

# IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN MICHAEL MCKENDRICK,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Mar 09 2021 03:47 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-20-823904-W

Docket No: 82532

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
**SEAN MCKENDRICK #84624,**  
**PROPER PERSON**  
**P.O. BOX 1989**  
**ELY, NV 89301-1989**

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

**A-20-823904-W**

**Sean McKendrick, Plaintiff(s)**

**vs.**

**State of Nevada, Defendant(s)**

**I N D E X**

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FILED

A-20-823904-W  
Dept. 6

OCT 29 2020

*John T. Williams*  
CLERK OF COURT

Case No. C-19-388224-1

Dept. No. VI

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

*PP*  
*DA*  
Sean McKeenrick

Petitioner,

v.

Respondent

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POST-CONVICTION)

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 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: Ely State Prison /

White Pine County

RECEIVED

OCT 29 2020

CLERK OF COURT

2. Name and location of court which entered the judgment of conviction under attack:

Sixth Judicial District Court, Clark County

3. Date of judgment of conviction: July 18th, 2019

4. Case number: C-19-338234-1

5. (a) Length of sentence: 10 years to Life

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

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

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

7. Nature of offense involved in conviction being challenged: Battery By Prisoner, Habitual Criminal Statute

8. What was your plea? (Check one)

(a) Not guilty     

(b) Guilty X

(c) Nolo contendere     

9. If you entered a plea of guilty 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 was negotiated, give details: The sentence to be imposed was for a

minimum of one (1) year and a maximum of six (6) years. The state would be free to argue at sentencing. State would be free to pursue Habitual Criminal Statute for non-compliance.

10. If you were found guilty 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 X

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

13. If you did appeal, answer the following:

(a) Name of court: Nevada Supreme Court

(b) Case number or citation: 79372

(c) Result: Judgment Affirmed

(d) Date of result: September 28th, 2020  
(Attach a 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 X

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 X

(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 X

(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 X

Citation or date of decision: N/A

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

Citation or date of decision: N/A

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

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 post-conviction proceeding? If so, identify: NO

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised: N/A

(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.) N/A

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.)

These are ineffective assistance of counsel claims on trial counsel and thus not pursued by trial counsel who handled direct appeal.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (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.)

Yes. Because my direct appeal to the Nevada Supreme Court was pending.

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

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Kenn M. Simmons (Trial counsel)

Darin F. Imley (Direct Appeal)

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

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

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

(a) Ground one: See Attached page 7A

Supporting FACTS (Tell your story briefly without citing cases or law.):

See attached pages 7A - 7B

(b) Ground two: See attached page 7C

Supporting FACTS (Tell your story briefly without citing cases or law.):

See attached pages 7C - 7E

(c) Ground Three: See attached page 7F

Supporting FACTS (Tell your story briefly without citing cases or law.):

See attached pages 7F - 7G



(d) Ground Four: See attached page 7H

Supporting FACTS (Tell your story briefly without citing cases or law.):

See attached pages 7H - 7I

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

EXECUTED at Ely State Prison on the 8 day of the month of  
October of the year 2020.

Sean McKeonick

Signature of petitioner

#84624

P.O. Box 1989 (E.S.P.), Ely, NV. 89301  
Address

Signature of attorney (if any)

Attorney for petitioner

Address

#### VERIFICATION

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

Sean McKeonick

Petitioner

N/A

Attorney of petitioner

## Ground One

Petitioner recieved ineffectve assistance of counsel under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and deserves an evidentiary hearing under Lewis v. State, 100 Nev. 456, 686 P.2d 219 (1984), Bollen v. State, 99 Nev. 181, 659 P.2d 886 (1983), and Gibbons v. State, 97 Nev. 530, 634 P.2d 1214 (1981).

## Supporting Facts

On February 19, 2019, the State of Nevada represented by the District Attorney's office went before the Grand Jury and received an Indictment against Petitioner for two counts of Battery by Prisoner, one count of Attempt Murder, and one count of Attempt Battery Substantial Bodily Harm. On February 27, 2019, Petitioner appeared before the District Court where he pled not guilty. On March 27, 2019, Petitioner pled guilty to one count of Battery by Prisoner while the State retained the right to argue at sentencing.

Petitioner's attorney, (Kara Simmons), didn't contact, visit, or otherwise speak with Petitioner regarding the pending charges against him even though those charges were extremely serious.

Petitioner's counsel never even bothered to hear his version of events, and when Petitioner expressed his desire for Ms. Simmons to acquire pictures from the scene of the incident Ms. Simmons failed to acquire these pictures that Petitioner claims shows that these charges were untrue.

1. and excessive. Petitioner also contends he would never have  
2. accepted this plea agreement had his counsel gave any  
3. indication of being willing to actively investigate, and work  
4. with Petitioner to prepare a defense.  
5. Petitioner contends that his attorney never made any attempt  
6. to investigate possible defenses and/or speak with witnesses  
7. in order to prepare a defense. Petitioner contends that counsel's  
8. only objective was to force Petitioner into a plea bargain even  
9. though Petitioner expressed to Ms. Simmons at his arraignment  
10. on February 27, 2019, his desire to proceed to a jury trial  
11. and to have Ms. Simmons acquire pictures taken from the  
12. scene of the incident and for Ms. Simmons to contact  
13. Petitioner's nephew, David Stawall, who was a witness and  
14. present at the time of the incident. It should be noted  
15. that Ms. Simmons never contacted the only witness even  
16. though she was asked to do so by Petitioner in order  
17. to prepare his defense.  
18. In conclusion, trial counsel was grossly ineffective in failing to  
19. speak with Petitioner regarding the pending charges, investigate  
20. possible defenses, and contact and speak/question any wit-  
21. nesses. This ineffective assistance of counsel prejudiced Peti-  
22. tioner because he was unable to prepare a defense  
23. against the charges brought against him and was thus  
24. pressured into a negotiated plea agreement which led to  
25. Petitioner receiving a sentence of 10 years to Life. Should  
26. a hearing be provided to Petitioner this issue should be  
27. permitted under Lozada v. State, 110 Nev. 349, 871 P.2d 944  
28. (1994).

## Ground Two

Petitioner received ineffective assistance of counsel under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and deserves an evidentiary hearing under Lewis v. State, 100 Nev. 456, 686 P.2d 219 (1984), Balden v. State, 99 Nev. 181, 659 P.2d 886 (1983), and Gibbons v. State, 97 Nev. 520, 634 P.2d 1214 (1981).

## Supporting Facts

On February 19, 2019, the State of Nevada represented by the District Attorney's office went before the Grand Jury and received an Indictment against Petitioner for two counts of Battery by Prisoner, one count of Attempt Murder, and one count of Attempt Battery Substantial Bodily Harm. On February 27, 2019, Petitioner before the District Court where he pled not guilty. On March 27, 2019, Petitioner pled guilty to one count of Battery by Prisoner while the State retained the right to argue at sentencing.

Petitioner's attorney, (Kara Simmons), was ineffective in failing to investigate Petitioner's mental health background not only as a possible defense to the actual charges, but also in mitigation for sentencing purposes despite this information being readily available from Petitioner but also on page 3 of Petitioner's Presentence Investigation Report.

Petitioner has a long mental health history dating back to his childhood and has been diagnosed with Bipolar Disorder, Post-Traumatic Stress Disorder, and Schizophrenia. Petitioner

1. has been on numerous medications for these disorders as  
2. well.

3. Petitioner contends that Ms. Simmons' failure to communi-  
4. cate with him in the month between his plea of not guilty  
5. and his acceptance of the State's negotiated plea bargain  
6. resulted in his mental health issues not being explored as a  
7. possible defense or brought up at sentencing in mitigation in  
8. the hopes of receiving a lesser sentence.

9. Petitioner asserts that he never assaulted or attempted to kill  
10. or injure the arresting officers, Petitioner reacted out of  
11. fear of going back to jail and was only trying to flee to  
12. avoid arrest

13. Bipolar Disorder, Post-Traumatic Stress Disorder, and Schizophrenia  
14. are all mental health disorders that could cause this type of  
15. reaction to being placed under arrest and being taken to  
16. jail. Counsel was extremely ineffective in failing to pursue  
17. this line of defense and for mitigation.

18. Petitioner is at a disadvantage regarding this issue be-  
19. cause Petitioner has no medical / mental health schooling /  
20. training to be able to argue this ground with any real  
21. efficiency. Also, Petitioner has no legal training / experience  
22. and is incarcerated, and therefore lacks the ability to  
23. fully explore and pursue this ground in this Petition.

24. Petitioner was prejudiced by this ineffectiveness because  
25. he was prevented from pursuing his mental health  
26. issues as a defense. Also, although Ms. Simmons briefly  
27. touched on Petitioner's mental health issues at sentencing,  
28. Petitioner contends that counsel was ineffective in failing

1 to Fully investigate and explore Petitioner's mental health  
2 issues and thus these issues were not properly considered  
3 as a mitigating factor in sentencing.

4 Petitioner asserts that these mitigating circumstances very  
5 well could have at the least reduced the length of his  
6 sentence, as Petitioner received a term of 10 years to Life.

7 Should a hearing be provided to Petitioner this issue should  
8 be permitted under Lozada v. State, 110 Nev. 349, 871 P.2d  
9 944 (1994).

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### Ground Three

2. Petitioner received ineffective assistance of counsel under  
3. the Fifth, Sixth, and Fourteenth Amendments to the United  
4. States Constitution, Strickland v. Washington, 466 U.S. 668, 104 S.Ct.  
5. 2052 (1984), and deserves an evidentiary hearing under Lewis v.  
6. State, 100 Nev. 456, 686 P.2d 219 (1984), Belden v. State, 99  
7. Nev. 181, 659 P.2d 886 (1983), and Gibbons v. State, 97 Nev.  
8. 530, 634 P.2d 1214 (1981).

### Supporting Facts

11. On February 19, 2019 the State of Nevada represented by the  
12. District Attorney's office went before the grand jury and  
13. received an Indictment against Petitioner for two counts  
14. of Battery by Prisoner, one count of Attempt Murder, and one count  
15. of Attempt Battery Substantial Bodily Harm. On February 27, 2019  
16. Petitioner appeared before the District Court where he pled not  
17. guilty. On March 27, 2019 Petitioner pled guilty to one count of  
18. Battery by Prisoner while the State retained the right to argue  
19. at sentencing. Sentencing was set for May 13, 2019 and the  
20. judge reduced the bail to \$10,000 without objection by  
21. the State. Shortly thereafter Petitioner posted bond.

22. On the day of sentencing, Petitioner was not present.  
23. Defense counsel, (Kara Simmons), objected to any bench  
24. warrant as she had previously contacted the District Court  
25. and the State that Petitioner had contacted counsel that he  
26. was intending to hire private counsel who should be  
27. present. The State requested a bench warrant and the  
28. Court granted its request and issued a bench warrant

1 Petitioner was arrested on June 26, 2019 and appeared be-  
2 fore the District Court on July 1, 2019. At this time, defense  
3 counsel was made aware of the States intent to seek  
4 habitual criminal treatment and the sentencing was set for  
5 two weeks.

6 Petitioner asserts that counsel was ineffective in failing  
7 to submit a Motion to Withdraw Guilty Plea. The proper  
8 time for withdrawing a guilty plea is before sentence  
9 has been imposed. After the sentence has been imposed  
10 the requirement that a defendant has to meet, "manifest  
11 injustice" is a much more greater and difficult standard  
12 to meet.

13 Counsel was ineffective because by not trying to with-  
14 draw Petitioner's guilty plea Ms. Simmons was allowing  
15 Petitioner to be sentenced to a much greater term of  
16 imprisonment, up to a sentence of Life without Parole.

17 Petitioner was prejudiced by this ineffectiveness because  
18 he was sentenced to 10 years to Life instead of the 12  
19 to 72 months as stated in the original agreement. Peti-  
20 tioner was also prejudiced by this ineffectiveness because  
21 he now has a much greater burden to meet in with-  
22 drawing his guilty plea. Should a hearing be provided to  
23 Petitioner this issue should be permitted under Lezada v. State,  
24 110 Nev. 349, 871 P.2d 944 (1994).

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1. Ground Four

2. Petitioner received ineffective assistance of counsel under the  
3. Fifth, Sixth, and Fourteenth Amendments to the United States Con-  
4. stitution, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052  
5. (1984), and deserves an evidentiary hearing under ~~Strickland~~  
6. Lewis v. State, 100 Nev. 456, 686 P.2d 219 (1984), Balke v. State,  
7. 99 Nev. 181, 659 P.2d 886 (1983), and Gibbons v. State, 97 Nev.  
8. 520, 634, P.2d 1214 (1981).

9.

10. Supporting Facts

11. On February 19, 2019 the State of Nevada represented by the  
12. District Attorney's office went before the Grand Jury and received  
13. an Indictment against Petitioner for two counts of Battery by  
14. Prisoner, one count of Attempt Murder, and one count of Attempt  
15. Battery Substantial Bodily Harm. On February 27, 2019 Petitioner app-  
16. eared before the District Court where he pled not guilty. On  
17. March 27, 2019, Petitioner pled Guilty to one count of Battery  
18. by Prisoner while the State retained the right to argue at  
19. sentencing.

20. As stated in grounds one through three Petitioner's  
21. attorney (Kara Simmons), was grossly ineffective in her  
22. representation of Petitioner. Counsel never spoke with  
23. Petitioner regarding possible defenses, never investigated  
24. the State's case against Petitioner, never tried to  
25. obtain evidence potentially favorable to Petitioner i.e.  
26. pictures or witness accounts of incident. Counsel was  
27. also ineffective in not looking into Petitioner's Mental  
28. Health status. Petitioner has been diagnosed with several

1 serious mental health disorders, namely, Bipolar Disorder, Post-  
2 Traumatic Stress Disorder, and Schizophrenia. Counsel was  
3 ineffective in failing to investigate Petitioner's mental  
4 health issues in relation to a possible defense and  
5 also in regards to mitigation at sentencing.

6 Counsel was ineffective in failing to file a timely "Mo-  
7 tion to Withdraw Guilty Plea" once counsel was made  
8 aware of the State's intent to seek habitual criminal  
9 treatment. The proper time to withdraw a guilty plea  
10 is before sentence is imposed.

11 It should also be noted that counsel failed to file  
12 a Direct Appeal on Petitioner's behalf. Ms. Simmons  
13 only filed Petitioner's "Opening Brief" with the Nevada  
14 Supreme Court after Petitioner filed his appeal to the  
15 Court and requested an attorney be appointed. Counsel  
16 should have filed Petitioner's Direct Appeal especially in  
17 light of the fact that his original plea agreement was  
18 for 12 to 72 months but his failing to appear for  
19 his hearing resulted in a 10 to life sentence.

20 The cumulative effect of trial counsel's errors  
21 rises to the level of ineffective assistance of counsel  
22 to which relief must be granted. Petitioner humbly  
23 requests this Court to reverse his Judgment based  
24 on grounds one through four.

25 Should a hearing be provided to Petitioner this issue  
26 should be permitted under *Lozada v. State*, 110 Nev. 3219,  
27 871 P.2d 944 (1994).

28

CERTIFICATE OF SERVICE BY MAIL

I, Sean McKeandrick, hereby certify pursuant to N.R.C.P. 5(b), that on this 14 day of the month of October of the year 2020, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Address

Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, NV 89155

Attorney General  
State of Nevada, Criminal Justice Division  
100 North Carson Street  
Carson City, Nevada 89701-4717

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

Sean McKeandrick  
Signature of Petitioner

1 Sean McKendrick  
Name  
2 P.O. Box 1989 (E.S.P.)  
3 Ely, NV. 89301  
Address

4 Defendant in Proper Person

5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 v. )

10 Defendant. )  
11 )  
12 )

CASE NO. C-19-33884-1

DEPT. NO. VI

DATE OF HRG: \_\_\_\_\_  
TIME OF HRG: \_\_\_\_\_

13 **DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD,**  
14 **REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE,**  
15 **AND REQUEST TO HAVE COURT APPOINTED REPRESENTATION**  
16 **DURING POST CONVICTION RELIEF PROCESS**

17 COMES NOW, the Defendant, Sean McKendrick, in proper person, and  
18 hereby moves that this Honorable Court grant an Order allowing the Public Defender's Office to  
19 withdraw as attorney of record. Additionally, the Defendant asks that a copy of his entire file be  
20 immediately produced and given to the Defendant. Defendant further requests that his Honorable  
21 Court appoint counsel to represent him during the Post Conviction Relief process.

22 This Motion is based upon all the papers and pleadings on file herein, the attached  
23 Declaration of Counsel, and oral argument at the time set for hearing this Motion.

24 DATED this 8 of October, 2020.

25 By Sean McKendrick

26 Defendant in Proper Person  
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1 Affidavit In Support of Request To Have Court Appointed  
2 Representation During Post Conviction Relief Process

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4 State of Nevada )

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ss.

6 County of White Pine )

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8 I, Sean McEndrick, being the Petitioner in this "Petition  
9 For Writ of Habeas Corpus (Post-Conviction)" do swear  
10 as follows.

11 1. Everything in this Petition is true and correct to the  
12 best of my knowledge.

13 2. Petitioner has no legal training and thus lacks the  
14 ability on his own to fully expand, put forth, and  
15 investigate and pursue ~~the~~ fully the grounds set  
16 forth in this Petition.

17 3. Petitioner lacks and medical training and/or  
18 experience to fully explore and expand upon ground  
19 two as regards mental health issues.

20 4. Petitioner needs court appointed representation  
21 in order to have the grounds in this petition  
22 properly argued, explored, investigated, and brought  
23 forth in this Petition before the Court.

24 5. Further Affiant Says etc. not.

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Sean McEndrick

Under Penalty of Perjury  
Sean McEndrick

**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing DEFENDANT'S 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 will be heard on \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m. in District Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

By Sean McKindrick

Defendant in Proper Person

**CERTIFICATE OF MAILING**

I hereby certify and affirm that I mailed a copy of the foregoing 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 to the attorney of record listed below on this  
14 day of October, 2008.

STEVEN B. WOLFSON  
CLARK COUNTY DISTRICT ATTORNEY  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, NV 89155

BY Sean McKindrick  
Defendant in Proper Person

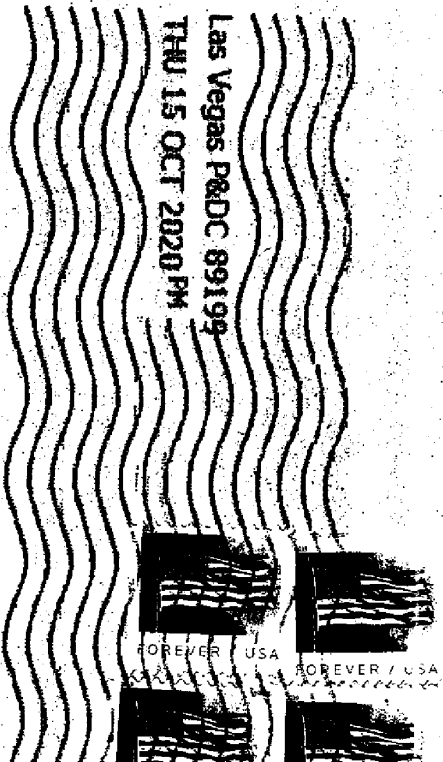
JEAN MCLENDRICK #64684  
P.O. Box 1989 (E.S.P.)  
Elizabethtown, NY 89301

Confidential  
Legal Mail

(Attn: Court Clerk)

Eighth Judicial District Court  
800 Lewis Ave.  
Las Vegas, NV 89155

Las Vegas PaDC 89199  
THU 15 OCT 2020 PM





PPOW

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Sean McKendrick,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-20-823904-W  
Department 6

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on October 29, 2020. 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 11th day of January, 2021, 20    , at the hour of

9:30 am

     o'clock for further proceedings.

Dated this 30th day of October, 2020



District Court Judge  
7F9 9BD 20D7 AC48  
Jacqueline M. Bluth  
District Court Judge

kj

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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.

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
16 known addresses on 11/2/2020

16 Sean McKendrick #84624  
17 ESP  
18 P.O. Box 1989  
19 Ely, NV, 89301  
20  
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1 **RSPN**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **JOHN NIMAN**  
6 **Deputy District Attorney**  
7 **Nevada Bar #014408**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Respondent**

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

9 **SEAN McKENDRICK,**  
10 **#7068215,**

11 **Petitioner,**

**CASE NO: A-20-823904-W**

12 **-vs-**

**C-19-338224-1**

13 **THE STATE OF NEVADA,**

**DEPT NO: VI**

14 **Respondent.**

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

18 **DATE OF HEARING: JANUARY 11, 2021**  
19 **TIME OF HEARING: 9:30AM**

20 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**  
21 **District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the**  
22 **attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus**  
23 **(Post-Conviction) and Motion to Appoint Counsel.**

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

27 **//**

28 **//**

**//**

\\CLARKCOUNTYDA.NET\CRM\CASE2\2019\081\19\201908119C-RSPN-(MCKENDRICK, SEAN)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 20, 2019, the State charged Sean McKendrick (hereinafter "Petitioner"),  
4 by way of Indictment with the following: Count 1 – Battery by Prisoner (Category B Felony  
5 – NRS 200.481(2)(F)); Count 2 – Battery by Prisoner (Category B Felony – NRS  
6 200.481(2)(F)); Count 3 – Attempt Murder (Category B Felony – NRS 200.010, 200.030,  
7 193.330); and Count 4 – Attempt Battery with Substantial Bodily Harm (Category D  
8 Felony/Gross Misdemeanor – NRS 200.481, 193.330). On February 27, 2019, Petitioner  
9 pleaded not guilty and invoked his right to a speedy trial.

10 On March 27, 2019, pursuant to negotiations with the State, Petitioner pleaded guilty  
11 to one count of Battery by Prisoner. Petitioner signed a Guilty Plea Agreement, which was  
12 filed the same day in open court.

13 On June 10, 2019, this Court filed a Bench Warrant after Petitioner failed to appear at  
14 his sentencing. On June 14, 2019, this court filed a Notice of Intent to Forfeit due to Petitioner's  
15 failure to appear in court. On June 20, 2019, the State filed a Notice of Intent to Seek  
16 Punishment as a Habitual Criminal.

17 On July 15, 2019, this Court sentenced Petitioner under the Habitual Criminal Statute  
18 NRS 207.010 to Life in the Nevada Department of Corrections (NDOC) with minimum parole  
19 eligibility after ten (10) years. Petitioner received fifty-nine (59) days credit for time served.  
20 The Judgment of Conviction was filed on July 23, 2019.

21 On August 8, 2019, Petitioner filed a Motion for Additional Credit for Time Served,  
22 requesting one hundred eight (108) days credit. The district court granted the Motion on  
23 August 19, 2019. The Amended Judgment of Conviction was filed on September 4, 2019.

24 On August 15, 2019, Petitioner filed a Notice of Appeal. Petitioner filed an Opening  
25 Brief arguing his sentence constituted cruel and unusual punishment. On September 28, 2020,  
26 the Court of Appeals of the State of Nevada affirmed this Court's sentence. Remittitur issued  
27 on October 27, 2020.

1 On October 29, 2020, Petitioner filed the instant Post-Conviction Petition for Writ of  
2 Habeas Corpus (hereinafter "Petition") and Motion for Appointment of Counsel (hereinafter  
3 "Motion"). The State responds as follows.

#### 4 ARGUMENT

##### 5 I. PETITIONER'S CLAIMS ARE OUTSIDE THE SCOPE OF A PETITION 6 FROM A GUILTY PLEA AGREEMENT

7 Petitioner's claims are outside the scope of habeas because Petitioner pleaded guilty.  
8 NRS 34.810(1)(a). His claims are limited to ineffective assistance of counsel at plea, or that  
9 his plea was not knowingly and voluntarily entered. NRS 34.810(1) reads:

10 The court shall dismiss a petition if the court determines that:

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

19 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
20 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
21 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
22 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
23 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
24 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

25 "A court must dismiss a habeas petition if it presents claims that either were or could  
26 have been presented in an earlier proceeding, unless the court finds both cause for failing to  
27 present the claims earlier or for raising them again and actual prejudice to the petitioner."  
28 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

##### A. Ground One

Petitioner first alleges that his counsel was ineffective by not contacting, visiting, or  
speaking to him. Petition, at 7A. Petitioner also claims that counsel was ineffective for failing

1 to investigate or interview any witnesses. Petition, at 7A-7B. As discussed supra, claims  
2 regarding counsel's communication and investigation are outside the scope of the instant  
3 Petition because they do not claim that the plea was not knowingly and voluntarily entered or  
4 that counsel's advice to plead was bad.

5 To the extent Petitioner claims he only pleaded guilty because of counsel's  
6 ineffectiveness, this claim is belied by the record. Petition, at 7B. The record demonstrates that  
7 Petitioner acknowledged that he would be waiving rights by pleaded guilty. GPA, March 27,  
8 2019, at 4-5. Moreover, in the section entitled "Voluntariness of Plea," Petitioner  
9 acknowledged that he and his attorney discussed all of the elements of the charge, the State's  
10 burden to prove the charges beyond a reasonable doubt, possible defenses, the rights that he  
11 waived, that he signed the GPA voluntarily, that he was not under the influence of any  
12 intoxicating substances, that his attorney answered all of his questions, and that his trial  
13 counsel competently represented him. Id. Additionally, counsel, as an officer of the Court,  
14 extensively acknowledged that she adequately explained the terms of the GPA to Petitioner  
15 and answered any questions Petitioner had. GPA, March 7, 2019, at 6.

16 By signing the GPA and being canvassed by this Court, Petitioner acknowledged that  
17 he freely and voluntarily entered his guilty plea. Most importantly, he acknowledged multiple  
18 times that his attorney had answered all of his questions, he was satisfied with the services  
19 provided, and he understood the terms of the negotiations. Petitioner irrefutably entered into  
20 his GPA freely, knowingly, and voluntarily. Therefore, to the extent Petitioner claims his plea  
21 was not freely and voluntarily entered, it is belied by the record.

## 22 **B. Ground Two**

23 Petitioner alleges that his counsel was ineffective by failing to investigate Petitioner's  
24 mental health and any mitigation at sentencing. Petition, at 7C-7E. As discussed supra, this  
25 claim is outside the scope of the instant Petition because his claims are limited to ineffective  
26 assistance of counsel at plea, or that his plea was not knowingly and voluntarily entered. NRS  
27 34.810(1)(a). Therefore, this claim must be dismissed.

28 ///

1           **C. Ground Three**

2           Petitioner alleges that his counsel was ineffective by failing to object to the State filing  
3 its Intent to Seek Habitual Criminal Treatment. Petition, at 7F-7G. Petitioner claims that  
4 because the State filed the Intent to Seek Habitual Criminal Treatment, he wanted to withdraw  
5 his guilty plea. Petition, at 7G. However, Petitioner fails to show support from the record that  
6 he ever attempted or wanted to withdraw his plea. Even had he tried to withdraw his plea,  
7 Petitioner specifically agreed that if he failed to appear, the State would have the right to argue  
8 for habitual criminal treatment. GPA, March 27, 2019, at 1-2. Additionally, as discussed supra,  
9 this claim is outside the scope of the instant Petition because his claims are limited to  
10 ineffective assistance of counsel at plea, or that his plea was not knowingly and voluntarily  
11 entered. NRS 34.810(1)(a). Therefore, this claim must be dismissed.

12           **D. Ground Four**

13           Lastly, Petitioner alleges that his counsel was ineffective by failing to investigate  
14 Petitioner's mental health concerns, failing to file a Motion to Withdraw Guilty Plea, and  
15 failing to file a direct appeal. Petition, at 7H-7I. Petitioner also includes one sentence that "the  
16 cumulative effect of trial counsels errors rises to the level of ineffective assistance of counsel  
17 to which relief must be granted." Petition, at 7I. The Nevada Supreme Court has never held  
18 that instances of ineffective assistance of counsel can be cumulated; it is the State's position  
19 that they cannot. However, even if they could be, it would be of no moment as there was no  
20 single instance of ineffective assistance in Petitioner's case. See United States v. Rivera, 900  
21 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the  
22 effect of matters determined to be error, not the cumulative effect of non-errors.").

23           As discussed supra, this claim is outside the scope of the instant Petition because his  
24 claims are limited to ineffective assistance of counsel at plea, or that his plea was not  
25 knowingly and voluntarily entered. NRS 34.810(1)(a). Moreover, Petitioner's counsel did file  
26 a direct appeal on behalf of Petitioner, and his conviction was affirmed by the Nevada Court  
27 of Appeals on September 28, 2020. Therefore, this claim is without merit, and this Petition  
28 must be dismissed.

1           **II.     PETITIONER IS NOT ENTITLED TO POST-CONVICTION COUNSEL**

2           Petitioner requests this Court appoint him counsel for the instant Petition because he  
3 has “no legal training and thus lacks the ability on his own to fully expand, put forth, and  
4 investigate and pursue fully the grounds set forth in this Petition. Motion, at 1. However, as  
5 discussed supra, Section I., the ground which Petitioner requests counsel to investigate are  
6 outside the scope of this Petition.

7           Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
8 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
9 McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme  
10 Court similarly observed that “[t]he Nevada Constitution ... does not guarantee a right to  
11 counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to  
12 counsel provision as being coextensive with the Sixth Amendment to the United States  
13 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)  
14 (entitling appointed counsel when petitioner is under a sentence of death), one does not have  
15 “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at  
16 164, 912 P.2d at 258.

17           However, the Nevada Legislature has given courts the discretion to appoint post-  
18 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and  
19 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750(1) reads:

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

NRS 34.750.



1 In the instant Petition, all of Petitioner's claims are outside the scope of habeas because  
2 Petitioner pleaded guilty. Therefore, Petitioner should not be appointed counsel to aid in  
3 investigating claims that are inappropriate for the instant Petition. As to the Motion for  
4 Withdrawal of Attorney of Record and Request to Obtain Copy of Defendant's File, the State  
5 takes no position. But as to the Motion for Appointment of Counsel, Petitioner should not be  
6 appointed counsel for claims that should be summarily rejected. As such, this Court should  
7 deny the Motion for Appointment of Counsel.

8 **CONCLUSION**

9 Based on the foregoing, Petitioner's Petition for Writ of Habeas Corpus (Post-  
10 Conviction) and Motion for Appointment of Counsel should be DENIED.

11  
12 DATED this 2nd day of December, 2020.

13 Respectfully submitted,

14 STEVEN B. WOLFSON  
15 Clark County District Attorney  
16 Nevada Bar #

17 BY JOHN NIMAN  
18 Deputy District Attorney  
19 Nevada Bar #014408  
20

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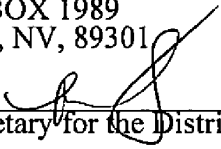
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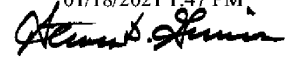
**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 2nd day of  
December, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

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

BY   
Secretary for the District Attorney's Office

JN/mah/L3

  
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

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  
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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

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1 CSERV

2 DISTRICT COURT  
3 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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1 NEOJ

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 SEAN MCKENDRICK,

5  
6 Petitioner,

Case No: A-20-823904-W

Dept. No: VI

7 vs.

8 STATE OF NEVADA,

9 Respondent,

NOTICE OF ENTRY OF ORDER

10  
11 PLEASE TAKE NOTICE that on January 18, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

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

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

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

22 ☒ By e-mail:

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

25 ☒ The United States mail addressed as follows:

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

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

*Heaven's Honor*  
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

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  
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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

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1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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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FILED

FEB 19 2021

*Alan J. Blum*  
CLERK OF 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

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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24 Dated this 12<sup>TH</sup> day of FEBRUARY, 2021  
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26 By: X *Jan 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

Sean McKendrick  
(Signature)

SEAN MCKENDRICK  
(Print Name)

PRO Se'  
(Attorney for)



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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),  
14  
15

Case No: A-20-823904-W

Dept No: VI

16  
17 **CASE APPEAL STATEMENT**

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

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: No  
Date Application(s) filed: N/A
9. Date Commenced in District Court: October 29, 2020
10. Brief Description of the Nature of the Action: Civil Writ  
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No  
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 23 day of February 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann  
Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Sean McKendrick

**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

PRINT DATE: 03/09/2021

Page 1 of 5

Minutes Date: January 08, 2021

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@clarkcountyda.com]. /cd 1-8-2021/

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 11, 2021**

---

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 and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated February 26, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 57.

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 9 day of March 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk