17 – Guilty of Robbery with Use of a Deadly Weapon; Count 18 – Guilty of Assault with a Deadly Weapon; Count 19 – Guilty of Assault with a Deadly Weapon; Count 20 – Guilty of Assault with a Deadly Weapon; and Count 21 – Guilty of Assault with a Deadly Weapon, Victim 60 Years of Age or Older.

On January 29, 2019, Petitioner was sentenced as follows: Count 1 – three hundred sixty-four (364) days in the Clark County Detention Center ("CCDC"); Count 2 – twelve (12) to forty-eight (48) months in the Nevada Department of Corrections ("NDC"), concurrent with Count 1; Count 3 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 2; Count 4 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 3; Count 5 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 3; Count 6 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 4; Count 7 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 6; Count 8 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 5; Count 9 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 7; Count 10 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 9; Count 11 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 8; Count 12 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 10; Count 13 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 12; Count 14 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 11; Count 15 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 14; Count 16 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 13; Count 17 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with

Count 16; Count 18 – twelve (12) to forty-eight (48) months, concurrent with Count 15; Count 19 – twelve (12) to forty-eight (48) months, concurrent with Count 18; Count 20 – twelve (12) to forty-eight (48) months, concurrent with Count 19; and Count 21 – twelve (12) to forty-eight (48) months, with a consecutive twelve (12) to forty-eight (48) months for the victim 65 years of age or older, concurrent with Count 17. Petitioner's total aggregate sentence was announced as twenty-four (24) to eighty (80) years, with one hundred seventy-four (174) days credit for time served. Petitioner's Judgment of Conviction was filed on February 27, 2019. The Court filed an Amended Judgment of Conviction on May 6, 2020, to correct a clerical error[1] in Petitioner's Judgment of Conviction.

On February 28, 2019, Petitioner filed a Notice of Appeal from his Judgment of Conviction. On March 18, 2020, the Nevada Supreme Court filed its Order of Affirmance. Remittitur issued on April 15, 2020.

On March 30, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus (Postconviction), as well as a Motion to Preserve All Evidence in Case # C-18-335500, and a Motion to Appoint Counsel. The State now responds to Petitioner's pleadings.

ARGUMENT

I. PETITIONER IS NOT ENTITLED TO A WRIT OF HABEAS CORPUS

A. Petitioner Fails to Demonstrate Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

[1] The original Judgment of Conviction erroneously listed charges against Petitioner's co-defendant for CARRYING CONCEALED PNEUMATIC GUN and PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION. Petitioner was not charged with these crimes, and was not sentenced for them.

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

The Court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Further, a defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

(1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

The decision not to call witnesses is within the discretion of trial counsel and will not be questioned unless it was a plainly unreasonable decision. See, Rhyne, 118 Nev. 1, 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d 593. Strickland does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation. When defense counsel does not have a solid case, the best strategy can be to say that there is too much doubt about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578 F.3d 944 (2011). "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S.Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must

be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states, in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the] petition to be dismissed." (Emphasis added).

Petitioner raises thirteen (13) separate allegations against the effectiveness of counsel: that counsel allegedly (1) failed to investigate all the counts against Petitioner, (2) failed to put forth a "meaningful defense" at trial, (3) failed to seek severance from Petitioner's co-defendants, (4) failed to seek DNA testing, (5) failed to have the alleged weapon fingerprinted, (6) failed to "thoroughly" explain guilty plea offers, (7) failed to challenge the Criminal Complaint, (8) failed to object to the "reasonable doubt" jury instruction, (9) failed to object to the erroneous Judgment of Conviction, (10) failed to present alibi witnesses, (11) failed to show Petitioner the discovery, (12) failed to investigate Petitioner's Fourth Amendment claims, and (13) failed to object to the prosecution's leading questions. Petition at 5-6. However, Petitioner's claims are belied by the record, or are otherwise without merit; therefore, Petitioner is not entitled to relief on his claims of ineffective assistance of counsel.

1. Investigate Criminal Complaint (sub-claim (a))

Petitioner first claims that counsel should have noticed that certain claims on the Criminal Complaint did not pertain to Petitioner, and therefore, should have challenged the Criminal Complaint. Petition at 6-7. However, Petitioner cannot show he is entitled to relief on this allegation, as he was not prejudiced by the inclusion of claims against his co-defendant. McNelton, 115 Nev. at 403, 990 P.2d at 1268.

Indeed, a review of Petitioner's Criminal Complaint clearly shows that Petitioner was not named in conjunction with the charges Petitioner now claims were erroneous. Instead, Petitioner's co-defendant was clearly named. Furthermore, the jury was not asked to return a verdict against Petitioner on those charges, and Petitioner was not sentenced for any such charges.

Because the allegedly-erroneous charges clearly named Petitioner's co-defendant, not Petitioner, and because Petitioner was not held to account for those charges in any way, Petitioner cannot demonstrate that he was prejudiced by those claims, much less that the outcome of his trial would have differed had those claims been removed. McNelton, 115 Nev. at 403, 990 P.2d at 1268.

2. Alibi Defense at Trial (sub-claims (b) and (j))

Petitioner next claims that counsel should have presented alibi witnesses at trial Petition at 7, 14. However, Petitioner fails to substantiate this claim with any support; as such, this claim is bare and naked and insufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

While Petitioner claims that there were "alibi witnesses" that would have changed the result at trial, Petitioner fails to offer any specific information about these witnesses, or what their testimony would be. See Petition at 7, 14. Instead, Petitioner directs this Court to an "Exhibit 'A'" that is not attached to his Petition. Id. at 14. Therefore, the lack of specificity and/or any substantive support for Petitioner's alibi assertions renders Petitioner's claim suitable only for dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225; NRS 34.735(6).

Moreover, Petitioner's claim that counsel had some "duty" to present witnesses on Petitioner's behalf is contrary to Nevada law. See, Rhyne, 118 Nev. 1, 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d 593. Petitioner's failure to allege the content of the witnesses' testimony, much less demonstrate their willingness and/or ability to testify at Petitioner's trial leaves Petitioner's claim insufficient to overcome the presumption that counsel's performance was reasonable. Means, 120 Nev. at 1011, 103 P.3d at 32.

3. Seek Severance (sub-claim (c))

Petitioner also claims that counsel should have moved to sever his trial from his co-defendants. Petition at 8. Petitioner does not set forth the standard for severance, much less argue according to that standard. See id. Instead, Petitioner's allegation amounts to an assertion of innocence, with the conclusory statement that Petitioner was only convicted because he was tried with his co-defendants. Id.

Petitioner's position has been specifically rejected by the Nevada Supreme Court. In Marshall v. State, 118 Nev. 642,647, 56 P.3d 376, 379 (2002), the Court explained, "[t]o establish that joinder was prejudicial requires more than simply showing that severance made acquittal more likely; misjoinder requires reversal only if it has a substantial and injurious effect on the verdict." (citing Middleton v. State, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998)). Because Petitioner fails to do more than allege severance would have made acquittal more likely, Petitioner's claim is belied by Nevada precedent. Therefore, Petitioner fails to overcome the presumption of counsel's effectiveness, and Petitioner is not entitled to relief. Means, 120 Nev. at 1011, 103 P.3d at 32.

4. Seek DNA Testing (sub-claim (d))[2]

Petitioner proceeds to claim that DNA testing would show that the "clothing, sunglasses, [and] hats" were not worn by him, and therefore would have "proved [Petitioner's] innocence." Petition at 9. Again, Petitioner relies on conclusory allegations, without any citations to the record or to relevant legal support. As such, Petitioner is not entitled to relief.

Petitioner does not allege that DNA was used as evidence to convict him. Petition at 9. Nor does Petitioner argue that the items he alleges should have been tested were crucial in the jury's verdict. Id. Therefore, Petitioner fails to establish that the lack of his DNA on those specific items would have changed the result at trial. McNelton, 115 Nev. at 403, 990 P.2d at 1268.

Indeed, the Nevada Supreme Court, in affirming Petitioner's conviction, explained that there was sufficient evidence to convict Petitioner of each count. See Order of Affirmance (filed on March 18, 2020 in Supreme Court Case No. 78270) ("Affirmance") at 2-5. As such, Petitioner's claim is limited to potentially undermining the prosecution's argument of guilt, but such a strategy was squarely within counsel's purview. See, Rhyne, 118 Nev. 1, 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d 593 (strategic choices are virtually unchallengeable).

---

[2] Throughout the pretrial phase, Petitioner's determination to proceed to trial within 60 days was noted, even despite the fact that "discovery was still coming in." See, e.g., Court Minutes – Calendar Call, dated November 29, 2018. Therefore, the State submits that Petitioner cannot reasonably challenge counsel's performance regarding discovery when Petitioner insisted on proceeding to a two- to three-week long trial, with dozens of witnesses, in such a short period. Id.

Ultimately, however, Petitioner's failure to offer more than conclusory allegations renders Petitioner's claim bare and naked, and suitable only to dismissal pursuant to NRS 34.735(6) and Hargrove. 100 Nev. at 502, 686 P.2d at 225.

5. Seek Fingerprint Analysis (sub-claim (e))[3]

Petitioner next raises a similar claim – that fingerprint analysis of the recovered BB gun would have been negative for Petitioner's fingerprints. Petition at 9-10. Petitioner also poses a few quaint questions, seemingly to undermine the validity of the deadly weapon enhancements for Petitioner's crimes. Id. at 10. However, Petitioner's claim is again bare and naked, and is further based on a lack of understanding of the deadly weapon enhancement.

Again, Petitioner makes conclusory allegations, and asks suggestive questions, rather than raising any substantive support for his allegation that counsel should have undermined the evidence of the deadly weapon. Petition at 9-10. As there is no substantive or legal support for Petitioner's claim, the same should be dismissed as bare and naked. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

The Nevada Supreme Court has previously determined that a BB gun may be considered a deadly weapon for the purposes of enhancement. Manning v. State, 107 Nev. 337, 810 P.2d 1216 (1991). The Nevada Supreme Court, in affirming Petitioner's conviction, made the specific determination that the jury was shown sufficient evidence to convict Petitioner of the use of a deadly weapon. Affirmance at 3-4 ("...the evidence as a whole supports the deadly weapon enhancement."). Therefore, because the questions of whether a deadly weapon was used, and/or whether there was sufficient evidence to link Petitioner to a deadly weapon, have already been asked – and answered – Petitioner cannot demonstrate that any objection or further inquiry by counsel would have changed the result at trial. McNelton, 115 Nev. at 403, 990 P.2d at 1268.

6. Explain Guilty Plea Offers (sub-claim (f))

Petitioner continues with conclusory assertions regarding counsel's communication – or lack thereof – regarding guilty plea offers. Petition at 11. Again, Petitioner fails to include

---

[3] See n.2, *supra.*

any specific facts, much less specifically assert that he would have accepted any of the allegedly-withheld plea offers. Id. As such, Petitioner's claim fails.

Petitioner's allegations are vague and conclusory, asserting generalities rather than any specific supporting facts. Petition at 11. Petitioner fails to note any of the *specific* deals that were allegedly withheld by counsel, and fails to describe how counsel explained the plea offers, much less substantiate any of these descriptions. Id. As such, Petitioner's allegations are bare and naked, and suitable only for dismissal. NRS 34.735(6); Hargrove. 100 Nev. at 502, 686 P.2d at 225.

Further, Petitioner's allegations are belied by the record. Before the preliminary hearing on the twenty-one (21) counts against Petitioner, counsel placed on the record the State's offer, along with a description of the circumstances surrounding the plea negotiations:

> MR. BROWER: Judge, I do want to put on the record there was an offer that was conveyed to the individuals, but it was a contingent offer so even if one client was inclined to take this, if the other one was not, *it is not an offer that has been varied on*. So it was for a robbery with use, a robbery, two burglaries and a conspiracy. I just want to put on the record that there is no point in actually going forward if both people did not want to change that, *the State is not wavering on that*. My client had been inclined to contemplate waiving up on that offer, but again *it's not being extended to him alone*.

Recorder's Transcript of Preliminary Hearing, dated October 4, 2018 (filed October 31, 2018), at 9:4-15 (emphases added). Therefore, contrary to Petitioner's assertions about "several deals," and their availability to Petitioner *alone*, counsel was clear that the ***only*** offer that was extended was a contingent offer that Petitioner's co-defendants were not interested in. Id. Because this claim is belied by the record, it cannot entitle Petitioner to relief.

7. Challenge Criminal Complaint (sub-claim (g))

Petitioner makes much ado about the allegedly "fatally flawed complaint," and insists that counsel should have challenge the Complaint based on its (1) failure to give notice, (2) double jeopardy, and (3) violation of separation of powers. Petition at 11-12. Petitioner does nothing more than list these alleged deficiencies. Id. Therefore, Petitioner again leaves his claim bare and naked under Hargrove.

Petitioner does not set forth the standard for charging documents in Nevada, much less specifically argue how the Complaint against him failed to meet such a standard. Petition at 11-12. Instead, Petitioner merely alleges, without a word more, three general theories of deficiency. Id. This is insufficient to meet Petitioner's burden to show that counsel was ineffective, as Petitioner fails to even show that the Complaint was deficient. Means, 120 Nev. at 1011, 103 P.3d at 32. Furthermore, the lack of specific factual support for these theories leaves Petitioner's claim bare and naked, and ripe for dismissal. NRS 34.735(6); Hargrove. 100 Nev. at 502, 686 P.2d at 225.

8. "Reasonable Doubt" Jury Instruction (sub-claim (h))

Petitioner next challenges counsel's failure to object to the jury instruction given on "reasonable doubt." Petition at 12. Petitioner cannot demonstrate counsel was ineffective, as the jury instruction conformed with the applicable statutes, and counsel cannot be ineffective for failing to make futile objections. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Petitioner's jury instruction No. 41 explained as follows:

> A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

See Petition, Exhibit 'C.' NRS 175.211(1), which contains the sole definition that may be given to juries in Nevada, contains the *exact same* language as the jury instruction. While there was expository language in the jury instruction concerning the State's burden of proof, that language did not in any way affect the stated definition of "reasonable doubt." See Petition, Exhibit 'C.' As such, any objection to that jury instruction would have been futile.

Because counsel may not be deemed ineffective for failing to raise futile objections, Petitioner cannot demonstrate ineffective assistance for counsel's failure to challenge this jury instruction. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

//

//

9. *Erroneous Judgment of Conviction (sub-claim (i))*

Petitioner proceeds to note the errors in his original Judgment of Conviction, and asserts ineffectiveness for counsel's failure to notify all parties of the error. Petition at 12-14. It appears, however, that Petitioner conflates his Information and his original Judgment of Conviction. Id. Further, certain representations in Petitioner's claim are belied by the record. In any event, Petitioner cannot demonstrate prejudice; therefore, he cannot succeed on this claim.

While Petitioner asserts his claim treats his original Judgment of Conviction, Petitioner asserts that he was prejudiced *at trial* by the inclusion of the two allegations against his co-defendant. See Petition at 13. He also asserts that he was sentenced for those two counts. Id. These assertions are belied by the record. As stated in Section I(A)(1), *supra*, the Information specifically charged Petitioner's *co-defendant* with the counts Petitioner now references. Further, the jury's Verdict form did not include sections for dispositions on those counts, as they did not pertain to Petitioner. Therefore, Petitioner cannot show that he was prejudiced at trial. Moreover, the Court Minutes for Petitioner's sentencing hearing reveal that Petitioner was sentenced only on the twenty-one (21) counts against him, *not including* the two counts now complained of by Petitioner. See Court Minutes – Sentencing, dated January 29, 2019. Indeed, directly contrary to Petitioner's claim, the original Judgment of Conviction does not include any pronounced sentence for those two counts. See original Judgment of Conviction at 5. Therefore, while the original Judgment of Conviction does *list* those two counts as having been found against Petitioner, the record as a whole demonstrates that the inclusion of the counts was merely a clerical error, and did not in any way prejudice Petitioner.

Moreover, the record reflects that Mr. Brower withdrew as counsel, and Ms. Stewart was appointed as appellate counsel, before Petitioner's original Judgment of Conviction was filed. Therefore, Petitioner cannot raise a claim against Mr. Brower for events occurring after Mr. Brower's representation of Petitioner ended.

//

//

Because this claim is belied by the record, and because Mr. Brower was no longer counsel of record at the time the original Judgment of Conviction was filed, Petitioner is not entitled to relief.

10. Show Petitioner the Discovery (sub-claim (k))[4]

Petitioner then alleges that he was unable to contribute to his defense because counsel failed to provide the discovery to Petitioner. Petition at 14-15. This claim is also belied by the record.

At the calendar call for Petitioner's trial, counsel informed the Court that counsel had reviewed the discovery with Petitioner, and that Petitioner had made the determination that he still wished to invoke his right to a speedy trial. Court Minutes, 11/29/18. Therefore, Petitioner's allegations that he was not able to review the discovery with counsel is expressly belied by the record. As such, Petitioner's claim cannot entitle Petitioner to relief.

11. Investigate Fourth Amendment Claims (sub-claim (l))

Petitioner next claims that counsel was ineffective for failing to challenge the manner in which a GPS device was installed on a vehicle and the information that GPS device subsequently provided. Petition at 15-16. Again, Petitioner provides only generalities, absent specific factual support for his claim; therefore, this claim is bare and naked and does not entitle Petitioner to relief. Hargrove. 100 Nev. at 502, 686 P.2d at 225.

Petitioner acknowledges a warrant that allowed for GPS to be installed on a vehicle, then asserts that officers "encroached on private property to install the GPS." Petition at 15. Petitioner does not substantiate his claim regarding the circumstances of the installation of the GPS; therefore, the State cannot reasonably respond to this contention, as the Nevada Supreme Court's determinations have been fact-specific. See, e.g., Osburn v. State, 118 Nev. 323, 44 P.3d 523 (2002) (no objective expectation of privacy for vehicle parked in plain view of street). Because Petitioner fails to include the facts necessary to make an analysis, much less demonstrate the merits of Petitioner's assertion, Petitioner cannot demonstrate that counsel

[4] See n.2 *supra.*

was ineffective, as counsel cannot be ineffective for failing to make futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

12. Prosecution's Leading Questions (sub-claim (m))

Petitioner's final allegation of ineffectiveness simply states "TBD." Therefore, the State declines to address the single-sentence title of this claim as found on p. 6. Petition at 16.

B. PETITIONER'S SUBSTANTIVE CLAIMS ARE WAIVED

The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

As part of his Petition, Petitioner includes a number of substantive claims, including allegations of Brady violations, claims against the validity of the Criminal Complaint (or, Information), a standalone claim against the "reasonable doubt" jury instruction, and another standalone claim regarding the alleged Fourth Amendment violations. See Petition at 18-19, 20-23, 28-30, 35-36. However, these substantive claims are beyond the limited scope of habeas review. NRS 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523. Moreover, each of these claims was available at the time Petitioner filed his direct appeal; therefore, these claims *must* be dismissed. Evans, 117 Nev. at 646-47, 29 P.3d at 523.

//

C. ACTUAL INNOCENCE IS NOT ITSELF A CLAIM FOR RELIEF

Petitioner also includes various allegations of actual innocence. Petition at 24-27. However, Petitioner fails to recognize that actual innocence, itself, does not provide grounds for relief. Further, while Petitioner titles his claim as "actual innocence," it appears that Petitioner is arguing insufficient evidence, a claim that has already been rejected by the Nevada Supreme Court.

Actual innocence is a stringent standard, designed to be applied only in the most extraordinary situations. Pellegrini v. State, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001) (abrogated on other grounds by Rippo v. State, 134 Nev. 411, 423 P.3d 1084 (2018)). The Eighth Circuit Court of Appeals, for instance, has "rejected free-standing claims of actual innocence as a basis for habeas review stating, '[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding.'" Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrerra v. Collins, 506 U.S. 390, 400, 113 S.Ct. 853, 860 (1993)). A defendant claiming actual innocence must demonstrate that it is more likely than not that *no reasonable juror* would have convicted him absent a constitutional violation. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Once a defendant has made such a showing, he may then use the claim of actual innocence as a "gateway" to present his constitutional challenges to the court and require the court to decide them on the merits. Schlup v. Delo, 513 U.S. 298, 315, 115 S.Ct. 851, 861 (1995). Furthermore, the newly discovered evidence suggesting the defendant's innocence must be "so strong that a court cannot have confidence in the outcome of the trial." Id. at 316, 115 S.Ct. at 861.

Petitioner does not allege that he has any "newly discovered evidence," nor does he specify what procedural bars he seeks to overcome with his allegations of actual innocence. Petition at 24-27. Instead, it appears that Petitioner is simply arguing insufficient evidence supports his convictions. See id. However, this claim was already raised – and rejected – as part of Petitioner's direct appeal. See generally, Affirmance.

Because actual innocence is not, itself, a ground for relief, and because the substance of Petitioner's claims has already been rejected by the Nevada Supreme Court, this claim cannot entitle Petitioner to relief.

D. PETITIONER FAILS TO DEMONSTRATE CRUEL AND UNUSUAL PUNISHMENT

Petitioner also titles a claim "Cruel & Unusual Punishment," while the substance thereof contests the validity of Petitioner's convictions with the deadly weapon enhancements. Petition at 31-32. However, the substance of this claim has likewise been rejected by the Nevada Supreme Court. Therefore, this claim cannot entitle Petitioner to relief.

Petitioner challenged the deadly weapon enhancements on direct appeal, upon which the Nevada Supreme Court made the following determination:

> As to the deadly weapon enhancement on counts 3-14, this court has broadly construed NRS 193.165(1), *see State v. Dunckhurst*, 99 Nev. 696, 697, 669 P.2d 243, 243 (1983), and explained that a defendant need not activate a weapon during the crime to receive a deadly weapon enhancement, *see Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979). Even where the victim does not actually see the weapon, a deadly weapon enhancement will be warranted if the evidence overall suggests the defendant used a deadly weapon to facilitate the crime. *See Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976). Here, although the victims in the first four robberies did not observe a weapon, the evidence as a whole supports the deadly weapon enhancement. Phillips and Barr threatened the bank tellers with use of a weapon, generally a gun, to facilitate those robberies, and during one robbery Phillips placed a bag on the counter and indicated it contained a bomb. During the burglary at the Smith's, officers observed that Barr had a bulge in his waistband and immediately after leaving the Smith's, Phillips and Barr robbed a bank at gunpoint. Officers found guns in the getaway car and in another car owned by Phillips. This is sufficient evidence by which the jury could determine that Phillips used a gun or other deadly weapon during each of the robberies.

Affirmance at 3-4. Because Petitioner's challenge to the deadly weapon enhancements has already been rejected, Petitioner is not entitled to relief on this claim.

E. PETITIONER'S FIRST AMENDMENT CLAIM CHALLENGES HIS CONDITIONS OF CONFINEMENT, NOT HIS CONVICTION

Petitioner also includes a claim alleging restricted or insufficient access to the law library. 33-34. However, this claim concerns Petitioner's conditions of confinement, rather

than the validity of Petitioner's conviction; therefore, this claim is more appropriately responded to by the Nevada Office of the Attorney General. NRS 34.730(2)(a).

As this claim is more appropriately responded to by the Attorney General, the State respectfully requests that this Court ensure that a copy of Petitioner's Petition was served upon that Office, and direct that Office to respond as necessary.

F. PETITIONER FAILS TO DEMONSTRATE CUMULATIVE ERROR

Petitioner finally includes a single-paragraph assertion of cumulative error. Petition at 37. However, Petitioner's contention does not entitle Petitioner to relief.

The Nevada Supreme Court has yet to endorse application of its direct appeal cumulative error standard to post-conviction Strickland claims. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Such an analysis should not apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006) ("[A] habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test."). Thus, this Court should not consider any claim of cumulative error in the instant Petition.

Nevertheless, even where cognizable, a finding of cumulative error in the Strickland context is extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). It is only logical that there can be no finding of cumulative error where a defendant fails to demonstrate a single violation of Strickland. See, Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)). Because Petitioner has failed to demonstrate that any claim warrants relief under Strickland, there is nothing to cumulate. As such, Petitioner's argument must be denied.

Furthermore, even under Nevada's direct appeal cumulative error standard, Petitioner cannot show that he is entitled to relief. In addressing cumulative error, the proper analysis considers (1) whether the issue of guilt is close; (2) the quantity and 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). While Petitioner was convicted of significant crimes indeed, the other two factors weigh strongly against a finding of cumulative error. The evidence of Petitioner's guilt has been expressly affirmed by the Nevada Supreme Court. See generally, Affirmance. Furthermore, even assuming that Petitioner could demonstrate some error, he could not demonstrate that the errors denied him a reasonable likelihood of a better outcome.

Because Petitioner's conviction and sentence have already been affirmed by the Nevada Supreme Court, there is no basis to conclude that any alleged errors could undermine this Court's confidence in the outcome of Petitioner's case. Therefore, Petitioner's cumulative error argument lacks merit and cannot entitle Petitioner to relief.

II. THE STATE DOES NOT OPPOSE THE MOTION TO PRESERVE EVIDENCE

Alongside his Petition, Petitioner filed a Motion to Preserve All Evidence. Petitioner's Evidence Motion does not cite to any legal standard. Rather, Petitioner simply lists the items he requests to be preserved by the State. See generally, Evidence Motion. Petitioner does not make any argument as to these items' ongoing materiality, especially given that Petitioner's conviction has already been upheld on appeal. Furthermore, Petitioner does not allege, much less show, in whose custody or control these items may be found.[5] See id.

As a general principle, the State recognizes its duty to preserve material evidence. See, e.g., Steese v. State, 114 Nev. 479, 491, 960 P.2d 321, 329 (1998). Therefore, to the extent that any of the listed items are in the State's custody or control, despite Petitioner's lack of specificity, the State does not oppose Petitioner's Evidence Motion.

III. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL

Petitioner also filed a boilerplate Motion to Appoint Counsel to accompany his Petition and his Evidence Motion. Petitioner's Motion to Appoint does not specifically address Petitioner's case, much less specifically assert *why* counsel is necessary.

While Petitioner's Motion to Appoint references the standard for appointment of counsel in postconviction cases, Petitioner's quotation is incomplete. NRS 34.750 reads:

---

[5] To the extent that Petitioner seeks preservation of evidence in the custody or control of some agency other than the Clark County District Attorney, the State submits that Petitioner's Evidence Motion must be served on each of those agencies, and those agencies afforded the opportunity to respond.

> A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:
> (a) The issues are difficult;
> (b) The Defendant is unable to comprehend the proceedings; or
> (c) Counsel is necessary to proceed with discovery.

Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint counsel. The Nevada Supreme Court has observed that a petitioner "must show that the requested review is not frivolous before he may have an attorney appointed." Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former statute NRS 177.345(2)).

Indeed, under the United States Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed, "[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that, with the exception of NRS 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

More recently, the Nevada Supreme Court examined whether a district court appropriately denied a defendant's request for appointment of counsel based upon the factors listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and

concluded the district court's decision should be reversed and remanded. Id. The Court explained the petitioner was indigent, his petition could not be summarily dismissed, and he had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d at 760-61. As for the first factor, the Court concluded that, because petitioner represented he had issues with understanding the English language—which was corroborated by his use of an interpreter at his trial—that was enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—were severe and his petition may have been the only vehicle for which he could raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance of counsel claims may have required additional discovery and investigation beyond the record. Id.

A review of Petitioner's instant Petition demonstrates that Petitioner does not meet the NRS 34.750 factors. First, the issues raised by Petitioner are not difficult. As set forth more fully in Section I, *supra*, Petitioner's claims are belied by the record, completely devoid of specific allegations and/or factual support, or have been expressly rejected as part of Petitioner's direct appeal. Therefore, pursuant to NRS 34.750(a) and Renteria-Novoa, Petitioner's instant Petition must be dismissed, and appointment of counsel is not necessary. See, 133 Nev. at 76, 391 P.3d at 760-61.

Second, it is abundantly clear that Petitioner can formulate and organize claims to raise in his postconviction efforts. Therefore, Petitioner sufficiently comprehends the proceedings and counsel is not necessary. NRS 34.750(b); Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

Lastly, Petitioner has not alleged that further discovery is necessary. See generally, Petition. While Petitioner has filed a Motion to Preserve Evidence, Petitioner has not alleged, much less shown, that more discovery must be conducted. Indeed, Petitioner's individual claims may be adjudicated with no further discovery, as set forth more fully in Section I, *supra*. Renteria-Novoa, 133 Nev. at 76-77, 391 P.3d at 761-62. Therefore, Petitioner does not

demonstrate that counsel is necessary to conduct additional discovery in this case. NRS 34.750(c).

CONCLUSION

For the forgoing reasons, the State respectfully requests that Petitioner's instant Petition for Writ of Habeas Corpus (Post-Conviction) and Petitioner's Motion to Appoint Counsel be DENIED in their entireties. As to Petitioner's Motion to Preserve Evidence, the State does not oppose the same, but respectfully submits that all agencies must be afforded an opportunity to respond to whatever merits that Motion may have before any disposition is rendered.

DATED this 25th day of May, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY /s/Alexander Chen
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539

CERTIFICATE OF MAILING FILING

I hereby certify that service of State's Response to Petition for Writ Of Habeas Corpus (Post-Conviction); Motion to Preserve Evidence; and Motion to Appoint Counsel, was made this 25th day of May, 2021, by Mail to:

DAMIEN A. PHILLIPS
121760
P.O. BOX 659 (HDSP)
INDIAN SPRINGS NV 89018

Secretary for the District Attorney's Office

18FH1708A/mcb/L-5

Electronically Filed
05/25/2021
CLERK OF THE COURT

27

Case No. A-21-831976-W

Dept. No. 23

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

DAMIEN PHILLIPS

PLAINTIFF

vs.

NEVADA DEPT. OF CORRECTIONS

DEFENDANTS

Case No. A-21-831976-W

Dept No. 23

Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that PLAINTIFF, DAMIEN PHILLIPS

will come on for hearing before the above-entitled Court on the ____ day of _____, 20__, at the hour of ____ o'clock ___. M. In Department ___, of said Court.

CC:FILE

DATED: this 21 day of APRIL, 2021.

BY: _____
DAMIEN PHILLIPS #1212710
/In Propria Personam

RECEIVED
MAY 11 2021
CLERK OF THE COURT

Electronically Filed
05/25/2021
CLERK OF THE COURT

27

DAMIEN A. PHILLIPS
#127760 / In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

DISTRICT COURT

CLARK COUNTY, NEVADA

DAMIEN PHILLIPS

Plaintiff,

vs.

NEVADA DEPARTMENT OF CORRECTIONS

DEFENDANT/S.

Case No. A-21-831076-W

Dept. No. 23

Docket

MOTION AND ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE OR, IN THE ALTERNATIVE FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERANCE

COMES NOW, PLAINTIFF, DAMIEN PHILLIPS herein above respectfully moves this Honorable Court for an MOTION TO ORDER TRANPORTATION FOR HIS PERSONAL APPEARANCE OR, IN THE ALTERNATIVE, by TELEPHONE OR VIDEO CONFERANCE AT THE HEARING ON JUNE 7TH, 2021 AT 11:00 @ RJC COURTROOM 12D.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 21 day of APRIL, 2021.

BY: /s/ DAMIEN PHILLIPS #127760
Defendant/In Propria Personam

RECEIVED
MAY 11 2021
CLERK OF THE COURT

In support of this Motion, I allege the following:

1. I am an inmate incarcerated at HIGH DESERT STATE PRISON. My mandatory release date is 4/4/2054.

2. The Department of Corrections is required to transport offenders to and from Court if an inmate is required or requests to appear before a Court in this state.

NRS 209.274 Transportation of Offender to Appear Before Court states:

"1. Except as otherwise provided in this section, when an offender is required or requested to appear before a Court in this state, the Department shall transport the offender to and from Court on the day scheduled for his appearance.

2. If notice is not provided within the time set forth in NRS 50.215, the Department shall transport the offender to Court on the date scheduled for his appearance if it is possible to transport the offender in the usual manner for the transportation of offenders by the Department. If it is not possible for the Department to transport the offender in the usual manner:

(a) The Department shall make the offender available on the date scheduled for his appearance to provide testimony by telephone or by video conference, if so requested by the Court.

(b) The Department shall provide for special transportation of the offender to and from the Court, if the Court so orders. If the Court orders special transportation, it shall order the county in which the Court is located to reimburse the Department for any cost incurred for the special transportation.

(c) The Court may order the county sheriff to transport the offender to and from the Court at the expense of the county."

3. My presence is required at the hearing because:

☒ I AM NEEDED AS A WITNESS.

My petition raises substantial issues of fact concerning events in which I participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S. 205 (1952) (District Court erred when it made findings of fact concerning Hayman's knowledge and consent to his counsel's representation of a witness against Hayman without notice to Hayman or Hayman's presence at the evidentiary hearing).

☐ THE HEARING WILL BE AN EVIDENTIARY HEARING.

My petition raises material issues of fact that can be determined only in my presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention that allegations are improbable and unbelievable cannot serve to deny the petitioner an opportunity to support them by evidence). The Nevada Supreme Court has held that the presence of the petitioner for habeas corpus relief is required at any evidentiary hearing conducted on the merits of the claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

4. The prohibition against ex parte communication requires that I be present at any hearing at which the state is present and at which issues concerning the claims raised in my petition are addressed. U.S. Const. amends. V, VI.

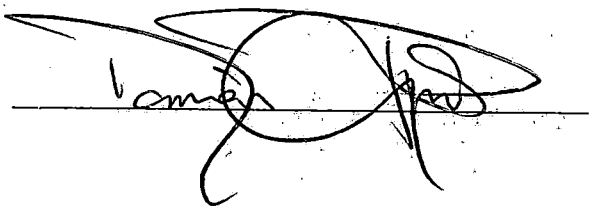
5. If a person incarcerated in a state prison is required or is requested to appear as a witness in any action, the Department of Corrections must be notified in writing not less than 7 business days before the date scheduled for his appearance in Court if the inmate is incarcerated in a prison located not more than 40 miles from Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or more from Las Vegas, the Department of Corrections must be notified in writing not less than 14 business days before the date scheduled for the person's appearance in Court.

6. HIGH DESERT STATE PRISON is located approximately 45-50 miles from Las Vegas, Nevada.

7. If there is insufficient time to provide the required notice to the Department of Corrections for me to be transported to the hearing, I respectfully request that this Honorable Court order the Warden to make me available on the date of the scheduled appearance, by telephone, or video conference, pursuant to NRS 209.274(2)(a), so that I may provide relevant testimony and/or be present for the evidentiary hearing.

8. The rules of the institution prohibit me from placing telephone calls from the institution, except for collect calls, unless special arrangements are made with prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my telephone appearance can be made by contacting the following staff member at my institution: HIGH DESERT STATE PRISON, CCS R.J. SMITH, whose telephone number is (702) 879-6789

Dated this 21ST day of APRIL, 2021.



Damien A. PHILLIPS

THE HONORABLE JASMINE LILLY-SPELLS APRIL-21-2021
CLARK COUNTY JUDGE
OF THE 8TH JUDICIAL DISTRICT

GOOD DAY JUDGE SPELLS. ON MARCH 30, 2021, A PETITION FOR WRIT OF HABEAS ~~CORPUS~~ CORPUS (POST CONVICTION RELIEF) WAS FILED. WITH THE PETION WAS ALSO:

1.) MOTION TO PRESERVE ALL EVIDENCE IN CASE # C-18-335500-1
2.) MOTION TO APPOINT COUNSEL.
3.) MANDATED ORDER TO GIVE PHILLIPS ACCESS TO PRISON LAW LIBRARY. (PG. 34, HABEAS)

THE FIRST TWO MOTIONS ARE ~~SE~~ SCHEDULED TO BE HEARD ON JUNE 7TH, 2021. I'D REQUEST THAT THE THIRD ALSO BE PUT ON CALANDER AS IT IS A CRUCIAL ELEMENT TO MY RESEARCH. ID ASK THE COURT TO GRANT ATLEAST 5 HOURS A WEEK TO THE PRISON LAW LIBRARY.

THANK YOU FOR HEARING MY REQUEST. I PRAY THAT JUSTICE BE SERVED AND ACCESS BE GRANTED TO THE PRISON LAW LIBRARY. THANK YOU AGAIN.

SINCERLY
DAMREN PHILLIPS
#1212760

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding ORDER FOR TRANSPORT OF INMATE, AND LETTER TO HONORABLE JUDGE
(Title of Document)

filed in District Court Case number A-21-831976-W

☐ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Damien A. Phillips
Signature

5/4/2021
Date

Damien A. Phillips
Print Name

SELF
Title

CERTFICATE OF SERVICE BY MAILING

I, DAMIEN A. PHILLIPS, hereby certify, pursuant to NRCP 5(b), that on this 21 day of APRIL, 2021, I mailed a true and correct copy of the foregoing, "ORDR OF TRANSPORT, LETTER TO THE HONERABLE JUDGE." by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

CLERK OF THE COURT
200 LEWIS AVE
3RD FLOOR
LAS VEGAS, NV. 89155-1160

CC:FILE

DATED: this 21 day of APRIL, 2021.

DAMIEN A. PHILLIPS #1212760
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

Electronically Filed
4/7/2021 10:56 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Damien Phillips, Plaintiff(s) vs. Nevada Department of Correction, Defendant(s)	Case No.: A-21-831976-W Department 23

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion(s) 1) Plaintiff is Motion to Appoint Counsel 2) Plaintiff's Motion to Preserve Evidence, in the above-entitled matter is set for hearing as follows:

Date: June 07, 2021

Time: 11:00 AM

Location: RJC Courtroom 12D
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

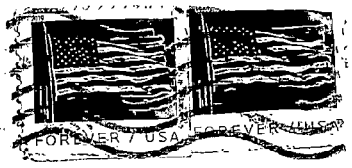
CERTIFICATE OF SERVICE

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

DAMIEN A. MARTINEZ #92668
HDSP
P.O. BOX 650
INDIAN SPRINGS, NV. 89070

LAS VEGAS NV 890
7 MAY 2021 PM 5 L



CLERK OF THE COURT
200 LEWIS AVENUE
3RD FLOOR
LAS VEGAS, NV. 89155

89101-630000

HIGH DESERT STATE PRISON
UNIT 7 C/D

Electronically Filed
07/08/2021
CLERK OF THE COURT

Case No. A-21-831976-W

Dept. No. 21

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

DAMIEN A. PHILLIPS

PETITIONER

vs.

NEVADA DEPT. OF CORRECTION

RESPONDENT

Case No. A-21-831976-W

Dept No. 21

Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that DAMIEN A. PHILLIPS PETITIONER will come on for hearing before the above-entitled Court on the ____ day of _____, 20___, at the hour of ____ o'clock ___. M. In Department ___, of said Court.

CC:FILE

DATED: this 29 day of JUNE, 2021.

BY: DAMIEN A. PHILLIPS #1212760
/In Propria Personam

RECEIVED
JUL - 6 2021
CLERK OF THE COURT

To the honorable Judge, 6/14/21

My name is Damien A. Phillips. Currently I am housed at High Desert State Prison. I recently received a response to my Post Conviction Habeas Corpus. Currently I am in the process of responding to the states response, However it is extremely difficult to respond if I have no law library access.

On June 7th, 2021 a hearing was held. I am clueless as to the actions or any orders the judge made that day.

My hearing was set for the 7th of June of 2021. I am clueless to what happened. I kindly ask the court to grant me a 45 day extension to respond and to order High Desert State Prison to give me atleast 2 hours a day in law library.

Currently unless there is a court order, we have no access to

RECEIVED
JUN 21 2021
CLERK OF THE COURT

law library.

Again my requests are the following.

(1) 45 day extension
(2) Court order for law library
(3) Minutes to the June 7th Hearing.

Your timely response is much appreciated, as I really want to resolve these matters. Thank you all for hearing my letter to the court.

Love Me,

Damien Phillips

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

INMATE CORRESPONDENCE

Date: June 23, 2021

Inmate Name: Damien A Phillips

Case Number: Unknown

- ☐ A Court order is required to complete the request
- ☐ Documents are sealed, required court order to reproduce. ***(PSI)***
- ☐ Documents requested are not in court file at this time.
- ☐ Transcripts have not been filed, require court order
- ☐ Copies are $.50 cents per page **or by court order**.
- ☒ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding Warrants under the above
- ☒ **Other: You need to provide District Court Case # so I can proceed with your request. If you don't know you can call Records Department at 702-671-0555.**

Deputy Clerk # 48

District Court Criminal Mail Desk

Electronically Filed
04/01/2021 5:14 PM
CLERK OF THE COURT

PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

Damien Phillips,

Petitioner,

vs.

Nevada Department of Correction,

Respondent,

Case No: A-21-831976-W
Department 23

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on March 30, 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 June, 2021, at the hour of 11:00 o'clock for further proceedings.

Dated this 1st day of April, 2021

District Court Judge
739 23F 9B7C FB43
Jasmin Lilly-Spells
District Court Judge

U.S. CONST.
1ST AMENDMENT

U.S. Const. 1st, Amendment
Right Of Access To The Courts. (federalize)

Phillips, urges here that his 1st Amend. Const. right is being hindered.

How?

Because the right of access to the courts and the right to assistance, which means that prison officials failed to assist the prisoner in bringing legal action to fruition. (I.E. - This writ of habeas corpus).

Nevada Dept. of Corrections, is denying Phillips access to the law library. Prison officials here at High Desert State Prison, right now during the Coronavirus pandemic have made it so impossible to attend the law library that it is basically non-existent. In turn, this makes it impossible to do legal research, and certify pertinent legal mail! Thereby violating Phillips, due process.

Phillips, urges here that the Court will order a mandate upon Nev. Dept. of Corr. to give, provide Phillips, access to the prison law library. In order to maintain this litigation, for this petition for writ of habeas corpus. Phillips, requests at least five hours per week for law library access. Pursuant to: Bounds -vs- Smith 430 U.S. 817 (1977)

June 29, 2021

3:00 PM

TO THE HONORABLE JUDGE OF

THE EIGHTH JUDICIAL COURT

COUNTY OF CLARK,

MY NAME IS DAMIEN A. PHILLIPS #1217760 I AM AN INMATE CURRENTLY HOUSED AT HIGH DESERT STATE PRISON. IN UNIT 7D (DELTA) CELL 10. I AM NOT A PROBLEM INMATE, NOR DO I GET INTO TROUBLE. IT IS VERY HARD NOT HAVING THE FINANCIAL ABILITY TO BUY STAMPS TO MAIL MY MOTIONS, AND TODAY, C/O's REFUSE ME TO GET A SENIOR OR LT. TO SIGN THE BRASS SLIP. I AM ENCLOSING A COPY OF THE BRASS SLIP SO MY REQUEST IS BACKED UP WITH PROOF OF THE DATE I GAVE MY PAPERWORK TO THE C/O.

PLEASE, I PRAY THE COURT GRANT MY EXTENSION FOR MY REPLY BRIEF TO THE STATE AS I ALSO NEED THE 10 HOUR

A WEEK LAW LIBRARY COURT ORDER TO BE ABLE TO SEND ANY DOCUMENTS DIRECTLY AT LAW LIBRARY, AND FINISH MY RESEARCH FOR MY REPLY BRIEF, AND TO SEND ME THE MINUTES TO THE JUNE 7TH, 2021 HEARING.

SO TO BE CLEAR PETIONER PHILLIPS # 1212760 BEGS THE COURT TO MAKE AN ORDER FOR THE FOLLOWING...

(1) 45 (FORTY-FIVE) DAY EXTENSION FOR REPLY BRIEF

(2) COURT ORDER FOR 2 HOURS A DAY IN LAW LIBRARY (10 HOURS)

(3) MINUTES TO THE JUNE 7TH, 2021 COURT HEARING:

- DAMIEN A PHILLIPS # 1212760
CASE # A-21-831976-W
DEPT NO. 21

I THANK YOU IN ADVANCE FOR YOUR HELP. GOD BLESS!

Damien Phillips

DAMIEN A. PHILLIPS
1212760

NEVADA DEPARTMENT OF CORRECTIONS

LEGAL MAIL

NAME: Phillips DOC#: 1212760 UNIT: 7D101

REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

LEGAL MAIL: C Garrison

CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: _____ OFFICER: Smith

INMATE SIGNATURE: _____ DOC#: 1212760 DATE: 6/29/21

DAMIEN A. PHILLIPS #1212760
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV. 89070

Hasler FIRST-CLASS MAIL
07/01/2021
US POSTAGE $000.71[9]

ZIP 89101
011E12650516

3762

CLERK OF THE COURT
200 LEWIS AVENUE
3rd FLOOR

LAS VEGAS, NV. 89155-1160

89101$6300 C075

137

Electronically Filed
08/04/2021
CLERK OF THE COURT

DAMIEN A. PHILLIPS
#1127760/ In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

DISTRICT COURT

CLARK COUNTY, NEVADA

DAMIEN A. PHILLIPS,

Plaintiff,

vs.

THE WARDEN, HDSP

RESPONDENT.

A-21-831976-W
Dept. XXIII

Case No. _____

Dept. No. 21

Docket _____

MOTION FOR AMENDED HABEAS CORPUS (POST CONVICTION)

COMES NOW, PLAINTIFF, DAMIEN PHILLIPS, herein above respectfully moves this Honorable Court for an MOTION FOR AMENDED HABEAS CORPUS (POST CONVICTION)

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 20 day of JULY, 2021.

BY: _____
DAMIEN A. PHILLIPS #1127760
Defendant/In Propria Personam

RECEIVED
AUG 02 2021
CLERK OF THE COURT

TO THE HONORABLE JUDGE
JASMIN LILLY, SPELLS,
"I WOULD LIKE THE RECORD TO REFLECT." GOOD DAY YOUR HONOR. MY NAME IS DAMIEN PHILLIPS. I AM AN INMATE HERE AT HIGH DESERT STATE PRISON.
THE REASON BEING FOR MY WRITTING OF THIS LETTER IS I HAVE BEEN ATTEMPTING WITH THE COURT TO GAIN A 45 DAY EXTENSION SINCE JUNE 14, OF THIS YEAR 2021. HOWEVER I HAVE SENT THE INFORMATION REQUESTED TWICE AND RECENTLY THE COURT HELD A HEARING WITHOUT ME BEING PRESENT.
IT IS EXTREMELY DIFFICULT TO PUT A HABEAS PETITION TOGETHER WITHOUT MY DISCOVERY. DISCOVERY AT WHICH I'VE BEEN REQUESTING FOR CLOSE TO 2 YEARS AND STILL FAILED TO RECIEVE FROM COUNCIL AT THE COURTS REQUEST I CAN SEND A COPY OF ALL ATTEMPTS TO RETRIEVE DISCOVERY.
~~ATTACH~~ ATTATCHED TO MY HABEAS IS/WAS A REQUEST FOR COUNCIL. I THINK STAND IN COUNCIL WOULD SUIT ME WELL AS I HAVE HARD DRIVES OF DISCOVERY THAT MY COUNCIL (PREVIOUSLY) ALERTED THE COURT I CANNOT RECIEVE IN THE PRISON. HOWEVER THAT IS UNTRUE.
IF I MAY BE INTELLECTUALLY HONEST WITH THE COURT, I REQUESTED ALSO WITH MY EXTENSION

REQUEST, A REQUEST OF ATLEAST 2 HOURS A DAY OF LAW LIBRARY TO CONDUCT MY RESEARCH. ALL WHICH HAVE BEEN SENT BACK TO ME ON 7 TO 3 DIFFERENT OCCASIONS.

I SERVED THE ATTORNEY GENERAL ON MARCH 30TH, 2021 WITH A COPY OF MY HABEAS. AGAIN NO RESPONSE AS TO MY MOTION FOR LAW LIBRARY TIME.

STAND IN COUNCIL IS EXTREMELY NECESSARY AS IT WILL MAKE GETTING MY DISCOVERY A WHOLE LOT EASIER. ALSO TO ASSIST ME IN MY RESEARCH EFFORTS. I AM AT A HUGE DISADVANTAGE, AS THE DEPUTY DISTRICT ATTORNEY HAS UNLIMITED RESOURCE AVAILABILITY, AND MINE IS CLOSE TO NONE ON A 23 HOUR LOCK DOWN SCHEDULE.

I KINDLY ASK THAT THE COURT ACCEPTS MY AMENDED PETITION AND GIVE THE STATE SOUND TIME TO RESPOND, AS THE 4TH AMENDMENT CLAIM HAS BEEN EXTENDED AND MORE INFO AS TO THE LAWS BROKEN AND [redacted] CONSTITUTIONAL VIOLATIONS.

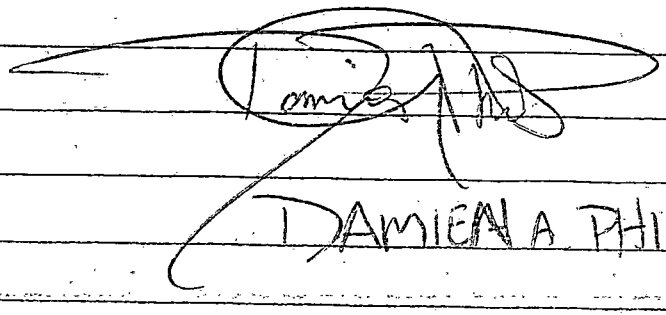
PLEASE HELP, AS MY REQUEST FOR COUNSEL IS ABSOLUTELY NECESSARY TO HANDLE DISCOVERY MATERIALS, AND TO ASSIST WITH DEVELOPEMENT OF ARGUMENT, AND CASE RESEARCH.

I ASK THAT MY 45 DAY EXTENSION REQUEST

BE GRANTED AS TO JUNE 14TH, 2021, AND MY AMENDED PETITION BE ACCEPTED.

I PRAY THAT THE COURT GRANT THE REQUESTS OF THIS LETTER, AND THANKS YOU FOR HEARING ME OUT. (PLEASE SEE EXHIBIT ____ FOR PREVIOUS REQUEST.)

SINCERELY



DAMIEN A PHILLIPS

APPL

Damien A. Phillips
NAME
High Desert State Prison
P.O. Box 650
ADDRESS
Indian Springs, NV. 89070
CITY, STATE, ZIP CODE

TELEPHONE
IN PROPER PERSON

FILED
MAR 30 2021
CLERK OF COURT

DISTRICT COURT
Clark COUNTY, NEVADA

Damien A. Phillips

Plaintiff,
vs.
Warden, HDSP

Defendant

Case No.: A-21-831976-W
Dept. No.: Dept. 23

APPLICATION TO PROCEED INFORMA PAUPERIS
(Filing Fees/Service Only)

Pursuant to NRS 12.015, and based on the following Affidavit, I request permission from this Court to proceed without paying court costs or other costs and fees as provided in NRS 12.015, because I lack sufficient financial ability.

© Clark County Civil Resource Center
Civil-IFP Costs/Fees

ALL RIGHTS RESERVED
u:\CRC\fee_waiver\packet_8\appfeewaiver_0501.wpd

AFFIDAVIT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Damien A. Phillips, after being duly sworn, depose and state as follows:

I wish to file with this Court the pleading submitted with this Application. I cannot pay the filing fees and costs of this action because I lack sufficient income, assets, or other resources. Including myself, there are 1 adults and 0 children age(s) _____ in my household.

My total monthly income is:

From all sources including employment, self-employment, social security, child support, etc $ 0

Any other household income from another member of the household is $ 0

My employer is unemployed/NA located at _____, my job title is _____.

The following represents a list of all of my assets and their value:

	Value	Loan Balance
Automobile _____ YEAR, MAKE, AND MODLE	$ 0	$ 0
Mobile Home, House or Other Real Estate _____ SIZE, TYPE, AND YEAR	$ 0	$ 0
Bank Accounts _____ NAME OF BANK AND TYPE OF ACCOUNT	$ 0	$ 0
_____ NAME OF BANK AND TYPE OF ACCOUNT	$ 0	$ 0
Other _____ DESCRIPTION	$ 0	$ 0

© Clark County Civil Resource Center
Civil-IFP Costs/Fees

ALL RIGHTS RESERVED
u:\CRC\fee_waiver\packet_8\appfeewaiver_0501.wpd

_____	$_____	$_____
_____	$_____	$_____

The following represents my total monthly expenses:

Rent or Mortgage		$ 0
Phone, Gas, Electricity, and Other Utilities		$ 0
Food		$ 0
Child Care		$ 0
Insurance		$ 0
Medical		$ 0
Transportation		$ 0
Other: Auto Insurance		$ 0
None		$ 0
TOTAL MONTHLY EXPENSES		$ 0

I request the Court hold a hearing on this Application if the Court is inclined to deny same, so that I may testify as to my indigent status. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 1st day of MARCH, 2021.

(Signature)

© Clark County Civil Resource Center
Civil-IFP Costs/Fees

ALL RIGHTS RESERVED
u:\CRC\fee_waiver\packet_8\appfeewaiver_0501.wpd

CASE NO. C-18-335500-1

DEPT NO.

IN THE MATTER OF

Damien A. Phillips #1212760

Name

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

STATE FINANCIAL CERTIFICATE

I, hereby certify that the Petitioner named herein above has the sum of $ 2.57 on account to his credit at the facility where hs is confined. I further certify that the Petitioner likewise has the following securities to his credit according to the records of said facility:

Savings = $3,51

DATED: this 13TH day of May, 2020

NEVADA DEPARTMENT OF CORRECTIONS

INMATE SERVICES ACCOUNTANT OR

AUTHORIZED OFFICER IF FACILITY

PLEASE EXECUTE A FINANCIAL CERTIFICATE FOR:

Inmate Name: Damien A. Phillips NDOC#: 1212760 Housing: 4A-41

Date: 4/24/2020

I am

Inmate Signature

RECEIVED

MAY 01 2020

To receive Financial Certificate from Inmate Banking, choose ONE below

○ Please schedule me to pick up in Law Library

◉ Please mail to me

Offender #
1212760

Account Status
Open

Freeze Type

Freeze End Date

Name
PHILLIPS, DAMIEN A

Primary Account		Savings Account		Trust2 Account		Trust3 Account	
Available Balance	2.57	Savings Balance	33.51	Trust2 Balance	0.00	Trust3 Balance	0.00
On Hold Balance	0.00						
Actual Balance	2.57						

Previous Notes

Notes

Cancel Save Close

Electronically Filed
04/01/2021 5:18 PM
CLERK OF THE COURT

APPL

Damien A. Phillips #1212760
NAME

P.O. Box 650
ADDRESS

Indian Springs, NV. 89070
CITY, STATE, ZIP CODE

TELEPHONE

IN PROPER PERSON

DISTRICT COURT
Clark COUNTY, NEVADA

Damien A. Phillips

Plaintiff,

vs.

The Warden, HDSP.

Defendant

Case No. A-21-831976-W

Dept. No. Dept. 23

ORDER TO PROCEED IN FORMA PAUPERIS

(Filing Fees/Service Only)

Upon consideration of Plaintiff 's Application to Proceed in Forma Pauperis and it appearing that there is not sufficient income, property, or resources with which to maintain the action and good cause appearing therefore:

IT IS HEREBY ORDERED,

1. That Plaintiff, Damien Phillips shall be permitted to proceed In Forma Pauperis with this action as permitted by NRS 12.015.

2. That Damien Phillips shall proceed without the prepayment costs or fees or the necessity of giving security, and the Clerk of the Court may file or issue any necessary writ, pleading or paper without charge.

3. That the Sheriff or other appropriate officer within this State shall make personal service of any necessary writ, pleading or paper without charge.

© Clark County Civil Resource Center
Civil-IFP Costs/Fees

ALL RIGHTS RESERVED
u:\CRC\fee_waiver\packet_8\ordfeewaiver_0501.wpd

4. That if the Plaintiff, Damien A. Phillips prevails in this action, the Court shall enter an Order pursuant to NRS 12.015 requiring the opposing party to pay into the court, within five (5) days, the costs which would have been incurred by the prevailing party, and those costs must then be paid as provided by law.

~~IT IS HEREBY ORDERED that _____'s request to waive fees and costs is DENIED for the following reason:~~

A. _____ The Party is not indigent.

B. _____ Other: Not Applicable

DATED this _____ day of _____, 20___.

Dated this 1st day of April, 2021

Jasmin Lilly-Spells

DISTRICT COURT JUDGE

F98 014 E4BF EAEA
Jasmin Lilly-Spells
District Court Judge

Respectfully submitted by:

Damien A. Phillips #1212760
PRINT NAME

HDSP, P.O. Box 650
ADDRESS

Indian Springs, NV. 89070
CITY, STATE, ZIP CODE

TELEPHONE

IN PROPER PERSON

DAMIEN A. PHILLIPS
121760 /In Propria Persona
Post Office Box 650 (HDSP)
Indian Springs, Nevada. 89018

FILED
MAR 30 2021
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA
PLAINTIFF

vs.

DAMIEN A. PHILLIPS
DEFENDANT

Case No. A-21-831976-W
Dept. 23
Dept. No
Docket

MOTION TO APPOINT COUNSEL

DATE OF HEARING:

TIME OF HEARING:

COMES NOW the Defendant DAMIEN A. PHILLIPS, in proper persona and moves this court for an Order granting him counsel in the proceeding action.

This motion is made and based upon all papers and pleadings on file herein and attached points and authorities.

Dated this 1ST day of MARCH, 2021.

Respectfully Submitted,

RECEIVED
MAR 23 2021
CLERK OF THE COURT

Case No. A-21-831976-W
Dept. No. Dept. 23

FILED
MAR 30 2021
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

DAMIEN M. PHILLIPS (P20-58)
Petitioner,

v.

NEV. DEPT. OF CORRECTIONS
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION) (FEDERALIZE)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: HIGH DESERT STATE PRISON, IN INDIAN SPRINGS, NV.

2. Name and location of court which entered the judgment of conviction under attack: 8TH JUDICIAL DISTR. COURT IN CLARK COUNTY, NV.

3. Date of judgment of conviction: MAY 2020

4. Case number: C-18-335500-1

5. (a) Length of sentence: 24-TO-80 YRS

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

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

Yes ..... No ✓

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

.....

.....

7. Nature of offense involved in conviction being challenged: N/A

.....

8. What was your plea? (check one)

(a) Not guilty ✓

(b) Guilty .....

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

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

.....

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

(a) Jury ✓

(b) Judge without a jury .....

11. Did you testify at the trial? Yes ..... No ✓

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

13. If you did appeal, answer the following:

(a) Name of court: NEVADA SUP. COURT

(b) Case number or citation: 78270

(c) Result: CONVICTION AFFIRMED

(d) Date of result: FILED MARCH 18, 2020

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

14. If you did not appeal, explain briefly why you did not: N/A

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

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

(a) (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No ✓

(5) Result: N/A

(6) Date of result: N/A

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

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

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No ✓

(5) Result: N/A

(6) Date of result: N/A

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

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

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

(1) First petition, application or motion? Yes ..... No ..✓..

Citation or date of decision: N/A

(2) Second petition, application or motion? Yes ..... No ..✓..

Citation or date of decision: N/A

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

Citation or date of decision: N/A

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

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

(a) Which of the grounds is the same: YES, IT WAS THE ISSUES WITHIN SENTENCING

(b) The proceedings in which these grounds were raised: NEW SENTENCING HRNG. DUE TO ERRONEOUS J.O.C.

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

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

DAMIEN PHILLIPS #1
P.O. BOX 650
INDIAN SPRINGS, NV
89070

FILED
MAR 30 2021
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

DAMIEN PHILLIPS (PRO-SE)

-VS-

DIST. C

A-21-831976-W
Dept. 23

STATE OF NEVADA,

CASE #:

(FEDERALIZE)

MOTION TO PRESERVE ALL EVIDENCE IN CASE # C-18-335500-1

COMES NOW THIS INSTANT MOTION INTO THIS HONORABLE COURT. THIS IS A PRO-SE MOTION FROM DAMIEN PHILLIPS. THIS IS A MOTION TO PRESERVE ALL EVIDENCE IN CASE # C-18-335500-1.

MR. PHILLIPS BEGS OF THIS HONORABLE COURT TO PLEASE ORDER THE STATE TO PRESERVE THE FOLLOWING ARTICLE OF EVIDENCE - (ANY SIGNIFICANCE IN THIS CASE). THOSE ITEMS ARE:

ANY & ALL WITNESS STATEMENTS.

ALL PHOTOS IN CONNECTION TO THE CASE.

ALL VIDEO SURVEILLANCE.

ALL FORENSIC REPORTS (DNA, FINGERPRINT, CHEMICAL)

ANY/ALL RECORDS MADE WITH MY NAME.

ALL 9-1-1 REPORTS WHILE POLICE LOG.

THE JURY VENIRE PANEL STATISTIC.

ALL CLOTHING ITEMS.

THE PNEUMATIC GUN

ALL HATS, SUNGLASSES, GLOVES.

ALL EVIDENCE SEIZED FROM THE GRAND MARQUIS

ANY PAYMENTS MADE TO WITNESSES.

PHILLIPS CONCLUDES THAT HIS CASE IS STILL ON-GOING, AND IN THE POST-CONVICTION STAGES. AND SO IN ALL ACCORDANCE WITH THE DUE PROCESS STANDARDS OF AN ON-GOING CASE THAT THE EVIDENCE BE PRESERVED.

AFFIDAVIT

I, DAMIEN A. PHILLIPS DO DECLARE UNDER THE PENALTY OF PERJURY THAT THE AFORE MENTIONINGS ARE TRUE, AND CORRECT TO THE BEST OF MY KNOWLEDGE. DATED THIS 1ST DAY OF MARCH, 2021

DAMIEN A PHILLIPS

PROCEDURAL HISTORY

1.) PHILLIPS AND OTHER CO-DEFENDANTS WERE ARRESTED ON AUGUST 9TH, 2018 FOR SEVERAL BANK ROBBERIES ALONG WITH OTHER COUNTS / CHARGES.

2.) PHILLIPS INVOKED HIS RIGHT TO 60 DAY SPEEDY TRIAL AND THE COURT COMPLIED.

3.) PHILLIPS WAS FOUND GUILTY ON DECEMBER OF 2018. PHILLIPS APPEALED AND THE CONVICTION WAS AFFIRMED WITH FINALITY ON [redacted] MAY 6TH, 2020 (TWENTY-TWENTY)

4.) PHILLIPS FILED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) MARCH 30, 2021.

3.) STATE RESPONDS TO HABEAS PETITION ON MAY 25TH, 2021

6.) PETITIONER WRITES COURT REQUESTING A 45 DAY EXTENSION

7.) PETITIONER NOW BRINGS THIS AMENDED PETITION FOR HABEAS CORPUS (POST CONVICTION).

U.S. Const. 5th, 6th, 14th Amend. - Ineffective Assistance of Counsel (Federalize)

Pursuant To: Jones -v- Wood, 114 F 3d. 1002 (1997) and, Strickland -v- Washington, 466 U.S. 668 (1984) Phillips Asserts Here That; "To Establish A Claim of Ineffective Assistance of Counsel, A Party Must Prove That (1) His Counsels Performance Was Deficient And (2) The Deficient Prejudiced The Defense. A Counsel's Performance Is Deficient If, Considering All The Circumstances, It Falls Below An Objective Standard Of Reasonableness Measured Under Prevailing Professional Norms."

And,

"In Connection With An Ineffective Assistance Of Counsel Claim Prejudice Is Shown When There Is A Reasonable Probability That, Absent Counsel's Errors, The Factfinder Would Have Had A Reasonable Doubt Respecting Guilt."

Phillips, Urges That In Regards To The Sections Mentioned Herein, This Petitions, Its Plain & Clear That Counsel's Errors Caused Phillips To Have An Unfair Trial, Based On The Reasons Already Mentioned Here.

Phillips Urges The Court To Vacate The Entire Conviction Or Grant Petitioner A New Trial, Or An Evidentiary Hearing.

(U.S. CONST. 6TH AM. - INEFFECTIVE ASSISTANCE OF COUNSEL (FEDERALIZE)

HERE PHILLIPS NOW BRINGS THIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, UNDER STRICKLAND -V- WASHINGTON, 466 US. 668 (1984). PHILLIPS DOES DISPLAY SEVERAL WAYS IN WHICH HIS TRIAL COUNSEL WAS INEFFECTIVE.

(a). - FAILURE TO INVESTIGATE MR. PHILLIPS' CASE IN THE PRE TRIAL STAGES (HOMICK -V- STATE, 913 P. 2d 1280, BIG POND -V- STATE, 692 P. 2d 1288, LOVE -V- STATE, 109 NEV. 1136 (1993)

(b). - TRIAL COUNSEL FAILED TO PRESENT A MEANINGFUL DEFENSE AT TRIAL. CHAMBERS -V- MISSISSIPPI, 410 U.S. 284 (1993)

(c). - TRIAL COUNSEL FAILED TO MOVE TO SEVER PHILLIPS' CHARGES FROM ANTHONY BARR'S CHARGES AND THE CASE THEIR.

(d). - TRIAL COUNSEL FAILED TO MOVE FOR A DNA TEST OF THE CLOTHING ITEMS, AND OTHER ITEMS POLICE IMPOUNDED.

(e). - TRIAL COUNSEL FAILED TO HAVE THE BB GUN FINGER-PRINTED.

(f). - TRIAL COUNSEL FAILED TO THOROUGHLY EXPLAIN THE PLEA BARGAIN TO PHILLIPS, BECAUSE IT'S POSSIBLE PHILLIPS MAY HAVE ACCEPTED THE PLEA DEAL.

(g). - TRIAL COUNSEL FAILED TO CHALLENGE THE FATALLY FLAWED COMPLAINT.

(h). - TRIAL COUNSEL FAILED TO OBJECT TO ERRONEOUS JURY INSTRUCTIONS, "THE REASONABLE DOUBT JURY INSTRUCTIONS."

(i) TRIAL COUNSEL FAILED TO NOTICE THAT PHILLIPS' "J.O.C." WAS ERRONEOUS.

(J) - TRIAL COUNSEL FAILED TO PUT COURT ON NOTICE OF ALIBI WITNESSES, AND FAILED TO CALL ALIBI WITNESSES.

(K) - TRIAL COUNSEL FAILED TO SHARE DISCOVERY INFORMATION WITH PHILLIPS.

(L) TRIAL COUNSEL FAILED TO DUTIFULLY INVESTIGATE SEARCH WARRANTS AND PHILLIPS 4TH AMENDMENT VIOLATION CLAIMS (AMENDED)

[redacted]

DUE PROCESS VIOLATION (ADDED GROUND)

(M) TRIAL COUNSEL FAILED TO DUTIFULLY INVESTIGATE ID METHODS STATE USED TO ID PETITIONER BEFORE TRIAL.

UNDER STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) MR PHILLIPS URGES THAT HIS CONVICTION MUST BE REVERSED.

PURSUANT TO U.S. CONST. 6TH AMENDMENT RIGHT TO COUNSEL, THE ACCUSED SHALL ENJOY THE RIGHT TO EFFECTIVE COUNSEL IN ALL CRIMINAL PROSECUTIONS.

(a.) PHILLIPS ASSERTS THAT TRIAL COUNSEL FAILED TO DUTIFULLY INVESTIGATE ALL OF THE COUNTS TO THE 73 COUNT CRIMINAL COMPLAINT.

HOLD?

BECAUSE PHILLIPS BELIEVES THAT THERE WERE EXTRA COUNTS ON HIS COMPLAINT THAT DID NOT PERTAIN TO PHILLIPS AT ALL (SUCH AS THE DISSUADING A WITNESS)

PHILLIPS ALSO ASSERTS THAT HAD HIS TRIAL COUNSEL KEITH BROWER WENT AND INTERVIEWED PHILLIPS' ALIBI WITNESSES AND CALLED THEM TO TESTIFY ON PHILLIPS' BEHALF THEN IT COULD'VE PRODUCED A DIFFERENT RESULT AT TRIAL.

BY MR. BROWER not calling Phillips' Defense WITNESSES THEN IT HINDERED PHILLIPS' U.S. CONST.- 6TH AMENDMENT - RIGHT TO COMPULSORY CLAUSE; BY not CALLING ANY OF PHILLIPS' WITNESSES U.S. -V- SIMPSON, 992 F. 2d 1224 (1993). THIS WOULD'VE CHANGED THE OUTCOME AT TRIAL, SO PHILLIPS URGES THE COURT TO REVERSE HIS CONVICTION.

(b). - PHILLIPS CLAIMS THAT MR BROWER FAILED TO PUT FORTH ANY DEFENSE AT TRIAL BY NOT CALLING THE ALIBI WITNESSES. PHILLIPS URGES THAT ACCORDING TO CHAMBERS -V- MISSISSIPPI, 410 U.S. 284, THAT THIS CALLS FOR A REVERSAL OF CONVICTION IN LINE WITH THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

(C¹).- PHILLIPS CLAIMS HERE THAT IT AFFECTED HIS RIGHT TO A FAIR TRIAL SINCE PHILLIPS AND BARR WERE TRIED TOGETHER. Although PHILLIPS BELIEVES IT WAS A MISJOINDER, PHILLIPS' TRIAL COUNSEL DIDN'T MOVE TO SEVER THE CO-DEFENDANTS. THE REASON PHILLIPS BELIEVES THAT THE CO-DEFENDANTS SHOULD HAVE BEEN SEVERED IS THAT PHILLIPS CLAIMS HE DID NOT PARTICIPATE IN EACH AND EVERY BANK ROBBERY. SO SOME OF THESE BANK ROBBERY COUNTS PHILLIPS SAT ON TRIAL FOR DID ACTUALLY PREJUDICE PHILLIPS. ALSO, ACCORDING TO CHARTIER -V- STATE BEING THAT TWO SEPARATE CONTRADICTING [redacted] THEORIES COULD ARISE. SO PHILLIPS CASE MUST BE REVERSED BASED ON HOW MR. BROWER'S DEFICIENT PERFORMANCE DID PREJUDICE PHILLIPS.

(C²).- PHILLIPS ASSERTS THAT BY MR. BROWER FAILING TO MOVE FOR SEVERANCE OF THE CHARGES, IT CAUSED PHILLIPS TO BE PREJUDICED AT THE JOINT TRIAL DUE TO THE JOINT [redacted] CHARGES OF ROBBERIES IN WHICH PHILLIPS ~~CLA~~ CLAIMS HE IS ACTUALLY INNOCENT OF. PHILLIPS WAS HELD TO ANSWER FOR CHARGES UNRELATED TO HIM. THIS DID OBSCURE THE CHARGES AGAINST PHILLIPS, AND IT IS UNCERTAIN [redacted] AS FAR AS IF THE JURY'S VERDICT WAS UNANIMOUS. U.S. -V- MOLONEY, 287 F. 3d. 256, AND U.S. -V- SAVOIRES, 430 F. 3d 376, U.S. -V- McDERMOTT, 245 F. 3d 133. PHILLIPS CLAIMS THERES NO EVIDENCE LINKING HIM TO COUNTS 4, 6, 7, 9, 10, 12 & 13.

° DNA AND CLOTHING, SUNGLASSES, HATS.

(d.) - PHILLIPS' TRIAL COUNSEL HAS ALSO FAILED TO EXAMINE ITEMS OF EVIDENCE THAT COULD'VE PROVED TO BE EXCULPATORY TO PHILLIPS HAD MR BROWER HAD THE CLOTHING ITEMS AND SUNGLASSES THE POLICE GATHERED FROM THE RAIDS, DNA TESTED. THE DNA TEST WOULD REVEAL THAT PHILLIPS' DNA ISN'T ON THOSE EVIDENTIARY ARTICLES.

AND,

SINCE PHILLIPS' DNA ISN'T ON THE ARTICLES MR. PHILLIPS IS CONFIDENT THAT THOSE EVIDENCIARY ARTICLES WOULD EXCULPATE PHILLIPS TO THE COUNTS THAT THE CLOTHING ITEMS ARE CONNECTED TO.

PHILLIPS URGES THAT THOSE CLOTHING ITEMS WERE NEVER WORN BY HIM. THE FORENSIC TESTING WOULD'VE PROVED PHILLIPS' INNOCENCE, AND THE DNA TEST WOULD PRODUCE NEWLY DISCOVERED EVIDENCE. PHILLIPS NOW REQUESTS A DNA TEST.

° FINGER PRINTS AND THE PNEUMATIC AIR PISTOL

(e). - PHILLIPS' TRIAL COUNSEL FAILED TO HAVE THE BB GUN FINGERPRINTED, AND TESTED. AND PHILLIPS ASSERTS THAT HAD THE BB GUN BEEN FINGERPRINTED THEN IT WOULDN'T SHOW PHILLIPS' FINGER PRINTS OR DNA

HAD MR BROWER HAD THE PNEUMATIC AIR PISTOL FINGERPRINTED AND THE RESULTS CAME BACK NEGATIVE THEN THE RESULTS AT TRIAL WOULD HAVE BEEN DIFFERENT. (f)

PHILLIPS URGES THAT HIS TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO PROPERLY PREPARING TO CONFRONT THIS EVIDENCE.

PHILLIPS ALSO ASSERTS THAT HIS TRIAL COUNSEL FAILED TO ADDRESS THIS PNEUMATIC GUN ISSUE IN TRIAL ON THE QUESTIONS OF:

- WHAT EVIDENCE IS THERE TO LINK PHILLIPS TO A GUN OR BOMB?
- WAS THE PNEUMATIC GUN EVEN OPERABLE?
- IS A PNEUMATIC GUN OR TOY GUN OR WATER GUN REALLY A DEADLY WEAPON (ACCORDING TO THE LAW)?

IF PHILLIPS' TRIAL COUNSEL WOULD'VE ADDRESSED THESE VERY IMPORTANT QUESTIONS THEN IT COULD'VE RESULTED IN OVER HALF OF PHILLIPS' CURRENT SENTENCE BEING NULL, VOID, AND NON EXISTENT.

A CHARGE OF ROBBERY IS ONE THING, BUT TO ILLEGALLY ADD A DEADLY WEAPON TO EACH COUNT CHANGED THE ENTIRE DYNAMICS OF THE CASE BECAUSE IT CHANGES THE ELEMENTS THAT HAVE TO MEET UP WITH THE AGGRAVATORS. ALSO, IT CHANGED THE VERDICT FORMS, and ALSO CHANGES THE SENTENCES PHILLIPS RECIEVED. AND ALL OF THIS IS BECAUSE OF FALSELY ADDED AGGRAVATORS. - SEE BENNETT -V- 8TH JUD. DIST. CT., 121 P. 3d. 605 (2005).

SINCE MR BROWER FAILED TO ADDRESS THESE ISSUES IT AFFECTED PHILLIPS' RIGHT TO A FAIR TRIAL AND PHILLIPS' CONVICTION SHOULD BE REVERSED, AND A NEW TRIAL SHOULD BE AWARDED.

(F) PHILLIPS URGES HERE THAT HIS TRIAL COUNSEL WAS INEFFECTIVE WHEN MR BROWER FAILED TO THOROUGHLY EXPLAIN TO PHILLIPS, THE DETAILS AND COLLATERAL EFFECTS OF IF PHILLIPS DOES/DOES NOT ACCEPT THE PLEA BARGAIN. MCMANN -V- RICHARDSON, 397 U.S. 759.

(2) PHILLIPS WAS OFFERED SEVERAL DEALS THROUGH OUT THE DURATION OF THE CASE. PHILLIPS LEARNED THAT MR BROWER DIDN'T COMMUNICATE ALL OF THE DEALS TO HIM THAT THE STATE OFFERED.

(3) PHILLIPS ASSERTS THAT TRIAL COUNSEL DIDN'T DISCLOSE CERTAIN EVIDENCE TO HIM IN ORDER TO INFLUENCE WHAT DECISION PHILLIPS MAKES. MR BROWERS' NEGLIGENCE DURING THE PLEA BARGAIN PROCESS DID VIOLATE PHILLIPS' DUE PROCESS OF LAWS PURSUANT TO U.S. CONST. 5TH AND 14TH AM.

(G) - U.S CONST. 5TH, 6TH, AND 14TH AM - DUE PROCESS OF LAWS. TRIAL COUNSEL FAILED TO CHALLENGE THE FATALLY FLAWED COMPLAINT.

PHILLIPS CLAIMS THAT MR BROWER FAILED TO OBJECT TO THE DEFICIENCIES WITHIN THE COMPLAINT IN WHICH THERE WERE SEVERAL

SUCH AS:

① FAILURE TO GIVE NOTICE

② DOUBLE JEOPARDY

③ IT VIOLATED "SEPARATION OF POWERS" CLAUSE WHEN THE STATE COMBINED TWO STATUTES TO MAKE UP ONE CHARGE.

(h). TRIAL COUNSEL FAILED TO OBJECT TO THE WORDS ADDED TO THE REASONABLE DOUBT JURY INSTRUCTIONS.

PHILLIPS URGES THAT ACCORDING TO NRS 175.211 THAT ITS ONLY ONE REASONABLE DOUBT INSTRUCTION TO BE GIVEN TO A JURY, THE JURY, ANY JURY IN THE STATE OF NEVADA.

MR. BROWER FAILED TO OBJECT AND CALL OUT THE ERROR. CAGE -V- LOISIANA, 498 U.S. 34

MR. BROWER'S ERRORS AFFECTED PHILLIPS' RIGHT TO DUE PROCESS, AND RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS, THIS CASE SHOULD BE REVERSED. CAGE -V- LOUISIANA, 498 U.S. 34

(i). TRIAL COUNSEL FAILED TO NOTIFY: PHILLIPS, THE JUDGE, AND THE STATE (THOSE ARE THE PARTIES).

PHILLIPS BELIEVES THAT HIS JUDGEMENT OF CONVICTION ERRORS SHOULD'VE BEEN DISCOVERED AND OBJECTED TO BY COUNSEL. YET SINCE COUNSEL DIDN'T FIGURE IT OUT, THE COURT, SUA SPONTE, RESENTENCED PHILLIPS. MR BROWER WAS INEFFECTIVE FOR NOT RECOGNIZING THAT ALTHOUGH MR PHILLIPS

WAS SENTENCED TO 30-100 YEARS, BUT THE J.O.C. REFLECTED 45-150 YEARS, AND ALTHOUGH THE COURT "SUA SPONTE" CORRECTED THIS ERROR IT DID STILL HAVE AN EFFECT ON PHILLIPS.

HOW?

BECAUSE PHILLIPS' J.O.C. READ OFF A CHARGE THAT PHILLIPS WASN'T CHARGED WITH ("DISSUADING A WITNESS") PHILLIPS WAS MISTAKENLY SENTENCED FOR THIS CRIME WHEN HE WASN'T EVER CHARGED WITH IT, AND WASN'T SUPPOSED TO BE CONVICTED OF IT AT ALL. AND SO IT ULTIMATELY HINDERED HIS RIGHT TO A FAIR TRIAL SINCE THE JURY THOUGHT HE DID IT AND HE GOT SENTENCED FOR IT.

AND, THE NEVADA SUPREME COURT MISTAKENLY BELIEVED THAT PHILLIPS DISSUADED A WITNESS (SEE EXHIBIT = ORDER OF AFFIRMATION). THE NEVADA SUPREME COURT LISTS IT IN THE OPINION.

HOWEVER, PHILLIPS ASSERTS HERE THAT IT VIOLATED HIS U.S CONST. RIGHT TO DUE PROCESS OF LAWS, AND RIGHT TO AN IMPARTIAL JURY BECAUSE IT VERY WELL DID PREJUDICE PHILLIPS AT TRIAL FOR THE JURY TO BELIEVE THAT PHILLIPS THREATENED WITNESSES.

IT PREJUDICED PHILLIPS TO HAVE ANY OF HIS ORIGINAL, OR AMENDED J.O.C., OR NEV. SUP. CT. CASE # 75270 AFFIRMANCE ORDER TO REFLECT THAT PHILLIPS WASN'T TRIED OR CONVICTED OF IT ALL.

ALTHOUGH THIS COULD BE WROTE OFF AS A CLERICAL ERROR, THE FACT IS IT TAINTED PHILLIPS'

JURY. SO PHILLIPS SO PHILLIPS' TRIAL COUNSEL SHOULD'VE BROUGHT THIS UP AT SENTENCING. AND APPELLANT COUNSEL, MS. STEWART, WAS ALSO INEFFECTIVE FOR NOT ADDRESSING THIS POINT HINDERING PHILLIPS' RIGHT TO U.S. CONST. 5TH, 6TH AND 14TH AM. (DUE PROCESS, RIGHT TO FAIR TRIAL, RIGHT TO EQUAL PROTECTION OF LAWS).

(A). - TRIAL COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO PUT THE COURT ON NOTICE ABOUT PHILLIPS' ALIBI WITNESSES, AND THIS FAILURE TO CALL THE ALIBI WITNESSES TO TESTIFY.

U.S. CONST. 6TH AM. - IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT... TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR.

- WASHINGTON -V- TEXAS, 388 U.S. 14 (1967)

- CHAMBERS -V- MISSISSIPPI, 410 U.S. 284 (1973)

PHILLIPS URGES THAT HAD TRIAL COUNSEL ACTUALLY CALLED HIS ALIBI WITNESSES (SEE EXHIBIT "A" AFFIDAVIT OF WITNESSES), THEN THEY WOULD HAVE TESTIFIED TO THE FOLLOWING: (SEE STATEMENTS ATTACHED TO AFFIDAVITS).

PHILLIPS URGES THAT THIS EVIDENCE COULD'VE PRODUCED A DIFFERENT RESULT AT TRIAL

(B). - PHILLIPS URGES THAT THE ERRORS OF TRIAL COUNSEL AND COUNSEL - ALLUDED

Docket 84115 Document 2023-09641.116

DISCOVERY TO PHILLIPS IN ORDER FOR PHILLIPS TO BE ABLE TO LEGITIMATELY PARTICIPATE IN THIS OWN DEFENSE.

PHILLIPS CLAIMS HERE THAT HE HAS AN ABSOLUTE RIGHT TO PARTICIPATE IN HIS OWN DEFENSE, SO HIS ATTORNEY SHOULD'VE BE HONORED PHILLIPS' EFFORTS TO AID AND ASSIST IN THE CASE. AND AS A RESULT IT CAUSED A MINOR BREAKDOWN IN COMMUNICATION BETWEEN MR PHILLIPS AND MR BROWER.

(L) - U.S. CONST. 4th, 5th, AND 14th AM.S THE US CONST FOURTH AMENDMENT WHICH PROTECTS THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS AGAINST UNREASONABLE SEARCH AND SEIZURE. THIS ALSO AFFECTS DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS. (FEDERALIZE)

PHILLIPS NOW ASSERTS HERE THAT THE EVIDENCE SEIZED WAS INADMISSIBLE FRUIT OF THE POISONOUS TREE!

EARLY ON IN THIS CASE, HENDERSON POLICE OBTAINED A WARRANT TO INSTALL A GPS TRACKING DEVICE ONTO AN UNREGISTERED MERCURY GRAND MARQUIS AROUND AUGUST OF 2018.

PHILLIPS CLAIMS THAT ITS OUTSIDE THE SCOPE OF THE WARRANTS EXPRESSED GUIDLINES ON THE MANNER OF WHERE THE POLICE ENCROACHED ON PRIVATE PROPERTY TO INSTALL THE GPS. THE WARRANT DOESN'T AUTHORIZE POLICE TO INSTALL THE GPS ON THE VEHICLE WHILE ON PRIVATE PROPERTY.

PHILLIPS ALSO URGES THAT SINCE THE TRACKING DEVICE WAS ILLEGALLY INSTALLED, AND THAT ALL SUBSEQUENT EVIDENCE OBTAINED THEREBY AFTERWARDS WAS INADMISSIBLE IN COURT AND IT VIOLATED PHILLIPS' DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS. WHICH SHOULD REQUIRE PHILLIPS TO BE GRANTED A NEW TRIAL.

(M). - TBD

U.S. CONST.

5th, 6th, 14th AMENDMENTS

BRADY -VS- MARYLAND, 373 U.S. 83

U.S. CONST. 5, 6, 14TH AMENDMENT: DUE PROCESS OF LAWS, RIGHT TO A FAIR TRIAL, EQUAL PROTECTION OF LAWS. (FEDERALIZED)

DISCOVERY MATERIALS

PHILLIPS ASSERTS HERE THAT THE PROSECUTION FAILED TO PROVIDE HIM WITH THE EXCULPATORY EVIDENCE THAT DO EXIST IN THIS CASE.

(A) PHILLIPS, URGES THAT UNDER BRADY-V-MARYLAND, 373 U.S. 83 THAT HE WAS ENTITLED TO ANY FORENSIC REPORTS OF TEST RESULTS. SUCH AS: DNA TESTING OF CLOTHING, HATS, SUN GLASSES, ETC., ALSO: FINGERPRINT RESULTS ON THE PNEUMATIC GUN. ALSO: ANY AND ALL INTERVIEWS AND STATEMENTS, DEALS MADE WITH (TAKARI MILLER

(B). PHILLIPS, SEEKS THE EVIDENCE OF THE PROOF OF OTHER SUSPECTS AROUND THE HEIGHT OF 5"5, ROBBING BANK.

"[redacted]"

PHILLIPS, ALSO SEEKS THE POLICE'S C.A.D. REPORT OF WHEN THE ROBBERIES WERE FIRST CALLED IN TO THE HENDERSON POLICE.

(C). PHILLIPS, PRESENTS A MOTION HEREIN, "A MOTION TO PRESERVE" ALL EVIDENCE, FOR ALL APPELLATE AND POST-CONVICTION PURPOSES. THIS INCLUDES: STATEMENTS OF WITNESSES, ALL PHOTOS, VIDEO SURVEILLIANCE, DNA REPORTS, FINGERPRINTS TESTS, PLEA BARGAINS MADE WITH ANYONE, AND REPORTS, JURY VENIRE PANELS STATISTICS, CLOTHING ITEMS, THE PNEUMATIC GUN, HATS, SUNGLASSES, AND ALL EVIDENCE SEIZED OUT OF THE RED GRAND MARQUIS MERCURY. AND ALL PAYMENTS MADE TO WITNESSES.

U.S. CONST.
5TH, 6TH, 14TH, AMENDMENTS
FATALLY FLAWED COMPLAINT

U.S. Const. 5th, 6th, 14th Am. - Due Process Of Laws Right To A Fair Trial, Equal Protection of Laws, (Federalize)
FATALLY FLAWED COMPLAINT

Phillips, claims here that the Fatally Flawed Complaint violated his U.S. Const. Due Process of Laws. Because, of various reasons. Such As:

(a). The Complaint was Vague And Lacked Specificity.

(b). - Failure To Give Proper Notice.

(c). - The Blanket Conspiracy Charges Violated Braverman v. U.S. 317 U.S. 49

(d). - Phillips, was Falsely Charged, Convicted, Sentenced for Dissuading A Witness.

Phillips, Urges That His Case Should Be Reversed Based Upon These Issues.

(a). - Bill of Particulars. - Phillips, claims That it Violated His Due Process Of Law, And Right To A Fair Trial, When His Complaint wasn't Specific. Since The Complaint Lacked Specifics, It Blended All of The Counts To The Case To The Point That It Confused The Jury. This Shows In How The False Charges Of Dissuading A Witness Wound Up On Phillips, J.O.C.

(b). - Phillips, Complaint Is Fatally Flawed Because It Failed To Display Exactly who Did What. The Vagueness Doesn't Give Phillips, A proper notice of what He Alone Is To Defend At Trial. Instead The Complaint Uses All Interchange-able, Disjunctive Language.

NRS. 173.075(1); U.S. -v- Nu Bo, 186 F.3d 1171 (1999) = If The Indictment is Fatally Flawed The The Defendant need not Show Prejudice From The Flaw To Obtain Reversal.

(b). - CONTINUED - THE FAILURE TO INCLUDE THE ELEMENT OF WILLFULNESS RENDERS AN INDICTMENT CONSTITUTIONALLY DEFECTIVE, AND IT IS NOT AMENDABLE TO HARMLESS ERROR REVIEW. - (SEE, EXHIBIT "B" = COMPLAINT)

(c). - PHILLIPS, CLAIMS THAT THE STATE USED A BLANKET CONSPIRACY CHARGE HERE IN THIS CASE. UNDER BRAVERMAN VS. U.S. 317 U.S. 49; PHILLIPS' RIGHT TO DUE PROCESS OF LAW, WAS VIOLATED BECAUSE IN PHILLIPS, CASE THE STATE USED ONE CONSPIRACY TO COVER A TWENTY THREE COUNT INDICTMENT, WHICH IS ALLEGED TO HAVE OCCURRED OVER A THREE WEEK PERIOD. WHICH MEANS THAT THE STATE CLAIMS THAT IT WAS A THREE WEEK LONG CONSPIRACY THAT EMBODIED SEVERAL CONSPIRACIES SINCE ITS SEVERAL CRIMES HERE. PHILLIPS, CONVICTIONS CAN'T STAND UNDER THE BRAVERMAN RULE, BECAUSE ONE CONSPIRACY DOESN'T AUTOMATICALLY EQUAL SEVERAL DIFFERENT CONSPIRACIES. THIS IS A STRUCTURAL ERROR, AND IT VIOLATES PHILLIPS, U.S. CONST. 5, 6, 14TH AM. SO THE ENTIRE CONVICTION MUST BE REVERSED FOR A NEW TRIAL. (SEE, EXHIBIT "B")

(d). - PHILLIPS, CLAIMS HERE THAT HIS U.S. CONST. RIGHT TO DUE PROCESS WAS VIOLATED, BY THE STATE FALSELY CHARGING, CONVICTING, SENTENCING PHILLIPS FOR ASSAULTING A WITNESS, BECAUSE INITIALLY PHILLIPS, ORIGINAL J.O.C. DID REFLECT THIS CHARGE OF COUNT 23, AND A SUBSEQUENT

(d).-(CONT.)- CONVICTION, AND SENTENCE. PHILLIPS, NOW URGES THAT ITS EVIDENT THAT THERE WERE SEVERAL ERRORS OF A MAGNITUDE OF STRUCTURAL ERROR.

AS FOR PARTS (a),(b),(c) - SEE, STATE -VS- 6TH JUD. DIST. CT. 114 NEV. 739, NORTON -VS- DIST. CT., 128 NEV. 922, BAIRFEN -V- STATE, 99 NEV. 661, JENNINGS -V- STATE, 116 NEV. 488 (2000) STATE -V- HANCOCK, 114 NEV. 161

IT SEEMS HERE THAT THE STATE ABUSED THE PROCESS, IN ITS USE OF THE CONSPIRACY CHARGES.

HOW?

BECAUSE, THE PROSECUTION ROLLED MANY CONSPIRACY THEORIES INTO ONE CONSPIRACY THEORY BECAUSE IN THE TWENTY THREE COUNT INDICTMENT IT SPANS OUT OVER A PERIOD OF APPROX. THREE WEEKS. PHILLIPS, ASSERTS HERE THAT UNDER THE BRAVERMAN RULE, THAT ILLEGAL & UNCONSTITUTIONAL TO CHARGE, CONVICT A DEFENDANT IN SUCH A MANNER WITHOUT SHOWING THE AGREEMENT ELEMENT OF EACH CONSPIRACIES. U.S. -V- ALERTA, 96 F. 3d 1230 (1996) THE CONVICTION MUST BE REVERSED!

U.S. CONST.
5th ; 6th , 14th AMENDMENTS
DUE PROCESS OF LAWS, RIGHT OF TRIAL
TO IMPARTIAL JURY = (FAIR TRIAL)

ACTUALLY INNOCENT ON COUNTS 1, 2, 3, 4

U.S. CONST. 5TH, 6TH, 14TH AMEND. DUE PROCESS OF LAW, RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS, (FEDERALIZE) ACTUAL INNOCENCE ON COUNTS 1, 2, 3, 4

PHILLIPS ASSERTS HERE THAT THERE WAS INSUFFICIENT EVIDENCE TO PROVE COUNTS 3 & 4. ON THE JULY 17TH, 2018 BANK ROBBERY. IN THIS INCIDENT THERE WAS ONLY ONE BANDIT. AND PHILLIPS URGES THAT HE WAS NOT THE LONE BANDIT. THEREFORE, PHILLIPS URGES THAT HIS CONVICTION WAS HIM WAS THE RESULT OF A PREJUDICIAL SPILLOVER OF EVIDENCE. THIS VIOLATED PHILLIPS RIGHT TO A FAIR TRIAL & AND DUE PROCESS OF LAW. PHILLIPS ALSO URGES THAT SINCE COUNTS 1 & 2 IS PART AND PARCEL OF COUNTS 3 & 4, THEN THAT MEANS THAT PHILLIPS IS ACTUALLY INNOCENT ON COUNTS 1, 2, 3, 4. AND THESE CONVICTIONS SHOULD BE VACATED BECAUSE IT VIOLATES U.S. CONST. 5TH, 6TH, 14TH AM. DUE PROCESS OF LAW, RIGHT TO A FAIR TRIAL AND EQUAL PROTECTION OF LAWS. U.S. -V- SHIPSEY, 363 F.3d 962 (9TH CIR. 2004)

U.S. CONST. 5th, 6th, 14th AMENDMENTS.....

ACTUALLY INNOCENT OF COUNTS # 14

U.S. CONST. 5TH, 6TH, 14TH AM. (FEDERALIZE)
RIGHT TO A FAIR TRIAL, DUE PROCESS OF LAWS

ACTUAL INNOCENT OF COUNT 14

PHILLIPS, CLAIMS THAT HE IS FALSELY CHARGED WITH A BURGLARY ON COUNT 14, BURGLARY! PHILLIPS DOESN'T DISPUTE THAT HE WENT INSIDE THE SMITH'S GROCERY MARKET. BUT HOWEVER, WHILE INSIDE THE MARKET PHILLIPS DIDN'T DO ANYTHING... NOTHING! AND ATTEMPTED CRIME, NO ACTUAL CRIME, DEBATING ON BUYING SOMETHING, BUT DIDN'T AND HE LEFT

AND, SO

PHILLIPS, IS ACTUALLY INNOCENT OF THIS COUNTS, THE 3-TO-10 YEAR SENTENCE PHILLIPS RECEIVED MUST BE VACATED, AND PHILLIPS SHOULD BE RESENTENCED MINUS THE COUNT IN ORDER TO AVOID A FUNDAMENTAL MISCARRIAGE OF JUSTICE

NRS 175.211

U.S. CONST. 5TH, 6TH, 14TH AM. - DUE PROCESS OF LAW. RIGHT TO A FAIR TRIAL, AND, EQUAL PROTECTION OF LAWS. (FEDERALIZE).

"THE REASONABLE DOUBT JURY INSTRUCTION"

NRS 175.211

PHILLIPS ASSERTS HERE THAT THE COURT ERRED IN ADDING ADDED "UNDUE" ENCROACHMENTS ONTO THE REASONABLE DOUBT JURY INSTRUCTION.

HOW?

BECAUSE IN PHILLIPS' JURY INSTRUCTIONS, THE COURT ADDED THE PRESUMPTION OF INNOCENCE INSTRUCTION ONTO THE REASONABLE DOUBT INSTRUCTION. AND SO NOW PHILLIPS BELIEVES THAT ACCORDING TO NRS 175.211, THAT THE REASONABLE DOUBT-JURY INSTRUCTION IS TO STAND ALONE.

UPON INSPECTION OF NRS 175.211, THERE IS ONLY TO BE ONE REASONABLE DOUBT JURY INSTRUCTION GIVEN IN NEVADA.

HOWEVER,

IN ANALYZING PHILLIPS' TRIAL JURY INSTRUCTIONS, (SEE EXH. "C") IT'S CLEAR THAT THE COURT DID VIOLATE NRS 175.211 BY ADDING ONTO THE JURY INSTRUCTION FOR REASONABLE DOUBT IN NEVADA.

THEREFORE,

PHILLIPS IS ULTIMATELY ENTITLED TO A NEW TRIAL, SINCE IT VIOLATED HIS U.S. CONST. RIGHTS 5TH, 6TH, 14TH AM., THE RIGHT TO DUE PROCESS OF LAWS, THE RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF LAWS, BECAUSE LEGISLATURES CONSTRUCTED THE STATUTORY LANGUAGE OF THE INSTRUCTION SO AS NOT TO CONFUSE AND JURY.

PURSUANT TO: CASE - V - LOUISIANA, 498 U.S. 39 & IN RE: WINSHIP, 397 U.S. 358 (1970) - THE 14TH AM. PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED.

THIS REASONABLE DOUBT STANDARD "PLAYS A VITAL ROLE IN THE AMERICAN SCHEME OF CRIMINAL PROCEDURE". WINSHIP, 397 U.S. 363.

AMONGST OTHER THINGS.

"IT IS A PRIME INSTRUMENT FOR REDUCING THE RISK OF CONVICTIONS RESTING ON FACTUAL ERROR".

AND SO,

AS ANYONE CAN SEE HERE, THAT THERE ARE DEFINITELY FACTUAL DISCREPANCIES IN MR. PHILLIPS, CASE!

THEREFORE,

THIS CASE SHOULD BE OVERTURNED IMMEDIATELY.

U.S. CONST.

CRUEL & UNUSUAL PUNISHMENT

U.S. CONST. 5TH, 6TH, 14TH, 8TH AM. - BECAUSE IT WAS CRUEL & UNUSUAL PUNISHMENT TO ENHANCE PHILLIPS FOR THE DEADLY WEAPON ON COUNTS 4, 6, 7, 9, 10, 12, 13, 16, 17.

SEE EXHIBITS "D", "E", "F"

(a). - PHILLIPS URGES HERE THAT IT WAS CRUEL & UNUSUAL PUNISHMENT TO SENTENCE PHILLIPS TO A DEADLY WEAPON ENHANCEMENT FOR COUNTS 4, 6, 7, 9, 10, 12, 13, 16, 17. ACCORDING TO BERRY -VS- STATE, 125 NEV. 265 (2009), BROOKS -V- STATE 124 NEV. 203

PHILLIPS CLAIMS HERE THAT HE WAS INCORRECTLY CHARGED WITH DEADLY WEAPON ENHANCERS BECAUSE IT WASN'T EVER A DEADLY WEAPON. HE DID SEEN, OR ALLEGE IN COUNTS 4, 6, 7, 9, 10, 12, 13. THIS MAKES PHILLIPS ACTUALLY INNOCENT HERE. THEREFORE, PHILLIPS URGES THAT THE DEADLY WEAPON ENHANCEMENT FOR THESE COUNTS MUST BE VACATED SINCE THESE ALLEGATIONS PREVENTED PHILLIPS FROM HAVING A FAIR TRIAL.

(b). - PHILLIPS CLAIMS THAT ALTHOUGH IT WAS A TOY GUN FOUND, A PNEUMATIC PISTOL. HOWEVER THE GUN WAS INOPERABLE AND SO THE JURY NECESSARILY FOUND THAT IT WAS A DEADLY WEAPON USED.

(c). - PHILLIPS URGES HERE THAT THE DEADLY WEAPON ENHANCEMENTS ARE ILLEGAL BECAUSE UNDER NRS 193.165(1) THE MERE DEADLY WEAPON IS ALLEGED IN THIS CASE IS NOT AN ELEMENT TO THE CRIME, AND SO THIS DOES INVALIDATE SECTIONS 1, 2, 3. PHILLIPS REQUESTS A NEW TRIAL

U.S. CONST.
1ST AMENDMENT

U.S. Const. 1st Amendment
Right Of Access To The Courts (Federalize)

Phillips, urges here that his 1st Amend. Const. Right is being hindered.

How?

Because the Right Of Access To The Courts And The Right To Assistance, which means that Prison Officials failed To Assist The Prisoner In Bringing Legal Action To Fruition. (I.E. - This Writ Of Habeas Corpus).

Nevada Dept. Of Corrections, Is Denying Phillips Access To The Law Library. Prison Officials Here At High Desert State Prison, Right Now During The Coronavirus Pandemic Have Made It So Impossible To Attend The Law Library That It Is Basically Non-Existent. In Turn, This Makes It Impossible To Do Legal Research, And Certify Pertinent Legal Mail! Thereby Violating Phillips, Due Process

Phillips, urges here that the Court will Order A Mandate Upon Nev. Dept. Of Corr. To Give, Provide Phillips, Access To The Prison Law Library. In Order To Maintain This Litigation, For This Petition For Writ Of Habeas Corpus. Phillips, Requests At least Five Hours Per Week For Law Library Access. Pursuant To: Bounds -Vs- Smith 430 U.S. 817 (1977)

U.S. CONST.
4th AMENDMENT RIGHTS

UNITED STATES CONSTITUTION 4TH, 6TH, AND 14TH AMENDMENTS VIOLATION....

A WARRANT GENERALLY AUTHORIZES NO MORE THAN WHAT IT EXPRESSLY PROVIDES. TO ACT UNREASONABLY BEYOND THE WARRANT IS AKIN TO ACTIONS WITHOUT A WARRANT (HORTON -V- CALIFORNIA, 496 U.S. 128 (1990), US -V- BERSHCHANSKY, 788 F 3D 102 (2nd CIRCUIT 2015)) MILLER -V- KENNEBEC CITY, 219 F. 3D 8 (1st CIRCUIT 2000)." IT IS SELF EVIDENT THAT A SEARCH AND SEIZURE MUST CONFORM TO THE TERMS OF THE WARRANT".

A SEARCH WARRANT IS CRIMINAL IN NATURE AND MAY ONLY BE ISSUED UPON A SWORN AFFIDAVIT FROM A LAW ENFORCEMENT OFFICER OR STATES ATTORNEY PROVIDING EVIDENCE OF PROBABLE CAUSE TO A MAGISTRATE TO ISSUE A WARRANT TO SEARCH OR SEIZE, AND THE WARRANT MUST IDENTIFY WITH PARTICULARITY, THE PROPERTY OR PERSON TO BE [redacted] SEIZED AND NAMING THE PERSON(S) OR PLACE(S) TO BE SEARCHED.

IN THE INSTANT CASE, 3 WARRANTS WERE ISSUED BETWEEN THE DATES OF AUGUST 8TH, 2018 TO AUGUST 10TH, 2018 (SEE SUPPLEMENTAL

MEMORANDUM EXHIBIT B).

THE FIRST OF THE 3 (THREE) WARRANTS, APPLIED FOR BY WAY OF APPLICATION AND AFFIDAVIT AUTHORED BY DETECTIVE KARL LAPPISCH# 1710 [redacted] AND WAS GRANTED BY THE HONORABLE JUDGE JERRY A. WIESE OF THE HENDERSON DISTRICT COURT.

THE SUBSEQUENT 2 (TWO) WARRANTS WERE AUTHORED BY DETECTIVE DENNIS OZAWA# 1531 BY WAY OF A HENDERSON DISTRICT COURT JUDGE (SEE SUPPLEMENTAL MEMORANDUM, EXHIBIT B, REFFERED TO HEREAFTER AS SME-B).

I WILL NOW DEMONSTRATE HOW THE SEARCH WARRANT (MOBILE TRACKING DEVICE) HERE AFTER REFFERED TO AS "THE FIRST WARRANT".), WAS NULL AND VOID IN ITS APPLICATION AND THE TWO SUBSEQUENT WARRANTS OBTAINED THERE AFTER ARE THE FRUITS OF A POISONOUS TREE, THEREFORE ALL STATEMENTS, ITEMS, AND PERSON(S) SEIZED SHOULD HAVE BEEN SUPPRESSED AND RELEASED FROM CUSTODY, HAD MR. BROWER DUTIFULLY AND [redacted] THOROUGHLY INVESTIGATED THE CLAIM.

FURTHER PROOF OF [redacted] PETITIONER'S PUSHING TO DO SO IS COURT TRANSCRIPTS FOR THE DATE OF NOVEMBER 29, 2018 (SEE SME B). CALENDAR CALL PG/2.). PETIONER URGED BROWER TO BRING SUCH 4TH AMENDMENT U.S.C. VIOLATION TO THE HONORABLE JUDGES

ATTENTION. BUT BROWER FAILED TO RAISE CLAIM, [redacted] THIS PREJUDICED PETITIONER AS TO BEING ILLEGALLY DETAINED AND SUBJECT TO ILLEGAL [redacted] AND MALICIOUS PROSECUTION WITH TAINTED EVIDENCE.

ON AUGUST [redacted] 8, 2018 (08/08/2018), LEAD DETECTIVE KARL UPPISCH #1710 OF THE HENDERSON POLICE DEPARTMENT APPLIED FOR A TRACKING WARRANT FOR PETITIONER'S AND CO-DEFENDANT BARR'S UNREGISTERED MERCURY GRAND MARQUIS. AT [redacted] 1030 HOURS THAT DAY HE WAS GRANTED THE WARRANT BY THE HONORABLE JUDGE JERRY A. WIESE. THE WARRANT SPECIFIED THE FOLLOWING...

"OFFICERS, AGENTS, AND EMPLOYEES OF THE POLICE DEPARTMENT ARE AUTHORIZED TO:

1.) ENTER UPON AREAS OPEN TO THE PUBLIC FOR THE PURPOSE OF INSTALLING, MAINTAINING AND/OR REMOVING A TRACKING DEVICE ON OR FROM THE SPECIFIED VEHICLE AND..."

ACCORDING TO PRE-LIMINARY HEARING TRANSCRIPTS DETECTIVE KARL UPPISCH ALONG WITH SEVERAL [redacted] OTHER OFFICERS [redacted] SEEN THE VEHICLE IN THE AVIATORS SUITES PARKING LOT (YET THE FIRST PRIVATE PROPERTY PARKING

LOT THE POLICE ENCROACHED ON.) LIPPISCH TESTIFIED AS TO SHIFTING HIS POSITION IN THE [redacted] AVIATORS TO GET A BETTER SIGHT ON THE TARGET VEHICLE, HOWEVER HE IS ON PRIVATE PROPERTY WHEN DOING SO, AND CONDUCTING SURVEILLANCE ON PRIVATE PROPERTY WITHOUT A WARRANT.

NEXT POLICE DETECTIVE LIPPISCH AND ASSISTING OFFICER FOLLOW THE VEHICLE FROM THE AVAIATORS TO CIRCUS CIRCUS MANOR (SEE SUPPLEMENTAL MEMORANDUM EXHIBIT-A, HEREAFTER REFERRED TO AS SME-A), WHERE THEY ONCE AGAIN WILLFULLY ENCROACH ON PRIVATE PROPERTY FOR THE PURPOSE OF INSTALLING A GPS TRACKING DEVICE. HE GOES ON TO TESTIFY AS TO FOLLOWING THE VEHICLE, ONCE IT WAS UNLOADED TO CLARK COUNTY'S PNP BUILDING. FROM THERE THEY OBSERVE SABRINA STAY IN THE CAR WHILE MELISSA SUMMLEARS GOES INTO PNP.

FROM THERE THE TWO FEMALES GET GAS, AND ARE THEN SEEN LEAVING THE CAR TO ORDER FOOD AT A JACK IN THE BOX.

POLICE DO NOT EVEN ATTEMPT TO PUT THE DEVICE ON BUT INSTEAD

WAIT UNTIL THE CAR IS BACK ON PRIVATE PROPERTY (THE CIRCUS CIRCUS MANOR 2888 S. LAS VEGAS BLVD), AND ILLEGALLY PLACE THE TRANSMITTER ONTO PETITIONER AND BARR'S VEHICLE.

ONCE THE TRANSMITTER IS PLACED THE VEHICLE WAS MONITORED AND THE FOLLOWING MORNING WITH ASSISTANCE OF THE GPS TRACKING DEVICE POLICE ARE ABLE TO PHYSICALLY FOLLOW THE VEHICLE [redacted] AND ULTIMATELY ARREST SUSPECTS THAT [redacted] DAY (AUGUST 9TH, 2018).

THE SECOND OF THE THREE WARRANTS AUTHORIZED THE DETECTIVES TO SEARCH MULTIPLE RESIDENCES TO INCLUDE THE GRAND MARQUIS (SEE SME-B). THE ORDER GAVE POLICE FROM 0700 - 1900 HOURS, HOWEVER THE ITEMS IN THE GRAND MARQUIS WERE TAKEN A DAY LATE (08/10/2018), FURTHER SHOWING DISREGARD AS TO A JUDICIAL ORDER.

ALSO, THE THIRD WARRANT AUTHORIZED OFFICERS TO REMOVE A FIREARM, LOCATED ON THE REAR DRIVER'S SIDE FLOOR BOARD. (SEE, SME-B) HOWEVER A BB GUN WAS RECOVERED AND THE ENTIRE CAR WAS SEARCHED

IN UNITED STATES -V- ANTOINE JONES, IT WAS HELD "UNDER THE COMMON LAW TRESSPASSORY TEST, THE GOVERNMENT PHYSICALLY OCCUPIED PRIVATE PROPERTY FOR THE PURPUSE OF [redacted] OBTAINING INFORMATION..." AND..." SUCH A PHYSICAL INTRUSION WOULD HAVE BEEN [redacted] CONSIDERED A "SEARCH" WITHIN THE MEANING OF THE FOURTH AMENDMENT WHEN IT WAS ADOPTED. THE GOVERNMENT FORFEITED, ITS ALTERNATIVE ARGUMENT THAT OFFICERS HAD REASONABLE SUSPICION AND PROBABLE CAUSE

HAD MR. BROWER DUTIFULLY INVESTIGATED THESE CLAIMS, IT WILLY HAVE BEEN CLEAR, NOT ONLY TO BROWER, BUT THE HONORABLE COURTS THATS PETITIONERS 4/TH AMENDMENT RIGHT TO PRIVACY & WARRANTLESS SEARCHES AS WELL AS HIS 14TH AMENDMENT RIGHT TO DUE PROCESS WAS VIOLATED. IT WOULD BE CLEAR OF THE WILFUL NEGLECT TO NOT ONLY FOLLOW A JUDICIAL ORDER BUT A CONSISTANT DISREGARD TO PHILLIPS' CONSTITUTIONAL RIGHTS GUARENTEED BY THE UNITED STATES CONSTITUTION. FURTHERMORE THIS CASE SHOULD HAVE HAD ALL EVIDENCE OBTAINED THROUGH SUCH AVENUES SUPPRESSED.

PETITIONER ASK COURT FOR AN EVIDENCIARY HEARING OF FACTS AND ULTIMATELY DEMISED. THESE ITEMS OF EVIDENCE WOULD

INCLUDE BUT ARE NOT LIMITED TO:

- STATEMENTS BY INDIVIDUAL AT THE LOCATION OF PREMESIS SEARCHED
- ITEMS OF CLOTHING OR ANY TANGIBLE ITEM RECOVERED (ANY AND ALL ITEMS LISTED IN SEARCH WARRANT RETURN)
- VIDEO TAKEN BY DETECTIVES FOLLOWING THE GRAND MARQUIS WHILE TRACKER WAS IN PLACE.
- ITEMS SURRENDERED TO INCLUDE VIDEO SENT BY EMAIL
- ANY AND ALL GPS DATA [redacted] FROM GPS MOBILE TRACKING DEVICE

PETITIONER PRAYS, THAT THIS COURT GRANT THIS PETITION, AND OVERTURN CASE DUE TO THE FACTS STATED [redacted] HEREIN

US CONSTITUTION

6TH AND 14TH AMENDMENT

- ILLEGAL IN-COURT IDENTIFICATION
- SUGGESTIVE ID METHODS USED BY STATE
- FAILURE TO ESTABLISH FOUNDATIONAL ID METHOD (IN-COURT ID -VS- 6 PERSON LINE UP).

SIXTH AND FOURTEENTH UNITED STATES CONSTITUTIONAL AMENDMENT VIOLATION)

PETITIONER NOW ASSERTS THAT THE STATE VIOLATED HIS SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS WELL AS HIS FOURTEENTH AMENDMENT.

A.) 6TH AMENDMENT VIOLATION

- RIGHT TO COUNSEL

STATE VIOLATED PETITIONERS 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN THEY FAILED TO NOTIFY COUNSEL OF MEETINGS THAT INVOLVED ANY TYPE OF IDENTIFICATION METHOD USED TO IDENTIFY PETITIONER.

- TRIAL COUNSEL WAS INEFFECTIVE FOR [redacted] FAILING TO DUTIFULLY INVESTIGATE ID METHOD USED BY STATE TO ID PETITIONER

B.) 14TH AMENDMENT

- RIGHT TO DUE PROCESS

PETITIONER'S RIGHT TO DUE PROCESS [redacted] GUARANTEED BY THE UNITED STATES WHEN THE STATE ALLOWED THE ILLEGAL IN-COURT ID METHOD. WITH SEVERAL VICTIMS / WITNESSES. TO INCLUDE: ALEX ORELLANA (SME-C EXHIBIT C)
CHELSEY GRITTON (SME-C EXHIBIT C)
ALLYSON SANTAMAURO (SME-C EXHIBIT C)

•REGINA COLEMAN (SEE SMB - EXHIBIT C)

ALL IN-COURT IDENTIFICATIONS TAINTED THE MINDS OF JURORS. ALL VICTIMS/WITNESSES TESTIFIED THEY WERE NOT GIVEN OR SHOWN ANY TYPE OF LINE-UP PRIOR TO TRIAL. THIS AFFECTED PETITIONERS RIGHT TO DUE PROCESS BY ALLOWING THE IN-COURT IDENTIFICATION WITHOUT PRIOR LINE UP, AND BEING THE FACT PETITIONER AND CO-DEFENDANT WAS THE ONLY TWO BLACK MALES IN COURT ROOM AND AT DEFENSE TABLE.

A.) RIGHT TO COUNSEL

"IT WAS HELD THAT (1) THE DEFENDENTS SIX AMENDMENT RIGHT TO COUNSEL ATTATCHED AT TIME TIME OF HIS PRELIMINARY HEARING, [redacted] WHICH MARKED THE INITIATION OF ADVERSARY JUDICIAL PROCEEDING AGAINST HIM..." (98 SCT 458, 54 LED2D 424, 434 US 220) THE PETITIONER AT BAR'S HAD A PRELIMINARY HEARING DATE OF OCTOBER 4TH, 2018, WHICH IF ACCORDING TO THE ABOVE CASE, MOORE -V- STATE OF ILLINOIS, WOULD MEAN THE STATE WOULD BE WRONG IN SHOWING PHOTOS OF THE PETITIONER WITHOUT HIS COUNSEL BEING PRESENT.

THIS IS IN FACT WHAT HAPPENED AND PETITIONER AND COUNSEL ONLY FOUND THIS INFORMATION OUT THROUGH TESTIMONY OF

SUNNY SHAY COURTNER IN COURT DURING TRIAL.

DURING @ CROSS-EXAMINATION BY MR. HUGHES HE ASKED SUNNY IF SHE REMEMBERED WHETHER THE INDIVIDUALS WHO ROBBED HER HAD ANY TATTOOS?. SHE SAID:

A.) "YES. I DO RECALL SEEING SOME ONE ONE OF THEIR FACES. I DON'T REMEMBER WHATS ON THERE, BUT I DO REMEMBER SEEING THAT."

THEN WHEN ASKED OF A STATEMENT SHE GAVE TO POLICE THAT VERY SAME DAY, AND RE-ASKED THE QUESTION SHE SAID:

A.) "NO -- YES, I DID NOT SEE ANY."

Q.) "SO YOU TOLD POLICE NO, THERE WERE NO TATTOOS?"

A.) "YES"

Q.) "AND NOW YOU SAY THERE IS TATTOOS?"

A.) "YES"

SHE IS THEN ASKED IF SHE SEEN THE VIDEO THEY JUST WATCHED PRIOR TO TRIAL SHE SAID YES AND ALSO CLAIMED SHE WAS SHOWN A PHOTO ARRAY OF POSSIBLE SUSPECTS BY POLICE, SHE SAID YES BUT NOT BY POLICE.

SHE SAID IT WAS TWO PHOTOS SHOWN BY DISTRICT ATTORNEY BARBARA SCHIFALACQUA AND RICHARD SCOW AT A MEETING A COUPLE WEEKS PRIOR. (SEE EXHIBIT C)

A SHOWING THAT IS USED TO IDENTIFY

PETITIONER WITHOUT COUNSEL PRESENT IS A DIRECT VIOLATION OF PETITIONERS RIGHT TO COUNSEL, 6TH AMENDMENT. THIS PREJUDICED PETITIONER BECAUSE THESE TYPE OF ID'S ARE HIGHLY SUGGESTIVE, AND ESPECIALLY NOT IN THE FORM OF A SIX MAN PHOTO LINE UP - VS - TWO SINGLE PHOTOS OF EACH SUSPECT.

PETITIONER ASKS FOR AN EVIDENCIARY HEARING AND AN ULTIMATE OVERTURNING OF CASE DUE TO ILLEGAL ID METHODS USED BY PROSECUTING ATTORNEY'S.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO DUTIFULLY INVESTIGATE ID METHODS USED TO IDENTIFY PETITIONER BY STATE, THE ABOVE ISSUE STATED ISSUE IS A PERFECT EXAMPLE OF SUCH METHODS.

FOUR INDIVIDUALS GAVE IN-COURT IDENTIFICATIONS AT TRIAL. ALL INDIVIDUALS THAT IDENTIFIED PETITIONER IN-COURT WERE VICTIMS OF THE JULY 23rd, 2018 AND JULY 31ST, 2018 INCIDENTS.

ALEX ORELLANA, CHELSEY GRITTON AND ALLYSON SANTAMAURO WERE ALL EITHER WITNESSES OR DIRECT VICTIMS IN THE JULY 23rd (2018) US BANK ROBBERY AT 10565 SOUTH EASTERN IN HENDERSON

REGINA COLEMAN IS A TELLER AT THE BANK OF THE WEST JULY 31ST (2018) INCIDENT.

PRIOR TO TRIAL AND AS FAR BACK AS WHEN LEAD DETECTIVE KARL LIPPISCH #1710 APPLIED FOR A MOBILE TRACKING DEVICE ON 08/08/2018, THE DETECTIVE WROTE AND I QUOTE...

"THE EMPLOYEES DID NOT NOTICE ANYTHING DISTINCT ABOUT THE SUSPECTS THAT WOULD ASSIST IN IDENTIFYING THE INDIVIDUALS, TO INCLUDE THEIR SPEECH". (PLEASE SEE SEARCH WARRANTS IN SME-B).

IF ANY INDICATORS AS TO SPECIFIC IDENTIFYING CHARACTERISTICS EXISTED, LEAD DETECTIVE LIPPISCH WOULD NOT HAVE GIVEN THAT TESTIMONY IN HIS AFFIDAVIT.

REGINAS TESTIMONY AT BEST IS SHAKY. SHE STARTS OFF BY EXPLAINING HOW SHE CAME INTO WORK LATE AND HAD INTERACTIONS WITH THE "MALE DRESSED AS A LADY". SHE STARTS HER NARRATIVE WITH THE INTERACTION WITH THAT INDIVIDUAL AND THEN CHANGES IT COMPLETELY LATER ON. BUT AGAIN SHE DOESN'T EVER ID PETITIONER IN ANY PHOTO ARRAY OF SUSPECTS, BUT IN OPEN COURT AND IN TRIAL, A HIGHLY SUGGESTIVE IDENTIFYING METHOD.

AT 10565 SOUTH EASTERN A US BANK

BRANCH IN HENDERSON ALL THE VICTIMS CLAIMED THEY COULD NOT ID SUSPECTS TO POLICE IN POLICE REPORTS BUT IN OPEN COURT AND IN TRIAL THE INDIVIDUALS LISTED GAVE TESTIMONY IDENTIFYING PETITIONER (SEE EXHIBIT C FOR EXACT TESTIMONY).

ALSO REGINA COLEMAN IN JULY 31ST INCIDENT CLAIMED IN TRIAL THAT ONE OF THE SUSPECTS HAD A LITTLE AFRO, BUT THE VIDEO SHOWS LONG STRAIGHT HAIR ON THE WOMAN DRESSED AS A WOMAN AND STRAIGHT HAIR ON THE MAN WITH THE TOWEL. PLEASE SEE EXHIBIT D).

SME - D (SUPPLEMENTAL MEMORANDUM EXHIBIT - D)

IN UNITED STATES -V- BILLY JOE WADE IT WAS RULED THAT:

"...(4) UNDER THE SIXTH AMEND. THE ACCUSED WAS ENTITLED TO THE AID OF COUNSEL AT THE LINEUP AND (3) COURT ROOM IDENTIFICATIONS SHOULD NOT BE EXCLUDED IF BASED ON OBSERVATIONS OF THE ACCUSED OTHER THAN THE LINEUP IDENTIFICATION..."

SO ACCORDING TO WADE IF THE 2 PHOTOS SHOWN BY PROSECUTION WOULD BE IN DIRECT VIOLATION OF PETITIONERS 6TH AMENDMENT RIGHT. (SEE ALLYSON SANTAMAURO'S STATEMENT, EXHIBIT C OF THIS PACKET).

AND THE IN-COURT IDENTIFICATION BY THE INDIVIDUALS AT TRIAL WOULD ALSO BE ILLEGAL DUE TO THE FACTS THAT ALL THE VICTIMS MENTIONED TOLD POLICE THEY DID NOT NOTICE ANYTHING DISTINCT THAT WOULD ASSIST IN IDENTIFYING THE SUSPECTS TO INCLUDE THEIR SPEECH. ALSO POLICE REPORTS REFLECTED THAT NONE OF THE VICTIMS COULD ID ANY FACIAL FEATURES OF THE SUSPECTS. SO THE IN-COURT IDENTIFICATION WOULD BE IN DIRECT VIOLATION OF U.S. -V- WADE AS WELL.

IN CONCLUSION PETITIONER PRAYS THE COURT GIVES AN EVIDENCIARY HEARING AND IF FACTS SO SURE MATCH THE FACTS PRESENTED, THE CASE

SHOULD BE OVERTURNED.

CUMULATE ERROR.

PHILLIPS ASSERTS HERE THAT PURSUANT TO VALDEZ-V-STATE, 196 P.3d 465, IT IS CUMULATIVE ERROR INVOLVED HERE. PHILLIPS URGES THAT THE MANY U.S. CONST. VIOLATIONS, ARE SO NUMEROUS, AND EGREGIOUS THAT IT AFFECTED THE TOTALITY OF PHILLIPS' PROCEEDINGS UP INTO THIS POINT. AND SO THE ENTIRE CASE SHOULD BE REVERSED.

CONCLUSIONS

HEREIN THIS PETITION FOR WRIT OF HABEAS CORPUS MR. PHILLIPS, HAS RAISED MANY STRUCTURAL ERROR GROUNDS, AND MANY REVERSIBLE ERROR GROUNDS.

AND SO,

IN ACCORDANCE WITH THE CONSTITUTIONAL FAIRNESS, AND THE ADHERENCE TO THE IMPERATIVE CASELAW DECISIONS CITED HEREIN, PHILLIPS, DO URGE THE COURT TO REVERSE THE ENTIRE CONVICTION, AND REMAND FOR A NEW TRIAL.

CERTIFICATE OF SERVICE BY MAILING

I, DAMIEN A. PHILLIPS, hereby certify, pursuant to NRCP 5(b), that on this 20 day of JULY, 2021, I mailed a true and correct copy of the foregoing, "MOTION FOR AMENDED [redacted] HABEAS CORPUS (POST CONVICTION)" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

CLERK OF THE COURT
CLARK COUNTY DISTRICT COURT
200 LEWIS AVE
3RD FLOOR
LAS VEGAS, NV. 89155

NEVADA ATTORNEY GENERAL
100 NORTH CARSON ST
CARSON CITY, NV. 89701

THE WARDEN, HDSP
~~ST~~ 22010 COLD CREEK RD.
INDIAN SPRINGS, NV. 89070

CC:FILE

DATED: this 20 day of JULY, 2021.

DAMIEN A. PHILLIPS #1212760
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HABEAS CORPUS (POST CONVICTION)
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

I Swear

Signature _____ Date _____

DAMIEN A. PHILLIPS
Print Name

PRO-SE
Title

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

EXECUTED at High Desert State Prison on the 1st day of the month of MARCH, 2021.

Damien A. Phillips #1212760
*

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

VERIFICATION

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

Damien A. Phillips #1212760
*

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

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-335500-1 Does not contain the social security number of any person.

Damien A. Phillips #1212760
*

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

CERTIFICATE OF SERVICE BY MAIL

I Damien A. Phillips, hereby certify pursuant to N.R.C.P. 5(b), that on this ____ day of the month of _____, 20__, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

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

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

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

Damien A. Phillips #1212760
*

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

Damien A. Phillips #1212760

* Print your name and NDOC back number and sign

EXHIBIT "B"

THE COMPLAINT

Electronically Filed
10/23/2018 12:34 PM
Steven D. Grierson
CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #009182
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

Exhibit 5A

I.A. 10/24/18
10:00 AM
K. BROWER, ESQ.

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS, aka
Travis Alexander Phillips,
#8437103

Defendant.

CASE NO: C-18-335500-1

DEPT NO: XXI

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That DAMIEN ALEXANDER PHILLIPS, the Defendant(s) above named, having committed the crimes of **CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480 - NOC 50445), CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147), BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426), ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138), ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 200.471, 193.167 - NOC 50202); CARRYING CONCEALED PNEUMATIC GUN**

COUNT 4 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or SABRINA MARIE HENDERSON did on or about July 17, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of AMIE CARR, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of AMIE CARR, with use of a deadly weapon, to wit: a pneumatic gun and/or a deadly weapon, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

COUNT 5 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 23, 2018 willfully, unlawfully, and feloniously enter a building, owned or occupied by U.S. BANK, located at 10565 S. Eastern Avenue, Henderson, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a pneumatic gun and/or a deadly weapon, during the commission of the crime and/or before leaving the structure; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 6 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 23, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of MELANIE TERADA, or in his or her presence, by means of

COUNT 8 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 31, 2018 willfully, unlawfully, and feloniously enter a building, owned or occupied by BANK OF THE WEST, located at 701 N. Valle Verde Drive, Henderson, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a pneumatic gun and/or an explosive device and/or a deadly weapon, during the commission of the crime and/or before leaving the structure; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about July 31, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of NUR BEGUM, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of NUR BEGUM, with use of a deadly weapon, to wit: a pneumatic gun and/or an explosive device and/or a deadly weapon, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling,

//

//

more of the following principles of criminal liability, to wit: (1) by directly committing this crime, and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 12 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about August 6, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of SUNNY CORTNER, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of SUNNY CORTNER, with use of a deadly weapon, to wit: a pneumatic gun and/or a deadly weapon, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 13 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON did on or about August 6, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of MEGHAN ZITZMANN, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of

feloniously enter building, owned or occupied by U.S. BANK, located at 801 E. Charleston Boulevard, Las Vegas, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a pneumatic gun, a deadly weapon, during the commission of the crime and/or before leaving the structure; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 16 – ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON, and/or MELISSA SUMMLEARS, did on or about August 9, 2018 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the person of JADA COPELAND, or in his or her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of JADA COPELAND, with use of a deadly weapon, to wit: a pneumatic gun, Defendants using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

//

//

the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 19 – ASSAULT WITH A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON, and/or MELISSA SUMMLEARS, did on or about August 9, 2018 willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: MICHAEL IRISH, with use of a deadly weapon, to wit: a pneumatic gun, by displaying and/or pointing a gun at and/or toward MICHAEL IRISH while demanding he get on the ground; Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

COUNT 20 – ASSAULT WITH A DEADLY WEAPON

Defendants DAMIEN ALEXANDER PHILLIPS, aka, Travis Alexander Phillips, and/or ANTHONY TERRELL BARR, and/or SABRINA MARIE HENDERSON, and/or MELISSA SUMMLEARS, did on or about August 9, 2018 willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: UNNAMED CUSTOMER, with use of a deadly weapon, to wit: a pneumatic gun, by displaying and/or pointing a gun at and/or toward UNNAMED CUSTOMER while demanding he get on the ground; Defendants being criminally liable under one or more of the following

//

COUNT 23 - PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION

Defendant ANTHONY TERRELL BARR did on or about August 9, 2018, did then and there willfully, unlawfully, and feloniously, by intimidation or threats, prevent or dissuade, or hinder or delay JASZMINE MOORHEAD, from reporting a crime to law enforcement by threatening said JASMINE MOORHEAD that if she tells anybody about what they were doing her life would be over.

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

BY _____
RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #009182

Names of witnesses known to the District Attorney's Office at the time of filing this information are as follows:

NAME	ADDRESS
BEGUM, NUR	C/O DISTRICT ATTORNEY'S OFFICE
CARR, AMIE	C/O DISTRICT ATTORNEY'S OFFICE
CORTNER, SUNNY	C/O DISTRICT ATTORNEY'S OFFICE
CUSTODIAN OF RECORDS	Henderson Detention Center Communications
CUSTODIAN OF RECORDS	Henderson Detention Center Records
CUSTODIAN OF RECORDS	HPD COMMUNICATIONS
CUSTODIAN OF RECORDS	HPD RECORDS
EBERT, J.	HPD P#1358
GRITTON, CHELSEY	11238 Fiesole St, LV, NV
LIPPISCH, K.	HPD P#1710
MONES, MARY GRACE	C/O DISTRICT ATTORNEY'S OFFICE
ORELLANA, ALEX	10565 S. Eastern Ave, Henderson, NV

EXHIBIT C

REASONABLE DOUBT JURY INSTR

INSTRUCTION NO. 41

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

EXHIBIT "D"

ORIGINAL Judgement of CONVICTION

Electronically Filed
2/27/2019 11:03 AM
Steven D. Grierson
CLERK OF THE COURT

Exhibit 573

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS aka Travis Alexander Phillips
#8437103

Defendant.

CASE NO. C-18-335500-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNTS 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7, 9, 10, 12, 13, 16 and 17 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNTS 18, 19 and 20 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 21 – ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF

☐ Nolle Prosequi (before trial)
☐ Dismissed (after diversion)
☐ Dismissed (before trial)
☐ Guilty Plea with Sent. (before trial)
☐ Transferred (before/during trial)
☐ Other Manner of Disposition

☐ Bench (Non-Jury) Trial
☐ Dismissed (during trial)
☒ Acquittal
☐ Guilty Plea with Sent. (during trial)
☐ Conviction

AGE OR OLDER (Category B Felony) in violation of NRS 200.471, 193.167; COUNT 22 – CARRYING CONCEALED PNEUMATIC GUN (Category C Felony) in violation of NRS 202.350; and COUNT 23 – PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION (Category D Felony) in violation of NRS 199.305; the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1 and 2 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNTS 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7, 9, 10, 12, 13, 16 and 17 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNTS 18, 19 and 20 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 21 – ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony) in violation of NRS 200.471, 193.167; COUNT 22 – CARRYING CONCEALED PNEUMATIC GUN (Category C Felony) in violation of NRS 202.350; and COUNT 23 – PREVENTING OR DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING PROSECUTION (Category D Felony) in violation of NRS 199.305; thereafter, on the 29th day of January, 2019, the Defendant was present in court for sentencing with counsel KEITH BROWER, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $250.00 Indigent Defense Civil Assessment Fee and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA

Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC); **COUNT 2** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 1; **COUNT 3** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon; **COUNT 5** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 3; **COUNT 6** – a MAXIMUM of a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 4; **COUNT 7** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 5; **COUNT 8** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 5; **COUNT 9** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole

Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 7; **COUNT 10** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 9; **COUNT 11** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 8; **COUNT 12** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 10; **COUNT 13** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 12; **COUNT 14** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 11; **COUNT 15** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 14; **COUNT 16** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED

TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 13; **COUNT 17** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 16; **COUNT 18** – a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 15; **COUNT 19**- a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 18; **COUNT 20**- a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 19; and **COUNT 21** – a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 20; with ONE HUNDRED SEVENTY-FOUR (174) DAYS credit for time served. The AGGREGATE TOTAL sentence is ONE HUNDRED (100) YEARS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF THIRTY (30) YEARS.

DATED this 25 day of February, 2019.

for VALERIE ADAIR
DISTRICT COURT JUDGE

EXHIBIT "E"

AMENDED JUDGEMENT of CONVICTION

Electronically Filed
5/6/2020 2:04 PM
Steven D. Grierson
CLERK OF THE COURT

AJOC

Exhibit 78

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMIEN ALEXANDER PHILLIPS aka Travis Alexander Phillips #8437102

Defendant.

CASE NO. C-18-335500-1

DEPT. NO. XXI

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 4, 6, 7, 9, 10, 12, 13, 16, and 17 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 18, 19 and 20 –

USJR Statistical Closure: Other Manner of Disposition

ASSAULT WITH A DEADLY WEAPN (Category B Felony) in violation of NRS 200.471, of COUNT 21 – ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category C Felony) in violation of NRS 202.350; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 3, 5, 8, 11, 14 and 15 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 4, 6, 7, 9, 10, 12, 13, 16, and 17 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 18, 19 and 20 – ASSAULT WITH A DEADLY WEAPN (Category B Felony) in violation of NRS 200.471, of COUNT 21 – ASSAULT WITH A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category C Felony) in violation of NRS 202.350, thereafter, on the 29th day of January, 2019, the Defendant was present in court for sentencing with counsel KEITH C. BROWER, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $250.00 Indigent Defense Civil Assessment Fee, and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant is SENTENCED as follows: **COUNT 1** - THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC); **COUNT 2** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT

with COUNT 1; **COUNT 3** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 2; **COUNT 4** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 3; **COUNT 5** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 3; **COUNT 6** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONSECUTIVE to COUNT 4; **COUNT 7** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONSECUTIVE to COUNT 6; **COUNT 8** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 5; **COUNT 9** - a MAXIMUM of ONE HUNDRED TWENTY

(120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONSECUTIVE to COUNT 7; **COUNT 10** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 9; **COUNT 11** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 8; **COUNT 12** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 10; **COUNT 13** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 12; **COUNT 14** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of

Corrections (NDC), CONCURRENT with COUNT 11; **COUNT 15** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 14; **COUNT 16** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 13; **COUNT 17** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, in the Nevada Department of Corrections (NDC), CONCURRENT with 16; **COUNT 18** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 15; **COUNT 19** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 18; **COUNT 20** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 19; **COUNT 21** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, plus a CONSECUTIVE term of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS for Victim Over

60 Years of Age, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 17; with ONE HUNDRED SEVENTY-FOUR (174) DAYS credit for time served as of January 29, 2019. The AGGREGATE TOTAL sentence is EIGHTY (80) YEARS MAXIMUM with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) YEARS.

IT IS HEARBY ORDERED by the COURT per minute order dated April 30, 2020 the Judgment of Conviction filed on February 27, 2019 and the Amended Judgment of Conviction filed on March, 30, 2020 have been STRICKEN from the record and this new original Judgment of Conviction has been prepared and filed in this case.

THEREAFTER, a clerical error having been discovered, the Amended Judgment of Conviction reflects the following correction: **the correct spelling of the Defendant's Name** DAMIEN ALEXANDER PHILLIPS.

DATED this 6th day of May, 2020.

VALERIE ADAIR TW
DISTRICT COURT JUDGE

EXHIBIT "F"

ORDER of AFFIRMANCE

Exhibit 6C

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIEN ALEXANDER PHILLIPS,
A/K/A TRAVIS ALEXANDER PHILLIPS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78270

FILED

MAR 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary,[1] conspiracy to commit robbery, six counts of burglary while in possession of a deadly weapon, nine counts of robbery with use of a deadly weapon, three counts of assault with a deadly weapon, assault with a deadly weapon of victim 60 years of age or older, carrying a concealed pneumatic gun, and preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. Eighth Judicial District Court, Clark County; Douglas Smith,[2] Judge.

Damien Phillips and Anthony Barr robbed a string of Las Vegas banks in July and August 2018. Phillips robbed the first bank—a U.S. Bank on Paseo Verde in Henderson—alone, but Barr joined him for the

[1]The judgment of conviction states that Phillips was convicted of "counts 1 and 2 – conspiracy to commit burglary," which appears to be a clerical error as count 2 was conspiracy to commit robbery. We direct the district court to enter a corrected judgment of conviction fixing this clerical error.

[2]Judge Valerie Adair presided over the trial.

subsequent four banks: a U.S. Bank on Eastern Avenue, a Bank of the West on North Valley Verde, a U.S. Bank inside of a Smith's Food and Drug on South Valley Verde, and a U.S. Bank on Charleston. During each of the first four robberies, Phillips or Barr or both presented the bank tellers with a note demanding money and threatening to use "a weapon," "a gun," and/or "a bomb" in order to secure compliance. Officers began tracking Phillips and Barr following the fourth robbery. Immediately prior to the fifth robbery, officers observed Phillips and Barr briefly enter a busy Smith's store that housed a U.S. Bank; there was a bulge in Barr's waistband that suggested a firearm. The pair then proceeded to the U.S. Bank on Charleston, where Phillips and Barr robbed the bank at gunpoint. Officers apprehended them as they fled from the fifth robbery. A jury found Phillips guilty on 21 counts, including burglary related to the Smith's he entered immediately before the fifth robbery (count 14). The jury also found Phillips guilty of using a deadly weapon in the commission of each of the crimes.

On appeal, Phillips contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on counts 3 and 4 regarding the robbery of the Paseo Verde branch, the deadly weapon enhancement on counts 3-14 regarding the first four robberies, and the burglary conviction on count 14 regarding the Smith's. We disagree.

Evidence is sufficient to support a verdict if, "viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hager v. State*, 135 Nev., Adv. Op 34, 447 P.3d 1063, 1070 (2019), *quoting Middleton v. State*, 114 Nev. 1089, 1103, 968 P.2d 296, 306 (1998) (internal quotation marks omitted). Circumstantial evidence may support a conviction. *Collman v. State*, 116 Nev. 687, 711, 7 P.3d 426,

441 (2000). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

Here, the jury could reasonably infer from the evidence presented at trial that Phillips committed these crimes. *See* NRS 193.165(1); NRS 200.380(1); NRS 205.060(1). As to counts 3 and 4, U.S. Bank provided video surveillance of the robbery at the Paseo Verde branch, and witnesses identified Phillips as the suspect who robbed that bank.[3] Moreover, officers tied the suspect in the first robbery to one suspect in the second robbery based upon his clothing, notably his glasses, and a witness testified that those glasses belonged to Phillips. It was for the jury to weigh that evidence, which we conclude provided sufficient grounds for the verdict on those counts.

As to the deadly weapon enhancement on counts 3-14, this court has broadly construed NRS 193.165(1), *see State v. Dunckhurst*, 99 Nev. 696, 697, 669 P.2d 243, 243 (1983), and explained that a defendant need not activate a weapon during the crime to receive a deadly weapon enhancement, *see Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979). Even where the victim does not actually see the weapon, a deadly weapon enhancement will be warranted if the evidence overall suggests the defendant used a deadly weapon to facilitate the crime. *See Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976). Here, although the victims in the first four robberies did not observe a weapon, the evidence as

---

[3]We have carefully reviewed the record and considered Phillips' arguments regarding the video surveillance, and conclude that the evidence as a whole supports that the witnesses identified Phillips as the suspect who robbed the Paseo Verde branch.

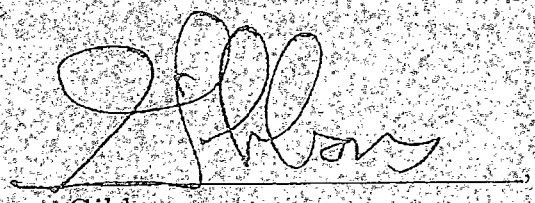
a whole supports the deadly weapon enhancement. Phillips and Barr threatened the bank tellers with use of a weapon, generally a gun, to facilitate those robberies, and during one robbery, Phillips placed a bag on the counter and indicated it contained a bomb. During the burglary at the Smith's, officers observed that Barr had a bulge in his waistband, and immediately after leaving the Smith's, Phillips and Barr robbed a bank at gunpoint. Officers found guns in the getaway car and in another car owned by Phillips. This is sufficient evidence by which the jury could determine that Phillips used a gun or other deadly weapon during each of the robberies.

Finally, as to count 14 regarding the Smith's burglary, the evidence established that Phillips and Barr parked in an apartment complex behind a Smith's that contained a U.S. Bank, observed the busy area before entering, and were inside only a short time. As noted above, officers observed a bulge in Barr's waistband indicating the presence of a firearm. Phillips and Barr proceeded to rob a U.S. Bank at gunpoint immediately after leaving the Smith's. This evidence, although circumstantial, supports an inference that Phillips and Barr entered the Smith's with intent to commit a robbery, *see* NRS 205.060(1), and no evidence was adduced at trial to demonstrate that Phillips and Barr entered the store for another purpose. Accordingly, there was sufficient evidence by which a rational juror could find Phillips guilty of burglary on count 14. *See*

Sheriff v. Stevens, 97 Nev. 316, 317-18, 630 P.2d 256, 257 (1981) (explaining the crime of burglary is complete once the defendant enters the building with the intent to commit a felony).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons

_____, J.
Stiglich

_____, J.
Silver

cc: Chief Judge, Eighth Judicial District Court
Hon. Valerie Adair, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

NEVADA DEPARTMENT OF CORRECTIONS

LEGAL MAIL

NAME: Phillips DOC#: 1242760 UNIT: TDW017

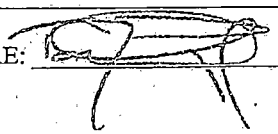
REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

LEGAL MAIL: C Garrison

CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: _____ OFFICER: Smith

INMATE SIGNATURE:  DOC#: 1242760 DATE: 6/29/21

DOC - 3020 (REV. 7/01)

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

INMATE CORRESPONDENCE

Date: June 23, 2021

Inmate Name: Damien A Phillips

Case Number: Unknown

- ☐ A Court order is required to complete the request
- ☐ Documents are sealed, required court order to reproduce. ***(PSI)***
- ☐ Documents requested are not in court file at this time.
- ☐ Transcripts have not been filed, require court order
- ☐ Copies are $.50 cents per page **or by court order.**
- ☒ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding Warrants under the above
- ☒ **Other: You need to provide District Court Case # so I can proceed with your request. If you don't know you can call Records Department at 702-671-0555.**

Deputy Clerk # 48

District Court Criminal Mail Desk

To the honorable Judge, 6/14/21

My name is Damien A. Phillips. Currently I am housed at High Desert State Prison. I recently received a response to my Post Conviction Habeas Corpus. Currently I am in the process of responding to the states response, However it is extremely difficult to respond if I have no law library access.

On June 7th, 2021 a hearing was held. I am clueless as to the actions or any orders the judge made that day.

My hearing was set for the 7th of June of 2021. I am clueless to what happened. I kindly ask the court to grant me a 45 day extension to respond and to order High Desert State Prison to give me atleast 2 hours a day in law library.

Currently unless there is a court order, we have no access to

RECEIVED
JUN 21 2021
CLERK OF THE COURT

law library.

Again my requests are the following:

(1) 45 day extension
(2) Court order for law library
(3) Minutes to the June 7th Hearing.

Your timely response is much appreciated, as I really want to resolve these matters. Thank you all for hearing my letter to the court.

Damien Phillips

Electronically Filed
04/01/2021 5:14 PM
CLERK OF THE COURT

PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

Damien Phillips,

Petitioner,

vs.

Nevada Department of Correction,

Respondent,

Case No: A-21-831976-W
Department 23

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on March 30, 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 June, 20 21, at the hour of 11:00 o'clock for further proceedings.

Dated this 1st day of April, 2021

District Court Judge
739 23F 9B7C FB43
Jasmin Lilly-Spells
District Court Judge

U.S. CONST.
1ST AMENDMENT

U.S. Const. 1st Amendment
Right Of Access To The Courts (federalize)

Phillips, urges here that his 1st Amend. Const. right is being hindered.

How?

Because the right of access to the courts and the right to assistance, which means that prison officials failed to assist the prisoner in bringing legal action to fruition. (I.E. - This writ of Habeas Corpus).

Nevada Dept. of Corrections, is denying Phillips access to the law library. Prison officials here at High Desert State Prison, right now during the Coronavirus pandemic have made it so impossible to attend the law library that it is basically non-existent. In turns, this makes it impossible to do legal research, and certify pertinent legal mail! Thereby violating Phillips, Due Process.

Phillips, urges here that the Court will order a mandate upon Nev. Dept. of Corr. to give, provide Phillips, access to the prison law library. In order to maintain this litigation, for this petition for writ of Habeas Corpus. Phillips, requests at least five hours per week for law library access. Pursuant to: Bounds -vs- Smith 430 U.S. 817 (1977)

DAMIEN A. PHILLIPS #1212760
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV. 89070

Hasler FIRST-CLASS MAIL
07/01/2021
US POSTAGE $000.71[2]

ZIP 89101
011E12650516

CLERK OF THE COURT
200 LEWIS AVENUE
3rd FLOOR

LAS VEGAS, NV. 89155-1160

3762

891018300 C075

244

Electronically Filed
07/08/2021
CLERK OF THE COURT

Case No. A-21-831976-W

Dept. No. 21

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

DAMIEN A. PHILLIPS
PETITIONER

vs.

NEVADA DEPT. OF CORRECTION
RESPONDENT

Case No. A-21-831976-W

Dept No. 21

Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that DAMIEN A. PHILLIPS PETITIONER will come on for hearing before the above-entitled Court on the ____ day of _____, 20__, at the hour of ____ o'clock ___ M. In Department ___, of said Court.

CC FILE

DATED this 29 day of JUNE, 2021.

BY: DAMIEN A. PHILLIPS #1212760
/In Propria Personam

RECEIVED
JUL 6 2021
CLERK OF THE COURT

June 29, 2021

3:00 PM

TO THE HONORABLE JUDGES OF

THE EIGHTH JUDICIAL COURT

COUNTY OF CLARK,

MY NAME IS DAMIEN A. PHILLIPS #1217760 I AM AN INMATE CURRENTLY HOUSED AT HIGH DESERT STATE PRISON. IN UNIT 7D (DELTA) CELL 10. I AM NOT A PROBLEM INMATE, NOR DO I GET INTO TROUBLE. IT IS VERY HARD NOT HAVING THE FINANCIAL ABILITY TO BUY STAMPS TO MAIL MY MOTIONS, AND TODAY, C/O's REFUSE ME TO GET A SENIOR OR LT. TO SIGN THE BRASS SLIP. I AM ENCLOSING A COPY OF THE BRASS SLIP SO MY REQUEST IS BACKED UP WITH PROOF OF THE DATE I GAVE MY PAPERWORK TO THE C/O.

PLEASE, I PRAY THE COURT GRANT MY EXTENSION FOR MY REPLY BRIEF TO THE STATE AS I ALSO NEED THE 10 HOUR