

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE
STATE OF NEVADA

SEAN MICHAEL MCKENDRICK,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No.: 82532

Electronically Filed
Oct 21 2021 01:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' OPENING BRIEF – APPENDIX VOLUME I

TCM LAW GROUP
THOMAS C. MICHAELIDES, ESQ
NEVADA BAR NO. 5425
2620 REGATTA DRIVE #219
LAS VEGAS, NV 89128
PHONE:702-462-6161
FAX:702-413-6255

TABLE OF CONTENTS

<u>Exh. No.</u>	<u>Page No.</u>	<u>Date</u>	<u>Document</u>
<u>VOLUME I</u>			
1	P1	10/21/21	<i>Criminal Complaint</i>
2	P4	10/21/21	<i>Judgment of Conviction</i>
3	P7	10/21/21	<i>Order Denying Petition</i>
4	P15	10/21/21	<i>Appellant's Notice of Appeal</i>
5	P19	10/21/21	<i>Appellant's Transcripts</i>

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I hereby certify that on this 21st day of October, 2021, service of the foregoing **APPELLANTS' APPENDIX** was made by submission to the electronic filing service for the Nevada Supreme Court upon all registered users to the email addresses on file:

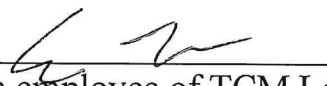

An employee of TCM Law

EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 20, 2019

C-19-338224-1 State of Nevada
 vs
 Sean McKendrick

February 20, 2019 11:00 AM Grand Jury Indictment

HEARD BY: Adair, Valerie; Jones, COURTROOM: RJC Courtroom 12C
 Tierra

COURT CLERK: Estala, Kimberly

RECORDER: Garibay, Maria

REPORTER:

PARTIES PRESENT:

Michael Dickerson

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

Russell Walker, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 18AGJ225X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-19-338224-1, Department VI.


State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, \$100,000.00 BAIL with High Level Electronic Monitoring; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment.

COURT FURTHER ORDERED, Exhibits 1-3 to be lodged with the Clerk of the Court; Las Vegas Justice Court case no. 19F01767X DISMISSED per the State's request. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done.

I.W. (CUSTODY)

02/27/19 8:30 A.M. INITIAL ARRAIGNMENT (DEPT VI)

Clark County District Attorney
Nevada Bar #001565
BRANDON ALBRIGHT
Deputy District Attorney
Nevada Bar #14158
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

BY,  ~~KIMBERLY ESTALA, DEPUTY~~

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN MICHAEL MCKENDRICK,
#7068215

Defendant.

CASE NO: C-19-338224-1

DEPT NO: VI

INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, SEAN MICHAEL MCKENDRICK, accused by the Clark County Grand Jury of the crime(s) of BATTERY BY PRISONER (Category B Felony - NRS 200.481(2)(F) - NOC 50229); ATTEMPT MURDER (Category B Felony - NRS 200.010, 200.030, 193.330 - NOC 50029); and ATTEMPT BATTERY WITH SUBSTANTIAL BODILY HARM (Category D Felony/Gross Misdemeanor - NRS 200.481, 193.330 - NOC 50244/50245); committed at and within the County of Clark, State of Nevada, on or about the 29th day of January, 2019, as follows:

COUNT 1 - BATTERY BY PRISONER

did willfully, unlawfully, feloniously, and knowingly use force or violence upon the person of another, to wit: D. WEBB, by punching the said D. WEBB, Defendant at the time of the offense, being a prisoner in lawful custody.

EXHIBIT 2

Steven D. Grierson

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN MICHAEL MCKENDRICK
#7068215

Defendant.

CASE NO. C-19-338224-1

DEPT. NO. VI

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of BATTERY BY PRISONER (Category B Felony) in violation of NRS 200.481(2)(F); thereafter, on the 15th day of July, 2019, the Defendant was present in court for sentencing with counsel KARA SIMMONS, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the HABITUAL CRIMINAL STATUTE NRS 207.010 and, in addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

1 DNA Collection Fee, the Defendant is sentenced as follows: LIFE WITH a MINIMUM
2 parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC);
3 with FIFTY-NINE (59) DAYS credit for time served.
4

5 COURT recommends Defendant for the 184 program while incarcerated.

6 DATED this 18th day of July, 2019.
7



8
9 
10 JACQUELINE M. BLUTH 
11 DISTRICT COURT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3

Alvin S. Smith
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,

///

///

///

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.

25 ///

26 ///

27 ///

28 ///

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.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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 ///

28 ///

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~~
21 ~~ELY, NV 89301~~

22 BY _____

Secretary for the District Attorney's Office

23
24
25
26
27
28 mah/L3

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. The filer has been
13 notified to serve all parties by traditional means.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 4

FILED

FEB 19 2021

Alan D. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY NEVADA

NAME, SEAN MCKENDRICK

Plaintiff(s),

-vs-

CASE NO.

NAME, STATE OF NEVADA

A-20-823904-W

Defendant(s).

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
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

24 Dated this 12th day of FEBRUARY, 2021
25
26
27
28

By: X Jim McKendrick

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document,

NOTICE OF APPEAL

Filed in case number: A-20-823904-W (Title of Document)

☒ 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

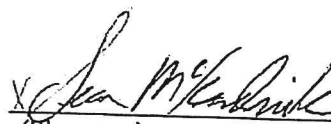
Or

☐ 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)

DRO Se'
(Attorney for)