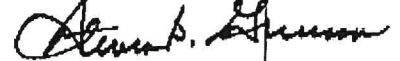


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EXHIBIT 5



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-19-338224-1
DEPT. VI

10 vs.

11 SEAN MICHAEL MCKENDRICK,
12 Defendant.

13 BEFORE THE HONORABLE JACQUELINE M. BLUTH,
14 DISTRICT COURT JUDGE
15 MONDAY, JULY 15, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING: SENTENCING**

17 APPEARANCES:

18 For the State:

BRANDON ALBRIGHT, ESQ.
Deputy District Attorney

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21 For the Defendant:

KARA SIMMONS, ESQ.
Public Defender's Office

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23
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25 RECORDED BY: De'AWNA TAKAS, COURT RECORDER

1 Las Vegas, Nevada, Monday, July 15, 2019

2
3 [Hearing began at 10:13 a.m.]

4 THE COURT: C338224 State of Nevada versus Sean
5 Michael McKendrick. Mr. McKendrick is present, in custody, Ms.
6 Simmons on his behalf, Mr. Albright on behalf of the State.

7 This is a time and date set for sentencing. This was on on
8 June 10th of 2019, the defendant wasn't present, a bench warrant was
9 issued. The negotiations were the State has the right to argue.

10 Are both sides ready to proceed today?

11 MS. SIMMONS: I'm prepared, Your Honor, I did want to
12 clarify one thing though. The State had submitted police reports for two
13 incidents that are not part of the negotiation here. They're not at all
14 related to this event. And I had objected to, Your Honor, considering
15 those as part of the sentencing for today.

16 THE COURT: Right.

17 MS. SIMMONS: So I did want to make sure the record was
18 clear I was objecting, because those are incidents that are not -- one
19 was dismissed and one is screening. Neither of them are actually
20 factually part of this case. So I was objecting for relevance and
21 prejudicial purposes. Deferring to Your Honor as to whether or not --
22 and the only thing I need to make clear is, whether or not, Your Honor,
23 did -- use them, and are going to consider them today.

24 THE COURT: Mr. Albright?

25 MR. ALBRIGHT: I'll just refer to *Nevada v. Morfin*, that's M-O-

1 R-F-I-N. It says a sentencing proceeding is not a second trial, and the
2 court is privileged to consider facts and circumstances, which would not
3 be admissible at trial. Other criminal conduct may properly be
4 considered at the sentencing hearing even though the defendant was
5 never charged or convicted of it. And that -- it says the purpose is to
6 allow the sentencing judge to gain a further assessment of the
7 defendant so that the punishment will fit offender and not merely the
8 crime for which he was convicted.

9 Another reason is because I'm seeking habitual --

10 THE COURT: Right.

11 MR. ALBRIGHT: -- treatment, which incubuses his criminal
12 history, Your Honor.

13 THE COURT: Understood.

14 MR. ALBRIGHT: And takes into account judgments of
15 conviction from prior convictions.

16 MS. SIMMONS: And my only response to that, specially, is
17 that, obviously, I already know in a PSI Your Honor's always made
18 aware -- well, specifically, factually in this case he was on house arrest
19 at the time. Obviously there was a prior case; however, that case was
20 dismissed. Obviously Your Honor would know if he had picked up a
21 new case, otherwise the State wouldn't have regained the right -- the full
22 right to argue.

23 THE COURT: Yeah.

24 MS. SIMMONS: However, the factual circumstances of those
25 cases and those allegations, especially when one of those cases was

1 voluntarily dismissed by the State, and the State has yet to file in the
2 other case, I think that is going beyond what should be considered in
3 sentencing Mr. McKendrick here today.

4 As far as the JOC goes, those are things that we can't really
5 argue against.

6 THE COURT: Sure.

7 MS. SIMMONS: Those already happened. But the police
8 reports for the other two cases, I do believe are being inappropriately
9 used here.

10 THE COURT: So I think that I understand your position Ms.
11 Simmons, I think that, you know, it's a little bit different then when it's a
12 judge hearing these things versus a jury; right? I think that I can look at
13 evidence and give evidence the appropriate weight that I see fit, were
14 as, you know, we get nervous with lay people, such as jury that are they
15 gonna be so prejudice by these types of things that they're not gonna be
16 able to, you know, make a determination based on the facts.

17 So, yes, I read them. Yes, I considered them. I don't give the
18 cases that you're -- discussing right now the type of weight that I'd give
19 the cases that are in the PSI, and cases that I have judgments of
20 convictions for. But I think that globally I should look at everything, and
21 then it's up to me to determine what weight is appropriate. So that's
22 what I'll say in regards to that; okay?

23 MS. SIMMONS: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 MS. SIMMONS: Other than that, we are prepared to go

1 forward today.

2 THE COURT: All right. And Mr. Albright are you -- also?

3 MR. ALBRIGHT: I am, Your Honor.

4 THE COURT: All right. Okay, Mr. Albright?

5 MR. ALBRIGHT: I will just briefly -- Your Honor, I mentioned
6 that I'll be seeking habitual treatment. On the State's notice to seek
7 habitual, there is one small amendment on page 1 line 26 it mentions an
8 assault with a deadly weapon. The actual charge per the JOC, which
9 I'll be entering shortly as an exhibit, is an assault upon an officer is the
10 actual name of the charge.

11 THE COURT: Okay.

12 MR. ALBRIGHT: It doesn't change the felony or the case
13 number.

14 THE COURT: Sure.

15 MR. ALBRIGHT: It was also in January of 2005; where as my
16 notice on line 25 says, 2004.

17 THE COURT: Okay.

18 MR. ALBRIGHT: So, I think, because the JOC takes a little
19 while, as you know, it became a 2005 case.

20 THE COURT: Okay.

21 MR. ALBRIGHT: So I just wanna make sure those
22 amendments were on the record.

23 THE COURT: Thank you.

24 MR. ALBRIGHT: The State is requesting today that the --
25 court adjudicate the defendant on the large habitual pursuant to NRS

1 207.010, and that you sentence him to 10 years to life in prison at the
2 Nevada Department of Corrections. As such I'll enter these three
3 exhibits -- prior judgements of convictions exhibit number 1, these have
4 been previously marked by your court. Exhibit 1 is case CR04-1800 a
5 judgment of conviction, 2005, for Sean Michael McKendrick for assault
6 upon an officer. Proposed exhibit number 2 is from case CR08-1349
7 filed in July of 2008 for Sean Michael McKendrick for battery by a
8 prisoner, a felony. And exhibit number 3, the sticker here says it's a
9 proposed exhibit, is a judgment of conviction from June of 2008 for Sean
10 Michael McKendrick case number CR08-0323 the charge of battery with
11 a deadly weapon causing substantially bodily harm.

12 With that, Your Honor, I wanna go a little bit through his
13 criminal history, most of which, obviously, is in the PSI, which you have
14 before you. On page 4, his first conviction was a gross misdemeanor,
15 drug related in 2003. He was 19-years-old, and he was given 12
16 months in jail. Less than a year later, he picks up his next gross
17 misdemeanor; he's barely 20-years-old, it's taking a vehicle without
18 owner's consent. Again, he's given 12 months in jail. Interestingly
19 enough, the next case he picks up is only a month later, which -- its
20 assault with a deadly weapon on a police officer is what he pleads to.
21 The charges included, PSV, eluding police, endangering persons, and
22 property. He's given -- this is his first felony, he's given 12 to 48 months.
23 He's dishonorably discharged in November of 2006. 14 months later
24 he's charged with attempt murder with a deadly weapon. He pleads
25 guilty to battery with a deadly weapon resulting in substantially bodily

1 harm, there's over \$100,000 in restitution. He's 24-years-old at this
2 point, and he's sent to prison for 6 to 15 years. Now before he actually
3 pleads to that, he picks up another case while in custody, which is,
4 according to the PSI, a battery on police officer. He pleads to a battery
5 by prisoner and gets a 16 to 48 consecutive to his 6 to 15 years, so
6 bottom there is about 7½ years. I don't know how much of that 7 to 20
7 years he served, or 7 to 19 years, but the next case that he does pick-up
8 is in January 19 -- 2019, just this year. And this was the case earlier
9 referenced that was dismissed. It's a -- domestic violence related, the
10 victim is his girlfriend, and her friend. It involves robbery with a deadly
11 weapon of him by gun point taking her phone, her wallet, and her tablet,
12 with a firearm, telling her and her friend, with a gun pointed to the friends
13 head, today all three of us are going to die. Eventually he's taken into
14 custody. In his car, is found that firearm with an obliterated serial
15 number. For whatever reason, such as the nature with domestic cases,
16 as you're fully aware, for lack of cooperation on the victim's part, that
17 case was ultimately dismissed.

18 But very shortly after getting arrested he posted bail and was
19 put on house arrest. He was sent to live with -- or permission from the
20 court and his brother, was living with his brother and sister-in-law at their
21 apartment on house arrest. Three days after being on house arrest his
22 brother calls the police, and says I need you to come -- and this is in the
23 report for this case -- the instant case he's on house arrest, and his
24 brother and sister-in-law call the police and say, we need you to do a
25 random check at our house, we want our brother to be drug tested and if

1 tests dirty he's not allowed to live at our house anymore. They leave the
2 house when the -- both the house arrest officers arrive, he's there, he's
3 acting erratic, he's sweating. Because of that they attempt to put him in
4 hand cuffs, and he starts to resist after they've got one hand cuff on. He
5 starts swinging at them, hitting both of them, including being hit by the
6 other half of the hand cuffs. At one point, per the arrest report, as well
7 as the -- they both testified at grand jury, one of the officers is charged
8 and thrown into a table that breaks. At one point the fight ends up
9 outside on the balcony. This is out front there on the second floor, and
10 the defendant charges one of the officers and attempts to push him over
11 the balcony off the second floor. The only way that doesn't happen is
12 that the other officer comes to his rescue, puts him in a headlock where
13 eventually he's rendered unconscious. When he comes to again he
14 immediately starts fighting. He's put into custody, and eventually makes
15 his way to jail.

16 He's charged, in that case, with attempt murder on that police
17 officer, two counts of battery by prisoner, and an attempt battery with --
18 resulting in substantial bodily harm. He ultimately pleads to a battery by
19 prisoner. Which as I've made clear, he's already got one of those
20 convictions in his past, as well as another assault with a deadly weapon
21 on a police officer. His bail is at \$100,000 after he enters his plea,
22 unfortunately as you're fully aware, the State's case load does not allow
23 me to be present for every entry of plea for my cases, so I'm not present
24 for that. The defense argues for lowering the bail to \$10,000. You were
25 not on the bench, Judge Bixler is, he bites at that argument and bail is

1 lowered to -- \$10,000 even though the only thing that's changed is that
2 assumption of guilt, innocence is gone, now he has plead guilty. So that
3 is what it is, it's an argument for another time.

4 But, unfortunately, he makes bail and is released. And to the
5 surprise of no one, he fails to appear at his rendition of sentence here on
6 the 10th of June 2019, a bench warrant is issued. We find out later,
7 actually I only found out a couple days ago, part of the reason he was
8 here is that on June 7th 2019 he picks a new case. He's inside of Your
9 Stop Liquor when police call to the scene, this is case 19F12275X,
10 what's concerning about this case -- although right now it's plead as a
11 trafficking, he's eventually caught with 10.5 grams of methamphetamine
12 on his person, but in the police report, again, as he's -- as officers --
13 multiple officers are trying to take him in custody, he's fighting, he's
14 swinging, he's assaulting multiple officers, a code red is called, three
15 other units have to be called off the street, which obviously puts the
16 community at risk pulling those -- men and woman off the streets, but
17 again as -- his criminal history is shown, again, he's combative with
18 officers, assaulting them, swinging at them, battering them. So that one
19 is yet to be filed, although probable cause has been found by a
20 magistrate, there's a status check on filing.

21 Also, important to note in that case, after he swung -- he's put
22 in hand cuffs, they're running his record to see who this man is, he
23 jumps up in the middle of the street and flees, ultimately escaping. At
24 that point he's -- a prisoners and hasn't been charged as an escape, but
25 it certainly could. He runs across the street into a 7-Eleven parking lot,

1 officers have to run through a street, with traffic, and catch him again
2 and put him in custody.

3 So one -- there's a couple patterns that we see here, multiple
4 incidences of eluding, of running, failing to appear, but another thing we
5 see is violence in every charge, deadly weapons are part of each
6 charge. But most concerning to the State is his tendency to zero in on
7 law enforcement officers. I've never seen a criminal history so over-
8 pleat with instances where whatever's happening whether he's on drugs
9 or not, on house arrest or not, in jail or in prison or not, he's assaulting
10 and victimizing law enforcement officers. It's concerning to the State for
11 -- obvious reasons.

12 I -- want to point out a couple things from the PSI that I expect
13 we'll hear in the defenses argument, and that's his mental health. So on
14 page 3 of the PSI it talks about diagnosed dyslexia, it also says --
15 allegedly he has bipolar disorder, post-traumatic stress disorder, and
16 schizophrenia. So this is unfortunate, and mental health is nothing to be
17 taken lightly, and I'm the first to admit that, but what I want to make clear
18 is that not only would he not be admitted to mental health, and I don't
19 think that's appropriate and I would oppose it if it's on the table, but
20 because of the violent nature I don't think would be accepted, but there
21 are thousands of people living in our city that suffer from schizophrenia,
22 PTSD and bipolar disorder and many, if not the vast majority, of them
23 live productive lives, hold down jobs, have families and struggle with that
24 personally without trying to kill law enforcement officers every time they
25 have the chance.

1 The next point, from the PSI, are drugs. On that same page,
2 page 3, he claims to be addicted to marijuana from age 12 and addicted
3 methamphetamine from 14. Again, I don't think he's a candidate for
4 drug court. I don't think he would be accepted because of the violent
5 nature of these charges and his past. I would oppose any sort of
6 program in that regard. But, again, the State deals with meth addicts on
7 a daily basis, and the vast, vast majority, although -- self-destructive,
8 and self-harming, maybe thieves to feed their need, the vast, vast
9 majority do not victimize other people violently, certainly not police
10 officers, while they're being taken into custody, whether they're high at
11 the time or not.

12 And then finally, I want to speak to the fact that -- of why I'm
13 asking for 10 to life versus 10 to 25. I'm well aware of the different
14 structure in the habitual statute, and why I feel that life on the end as a
15 possibility versus 25 is important here. I've made clear that his criminal
16 history started at 19, at least his adult criminal history, and that every
17 time he's out of custody, even for a short number of months, he picks up
18 another violent concerning charge. I think 10 to 25 versus 10 to life he'll
19 likely -- actually probably get out along the same amount time he'll serve
20 initially the same amount of time, but keeping him on parole for life
21 prospectively, at least gives him that motivation and that, kind of,
22 hammer hanging over his head to try to give him the motivation to be
23 better. It's to protect, not only, the members of our community to maybe
24 people that his family, obviously, were victimized in some of these
25 cases. Law enforcement officers, obviously, but also to protect himself,

1 the defendant, as something that would possible be a motivating factor
2 to be better once he gets out. And with that, I'll submit.

3 THE COURT: I know that the murder that he was charged
4 with in Reno was ultimately -- he was convicted to a bat with deadly with
5 substantial. Does anybody know the underlying circumstances? It's
6 hard to get those records, so I'm blaming anybody for not having them.
7 But does anybody know the underlying circumstances related to the
8 murder?

9 MR. ALBRIGHT: It was hard enough for me to get the
10 judgments of convictions, Your Honor.

11 THE COURT: Okay.

12 MR. ALBRIGHT: And I was hoping the JOC's would include a
13 little bit more factual detail, which they don't.

14 THE COURT: Okay. So, sir, in a moment I'm going to have
15 the opportunity to hear from Ms. Simmons on your behalf, is there
16 anything that you would like to say to the Court before I sentence you?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay.

19 THE DEFENDANT: First and foremost everything that the DA
20 has said, it's pretty much true ma'am. I have a really bad history, and no
21 way, shape or form, am I saying that anything right now is an excuse. I
22 am guilty of the crime of resisting arrest, arguing with those officers,
23 when I'm being tried for right now. The only thing is, ma'am, I would like
24 to explain my situation where I was at mentally.

25 I had just did 9½ years solitary confinement in Ely max prison.

1 I was released, I have PTSD I couldn't be around no-body, but I still
2 gainfully had a job. I fell in love with somebody, I was with them for 8
3 months, I found out they were HIV positive. I did not know what to do. I
4 left my apartment, went to my brother's house, cried, went right back to
5 my apartment. Then I was arrested. Do to allegations that were
6 completely false, I was out on bail, this did happen.

7 Your Honor, the only thing I ask of you, is to please give me a
8 chance. Even when I was out on bail I was still gainfully employed. I
9 still got a new apartment. I did not show up for sentencing because I,
10 myself, had gave my girl my money for a new lawyer to show up. I was
11 at work, my lawyer called me, why didn't you show up? I told her what
12 happened. She said you need to get ahold of a lawyer now so they can
13 file a motion to expunge it. Honestly, ma'am, I was so scared I didn't
14 know what to do I just started getting high again.

15 In no way shape or form am I saying that it's right. And no
16 way shape or form am I saying that I'm not guilty, I am. But I'm begging
17 you, please, show me some leniency. I do not even know how to
18 explain the things that I was going through mentally. Even officers that
19 took me to UMC that I got in a fight with I explained it to them while we
20 were there, I told them, look I'll pee in a cup; they were like well it's too
21 late. You know, it was too late. And I understand that I did make
22 mistakes, but I could not function right, but I was trying to get the help
23 that I needed.

24 I'm begging you please don't throw me away like an animal.
25 Please don't give me the habitual. And if you do, ma'am, please

1 suspend it. Give me 5 years probation. Give me intensive house arrest,
2 I will show you that I can be a better man. I'm begging you. And I know
3 that you probably hear this all the time, you used to be a prosecutor
4 yourself, but sometimes, some people just get the bad deal, and that
5 was me. I'm not saying that it was --

6 THE COURT: Got --

7 THE DEFENDANT: -- right.

8 THE COURT: -- the bad --

9 THE DEFENDANT: I'm not --

10 THE COURT: -- deal? What do you mean you got the bad
11 deal? Listen, I --

12 THE DEFENDANT: No, no --

13 THE COURT: No, no, no. I'm all about giving people
14 chances. You have literally tried to kill people, and killed somebody,
15 over, and over, and over again. This isn't about you getting a bad deal.
16 This is about you making bad decisions and trying to hurt people over,
17 and over, and over again. This isn't about me being a prosecutor. This
18 isn't about you being a defendant. This is about you are dangerous, and
19 if you think you are getting probation you are delusional. You have
20 made --

21 THE DEFENDANT: Excuse me --

22 THE COURT: -- no. You have got your chances. You have
23 been given the chances of probation. You've been given the chances of
24 parole. And what you do is you get out, and even when you're not out,
25 you continue to hurt people. And that is going to stop. And it's gonna

1 stop here today. Ms. Ross. Ms. --

2 MS. SIMMONS: Ms. --

3 THE COURT: -- Simmons.

4 MS. SIMMONS: -- Simmons. It's okay, I understand.

5 Obviously, I had previously explained to him if he's treated as
6 a habitual criminal, that's not like -- we can't suspend it, its mandatory
7 prison. I'd also explained to him, obviously, it's a long shot in asking for
8 probation. More than a long shot like the longest shot ever based on his
9 criminal history.

10 But in looking -- so I'm gonna start with I'm asking for. Parole
11 and Probation, when he showed up for his PSI when he went and got
12 the evaluation done by them, they recommended based on all of his
13 criminal history, and the facts at that time, I recognize they are slightly
14 different now, but at that time their recommendation was a 12 to 48. I
15 would, at a minimum, ask that, Your Honor, consider that, but if not,
16 simply not treating him as habitual criminal.

17 In this case -- what we have here is a situation where Mr.
18 McKendrick was, unfortunately at the time, on house arrest. Although I
19 do not agree with it, it was definitely something I was going to writ had
20 we not negotiated the case. Mr. Albright and I actually had negotiated
21 this case prior to him going to the grand jury. Then he had gone to the
22 grand jury, and we done the deal up here in District Court. I think it was
23 going to be actually next to impossible to actually -- substantiate the
24 attempt murder charge in this case. In this case what I think is very
25 clear just based on reading the police report that this was a situation

1 where somebody who was being monitored by house arrest, who was
2 scared of going back to jail, had officer's show up, and maybe he was
3 high, maybe he wasn't, but he definitely was not acting normal, and he
4 panicked. Mr. McKendrick tried to flee. He hurt those officers,
5 unfortunately, in his attempt to flee, but there was no intent by Mr.
6 McKendrick to actually kill one of those officers, which is something the
7 State would have actually had to of proven. And I do think that in and of
8 itself is one charge that probably went a little bit too far. However, he
9 did still plea to the battery by prisoner, because that is, in fact, what
10 happened.

11 As far as the bail goes, Mr. Albright was not here that day, I
12 was here that day, mister -- or Judge Bixler was on the bench, and Mr.
13 Stanton was here for the District Attorney's Office. At that time -- just so
14 that it's clear how it happened, Mr. McKendrick had asked the judge to
15 consider an O.R. I told -- Judge Bixler that I had explained that that has
16 to be in writing, but he would consider reducing the bail based on the
17 charge that he's pleading guilty too. Mr. Stanton did not object, he said
18 that it seemed appropriate to modify the bail based on the charge he's
19 actually pleading to. And so that's how the bail got set that way.

20 Obviously Mr. Albright was much more familiar with the case,
21 so I understand his position.

22 THE COURT: Sure.

23 MS. SIMMONS: But that is what happened when it came to
24 the bail -- bail reduced at that time.

25 THE COURT: I understand.

1 MS. SIMMONS: As far as the other cases go, I mean, Your
2 Honor, already knows my position. Those are cases were either
3 voluntarily dismissed by the State, or have not yet been filed. So while I
4 do understand that there's still an issue, there's clearly even based on
5 the allegations concerns for the State and Your Honor, based on the
6 simple allegations placed in those new cases -- or, well one older case
7 and then the quote-unquote new case.

8 But what's also clear from the yet -- unyet -- or the yet to be
9 filed case.

10 THE COURT: Sure.

11 MS. SIMMONS: Is that there's still a drug problem. And Mr.
12 Albright's right that is something I'm definitely going to talk about. Mr.
13 McKendrick has a very severe mental health and substance abuse
14 problem. He's been using methamphetamine since 14 and on a regular
15 basis. That doesn't excuse -- and a lot of people are able to not be in
16 the position were Mr. McKenrick is at. But he was also, as Mr. Albright
17 pointed out, 19 when he picked up his first case and shortly thereafter
18 went to prison for 9 or more years before he was ever eligible for parole
19 or released in any fashion. Those are formative years for young people,
20 especially men, because they develop a little bit slower than women do.
21 But those are formative years, and at that time being placed in isolation
22 in max prison, unfortunately as Your Honor's probably aware, people
23 don't always come out of prison being a better person, especially for that
24 amount of time, at that age. It's based on the history. It's clear that
25 there are reasons why Mr. McKendrick became the type of person he is.

1 That he is distrustful. That he is running.

2 Now the violence that is another situation, obviously, I
3 understand all the concerns there. But there are reasons that people
4 who have spent a long -- or large amount of time in prison become
5 distrustful of the system. Become people who flee, who run, who panic,
6 and don't have the appropriate ability to control their impulses. That's
7 why a lot of our clients have to take those impulse control classes when
8 they are still down in Justice Court and they have -- we, hopefully, have
9 the ability to intervene at that time. We having meet Mr. McKendrick at
10 a later stage in life where many things had previously occurred don't
11 have that ability to help him or intervene for him.

12 I do believe habitual treatment is inappropriate in this case.
13 Mr. McKendrick has never been treated as a habitual criminal before.
14 So jumping from zero to large does seem a little bit inappropriate, even
15 when you consider the way that things move. Obviously the way that
16 the law is currently written allows for anything two or more, or three or
17 more. But it's very clear from the intent of a legislature based on the
18 recent changes, which aren't in affect now, but do clearly indicate the
19 way that the State is wanting to treat what is considered a habitual --
20 criminal. And at this stage, Mr. McKendrick, if that law were in place, he
21 would not qualify based on the history that he has. Because of that, I do
22 believe that habitual criminal is inappropriate, and the fact that he has
23 three prior felonies, obviously, very serious prior felonies, but that does
24 not mandate a large habitual criminal sentences in this case.

25 When -- Mr. McKendrick failed to appear at his sentencing, we

1 had been in contact since he had posted bail. We discussed trying to
2 set-up treatment. We has discussed trying to get him evaluated, so that
3 he could come in here before Your Honor and explain what he had been
4 working on. Still even knowing then that it was an extremely long shot at
5 getting probation at that time, but at least to show that he was taking
6 those steps. He had contacted me briefly before -- or just prior to the
7 original sentencing day, I had emailed the Court and Mr. Albright
8 informing everyone, that Mr. McKendrick had contacted -- an attorney. I
9 contacted him the day he missed his sentencing to find out what was
10 going on, because not even another attorney had been here. He
11 explained to me that he had given that money to his girlfriend, that she
12 had set-up a private attorney for him. It turns out, because she shortly
13 thereafter fled that state, that she had actually taken his money and ran.
14 So that's why he was not been here that day. He's already explained
15 why and what happened shortly after that as he panicked.

16 I do believe that based on his mental health, the substance
17 abuse issues that he has, that a more appropriate sentence would be
18 something, which is simply not be habitual treatment, a 28 to 72 is more
19 appropriate then a habitual treatment in this case, because that's not
20 what we should be doing in this society based on the changes that the
21 legislature has made. That's not what a habitual criminal is suppose to
22 be. The type of charges, or the number of convictions, that Mr.
23 McKendrick has at this stage, there's also clearly mitigating issues that
24 we simply cannot address at this stage. That had we had intervened or
25 had somebody intervened at a much younger age for Mr. McKendrick

1 we probably would never have been here.

2 So I'd be asking, Your Honor, to consider a 28 to 72, which, I
3 believe, is the high end of a regular sentence.

4 THE COURT: Okay. So I've taken a lot of time to go through
5 this case, look up the other cases, look up the underlying police reports.
6 Like I stated when I began discussing this case that I -- don't really give
7 a lot of weight in regards to the cases that were either dismissed or
8 haven't been filed yet. Because, quite honestly, we have enough to
9 work with in regards to page 4 of the PSI. And do I agree that this
10 defendant has a drug addiction, yes. Do I agree that to a certain degree
11 there's probably mental health issues, yes I do.

12 But -- what I have to balance out with is the safety of the
13 community. And when I look at assault with a deadly weapon,
14 obstructing a police officer, murder with a deadly weapon, battery with
15 substantial bodily harm, battery on a police officer, battery by prisoner,
16 two counts, attempt murder, attempt battery resulting in substantial
17 bodily harm, there's only so many passes that you get until someone
18 has to call you out on it, and we have to start protecting people that work
19 to protect us. And when we have these constant attacks on police
20 officers, and even attacks of violence on people who are -- lay people,
21 that just has to stop. So I actually agree with the State today. I am
22 going to be sentencing him under the habitual statute.

23 So in accordance with the laws of the State of Nevada, you
24 are hereby judged guilty of the crime of battery by prisoner.

25 In addition to the \$25 Administrative Assessment, the \$150

1 DNA fee, the \$3 DNA collection, the \$250 Indigent Defense fee, and the
2 fact that you must submit to genetic marker testing.

3 You're sentenced under the habitual statute of NRS 207.010,
4 to life in the department -- Nevada Department of Corrections. The first
5 opportunity at parole will be after 10 years has been served.

6 Pursuant to case law it does discuss the fact that I must -- that
7 this isn't just an automatic thing that must be done. That the court must
8 weight the appropriate factors, for and against, the criminal
9 enhancement. I have discussed the constant attacks on people, both
10 that are police officers, that are not police officers, the fact that even
11 while in custody the defendant commits -- continues to commit acts of
12 violence while in custody. And that the court has grave concerns about
13 the safety of the community with the defendant out.

14 The reason why I think that life -- a life sentence is
15 appropriate, is I agree with the State in regards to that I do think that
16 whether it's a 10 to 25 or a 10 to life the defendant probably gets out
17 around the same time, but this thing -- this opportunity that we have of
18 parole hanging over his head will hopefully keep him, we can only hope,
19 will keep him in line and making better decisions.

20 So, the amount of credit for time served is -- I had --

21 THE DEFENDANT: So when I'm 50-years-old it -- that --

22 MS. SIMMONS: Sean. Sean.

23 THE DEFENDANT: -- will be considered --

24 MS. SIMMONS: Sean stop.

25 THE DEFENDANT: -- a better -- judgment for me?

1 MS. SIMMONS: Sean --

2 THE COURT: I really think you're proving me wrong at this
3 point.

4 So I'm showing 26 days for credit for time served, which I
5 don't think is correct, because that was in February of 23.

6 MS. SIMMONS: It's should be 59 days as of today. The only
7 other thing I would ask is, and I don't know if -- he can qualify it, if he's
8 treated as a large habitual defendant, is whether or not he can
9 participate in the drug treatment program --

10 THE COURT: Okay.

11 MS. SIMMONS: -- if that's something, Your Honor, could
12 consider --

13 THE COURT: Of course.

14 MS. SIMMONS: -- allowing him to patriciate in.

15 THE COURT: So I believe it's called the -- Program 184, --

16 MS. SIMMONS: Yes.

17 THE COURT: -- and if he is allowed to partake in that that, I
18 think, would be a great option.

19 MS. SIMMONS: Thank you, Your Honor.

20 MS. SISOLAK: Your Honor, I have Ms. Riffle on page 12.

21 THE COURT: Okay. Just one second.

22 THE CLERK: Counselor, are you offering any exhibits for
23 admission?

24 MR. ALRBRIGHT: Correct, Your Honor. I wasn't sure if they
25 were -- suppose to be proposed, or if they automatically -- but yes I

1 would move for their admission.

2 THE COURT: So they were attached originally, or sent over
3 to the court, but yes they are going to be admitted.

4 MR. ALBRIGHT: And those are the certified originals that I've
5 given over.

6 MS. SIMMONS: And I had received a copy of those
7 previously from Mr. Albright.

8 [Hearing concluded at 11:38 a.m.]

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


De'Awna Takas
Court Recorder/Transcriber



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-19-338224-1
DEPT. VI

10 vs.

11 SEAN MICHAEL MCKENDRICK,
12 Defendant.

13 BEFORE THE HONORABLE TIERRA JONES,
14 DISTRICT COURT JUDGE

15 MONDAY, JULY 1, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **BENCH WARRANT RETURN**

18 APPEARANCES:

19 For the State:

DAVID STANTON, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

22 KARA SIMMONS, ESQ.
23 ASHLEY L. SISOLAK, ESQ.
24 Public Defender's Office

25 RECORDED BY: PATTI SLATTERY, COURT RECORDER

1 Las Vegas, Nevada, Monday, July 1, 2019

2
3 [Hearing began at 9:42 a.m.]

4 MS. SISOLAK: Good morning, Your Honor, Ashely Sisolak
5 present on behalf of Mr. McKendrick. Your Honor, this is Ms.
6 Simmons's matter.

7 THE COURT: Okay.

8 MS. SISOLAK: She is in Justice Court. I have notes here that
9 I'm intending to ask for 12 to 48 as recommended by P&P, with a 184
10 program. If Your Honor's inclined to follow that I can handle it, otherwise
11 I'll have to go swap her out and send her up.

12 THE COURT: Well, I mean, I'm not going to tell you what I'm
13 inclined to do, because I haven't heard argument, and the State filed a
14 notice of intend to seek habitual criminal treatment on this.

15 MS. SISOLAK: I'll send -- I'll have her sent her up.

16 THE COURT: Yeah.

17 MS. SISOLAK: Thanks, Your Honor.

18 THE COURT: So, sir, just have a seat we going to come back
19 to you.

20 [Hearing resumed at 9:54 a.m.]

21 MR. STANTON: That's correct, Your Honor.

22 THE COURT: Are you prepared to go forward today?

23 MR. STANTION: I believe the certified copies have been
24 obtained, but they're not in the file. So I'd ask that a sentencing date be
25 set, and that's the note from Mr. Albright, as well.

1 MS. SIMMONS: When was that notice, because I anticipated
2 that would happen, but I did not actually receive the notice.
3 THE COURT: It was filed -- I saw it in Odyssey on Friday --
4 MR. SIMMONS: Okay.
5 THE COURT: -- when I prepped this calendar. It's filed --
6 MS. SIOMMONS: Okay.
7 THE COURT: -- I just couldn't tell you the date.
8 MS. SIMMONS: Okay.
9 THE COURT: But I did see it in Odyssey so I assumed that
10 they'd be requesting a continuance to get the certified priors. So we're
11 going to pass this matter for two weeks for sentencing; that date is?
12 THE CLERK: Two weeks sentencing, Your Honor, July 15th
13 9:30.
14 MS. SIMMONS: Thank you, Your Honor.
15 THE RECORDER: Counsel can you spell your name for me,
16 please?
17 MS. SIMMONS: K-A-R-A S-I-M-M-O-N-S.
18 THE RECORDER: Thank you.
19 MS. SIMMONS: Thank you. I'm sorry, what was that date?
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THE CLERK: July 15th 9:30.

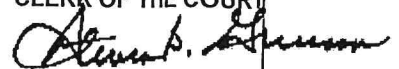
MS. SIMMONS: Thank you.

[Hearing concluded at 9:55 a.m.]

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


De'Awna Takas
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-19-338224-1
DEPT. VI

10 vs.

11 SEAN MICHAEL MCKENDRICK,
12 Defendant.

13 BEFORE THE HONORABLE JAMES BIXLER,
14 SENIOR DISTRICT COURT JUDGE
15 WEDNESDAY, MARCH 27, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: NEGOTIATIONS**

18 APPEARANCES:

19 For the State:

DAVID STANTON, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

KARA SIMMONS, ESQ.
Public Defender's Office

22
23
24
25 RECORDED BY: De'AWNA TAKAS, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, March 27, 2019

2
3 [Hearing began at 10:13 a.m.]

4 THE COURT: Page 7 is State of Nevada versus Sean
5 Michael McKendrick, who is present, in custody. Public Defender case,
6 status check on negotiations, and it would appear it's been resolved.

7 MS. SIMMONS: It has been, Your Honor. The only thing, I
8 guess, logistically, to note is that on the back the District Attorney had
9 attached a copy of the full indictment versus an amended information.

10 Mr. McKendrick is going to be pleading to one count of battery
11 by prisoner. So, for efficiency sake, I was suggesting to Mr. Stanton this
12 morning that maybe we just strike all counts but count one.

13 THE COURT: We'll go through count one, and then we'll
14 dismiss the rest of them.

15 MS. SIOMMONS: Thank you, --

16 THE COURT: Okay.

17 MS. SIMMONS: -- Your Honor.

18 THE COURT: That's fine.

19 Mr. McKendrick -- that is your correct name, Sean Michael
20 McKendrick; right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. I have a guilty plea agreement here that
23 indicates that this case has been resolved. Is that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: As to the category B felony offense, battery by

1 prisoner, one count, how are you going to plea to that charge?

2 THE DEFENDANT: Guilty.

3 THE COURT: Did read through this guilty plea agreement?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you discuss it with your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You feel confident you understand the terms
8 and conditions of this agreement?

9 THE DEFENDANT: Yes, sir,

10 THE COURT: On page 4 of this agreement, there's a section
11 entitled waiver of rights, did you read through that section carefully?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you discuss those rights with your
14 attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You feel confident that you thoroughly
17 understand the rights that you would be giving up or waiving in order to
18 plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I want to run through them real quickly with
21 you. On a criminal case the State has to prove that the defendant, you,
22 are guilty beyond a reasonable doubt of the charge that you're charged
23 with. You don't have to prove that you're innocent. You have the right
24 to confront and cross-examine the State's witnesses against you. You
25 have the right to subpoena witnesses on your behalf, if you chose to do

1 that. You're also protected by the 5th Amendment of the Constitution
2 against self-incrimination, meaning you could not be compelled to testify
3 in a criminal case where you're the defendant. You can waive that right,
4 and get on the witness stand and testify just like any other witness. If
5 you do that you'll be subject to being cross-examined by the State of
6 Nevada and if you have any prior criminal history the State gets to go
7 into your prior criminal history, to a certain degree.

8 Do you understand all those rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: At the end of that trial, if you're convicted, you
11 have the right to appeal that conviction to the Supreme Court. You
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now are you sure you want to waive all those
15 rights so that you can plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. What is your understanding of the
18 maximum sentence that can be imposed upon you as a result of this
19 plea of guilty?

20 THE DEFENDANT: 28 to 72 months.

21 THE COURT: That is correct. You've been paying attention.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That's 1 to 6 is the range, but the maximum
24 sentenced would be 28 to 72 months.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You understand that what happens to you at
2 the time of sentencing -- the State retains the right to argue so they're
3 going to be arguing, I have no doubt, for prison time. And what happens
4 to you at the time of sentencing is completely and totally up to the Court,
5 and no one can promise, or predict, what kind of sentence the Court's
6 going to impose, except that that's the maximum sentence that the court
7 can impose, so you're aware of that; right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Did anybody promise you anything
10 that's not contained in this guilty plea agreement in order to get you to
11 plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Anybody threat or coerces you in order to get
14 you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you pleading guilty because in truth and
17 fact you're actually are guilty and you're freely and -- voluntarily entering
18 this plea; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'm going to read to you from the indictment,
21 just the first count; we're going to dismiss the rest of the counts.

22 According to the information contained in count one, it says that on or
23 about the 29th of January 2019 you did willfully, unlawfully, feloniously,
24 and knowingly use force or violence upon another person, to wit: D.
25 Webb, by punching -- said D. Webb, and at that time you were a

1 prisoner lawfully in custody. Are those allegations contained in the
2 indictment true and correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And just one last time, I'm not going to see you
5 back here in a few months, or 6 months, asking -- saying I didn't
6 understand what I was doing, and I want to withdraw my plea; anybody
7 sitting on the bench gonna hear that from you?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. The court will accept your plea of guilty
10 as have been freely and voluntarily entered. Counts 2, 3 and 4 in this
11 matter are gonna be dismissed.

12 What else is he in custody on?

13 THE DEFENDANT: That's --

14 MS. SIMMIONS: This is --

15 THE DEFENDANT: -- it.

16 MS. SIMMONS: -- the only case holding him, Your Honor.

17 THE COURT: Oh, it is?

18 MS. SIMMONS: It is.

19 THE COURT: Okay. P&P's gonna be here down at the jail to
20 interview you. They'll do it by remote -- I don't know if they have to go to
21 the jail, or if they can do it by some other remote fashion. I'm not sure.
22 But be aware that you're gonna be in contact by P&P, because they
23 need personal background information to prepare the PSI.

24 THE DEFENDANT: Yeah, Your Honor, my lawyer was
25 explaining to me, if I were to get out on bail, or I get an O.R., that to be

1 contact with them, and --

2 MS. SIMMONS: We explained to him his obligations with
3 P&P, Your Honor.

4 THE COURT: What's happened to all these other charges?

5 THE DEFENDANT: Dismissed.

6 MS. SIMMONS: They're getting dismissed.

7 THE COURT: I mean --

8 MS. SIMMONS: The other -- oh, you mean the other case?

9 THE COURT: Yes.

10 MS. SIMMONS: The other case was dismissed.

11 THE COURT: Battery by prisoner, attempt murder --

12 MS. SIMMONS: That's this case, Your Honor.

13 THE COURT: Oh, it is this case?

14 MS. SIMMONS: Yes.

15 THE COURT: I was thinking they were all the charges were
16 battery. That is an attempt murder -- yeah, okay, he's getting a good
17 deal.

18 So are you wanting the court to address his custody status?

19 MS. SIMMONS: If you're willing to do it right now, I was
20 planning on filing a --

21 THE COURT: I would --

22 MS. SIMMONS: -- motion on Friday.

23 THE COURT: -- prefer that you file a motion, and let the State
24 respond. The normal method of addressing bail in these situations is
25 have your counsel file a motion so the State has a chance read it, and

1 then file a response if they chose too. Okay?

2 THE DEFENDANT: I understand that, Your Honor. I just --
3 there's any way to do it today, I want to do it today. My boss has been
4 holding my job for over two months now. You know, I'm a fulltime
5 student at CSN. You know --

6 MS. SIMMONS: So, I guess, the only thing I would ask today,
7 because he has plead just one count, if Your Honor would consider
8 modifying the bail to reflect the charge the he is currently plead to versus
9 the multiple charges he originally had.

10 MR. STANTON: I don't have an objection to that, but would
11 request that anything other than that be in writing.

12 THE COURT: I don't -- I'm just asking the question. What's
13 his background look like?

14 MS. SIMMONS: He has 3 prior felonies.

15 THE DEFENDANT: That are 10 years old.

16 MS. SIMMONS: That's true, Your Honor. In looking at -- and
17 I can show Your Honor a copy of my risk assessment if you'd like. It
18 does show that the last felony conviction he had -- was in 2008.

19 THE COURT: How many points? I'm just getting a custom to
20 the risk assessment that --

21 MS. SIMMONS: The risk assessment is four.

22 THE COURT: Oh, that's not so terrible bad. Here's what I'll
23 do, under the circumstances of a three prior felony convictions and --
24 even though that is -- and with his finally plea, I'll set the bail appropriate
25 for the charge. In my opinion it's \$10,000. So I'll set bail on the one

1 count that he's plead guilty to in the sum of \$10,000.

2 MS. SIMMONS: Thank you, Your Honor.

3 THE COURT: Then they can file a motion to reduce the bail
4 or give you an O.R., but, as of now, the bails 10,000. Okay?

5 THE DEFENDANT: Yes, sir.

6 MR. STANTON: The sentencing date, Your Honor.

7 THE COURT: Yep.

8 THE CLERK: May 13th at 8:30.

9 THE COURT: May 13th.

10 [Hearing concluded at 9:38 a.m.]

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