

FILED

FEB 19 2021

*Alana L. Johnson*  
CLERK OF COURT

Electronically Filed  
Feb 24 2021 10:37 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DISTRICT COURT  
CLARK COUNTY NEVADA

NAME, SEAN MCKENDRICK

Plaintiff(s),

-vs-

NAME, STATE OF NEVADA

Defendant(s).

CASE NO.

A-20-823904-W

NOTICE OF APPEAL

COMES NOW, PLAINTIFF, in PRO PER and herein above respectfully

Moves this Honorable Court for a NOTICE OF APPEAL BE  
FILED WITH THE NEVADA SUPREME COURT WITH  
A CASE APPEAL STATEMENT.

The above is made and based on the following Memorandum of Points and Authorities.

RECEIVED

FEB 18 2021

<sup>1</sup>  
CLERK OF THE COURT

1 ON JANUARY 19, 2021 THIS COURT DENIED  
2 MR MCKENDRICKS PETITION FOR WRIT OF  
3 HABEAS CORPUS. AS SUCH HE NOW  
4 NOTIFIES THIS COURT OF HIS APPEAL  
5 TO THE NEVADA SUPREME COURT OF  
6 THIS DENIAL  
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23  
24 Dated this 12<sup>TH</sup> day of FEBRUARY, 2021  
25

26 By: X Sean McKendrick  
27  
28

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

NOTICE OF APPEAL

(Title of Document)

Filed in case number: A-20-823904-W

☒ Document does not contain the social security number of any person

Or

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

☐ A Specific state or federal law, to wit

\_\_\_\_\_

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: FEBRUARY 12, 2021

  
(Signature)

SEAN MCKENDRICK  
(Print Name)

PRO Se'  
(Attorney for)



1 ASTA

2  
3  
4  
5  
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**

9 SEAN MCKENDRICK,

10 Plaintiff(s),

11 vs.

12 STATE OF NEVADA,

13 Defendant(s),

Case No: A-20-823904-W

Dept No: VI

14  
15  
16 **CASE APPEAL STATEMENT**

17  
18 1. Appellant(s): Sean McKendrick

19 2. Judge: Jacqueline M. Bluth

20 3. Appellant(s): Sean McKendrick

21 Counsel:

22 Sean McKendrick #84624  
23 P.O. Box 1989  
24 Ely, NV 89301

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 Lewis Ave.  
Las Vegas, NV 89155-2212

1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
2 Permission Granted: N/A

3 Respondent(s)'s Attorney Licensed in Nevada: Yes  
4 Permission Granted: N/A

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

6 7. Appellant Represented by Appointed Counsel On Appeal: N/A

7 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A

8 \*\*Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: No  
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: October 29, 2020

12 10. Brief Description of the Nature of the Action: Civil Writ

13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 23 day of February 2021.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk  
22 200 Lewis Ave  
23 PO Box 551601  
24 Las Vegas, Nevada 89155-1601  
25 (702) 671-0512

26 cc: Sean McKendrick  
27  
28

## EIGHTH JUDICIAL DISTRICT COURT

# CASE SUMMARY

## CASE NO. A-20-823904-W

Sean McKendrick, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

§  
§  
§  
§  
§

Location: Department 6  
Judicial Officer: Bluth, Jacqueline M.  
Filed on: 10/29/2020  
Cross-Reference Case Number: A823904

### CASE INFORMATION

#### Related Cases

C-19-338224-1 (Writ Related Case)

Case Type: Writ of Habeas Corpus

Case Status: 10/29/2020 Open

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-20-823904-W  
Court Department 6  
Date Assigned 10/29/2020  
Judicial Officer Bluth, Jacqueline M.

### PARTY INFORMATION

**Plaintiff** McKendrick, Sean

Lead Attorneys

Pro Se

**Defendant** State of Nevada






Overly, Sarah  
Retained  
702-486-3420(W)

### DATE

### EVENTS & ORDERS OF THE COURT

### INDEX

#### EVENTS

10/29/2020	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff McKendrick, Sean
10/30/2020	 Order for Petition for Writ of Habeas Corpus <i>Order for Petition for Writ of Habeas Corpus</i>
12/03/2020	 Response Filed by: Defendant State of Nevada <i>State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion for Appointment of Counsel</i>
01/18/2021	 Order Filed By: Plaintiff McKendrick, Sean <i>Order Denying in Part Petition for Writ of Habeas Corpus, Defendant's Motion for Withdrawal of Attorney of Record and Request to Have Court Appointed Representation During Post-Conviction Relief Process and Granting in Part Request to Obtain Copy of Defendant's File</i>
01/19/2021	 Notice of Entry of Order Filed By: Defendant State of Nevada <i>Notice of Entry of Order</i>

# CASE SUMMARY

## CASE NO. A-20-823904-W

02/19/2021



Notice of Appeal  
Notice of Appeal

02/23/2021



Case Appeal Statement  
Filed By: Plaintiff McKendrick, Sean  
Case Appeal Statement

### HEARINGS

01/08/2021



Minute Order (3:00 AM) (Judicial Officer: Bluth, Jacqueline M.)  
Minute Order: Pending Matters  
Minute Order - No Hearing Held;  
Journal Entry Details:

*I. Writ of Habeas Corpus The Court having considered Petitioner s Writ of Habeas Corpus and the State s opposition thereto, rules as follows: Petitioner s Writ of Habeas Corpus is DENIED. Petitioner s claims are outside the scope of a habeas petition because Petitioner pleaded guilty. See NRS 43.810(1)(a). Pursuant to NRS 34.810(1), Petitioner s claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered. NRS 34.810(1) states: 1. The court shall dismiss a petition if the court determines that: (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel. (b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been: . . . (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or post-conviction relief. NRS 34.810(1). [C]hallenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must be first pursued in post-conviction proceedings in the district court. Franklin v. State, 110 Nev. 750, 751 52, 877 P.2d 1058, 1059 (1994). [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. Id. [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, 621 22, 28 P.3d 498, 507 (2001). Petitioner asserts four grounds for his petition, each one based on ineffective assistance of counsel. Petitioner alleges that: (1) counsel failed to maintain adequate communication with Petitioner and to investigate or interview any witnesses; (2) counsel failed to investigate petitioner s mental health and any mitigation at sentencing; (3) counsel failed to object to the state filing its intent to seek habitual criminal treatment; and (4) Counsel failed to file a motion to withdraw plea or to file a direct appeal. As Petitioner s claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered, each of the foregoing claims is outside the scope of the instant petition. Thus, the claims are be dismissed. Moreover, Petitioner s counsel did file a direct appeal on behalf of Petitioner and his conviction was affirmed by the Nevada Court of Appeals on September 28, 2020. As aforementioned, Petitioner first alleges that his counsel was ineffective by not contacting, visiting, or speaking to him. Petitioner also claims counsel was ineffective for failing to investigate or interview any witnesses. As discussed supra, claims regarding counsel s communication and investigation are outside the scope of a habeas petition where the petitioner pleaded guilty because they do not claim that the plea was not knowingly and voluntarily entered or that counsel s advice to plead was bad. To the extent that Petitioner claims he only pleaded guilty because of counsel s ineffectiveness, this claim is belied by the record. The record demonstrates that petitioner acknowledged that he would be waiving his rights by pleading guilty. (GPA 3/27/19). Moreover, in the section entitled voluntariness of plea, petitioner acknowledged that he and his attorney discussed all of the elements of the charge, the State s burden to prove the charges beyond a reasonable doubt, possible defenses, and the rights that he waived. In addition, he acknowledged that he was not under the influence, that his attorney answered all of his questions, and that his counsel competently represented him. Id. By signing the GPA and being canvassed by this court, petitioner acknowledged that he freely and voluntarily entered his guilty plea. Most importantly, he acknowledged multiple times that his attorney had answered all of his questions, he was satisfied with the services provided, and he understood the terms of the negotiations. Petitioner irrefutably entered into his GPA freely, knowingly, and voluntarily and any claims to the contrary are belied by the record. Petitioner also claims that counsel was ineffective by failing to investigate petitioner s mental health and any mitigation at sentencing. As discussed supra, this claim is also outside the scope of this petition because his claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered. Petitioner next argues that counsel was ineffective by failing to object to the state filing its*

**CASE SUMMARY****CASE NO. A-20-823904-W**

intent to seek habitual criminal treatment. Because the State filed the Intent to seek habitual treatment, Petitioner wanted to withdraw his guilty plea. However, petitioner fails to show support from the record that he ever attempted or wanted to withdraw his plea. Even had he tried to withdraw his plea, petitioner specifically agreed that if he failed to appear the state would have the right to argue for habitual treatment. In any case, this claim is also outside the scope of the present petition because it does not involve ineffective assistance of counsel at plea or that his plea was not knowingly and voluntarily entered. Finally, petitioner argues counsel was ineffective by failing to investigate his mental health concerns, failing to file a motion to withdraw plea, and failing to file a direct appeal. As discussed supra, this claim is outside the scope of the instant petition because his claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered. Moreover, Petitioner's counsel did file a direct appeal on behalf of petitioner and his conviction was affirmed by the Nevada Court of Appeals on September 28, 2020. Thus, this claim is without merit. Accordingly, because Petitioner cannot show that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel, and for the reasons listed above, Petitioner's Writ of Habeas Corpus is **DENIED**. II. Motion for Withdrawal of Attorney of Record, Request to Obtain Copy of Defendant's File, and Request to Have Court Appointed Representation During Post-Conviction Relief Process (Note: The writ for habeas corpus and motion to appoint counsel are two separate motions but they were filed together in the same filing). Next Petitioner requests that the Court appoint him counsel for the instant petition because he has no legal training and thus lacks the ability on his own to fully expand, put forth, and investigate and pursue fully the grounds for this petition. However, the grounds which petitioner requests counsel to investigate are outside the scope of this petition. [T]here is no constitutional or statutory right to the assistance of counsel in noncapital post-conviction proceedings. *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (citing *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996)). However, under NRS 34.750(1), the district court has discretion to appoint counsel to represent a petitioner who has filed a post-conviction petition for a writ of habeas corpus if (1) the petitioner is indigent and (2) the petition is not summarily dismissed. The statute sets forth a non-exhaustive list of factors that the district court may consider in deciding whether to appoint post-conviction counsel: the severity of the consequences that the petitioner faces, the difficulty of the issues presented, the petitioner's ability to comprehend the proceedings, and the necessity of counsel to proceed with discovery. The district court's decision to deny the appointment of counsel is reviewed for an abuse of discretion. *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760 61 (2017). Here, petitioner's claims are outside the scope of a habeas petition because he pleaded guilty. Therefore, counsel will not be appointed to investigate claims that are inappropriate for the instant petition. Based on the foregoing, petitioner's Motion for Appointment of Counsel is **DENIED**. Lastly, Defendant's Motion for Withdrawal of Attorney of Record, Request to Obtain Copy of Defendant's File per (NRS 7.055) (An attorney who has been discharged by his or her client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client. ) is **GRANTED**. State to prepare order consistent with this minute order. **CLERK'S NOTE: This Minute Order has been served by mail to Sean McKendrick [BAC #84624, Ely State Prison, PO Box 1989, Ely, NV 89301] and by email to John Niman, Deputy District Attorney [john.niman@clarkcountynvda.com]. /cd 1-8-2021/;**

01/11/2021

**Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Bluth, Jacqueline M.)**

See 1/8/21 Minute Order

Off Calendar;

Journal Entry Details:

Court stated a decision was reached via minute order and **ORDERED**, proceedings **OFF CALENDAR**; State's to prepare a written order consistent with the order issued January 8, 2021.;



## DISTRICT COURT CIVIL COVER SHEET

A-20-823904-W

Dept. 6

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Sean McKendrick	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

October 29, 2020

PREPARED BY CLERK

Date

Signature of initiating party or representative

See other side for family-related case filings.

*Heather S. Linn*

CLERK OF THE COURT

**ORDR**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
SARAH E. OVERLY  
Chief Deputy District Attorney  
Nevada Bar #012842  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN MICHAEL MCKENDRICK,  
#7068215

Defendant.

CASE NO: A-20-823904W

DEPT NO: VI

**ORDER DENYING IN PART DEFENDANT'S PETITION FOR WRIT OF HABEAS  
CORPUS, DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF  
RECORD AND REQUEST TO HAVE COURT APPOINTED REPRESENTATION  
DURING POST-CONVICTION RELIEF PROCESS AND GRANTING IN PART  
REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE**

DATE OF HEARING: January 11, 2021  
TIME OF HEARING: 11:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the  
21st day of January, 2021, the Defendant not being present, IN PROPER PERSON, the  
Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through SARAH  
E. OVERLY, Chief Deputy District Attorney, without argument, based on the pleadings and  
good cause appearing therefor,

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///

1 IT IS HEREBY ORDERED that the Defendant's Motions, shall be, and it is

2 **I. Writ of Habeas Corpus**

3 The Court having considered Petitioner's Writ of Habeas Corpus and the State's  
4 opposition thereto, rules as follows: Petitioner's Writ of Habeas Corpus is DENIED.  
5 Petitioner's claims are outside the scope of a habeas petition because Petitioner pleaded guilty.  
6 See NRS 43.810(1)(a). Pursuant to NRS 34.810(1), Petitioner's claims are limited to  
7 ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily  
8 entered. NRS 34.810(1) states:

- 9 1. The court shall dismiss a petition if the court determines that:  
10 (a) The petitioner's conviction was upon a plea of guilty or  
11 guilty but mentally ill and the petition is not based upon an  
12 allegation that the plea was involuntarily or unknowingly  
13 entered or that the plea was entered without effective assistance  
14 of counsel.  
15 (b) The petitioner's conviction was the result of a trial and the  
16 grounds for the petition could have been: . . .
- 17 2. Raised in a direct appeal or a prior petition for a writ of habeas  
18 corpus or post-conviction relief.

15 NRS 34.810(1). [C]hallenges to the validity of a guilty plea and claims of ineffective  
16 assistance of trial and appellate counsel must be first pursued in post-conviction  
17 proceedings in the district court. Franklin v. State, 110 Nev. 750, 751 52, 877 P.2d  
18 1058, 1059 (1994). [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. Id.

19 [A] court must dismiss a habeas petition if it presents claims that either were or could  
20 have been presented in an earlier proceeding, unless the court finds both cause for failing to  
21 present the claims earlier or for raising them again and actual prejudice to the petitioner.  
22 Evans v. State, 117 Nev. 609, 621 22, 28 P.3d 498, 507 (2001).

23 Petitioner asserts four grounds for his petition, each one based on ineffective assistance  
24 of counsel. Petitioner alleges that: (1) counsel failed to maintain adequate communication  
25 with Petitioner and to investigate or interview any witnesses; (2) counsel failed to investigate  
26 petitioner's mental health and any mitigation at sentencing; (3) counsel failed to object to the  
27 state filing its intent to seek habitual criminal treatment; and (4) Counsel failed to file a motion  
28 to withdraw plea or to file a direct appeal. As Petitioner's claims are limited to ineffective

1 assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered, each  
2 of the foregoing claims is outside the scope of the instant petition. Thus, the claims are be  
3 dismissed. Moreover, Petitioner's counsel did file a direct appeal on behalf of Petitioner and  
4 his conviction was affirmed by the Nevada Court of Appeals on September 28, 2020.

5 As aforementioned, Petitioner first alleges that his counsel was ineffective by not  
6 contacting, visiting, or speaking to him. Petitioner also claims counsel was ineffective for  
7 failing to investigate or interview any witnesses. As discussed supra, claims regarding  
8 counsel's communication and investigation are outside the scope of a habeas petition where  
9 the petitioner pleaded guilty because they do not claim that the plea was not knowingly and  
10 voluntarily entered or that counsel s advice to plead was bad.

11 To the extent that Petitioner claims he only pleaded guilty because of counsel s  
12 ineffectiveness, this claim is belied by the record. The record demonstrates that petitioner  
13 acknowledged that he would be waiving his rights by pleading guilty. (GPA 3/27/19).  
14 Moreover, in the section entitled voluntariness of plea, petitioner acknowledged that he and  
15 his attorney discussed all of the elements of the charge, the State's burden to prove the charges  
16 beyond a reasonable doubt, possible defenses, and the rights that he waived. In addition, he  
17 acknowledged that he was not under the influence, that his attorney answered all of his  
18 questions, and that his counsel competently represented him. Id.

19 By signing the GPA and being canvassed by this court, petitioner acknowledged that  
20 he freely and voluntarily entered his guilty plea. Most importantly, he acknowledged multiple  
21 times that his attorney had answered all of his questions, he was satisfied with the services  
22 provided, and he understood the terms of the negotiations. Petitioner irrefutably entered into  
23 his GPA freely, knowingly, and voluntarily and any claims to the contrary are belied by the  
24 record.

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1       Petitioner also claims that counsel was ineffective by failing to investigate petitioner's  
2       mental health and any mitigation at sentencing. As discussed supra, this claim is also outside  
3       the scope of this petition because his claims are limited to ineffective assistance of counsel at  
4       plea, or that his plea was not knowingly and voluntarily entered.

5       Petitioner next argues that counsel was ineffective by failing to object to the State filing  
6       its intent to seek habitual criminal treatment. Because the State filed the Intent to seek habitual  
7       treatment, Petitioner wanted to withdraw his guilty plea. However, petitioner fails to show  
8       support from the record that he ever attempted or wanted to withdraw his plea. Even had he  
9       tried to withdraw his plea; petitioner specifically agreed that if he failed to appear the State  
10      would have the right to argue for habitual treatment. In any case, this claim is also outside the  
11      scope of the present petition because it does not involve ineffective assistance of counsel at  
12      plea or that his plea was not knowingly and voluntarily entered.

13      Finally, petitioner argues counsel was ineffective by failing to investigate his mental  
14      health concerns, failing to file a motion to withdraw plea, and failing to file a direct appeal.  
15      As discussed supra, this claim is outside the scope of the instant petition because his claims  
16      are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and  
17      voluntarily entered. Moreover, Petitioner's counsel did file a direct appeal on behalf of  
18      petitioner and his conviction was affirmed by the Nevada Court of Appeals on September 28,  
19      2020. Thus, this claim is without merit.

20      Accordingly, because Petitioner cannot show that the plea was involuntarily or  
21      unknowingly entered or that the plea was entered without effective assistance of counsel, and  
22      for the reasons listed above, Petitioner's Writ of Habeas Corpus is DENIED.

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1           **II. Motion for Withdrawal of Attorney of Record, Request to Obtain Copy of**  
2           **Defendant's File, and Request to Have Court Appointed Representation**  
3           **During Post-Conviction Relief Process (Note: The writ for habeas corpus**  
4           **and motion to appoint counsel are two separate motions but they were filed**  
5           **together in the same filing).**

6           Next Petitioner requests that the Court appoint him counsel for the instant petition  
7 because he has no legal training and thus lacks the ability on his own to fully expand, put  
8 forth, and investigate and pursue fully the grounds for this petition. However, the grounds  
9 which petitioner requests counsel to investigate are outside the scope of this petition.

10          [T]here is no constitutional or statutory right to the assistance of counsel in noncapital  
11 post-conviction proceedings. *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870  
12 (2014) (citing *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996)).

13          However, under NRS 34.750(1), the District Court has discretion to appoint counsel  
14 to represent a petitioner who has filed a post-conviction petition for a writ of habeas corpus  
15 if (1) the petitioner is indigent and (2) the petition is not summarily dismissed. The statute  
16 sets forth a non-exhaustive list of factors that the district court may consider in deciding  
17 whether to appoint post-conviction counsel: the severity of the consequences that the  
18 petitioner faces, the difficulty of the issues presented, the petitioner's ability to comprehend  
19 the proceedings, and the necessity of counsel to proceed with discovery. The district court's  
20 decision to deny the appointment of counsel is reviewed for an abuse of discretion. *Renteria-*  
21 *Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760 61 (2017).

22          Here, Petitioner's claims are outside the scope of a habeas petition because he pleaded  
23 guilty. Therefore, counsel will not be appointed to investigate claims that are inappropriate  
24 for the instant petition. Based on the foregoing, Petitioner's Motion for Appointment of  
25 Counsel is DENIED.

26       ///

27       ///

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1 Lastly, Defendant's Motion for Withdrawal of Attorney of Record, Request to Obtain  
2 Copy of Defendant's File per (NRS 7.055) (An attorney who has been discharged by his or  
3 her client shall, upon demand and payment of the fee due from the client, immediately deliver  
4 to the client all papers, documents, pleadings and items of tangible personal property which  
5 belong to or were prepared for that client.) is GRANTED.

6 ~~DATED~~ this \_\_\_\_\_ day of January, 2021. Dated this 18th day of January, 2021

7  
8   
DISTRICT JUDGE

kj

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

8A8 974 D03E E3B7  
Jacqueline M. Bluth  
District Court Judge

11  
12 BY 

SARAH E. OVERLY  
Chief Deputy District Attorney  
Nevada Bar #012842

13  
14  
15  
16 ~~CERTIFICATE OF SERVICE~~

17 I certify that on the \_\_\_\_\_ day of January, 2021, I mailed a copy of the foregoing Order

18 to:

19 ~~SEAN MCKENDRICK, BAC #84624~~  
20 ~~ELY STATE PRISON~~  
~~PO BOX 1989~~  
~~ELY, NV 89301~~

21  
22 BY \_\_\_\_\_

Secretary for the District Attorney's Office

23  
24  
25  
26  
27  
28 mah/L3

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sean McKendrick, Plaintiff(s)

CASE NO: A-20-823904-W

7 vs.

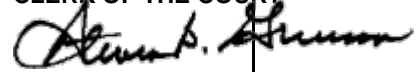
DEPT. NO. Department 6

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

SEAN MCKENDRICK,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-20-823904-W

Dept. No: VI

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that on January 18, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on January 19, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 19 day of January 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Sean McKendrick # 84624  
P.O. Box 1989  
Ely, NV 89301

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

*Heather S. Linn*

CLERK OF THE COURT

**ORDR**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
SARAH E. OVERLY  
Chief Deputy District Attorney  
Nevada Bar #012842  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN MICHAEL MCKENDRICK,  
#7068215

Defendant.

CASE NO: A-20-823904W

DEPT NO: VI

**ORDER DENYING IN PART DEFENDANT'S PETITION FOR WRIT OF HABEAS  
CORPUS, DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF  
RECORD AND REQUEST TO HAVE COURT APPOINTED REPRESENTATION  
DURING POST-CONVICTION RELIEF PROCESS AND GRANTING IN PART  
REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE**

DATE OF HEARING: January 11, 2021

TIME OF HEARING: 11:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the  
21st day of January, 2021, the Defendant not being present, IN PROPER PERSON, the  
Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through SARAH  
E. OVERLY, Chief Deputy District Attorney, without argument, based on the pleadings and  
good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motions, shall be, and it is

2 **I. Writ of Habeas Corpus**

3 The Court having considered Petitioner's Writ of Habeas Corpus and the State's  
4 opposition thereto, rules as follows: Petitioner's Writ of Habeas Corpus is DENIED.  
5 Petitioner's claims are outside the scope of a habeas petition because Petitioner pleaded guilty.  
6 See NRS 43.810(1)(a). Pursuant to NRS 34.810(1), Petitioner's claims are limited to  
7 ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily  
8 entered. NRS 34.810(1) states:

- 9 1. The court shall dismiss a petition if the court determines that:  
10 (a) The petitioner's conviction was upon a plea of guilty or  
11 guilty but mentally ill and the petition is not based upon an  
12 allegation that the plea was involuntarily or unknowingly  
13 entered or that the plea was entered without effective assistance  
14 of counsel.  
15 (b) The petitioner's conviction was the result of a trial and the  
16 grounds for the petition could have been: . . .
- 17 2. Raised in a direct appeal or a prior petition for a writ of habeas  
18 corpus or post-conviction relief.

15 NRS 34.810(1). [C]hallenges to the validity of a guilty plea and claims of ineffective  
16 assistance of trial and appellate counsel must be first pursued in post-conviction  
17 proceedings in the district court. Franklin v. State, 110 Nev. 750, 751 52, 877 P.2d  
18 1058, 1059 (1994). [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. Id.

19 [A] court must dismiss a habeas petition if it presents claims that either were or could  
20 have been presented in an earlier proceeding, unless the court finds both cause for failing to  
21 present the claims earlier or for raising them again and actual prejudice to the petitioner.  
22 Evans v. State, 117 Nev. 609, 621 22, 28 P.3d 498, 507 (2001).

23 Petitioner asserts four grounds for his petition, each one based on ineffective assistance  
24 of counsel. Petitioner alleges that: (1) counsel failed to maintain adequate communication  
25 with Petitioner and to investigate or interview any witnesses; (2) counsel failed to investigate  
26 petitioner's mental health and any mitigation at sentencing; (3) counsel failed to object to the  
27 state filing its intent to seek habitual criminal treatment; and (4) Counsel failed to file a motion  
28 to withdraw plea or to file a direct appeal. As Petitioner's claims are limited to ineffective

1 assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered, each  
2 of the foregoing claims is outside the scope of the instant petition. Thus, the claims are be  
3 dismissed. Moreover, Petitioner's counsel did file a direct appeal on behalf of Petitioner and  
4 his conviction was affirmed by the Nevada Court of Appeals on September 28, 2020.

5 As aforementioned, Petitioner first alleges that his counsel was ineffective by not  
6 contacting, visiting, or speaking to him. Petitioner also claims counsel was ineffective for  
7 failing to investigate or interview any witnesses. As discussed supra, claims regarding  
8 counsel's communication and investigation are outside the scope of a habeas petition where  
9 the petitioner pleaded guilty because they do not claim that the plea was not knowingly and  
10 voluntarily entered or that counsel s advice to plead was bad.

11 To the extent that Petitioner claims he only pleaded guilty because of counsel s  
12 ineffectiveness, this claim is belied by the record. The record demonstrates that petitioner  
13 acknowledged that he would be waiving his rights by pleading guilty. (GPA 3/27/19).  
14 Moreover, in the section entitled voluntariness of plea, petitioner acknowledged that he and  
15 his attorney discussed all of the elements of the charge, the State's burden to prove the charges  
16 beyond a reasonable doubt, possible defenses, and the rights that he waived. In addition, he  
17 acknowledged that he was not under the influence, that his attorney answered all of his  
18 questions, and that his counsel competently represented him. Id.

19 By signing the GPA and being canvassed by this court, petitioner acknowledged that  
20 he freely and voluntarily entered his guilty plea. Most importantly, he acknowledged multiple  
21 times that his attorney had answered all of his questions, he was satisfied with the services  
22 provided, and he understood the terms of the negotiations. Petitioner irrefutably entered into  
23 his GPA freely, knowingly, and voluntarily and any claims to the contrary are belied by the  
24 record.

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1       Petitioner also claims that counsel was ineffective by failing to investigate petitioner's  
2       mental health and any mitigation at sentencing. As discussed supra, this claim is also outside  
3       the scope of this petition because his claims are limited to ineffective assistance of counsel at  
4       plea, or that his plea was not knowingly and voluntarily entered.

5       Petitioner next argues that counsel was ineffective by failing to object to the State filing  
6       its intent to seek habitual criminal treatment. Because the State filed the Intent to seek habitual  
7       treatment, Petitioner wanted to withdraw his guilty plea. However, petitioner fails to show  
8       support from the record that he ever attempted or wanted to withdraw his plea. Even had he  
9       tried to withdraw his plea; petitioner specifically agreed that if he failed to appear the State  
10      would have the right to argue for habitual treatment. In any case, this claim is also outside the  
11      scope of the present petition because it does not involve ineffective assistance of counsel at  
12      plea or that his plea was not knowingly and voluntarily entered.

13      Finally, petitioner argues counsel was ineffective by failing to investigate his mental  
14      health concerns, failing to file a motion to withdraw plea, and failing to file a direct appeal.  
15      As discussed supra, this claim is outside the scope of the instant petition because his claims  
16      are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and  
17      voluntarily entered. Moreover, Petitioner's counsel did file a direct appeal on behalf of  
18      petitioner and his conviction was affirmed by the Nevada Court of Appeals on September 28,  
19      2020. Thus, this claim is without merit.

20      Accordingly, because Petitioner cannot show that the plea was involuntarily or  
21      unknowingly entered or that the plea was entered without effective assistance of counsel, and  
22      for the reasons listed above, Petitioner's Writ of Habeas Corpus is DENIED.

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1           **II. Motion for Withdrawal of Attorney of Record, Request to Obtain Copy of**  
2           **Defendant's File, and Request to Have Court Appointed Representation**  
3           **During Post-Conviction Relief Process (Note: The writ for habeas corpus**  
4           **and motion to appoint counsel are two separate motions but they were filed**  
5           **together in the same filing).**

6           Next Petitioner requests that the Court appoint him counsel for the instant petition  
7 because he has no legal training and thus lacks the ability on his own to fully expand, put  
8 forth, and investigate and pursue fully the grounds for this petition. However, the grounds  
9 which petitioner requests counsel to investigate are outside the scope of this petition.

10          [T]here is no constitutional or statutory right to the assistance of counsel in noncapital  
11 post-conviction proceedings. *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870  
12 (2014) (citing *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996)).

13          However, under NRS 34.750(1), the District Court has discretion to appoint counsel  
14 to represent a petitioner who has filed a post-conviction petition for a writ of habeas corpus  
15 if (1) the petitioner is indigent and (2) the petition is not summarily dismissed. The statute  
16 sets forth a non-exhaustive list of factors that the district court may consider in deciding  
17 whether to appoint post-conviction counsel: the severity of the consequences that the  
18 petitioner faces, the difficulty of the issues presented, the petitioner's ability to comprehend  
19 the proceedings, and the necessity of counsel to proceed with discovery. The district court's  
20 decision to deny the appointment of counsel is reviewed for an abuse of discretion. *Renteria-*  
21 *Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760 61 (2017).

22          Here, Petitioner's claims are outside the scope of a habeas petition because he pleaded  
23 guilty. Therefore, counsel will not be appointed to investigate claims that are inappropriate  
24 for the instant petition. Based on the foregoing, Petitioner's Motion for Appointment of  
25 Counsel is DENIED.

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1 Lastly, Defendant's Motion for Withdrawal of Attorney of Record, Request to Obtain  
2 Copy of Defendant's File per (NRS 7.055) (An attorney who has been discharged by his or  
3 her client shall, upon demand and payment of the fee due from the client, immediately deliver  
4 to the client all papers, documents, pleadings and items of tangible personal property which  
5 belong to or were prepared for that client.) is GRANTED.

6 ~~DATED~~ this \_\_\_\_\_ day of January, 2021. Dated this 18th day of January, 2021


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DISTRICT JUDGE

kj

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

8A8 974 D03E E3B7  
Jacqueline M. Bluth  
District Court Judge

11  
12 BY

  
13 SARAH E. OVERLY  
Chief Deputy District Attorney  
14 Nevada Bar #012842

15  
16 ~~CERTIFICATE OF SERVICE~~

17 ~~I certify that on the \_\_\_\_\_ day of January, 2021, I mailed a copy of the foregoing Order~~  
18 to:

19 ~~SEAN MCKENDRICK, BAC #84624~~  
~~ELY STATE PRISON~~  
20 ~~PO BOX 1989~~  
~~ELY, NV 89301~~

21  
22 BY \_\_\_\_\_

Secretary for the District Attorney's Office

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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Sean McKendrick, Plaintiff(s)

CASE NO: A-20-823904-W

7 vs.

DEPT. NO. Department 6

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 08, 2021**

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A-20-823904-W	Sean McKendrick, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

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**January 08, 2021      3:00 AM      Minute Order**

**HEARD BY:** Bluth, Jacqueline M.      **COURTROOM:** Chambers

**COURT CLERK:** Christopher Darling

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- I. Writ of Habeas Corpus

The Court having considered Petitioner s Writ of Habeas Corpus and the State s opposition thereto, rules as follows: Petitioner s Writ of Habeas Corpus is DENIED. Petitioner s claims are outside the scope of a habeas petition because Petitioner pleaded guilty. See NRS 43.810(1)(a). Pursuant to NRS 34.810(1), Petitioner s claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered. NRS 34.810(1) states:

1. The court shall dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

...

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or post-conviction relief. NRS 34.810(1). [C]hallenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must be first pursued in post-conviction proceedings in the district court. Franklin v. State, 110 Nev. 750, 751 52, 877 P.2d 1058, 1059 (1994). [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. *Id.*

[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, 621 22, 28 P.3d 498, 507 (2001).

Petitioner asserts four grounds for his petition, each one based on ineffective assistance of counsel. Petitioner alleges that: (1) counsel failed to maintain adequate communication with Petitioner and to investigate or interview any witnesses; (2) counsel failed to investigate petitioner's mental health and any mitigation at sentencing; (3) counsel failed to object to the state filing its intent to seek habitual criminal treatment; and (4) Counsel failed to file a motion to withdraw plea or to file a direct appeal. As Petitioner's claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered, each of the foregoing claims is outside the scope of the instant petition. Thus, the claims are to be dismissed. Moreover, Petitioner's counsel did file a direct appeal on behalf of Petitioner and his conviction was affirmed by the Nevada Court of Appeals on September 28, 2020.

As aforementioned, Petitioner first alleges that his counsel was ineffective by not contacting, visiting, or speaking to him. Petitioner also claims counsel was ineffective for failing to investigate or interview any witnesses. As discussed *supra*, claims regarding counsel's communication and investigation are outside the scope of a habeas petition where the petitioner pleaded guilty because they do not claim that the plea was not knowingly and voluntarily entered or that counsel's advice to plead was bad.

To the extent that Petitioner claims he only pleaded guilty because of counsel's ineffectiveness, this claim is belied by the record. The record demonstrates that petitioner acknowledged that he would be waiving his rights by pleading guilty. (GPA 3/27/19). Moreover, in the section entitled voluntariness of plea, petitioner acknowledged that he and his attorney discussed all of the elements of the charge, the State's burden to prove the charges beyond a reasonable doubt, possible defenses, and the rights that he waived. In addition, he acknowledged that he was not under the influence, that his attorney answered all of his questions, and that his counsel competently represented him. *Id.* By signing the GPA and being canvassed by this court, petitioner acknowledged that he freely and voluntarily entered his guilty plea. Most importantly, he acknowledged multiple times that his attorney had answered all of his questions, he was satisfied with the services provided, and he understood the terms of the negotiations. Petitioner irrefutably entered into his GPA freely, knowingly, and voluntarily and any claims to the contrary are belied by the record.

Petitioner also claims that counsel was ineffective by failing to investigate petitioner's mental health and any mitigation at sentencing. As discussed *supra*, this claim is also outside the scope of this petition because his claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered.

Petitioner next argues that counsel was ineffective by failing to object to the state filing its intent to seek habitual criminal treatment. Because the State filed the Intent to seek habitual treatment,

Petitioner wanted to withdraw his guilty plea. However, petitioner fails to show support from the record that he ever attempted or wanted to withdraw his plea. Even had he tried to withdraw his plea, petitioner specifically agreed that if he failed to appear the state would have the right to argue for habitual treatment. In any case, this claim is also outside the scope of the present petition because it does not involve ineffective assistance of counsel at plea or that his plea was not knowingly and voluntarily entered.

Finally, petitioner argues counsel was ineffective by failing to investigate his mental health concerns, failing to file a motion to withdraw plea, and failing to file a direct appeal. As discussed supra, this claim is outside the scope of the instant petition because his claims are limited to ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered. Moreover, Petitioner's counsel did file a direct appeal on behalf of petitioner and his conviction was affirmed by the Nevada Court of Appeals on September 28, 2020. Thus, this claim is without merit.

Accordingly, because Petitioner cannot show that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel, and for the reasons listed above, Petitioner's Writ of Habeas Corpus is DENIED.

II. Motion for Withdrawal of Attorney of Record, Request to Obtain Copy of Defendant's File, and Request to Have Court Appointed Representation During Post-Conviction Relief Process (Note: The writ for habeas corpus and motion to appoint counsel are two separate motions but they were filed together in the same filing).

Next Petitioner requests that the Court appoint him counsel for the instant petition because he has no legal training and thus lacks the ability on his own to fully expand, put forth, and investigate and pursue fully the grounds for this petition. However, the grounds which petitioner requests counsel to investigate are outside the scope of this petition.

[T]here is no constitutional or statutory right to the assistance of counsel in noncapital post-conviction proceedings. *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (citing *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996)).

However, under NRS 34.750(1), the district court has discretion to appoint counsel to represent a petitioner who has filed a post-conviction petition for a writ of habeas corpus if (1) the petitioner is indigent and (2) the petition is not summarily dismissed. The statute sets forth a non-exhaustive list of factors that the district court may consider in deciding whether to appoint post-conviction counsel: the severity of the consequences that the petitioner faces, the difficulty of the issues presented, the petitioner's ability to comprehend the proceedings, and the necessity of counsel to proceed with discovery. The district court's decision to deny the appointment of counsel is reviewed for an abuse of discretion. *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760 61 (2017).

Here, petitioner's claims are outside the scope of a habeas petition because he pleaded guilty. Therefore, counsel will not be appointed to investigate claims that are inappropriate for the instant petition. Based on the foregoing, petitioner's Motion for Appointment of Counsel is DENIED.

Lastly, Defendant s Motion for Withdrawal of Attorney of Record, Request to Obtain Copy of Defendant s File per (NRS 7.055) ( An attorney who has been discharged by his or her client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client. ) is GRANTED.

State to prepare order consistent with this minute order.

CLERK'S NOTE: This Minute Order has been served by mail to Sean McKendrick [BAC #84624, Ely State Prison, PO Box 1989, Ely, NV 89301] and by email to John Niman, Deputy District Attorney [john.niman@clarkcountynvda.com]. /cd 1-8-2021/

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 11, 2021**

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A-20-823904-W      Sean McKendrick, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**January 11, 2021      11:00 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Bluth, Jacqueline M.

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:** Overly, Sarah

Attorney

**JOURNAL ENTRIES**

- Court stated a decision was reached via minute order and ORDERED, proceedings OFF  
CALENDAR; State's to prepare a written order consistent with the order issued January 8, 2021.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING IN PART DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS, DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND REQUEST TO HAVE COURT APPOINTED REPRESENTATION DURING POST-CONVICTION RELIEF PROCESS AND GRANTING IN PART REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

SEAN MCKENDRICK,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

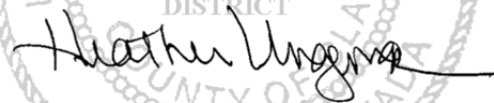
Case No: A-20-823904-W

Dept No: VI

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 23 day of February 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk