

# IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Nov 23 2021 03:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-21-835827-W

Docket No: 83680

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**

LUIS CASTRO #1214547,  
PROPER PERSON  
P.O. BOX 1989  
ELY, NV 89301

**ATTORNEY FOR RESPONDENT**

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

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1. Luis A. Castro  
ESP-1214547  
P.O. Box 1989  
2. Ely, Nv. 89301

FILED  
JUN 07 2021

*John J. Blum*  
CLERK OF COURT

3.  
4. IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE  
5. OF NEVADA IN AND FOR THE COUNTY OF CLARK  
6.

7. LUIS ANGEL CASTRO,

8. PETITIONER,

9. vs

10. THE STATE OF NEVADA,

11. RESPONDENT.

CASE No. A-21-835827-W  
DEPT. No. Dept. 30

12.  
13. PETITION FOR WRIT OF HABEAS CORPUS

14. (POST CONVICTION - NRS 34.740)

15. AND TO WITHDRAW GUILTY PLEA

16. (PURSUANT TO NRS 176.165)  
17.

18. PETITIONER, LUIS A. CASTRO, IN PRO SE, PURSUANT TO  
19. NRS 34.740, NRS 176.165 AND THE NEVADA AND THE  
20. UNITED STATES CONSTITUTIONS, RESPECTFULLY MOVES THIS  
21. HONORABLE COURT TO WITHDRAW HIS GUILTY PLEA ENTERED  
22. FEBRUARY 4<sup>TH</sup> 2019, ON THE BASES HE WAS DENIED OF HIS  
23. RIGHT TO EFFECTIVE ASSISTANCE OR COUNSEL DURING  
24. PLEA-BARGAINING PROCESS; AND THAT IT WAS INVOLUN-  
25. TARY AND UNINTELLIGENTLY GIVEN. PETITIONER WAS NOT  
26. COMPETENT TO ENTER THE PLEA BECAUSE OF HIS  
27.  
28.



1. SEVENTH GRADE EDUCATION, PSYCHIATRIC AND MEDICAL

2. CONDITIONS AT THE TIME OF THE PLEA.

3.

4. THIS PETITION IS FURTHER BASED ON DEFENSE

5. COUNSEL'S INEFFECTIVENESS, THE ACCOMPANYING

6. AFFIDAVITS, EXHIBITS, FACTS AND POINTS AND

7. AUTHORITIES.

8.

9. DATED THIS 11 DAY OF May, 2021


10.

11.

Respectfully Submitted,

12.

13.

  
\_\_\_\_\_  
PETITIONER, IN PRO SE

14.

15.

16.

17. PREPARED BY A TRANSIENT PRISONER

18. ON BEHALF OF LUIS A. CASTRO, PETITIONER

19.

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1. POINTS AND AUTHORITIES

2. FACTUAL STATEMENTS

3.  
4. PETITIONER, PLED GUILTY TO A POORLY NEGOTIATED PLEA  
5. ON FEBRUARY 4TH 2019, JUST DAYS FOLLOWING SUICIDE  
6. WATCH - MENTAL HEALTH CRISIS AT THE CLARK COUNTY -  
7. DETENTION. THE PLEA MUST BE CONSIDERED INVALID, BECAUSE  
8. IT WAS MADE WHILE PETITIONER WAS HEAVILY MEDICATED AND  
9. NOT COMPETENT, NOR ABLE TO FULLY APPRECIATE, UNDERSTAND,  
10. AND WAIVE HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS. THE  
11. COURT REMAINED OBLIVIOUS TO THE MOST VITAL ASPECT OF  
12. THE PLEA COLLOQUY, WHICH CENTERED ON PETITIONER'S  
13. PERCEPTION AND MENTAL HEALTH STATE AT THE TIME  
14. THE PLEA WAS INOCCURED.

15. AN EVIDENTIARY HEARING WILL CLEARLY AND UNEQUIVOCALLY  
16. ESTABLISH THAT THE MENTAL HEALTH CRISIS AND A NEWLY  
17. PRESCRIBED AND SUBSTANTIALLY POWERFUL DAILY ANTI-PSYCHOTIC  
18. MEDICATION HAD ADVERSELY AFFECTED AND IMPACTED HIS  
19. COMPETENCY DURING THE PLEA. THEREFORE, HE COULD NOT  
20. HAD INTELLIGENTLY UNDERSTOOD HIS RIGHTS AND HIS PLEA  
21. WAS INVOLUNTARY THROUGH NO FAULT OF HIS OWN. THE  
22. INVOLUNTARINESS, LACK OF INTELLIGIBILITY AND  
23. INCOMPETENCE DURING THE PLEA COLLOQUY WERE ALL  
24. ATTENTION EVASION TO PETITIONER'S MENTAL ILLNESS,  
25. RECENT DISCHARGE FROM SUICIDE PRECAUTION CRISIS  
26. AND CONSUMPTION OF THE ANTI-PSYCHOTIC MEDICATION.

1. I. PETITION TO WITHDRAW GUILTY PLEA

2.

3. NRS 176.165 provides: "... THE COURT AFTER SENTENCING  
4. MAY SET ASIDE THE JUDGMENT OF CONVICTION AND PERMIT  
5. THE PETITIONER TO WITHDRAW THE PLEA"

6.

7. A GUILTY PLEA MUST BE VOLUNTARILY ENTERED AND IS  
8. INVALID, IF MADE WHEN A DEFENDANT IS MENTALLY INCOMPETENT.  
9. SPECIFICALLY IN THIS CASE, QUESTION AS TO WHETHER THE PLEA  
10. WAS VOLUNTARILY ENTERED LET US TURN TO THE FACTS AND  
11. CIRCUMSTANCES OF EACH OF THE PARTICULARS. SEE:  
12. TAYLOR VS WARDEN, 96 NEV. AT 274. THE FOCUS OF THE  
13. VOLUNTARINESS INQUIRY IS UPON THE FRAME OF MIND THE  
14. DEFENDANT HAD AT THE TIME HE DECIDES HIS PLEA. AS IN  
15. TAYLOR AT 274, THE COURT MUST EXAMINE THE DATA AVAI-  
16. LABLE TO THE DEFENDANT'S MIND AND TAKE INTO ACCOUNT  
17. THE STRAINS AND ANXIETIES OF A PERSON IN PETITIONER'S  
18. POSITION.

19. THE STATE OF A MAN'S MIND LIKE MOST OTHER ISSUES  
20. OF FACT IS DECIDED ON BASIS OF REASONABLE INFERENCES  
21. DRAWN FROM THE KNOWN SURROUNDING FACTS AND CIRCUMSTANCES,  
22. AND TO SATISFY CONSTITUTIONAL MUSTER, ANY GUILTY PLEA  
23. MUST BE MADE KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY  
24. WAIVER OF DEFENDANT'S SIXTH AMENDMENT TO TRIAL BOYKIN  
25. V ALABAMA, 395 U.S. 239 (1969). IT IS RESPECTFULLY  
26. SUBMITTED THAT PETITIONER, LUIS A. CASTRO, DID NOT HAVE

27.

28.

1. THE MENTAL CAPACITY OR FULLY UNDERSTAND HIS RIGHTS  
2. AND DID NOT KNOW WHAT HE WAS FACING WHEN HE PLED  
3. GUILTY, HE COULD NOT ENTER A VALID PLEA. SEE:  
4. MEYER V STATE, 95 Nev. 885 (1979).

5. WHEN A PERSON IS PHYSICALLY OR PSYCHOLOGICALLY INCAPA-  
6. CITATED, THERE IS ALWAYS SERIOUS DOUBT ABOUT HIS ABILITY  
7. TO ENTER ANY PLEA. AN EVIDENTIARY HEARING WILL SHOW  
8. THAT IN THIS CASE THE PETITIONER WAS UNDER THE INFLUENCE  
9. OF A HEAVY ANTI-PSYCHOTIC MEDICATION, PRESCRIBED BY THE  
10. JAIL'S HEALTH CARE PROVIDER. THIS MEDICATION IMPAIRED HIS  
11. PERCEPTIONS AND APPRECIATION OF THE CONSEQUENCES OF  
12. ACCEPTING THE GUILTY PLEA. THE COMBINED ADVERSITIES  
13. HAS A PROFOUND IMPACT IN HIS ABILITY TO FULLY  
14. UNDERSTAND AND VOLUNTARILY WAIVE HIS RIGHTS.  
15. CONSEQUENTLY, WHEN HE ENTERED HIS PLEA, IT WAS NOT  
16. A KNOWING AND INTELLIGENT PLEA.

17.  
18. II. THE MORE CONCLUSORY RESPONSES PETITIONER  
19. MADE DURING ALLOCATION DO NOT ESTABLISH  
20. HE WAS COMPETENT TO ENTER A VOLUNTARY  
21. PLEA OF GUILT TO THE CHARGE

22.  
23. AT THE PLEA HEARING OF FEBRUARY 4<sup>TH</sup> 2019,  
24. PETITIONER MADE THE STANDARD PERFUNCTORY CONCLUSORY  
25. AFTER MOTION OF GUILT AS WELL AS THE AFFIRMATION HE  
26. UNDERSTOOD ALL HIS RIGHTS. IT IS RESPECTFULLY SUBMITTED

1. A REVIEW OF THE TRANSCRIPTS OF THE PLEA HEARING WILL NOT  
2. CLEARLY ESTABLISH THAT PETITIONER FULLY UNDERSTOOD HIS  
3. RIGHTS. THEREFORE, ONLY AN EVIDENTIARY HEARING WILL  
4. DEFINITELY ESTABLISH PETITIONER'S PSYCHOTIC CONDITION AT  
5. THE TIME OF HIS PLEA, WHICH PRECLUDED HIS ABILITY TO  
6. VOLUNTARILY AND INTELLIGENTLY PLEA GUILT.

7. CONSIDER WILKENS V. BOWENSON, 145 F.3d 1006, (8TH CIR 1998)  
8. A CASE WHICH THE COURT HELD THAT THE DEFENDANT'S GUILTY  
9. PLEA AND WAIVER OF PRESENTING MITIGATING EVIDENCE WAS  
10. NOT KNOWING, VOLUNTARY AND INTELLIGENT, DESPITE THE  
11. CANVASS THAT THE DEFENDANT FULLY UNDERSTOOD HIS RIGHTS.

12. IN CONSIDERING THE FACTS OF THIS CASE THE COURT  
13. SHOULD FIND STRONG SIMILARITIES TO THE WILKEN'S CASE,  
14. THE MERELY FACT THAT THE PETITIONER, AN UNSOPHISTICATED  
15. PERSON, WAS ABLE TO CORRECTLY ANSWER SIMPLE  
16. QUESTIONS OF THE PLEA CANVASS - UNDER THE DEFENSE  
17. COUNSEL'S DIRECTION, WAS NOT ENOUGH TO ESTABLISH  
18. HE HAD A FULL UNDERSTANDING OF WHAT RIGHTS HE  
19. WAS GIVING UP OR WHAT DUTIES HIS ATTORNEY FAILED  
20. TO PERFORM. ESPECIALLY, AGAINST THE BACK-DROP  
21. OF A HISTORY OF DRUG ABUSE SINCE THE AGE OF —  
22. THIRTEEN, A SEVENTH GRADE LEVEL EDUCATION - AN  
23. OVERALL LOW LEVEL INTELLECTUAL FUNCTION, INHERITED  
24. BI-POLAR AND ALL COMPOUNDED WITH HIS PSYCHOSIS.  
25. HIS ATTORNEY WAS ABLE TO EASILY INSTRUCT AND/OR  
26. MANIPULATE PETITIONER IN HOW TO ANSWER EVERY

27.

28.

1. QUESTION OF THE COURT BY SIMPLY RESPONDING 'YES'  
2. TO EVERY QUESTION. HOWEVER, IN THE CANVASS OF  
3. PLEA, PAGE 7, LINES 12 THRU 25, IT IS EASILY INFERRED  
4. THAT THE PETITIONER WAS BEING POORLY ADVISED BY  
5. MR. GELLER, DEFENSE COUNSEL. WHO DID NOT DISCUSS  
6. ANY OF THE CONSEQUENCES TO HIS IMMIGRATION STATUS.  
7. THEREFORE, A DEFENDANT'S PLEA MAY BE FOUND -  
8. INVOLUNTARY, WHERE DEFENSE COUNSEL DID NOT  
9. ADVISE HIM OF THE PLAUSIBLE REMOVAL FROM THE UNITED  
10. STATES, AS REMOVAL IS NEARLY AN AUTOMATIC RESULT  
11. FOR A BROAD CLASS OF NONCITIZEN OFFENDERS, AS IN  
12. PADILLA VS KENTUCKY, 130 S. CT. 1473 (2010)

13. THE COURT MUST LOOK AT THE TOTALITY OF THE CIRCUMSTANCES  
14. IN THE CASE TO DETERMINE WHETHER THE PETITIONER'S PLEA IN  
15. THIS CASE WAS ACTUALLY A KNOWING, VOLUNTARY AND  
16. INTELLIGENT WAIVER OF HIS RIGHTS. [SEE] STATE V. FREEZE,  
17. 116 NEV. 1097, (2000); MCCONNELL V STATE, 125 NEV. 243,  
18. (2009). MEYER V STATE, 95 NEV. 888 (1979) REQUIRES  
19. THE WITHDRAW OF A GUILTY PLEA TO PREVENT 'MANIFEST  
20. INJUSTICE'. FOR A GUILTY PLEA TO BE VALID IT MUST  
21. HAVE BEEN ENTERED UNDER CIRCUMSTANCES THAT  
22. WERE FUNDAMENTALLY FAIR. MEANS V STATE, -  
23. 120 NEV. 1001, (2004) - THE TOTALITY OF THE FACTS  
24. AND CIRCUMSTANCES OF THE PETITIONER'S PLEA OF  
25. GUILT. THIS CASE REQUIRES THAT PETITIONER BE  
26. ALLOWED TO WITHDRAW HIS PLEA BECAUSE IT WAS

1. FUNDAMENTALLY UNFAIR AND MANIFESTED INJUSTICE,  
2. PARTICULARLY, BECAUSE DEFENSE COUNSEL TALK HIM  
3. INTO ACCEPTING A 'BLIND PLEA' THAT DID NOT BENEFIT  
4. HIM AT ALL.

5. IN SHORT, JAIL RECORDS SHOULD ESTABLISH THAT  
6. CASTRO, WAS ON SUICIDAD PRECAUTION CRISIS PLACEMENT  
7. AND DISCHARGE WITH NEWLY PRESCRIBED ANTI-PSYCHOTIC  
8. MEDICATION, SHORTLY BEFORE TO THE PLEA. BASED ON  
9. PETITIONER'S PRIOR PSYCHIATRIC HISTORY, IT IS ONLY  
10. LOGICAL THAT THIS CHANGE HAD A SUBSTANTIAL COGNITIVE  
11. IMPACT ON HIM. THE COURT SHOULD HAD BEEN ALERTED  
12. BY DEFENSE COUNSEL OF THE LIKELIHOOD OF INTERVENING  
13. MENTAL HEALTH FACTORS RELEVANT TO THE FAIR AND  
14. CONSTITUTIONAL DISPOSITION OF THIS ACTION.

15. IN ADDITION, THE STATE WILL NOT BE PREJUDICED BY  
16. PETITIONER'S WITHDRAW OF HIS PLEA. THIS CASE IS NOT SO OLD  
17. THAT THE STATE WILL BE GRAVELY PREJUDICED; AND THE TOTALITY  
18. OF THE CIRCUMSTANCES MANIFEST INJUSTICE, WHICH SHOULD  
19. COMPEL WITHDRAW OF THE PLEA.

20.

21. III. THE DISTRICT COURT IMPOSITION OF A LIFE WITHOUT  
22. POSSIBILITY OF PAROLE ON A FIRST TIME OFFENDER  
23. WAS THE RESULT OF AN INEFFECTIVE ASSISTANCE  
24. OF COUNSEL.

25.

26. IT IS UNDERSTOOD THAT THE DISTRICT COURT HOLDS

27.

28.

1. WIDE DISCRETION TO DETERMINE THE IMPOSITION OF A  
2. SENTENCE; AND WHILE THE SENTENCE IMPOSED ON  
3. PETITIONER IS WITHIN THE STATUTORY LIMIT, IS NOT IN  
4. THE BEST INTEREST OF JUDICIAL PROCEEDINGS.

5. MEANING: WHY SHOULD AN ACCUSED PLEA-OUT WHEN  
6. THE CONSEQUENCES ARE FROM PETITIONER'S PERSPECTIVE  
7. THE SAME AS IF HE HAD GONE TO TRIAL. IN FACT, THE  
8. PETITIONER WAS IN FAVOR OF A TRIAL. BECAUSE ALTHOUGH  
9. SALAZAR-ORTIZ'S TESTIMONY MAKES IT APPEAR THAT  
10. CASTRO WAS PRESENT DURING THE ORDEAL, VIDEO FOOTAGE  
11. FROM A CONVENIENCE STORE AND STATEMENT FROM A  
12. WITNESS DEMONSTRATE THAT CASTRO ACTUALLY LEFT  
13. WHILE THIS ORDEAL WAS OCCURRING. SEE HEREIN  
14. PHOTO OF CASTRO IN THE CONVENIENCE STORE (7-11), DURING  
15. THE ORDEAL. FURTHERMORE, CASTRO OFFERED TO TAKE A  
16. POLYGRAPH TO PROVE HIS TRUTHFULNESS WHEN HE STATED  
17. THAT HE DID NOT KNOW HOW VIOLENT THE ENCOUNTER  
18. WOULD BE; ATTEMPTED TO STOP HIS CO-DEFENDANTS,  
19. AND LEFT THE SCENE WHEN HE FAILED. CASTRO DID NOT  
20. CALL THE POLICE, OUT OF FEAR FOR HIS FAMILY.

21. MOREOVER, THE TRIAL COULD HAD REVEALED THAT HE  
22. WAS 'NOT THE SHOTCALLER', AS THE PROSECUTION COACHED  
23. SALAZAR-ORTIZ TO STATE,

24. IT WAS COUNSEL'S DEFICIENT PERFORMANCES THAT  
25. DEPRIVED PETITIONER OF A TRIAL BY CAUSING HIM TO  
26. ACCEPT THE STATE'S BLIND PLEA. DEFENSE COUNSEL

27.

28.



1. INTIMIDATED AND MISINFORMED PETITIONER'S MOTHER,  
2. IN ORDER TO FORCE PETITIONER TO ACCEPT THE PLEA.  
3. SINCE IF HE DIDN'T ACCEPT THE PLEA SHE WOULD WITHDRAW  
4. HER SUPPORT FROM HIM. COUNSEL ASSURED PETITIONER'S  
5. MOTHER, THAT HE WILL RECEIVE A SENTENCE OF 15 YEARS  
6. TO LIFE WITH THE POSSIBILITY OF PAROLE.  
7. FURTHERMORE, PETITIONER WAS DENIED HIS SIXTH AMENDMENT  
8. RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL DURING PLEA-  
9. BARGAINING PROCESS. THIS IS 'EVIDENT' IN THE SENTENCE  
10. IMPOSED ON PETITIONER, MEANING, "HE DID NOT BENEFIT FROM  
11. THE PLEA AGREEMENT" AND WAS DENIED DUE PROCESS OF LAW  
12. AS A RESULT. SEE: JAE LEE V UNITED STATES, 132 S. CT 1958,  
13. (2017); LAFLOR V COOPER, 132 S. CT. 1376, (2012); HILL, 474  
14. U.S. AT 58, 106 S. CT 366  
15. CASTRO'S SENTENCE SHOCKS THE CONSCIENCE WHEN CONSI-  
16. DERING THAT ~~HE~~ HE DID NOT HAVE A HISTORY OF PRIOR CONVICTIONS  
17. FOR VIOLENT OFFENSES (UNLIKE HIS CO-DEFENDANTS) AND HE WAS  
18. ELSEWHERE (7-11 CONVENIENCE STORE) AND NOT AWARE THAT  
19. THIS CRIME WOULD BECOME SO VIOLENT; PROOF OF CASTRO'S  
20. UNINVOLVEMENT— DID NOT HARM THE VICTIM, IS IN THE FACT  
21. THAT ONLY HIS CO-DEFENDANT'S DNA WAS FOUND ON THE  
22. WEAPON. (ZAA 135-38). CASTRO DID NOT CALL THE POLICE  
23. BECAUSE HE WAS SCARED THAT HIS CO-DEFENDANTS WOULD  
24. HARM HIS FAMILY, GIVEN THAT THEY KNEW WHERE HIS  
25. FAMILY BUSINESS WAS LOCATED. (ZAA 137).

26. ADDITIONALLY, CASTRO SUFFERS FROM PTSD SYMPTOMS  
27.

1. FROM BEING SEXUALLY ABUSED AS A CHILD BY AN UNCLE,  
2. CONFIRMED BY CASTRO'S PARENTS; SUFFERS FROM BI-POLAR  
3. DISORDER; SUFFERS FROM DEPRESSION, ANXIETY AND DRUG  
4. ADDICTION; AND ATTEMPTED SUICIDE. (ZAA 147-48). THEREFORE,  
5. HIS SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE IS SO  
6. UNREASONABLE DISPROPORTIONATE TO THE OFFENSE AND CASTRO'S  
7. ROLE IN THE OFFENSE AS TO SHOCK THE CONSCIENCE AND AMOUNTS  
8. TO CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE  
9. EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS  
10. WELL AS ARTICLE I, SECTION 6 OF THE NEVADA CONSTITUTION.  
11. SEE: ALFREDO V. STATE, 120 NEV. 410, 92 P.2d. AT 1253.

12. CASTRO IS NOT ARGUING THAT HIS SENTENCE IS AN ILLEGAL  
13. SENTENCE UNDER NEVADA LAW, IT IS DISPROPORTIONATE  
14. TO THE CRIME HE WAS CONVICTED OF - FIRST DEGREE  
15. KIDNAPPING WITH SUBSTANTIAL BODILY HARM - AND HIS  
16. ROLE IN SAID CRIME WHEREAS, FOR EXAMPLE, A DEFENDANT  
17. ACTUALLY CONVICTED OF FIRST DEGREE MURDER IS  
18. GIVEN A CHANCE AT PAROLE IN TWENTY (20) YEARS. —  
19. THEREFORE, CASTRO'S SENTENCE OF LIFE WITHOUT THE  
20. POSSIBILITY OF PAROLE AMOUNTS TO CRUEL AND UNUSUAL  
21. PUNISHMENT

22. EVEN PAROLE AND PROBATION CONSIDERED PETITIONER'S  
23. CHARACTER, NATURE AND HISTORY, WHEN IT RECOMMENDED  
24. A SENTENCE OF 15 YEARS TO LIFE, WITH THE POSSIBILITY  
25. OF PAROLE. WHILE THE SENTENCING RECOMMENDATION  
26. PROVIDED IN CASTRO'S PSI IS NOT A BINDING UPON THE

1. DISTRICT COURT, IT REPRESENTS AN INTERJURISDICTIONAL  
2. COMPARATIVE ANALYSIS AS THE PROPOSED SENTENCE IS  
3. THE NORMAL PUNISHMENT FOR SIMILAR CRIMES IN OTHER  
4. JURISDICTIONS.

5. GIVEN CASTRO'S HISTORY AND ACTUAL OVERALL NATURE  
6. OF HIS INVOLVEMENT, THE SENTENCE IMPOSED IS GROSSLY  
7. DISPROPORTIONATE. A SENTENCE OF 15 OR 20 TO LIFE,  
8. WITH THE POSSIBILITY OF PAROLE WILL SERVE THE INTEREST  
9. OF FAIR JUSTICE. CASTRO, HAD NO INVOLVEMENT IN THE  
10. VIOLENT HARM ON THE VICTIM, AND AT THE END OF THE DAY  
11. NO DEATH RESULTED.

12. ACCORDINGLY, THIS COURT SHOULD ALLOW PETITIONER TO  
13. WITHDRAW HIS PLEA, OR IN THE ALTERNATIVE THAT THE  
14. DISTRICT COURT IMPOSE THE SENTENCE LIFE WITH THE  
15. POSSIBILITY OF PAROLE

16.

17. CONCLUSION

18.

19. BASED UPON THE ARGUMENTS HEREIN, PETITIONER'S  
20. SENTENCE SHOULD BE VACATED, AND ALLOWED TO  
21. WITHDRAW PLEA OR RE-SENTENCED TO LIFE WITH THE  
22. POSSIBILITY OF PAROLE.

23.

24. DATED THIS 12 DAY OF May , 2021

25.

Respectfully Submitted

26.

27.

28.

12 OF 14

1. VERIFICATION

2.


3. I, LUIS ANGEL CASTRO, DO HEREBY STATE AND DECLARE  
4. UNDER PENALTY OF PERJURY AND PURSUANT TO NEVADA  
5. REVISED STATUTE 208.165 THAT THE STATEMENTS AND  
6. FACTS IN THIS PETITION FOR WRIT OF HABEAS CORPUS AND  
7. TO WITHDRAW GUILTY PLEA, ARE TRUE AND CORRECT,  
8. AND TO THE BEST OF MY OWN PERSONAL KNOWLEDGE AND  
9. BELIEF.

10.

11. DATED THIS 12 DAY OF May, 2021

12.

13.

  
\_\_\_\_\_  
PETITIONER, IN PRO SE

14.

15.

16. AFFIRMATION PURSUANT TO NRS 239B.030

17.

18. THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING  
19. PETITION FOR WRIT OF HABEAS CORPUS AND TO WITHDRAW GUILTY  
20. PLEA, DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF  
21. ANY PERSON.

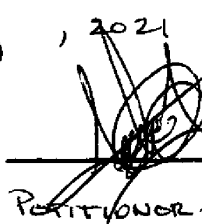
22.

23. DATED THIS 12 DAY OF May, 2021

24.

25.

26.

  
\_\_\_\_\_  
PETITIONER, IN PRO SE

27.

28.

CERTIFICATE OF SERVICE BY MAIL

2..

3.. I, Luis A. Castro, HEREBY CERTIFY PURSUANT TO  
4.. N.R.C.P. 5(b), THAT ON THIS 12 DAY OF THE MONTH  
5.. OF May, OF THE YEAR 2021, I MAILED A TRUE  
6.. AND CORRECT COPY OF THE FOREGOING PETITION FOR  
7.. WRIT OF HABEAS CORPUS - TO WITHDRAW GUILTY PLEA  
8.. ADDRESSED TO:

9..

10.. ALEXANDER G. CHEN, ESQ.  
11.. CLARK COUNTY DISTRICT ATTORNEY  
12.. 200 LEWIS AVENUE  
13.. LAS VEGAS, NV. 89155-2212

OFFICE OF THE ATTORNEY GENERAL  
HEROES' MEMORIAL BUILDING  
100 NORTH CARSON STREET  
CARSON CITY, NV. 89701-4717

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PETITIONER, IN PRESENCE

PETITION

1. CURRENTLY IMPRISONED AT ELY STATE PRISON,  
WHITE PINE COUNTY

2 THE JUDGMENT OF CONVICTION WAS ENTERED BY  
THE EIGHTH JUDICIAL DISTRICT COURT, CLACK  
COUNTY, LAS VEGAS, NEVADA

3 DATE OF JUDGMENT OF CONVICTION  
MARCH 28, 2019

4. D.C. No. C-16-314092-1

5. (a) LENGTH OF SENTENCE: LIFE WITHOUT THE  
POSSIBILITY OF PAROLE

6. NO, OTHER CONVICTION IS UNDER ATTACK IN  
THIS MOTION,

7. NATURE OF THE OFFENSE INVOLVED IN  
CONVICTION BEING CHALLENGED: ...  
"FIRST DEGREE KIDNAPPING SUBSTANTIAL  
BODILY HARM"

8. PLED GUILTY

- 1.. 9. PLED GUILTY UNDER THE ADVICE OF DEFENSE  
2.. COUNSEL.  
3..  
4.. 10. NOT APPLICABLE  
5..  
6.. 11. TESTIFY - YES - ALLOCATION  
7..  
8.. 12. APPEALED THE JUDGMENT OF CONVICTION  
9..  
10.. 13. (a) THE SUPREME COURT OF THE STATE OF NEVADA  
11.. (b) S.Ct. No. 78643  
12.. (c) ORDER DENYING PETITION FOR REHEARING  
13.. AFFIRMANCE OF SENTENCE  
14.. (d) DATE OF RESULTS; OCTOBER 23, 2020  
15..  
16.. 14. NOT APPLICABLE  
17..  
18.. 15. NO, PREVIOUS PETITIONS, APPLICATIONS OR  
19.. MOTIONS HAVE BEEN FILED WITH/IN THIS  
20.. MATTER - JUDGMENT.  
21..  
22.. 16. NOT APPLICABLE  
23..  
24.. 17. NONE OF THE ISSUES - GROUNDS PRESENTED  
25.. HEREIN BEEN RAISED IN ANY OTHER COURT  
26..  
27..  
28..

18. THE ONLY ISSUE NOT PREVIOUSLY PRESENTED WAS  
THE WITHDRAWAL OF GUILTY PLEA. PETITIONER WAS  
DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING  
THE PLEA-BARGAINING.

19. THIS PETITIONER CERTIFIES THAT THE PETITION  
FOR WRIT OF HABEAS CORPUS-POST CONVICTION  
RELIEF IS TIMELY FILED.

20. NO OTHER PETITION OR APPEAL IS PENDING  
IN ANY COURT.

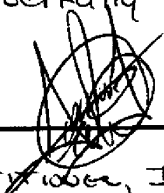
21. DEFENSE COUNSEL - WARREN GELLER  
APPEAL COUNSEL - JEAN J. SCHWARTZ

22. NO OTHER MATTERS ARE PENDING  
UPON COMPLETION OF THIS SENTENCE.

23. SEE THE ATTACHED FOLLOWING  
FACTS AND ARGUMENTS.

24.  
25. DATED THIS 12 DAY OF May, 2021

26. Respectfully Submitted

27.   
\_\_\_\_\_  
PETITIONER, IN PERSONA

28. 2C OF 14



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78643-COA

**FILED**

OCT 23 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.<sup>1</sup>

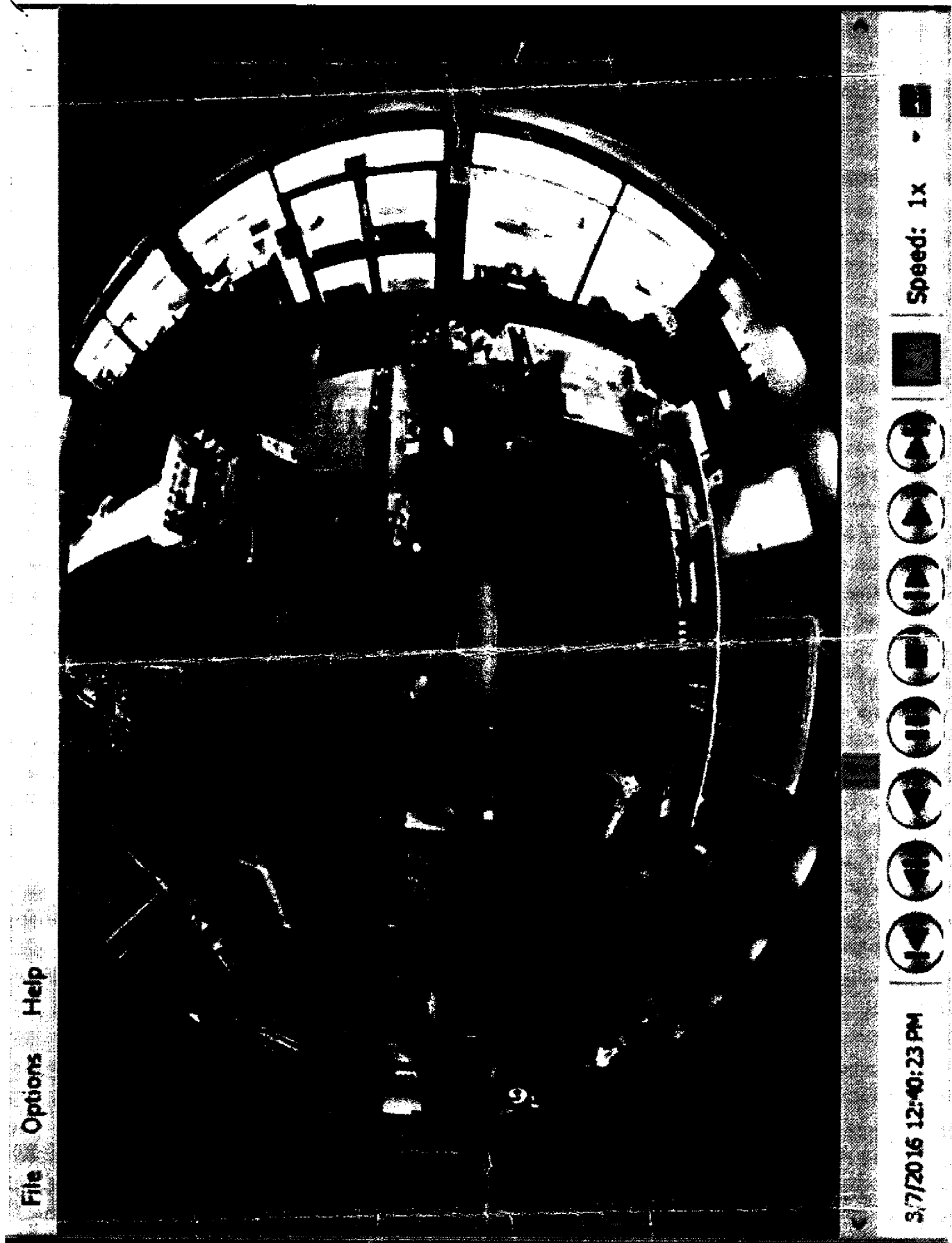
[Signature], C.J.  
Gibbons

[Signature], J.  
Tao

[Signature], J.  
Bulla

cc: Hon. Jerry A. Wiese, District Judge  
Jean J. Schwartz  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>Appellant did not object to the sentencing court's statement that credit for time served did not matter. He thus failed to preserve the presentence credit issue below. And, despite bearing the burden of demonstrating plain error, *see Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005), appellant failed to argue plain error in his opening brief on appeal. Accordingly, we declined to review this error on appeal.



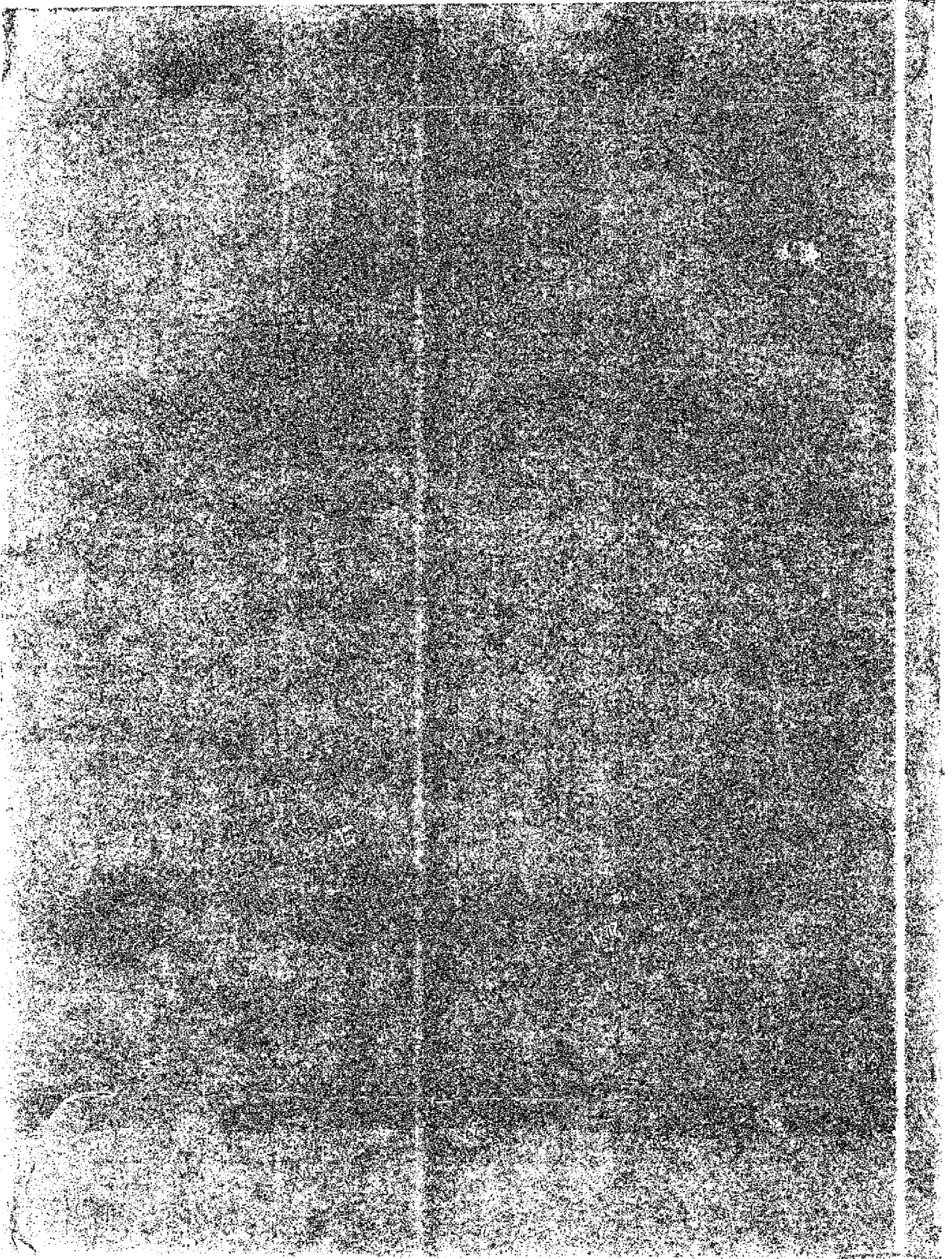
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FILED

JUN 07 2021

DEPT. No. 30 CLERK OF COURT

1. CASE No. C-16-3140921

2.

3. IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE

4. OF NEVADA, IN AND FOR THE COUNTY OF CLARK

5.

6. LUIS ANGEL CASTRO,

CASE No. A-21-835827-W

7. PETITIONER,

DEPT. No Dept. 30

8. v.

9. THE STATE OF NEVADA,

REQUEST FOR

10. RESPONDENT,

SUBMISSION

11.

12. IT IS REQUESTED THAT THE PLEADINGS ENTITLED PETITION FOR WRIT  
13. OF HABEAS CORPUS ..., EX PARTE MOTION FOR APPOINTMENT OF COUNSEL ...,  
14. AND MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, WHICH WAS  
15. SUBMITTED ON THE 12 DAY OF May, 2021, IN THE ABOVE -  
16. ENTITLED MATTER BE SUBMITTED TO THE COURT FOR ITS CONSIDERATION.  
17. THE UNDERSIGNED PETITIONER, CERTIFIES THAT A COPY OF THE -  
18. PLEADINGS NOTED ABOVE AND THIS DOCUMENT, HAVE BEEN SERVED  
19. UPON THE RESPONDENT.

20.

21. DATED THIS 12 DAY OF May, 2021

22.

23.

Respectfully Submitted

24.

25.

26.

PETITIONER, In Pro Se

27.

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1 of 2


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AFFIRMATION

PURSUANT TO NRS 239B.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE  
PRECEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL  
SECURITY NUMBER OF ANY PERSON.

DATED THIS 12 DAY OF May, 2021

  
\_\_\_\_\_  
LUIS A. CASTRO, #1214547  
POSITIONAL, IN PRO SE

FILED  
JUN 07 2021

*John J. Williams*  
CLERK OF COURT

1 LUIS A. CASTRO  
2 E.S.P. #1214547  
3 P.O. Box 1989  
4 ELY, NV. 89301

5  
6  
7  
8 IN THE EIGHTH DISTRICT COURT OF THE  
9 STATE OF NEVADA IN AND FOR THE COUNTY OF CLATSOP

10  
11 LUIS ANGEL CASTRO  
12 Petitioner,

CASE NUMBER: **A-21-835827-W**  
Dept. 30

13 vs.

**EX PARTE MOTION FOR**  
**APPOINTMENT OF COUNSEL AND**  
**REQUEST FOR EVIDENTIARY**  
**HEARING**

14  
15 Warden; State of Nevada,  
16 Respondents.

17  
18 COMES NOW, LUIS A. CASTRO the Petitioner, in proper person, and moves this Court  
19 for its order allowing the appointment of counsel for Petitioner and for an evidentiary hearing. This  
20 motion is made and based in the interest of justice.

21 Pursuant to NRS 34.750(1):

22 A petition may allege that the petitioner is unable to pay the costs of the  
23 proceedings or to employ counsel. If the court is satisfied that the  
24 allegation of indigency is true and the petitioner is not dismissed  
25 summarily, the court may appoint counsel to represent the petitioner. In  
26 making its determination, the court may consider, among other things, the  
severity of the consequences facing the petitioner and whether:

- (a) The issues presented are difficult;  
(b) The petitioner is unable to comprehend the proceedings; or

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CLERK OF THE COURT



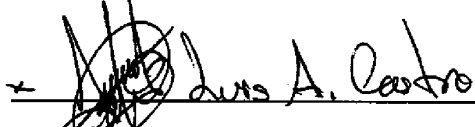
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(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at ELY STATE PRISON, is indigent and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Further, Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Dated this 12 day of May, 2021.

  
\_\_\_\_\_  
In Proper Person



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on May 12, 2021, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office

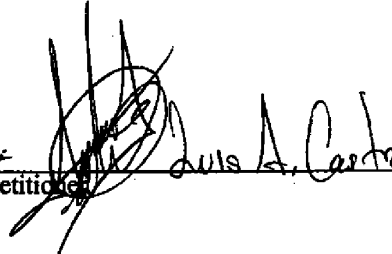
Address:

200 LEWIS AVENUE  
LAS VEGAS, NEVADA  
89155-2212

Warden - WILLIAM GITTER

Address:

P.O. Box 1989  
ELY, NV. 89301

  
x \_\_\_\_\_  
Petitioner

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Ex Parte

MOTION FOR APPT. OF COUNSEL & REG. FOR EVIDENTIARY HEARING  
(Title of Document)

filed in District Court Case number C-16-31-4092-1

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

-OR-

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

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

\_\_\_\_\_  
(State specific law)

-or-

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

X  
\_\_\_\_\_  
Signature

May 12 2021  
\_\_\_\_\_  
(Date)

LUIS ANGEL CASTRO  
\_\_\_\_\_  
Print Name

IN PRO SE  
\_\_\_\_\_  
Title

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1 PPOW

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 Luis Angel Castro,

6 Petitioner,

7 vs.

8 State of Nevada,

9 Respondent,

Case No: A-21-835827-W  
Department 30

ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS

10  
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on  
12 June 07, 2021. The Court has reviewed the Petition and has determined that a response would assist the  
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good  
14 cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,  
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS  
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

19 Calendar on the 26TH AUGUST 21, 2021, at the hour of 8:30  
20 ~~AM~~ day of \_\_\_\_\_,

21 \_\_\_\_\_ o'clock for further proceedings.

22 Dated this 10th day of June, 2021

23 

24 District Court Judge

25 849 C80 B05B 0BA2  
26 Jerry A. Wiese  
27 District Court Judge  
28

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

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 6/11/2021

16 Luis Castro

#1214547

ESP

17 P.O. Box 1989

18 Ely, NV, 89301



**DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\***

Luis Castro, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

Case No.: A-21-835827-W

Department 30

**NOTICE OF HEARING**

Please be advised that the Plaintiff's Motion for Appointment of Attorney and Request for Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

**Date:** August 26, 2021

**Time:** 8:30 AM

**Location:** RJC Courtroom 14A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

FILED

JUL 06 2021

*Alana A. Flynn*  
CLERK OF COURT

1 CASE No. A-21-835821-W

DEPT No. 30

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

LUIS ANGEL CASTRO,

PETITIONER,

vs

THE STATE OF NEVADA,

RESPONDENT,

REQUEST FOR SUBMISSION  
OF PLEADING

IT IS REQUESTED THAT THE PLEADING ENTITLED PETITIONER'S  
SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS, WHICH  
WAS SUBMITTED ON THE 22<sup>ND</sup> DAY OF JUNE, 2021, IN THE ABOVE -  
ENTITLED MATTER BE SUBMITTED TO THE COURT FOR ITS CONSIDERATION.  
THE UNDERSIGNED PETITIONER, CERTIFIES THAT A COPY OF THE  
PLEADING NOTED ABOVE AND THIS DOCUMENT, HAVE BEEN  
SERVED UPON THE RESPONDENT.

DATED THIS 22 DAY OF JUNE, 2021

Respectfully Submitted

*[Signature]*  
\_\_\_\_\_  
Petitioner, In Pro Se

1 OF 2

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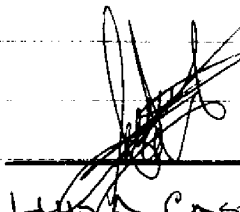
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AFFIRMATION

PURSUANT TO NRS 239B.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE  
PRECEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL  
SECURITY NUMBER OF ANY PERSON.

DATED THIS 22 DAY OF JUNE, 2021



LUISA CASTRO, # 1214547  
PETITIONER, IN PRO SE

FR: Mc Luis A Castro  
ESP # 1214547  
P.O. Box 1989  
Eliz, NV 89301

To: Mc Steven D Gersonson  
Clerk of the Court  
200 Lewis Ave., 3rd Fl.  
Las Vegas, Nevada  
89155-1160

LEGAL MAIL \*



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JUL 06 2021

*Sharon A. Williams*  
CLERK OF COURT

1 LUIS A. CASTRO  
2 ESP-#1214547  
3 P.O. Box 1989  
4 ELY, NV, 89301

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

8 LUIS ANGEL CASTRO,

9 PETITIONER,

10 VS

11 THE STATE OF NEVADA,

12 RESPONDENT.

CASE NO. A-21-835827-W

DEPT. No 30

13  
14 PETITIONER'S SUPPLEMENT TO  
15 PETITION FOR WRIT OF HABEAS CORPUS  
16

17 COME NOW PETITIONER, LUIS A. CASTRO, IN PRO SE,  
18 SUBMITS-FILE THIS PETITIONER'S SUPPLEMENT TO  
19 PETITION FOR WRIT OF HABEAS CORPUS. IN ADDITION,  
20 TO ALL DOCUMENTS, PLEADINGS, TANGIBLE PAPERS  
21 ARGUMENTS IN THIS CASE, PETITIONER ASSERTS  
22 THAT HE WAS ROBBED OF HIS FIFTH, SIXTH AND  
23 FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS.  
24 ACCORDINGLY, BRINGS THE FOLLOWING CLAIMS:  
25  
26

CLERK OF THE COURT

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1 of 15

1 • GROUND ONE - VIOLATION OF PETITIONER'S  
2 SIXTH AMENDMENT RIGHT TO EFFECTIVE  
3 ASSISTANCE OF COUNSEL DURING PLEA  
4 NEGOTIATIONS.

5  
6 • GROUND TWO - THE COURT ABUSED IT'S  
7 DISCRETION BY IMPOSING A DISPROPORTIONATE  
8 SENTENCE THAT CONSTITUTED CRUEL AND  
9 UNUSUAL PUNISHMENT, IN VIOLATION OF  
10 THE EIGHTH AMENDMENT RIGHT

11  
12 PROCEDURAL HISTORY

13  
14 ON FEBRUARY 4<sup>TH</sup> 2019, LUIS ANGEL CASTRO -  
15 PETITIONER, WAS CHARGED BY WAY OF AN AMENDED  
16 INFORMATION IN CASE NO. C-16-314092-1 WITH  
17 THE FOLLOWING:

18 • FIRST DEGREE KIDNAPPING RESULTING IN  
19 SUBSTANTIAL BODILY HARM - NRS 200.310, 320.  
20 CONTEMPORANEOUSLY IN CASE NO. C-16-314092-1-2-3-4,  
21 CASTRO WAS CHARGED BY WAY OF INFORMATION WITH  
22 THE FOLLOWING:

23 • CONSPIRACY TO COMMIT MURDER - NRS 200.010,  
24 • ATTEMPTED MURDER WITH USE OF DEADLY  
25 WEAPON - NRS 200.010, 193.330, 165;

1 • MAYHEM WITH USE OF A DEADLY WEAPON -

2 NRS 200.280, 193.165;

3 • BATTERY WITH THE USE OF A DEADLY WEAPON

4 RESULTING IN SUBSTANTIAL BODILY HARM -

5 NRS 200.481;

6 • FIRST DEGREE KIDNAPPING RESULTING IN

7 SUBSTANTIAL BODILY HARM - NRS 200.310;

8 • EXTORTION WITH USE OF A DEADLY WEAPON -

9 NRS 200.320, 193.165;

10 • ROBBERY WITH USE OF A DEADLY WEAPON -

11 NRS 200.380, 193.165

12 • FIRST DEGREE ARSON - NRS 205.010

13  
14 ON FEBRUARY 4<sup>TH</sup> 2019, CASTRO PLEA GUILTY TO:

15 • ONE COUNT OF FIRST DEGREE KIDNAPPING

16 RESULTING IN SUBSTANTIAL BODILY HARM

17  
18 DURING THE CANVAS OF THE PLEA SOME CONFUSION

19 EXISTED AS TO WHETHER OR NOT THE GUILTY PLEA WOULD

20 RESULT IN DEPORTATION. THE COURT ASKED CASTRO

21 IF HE HAD A CHANCE TO DISCUSS ANY IMMIGRATION -

22 ISSUES WITH HIS ATTORNEY, AND HAS THE ATTORNEY

23 ANSWERED ANY QUESTION HE MAY HAVE? CASTRO

24 RESPONDED "YES AND NO", 'but I'll just say Yes'.

25 (SEE CANVAS OF PLEA, PAGE 7, LINES 16 THRU 20). BESIDES

1 THE OBVIOUS, THE COURT SHOULD HAVE NOTED THAT  
2 PETITIONER WAS NOT MENTALLY EQUIPPED TO -  
3 COGNITIVELY ACCEPT THE PLEA. HE MERELY MADE  
4 THE RESPONSES AS INSTRUCTED BY HIS DEFENSE  
5 COUNSEL - MR. WARREN GELLER,

## 6 7 8 ARGUMENT

### 9 10 GROUND ONE

#### 11 CASTRO WAS DENIED EFFECTIVE ASSISTANCE 12 OF COUNSEL DURING PLEA NEGOTIATIONS

13  
14 MR. GELLER - DEFENSE COUNSEL INAPPROPRIATELY -  
15 IMPROPERLY ADVISED PETITIONER'S MOST INFLUENTIAL  
16 FAMILY MEMBER - HIS PARENTS TO INDUCE THE  
17 ACCEPTANCE OF AN 'UNBARGAIN' PLEA AGREEMENT,  
18 IN VIOLATION OF HIS FIFTH, SIXTH AND FOURTEENTH  
19 AMENDMENT RIGHTS.

20  
21 THE PLEA BARGAINING PROCESS IS A CRITICAL  
22 STAGE OF A CRIMINAL PROSECUTION. IOWA V TOVAR,  
23 541 U.S. 77, 81 (2004); AND BURGER V KEMP, -  
24 483 U.S. 776, 803-804 (1987). ACCORDINGLY,  
25 THE SIXTH AMENDMENT APPLIES TO REPRESENTATION

1 DURING THE PLEA-BARGAINING PROCESS. IN  
2 JANE LEE VS UNITED STATES, 582 U.S., 137 S. Ct.,  
3 (2017), THE SUPREME COURT HELD THAT: "WHEN A  
4 DEFENDANT CLAIMS THAT HIS COUNSEL'S DEFICIENT  
5 PERFORMANCE DEPRIVED HIM OF A TRIAL BY CAUSING  
6 HIM TO ACCEPT A PLEA, THE DEFENDANT CAN SHOW  
7 PREJUDICE BY DEMONSTRATING A "REASONABLE  
8 PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS HE  
9 WOULD NOT HAVE  PLEADED GUILTY AND  
10 WOULD HAVE INSISTED ON GOING TO TRIAL. [ALSO  
11 SEE] MISSOURI VS FRYE, 132 S. Ct 1399, 1405 (2012)  
12 AND HILL VS LOCKHART, 474 U.S. 52, 57 (1985)

13 THE DECISION TO PLEAD GUILTY OR CONTEST A  
14 CRIMINAL CHARGE IS ORDINARILY THE MOST IMPORTANT  
15 SINGLE DECISION IN ANY CRIMINAL CASE, - BORJA V,  
16 KEANE, 99 F3d 492, 496-497 (2<sup>ND</sup> Cir. 1996). THIS  
17 DECISION MUST BE COGNITIVELY MADE BY THE CLIENT.

18 THE UNITED STATES SUPREME COURT NOTED  
19 THE IMPORTANCE OF \*PLEA NEGOTIATIONS\* IN  
20 SANTOBELLO VS NEW YORK, 404 U.S. 257, 261 (1971).  
21 AT THE END OF THE DAY, IT IS THE VERY NATURE OF  
22 THIS PROCESS INVOLVES A "QUID PRO QUO". THE  
23 GOVERNMENT AVOIDS THE TIME AND EXPENSE OF  
24 A TRIAL AND THE DEFENDANT 'SECURES' A MORE  
25 ADVANTAGEOUS OUTCOME. U.S. ex rel -

1 CARUSO V ZELENSKI, 689 F.2d 435, 438 (3rd Cir. 1982).

2

3 Here, Attorney - Mr. Geller, was paid \$85,000.<sup>00</sup>  
4 DOLLARS TO DEFEND AND/OR NEGOTIATE A FAIR  
5 SENTENCE ON BEHALF OF PETITIONER. His lack  
6 OF LEGAL REPRESENTATION WAS A DISGRACE AND  
7 AMOUNTED TO DECEITMENT. THIS IS EVIDENT  
8 IN THE LEGION OF ERRORS - FAILURES TO PROTECT  
9 PETITIONER'S CONSTITUTIONAL RIGHTS AS  
10 DEMONSTRATED IN THE OUTCOME OF THE TRIAL.

11 EVEN MORE EGREGIOUS AND DISTURBING  
12 IS HOW MR. GELLER, MISLED (LIED) TO CASTRO'S  
13 PARENTS. (See ATTACHED AFFIDAVIT EXHIBIT 1)

14 MR. GELLER, FAILED TO SEVER CASTRO'S  
15 CASE FROM THE OTHER DEFENDANTS THAT WERE  
16 UNDER THE SAME INDICTMENT/INFORMATION; AND  
17 AFTER HE GAVE PETITIONER'S THE ASSURANCE THAT  
18 CASTRO WOULD BE PROSECUTED SEPARATELY.

19 IN ADDITION, MR. GELLER, FAILED TO OBJECT  
20 AND/OR ARGUE THE COURT'S UNREASONABLE  
21 DEMAND. THE DEMAND THAT THE ACCEPTANCE OF  
22 THE PLEA WAS CONTINGENT UPON ALL FOUR (4)  
23 DEFENDANTS ACCEPTING THEIR RESPECTIVE -  
24 NEGOTIATIONS, (See GUILTY PLEA AGREEMENT,  
25 PAGE 1, LINES 21 AND 22).

26

27

28

4 OF 15



1 THE 'UNBARGAIN' PLEA AGREEMENT RESULTED  
2 IN THE SAME, RATHER WORST OUTCOME HAD THE CASE  
3 GONE TO TRIAL. BECAUSE THE PROSECUTION WOULD  
4 HAVE HAD TO PROVE EACH OF THE ELEMENTS OF  
5 CHARGES BROUGHT AGAINST THE PETITIONER,

6 IN WHICH CASE, CASTRO'S ROLE, ALIBI  
7 AND LACK OF DNA EVIDENCE COULD HAVE HAD  
8 AN ENORMOUS EFFECT ON THE JURORS. 'MORE'  
9 STILL, CASTRO HAD LEFT THE ~~CO~~-DEFENDANTS  
10 WHEN THEY STARTED TO BECOME VIOLENT.

11 FURTHERMORE, CASTRO'S CONSTITUTIONAL RIGHTS  
12 COULD HAVE BEEN PRESERVED AND 'ALL' THE  
13 FACTS OF THIS CASE WOULD HAVE BEEN REVEALED.  
14 INCLUDING, THE PROSECUTION COERCING THE  
15 VICTIM, TO IDENTIFY CASTRO AS ONE OF THE  
16 PERSON WHOM ACTUALLY HARM HIM, STILL  
17 MORE IMPORTANTLY, THE TRIAL COULD HAVE  
18 SHOWN THAT CASTRO, LACKED THE MENTAL  
19 CAPACITY TO ORCHESTRATE THE ORDER.

20 MR. GELLER, DEFENSE COUNSEL DID NOT  
21 OBJECT TO THE MULTIPLE PREJUDICIAL STATEMENTS  
22 MADE DURING THE PRELIMINARY HEARINGS!

23  
24 MR. GELLER'S COUNSEL, CONSTITUTED AS A  
25 'TRUMP CON - FRAUDULENT LEGAL REPRESENTATION,

26

27

28 70215

29

1 He deceived CASTRO'S PARENTS, TOLD THEM THAT  
2 CASTRO'S SENTENCE WILL RANGE BETWEEN 15  
3 TO 25 YEARS IN PRISON, IF HE ACCEPTED THE PLEA.

4 WITH THIS FALSE ASSERTION MR & MRS CASTRO,  
5 THREATEN PETITIONER WITH THE LOSS OF THEIR  
6 SUPPORT IF HE DIDN'T ACCEPT SAID OFFER. LEFT  
7 WITH NO ALTERNATIVE PETITIONER ACCEPTED THE  
8 PLEA. IF NOT FOR MR. GELLER'S INAPPROPRIATE-  
9 MISLEADING ADVICE TO PETITIONER'S PARENTS,  
10 CASTRO WOULD HAD TAKEN THE CASE TO TRIAL.

11  
12 FRANKLY, IT IS EASY TO INFER THAT DEFENSE  
13 COUNSEL- MR. GELLER, INTENDED ALL ALONG  
14 TO CONVINCE PETITIONER TO PLEA OUT- ACCEPT  
15 WHATEVER THE STATE OFFERED. IS VERY  
16 UNLIKELY HE SPEND MORE THAN TEN (10)  
17 HOURS WORKING ON THIS CASE, AVERAGING  
18 \$ 8,500.<sup>00</sup> DOLLARS AN HOUR. FOR THIS HOURLY  
19 RATE HE COULD HAD TRIED TO BE AN ACTUAL  
20 EFFECTIVE ATTORNEY; OR AT THE VERY, VERY  
21 MINIMUM NEGOTIATED THE PLEA- SENTENCE.

22  
23 THEREFORE, IT IS CLEAR THAT CASTRO RECEIVED  
24 INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION  
25 OF HIS 5<sup>TH</sup>, 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENT RIGHTS.

## Ground Two

THE COURT ABUSED IT'S DISCRETION  
BY IMPOSING A DISPROPORTIONATE  
SENTENCE, THAT CONSTITUTED CRUEL  
AND UNUSUAL PUNISHMENT IN VIOLATION  
OF THE EIGHTH AMENDMENT RIGHT.

CASTRO PLEADED GUILTY TO FIRST DEGREE  
KIDNAPPING WITH SUBSTANTIAL BODILY HARM. CASTRO  
DID NOT HAVE A HISTORY OF PRIOR CONVICTIONS  
FOR VIOLENT OFFENSES, UNLIKE HIS CO-DEFENDANTS.  
ALTHOUGH, HE WAS UNDER THE INFLUENCE OF DRUGS  
AT THE TIME THE CRIME WAS COMMITTED HE LEFT  
THE SCENE WHEN HIS CO-DEFENDANTS BECAME  
VIOLENT. THIS IS SUPPORTED BY THE FACT THAT ONLY  
HIS CO-DEFENDANTS DNA WAS FOUND ON THE WEAPON  
AND AT SCENE OF THE CRIME, 2AA 135-38.

CASTRO DID NOT CALL THE POLICE BECAUSE HE  
WAS SCARED THAT THE CO-DEFENDANT WOULD HARM  
HIS FAMILY, SINCE THEY KNEW THE LOCATION OF  
HIS FAMILY BUSINESS. 2 AA 137.

ADDITIONALLY, CASTRO SUFFERS FROM PTSD  
SYMPTOMS FROM BEING SEXUALLY ABUSED BY HIS  
UNCLE, CONFIRMED BY CASTRO'S PARENTS; HE  
ALSO SUFFERS FROM BIPOLAR SYMPTOMS, —

1 DEPRESSION, ANXIETIES, DRUG ADDICTION AND  
2 ATTEMPTED SUICIDE. 2AA 147-48.

3 THEREFORE, HIS SENTENCE OF LIFE WITHOUT  
4 THE POSSIBILITY OF PAROLE IS SO UNREASONABLY  
5 DISPROPORTIONATE TO THE OFFENSE, PARTICULARLY,  
6 CONSIDERING CASTRO'S ROLE - LACK OF PARTICIPATION  
7 IN THE CRIME, AND NEVER HAD HE ENGAGED IN A  
8 VIOLENT CONDUCT. THIS SENTENCE SHOCKS THE  
9 CONSCIENCE AND AMOUNTS TO CRUEL AND -  
10 UNUSUAL PUNISHMENT.

11 CASTRO IS NOT ARGUING THAT HIS SENTENCE IS  
12 ILLEGAL UNDER NEVADA LAW, RATHER IT IS DIS-  
13 PROPORTIONATE TO THE CRIME HE WAS CONVICTED,  
14 AND HIS ROLE IN IT. WHEREAS, FOR EXAMPLE A  
15 DEFENDANT ACTING ALONE CONVICTED OF FIRST  
16 DEGREE MURDER CAN BE GIVEN A CHANCE AT  
17 PAROLE IN TWENTY (20) YEARS.

18 CASTRO'S SENTENCE IS CONTRARY TO THE  
19 PRECEDENCE SET IN ALLRED, 120 NEV. 410 AND  
20 VIOLATES THE EIGHTH AMENDMENT TO THE UNITED  
21 STATES CONSTITUTION, AS WELL AS ARTICLE 1,  
22 SECTION 6 OF THE NEVADA CONSTITUTION.  
23 ALLRED V STATE, 120 NEV. 410, 92 P2d AT  
24 1253.

25 PETITIONER IS SIMPLY SEEKING LIGHT AT THE  
26

1 END OF THE TUNNEL.

2

3

4

## JUSTIFICATION FOR EVIDENTIARY HEARING

5

6

7 "A PETITIONER FOR POST-CONVICTION RELIEF IS  
8 ENTITLED TO AN EVIDENTIARY HEARING ONLY IF  
9 HE SUPPORTS HIS CLAIMS WITH SPECIFIC FACTUAL  
10 ALLEGATIONS THAT IF TRUE WOULD ENTITLE HIM  
11 TO RELIEF." THOMAS V. STATE, 120 N.W. 3d 818, 823 (2004).

12

13 IF GIVEN THE OPPORTUNITY CASTRO WILL  
14 TESTIFY REGARDING THE FACT THAT DEFENSE -  
15 COUNSEL - MR. WARREN GELLER, BAMBOOZLED AND  
16 INAPPROPRIATELY MISLED CASTRO'S PARENTS  
17 TO INDUCE PETITIONER TO ACCEPT THE PLEA  
18 OFFER OF 15 TO 25 YEARS IN PRISON. CASTRO'S  
19 PARENTS WILL TESTIFY THAT ON THE NOW  
20 KNOWN FALSE ASSURANCE, THREATEN PETITIONER  
21 WITH THE LOSS OF THEIR SUPPORT IF HE  
22 DIDN'T SIGN THE PLEA.

23

24 IN ADDITION, MR. AND MRS. CASTRO WILL  
25 TESTIFY THAT MR. GELLER ASSURED THEM  
26 THAT PETITIONER WOULD BE PROSECUTED -

26

27

28

1 SEPARATELY.

2

3 CASTRO'S PARENTS WILL FURTHER TESTIFY,  
4 THAT WOULD HAD THEY BEEN INFORMED THAT THE  
5 CONDITION OR RESULT OF THE PLEA AGREEMENT  
6 WAS LIFE WITHOUT THE POSSIBILITY OF PAROLE,  
7 THEY WOULD HAD INSISTED THAT THEIR SON TAKE  
8 THE CASE TO TRIAL, ESPECIALLY, BECAUSE THE  
9 TRIAL WOULD HAD REVEAL 'ALL' THE FACTS IN  
10 THIS CASE, SUCH AS, ALL THREE (3) CO-DEFENDANTS  
11 PROPENSITY FOR VIOLENCE; AND NOT TO BELITTLE THE  
12 VICTIM'S INJURIES, BUT THE COURT AND THE JURORS  
13 COULD HAVE ACKNOWLEDGE HIS CRIMINAL HISTORY  
14 AND HIS PARTICIPATION IN THE MICRO UNDERGROUND  
15 WORLD; AND CONSIDERED CASTRO'S LOW INTELLECTUAL  
16 FUNCTION.

17

18 FURTHERMORE, MR & MRS CASTRO WILL TESTIFY  
19 THAT THEY PAID MR. GELBERG W., \$85,000.00 -  
20 DOLLARS REPRESENT-DEFEND PETITIONER IN  
21 THIS CASE. THE VERY LEAST HE COULD HAVE DONE  
22 WAS TO NEGOTIATE AN APPROPRIATE SENTENCE,  
23 LIFE WITH THE POSSIBILITY OF PAROLE WOULD  
24 HAD BEEN A FAIR AND JUST SENTENCE WHEN  
25 CONSIDERING CASTRO'S ROLE IN THE INCIDENT.

26

27

12 OF 15

28

1 AN EVIDENTIARY HEARING IS NEEDED TO  
2 PRESENT TESTIMONY - EVIDENCE REGARDING THE  
3 NATURE AND CIRCUMSTANCES OF HOW COUNSEL  
4 INADEQUATELY COUNSELED CASTRO'S PARENTS  
5 AND HIM REGARDING THE TERMS OF HIS PLEA  
6 AGREEMENT. THIS EVIDENCE IS NECESSARY  
7 IN ORDER FOR THE COURT TO DETERMINE IF  
8 CASTRO WAS AFFORDED CONSTITUTIONALLY -  
9 SUFFICIENT ADVISE SO THAT HE COULD -  
10 INTELLIGENTLY AND KNOWINGLY WAIVE HIS IMPORTANT  
11 CONSTITUTIONAL TRIAL, APPELLATE AND POST-  
12 CONVICTION RIGHTS IN THE CONTEXT BROUGHT TO  
13 BEAR IN PLEADING GUILTY TO FIRST DEGREE -  
14 KIDNAPPING...

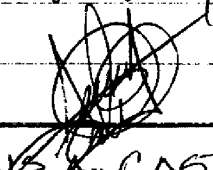
15 THERE EXIST NO INFORMATION IN THE RECORD TO  
16 CONTRADICT SAID ASSERTIONS BECAUSE THE NATURE  
17 AND SCOPE OF THE DISCUSSIONS HAD BY CASTRO'S  
18 PARENTS, HIMSELF, AND MR. GELBER, WERE ONLY  
19 WITNESSED BY EACH OTHER. THEREFORE, CASTRO IS  
20 ENTITLED TO EXPAND THE RECORD OF THIS CASE  
21 TO INCLUDE HIS TESTIMONY, THAT OF HIS PARENTS,  
22 AND OF HIS TRIAL COUNSEL TO SUPPORT HIS CLAIMS.

1 CONCLUSION

2  
3 PETITIONER RESPECTFULLY REQUEST  
4 THAT THIS COURT VACATE HIS CONVICTION  
5 AND AFFORD HIM EFFECTIVE ASSISTANCE  
6 OF COUNSEL TO EFFECTIVELY REPRESENT  
7 CASTRO AT ALL CRITICAL STAGES OF HIS  
8 CRIMINAL CASE. IN THE ALTERNATIVE  
9 PETITIONER, WILL ACCEPT LIFE WITH  
10 THE POSSIBILITY OF PAROLE, FOR HIS  
11 PARTICIPATION - ROLE IN THIS MATTER.

12  
13 DATED THIS 22<sup>ND</sup> DAY OF JUNE, 2021

14  
15 RESPECTFULLY SUBMITTED

16  
17   
18 \_\_\_\_\_  
19 LUIS A. CASTRO, # 1214547  
20 PETITIONER, IN PRO SE  
21

22 NOTE TO THE COURT

23 THIS PLEADING WAS PREPARED BY A TRANSIENT PRISONER  
24 WHO IS SUBJECT TO BE TRANSFERRED AT ANY TIME,  
25 CASTRO, LACKS THE BASIC SKILLS TO DEFEND HIMSELF  
26 AN ATTORNEY SHOULD BE APPOINTED,

27 17 OF 15  
28



EXHIBIT-1

Jose A. Castro  
Angeles Castro  
3501 Kidd Street  
North Las Vegas NV 89032

Re: Luis Angel Castro Morales

To whom this may concern:

We hired attorney Warren Geller in 2016, we paid \$85,000.00 for him to defend Luis Angel Castro Morales in the Case between the State of Nevada against Luis Angel Castro Morales, the Jose Ortiz Salazar Case where he was charged with numerous crimes.

We were told by the attorney that the case would be difficult and that all four defendants would be prosecuted separately.

After months of deliberation, we were told that a plea deal had been reached where Luis Angel Castro if pled guilty would receive a sentence of 15-25 years in prison. As Parents, we understand there are consequences to the actions taken by our Son, we advised Luis Angel Castro to take the deal instead of going thru trial, which he did.

Upon the sentencing of his case, all four defendants were charged together, not separately, all four defendants received the same outcome, Life in Prison.


If we would have known that they would of all been charged together, we would have gone to trial, Luis Angel Castro signed a deal and to be charged separately, therefore I do not understand and until this day have not received a clear answer as in to why the Judge charged them together instead of each separately.

I am requesting the courts to open the case of Luis Angel Castro Morales and charge him separately, he did not receive a fair trial nor the opportunity to defend himself,

We understand and we do not deny that him being with the wrong crowd would get him into trouble, we ask what needs to be done to open his case again.

Attorney William Geller did not defend Luis Angel Castro Morales, took \$85,000.00 from us and ask you please open his case.


  
Jose Antonio Castro Moreno  
Father of Luis Angel Castro Morales

  
Angeles Castro  
Mother of Luis Angel Castro

1 AFFIRMATION Pursuant To NRS 239B.030

2 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE  
3 PRECEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY  
4 NUMBER OF ANY PERSON.

5 DATED THIS 22 DAY OF JUNE, 2021

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PETITIONER, LUIS A. CASTRO

11 CERTIFICATE OF SERVICE

12 I HEREBY CERTIFY THAT ON THE 22<sup>ND</sup> DAY OF JUNE,  
13 2021, I SERVED A TRUE AND CORRECT COPY OF THE  
14 ABOVE AND FOREGOING PETITIONER'S Supplement TO  
15 PETITIONER'S WRIT OF HABEAS CORPUS, FIRST CLASS  
16 MAIL ADDRESSED TO THE FOLLOWING:

17 CLARK Co. DISTRICT ATTORNEY      NV ATTORNEY GENERAL  
18 200 LEWIS AVENUE      100 NORTH CARSON ST.  
19 LAS VEGAS, NV, 89155-2212      CARSON CITY, NV, 89701-4717

20  
21  
22  
23   
24  
25  
26  
27  
28  
LUIS A. CASTRO, # 1214547

PETITIONER, IN PRO SE

FR: Mc Luis A Castro  
ESP # 1214547  
P.O. Box 1989  
Eliz, NV 89301

To: Mc Steven D Gersonson  
Clerk of the Court  
200 Lewis Ave., 3rd Fl.  
Las Vegas, Nevada  
89155-1160

Legal Mail \*

23



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*Heather L. Smith*  
CLERK OF THE COURT

Luis A Castro  
ESP # 1214547  
P.O. Box 1989  
REly, NV, 89301

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 Luis Angel Castro,

8 Petitioner,

9 vs

10 State of Nevada,

11 Respondent,

CASE No A-21-83582FW

COURTROOM: 14A

MEMORANDUM OF FACTS AND LAW

IN SUPPORT OF PETITIONER'S MOTION

FOR APPOINTMENT OF COUNSEL...

17 PETITIONER, Luis A. Castro, FILED PETITION FOR  
18 WRIT OF HABEAS CORPUS, SEEKING POST-CONVICTION  
19 RELIEF, ADDING MOTION TO WITHDRAW GUILTY  
20 PLEA, PURSUANT TO NRS 34.740 AND 176.165.  
21 THESE ARE BASED ON THE DENIAL OF HIS RIGHT  
22 TO EFFECTIVE ASSISTANCE OF COUNSEL DURING  
23 THE 'PLEA BARGAINING' PROCESS; AND THAT  
24 PLEA WAS INVOLUNTARILY AND UNINTELLIGENTLY  
25 GIVEN.

RECEIVED  
JUL 14 2021  
CLERK OF THE COURT

## STATEMENT OF THE CASE

PETITIONER PLED GUILTY TO FIRST DEGREE KIDNAPPING  
RESULTING IN BODILY HARM, BASED ON THE FALSE -  
ASSERTIONS MADE BY TRIAL COUNSEL - WARREN GELLER,  
TO HIS PARENTS; AND WHO WAS PAID \$85,000.00 TO  
REPRESENT CASTRO IN THIS MATTER. MR. GELLER,  
FALSELY ASSURED PETITIONER'S PARENTS THAT THEIR  
SON'S LEGAL PROCEEDINGS WILL BE CONDUCTED SEPARATE  
FROM THE CO-DEFENDANTS; AND IF HE ACCEPTED THE  
PLEA AGREEMENT, HIS SENTENCE WOULD BE BETWEEN  
15 TO 25 YEARS OF PRISON. UNDER THIS GUISE -  
FALSE APPEARANCE, MR. AND MRS. CASTRO, FORCE  
THEIR SON - PETITIONER TO SIGN THE PLEA.  
HOWEVER, AFTER ACCEPTING THE PLEA AGREEMENT  
PETITIONER WAS SENTENCED TO LIFE WITHOUT THE  
POSSIBILITY OF PAROLE. IF PETITIONER'S PARENTS  
WOULD HAD KNOWN THIS BEFOREHAND, THEY WOULD  
NOT HAVE THROATENED - COERCED THEIR OWN SON  
TO ACCEPT SUCH UNFAIR AND UNJUST SENTENCE.

## ARGUMENT

### THE COURT SHOULD APPOINT COUNSEL FOR PETITIONER

IN DECIDING WHETHER TO APPOINT COUNSEL FOR AN INDIGENT  
LITIGANT, THE COURT SHOULD CONSIDER THE FACTUAL

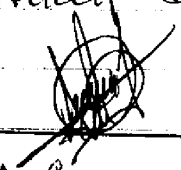
1 COMPLEXITY OF THE CASE, THE ABILITY OF THE INDIGENT  
2 TO INVESTIGATE THE FACTS, THE EXISTENCE OF CON-  
3 FLECTING TESTIMONY, THE ABILITY OF THE INDIGENT  
4 TO PRESENT HIS CLAIM(S) AND THE COMPLEXITY OF  
5 THE LEGAL ISSUE. BROWN V. UNITED STATES, 623 F.2d -  
6 54, 61 (9<sup>TH</sup> CIR 1980); HAWKINS V BENNET, 423 F.2d 948 -  
7 (8<sup>TH</sup> CIR 1970); ABDULLAH V GUNTER, 949 F.2d 1032, 1035 -  
8 (8<sup>TH</sup> CIR 1991).

9 PETITIONER'S WANT OF HABEAS CORPUS-POST CONVICTION RELIEF  
10 HAS REAL MERIT. (CARMONA V. U.S. BUREAU OF PRISON, 243 F.3d -  
11 629, 632 (2<sup>ND</sup> CIR 2001). EACH OF THESE FACTORS WEIGHS IN  
12 FAVOR OF APPOINTMENT OF COUNSEL IN THIS CASE.

### 13 14 CONCLUSION

15  
16 FOR THE AFOREMENTIONED REASONS THE COURT  
17 SHOULD GRANT PETITIONER'S MOTION AND APPOINT  
18 COUNSEL IN THIS CASE.

19  
20 Respectfully Submitted.


21  
22   
23 LUIS A. CASTRO, #1214547

24 PETITIONER, IN PRO SE.

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 THE UNDERSIGNED HEREBY AFFIRMS THAT THE PRECEDING  
3 ADDENDUM..., DECLARATION..., AND MEMORANDUM OF  
4 FACT AND LAW..., DOES NOT CONTAIN THE SOCIAL SECURITY  
5 NUMBER OF ANY PERSON.

6 DATED THIS 5<sup>TH</sup> DAY OF JULY, 2021

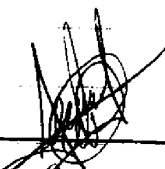
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8  
9   
Luis A. Castro, IN PR SE

10  
11 CERTIFICATE OF SERVICE BY MAIL

12 I, LUIS A. CASTRO, HEREBY CERTIFY PURSUANT TO NRCP 5(6)  
13 THAT ON THIS 5<sup>TH</sup> DAY OF JULY, 2021, I MAILED A TRUE AND  
14 CORRECT COPY OF THE ADDENDUM..., DECLARATION..., AND  
15 MEMORANDUM OF FACTS AND LAW, IN SUPPORT OF MOTION TO Appoint  
16 COUNSEL ADDRESSED TO:

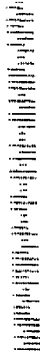
17  
18 CLARK CO. DIST. ATT. 1  
19 200 Lewis Ave., 2<sup>nd</sup> Fl.  
20 Las Vegas, NV. 89155-2212

OFFICE OF THE ATTORNEY GENERAL  
100 No. CARSON STREET  
CARSON CITY, NV. 89701-4717

21  
22  
23   
24 Luis A. Castro, # 1214547  
25 PETITIONER, IN PR SE  
26  
27  
28

18 02 10

RE: Mrs. Luis A. Castro  
E.S.P. # 1214547  
P.O. Box 1989  
Ely, NV 89301



101

CLERK OF THE COURT  
8th Judicial Dist.  
200 Lewis Ave., 3rd Fl.  
Las Vegas, NV 89155-1160



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CLERK OF THE COURT



*Heather S. Gemin*  
CLERK OF THE COURT

1 CASE NO. A-21-835827-W

COURTROOM 14A

2  
3 District Court  
4 CLARK COUNTY, NEVADA  
5

6 LUIS ANGEL CASTRO,

7 PETITIONER,

8 ✓

9 STATE OF NEVADA,

10 RESPONDENT,

REQUEST FOR SUBMISSION  
OF PLEADINGS

11  
12 IT IS REQUESTED THAT THE FOLLOWING PLEADINGS ENTITLED  
13 ADDENDUM TO PETITIONER'S EX PARTE MOTION FOR APPOINTMENT  
14 OF COUNSEL..., DECLARATION IN SUPPORT..., MEMORANDUM  
15 OF FACTS AND LAW..., AND JUDICIAL NOTICE, WHICH WAS  
16 SUBMITTED ON THE 5<sup>TH</sup> DAY OF JULY, 2021, IN THE ABOVE -  
17 ENTITLED MATTER BE SUBMITTED FOR THIS COURT'S CONSIDERATION.  
18 THE UNDERSIGNED PETITIONER CERTIFIES A COPY OF EACH OF  
19 THE PLEADINGS NOTED ABOVE AND THIS DOCUMENT HAVE BEEN  
20 SERVED UPON THE RESPONDENT.  
21 DATED THIS 5<sup>TH</sup> DAY OF JULY, 2021

22 RESPECTFULLY SUBMITTED

23  
24  
25 LUIS A. CASTRO, RECEIVED

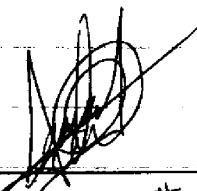
JUL 12 2021

26  
27 1 of 2

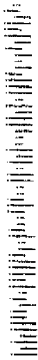
CLERK OF THE COURT

1 AFFIRMATION  
2 PURSUANT TO NRS 239B.030  
3  
4 THE UNDERSIGNED DOES HEREBY AFFIRM  
5 THAT THE PRECEDING DOCUMENT DOES NOT  
6 CONTAIN THE SOCIAL SECURITY NUMBER OF  
7 ANY PERSON

8  
9 DATED THIS 5<sup>TH</sup> DAY OF JULY 2021

10  
11  
12  
13   
14 Luis A. Castro # 1219547  
15 PETITIONER, IN PRO SE

FE: No. Luis A. Castro  
E.S.P. # 1214347  
P.O. Box 1989  
Ely, NV 89301



101

CLERK OF THE COURT  
8TH JUD. DIST. CT.  
200 Lewis Ave., 3rd Fl.  
Las Vegas, NV 89155-1160



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07/14/2021

*Heather S. Smith*  
CLERK OF THE COURT

1 LUIS A. CASTRO  
2 ESP #1214541  
3 P.O. BOX 1989  
4 ELY, NV 89301

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 LUIS ANGEL CASTRO  
8 PETITIONER,  
9 VS  
10 STATE OF NEVADA,  
11 RESPONDENT.

CASE No. A-21-835827-W

COURTROOM: ~~XXX~~ (DEPT 30)

12  
13 JUDICIAL NOTICE

14  
15 COMES NOW, PETITIONER, LUIS A. CASTRO, IN PRO SE, ASK THIS  
16 COURT TO TAKE JUDICIAL NOTICE, PURSUANT TO NRS 47.130 -  
17 MATTERS OF FACT, NRS ~~47~~ 140 - MATTERS OF LAW, AND  
18 NRS 47.170 TIME OF TAKING NOTICE, REQUESTING -  
19 CLARIFICATION IN WHICH COURT THE EX PARTE MOTION  
20 FOR APPOINTMENT OF COUNSEL AND REQUEST FOR AN  
21 EVIDENTIARY HEARING WILL BE HEARD.

22 PETITIONER, IS A TYMO AT LAW, WHO FAILS TO  
23 UNDERSTAND THE REASON FOR THE WRIT OF HABEAS  
24 CORPUS IS BEING HEARD IN THIS COURT, WHICH  
25 ON THE SAME DATE AND TIME AUGUST 26, 2021, 8:00 AM

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RECEIVED  
JUL 12 2021  
CLERK OF THE COURT

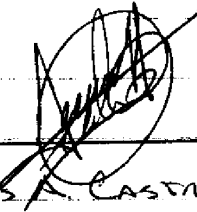
1 THE EX PARTE MOTION FOR APPOINTMENT OF COUNSEL  
2 WILL BE HEARD/ADJUDGE ELSEWHERE - COURTROOM 14A.

3  
4 CONCLUSION

5  
6 THEREFORE, THIS PETITIONER HUMBLY AND  
7 RESPECTFULLY REQUEST CLARIFICATION OF  
8 THE AFOREMENTIONED PLEADINGS, AS TO WHICH  
9 COURT WILL HAVE THE CONTROLLING DECISION.

10  
11 DATED THIS 5<sup>TH</sup> JULY, 2021


12  
13 Respectfully Requested

14  
15   
16 \_\_\_\_\_  
17 LUIS A. CASTRO # 1214547

18 PETITIONER IN PRO SE  
19  
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1 AFFIRMATION PURSUANT TO NRS 239B.030

2 THE UNDERSIGNED HEREBY AFFIRMS THAT THE PRECEDING  
3 JUDICIAL NOTICE, DOES NOT CONTAIN THE SOCIAL  
4 SECURITY NUMBER OF ANY PERSON.  
5 DATED THIS 5<sup>TH</sup> DAY OF JULY, 2021

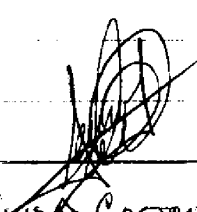
6  
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Luis A. Castro, In Pro Se

9  
10 CERTIFICATE OF SERVICE BY MAIL

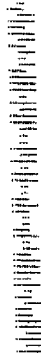
11 I, Luis A. Castro, HEREBY CERTIFY PURSUANT TO NRCP 5(b)  
12 THAT ON THIS 5<sup>TH</sup> DAY OF JULY, 2021, I MAILED A TRUE AND  
13 CORRECT COPY OF THE JUDICIAL NOTICE, ADDRESSED TO;

14  
15 CLARK Co, DIST ATTY  
16 200 LEWIS AVE, 2<sup>ND</sup> FL  
17 LAS VEGAS, NV 89153-2212

OFFICE OF THE ATTY GEN.  
100 NO CARSON ST  
CARSON CITY NV 89701-4717

18  
19  
20  
21   
22 Luis A. Castro, # 1214547  
23 PETITIONER, IN PRO SE

Fe: New Lewis A. Castro  
E.S.P. # 1214547  
P.O. Box 1989  
Eug, NV, 89301



101

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23

1 LUIS A. CASTRO  
2 ESP-#1214547  
3 P.O. Box 1989  
4 Elko, NV 89301

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 LUIS ANGEL CASTRO,

8 Petitioner,

Case No. A-21-835827-W

9 vs

Courtroom 14A

10 STATE OF NEVADA,

11 Respondent,

12  
13 ADDENDUM TO PETITIONER'S EX PARTE MOTION  
14 FOR APPOINTMENT OF COUNSEL AND  
15 REQUEST FOR AN EVIDENTIARY HEARING  
16

17 THE PRO SE PETITIONER, LUIS A. CASTRO, HEREBY REQUEST-  
18 FULLY REQUEST THAT THIS COURT ADDITIONALLY CONSIDER  
19 THE ATTACHED MEMORANDUM OF FACTS AND LAW IN -  
20 SUPPORT OF HIS MOTION FOR THE APPOINTMENT OF  
21 COUNSEL AND PETITIONER'S DECLARATION IN SUPPORT OF  
22 SAID MOTION SCHEDULED TO BE HEARD IN THIS COURT  
23 ON AUGUST 26, 2021, 8:30 AM.

24  
25 PETITIONER BELIEVES THAT THE ADDITIONAL RECEIVED - -

JUL 12 2021

26  
27 1 OF 10

CLERK OF THE COURT

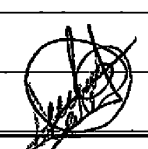


1 WILL HELP THE COURT CONCLUDE THE NEED FOR  
2 APPOINTMENT OF COUNSEL IN THIS CASE. THAT IS,  
3 BESIDES THE COMPLEXITIES OF THIS CASE, WHICH  
4 THE DENIAL OF COUNSEL WOULD AMOUNT TO A -  
5 DENIAL OF DUE PROCESS, [BROWN V. UNITED STATES,  
6 623 F.2d 54, 61 (9th Cir 1980)], PETITIONER'S VERY  
7 LIMITED EDUCATION LEAVES HIM INCAPABLE OF  
8 PRESENTING HIS CLAIMS IN SUCH A WAY THAT THE  
9 COURT CAN AFFORD HIM A FAIR HEARING. SEE:  
10 HAWKINGS V BENNET, 423 F.2d. 948 (8th Cir 1970).

11  
12 THEREFORE, PETITIONER RESPECTFULLY REQUEST  
13 THAT THIS COURT APPOINT COUNSEL IN THE INTEREST  
14 OF JUSTICE AND REASONS STATED HEREIN.

15  
16 DATED THIS 5<sup>th</sup> DAY OF JULY, 2021

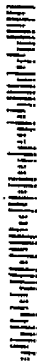
17  
18 RESPECTFULLY SUBMITTED

19  
20  
21   
22 LUIS A. CASTRO, # 1214547  
23 PETITIONER, IN PRO SE  
24  
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28

Fr: New Luis A. Castro  
F.S.P. # 1214547  
P.O. Box 1989  
Elm, NV 89301



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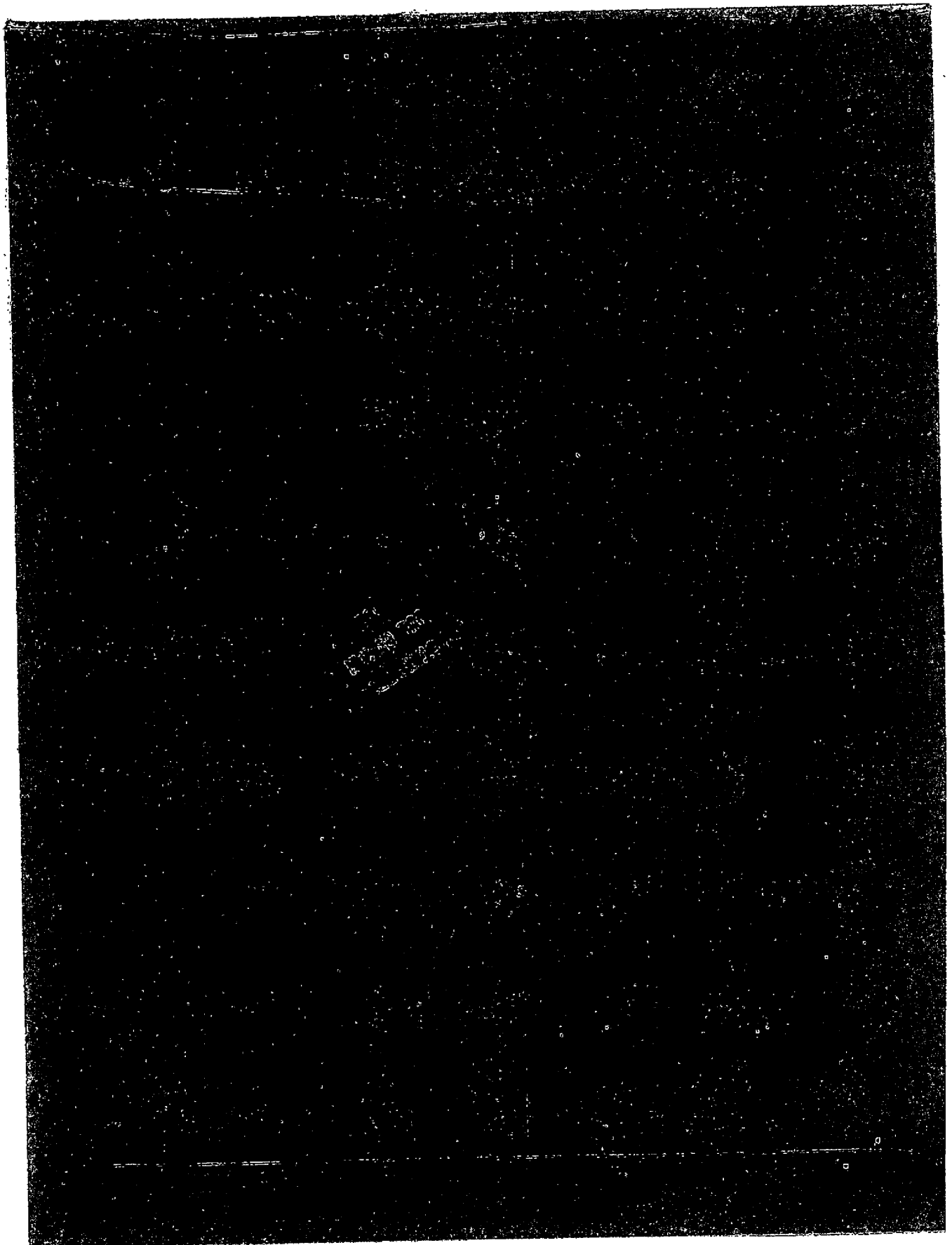
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1 Luis A. Castro  
2 ESP-#1214547  
3 P.O. Box 1989  
4 Elko, NV. 89301

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 Luis Angel Castro,

8 Petitioner,

Case No. A-21-835827-W

9 vs

Courtman. 14A

10 State of Nevada,

11 Respondent,

12  
13 DECLARATION IN SUPPORT OF PETITIONER'S  
14 EX PARTE MOTION FOR APPOINTMENT OF COUNSEL  
15 AND REQUEST FOR AN EVIDENTIARY HEARING  
16

17 Luis Angel Castro states:

18  
19 I, I AM THE PETITIONER IN THE ABOVE ENTITLED CASE,

20 I MAKE THIS DECLARATION IN SUPPORT OF MY MOTION FOR  
21 APPOINTMENT OF COUNSEL

22  
23 2. THE MOTION IN THIS CASE ALLEGES PETITIONER HAS  
24 A LOW INTELLECTUAL FUNCTION. CONFIRMED BY  
25 SHARON JONES-FORRESTER, Phd. Neuropsychologist

1 IN HER REPORT TO THE COURT, DATED March, 14, 2019.

2  
3 3. THIS IS A COMPLEX CASE BECAUSE IT CONTAINS SEVERAL  
4 DIFFERENT CLAIMS AND EACH OF THEM INVOLVES THE  
5 INEFFECTIVE ASSISTANCE OF COUNSEL.

6  
7 4. THIS CASE MAY REQUIRE EXPERT TESTIMONY OF  
8 A PSYCHIATRIST.

9  
10 5. PETITIONER IS LIKELY TO DEMAND A JURY TRIAL.

11  
12 6. THIS CASE REQUIRES AN EVIDENTIARY HEARING,  
13 DUE TO ASSERTIONS MADE BY TRIAL COUNSEL -  
14 MR. GELLER OUTSIDE THE RECORD. THE DISCUSSIONS  
15 BETWEEN PETITIONER'S PARENTS, MR. GELLER,  
16 AND HIMSELF WERE ONLY WITNESSED BY EACH OTHER.  
17 PETITIONER SHOULD BE ENTITLED TO EXPAND THE RECORD  
18 TO INCLUDE MR. WARREN GELLER'S FALSE -  
19 STATEMENTS TO PETITIONER'S PARENTS, WHICH HAD  
20 A DIRECT EFFECT ON THE COERCION CONDUCTED  
21 OF CASTRO'S ACCEPTANCE OF PLEA.

22  
23 7. THE TESTIMONIES MAY BE IN SHARP CONFLICT  
24 SINCE PETITIONER ALLEGES THAT IF NOT FOR TRIAL  
25 COUNSEL'S FALSE ASSERTIONS TO HIS PARENTS

1 HE WOULD NOT HAVE TAKEN THE PLEA, AND HE  
2 WOULD HAVE TAKEN THE CASE TO TRIAL.

3  
4 8. PETITIONER DOES NOT HAVE A HIGH SCHOOL  
5 DIPLOMA, NOR A G.E.D.; AND DOES NOT HAVE  
6 ANY LEGAL EDUCATION OR NOTABLE UNDERSTAND-  
7 ING OF THE LAW.

8  
9 9. PETITIONER IS SERVING THE IMPOSED -  
10 SENTENCE IN ADMINISTRATIVE SEGREGATION.  
11 FOR THIS REASON HE HAS VERY LIMITED  
12 ACCESS TO LEGAL MATERIALS, AND HAS NO WAY  
13 TO ACQUIRE HELP FROM THE PRISONERS WHO  
14 ARE ASSIGNED TO THE OLY STATE PRISON -  
15 LAW LIBRARY.

16  
17 10. FOR THE RECORD: ALL PLEADINGS, AND  
18 MOTION PREPARED TO DATE, HAVE BEEN  
19 COMPLETED ON BEHALF OF MR. CASTRO,  
20 BY A 'TRANSIENT PRISONER', WHO IS  
21 SUBJECT TO TRANSFER AT ANY MOMENT.  
22 THEREFORE, THIS PETITIONER REQUIRES  
23 FAIR AND EFFECTIVE ASSISTANCE OR COUNSEL  
24 TO PRESENT THE ENTIRETY OF HIS CASE TO  
25 THE COURT

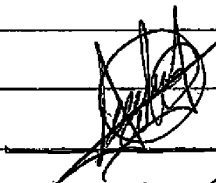
1 10. As set forth in the Memorandum submitted  
2 with the Motion, these facts, along with the  
3 legal merits of Petitioner's claims, support  
4 the Appointment of Counsel to represent him.  
5

6 Therefore, Petitioner's Ex Parte Motion  
7 for Appointment of Counsel and Evidentiary  
8 Hearing should be granted.  
9

10 DATED this 5th day of July, 2021  
11

12 Pursuant to NRS 208.165, I declare  
13 under penalty of perjury that the  
14 aforementioned is true and correct  
15

16  
17 Respectfully Submitted  
18

19  
20 

21 Luis A. Castro, #1214547

22 Petitioner, IN Pro Se  
23  
24  
25  
26  
27  
28

6 6010



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 #14408  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 LUIS ANGEL CASTRO,  
10 #1918366

11 Plaintiff,

12 -vs-

13 THE STATE OF NEVADA

14 Defendant.

CASE NO: A-21-835827-W

DEPT NO: XXX

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**  
16 **CORPUS (POST CONVICTION - NRS 34.740) AND TO WITHDRAW GUILTY**  
17 **PLEA (PURSUANT TO NRS 176.165), AND SUPPLEMENTAL BRIEF IN SUPPORT**  
18 **OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**

19 DATE OF HEARING: AUGUST 26, 2021

20 TIME OF HEARING: 8:30 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the  
23 attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus  
24 (Post Conviction - NRS 34.740) and to Withdraw Guilty Plea (Pursuant to NRS 176.165), and  
25 Supplemental Brief in Support of Petitioner's Petition for Writ of Habeas Corpus.

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

//

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 10, 2016, Luis Angel Castro (hereinafter "Petitioner") was charged by way  
4 of Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B  
5 Felony); Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ;  
6 Count 3 - Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon  
7 Resulting in Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping  
8 with Use of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly  
9 Weapon (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B  
10 Felony) ; Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-  
11 defendants.

12 On April 12, 2019, Petitioner was bound up to the District Court on all charges  
13 following a preliminary hearing.

14 After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled  
15 guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping  
16 Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea  
17 Agreement ("GPA"): "This offer is condition upon all four (4) Defendants accepting their  
18 respective negotiations and being sentenced. All Parties agree the State will have the right to  
19 argue for Life without the possibility of Parole, and the Defense will argue for Life with the  
20 possibility of Parole after fifteen (15) years. All Parties agree that no one will seek a term of  
21 years."

22 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24, 2019,  
23 Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro ("Petitioner's  
24 Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life without the  
25 possibility of Parole in the Nevada Department of Corrections.

26 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's Judgment of  
27 Conviction. Remittitur issued on November 17, 2020.

28 //

1 On June 7, 2021, Petitioner filed a pro per Petition for Writ of Habeas Corpus (Post-  
2 Conviction) ("Petition"), a Motion for Appointment of Counsel, and a Request for an  
3 Evidentiary Hearing on the Petition. On July 6, 2021, Petitioner filed a Supplement to Petition  
4 for Writ of Habeas Corpus ("Supplemental Petition").<sup>1</sup> On July 14, 2021, Petitioner filed  
5 Memorandum of Facts and Law In Support of Petitioner's Motion for Appointment of Counsel  
6 ("Memo In Support") and various other pleadings.

### 7 STATEMENT OF FACTS

8 At sentencing, the district court relied on the following facts contained on pages 6-7 of  
9 Petitioner's Presentence Investigation Report ("PSI"):

10 On March 7, 2016, officers received a call in reference to a residential  
11 fire and of a male with a slit throat exiting the same residence. The caller  
12 reported that the victim was possibly tied up.

13 Paramedics arrived on the scene and advised there were several  
14 citizens around the victim attempting to provide first aid. The paramedics  
15 observed that the victim had both legs bound together by a cord at his  
16 ankles and knees. The paramedics removed the bindings. The victim had  
17 several injuries including: multiple stab wounds to his chest, back and right  
18 arm, his right pinky finger was partially amputated, his fingernails were  
19 pulled off from his right index and middle fingers, there was a laceration to  
20 his right thumb and a deep laceration to his throat/neck. The paramedics  
21 reported that it appeared that the victim was tortured. The victim was  
22 treated by paramedics and transported to a local hospital. The victim was  
23 unable to be interviewed the night of the incident as he was undergoing  
24 numerous surgeries and was heavily sedated.

25 Officers and detectives arrived on the scene and set a perimeter around  
26 the crime scene while firefighters battled the residential fire. Detectives  
27 interviewed each witness individually on scene. All witnesses confirmed  
28 that they noticed the residence on fire and when they pulled over to assist,  
they observed the victim with his legs bound, with several injuries. On  
March 8, 2016, detectives canvassed the area and spoke to surrounding  
neighbors. The neighbors advised seeing a pickup truck with two males and  
two females at the victim's residence.

---

<sup>1</sup> Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a petitioner from filing any additional pleadings or supplements, except for those specifically provided for in subsections (2)-(4), unless ordered by the Court. Because Petitioner's Supplemental Petition and Memo in Support were filed after he filed his Petition and filed without leave of this Court, the pleadings should be stricken and/or any new claims or allegations contained therein should not be summarily denied.

1 Detectives arrived to the local hospital to attempt to speak to the  
2 victim. He was unable to speak due to his injuries; however, he was  
3 responsive and wished to attempt to provide information to the detectives.  
4 He was able to provide information regarding his identity and his  
5 girlfriend's identity. When asked how many suspects committed the crime  
6 against him, he raised four fingers. When asked who committed the crime  
7 against him, the victim mouthed the name Angel Castro, who was  
8 identified as a defendant Luis Angel Castro.

9 Detectives were able to make contact with the victim's girlfriend. She  
10 stated that on March 6, 2016, her vehicle had broken down while the victim  
11 was driving it and he asked his friend Angel Castro for a tow back to his  
12 girlfriend's home. The victim's girlfriend stated that the victim told her he  
13 was going to pay Mr. Castro \$50.00 in United States currency for the tow.  
14 She stated on March 7, 2016 the victim was still at her residence with a  
15 mechanic when Mr. Castro arrived in a pickup truck with two other males.  
16 Mr. Castro demanded the tow money from the victim and the other male  
17 made mention that he had a firearm inside the truck. The victim then agreed  
18 to leave with the three males in the truck. The victim's girlfriend reported  
19 that she had not heard from the victim for several hours so she attempted  
20 to contact several friends of his to see if anyone had heard from him. One  
21 of his friends told her that the victim had contacted him asking for \$300.00  
22 in United States currency. He stated that he heard a female in the  
23 background apparently coaching him on what to say.

24 Detectives returned to the hospital and continued to interview the  
25 victim. The victim reported he was taken in a pickup truck to an unknown  
26 house. Once at the home, Mr. Castro bound the victim's hands/wrists and  
27 ankles/knees. He stated that he remembers making three phone calls asking  
28 for \$300.00 in United States currency. The victim reported that one of the  
males cut his finger and hand with a machete and stabbed him multiple  
times about his body with a knife. He reported that all four suspects cut his  
throat/neck. The victim stated that he was tortured before, during and after  
he made the phone calls. He reported after the four suspects took turn  
cutting his throat/neck, the victim faked as if he died. After believing the  
victim was dead, the unknown male started the fire and all the suspects left  
the house. Once all the suspects left, the victim stated he was able to get  
out of the home, where he was assisted by people going by. The victim  
stated that the only thing the suspects took from him was a pack of  
cigarettes.

During the course of the investigation, detectives were able to identify  
the co-defendant Edward Honabach as the driver of the pickup truck. Both  
the victim and his girlfriend were able to identify Angel Castro and Edward  
Honabach from a lineup. Detectives went to Mr. Honabach's residence and  
took Mr. Honabach and Mr. Castro into custody. Also, present at the  
residence were two females. One of the females was identified as the co-  
defendant Fabiola Jimenez. A photo lineup with Ms. Jimenez in it was

1 presented to the victim who confirmed that Ms. Jimenez was present and  
2 involved in his torture. A search of Mr. Honabach's residence was  
3 completed where detectives found numerous knives inside the home and  
4 the vehicle. They also found a machete and twine inside the vehicle.

5 On March 10, 2016, detectives interviewed Ms. Jimenez. She  
6 confessed to being present during the brutal attempt murder and arson  
7 where the incident occurred. Her version of the incident was similar to the  
8 victim's account. She stated that on March 7, 2016, Mr. Honabach, Mr.  
9 Castro and an unknown male went to pick up the victim. Ms. Jimenez  
10 reported that the victim owed \$200.00 in United States currency for a drug  
11 debt. A short time later, Mr. Honabach, Mr. Castro and the unknown male  
12 arrived with the victim to the residence the incident occurred at. Ms.  
13 Jimenez was already present at the residence as Mr. Castro and Mr.  
14 Honabach had dropped her off prior to picking up the victim. Once inside  
15 the residence, Mr. Honabach and Mr. Castro confronted the victim about  
16 the money he owed them. The victim told them he was working on getting  
17 the money and asked Mr. Honabach and Mr. Castro for another week to  
18 pay off the debt. Mr. Honabach and Mr. Castro became physical with the  
19 victim and forced him into a chair and bound his hands and legs with rope  
20 found in the home. Ms. Jimenez reported that Mr. Honabach, Mr. Castro  
21 and the unknown male started punching the victim. Mr. Honabach then  
22 brandished a pocket knife and stabbed the victim three times in his right  
23 shoulder area. The victim pleaded for them to stop. Mr. Honabach asked  
24 Mr. Castro what he wanted to do and Mr. Castro stated "we have gone this  
25 far, let's finish it." At that point, Mr. Honabach pulled the victim's hair and  
26 Mr. Castro took the knife and cut the victim's throat. Ms. Jimenez advised  
27 that they all believed the victim to be dead so began to gather paper  
28 materials and household chemicals which they poured on the victim. Mr.  
Castro told Ms. Jimenez to leave the residence at that point and she did.  
She stated that before she left she saw Mr. Honabach and Mr. Castro with  
lighters in their hands. Once outside, Ms. Jimenez saw the flames coming  
from the house and that is when Mr. Honabach and Mr. Castro left the  
residence. They then got into the vehicle and left. Ms. Jimenez reported she  
did not know where the unknown male had gone. She stated that she did  
believe the victim was dead and confirmed that she did not call the police  
to stop the brutal attack. Ms. Jimenez denied participating in the actual  
stabbing or setting the house on fire. Initially, she denied being with Mr.  
Castro and Mr. Honabach; however, eventually did admit being present at  
the house during the attack and that she does not like the victim.

On March 10, 2016, Angel Castro was arrested and transported to  
Clark County Detention Center where he was booked accordingly.

//

//

## ARGUMENT

A Writ of Habeas Corpus is the mechanism for a person who believes he or she is unlawfully being “committed, detained, confined or restrained of his or her liberty” to “inquire into the cause of imprisonment or restraint.” NRS 34.360. Claims other than challenges to the validity of a guilty plea and ineffective assistance of trial and appellate counsel must be raised on direct appeal “or they will be *considered waived in subsequent proceedings*.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Where a petitioner does not show good cause for failure to raise claims of error upon direct appeal, the district court is not obliged to consider their merits in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975). Further, substantive claims—even those disguised as ineffective assistance of counsel claims—are beyond the scope of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). A proper petition for post-conviction relief must set forth specific factual

//

1 allegations supporting the claims made and cannot rely on conclusory claims for relief. N.R.S.  
2 34.735(6). Failure to do so will result in a dismissal of the petition. Id.

3 **I. PETITIONER IS NOT ENTITLED TO WITHDRAW HIS GUILTY PLEA**

4 Petitioner argues that his guilty plea was involuntary because he was mentally  
5 incompetent during the plea canvass and “did not have the mental capacity or fully understand  
6 his rights and did not know what he was facing when he pled guilty.” Petition at 4-5. In support  
7 of this claim, Petitioner explains that he was on suicide watch in the days before his entry of  
8 plea and that his suicidality renders him incapable of knowingly pleading guilty. Id. at 3.  
9 Petitioner claims that his responses during the plea canvass do not establish that he  
10 competently entered his plea because he did not understand the consequences of his plea. Id.  
11 at 5-6. Petitioner believes that an evidentiary hearing will establish that his mental condition  
12 at the time he entered his plea rendered his plea invalid. Id. at 6. Petitioner’s claim is belied by  
13 the record.

14 To determine whether a guilty plea was voluntarily entered, the Court will review the  
15 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
16 P.2d at 367. A proper plea canvass should reflect that:

17 [T]he defendant knowingly waived his privilege against self-incrimination,  
18 the right to trial by jury, and the right to confront his accusers; (2) the plea  
19 was voluntary, was not coerced, and was not the result of a promise of  
20 leniency; (3) the defendant understood the consequences of his plea and the  
range of punishments; and (4) the defendant understood the nature of the  
charge, i.e., the elements of the crime.

21 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.  
22 774, 476 P.2d 950 (1970)).

23 The presence and advice of counsel is a significant factor in determining the  
24 voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975). A  
25 plea of guilty is presumptively valid, particularly where it is entered into on the advice of  
26 counsel, and the burden is on a defendant to show that the plea was not voluntarily entered.  
27 Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535  
28 P.2d 1295, 1295 (1975)); Jeziarski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991).

1           This standard requires the court accepting the plea to personally address the defendant  
2 at the time he enters his plea in order to determine whether he understands the nature of the  
3 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not  
4 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.  
5 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a  
6 formal setting, such as that occurring between an official sitting in judgment of an accused at  
7 plea. Id. During a plea canvass of the contents of a GPA, the trial court must personally  
8 address a defendant to determine whether he understands the nature of the charges to which  
9 he is pleading. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). While no  
10 uniform language is required, Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404  
11 (1973), requires the record reflect the following: 1) the defendant knowingly waived his  
12 privilege against self-incrimination, the right to trial by jury, and the right to confront his  
13 accusers; 2) the plea was voluntary, was not coerced, and was not the result of a promise of  
14 leniency; 3) the defendant understood the consequences of his plea and the range of  
15 punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of the  
16 crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970). Importantly, “the record  
17 must affirmatively disclose that a defendant is entering his plea understandingly and  
18 voluntarily.” Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970).

19           Even when courts endeavor to give defendants who hastily entered their plea the  
20 opportunity to withdraw their plea, defendants cannot claim that the pressure of time or a fast  
21 approaching trial coerced them into accepting a plea. Stevenson v. State, 131 Nev. 598, 605,  
22 354 P.3d 1277, 1281 (2015) (citing Miles v. Dorsey, 61 F.3d 1459, 1470 (10<sup>th</sup> Cir. 1995)).  
23 “Undue coercion occurs when a ‘defendant is induced by promises or threats which deprive  
24 the plea of the nature of a voluntary act.’” Id. Time constraints and pressure exist in every  
25 criminal case, are hallmarks of pretrial discussions and do not individually or in the aggregate  
26 make a plea involuntary. Id. at 605, 354 P.3d at 1281 (quoting Miles, 61 F.3d at 1470). Instead,  
27 the key inquiry for determining the validity of a plea is “whether the plea itself was a voluntary  
28

1 and intelligent choice among the alternative courses of action open to the defendant.” Id. at  
2 604-05, 354 P.3d at 1281, (*quoting Doe v. Woodford*, 508 F. 3d 563, 570 (9<sup>th</sup> Cir. 2007)).

3 Here, as an initial matter, Petitioner attempts to draw similarities between this case and  
4 Wilkens v. Bowerson, 145 P.3d 1006 (8th Cir. 1998).<sup>2</sup> Petition at 6. Eighth Circuit case law is  
5 irrelevant and inapplicable here, particularly in light of the fact that the totality of the  
6 circumstances establish that Petitioner’s plea was voluntarily, knowingly, and intelligently  
7 entered.

8 Regardless, the totality of the circumstances establish that Petitioner’s plea was  
9 knowingly and voluntarily entered. First, Petitioner signed his GPA and affirmed that he was  
10 “signing this agreement voluntarily, after consultation with [his] attorney, and [was] not acting  
11 under duress or coercion[.]” GPA, at 5. Petitioner further affirmed that he was not “under the  
12 influence of any intoxicating liquor, a controlled substance or other drug which would in any  
13 manner impair [his] ability to comprehend or understand [the] agreement or the proceedings  
14 surrounding [the] entry of [the] plea.” GPA, at 5.

15 Next, despite Petitioner’s claim to the contrary, his answers during his plea colloquy  
16 were not perfunctory affirmations. Petitioner’s answers during the plea canvass further belies  
17 any claim that Petitioner was not competent to plead guilty or did not understand what he was  
18 pleading guilty to:

19 THE COURT: Have you seen a copy of the amended information I this case  
20 charging you with first degree kidnapping resulting in substantial bodily harm which  
21 is a category A. Have you seen that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did you have a chance to read that and discuss it with your attorney?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: With regard to that charge, first degree kidnapping resulting in  
26 substantial bodily harm, how do you plead, guilty or not guilty?

27 THE DEFENDANT: Guilty.

28 THE COURT: Before I can accept your plea of guilty, I have to be convinced that  
your plea is freely and voluntarily made. Are you making your plea freely and  
voluntarily?

THE DEFENDANT: Yes, I am, sir.

<sup>2</sup> It appears that Petitioner has miscited this case because, despite the State’s best efforts, it has been unable to locate this case.



1 THE COURT: Has anybody forced you or coerced you to enter that plea?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you making that plea because you're, in fact, guilty of that charge?

4 THE DEFENDANT: Yes, sir

5 [...]

6 THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated February 4. Did you read and sign that today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you understand it before you signed it?

9 THE DEFENDANT: Yes, sir.

10 [...]

11 THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter this plea?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you currently under the influence of any alcohol, medication, narcotics or any substance that might affect your ability to understand these documents or the process that we're going through?

14 THE DEFENDANT: No, sir.

15 Recorder's Transcript of Hearing – Entry of Plea (“RT: EOP”), at 45-6 (February 4, 2019)  
(emphasis added).

16 Additionally, Petitioner's allegation that his plea was invalid because he was on suicide  
17 watch in the days preceding his guilty plea is nothing but a bare and naked claim that his  
18 unsupported by the record. According to the sentencing memorandum filed by counsel prior  
19 to sentencing, Petitioner received three neuropsychological evaluations on February 21, March  
20 5, and March 7, 2019, after he entered his plea. Petitioner's Sentencing Memo at 11. However,  
21 the only suicide attempt mentioned in those evaluations is an incident from years prior to  
22 Petitioner's incarceration. Id. at 15. Therefore, the claim that Petitioner was on suicide watch  
23 is unfounded and belied by the report *provided by the defense* in preparation of sentencing.  
24 Accordingly, Petitioner's claim that he was not competent to plead guilty fails.

25 **II. PETITIONER'S GUILTY PLEA WAS ENTERED INTO WITH EFFECTIVE**  
26 **ASSISTANCE OF COUNSEL**

27 Petitioner argues that trial counsel was ineffective during the plea process because (1)  
28 counsel did not inform him of the possible immigration consequences; (2) counsel should have

1 revealed that Petitioner was not the “shotcaller” and was not at the convenience store when  
2 the charged crimes were committed; (3) counsel intimidated Petitioner and lied to Petitioner’s  
3 mother in order to get Petitioner to plead guilty; (4) that counsel promised him a sentence of  
4 fifteen (15) years to life; and (4) because he was ultimately sentenced to a term of life without  
5 the possibility of parole, which he believed rendered his plea invalid because “he did not  
6 benefit from the plea agreement.” Petition at 9-10. Additionally, Petitioner acknowledges that  
7 his sentence is legal but believes that his sentence is disproportionate and shocks the  
8 conscience because he did not have any prior criminal history, there was no evidence of his  
9 DNA at the crime scene, and Petitioner suffers from various mental conditions. Id. at 10-11.  
10 Petitioner’s claim fails.

11 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
12 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
13 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
14 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
15 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
16 (1993).

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

28 //

1 The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975). Counsel cannot be ineffective for failing to make futile objections  
7 or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

8 Based on the above law, the role of a court in considering allegations of ineffective  
9 assistance of counsel is "not to pass upon the merits of the action not taken but to determine  
10 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
11 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
12 (1978). This analysis does not mean that the court should "second guess reasoned choices  
13 between trial tactics nor does it mean that defense counsel, to protect himself against  
14 allegations of inadequacy, must make every conceivable motion no matter how remote the  
15 possibilities are of success." Id. To be effective, the constitution "does not require that counsel  
16 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
17 cannot create one and may disserve the interests of his client by attempting a useless charade."  
18 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

19 "There are countless ways to provide effective assistance in any given case. Even the  
20 best criminal defense attorneys would not defend a particular client in the same way."  
21 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after  
22 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,  
23 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
24 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's  
25 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
26 conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

27 To establish a claim of ineffective assistance of counsel for advice regarding a guilty  
28 plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d

1 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant must  
2 show that there is a “reasonable probability that, but for counsel’s errors, he would not have  
3 pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59,  
4 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923  
5 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).  
6 Ultimately, while it is counsel’s duty to candidly advise a defendant regarding a plea offer, the  
7 decision of whether or not to accept a plea offer is the defendant’s. Rhyne v. State, 118 Nev.  
8 1, 8, 38 P.3d 163, 163 (2002). Further, substantive claims—even those disguised as ineffective  
9 assistance of counsel claims—are beyond the scope of habeas and waived. NRS 34.724(2)(a);  
10 Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

11 Here, Petitioner’s signature on his GPA and answers during his plea canvass belie any  
12 claim of ineffective assistance of counsel. Taking each challenge in turn, first, Petitioner’s  
13 claim that counsel did not discuss the consequences of a plea on Petitioner’s immigration status  
14 it is completely unfounded and belied by the record. By signing the GPA, where Petitioner  
15 affirmed that he did understand the immigration consequences. GPA, at 3-4. Moreover, during  
16 the plea canvass, Petitioner and his attorney discussed the immigration consequences:

17 THE COURT: Based on all the facts and circumstances, are you satisfied  
18 with the services of your attorney?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you a U.S. citizen?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you understand that there are some charges that have  
23 adverse immigration consequences and may result in deportation?

24 THE DEFENDANT: That is correct.

25 THE COURT: Have you had the chance to discuss any immigration issues  
26 with your attorney, and he’s answered any questions you have?

27 THE DEFENDANT: To this point, yes and no, but I’ll just say yes.

28 **MR. GELLER: Judge, I can represent to the Court, I’ve been in touch  
with his immigration attorney, and we’ve been in communication. I did  
let my client know today, as well as previously, that there’s substantial  
probability he’ll be deported after he serves a period of incarceration.**

THE COURT: Do you understand that?

THE DEFENDANT: Yes, sir.

1 THE COURT: You still agree with the terms as set forth in the guilty plea  
2 agreement?

3 THE DEFENDANT: Yes.

4 RT: EOP, at 7-8 (emphasis added).

5 Further, this claim is belied by the record at sentencing. In the Sentencing Memo,  
6 counsel stated, "the parole board may deem it appropriate to release him to Immigration and  
7 Customs Enforcement for removal from the United States." Petitioner's Sentencing Memo at  
8 7-8. During sentencing, counsel also referenced the possibility of Petitioner's deportation to  
9 Mexico multiple times and even used that fact to argue in favor of possible parole. Recorder's  
10 Transcript of Proceedings Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019).  
11 Specifically, counsel stated, "There is an ICE hold. If...the Court...granted the defense's  
12 request for parole eligibility at 15 years...the parole board would have the option to say, you  
13 know what federal government, now you can take Mr. Castro and deport him to Mexico...if  
14 the Court sentences him to life without, no matter what the circumstances are, we're always  
15 going to be paying for his incarceration." Id. at 7-8. Additionally, Petitioner addressed the  
16 court and made no mention that he was never informed of or advised about potential  
17 immigration consequences. Id. at 10-11. Therefore, Petitioner's claim that he was not aware  
18 of the consequences of immigration fails as it is belied by the record.

19 Second, Petitioner's claim that counsel should have challenged the evidence against  
20 him is nothing but a substantive claim disguised as a claim of ineffective assistance of counsel.  
21 Regardless, Petitioner's guilty plea waived counsel's duty to challenge the evidence against  
22 him. Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.  
23 It is therefore inappropriately raised in the instant Petition and suitable only for summary  
24 denial.

25 Additionally, when Petitioner signed the GPA, he acknowledged that he understood  
26 that he was waiving his right to a jury trial:

27 By entering my plea of guilty, I understand that I am waiving and forever  
28 giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.

GPA at 4.

Moreover, during the plea canvass, Petitioner confirmed that he was waiving his right to challenge the evidence at trial:

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf. You understand that?

THE DEFENDANT: I understand, sir.

RT: EOP, at 5-6.

Further, Petitioner has failed to articulate what other investigations or challenges to the evidence counsel should have engaged in prior to Petitioner's guilty plea that would have resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This failure is fatal. Hill, 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot be deemed ineffective.

Third, Petitioner's claim that counsel intimidated and lied in order to induce Petitioner into pleading guilty is a bare and naked allegation suitable only for summary denial. In signing the GPA, Petitioner confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was] satisfied by the services provided by [his] attorney."

Specifically, Petitioner further confirmed that he was satisfied with counsel during his plea canvass and affirmed that he had not been threatened into pleading guilty:

THE COURT: Did you have a chance to read [the amended information] and discuss it with your attorney?

THE DEFENDANT: Yes, I have.

1 [...]
   
2 THE COURT: Before I can accept your plea of guilty, I have to be convinced
   
3 that your plea is freely and voluntarily made. Are you making your plea freely
   
4 and voluntarily?
   
5 THE DEFENDANT: Yes, I am, sir.
   
6 THE COURT: Has anybody forced you or coerced you to enter that plea?
   
7 THE DEFENDANT: No, sir.
   
8 THE COURT: Are you making that plea because you're, in fact, guilty of that charge?
   
9 THE DEFENDANT: Yes, sir.
   
10 THE COURT: Has anybody made any promises or guarantees to you other than
   
11 what's been stated in open court and what's contained in the guilty plea agreement?
   
12 THE DEFENDANT: No, sir.
   
13 [...]
   
14 THE COURT: You had a chance to discuss [the guilty plea agreement] with your
   
15 attorney, and he answered any questions you might have about it?
   
16 THE DEFENDANT: Yes, I have.
   
17 [...]
   
18 THE COURT: Do you have any questions that you want to ask of myself or the
   
19 State or your counsel before we proceed?
   
20 THE DEFENDANT: No, sir.
   
21 ...
   
22 THE COURT: Based on all the facts and circumstances, are you satisfied with
   
23 the services of your attorney?
   
24 THE DEFENDANT: Yes, sir.

25 RT: EOP, at 4-7.

26 Accordingly, any claim of threats or dissatisfaction must fail.

27 Fourth, Petitioner's claim that counsel promised him a sentence of fifteen (15) years to
   
28 life, or any other sentence, is a bare and naked claim that is entirely belied by the record.
   
Petitioner's signed GPA first states that pursuant to the negotiations, while counsel could argue
   
for a sentence of fifteen (15) years to life, Petitioner understood he was not guaranteed that
   
sentence:

I have not been promised or guaranteed any particular sentence by
   
anyone. I know that my sentence is to be determined by the Court within
   
the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both
   
recommend any specific punishment to the Court, the Court is not obligated
   
to accept the recommendation.

29 GPA at 3.

1           Petitioner's answers during the plea canvass further confirms that Petitioner understood  
2 the terms of the negotiations and belie any claim that he believed he would receive a particular  
3 sentence:

4           THE COURT: Do you understand that in the guilty plea agreement it says  
5 that the possibility of sentence is 15 to 40 years or for minimum of 15 years  
6 and a maximum of life or life without parole? Do you understand that those  
are the options?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Do you understand that sentencing is strictly up to the Court,  
and nobody can promise you probation, leniency, or any kind of special  
9 treatment; correct?

10          THE DEFENDANT: That's correct.

11          RT: EOP, at 6.

12          While counsel indeed argued during sentencing that Petitioner should receive a  
13 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did not  
14 honor that request does not render counsel deficient. Accordingly, any claim that he was  
promised a sentence outside of the negotiations contained in the GPA are belied by the record.

15          Fifth. Petitioner's claim that his sentence of life without the possibility of parole  
16 suggests that counsel was ineffective during the plea negotiations fails. In preparation for  
17 sentencing, counsel filed a sixty-eight (68) page sentencing memo, which included a detailed  
18 history of Petitioner's upbringing, a neuropsychological evaluation that was completed at  
19 Attorney Geller's request, and multiple letters of support for Petitioner. In this sentencing  
20 memo, Attorney Geller made a passionate argument for the possibility of parole based on all  
21 of the applicable mitigating factors. Petitioner's Sentencing Memo at 6-8. Counsel then made  
22 a similarly passionate argument during the sentencing hearing highlighting (1) Petitioner's  
23 lack of criminal history; (2) childhood trauma that led to self-medicating with drugs; (3) the  
24 support Petitioner had from his family; (4) Parole and Probation's recommended sentence of  
25 fifteen (15) years to life; (5) Petitioner's consistent claim that he was not one of the people  
26 who handled the weapon or touched the victim; (6) DNA results showing that Petitioner's  
27 DNA was not on the weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance  
28 camera footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.



1 That the Court was not moved by counsel's argument does not render counsel deficient.  
2 Indeed, the record is clear that the district court acknowledged that while a defendant's lack of  
3 criminal history and obvious substance abuse problems tend to incline the court to be merciful  
4 at sentence, neither factor negated the "horrific crimes" committed:

5 I want to be merciful, but at the same time, I know that justice has to  
6 be done. And we have a victim who, but for the fact that he lived against  
7 what you all thought -- my understanding is not only was he tortured and  
8 mutilated in this room for a period of time, for a period of hours, but that  
9 everybody thought he was dead, tried to burn the house down around him.  
And if you had been successful in this, this would have been a capital  
murder case and you all would be looking at potentially a capital sentence.

10 I have a hard time with the pictures that I've seen and the horrible  
11 injuries that were inflicted upon this poor victim. I understand that he is not  
12 the pillar of our community either, but that doesn't justify the things that  
were done to him over \$50. And that almost makes it worse because that  
was the basis for this, is him not being able to come up with \$50.

13 [...]

14 I understand that that is a difficult sentence for you to have to deal  
15 with. It's a difficult sentence for me to have to give, but I don't see any  
16 redeeming qualities. I would like to be merciful, but I don't think that this  
is a crime that -- I don't think the community wants you back out on the  
streets.

17 Id. at 23-24.

18 Notably, Petitioner was sentenced with his three (3) co-defendants, all of whom entered  
19 into the same plea negotiations, and all of whom received the same sentence of life without  
20 the possibility of parole. Of the other co-defendants, only co-defendant Edward Honabach  
21 filed a Post-Conviction Writ of Habeas Corpus ("Honabach's Petition"). See Horabach v.  
22 William Gittere, A-20-812948-W, Petition Post-Conviction Writ of Habeas Corpus filed  
23 March 27, 2020). In that Honabach's Petition, Honabach made a similar claim to those  
24 contained in this instant Petition, in that he claimed his plea was involuntarily entered and his  
25 counsel was ineffective because he was not advised that he could receive life without the  
26 possibility of parole. Id. The Court summarily denied Honabach's Petition, finding that the  
27 Guilty Plea Agreement and the record of plea canvass proceedings demonstrate that  
28 Honabach's "guilty plea was made freely and voluntarily, and that he understood the nature of

1 the offense and the consequences of his plea.” Horabach v. William Gittere, A-20-812948-W,  
2 Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23, 2020). Because Petitioner  
3 raises factually similar claims, signed the same Guilty Plea Agreement, and was canvassed  
4 during the same proceeding as Honabach, the Court’s reasoning and denial of Honabach’s  
5 petition suggests that Petitioner’s instant petition should be summarily denied.

6 **A. Petitioner’s sentence does not constitute cruel and unusual punishment.**

7 Petitioner’s claim that his sentence amounts to cruel and unusual punishment fails.  
8 Petitioner bases this claim on the fact that he did not have prior convictions, that he briefly left  
9 the scene during the commission of the crime, that his DNA was not found on the weapon, and  
10 his history of mental illness. Petition, at 9-10. Petitioner does not contest the legality of the  
11 imposed sentence, but rather its excessiveness. Id. at 9

12 As an initial matter, this is not a claim of ineffective assistance of counsel, nor is it a  
13 challenge to the validity of Petitioner’s guilty plea. Accordingly, it should have been raised on  
14 direct appeal, is beyond the scope of habeas proceedings and therefore waived. Franklin, 110  
15 Nev. at 752, 877 P.2d at 1059. Indeed, this claim was raised and rejected by the Nevada Court  
16 of Appeals:

17 Third, Castro claims his sentence constitutes cruel and unusual punishment  
18 for the following reasons. He did not have a history of violent offenses and  
19 was under the influence of drugs when he committed the crime. He was not  
20 aware that the crime would become so violent and left when it became  
21 violent. His DNA was not found on the weapon. He did not call the police  
22 because he was afraid that his codefendants would harm his family. He has  
23 PTSD symptoms; bipolar symptoms; and suffers from depression, anxiety,  
24 and drug addiction. And he once attempted suicide.

25 [...]

26 Here, Castro’s life-without-the-possibility-of-parole sentence falls within  
27 the parameters of the relevant statute. *See* NRS 200.320(1)(a). He does not  
28 allege that the statute is unconstitutional. And we conclude the sentence  
imposed is not grossly disproportionate to his crime and does not constitute  
cruel and unusual punishment.

Order of Affirmance, State v. Castro, Docket No: 78643-COA, at 3-4 (filed August 12, 2020).

Accordingly, this claim is barred by the doctrine of law of the case. “The law of a first  
appeal is law of the case on all subsequent appeals in which the facts are substantially the

1 same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85  
2 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the case cannot be avoided  
3 by a more detailed and precisely focused argument subsequently made after reflection upon  
4 the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of the case doctrine,  
5 issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini  
6 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396,  
7 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada  
8 Supreme Court. NEV. CONST. Art. VI § 6. See Mason v. State, 206 S.W.3d 869, 875 (Ark.  
9 2005) (recognizing the doctrine’s applicability in the criminal context); see also York v. State,  
10 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file  
11 petitions with the same arguments, Petitioner’s claim is barred by the doctrine of the law of  
12 the case. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

13 To the extent that the Court considers Petitioner’s claim, it still fails. Petitioner  
14 acknowledges that his sentence is legal but believes that his sentence is disproportionate and  
15 shocks the conscience because he did not have any prior criminal history, there was no  
16 evidence of his DNA at the crime scene, and Petitioner suffers from various mental conditions.  
17 Id. at 10-11. Petitioner’s claim fails. The Eighth Amendment to the United States Constitution  
18 as well as Article 1, Section 6 of the Nevada Constitution prohibit the imposition of cruel and  
19 unusual punishment. The Nevada Supreme Court has stated that “[a] sentence within the  
20 statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is  
21 unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock  
22 the conscience.’” Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v.  
23 State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 95  
24 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)). As long as the sentence is within the limits set  
25 by the legislature, a sentence will normally not be considered cruel and unusual. Glegola v.  
26 State, 110 Nev. 344, 871 P.2d 950 (1994).

27 Additionally, the Nevada Supreme Court has granted district courts “wide discretion”  
28 in sentencing decisions, which will not be disturbed “[s]o long as the record does not

1 demonstrate prejudice resulting from consideration of information or accusations founded on  
2 facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92  
3 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A district  
4 court’s sentencing determination will not be disturbed on appeal absent an abuse of discretion.  
5 Randell v. State, 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610  
6 P.2d 722 (1980)).

7 In addressing cruel and unusual punishment, the United States Supreme Court in Solem  
8 v. Helm, laid out three (3) factors to consider when determining if a defendant’s sentence is  
9 grossly disproportionate to the crime: 1) the gravity of the offense and harshness of the penalty;  
10 2) sentences of other defendants for the same crime in the same jurisdiction; and 3) sentences  
11 for the same crime in other jurisdictions. 463 U.S. 277, 290-91, 103 S.Ct. 3001, 3010 (1983).

12 The Nevada Supreme Court has never invalidated a sentence based on Solem. In Houk  
13 v. State, the defendant received a total of five (5) consecutive ten (10) year sentences, for a  
14 conviction of three (3) counts of “issuance of no account check” and two (2) counts of “uttering  
15 forged instrument.” 103 Nev. 659, 747 P.2d 1376 (1987). Recognizing the substantial  
16 deference owed the legislature and sentencing courts, the Houk Court concluded that the  
17 defendant’s sentence was proportionate to their crimes. Id. at 664, 747 P.2d at 1379.  
18 Specifically, the Court rejected the defendant’s claim that their sentence was cruel and unusual  
19 under the Solem factors, and instead reinforced the Nevada standard that “a sentence of  
20 imprisonment that is within the statutory limits is not considered cruel and unusual  
21 punishment.” Id. at 664, 747 P.2d at 1378 (citing Schmidt v. State, 94 Nev. 665, 584 P.2d 695  
(1978)).

22 The Nevada Supreme Court has consistently echoed its standard of review for claims  
23 of excessive criminal sentences: “[r]egardless of its severity, a sentence that is ‘within the  
24 statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is  
25 unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock  
26 the conscience.’” Harte v. State, 132 Nev. 410, 373 P.3d 98 (2016)(internal quotations  
27 omitted). The Harte Court also expressly held that it will “not review nondeath sentences for  
28 excessiveness.” Id.

1 Here, Petitioner's sentence does not amount to cruel and unusual punishment. In  
2 pleading guilty, Petitioner acknowledged that the State would have the right to argue for a  
3 sentence of life without the possibility of parole. While Petitioner may view that sentence as a  
4 harsh penalty, Petitioner was involved in the kidnapping, torturing, and mutilation of the  
5 victim and an attempt to burn down the location of the crime after the defendants believed the  
6 victim had died. Sentencing Proceedings at 23. In fact, the sentencing judge stated, "if you had  
7 been successful in this, this would have been a capital murder case and you all would be  
8 looking at potentially a capital sentence. Id. Therefore, the harshness of the penalty imposed  
9 is not disproportionate to the crime.

10 Additionally, despite what Petitioner believes amount to mitigating factors, all of these  
11 facts were provided to the Court in both the Sentencing Memorandum and the sentencing  
12 argument. The Court considered all of these factors and, nonetheless, sentenced Petitioner and  
13 all other defendants to life without the possibility of parole based on the horrific facts of the  
14 crimes. Sentencing Proceedings at 6-10 & 23-24. Accordingly, Petitioner's claim fails.

### 15 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

16 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
17 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566  
18 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada  
19 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right  
20 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to  
21 counsel provision as being coextensive with the Sixth Amendment to the United States  
22 Constitution." McKague specifically held that, with the exception of NRS 34.820(1)(a)  
23 (entitling appointed counsel when petitioner is under a sentence of death), one does not have  
24 "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at  
25 164, 912 P.2d at 258.

26 The Nevada Legislature has, however, given courts the discretion to appoint post-  
27 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
28 the petition is not dismissed summarily." NRS 34.750. NRS 34.750 reads:

A petition may allege that the Defendant is unable to pay the costs of the  
proceedings or employ counsel. If the court is satisfied that the allegation of

1 indigency is true and the petition *is not dismissed summarily*, the court may  
2 appoint counsel at the time the court orders the filing of an answer and a  
return. In making its determination, the court may consider whether:

- 3 (a) The issues are difficult;  
4 (b) The Defendant is unable to comprehend the proceedings; or  
5 (c) Counsel is necessary to proceed with discovery.

6 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in  
7 determining whether to appoint counsel.

8 More recently, the Nevada Supreme Court examined whether a district court  
9 appropriately denied a defendant's request for appointment of counsel based upon the factors  
10 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-  
11 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,  
12 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant  
13 filed a pro se post-conviction petition for writ of habeas corpus and requested counsel be  
14 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment  
15 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court  
16 examined the statutory factors listed under NRS 34.750 and concluded that the district court's  
17 decision should be reversed and remanded. Id. The Court explained that the petitioner was  
18 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the  
19 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that  
20 because petitioner had represented he had issues with understanding the English language  
21 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that  
22 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had  
23 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—  
24 were severe and his petition may have been the only vehicle for which he could raise his  
claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims  
may have required additional discovery and investigation beyond the record. Id.

25 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be  
26 appointed. As a preliminary matter, Petitioner's request should be summarily denied because  
27 all of his claims are belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502,  
28 686 P.2d 222, 225 (1984). Notwithstanding summary dismissal of the Petition, Petitioner's

1 request for counsel should still be denied as he has failed to meet any of the additional statutory  
2 factors under NRS 34.750.

3 Petitioner has failed to include any factual allegations in the initial Petition that  
4 demonstrate counsel should be appointed. Although the consequences Petitioner faces are  
5 severe as he is serving life without the possibility of parole, that fact alone does not require the  
6 appointment of counsel. The issues are not difficult because Petitioner's claims are meritless  
7 and belied by the record as discussed *supra*. Despite the claims' futility, Petitioner does not  
8 and cannot demonstrate that he had any trouble raising the issues.

9 Additionally, there has been no indication that Petitioner is unable to comprehend the  
10 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the  
11 English language, here Petitioner has failed to demonstrate any inability to understand these  
12 proceedings. There is also no indication from the record that Petitioner cannot comprehend the  
13 instant proceedings as he managed to file a Motion to Withdraw Counsel, this instant Petition,  
14 and two supplemental pleadings without the assistance of counsel.

15 Finally, counsel is not necessary to proceed with further discovery in this case.  
16 Petitioner himself indicates that he has provided the Court with the information needed to grant  
17 him relief. Due to habeas relief not being warranted, there is no need for additional discovery,  
18 let alone counsel's assistance to conduct such investigation. Therefore, Petitioner's request  
19 should be denied.

#### 20 **IV. PETITIONER IS NOT ENTITLED TO AN EVDIENTIARY HEARING**

21 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 22 1. The judge or justice, upon review of the return, answer and all  
23 supporting documents which are filed, shall determine whether  
24 an evidentiary hearing is required. A petitioner must not be  
25 discharged or committed to the custody of a person other than the  
26 respondent *unless an evidentiary hearing is held*.
- 27 2. If the judge or justice determines that the petitioner is not  
entitled to relief and an evidentiary hearing is not required, he  
shall dismiss the petition without a hearing.
- 28 3. If the judge or justice determines that an evidentiary hearing  
is required, he shall grant the writ and shall set a date for the  
hearing.

//

1 The Nevada Supreme Court has held that if a petition can be resolved without  
2 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
3 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
4 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
5 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
6 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
7 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction  
8 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
9 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
10 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

11 It is improper to hold an evidentiary hearing simply to make a complete record. See  
12 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The  
13 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted  
14 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary  
15 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is  
16 not required simply because counsel’s actions are challenged as being unreasonable strategic  
17 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
18 post hoc rationalization for counsel’s decision making that contradicts the available evidence  
19 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
20 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
21 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
22 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
23 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
24 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

25 Here, Petitioner is not entitled to an evidentiary hearing. All of the Petitioner’s factual  
26 assertions are belied by the record in this case. Every claim is nothing but a bare and naked  
27 assertion that is repelled by the record. As all of Petitioner’s claims fail, he has likewise failed  
28 to demonstrate that the record needs to be expanded through an evidentiary hearing. Therefore,



1 the Petition can be resolved on the pleadings and an evidentiary hearing is not required, nor is  
2 Petitioner entitled to one.

3 **CONCLUSION**

4 For the foregoing reasons, the State respectfully requests this Court DENY Petitioner's  
5 Defendant's Petition for Writ of Habeas Corpus (Post Conviction - NRS 34.740) and to  
6 Withdraw Guilty Plea (Pursuant to NRS 176.165), and Supplemental Brief in Support of  
7 Petitioner's Petition for Writ of Habeas Corpus.

8 DATED this 26<sup>th</sup> day of July, 2021.

9 Respectfully submitted,

10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
12 Nevada Bar #1563

13 BY

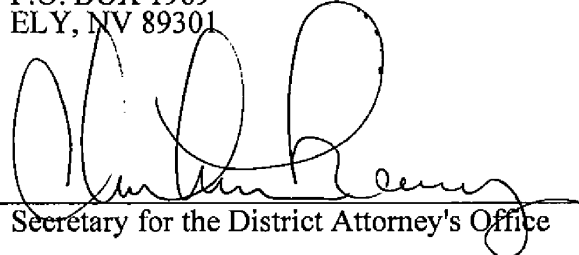
  
14 JOHN NIMAN  
15 Deputy District Attorney  
16 Nevada Bar #14408

17 **CERTIFICATE OF MAILING**

18 I hereby certify that service of the above and foregoing was made this 27<sup>th</sup> day of  
19 July 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 LUIS ANGEL CASTRO  
21 ESP #1214547  
22 P.O. BOX 1989  
23 ELY, NV 89301

24 BY

  
25 Secretary for the District Attorney's Office

26  
27  
28 16F03770A/JN/clh/L3

*Heather S. Lumin*  
CLERK OF THE COURT

1 LUIS A CASTRO  
1 ESR #1214547  
1 P.O. Box 1989  
2 Elko, NV. 89301

3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 LUIS ANGEL CASTRO,

8 PETITIONER,

9 ✓

10 THE STATE OF NEVADA,

11 RESPONDENT,

CASE NO. A-21-835827-W

DEPT. NO. 30

12  
13 REPLY TO STATE'S RESPONSE TO PETITIONER'S  
14 PETITION FOR WRIT OF HABEAS CORPUS AND TO  
15 WITHDRAW OF GUILTY PLEA AND SUPPLEMENT  
16 TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS  
17

18 COMES NOW, PETITIONER, LUIS A. CASTRO, IN PRO SE,  
19 HEREBY SUBMITS THIS REPLY TO THE STATE'S RESPONSE TO  
20 PETITIONER'S WRIT OF HABEAS CORPUS - NRS 34, 140,  
21 SUPPLEMENT IN SUPPORT OF SAME - NRECR - RULE 15,  
22 AND WITHDRAW GUILTY PLEA, PURSUANT TO NRS 176, 165,  
23 ALONG WITH AN ADDENDUM, DECLARATION AND  
24 MEMORANDUM OF FACTS AND LAW IN SUPPORT  
25 OF PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL.  
26  
27  
28

1 IN REPLYING TO THE STATE'S RESPONSE TO  
2 PETITIONER'S WRIT AND VARIOUS SUBSEQUENT PLEADINGS,  
3 PETITIONER RESPECTFULLY ASK THE COURT NOT TO HOLD HIM  
4 TO THE SAME STRICT STANDARDS THAT ARE REQUIRED  
5 FROM ATTORNEYS, HAINES VS KERNER, 404 U.S. 519, 520 (1972);  
6 U.S. VS WEEKS, 653 F.2d 1188, 1206 (10th Cir. 2011) ---,  
7 MOTION CONSTRUED LIBERALLY TO INCLUDE ADDITIONAL  
8 CLAIM(S) OF INEFFECTIVE ASSISTANCE OF COUNSEL.  
9 THIS REPLY IS BASED ON ALL DOCUMENTS, PLEADINGS  
10 AND RECENT MOTIONS) FILED, AND POINTS AND AUTHORITIES  
11 IN SUPPORT

### 12 13 PROCEDURAL HISTORY

14  
15 ON FEBRUARY 4<sup>TH</sup> 2019, CASTRO PLED GUILTY TO ONE  
16 COUNT OF FIRST DEGREE KIDNAPPING RESULTING IN -  
17 SUBSTANTIAL BODILY HARM, FOLLOWED BY THE IMPOSITION  
18 OF A SENTENCE, LIFE WITHOUT THE POSSIBILITY OF -  
19 PAROLE, ON MARCH 27, 2019.

20 ON NOVEMBER 24, 2020, THE NEVADA SUPREME  
21 COURT AFFIRMED PETITIONER'S JUDGMENT OF CONVICTION.  
22 REMITTITUR ISSUED, ACCORDING TO THE DEPUTY DISTRICT  
23 ATTORNEY JOHN NIMMO, ON NOVEMBER 27, 2020

24 ON MAY 12, 2021, PETITIONER MAILED TO THE  
25 EIGHTH JUDICIAL DISTRICT COURT, POST CONVICTION

1 PETITION FOR WRIT OF HABEAS CORPUS, MOTION TO WITHDRAW  
2 PLEA, EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND  
3 REQUEST FOR EVIDENTIARY HEARING, WHICH WERE NOT FILED  
4 UNTIL JUNE 7<sup>TH</sup>, 2021

5 ON JUNE 22, 2021, CASTRO, MAILED PETITIONER'S  
6 SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS,  
7 WHICH WAS FILED ON JULY 6, 2021

8 ON JULY 5, 2021, CASTRO, HANDED TO AN ELY STATE  
9 PRISON OFFICER, AN ADDENDUM TO PETITIONER'S EX  
10 PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST  
11 FOR AN EVIDENTIARY HEARING, INCLUDING A DECLARATION  
12 AND MEMORANDUM OF FACTS AND LAW IN SUPPORT,  
13 THOSE WERE RECEIVED BY THE CLERK'S COURT ON,  
14 JULY 12, 2021, AND FILED ON JULY 14, 2021

### 15 16 ARGUMENT

17  
18 THE STATE ARGUES IN THEIR RESPONSE (PAGE 6, LINES  
19 4 TO 6) "... THE VALIDITY OF THE GUILTY PLEA AND INEFFECT-  
20 TIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL MUST  
21 BE RAISED ON DIRECT APPEAL, OR WAIVED IN SUBSE-  
22 QUENT PROCEEDINGS. THIS IS AN EGREGIOUS DENIAL  
23 OF DUE PROCESS OF LAW. BECAUSE THE ATTORNEY(S)  
24 HAVE COMPLETE CONTROL OF THE ISSUES THAT ARE TO  
25 BE PRESENTED ON DIRECT APPEAL, AND THEY HAVE

1 TENDENCY OF COVERING UP EACH OTHERS DEFICIENCIES,  
2 SOME QUITE DISGRACEFUL. IT IS PERPLEXING AND  
3 DOUBTFUL THAT AN APPELLATE COUNSEL WOULD -  
4 ADDRESS HIS OWN INEFFECTIVENESS WHILE HE/SHE  
5 PREPARES BRIEF ON DIRECT APPEAL ON BEHALF OF  
6 HIS/HER CLIENT.

7 THE SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSIS-  
8 TANCE OF COUNSEL DURING PLEA-BARGAINING, IS  
9 NOT A SUGGESTION, IS A CONSTITUTIONALLY GUARANTEED  
10 RIGHT. IN JACOB LEE VS U.S., 582 U.S. — (2017)  
11 THE SUPREME COURT HELD: WHEN A DEFENDANT CLAIM  
12 THAT HIS COUNSEL'S DEFICIENT PERFORMANCE DE-  
13 PRIVED HIM OF A TRIAL, BY CAUSING HIM TO ACCEPT  
14 A PLEA, THE DEFENDANT CAN SHOW PREJUDICE BY DEMONS-  
15 TRATING A 'REASONABLE PROBABILITY' THAT BUT FOR  
16 COUNSEL'S ERROR (IMPROPER PROMISES) HE WOULD NOT  
17 HAVE PLEADED GUILTY AND WOULD HAVE INSISTED ON  
18 GOING TO TRIAL. SEE: HILL V LOCHART 474 U.S. 52, 59,  
19 106 S. CT. 366 (1985); MISSOURI MO. V FRYE 132 S. CT. -  
20 1399, 1403 (2012) - INEFFECTIVENESS OF COUNSEL  
21 TEST EXTENDS TO COUNSEL'S CONDUCT DURING  
22 PLEA NEGOTIATIONS.

23 FURTHERMORE, THE DECISION TO PLEAD GUILTY OR  
24 CONTEST A CRIMINAL CHARGE IS ORDINARILY THE MOST  
25 IMPORTANT DECISION IN ANY CRIMINAL CASE. THIS

1 DECISION MUST BE COGNITIVELY MADE BY THE CLIENT. HERE,  
2 THE CLIENT - CASTRO, HAS SIGNIFICANT DEVELOPMENT DEF-  
3 ICULTY AND PSYCHOLOGICAL DEVELOPMENT "PLATEAUED"  
4 AT HIS TEENAGE YEARS. THEREFORE, HIGHLY SUSCEPTIBLE  
5 TO SUGGESTION - EASILY MANIPULATED, A MARIONETTE IN  
6 THE HANDS OF DEFENSE COUNSEL. BORJA VS KEANE, -  
7 99 F.3d 492, 496-97 (2<sup>ND</sup> CIR 1996).

8 THE UNITED STATES SUPREME COURT NOTED THE IMPOR-  
9 TANCE OF 'PLEA NEGOTIATIONS' IN SANTOBELLO V NEW YORK,  
10 404 U.S. 257, 261 (1971). AT THE END OF THE DAY, IT IS  
11 THE VERY NATURE OF THIS PROCESS INVOLVES A "QUID -  
12 PRO QUO". THE GOVERNMENT AVOIDS THE TIME AND  
13 EXPENSE OF A TRIAL AND THE DEFENDANT SECURES A  
14 FAIR OUTCOME. U.S. ex rel CARUSO V. ZELENSKI,  
15 689 F.2d. 435, 438 (3<sup>RD</sup> CIR 1982).

16 HERE, TRIAL ATTORNEY - MR. GELLER, WAS PAID  
17 \$85,000.00 DOLLARS TO DEFEND AND/OR NEGOTIATE A  
18 FAIR/JUST SENTENCE ON BEHALF OF PETITIONER.  
19 INSTEAD, MR. GELLER'S REPRESENTATION CONSISTED  
20 IN A LEGION OF ERRORS - FAILURES TO PROTECT PETITIONER'S  
21 CONSTITUTIONAL RIGHTS, SUCH AS, FAILURE TO EXPLAIN TO  
22 THE COURT, WHY THE SENTENCE LIFE WITHOUT THE  
23 POSSIBILITY OF PAROLE WAS/IS "SUBSTANTIVELY -  
24 UNREASONABLE." PARTICULARLY WHEN THE COURT  
25 IN ITS CONSIDERATION OF PETITIONER'S SENTENCE

26

27

28

1 ATTRIBUTED INCORRECTLY THE CO-DEFENDANTS CRIMINAL  
2 RECORDS AND OTHER PENDING MATTERS TO HIM.

3 MR. GELLER, FAILED TO SEVER CASTRO'S CASE  
4 FROM THE OTHER DEFENDANTS THAT WERE UNDER THE SAME  
5 INDICTMENT/INFORMATION, AND AFTER HE GAVE THE  
6 ASSURANCE THAT HIS CASE WOULD BE PROSECUTED  
7 SEPARATELY. MR. GELLER, GAVE PETITIONER'S PARENTS  
8 THIS ASSURANCE, (SEE: ATTACH AFFIDAVIT IN PETITIONER'S  
9 SUPPLEMENT, FILED JULY 6<sup>TH</sup> 2021)

10 DEFENSE COUNSEL FAILED TO OBJECT AND/OR ARGUE  
11 THE COURT'S ABUSE OF DISCRETION, WHEN IT UNREA-  
12 SONABLY DEMANDED THAT THE ACCEPTANCE OF THE  
13 PLEA WAS CONTINGENT UPON ALL FOUR (4) DEFENDANTS  
14 ACCEPTING THEIR RESPECTIVE NEGOTIATIONS, (SEE -  
15 GUILTY PLEA AGREEMENT, PAGE 1, LINES 21 AND 22).

16 FURTHERMORE, THE 'UNBARGAIN' PLEA AGREEMENT  
17 RESULTED IN THE SAME, RATHER, WORST OUTCOME  
18 HAD THE CASE GONE TO TRIAL, BECAUSE THE —  
19 PROSECUTION WOULD HAVE HAD TO PROVE EACH OF  
20 THE ELEMENTS OF THE CHARGES BROUGHT AGAINST  
21 THE PETITIONER, IN WHICH CASE CASTRO'S ALIBI  
22 AND LACK OF D.N.A EVIDENCE COULD HAVE HAD  
23 AN ENORMOUS EFFECT ON THE JURORS. ESPECIALLY,  
24 WHEN THEY LEARN THAT CASTRO LEFT WITH THE  
25 CO-DEFENDANTS STARTED TO BECOME VIOLENT. —

26

27

28

1 CASTRO'S CONSTITUTIONAL RIGHTS COULD HAVE  
2 BEEN PRESERVED AND 'ALL' THE FACTS OF THIS CASE  
3 COULD HAVE BEEN REVEALED. INCLUDING, THE PROSECUTION'S  
4 COACHING THE VICTIM, TO IDENTIFY CASTRO AS  
5 ONE OF THE ASSAILANTS, EVEN MORE IMPORTANTLY,  
6 THE TRIAL IN ALL LIKELIHOOD, WOULD HAVE SHOWN  
7 THAT CASTRO, LACKED THE MENTAL CAPACITY TO -  
8 ORCHESTRATE THE ORDEAL.

9 DEFENSE COUNSEL DID NOT OBJECT ONCE,  
10 TO THE MANY PREJUDICIAL STATEMENTS MADE  
11 DURING THE PRELIMINARY HEARINGS.

12 THE MOST EGREGIOUS CONDUCT BY TRIAL COUNSEL,  
13 WAS THE DECEITFUL ALLEGATION HE MADE TO CASTRO'S  
14 PARENTS. HE TOLD THEM THAT CASTRO'S SENTENCE  
15 WILL RANGE BETWEEN 15 TO 25 YEARS, IF HE  
16 ACCEPTED THE PLEA. WITH THIS FALSE ASSERTION  
17 MR. AND MRS. CASTRO, THREATEN PETITIONER WITH  
18 THE LOSS OF THEIR SUPPORT IF HE FAIL TO ACCEPT  
19 THE GUILTY PLEA AGREEMENT, IF NOT FOR TRIAL  
20 COUNSEL'S INAPPROPRIATE AND MISLEADING ADVICE  
21 TO PETITIONER'S PARENTS, CASTRO WOULD HAVE  
22 TAKEN THE CASE TO TRIAL. FRANKLY, IT IS EASY  
23 TO INFER THAT DEFENSE COUNSEL INTENDED ALL  
24 ALONG TO CONVINCE PETITIONER TO PLEA OUT-ACCEPT  
25 WHATEVER THE STATE OFFERED. YOU WOULD



1 I THINK THAT \$85,000.00 DOLLARS, WOULD MOVE AN  
2 ATTORNEY TO AT LEAST NEGOTIATE ON BEHALF OF HIS  
3 CLIENT AN ACTUAL PLEN AGREEMENT- SENTENCE  
4 MORE FAVORABLE CONSIDERING THE ACTUAL PARTICI-  
5 PATION OF HIS CLIENT IN THE CRIME COMMITTED,  
6 THEREFORE, IT IS CLEAR, THAT CASTRO RECEIVED  
7 INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF  
8 HIS 5TH, 6TH AND 14TH AMENDMENTS.

9  
10 THE NEVADA RULES OF CIVIL PROCEDURES, RULE 15,  
11 ALLOWS A PARTY TO AMEND AND SUPPLEMENT -  
12 PLEADINGS; AND NRS 34.750 (3) ALLOW THE  
13 APPOINTED COUNSEL BY THE COURT TO FILE AND  
14 SUPPLEMENTAL PLEADINGS. HERE, PETITIONER,  
15 IS ASSISTED BY A FELLOW PRISONER, BECAUSE  
16 CASTRO DOES NOT HAVE THE MENTAL CAPACITY  
17 TO HELP HIMSELF. (IN MEDINA, AS VERY LITTLE  
18 UNDERSTANDING OF THE LAW, AND IS SUBJECT TO BE  
19 TRANSFERRED AT ANY DAY NOW).

20 AS PREVIOUSLY MENTIONED, PETITIONER,  
21 HAS THE MATURITY OF A TEENAGER AT BEST, THEREFORE,  
22 IS INCAPABLE TO PROSECUTE THIS CASE TO THE  
23 COURT. APPOINTMENT OF COUNSEL, IS THE ONLY  
24 HUMANLY FAIR SOLUTION.

1 CONCLUSION

2  
3 WHEREFORE, PETITIONER PRAYS AND RESPECT-  
4 FULLY REQUEST THAT THIS HONORABLE COURT  
5 'GRANT' PETITION FOR WRIT OF HABEAS CORPUS-  
6 POST CONVICTION, NRS 34,740, AND TO WITHDRAW  
7 GUILTY PLEA, PURSUANT TO NRS 176.165 AND PERMIT  
8 ~~THE~~ SUPPLEMENT HIS CLAIMS AS STATED HEREIN, THE  
9 ERRORS OF COUNSEL, DEFINE THE INADEQUATE  
10 REPRESENTATION OF PETITIONER'S CASE.

11  
12 DATED THIS 18<sup>TH</sup> DAY OF AUGUST, 2021

13  
14 Respectfully Submitted

15  
16   
17

18 LUIS A. CASTRO, 1214547

19 PETITIONER, IN PRO SE

20 Ely STATE PRISON

21 P.O. Box 1989

22 Ely, NV. 89301

23  
24  
25  
26  
27  
28 Prepared By  
ALBERT MEDWA, 74738  
ON BEHALF OF  
L.A. CASTRO.

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 THE UNDERSIGNED DOES HEREBY AFFIRMS THAT THE PRE-  
3 CEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY  
4 NUMBER OF ANY PERSON.

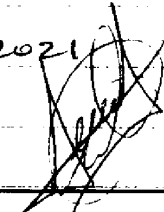
5

6 DATED THIS 18<sup>TH</sup> DAY OF AUGUST 2021

7

8

9

  
Luis A. Castro, # 1214547

10

11

CERTIFICATE OF SERVICE BY MAIL

12

13 I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND  
14 FOREGOING WAS MAILED ON THIS 18<sup>TH</sup> DAY OF August 2021,  
15 BY HANDING IT TO AN Ely State Prison OFFICER, WHO WILL  
16 DEPOSIT A COPY IN THE U.S. MAIL, POSTAGE PREPAID  
17 ADDRESS TO:

18 Mr. JOHN NIMAN

19 Deputy Dist. Atty.

20 P.O. Box 552212

21 Las Vegas, NV.

22 89155-2212

23

24

25

26

27


28

CLERK OF THE COURT

8<sup>TH</sup> JUD. DIST. COURT

P.O. Box 551160

Las Vegas, NV. 89155-1160

  
Luis A. Castro, # 1214547

Mr. Lewis A. Casper  
C.S.F. #1214547  
P.O. Box 1989  
Elko Nevada, 89301

Local Mail

Clerk of the Court  
8th Judicial District Court  
200 Lewis Avenue, 3rd Fl.  
P.O. Box 551160  
Las Vegas Nv. 89155-1160

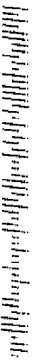


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AUG 24 2021

COURT OF THE CLERK

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*Heather S. Ginn*  
CLERK OF THE COURT

1 LUIS A. CASTRO  
2 ESP #1214547  
3 P.O. BOX 1989  
4 ELI, NV. 89301

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 LUIS ANGEL CASTRO,

8 PETITIONER,

CASE NO. A-21-835827-W

9 ✓

DEPTING,

30

10 THE STATE OF NEVADA,

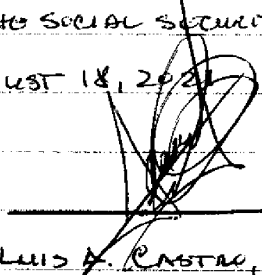
11 RESPONDENT,

12 REQUEST FOR SUBMISSION

13  
14 IT IS REQUESTED THAT THE REPLY TO STATE'S RESPONSE  
15 TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS, AND TO  
16 WITHDRAW GUILTY PLEA, AND SUPPLEMENT..., SUBMITTED  
17 ON AUGUST 18<sup>TH</sup> 2021, BE SUBMITTED TO THE COURT FOR  
18 DECISION.

19  
20 AFFIRMATION PURSUANT TO NRS 239B.030

21 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING  
22 DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
23 PERSON. DATED: AUGUST 18, 2021

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LUIS A. CASTRO, # 1214547


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CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I hereby certify that  
on August 18, 2021, I deposited for mailing  
through the U.S. Mail Service at Ely State Prison,  
Ely, Nevada, postage prepaid, a true copy of the  
foregoing document addressed to:

Mr. JOHN NINAN  
Deputy Dist. Atty.  
200 Lewis Avenue  
P.O. Box 552212  
Las Vegas, NV 89155-2212

Clerk of the Court  
8th Jus. Dist. Court  
200 Lewis Avenue  
P.O. Box 551160  
Las Vegas, NV 89155-1160



Luis R. Castro, #1214547  
Petitioner, In Pro Se.

Mr Lewis A. Carbo  
E.S.F. #1214547  
P.O. Box 1989  
Elko Nevada, 89301

Legal Mail

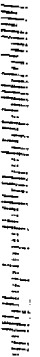


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8th Judicial District Court  
200 Lewis Avenue, 3rd Fl.  
P.O. Box 551160  
Las Vegas Nv. 89155-1160

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**DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-**

LUIS ANGEL CASTRO,	)	
	)	
Petitioner,	)	CASE NO.: A-21-835827-W
	)	DEPT. NO.: XXX
vs.	)	
	)	ORDER RE: PETITION FOR WRIT
STATE OF NEVADA,	)	OF HABEAS CORPUS AND RE:
	)	PLAINTIFF'S MOTION FOR
Defendant.	)	APPOINTMENT OF COUNSEL AND
	)	FOR EVIDENTIARY HEARING

**INTRODUCTION**

The above-referenced matter is scheduled for a hearing on September 23, 2021, with regard to Petitioner Luis Castro's Petition for Writ of Habeas Corpus. Pursuant to the Administrative Orders of this Court, and N.R.Cr.P. 8(2), this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

**FACTUAL AND PROCEDURAL HISTORY**

On March 10, 2016, Luis Angel Castro (hereinafter "Petitioner") was charged by way of Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B Felony); Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ; Count 3 - Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping with Use of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly Weapon (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B Felony); Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-defendants.

On April 12, 2019, Petitioner was bound up to the District Court on all charges following a preliminary hearing. After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea Agreement ("GPA"), the offer was contingent upon all four (4) Defendants accepting their respective negotiations and being



1 sentenced. All Parties agreed that the State would have the right to argue for Life  
2 without the possibility of Parole, and the Defense will argue for Life with the possibility  
3 of Parole after fifteen (15) years. All Parties agreed that no one would seek a term of  
4 years. (See GPA).

5 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24,  
6 2019, Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro  
7 ("Petitioner's Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life  
without the possibility of Parole in the Nevada Department of Corrections.

8 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's  
9 Judgment of Conviction. Remittitur issued on November 17, 2020.

10 Petitioner Luis A. Castro sent his pro per Petition for Writ of Habeas Corpus and  
11 to Withdraw Guilty Plea and a separate Ex Parte Motion for Appointment of Counsel  
12 and Request for Evidentiary Hearing on May 12, 2021. Thereafter, both were received  
13 by the Clerk of Court and e-filed on June 7, 2021. On June 22, 2021, Petitioner sent a  
14 Supplement to Petition for Writ of Habeas Corpus, which was received by the Clerk of  
15 Court and e-filed on July 6, 2021.

#### 16 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

17 Petitioner seeks to withdraw his guilty plea entered on 2/4/19 on the basis he  
18 was denied his right to effective assistance of counsel during the plea-bargain process,  
19 and that his plea was not given voluntarily or intelligently. Petitioner states he was not  
20 competent to enter the plea because of his seventh-grade education, and his psychiatric  
and medical conditions at the time of his plea.

21 First, Petitioner asserts that at the time he entered his guilty plea, "he was  
22 heavily medicated and not competent, nor able to fully appreciate, understand, and  
23 waive his fundamental Constitutional rights." He further states that "the Court  
24 remained oblivious to the most vital aspect of the plea colloquy, which centered on his  
25 perception and mental health state at the time the plea was induced." (See Petition at  
26 pg. 3 of 14). Moreover, an evidentiary hearing will clearly establish that the mental  
27 health "crisis and a newly prescribed and substantially powerful daily antipsychotic  
28 medication had adversely affected and impacted his competency during the plea." *Id.*

1       Petitioner argues that a review of the transcripts of the plea hearing will not  
2 clearly establish he fully understood his rights. Only an evidentiary hearing will  
3 definitely establish his psychotic condition at the time of his plea, which precluded his  
4 ability to voluntarily and intelligently plea guilty. Petitioner cites to *Wilkins v.*  
5 *Bowersox*, 145 F.3d 1006 (8th Cir. 1998), as support for his argument. Petitioner  
6 argues that he is an unsophisticated person who was able to correctly answer simple  
7 questions during the plea canvas at defense counsel's direction, but that is not enough  
8 to establish that he fully understood what rights he gave up or what duties his attorney  
failed to perform.

9       Given his seventh-grade education, history of drug abuse, and inherited bipolar  
10 disorder, Petitioner asserts that his attorney, Mr. Warren Geller, was able to easily  
11 instruct and/or manipulate him to answer every question of the Court by simply  
12 responding "yes" to every question. He suggests that on page 7 of the plea canvass,  
13 there is evidence that he was poorly advised by counsel. Petitioner argues that Mr.  
14 Geller did not discuss any of the immigration consequences of a guilty plea with  
15 Petitioner, and consequently, the plea must be found involuntary.

16       Petitioner argues his guilty plea must be withdrawn because it was  
17 fundamentally unfair and manifested injustice, because Mr. Geller "talk[ed] him into  
18 accepting a 'blind plea' that did not benefit him at all." Petitioner suggests that he was  
19 on suicide crisis placement and then discharged with newly prescribed anti-psychotic  
20 medication, shortly before the plea, and Mr. Geller should have alerted the Court that  
21 these changes had a substantive cognitive impact on him. Further, Petitioner argues  
22 that the State will not be prejudiced by his withdrawal of plea because the case is "not  
so old" and the totality of the circumstance's manifest injustice.

23       According to Petitioner, Mr. Geller intimidated and misinformed Petitioner's  
24 mother, in order to force Petitioner into accepting a plea, because otherwise she would  
25 withdraw her support from him. Petitioner alleges that Mr. Geller assured his mother  
26 that he would receive a sentence of 15 years to life with the possibility of parole.  
27 Because he did not receive a benefit from the plea agreement, Petitioner's Sixth  
28 Amendment rights were violated.

1       Petitioner takes issue with the District Court's decision to sentence him to life  
2 without the possibility of parole. While he understands the Court had wide discretion to  
3 impose a sentence and that the sentence imposed on him was within the statutory limit,  
4 Petitioner argues his sentence is not in the best interest of judicial proceedings.  
5 Petitioner argues that it doesn't make sense for him to take a plea for a sentence that  
6 would have been the same had he gone to trial. Had this case gone to trial, the evidence  
7 would have revealed that he played a minimal role in the crime, that he tried to stop his  
8 co-defendants, the only reason he did not call the police was out of fear for his family,  
and that there was no DNA evidence.

9       He argues that the ultimate sentence imposed shocks the conscience given his  
10 lack of prior convictions for violent offenses, the fact he left the scene, and that he was  
11 not aware the crime would become violent. Petitioner states that his sentence of life  
12 without the possibility of parole "is so unreasonably disproportionate to the offense and  
13 [his] role in the offense as to shock the conscience and amounts to cruel and unusual  
14 punishment in violation of the Eighth Amendment of the United States Constitution  
15 and Article I, Section VI of the Nevada Constitution." (See Petition at pg. 11 of 14.)

16       In his "Supplemental Petition," Petitioner focuses on Mr. Geller's alleged  
17 ineffective assistance of counsel. Petitioner argues that Mr. Geller was ineffective by  
18 failing "to object and/or argue the Court's unreasonable demand. The demand that the  
19 acceptance of the plea was contingent upon all four (4) Defendants accepting their  
20 respective negotiations." (See Supplemental Petition at pg. 6 of 15).

21       Petitioner again states that the plea agreement resulted in the same, or a worse  
22 outcome than if the case had gone to trial, because the State would not have been able  
23 to prove its case. Had the case gone to trial, the "facts" would have been revealed,  
24 including that the prosecution coached the victim into identifying Petitioner as one of  
the people who harmed him. And trial could have shown Petitioner lacked the mental  
capacity to orchestrate the ordeal.

25       According to Petitioner, Mr. Geller's counsel constituted "as a 'Trump Con'-  
26 fraudulent legal representation," because he told Petitioner's parents that the sentence  
27 would range between 15 to 25 years in prison if he accepted. Petitioner stated that his  
28 parents then threatened him with loss of support if he did not accept the offer, which  
left him no alternative but to take the guilty plea. Mr. Geller was paid \$85,000.00 to

1 defend and/or negotiate a fair sentence on behalf of petitioner. Petitioner stated Mr.  
2 Geller failed to sever Petitioner's case from the co-defendants, and provided a "lack of  
3 legal representation" which "was a disgrace and amounted to beguilement." (See  
4 Supplemental Petition at pg. 6 of 15).

5 Petitioner argues that it is "very unlikely [Mr. Geller] spen[t] more than ten  
6 hours working on this case, averaging \$8,500.00 an hour. For this hourly rate he could  
7 have tried to be an effective attorney or at the very, very minimum, negotiated the plea-  
8 sentence." (See Supplemental Petition at pg. 8 of 15.)

9 In his Supplement, Petitioner again argues that the Court's sentence was  
10 disproportionate, and constituted cruel and unusual punishment in violation of the  
11 Eighth Amendment.

12 Finally, Petitioner also argues that an evidentiary hearing is necessary so that his  
13 parents can testify about Mr. Geller's alleged promise to induce Petitioner to accept the  
14 plea offer. The evidence is necessary in order for the Court to determine if Petitioner  
15 was afforded constitutionally sufficient advice so that he could intelligently and  
16 knowingly waive his important constitutional trial.

17 The Court notes that the Petitioner attached as an exhibit to his Supplement, a  
18 letter allegedly from his parents supporting his arguments regarding Mr. Geller.

19 With regard to the Petitioner's request for appointment of counsel, Petitioner  
20 argues that the Court should consider that his Writ of Habeas Corpus has real merit.  
21 Further, the Court should consider the factual complexity of this case, the ability of the  
22 indigent to investigate the facts, the existence of conflicting testimony, the ability of the  
23 indigent to present his claim(s) and the complexity of the legal issues.

24 In Return, the State first notes the procedural and factual background of this  
25 matter and the underlying criminal case. Because Petitioner's Supplemental Petition  
26 and Memo in Support were filed after he filed this Petition and filed without leave of  
27 Court, the State argues those pleading should be stricken and/or any new claims or  
28 allegations contained therein should be summarily denied, pursuant to NRS 34.750 (5).  
Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a  
petitioner from filing any additional pleadings or supplements, except for those  
specifically provided for in subsections (2)-(4), unless ordered by the Court.

1 With regard to Petitioner's argument that his guilty plea was involuntary  
2 because he was mentally incompetent during the plea canvass and "did not have the  
3 mental capacity or fully understand his rights and did not know what he was facing  
4 when he pled guilty," the State contends this claim is belied by the record.  
5 To determine whether a guilty plea was voluntarily entered, the Court will review the  
6 totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at 271,  
721 P.2d at 367. A proper plea canvass should reflect that:

7 [T]he defendant knowingly waived his privilege against self-incrimination, the  
8 right to trial by jury, and the right to confront his accusers; (2) the plea was  
9 voluntarily, was not coerced, and was not the result of a promise of leniency; (3)  
10 the defendant understood the consequences of his plea and the range of  
the punishments; and (4) the defendant understood the nature of the charge, i.e.,  
the elements of the crime.

11 *Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
12 Nev. 774, 476 P.2d 950 (1970)).

13 As an initial matter, Petitioner attempts to draw similarities between this case  
14 and *Wilkins v. Bowersox*, 145 P.3d 1006 (8th Cir. 1998), but the State argues that  
15 Eighth Circuit case law is irrelevant and inapplicable here, particularly in light of the  
16 fact that the totality of the circumstances establish that Petitioner's plea was  
17 voluntarily, knowingly, and intelligently entered. First, Petitioner signed his GPA and  
18 affirmed that he was "signing this agreement voluntarily, after consultation with [his]  
19 attorney, and [was] not acting under duress or 'coercion[.]'" (GPA, at pg. 5.) Petitioner  
20 further affirmed that he was not "under the influence of any intoxicating liquor-, a  
21 controlled substance or other drug which would in any manner impair [his] ability to  
22 comprehend or understand [the] agreement or the proceedings surrounding [the] entry  
of [the] plea." (GPA, at pg. 5).

23 Next, despite Petitioner's claim to the contrary, his answers during his plea  
24 colloquy were not perfunctory affirmations. Petitioner's answers during the plea  
25 canvass further bely any claim that Petitioner was not competent to plead guilty or did  
26 not understand what he was pleading guilty to. See Recorder's Transcript of Hearing-  
27 Entry of Plea ("RT: EOP"), at 45-6 (February 4, 2019).

28 Additionally, Petitioner's allegation that his plea was invalid because he was on  
suicide watch in the days preceding his guilty plea is nothing but a bare and naked  
allegation that his unsupported by the record. According to the sentencing

1 memorandum filed by counsel prior to sentencing, Petitioner received three  
2 neuropsychological evaluations on February 21, March 5, and March 7, 2019, after he  
3 entered his plea. (Petitioner's Sentencing Memo at pg. 11). However, the only suicide  
4 attempt mentioned in those evaluations is an incident from years prior to Petitioner's  
5 incarceration. *Id.* at 15. Therefore, the claim that Petitioner was on suicide watch is  
6 unfounded and belied by the reports provided by the defense in preparation for  
7 sentencing. Accordingly, Petitioner's claim that he was not competent to plead guilty  
8 fails.

9 In response to Petitioner's argument that the guilty plea was entered into with  
10 effective assistance of counsel, the State argues that this also fails. Petitioner  
11 acknowledges that his sentence is legal but believes that his sentence is disproportion  
12 and shocks the conscience because he did not have any prior criminal history, there was  
13 no evidence of his DNA at the crime scene, and Petitioner suffers from various mental  
14 conditions, and this also fails. The State argues that Petitioner's signature on his GPA  
15 and answers during his plea canvass belie any claim of ineffective assistance of counsel.  
16 Petitioner claims that his counsel did not discuss the consequences of the plea on  
17 Petitioner's immigration status, but this is completely unfounded and belied by the  
18 record. By signing the GPA, Petitioner affirmed that he did understand the  
19 immigration consequences. (See GPA, at pgs. 3-4). Moreover, during the plea canvass,  
20 Petitioner and his attorney discussed the immigration consequence. (See RT: EOP, at  
21 7-8). Additionally, this claim is belied by the record at sentencing. In the Sentencing  
22 Memo, counsel stated, "the parole board may deem it appropriate to release him to  
23 Immigration and Customs Enforcement for removal from the United States." (See  
24 Petitioner's Sentencing Memo at 7-8). During sentencing, Petitioner's counsel  
25 referenced the possibility of Petitioner's deportation to Mexico multiple times and even  
26 used that fact to argue in favor of possible parole. Recorder's Transcript of Proceedings  
27 Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019). Specifically, counsel  
28 stated, "There is an ICE hold. If...the Court...granted the defense's request for parole  
eligibility at 15 years...the parole board would have the option to say, you know what  
federal government, now you can take Mr. Castro and deport him to Mexico...if the  
Court sentences him to life without, no matter what the circumstances are, we're always  
going to be paying for his incarceration." *Id.* at 7-8. Additionally, Petitioner addressed

1 the court and made no mention that he was never informed of or advised about  
2 potential immigration consequences. (*Id.* at 10- 11). Therefore, Petitioner's claim that  
3 he was not aware of the consequences of immigration fails as it is belied by the record.

4 With regard to Petitioner's argument that counsel intimidated and lied to  
5 Petitioner's parents, in order to induce Petitioner into pleading guilty, this is a bare and  
6 naked allegation suitable only for summary denial. In signing the GPA, Petitioner  
7 confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty  
8 plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was]  
9 satisfied by the services provided by [his] attorney." Additionally, when Petitioner  
10 signed the GPA, he acknowledged that he understood that he was waiving his right to a  
11 jury trial. (GPA at 4). Moreover, during the plea canvass, Petitioner confirmed that he  
12 was waiving his right to challenge the evidence at trial. (RT: EOP, at 5-6). Further,  
13 Petitioner has failed to articulate what other investigation or challenge to the evidence  
14 counsel should have engaged in, prior to Petitioner's guilty plea that would have  
15 resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This  
16 failure is fatal. *Hill*. 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot  
17 be deemed ineffective. Specifically, Petitioner further confirmed that he was satisfied  
18 with counsel during his plea canvass and affirmed that he had not been threatened into  
19 pleading guilty RT: EOP, at 4-7.

20 Petitioner's claim that counsel promised him a sentence of fifteen (15) years to  
21 life, or any other sentence, is a bare and naked claim that is entirely belied by the  
22 record. Petitioner's signed GPA first states that pursuant to the negotiations, while  
23 counsel could argue for a sentence of fifteen (15) years to life, Petitioner understood he  
24 was not guaranteed that sentence. GPA at 3. Petitioner's answers during the plea  
25 canvass further confirms that Petitioner understood the terms of the negotiations and  
26 belie any claim that he believed he would receive a particular sentence RT: EOP, at 6.  
27 While counsel indeed argued during sentencing that Petitioner should receive a  
28 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did  
not honor that request does not render counsel deficient.

Petitioner's claim that his sentence of life without the possibility of parole  
suggests that counsel was ineffective during the plea negotiations fails. Counsel filed a  
sixty-eight (68) page sentencing memo, which included a detailed history of

1 Petitioner's upbringing, a neuropsychological evaluation that was completed at  
2 Attorney Geller's request, and multiple letters of support for Petitioner. In this  
3 sentencing memo, Attorney Geller made a passionate argument for the possibility of  
4 parole based on all of the applicable mitigating factors. Petitioner's Sentencing Memo  
5 at 6-8.

6 Counsel then made a similarly passionate argument during the sentencing  
7 hearing highlighting (1) Petitioner's lack of criminal history; (2) childhood trauma that  
8 led to self-medicating with drugs; (3) the support Petitioner had from his family; (4)  
9 Parole and Probation's recommended sentence of fifteen (15) years to life; (5)  
10 Petitioner's consistent claim that he was not one of the people who handled the weapon  
11 or touched the victim; (6) DNA results showing that Petitioner's DNA was not on the  
12 weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance camera  
13 footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.  
14 Indeed, the record is clear that the district court acknowledged that while a defendant's  
15 lack of criminal history and obvious substance abuse problems tend to incline the court  
16 to be merciful at sentence, neither factor negated the "horrific crimes" committed. *Id.*  
17 at 23-24.

18 Further, the State also notes that Petitioner was sentenced with his three co-  
19 defendants, all of whom entered into the same plea negotiations, and all of whom  
20 received the same sentence of life without the possibility of parole. Of the other co-  
21 defendants, only co-defendant Edward Honabach filed a Post-Conviction Writ of  
22 Habeas Corpus ("Honabach's Petition"). See *Honabach v. William Gittere*, A-20-  
23 812948-W, Petition Post-Conviction Writ of Habeas Corpus filed March 27, 2020). In  
24 Honabach's Petition, Honabach made similar claims to those contained in this instant  
25 Petition, in that he claimed his plea was involuntarily entered and his counsel was  
26 ineffective because he was not advised that he could receive life without the possibility  
27 of parole. *Id.* The Court summarily denied Honabach's Petition, finding that the Guilty  
28 Plea Agreement and the record of plea canvass proceedings demonstrate that  
Honabach's "guilty plea was made freely and voluntarily, and that he understood the  
nature of the offense and the consequences of his plea." *Honabach v. William Gittere*,  
A-20-812948-W, Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23,  
2020). Because Petitioner raises factually similar claims, signed the same Guilty Plea



1 Agreement, and was canvassed during the same proceeding as Honabach, the Court's  
2 reasoning and denial of Honabach's petition suggests that Petitioner's instant petition  
3 should be summarily denied.

4 With regard to Petitioner's claim that his sentence is cruel and unusual, this is  
5 not a claim of ineffective assistance of counsel, nor is it a challenge to the validity of  
6 Petitioner's guilty plea. Accordingly, it should have been raised on direct appeal, and is  
7 beyond the scope of habeas proceedings and therefore waived. *Franklin*, 110 Nev. at  
8 752, 877 P.2d at 1059. Further, Petitioner already raised this claim which was rejected  
9 by the Nevada Court of Appeals.

10 The Court of Appeals already ruled that although Castro claimed his sentence  
11 constitutes cruel and unusual punishment, the sentence falls within the parameters of  
12 the relevant statute. See NRS 200.320(1)(a). He did not allege that the statute is  
13 unconstitutional, and the Court concluded that the sentence imposed was not grossly  
14 disproportionate to his crime and did not constitute cruel and unusual punishment.  
15 Order of Affirmance, *State v. Castro*, Docket No: 78643-COA, at 3-4 (filed August 12,  
16 2020).

17 Based on this ruling by the Court of Appeals, the State argues that this claim is  
18 barred by the doctrine of law of the case. "The law of a first appeal is law of the case on  
19 all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91  
20 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343- 455  
21 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more  
22 detailed and precisely focused argument subsequently made after reflection upon the  
23 previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,  
24 issues previously decided on direct appeal may not be reargued in a habeas petition.  
25 *Pellegrini v. State*, 117 Nev. 860, 879, 34P.3d519, 532 (2001) (citing *McNelson v. State*,  
26 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot  
27 overrule the Nevada Supreme Court. NEV. CONST. Art. VI§ 6. Accordingly, by simply  
28 continuing to file petitions with the same arguments, Petitioner's claim is barred by the  
29 doctrine of the law of the case. *Id.*; *Hall v. State*, 91Nev.314, 316, 535 P.2d 797, 799  
30 (1975).

31 The Eighth Amendment to the United States Constitution as well as Article I,  
32 Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual

1 punishment. The Nevada Supreme Court has stated that "[a] sentence within the  
2 statutory limits is not 'cruel and unusual punishment unless the statute fixing  
3 punishment is unconstitutional or the sentence is so unreasonably disproportionate to  
4 the offense as to shock the conscience.'" *Allred v. State*, 120 Nev. 410, 92 P.2d 1246,  
5 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)  
6 (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).  
7 As long as the sentence is within the limits set by the legislature, a sentence will  
8 normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev. 344, 871 P.2d  
9 950 (1994).

10 The Nevada Supreme Court has consistently echoed its standard of review for  
11 claims of excessive criminal sentences: "[r]egardless of its severity, a sentence that is  
12 'within the statutory limits is not 'cruel and unusual punishment unless the statute  
13 fixing punishment is unconstitutional or the sentence is so unreasonably  
14 disproportionate to the offense as to shock the conscience.'" *Harte v. State*, 132 Nev.  
15 410, 373 P.3d 98 (2016) (internal quotations omitted). The *Harte* Court also expressly  
16 held that it will "not review nondeath sentences for excessiveness." *Id.* In this case,  
17 Petitioner acknowledged as part of his guilty plea that the State would have the right to  
18 argue for a sentence of life without the possibility of parole. While Petitioner views that  
19 sentence as harsh, he was involved in the kidnapping, torturing, and mutilation of the  
20 victim and an attempt to burn down the location of the crime after the defendants  
21 believed the victim had died. In fact, the sentencing judge stated, "if you had been  
22 successful in this, this would have been a capital murder case and you all would be  
23 looking at potentially a capital sentence." Therefore, the harshness of the penalty  
24 imposed is not disproportionate to the crime. Further, in sentencing, the Court did  
25 consider all of the mitigating factors Petitioner raises again here.

26 As for Petitioner's request for appointment of counsel, the State argues that  
27 Petitioner has not demonstrated that counsel should be appointed pursuant to NRS  
28 34.750. Additionally, Petitioner's request should be summarily denied because all of his  
claims are belied and repelled by the record. *Hargrove v. State*, 100 Nev. 498, 502, 686  
P.2d 222, 225 (1984). Petitioner has failed to include any factual allegations in the  
initial Petition that demonstrate counsel should be appointed. Although the  
consequences Petitioner faces are severe as he is serving life without the possibility of

1 parole, that fact alone does not require the appointment of counsel. The issues are not  
2 difficult because Petitioner's claims are meritless and belied by the record as discussed  
3 supra. Despite the claims' futility, Petitioner does not and cannot demonstrate that he  
4 had any trouble raising the issue

5 Additionally, there has been no indication that Petitioner is unable to  
6 comprehend the proceedings here. He managed to file a Motion to Withdraw Counsel,  
7 this instant Petition, and two supplemental pleadings without the assistance of counsel.  
8 Finally, counsel is not necessary to proceed with further discovery in this case.

9 Petitioner himself indicates that he has provided the Court with the information  
10 needed to grant him relief. Due to habeas relief not being warranted, there is no need  
11 for additional discovery, let alone counsel's assistance to conduct such investigation

12 Lastly, the State argues that Petitioner is not entitled to an evidentiary hearing.  
13 All of the Petitioner's factual assertions are belied by the record in this case. Every  
14 claim is nothing but a bare and naked assertion that is repelled by the record. As all of  
15 Petitioner's claims fail, he has likewise failed to demonstrate that the record needs to be  
16 expanded through an evidentiary hearing. Therefore, the Petition can be resolved on  
17 the pleadings and an evidentiary hearing is not required, nor is Petitioner entitled to  
18 one.

19 In Reply, Petitioner argues that it is perplexing and doubtful that an appellate  
20 counsel would address his own ineffectiveness while he/she prepare[s] [a] brief on  
21 direct appeal, on behalf of his/her client. He states that he is entitled to appointment of  
22 counsel under the Sixth Amendment of the United States Constitution. Petitioner  
23 summarizes the same arguments he made in his other briefing, and adds that the  
24 appointment of counsel is "the only humanly fair solution."

#### 25 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

26 As the "plea canvass" is at issue here, the Court herein reviews the entire plea  
27 canvass pertaining to this Petitioner, as follows:

28 THE COURT: Okay. I've got to do a plea canvas with each of you individually.  
I'm just going to do them in the order that they're in the pleadings. So We'll do  
Luis Angel Castro first. The rest of you can sit down if you want.

Mr. Castro, give me your full legal [name].

THE DEFENDANT: Luis Angel Castro Morales.

THE COURT: How old are you, sir?

THE DEFENDANT: 32.

THE COURT: How far did you go in school.

1 THE DEFENDANT: Tenth grade.  
2 THE COURT: Do you read, write, and understand the English language?  
3 THE DEFENDANT: The best I can.  
4 THE COURT: What does that mean?  
5 THE WITNESS: Yes.  
6 THE COURT: Have you seen a copy of the amended information in this case  
7 charging you with first degree kidnapping resulting in substantial bodily harm,  
8 which is a category A. Have you seen that?  
9 THE DEFENDANT: Yes, sir.  
10 THE COURT: Did you have a chance to read that and discuss it with your  
11 attorney?  
12 THE DEFENDANT: Yes, I have.  
13 THE COURT: With regard to that charge, first degree kidnapping resulting in  
14 substantial bodily harm, how do you plead, guilty or not guilty?  
15 THE DEFENDANT: Guilty.  
16 THE COURT: Before I can accept your plea of guilty, I have to be convinced that  
17 your plea is freely and voluntarily made. Are you making your plea freely and  
18 voluntarily?  
19 THE DEFENDANT: Yes, I am, sir.  
20 THE COURT: Has anybody forced you or coerced you to enter that plea?  
21 THE DEFENDANT: No, sir.  
22 THE COURT: Are you making that plea because you're, in fact, guilty of that  
23 charge?  
24 THE DEFENDANT: Yes, sir.  
25 THE COURT: Has anybody made any promises or guarantees to you other than  
26 what's been stated in open court and what's contained in the guilty plea  
27 agreement?  
28 THE DEFENDANT: No, sir.  
THE COURT: In looking at the guilty plea agreement, it looks like you signed  
this on page 5. It's dated February 4. Did you read and sign that today?  
THE DEFENDANT: Yes, sir.  
THE COURT: Did you understand it before you signed it?  
THE DEFENDANT: Yes, sir.  
THE COURT: You had a chance to discuss it with your attorney, and he  
answered any questions you might have had about it?  
THE DEFENDANT: Yes, I have.  
THE COURT: You understand that by signing it, you're agreeing that you read  
and understood it; correct?  
THE DEFENDANT: That is correct.  
THE COURT: Also by signing that document, you're agreeing to waive certain  
important constitutional rights like the right to be able to confront your accuser,  
go to trial and put on evidence on your own behalf. You understand that?  
THE DEFENDANT: I understand, sir.  
THE COURT: Are you currently suffering from any emotional or physical  
distress that's caused you to enter this plea?  
THE DEFENDANT: No, sir.

1 THE COURT: Are you currently under the influence on any alcohol, medication,  
2 narcotics or any substance that might affect your ability to understand these  
3 documents or the process that we're going through?  
4 THE DEFENDANT: No, sir.  
5 THE COURT: Do you understand that in the guilty plea agreement it says that  
6 the possibility of sentence is 15 to 40 years or for minimum of 15 years and a  
7 maximum of life or life without parole? Do you understand that those are the  
8 options?  
9 THE DEFENDANT: Yes, sir.  
10 THE COURT: Do you understand that sentencing is strictly up to the Court, and  
11 nobody can promise you probation, leniency, or any kind of special treatment;  
12 correct?  
13 THE DEFENDANT: That's correct.  
14 THE COURT: Do you have any questions that you want to ask of myself or the  
15 State or your counsel before we proceed?  
16 THE DEFENDANT: No, sir.  
17 THE COURT: Has your attorney made any promises to you that are not  
18 contained in the guilty plea agreement?  
19 THE DEFENDANT: No, sir.  
20 THE COURT: Based on all the facts and circumstances, are you satisfied with the  
21 services of your attorney?  
22 THE DEFENDANT: Yes, sir.  
23 THE COURT: Are you a U.S. citizen?  
24 THE DEFENDANT: No, sir.  
25 THE COURT: Do you understand that there are some charges that have adverse  
26 immigration consequences and may result in deportation?  
27 THE DEFENDANT: That is correct.  
28 THE COURT: Have you had the chance to discuss any immigration issues with  
your attorney, and he's answered any questions you have?  
THE DEFENDANT: To this point, yes and no, but I'll just say yes.  
MR. GELLER: Judge, I can represent to the Court, I've been in touch with his  
immigration attorney, and we've been in communication. I did let my client  
know today, as well as previously, that there's a substantial probability he'll be  
deported after he serves a period of incarceration.  
THE COURT: Do you understand that?  
THE DEFENDANT: Yes, sir.  
THE COURT: You still agree with the terms as set forth in the guilty plea  
agreement?  
THE DEFENDANT: Yes.  
THE COURT: So I have to go through the amended information with you to  
make sure that there's a factual basis for your plea. According to the  
information, it says that,  
"On or about the 7th day of March 2016 in Clark County, Nevada, contrary to the  
laws of the State of Nevada, you did willfully, unlawfully, feloniously seize,  
confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away Jose Ortiz  
Salazar, a human  
being, with the intent to hold or detain Jose Ortiz Salazar against his will and  
without his consent for the purpose of committing murder and/or robbery with

1 substantial bodily harm. The defendants being criminally liable under one or  
2 more of the following princip[les] of criminal liability, to wit: One, by directly  
3 committing the crime or by; two, aiding or abetting in the commission of the  
4 crime with the intent that the crime be committed by counseling, encouraging,  
5 hiring, commanding, inducing or otherwise procuring the other to commit the  
6 crime; and/or, three, pursuant to conspiracy to commit the crime with the intent  
7 that the crime be committed, the defendants aiding or abetting or conspiring,  
8 defendants acting in concert throughout." Is that what you did?  
9 THE DEFENDANT: According to this, yes.  
10 THE COURT: The question is, is that what you did?  
11 THE DEFENDANT: Yes.  
12 THE COURT: Okay. Because, I mean, if you don't think that's what you did, then  
13 you can't be freely and voluntarily accepting the plea.  
14 THE DEFENDANT: Yes.  
15 THE COURT: You agree that's what you did; correct?  
16 THE WITNESS: Yes.  
17 THE COURT: All right. The Court hereby finds the defendant's plea of guilty is  
18 freely and voluntarily made. He appears to understand the nature of the offense  
19 and the consequences of the plea. I'll therefore accept your plea of guilty. We'll  
20 refer this to the Division of Parole and Probation for preparation of the PSI.  
21 We'll set for sentencing hearing for --  
22 THE CLERK: March 26th, 8:30.

23 Transcript of Plea Canvass, 2/4/19.

24 In determining whether a guilty plea was voluntarily entered, the Court reviews  
25 the totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at  
26 271, 721 P.2d at 367. A proper plea canvass should reflect that:

27 [T]he defendant knowingly waived his privilege against self-incrimination, the  
28 right to trial by jury, and the right to confront his accusers; (2) the plea was  
voluntarily, was not coerced, and was not the result of a promise of leniency; (3)  
the defendant understood the consequences of his plea and the range of  
punishments; and (4) the defendant understood the nature of the charge, i.e.,  
the elements of the crime.

*Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
Nev. 774, 476 P.2d 950 (1970)).

The requirements of a proper plea canvass were met in the canvass conducted by  
the Court on February 4, 2019.

Pursuant to NRS 34.810, "The court shall dismiss a petition if the court  
determines that: (a) the petitioner's conviction was upon a plea of guilty . . . and the  
petition is not based upon an allegation that the plea was involuntarily or unknowingly

1 entered or that the plea was entered without effective assistance of counsel.” NRS  
2 34.810(1)(a).

3 Although the Defendant pled guilty, he is alleging that his plea was involuntary  
4 or unknowingly entered, and he further is arguing ineffective assistance of counsel.

5 In considering a challenge relating to “ineffective assistance of counsel,” the U.S.  
6 Supreme Court has stated the following:

7 Judicial scrutiny of counsel's performance must be highly deferential. It is all too  
8 tempting for a defendant to second-guess counsel's assistance after conviction or  
9 adverse sentence, and it is all too easy for a court, examining counsel's defense  
10 after it has proved unsuccessful, to conclude that a particular act or omission of  
11 counsel was unreasonable. *Cf. Engle v. Isaac*, 456 U.S. 107, 133–134, 102 S.Ct.  
12 1558, 1574–1575, 71 L.Ed.2d 783 (1982). A fair assessment of attorney  
13 performance requires that every effort be made to eliminate the distorting  
14 effects of hindsight, to reconstruct the circumstances of counsel's challenged  
15 conduct, and to evaluate the conduct from counsel's perspective at the time.  
16 Because of the difficulties inherent in making the evaluation, a court must  
17 indulge a strong presumption that counsel's conduct falls within the wide range  
18 of reasonable professional assistance; that is, the defendant must overcome the  
19 presumption that, under the circumstances, the challenged action “might be  
20 considered sound trial strategy.” See *Michel v. Louisiana*, supra, 350 U.S., at  
21 101, 76 S.Ct., at 164. There are countless ways to provide effective assistance in  
22 any given case. Even the best criminal defense attorneys would not defend a  
23 particular client in the same way. See Goodpaster, *The Trial for Life: Effective*  
24 *Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.Rev. 299, 343 (1983).

18 *Strickland v. Washington*, 466 U.S. 668, 689-690, 104 S.Ct. 2052, 2066 (1984).

19 The Court indicated that there is a two-prong test: The first prong is “whether,  
20 in light of all the circumstances, the identified acts or omissions were outside the wide  
21 range of professionally competent assistance,” recognizing that “counsel is strongly  
22 presumed to have rendered adequate assistance and made all significant decisions in  
23 the exercise of reasonable professional judgment.” *Strickland* at 690. The second  
24 prong is that “The defendant must show that there is a reasonable probability that, but  
25 for counsel’s unprofessional errors, the result of the proceeding would have been  
26 different. A reasonable probability is a probability sufficient to undermine confidence  
27 in the outcome.” *Strickland* at 694.

27 Performance of counsel is judged against an objective standard for  
28 reasonableness and is deficient when it falls below that standard. *State v. Powell*, 122  
Nev. 751, 759, 138 P.3d 453, 458 (2006); *Means v. State*, 120 Nev. 1001, 103 P.3d 25  
(2004); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102 (1996).

1 The Nevada Supreme Court has stated the following relating to the “prejudice”  
2 requirement:

3 In meeting the “prejudice” requirement, the defendant must show a reasonable  
4 probability that, but for counsel's errors, the result of the trial would have been  
5 different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068. When a conviction is  
6 the result of a guilty plea, [t]he second, or “prejudice,” requirement ... focuses on  
7 whether counsel's constitutionally ineffective performance affected the outcome  
8 of the plea process. In other words, in order to satisfy the “prejudice”  
9 requirement, the defendant must show that there is a reasonable probability  
10 that, but for counsel's errors, he would not have pleaded guilty and would have  
11 insisted on going to trial.

*Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)  
(emphasis added); see also *State v. Langarica*, 107 Nev. 932, 933, 822 P.2d  
1110, 1111 (1991), cert. denied, 506 U.S. 924, 113 S.Ct. 346, 121 L.Ed.2d 261  
(1992). “A reasonable probability is a probability sufficient to undermine  
confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068.

12 *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102 (1996).

13 In a very recent case, the Nevada Supreme Court summarized the analysis which  
14 the Court should undertake when considering an ineffective assistance claim. The  
15 Court stated the following:

16 To prove ineffective assistance of counsel, a petitioner must show “(1) that  
17 counsel's performance was deficient, and (2) that the deficient performance  
18 prejudiced the defense.” *Kirksey*, 112 Nev. at 987, 923 P.2d at 1107 (internal  
19 quotation marks omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 687,  
20 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The first prong of this test asks whether  
21 counsel's representation fell “below an objective standard of reasonableness” as  
22 evaluated from counsel's perspective at the time. *Id.* at 987-88, 923 P.2d at 1107.  
23 The second prong asks whether there is “a reasonable probability that, but for  
24 counsel's errors, the result of the [proceeding] would have been different.” *Id.* at  
25 988, 923 P.2d at 1107. We give deference to the district court's factual findings if  
26 supported by substantial evidence and not clearly erroneous, but we review the  
27 court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev.  
28 682, 686, 120 P.3d 1164, 1166 (2005). Both components of the inquiry must be  
shown. *Strickland*, 466 U.S. at 697, 104 S.Ct. 2052.

24 *Gonzales v. State*, 137 Nev.Adv.Op. 40 (7/29/21).

25 With regard to the Petitioner's argument that the Court's sentence constitutes  
26 “cruel and unusual punishment,” the Court of Appeals has already addressed that  
27 argument, and their decision is the Law of the Case. The Court of Appeals stated the  
28 following:

... Castro claims his sentence constitutes cruel and unusual punishment for the  
following reasons. He did not have a history of violent offenses and was under



1 the influence of drugs when he committed the crime. He was not aware that the  
2 crime would become so violent and left when it became violent. His DNA was  
3 not found on the weapon. He did not call the police because he was afraid that  
4 his codefendants would harm his family. He has PTSD symptoms; bipolar  
5 symptoms; and suffers from depression, anxiety, and drug addiction. And he  
6 once attempted suicide.

7 Regardless of its severity, a sentence that is within the statutory limits is  
8 not “cruel and unusual punishment unless the statute fixing punishment is  
9 unconstitutional or the sentence is so unreasonably disproportionate to the  
10 offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
11 282, 284 (1996)(quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,  
12 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01  
13 (1991)(plurality opinion)(explaining the Eighth Amendment does not require  
14 strict proportionality between crime and sentence; it forbids only an extreme  
15 sentence that is grossly disproportionate to the crime).

16 Here, Castro’s life-without-the-possibility-of-parole sentence falls within  
17 the parameters of the relevant statute. See NRS 200.320(1)(a). He does not  
18 allege that the statute is unconstitutional. And we conclude the sentence  
19 imposed is not grossly disproportionate to his crime and does not constitute  
20 cruel and unusual punishment.

21 (Castro v. Nevada, Court of Appeals, Order of Affirmance dated 12/12/20, Case 78643-  
22 COA).

23 As indicated above, the Eighth Amendment to the United States Constitution as  
24 well as Article I, Section 6 of the Nevada Constitution prohibit the imposition of cruel  
25 and unusual punishment. The Nevada Supreme Court has stated that “[a] sentence  
26 within the statutory limits is not ‘cruel and unusual punishment unless the statute  
27 fixing punishment is unconstitutional or the sentence is so unreasonably  
28 disproportionate to the offense as to shock the conscience.’” *Allred v. State*, 120 Nev.  
410, 92 P.2d 1246, 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,  
221-22 (1979))). And, as long as the sentence is within the limits set by the legislature, a  
sentence will normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev.  
344, 871 P.2d 950 (1994). Petitioner argues now that his sentence is disproportionate  
and shocks the conscience. While he may not have used the “buzz words,” of “shocks  
the conscience” in his appeal, the Court of Appeals previously held that the sentence  
was “not grossly disproportionate to his crime and does not constitute cruel and  
unusual punishment.” *Castro v. Nevada*, Court of Appeals, Order of Affirmance dated  
12/12/20, Case 78643-COA. The Court of Appeals already analyzed the Eighth

1 Amendment argument of “cruel and unusual punishment,” and found against the  
2 Petitioner on that issue. That ruling is the law of the case. *Hall v. State*, 91 Nev. 314,  
3 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343, 455 P.2d 34,  
4 38 (1969)).

5 Although the Petitioner is now unhappy with his sentence, the Guilty Plea  
6 Agreement (GPA) that he entered into specifically indicated the following:

7 This offer is conditional upon all four (4) Defendants accepting their  
8 respective negotiations and being sentenced. All Parties agree the State will  
9 have the right to argue for Life without the possibility of Parole, and the Defense  
will argue for Life with the possibility of Parole after fifteen (15) years. All  
parties agree that no one will seek the term of years.

10 GPA filed 2/4/19, at pg. 1.

11 At the Sentencing Hearing, defense counsel argued for Life “with” the possibility  
12 of parole, and the State argued for Life “without” the possibility of parole. The  
13 arguments were exactly what the Defendant agreed the arguments would be. When the  
14 Court sentenced each of the Defendants, the Court stated the following:

15 I want to be merciful, but at the same time, I know that justice has to be  
16 done. And we have a victim who, but for the fact that he lived against what you  
all thought -- my understanding is not only was he tortured and mutilated in this  
17 room for a period of time, for a period of hours, but that everybody thought he  
was dead, tried to burn the house down around him. And if you had been  
18 successful in this, this would have been a capital murder case and you all would  
be looking at potentially a capital sentence.

19 I have a hard time with the pictures that I've seen and the horrible  
injuries that were inflicted upon this poor victim. I understand that he is not the  
20 pillar of our community either, but that doesn't justify the things that were done  
to him over \$50. And that almost makes it worse because that was the basis for  
21 this, is him not being able to come up with \$50.

22 So . . . . I'm going to go ahead and sentence each of you to life in the  
Nevada Department of Corrections without the possibility of parole. I  
23 understand that that is a difficult sentence for you to have to deal with. It's a  
difficult sentence for me to have to give, but I don't see any redeeming qualities.  
24 I would like to be merciful, but I don't think that this is a crime that -- I don't  
think the community wants you back out on the streets. So that will be the  
25 sentence. I don't think credit time served matters.

26 . . . .

27 (Transcript of Sentencing Hearing 3/26/19, pgs. 23-24).

28 The Petitioner argues that his plea was not entered freely and voluntarily, but his  
claim is belied by the record, as set forth above. He acknowledged, both in his GPA and

1 orally before the Court, what the possibilities would be, and he acknowledged that  
2 sentencing was strictly up to the Court. Further he acknowledged that he had discussed  
3 immigration issues with his attorney, and that he still wanted to enter into the GPA,  
4 and accept the terms thereof. Based on the GPA and the plea canvass, and the totality  
5 of the circumstances in the case, the Court finds that the Defendant's guilty plea was  
6 made freely and voluntarily, and that he understood the nature of the offense and the  
7 consequences of his plea.

8 The Petitioner's argument that counsel promised the Petitioner and Petitioner's  
9 family that he would receive fifteen (15) years to life, is a bare and naked allegation that  
10 is unsupported in the record, and is actually belied by the record. Both the GPA signed  
11 by the Petitioner, as well as the oral plea canvass, specifically informed the Petitioner  
12 that the State would be arguing for life without the possibility of parole, and that  
13 sentencing was at the discretion of the Judge.<sup>1</sup> Petitioner argues, and submitted a letter  
14 from his parents, suggesting that counsel made misrepresentations to Petitioner's  
15 parents, but his parents did not accept the plea – Defendant did. And there is no  
16 evidence that Defendant's plea was anything but knowing, willing, and voluntary.

17 Further, Petitioner's argument that counsel was ineffective for failing to inform  
18 him of the immigration consequences of his plea, is equally belied by the record. <sup>2</sup>

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19 <sup>1</sup> The GPA specifically states, "I have not been promised or guaranteed any particular sentence by anyone. I know that  
20 my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the  
21 State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the  
22 recommendation." (See GPA at pg. 3). Additionally, in the oral plea canvass, the following interaction occurred:

23 THE COURT: Do you understand that in the guilty plea agreement it says that the possibility of sentence is 15 to 40  
24 years or for minimum of 15 years and a maximum of life or life without parole? Do you understand that those are the  
25 options?

26 THE DEFENDANT: Yes, sir.

27 THE COURT: Do you understand that sentencing is strictly up to the Court, and nobody can promise you probation,  
28 leniency, or any kind of special treatment; correct?

(See Plea Canvass of 2/4/19.)

<sup>2</sup>

In the GPA, signed by the Defendant, he agreed to the following:

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious  
negative immigration consequences including but not limited to:

1. The removal from the United States through deportation; . . .

. . . .

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not  
result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a  
legal resident.

. . . .

(See GPA at pg. 3)

Additionally, during the oral plea canvass, the following took place:

THE COURT: Are you a U.S. citizen?

THE DEFENDANT: No, sir.

1 In reviewing the Petitioner's arguments regarding ineffective assistance of  
2 counsel, in totality, the Court finds and concludes that the Petitioner has failed to meet  
3 the standard set forth in *Strickland*. The Court finds that there is insufficient evidence  
4 to support the conclusion that counsel's actions were objectively unreasonable.  
5 Further, there is insufficient evidence suggesting that the result of the proceeding  
6 would have been different if counsel had said or done things differently. Consequently,  
7 there is no prejudice to the Defendant.

8 Inasmuch as the Petition requested a "withdrawal of plea," such request is  
9 improper for a Writ of Habeas Corpus, but insofar as the issues have been addressed  
10 herein, the request is denied.

11 Petitioner argues that at the time he entered his guilty plea he was heavily  
12 medicated, not competent, and not able to understand the Constitutional rights he was  
13 waiving. Such allegations are bare and naked allegations, and are belied by the record.<sup>3</sup>

14 THE COURT: Do you understand that there are some charges that have adverse immigration consequences  
15 and may result in deportation?

16 THE DEFENDANT: That is correct.

17 THE COURT: Have you had the chance to discuss any immigration issues with your attorney, and he's  
18 answered any questions you have?

19 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

20 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his immigration attorney, and  
21 we've been in communication. I did let my client know today, as well as previously, that there's a substantial  
22 probability he'll be deported after he serves a period of incarceration.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You still agree with the terms as set forth in the guilty plea agreement?

26 THE DEFENDANT: Yes.

27 (See transcript of plea canvass 2/4/19).

28 <sup>3</sup> The Petitioner was asked about his "understanding," and whether he was under the "influence" of anything at the time  
of the plea canvass, and he stated as follows:

THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated  
February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he answered any questions you might  
have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional  
rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf.  
You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter  
this plea?

THE DEFENDANT: No, sir.

1       Petitioner requests an Evidentiary Hearing, but the issues he believes require an  
2 evidentiary hearing have already been addressed by the Court, and the Petitioner's  
3 arguments are belied by the record. Consequently, the Court does not believe that an  
4 Evidentiary Hearing would be necessary, and instead it would be a waste of judicial  
5 resources.

6       With regard to the Petitioner's request for appointment of counsel, NRS 171.188  
7 provides that an indigent defendant may request appointment of counsel, and pursuant  
8 to NRS 178.397, an indigent defendant accused of a felony or gross misdemeanor is  
9 entitled to counsel at every stage of the proceedings, from the initial appearance  
10 through appeal, unless he waives such appointment. But pursuant to *Coleman v.*  
11 *Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991), there is no Sixth Amendment  
12 right to post-conviction counsel. See also *McKague v. Warden*, 112 Nev. 159, 163, 912  
13 P.2d 255, 258 (1996). NRS 34.750 provides the Court with discretion to appoint post-  
14 conviction counsel, after considering whether 1) the issues presented are difficult; 2)  
15 the petitioner is unable to comprehend the proceedings; or 3) counsel is needed to  
16 proceed with discovery. In analyzing these factors, this Court finds and concludes that  
17 while many issues have been raised in the Petition, they do not appear to be "complex"  
18 issues. The Petition is comprehensive and somewhat organized, especially for a pro-se  
19 Petitioner, and consequently, the Court cannot find that Petitioner would be "unable to  
20 comprehend the proceedings," or need assistance in filing any documents, as he  
21 appears to be very capable of doing so on his own. Finally, there is not even a

22 . . . .

23 . . . .

24 . . . .

25 . . . .

26 . . . .

27 . . . .

28 . . . .

THE COURT: Are you currently under the influence on any alcohol, medication, narcotics or any substance  
that might affect your ability to understand these documents or the process that we're going through?

THE DEFENDANT: No, sir.

(See transcript of plea canvass 2/4/19).

1 suggestion that discovery is necessary. Consequently, the Petitioner's request for  
2 appointment of counsel must be denied.

3 ORDER/CONCLUSION


4 Based upon the foregoing, and good cause appearing,

5 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is hereby  
6 DENIED. Petitioner's request for an Evidentiary Hearing is also DENIED. And finally,  
7 Petitioner's request for appointment of counsel is also DENIED.

8 The Court requests that the State process the Notice of Entry relative to this  
9 Order.

10 Because this matter has been decided on the pleadings, the hearing scheduled  
11 for 9/23/21 will be taken off calendar, and consequently, there is no need for any  
12 parties or attorneys to appear.

13 Dated this 21st day of September, 2021

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16  
17 4F9 B1F 0283 78E0  
18 Jerry A. Wiess  
19 District Court Judge  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

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 9/22/2021

16 Luis Castro

#1214547  
ESP  
P.O. Box 1989  
Ely, NV, 89301

17  
18  
19 Steven Wolfson

Clark County District Attorney  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV, 89155



1 NEOJ

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 LUIS CASTRO,

6 Petitioner,

Case No: A-21-835827-W

Dept. No: XXX

7 vs.

8 STATE OF NEVADA,

9 Respondent,

10 NOTICE OF ENTRY OF ORDER

11 PLEASE TAKE NOTICE that on September 21, 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 mailed  
15 to you. This notice was mailed on September 23, 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 23 day of September 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  
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:  
25 Luis Castro # 1214547  
26 P.O. Box 1989  
Ely, NV 89301

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



**DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-**

LUIS ANGEL CASTRO,	)	
	)	
Petitioner,	)	CASE NO.: A-21-835827-W
	)	DEPT. NO.: XXX
vs.	)	
	)	ORDER RE: PETITION FOR WRIT
STATE OF NEVADA,	)	OF HABEAS CORPUS AND RE:
	)	PLAINTIFF'S MOTION FOR
Defendant.	)	APPOINTMENT OF COUNSEL AND
	)	FOR EVIDENTIARY HEARING

**INTRODUCTION**

The above-referenced matter is scheduled for a hearing on September 23, 2021, with regard to Petitioner Luis Castro's Petition for Writ of Habeas Corpus. Pursuant to the Administrative Orders of this Court, and N.R.Cr.P. 8(2), this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

**FACTUAL AND PROCEDURAL HISTORY**

On March 10, 2016, Luis Angel Castro (hereinafter "Petitioner") was charged by way of Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B Felony); Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ; Count 3 - Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping with Use of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly Weapon (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B Felony); Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-defendants.

On April 12, 2019, Petitioner was bound up to the District Court on all charges following a preliminary hearing. After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea Agreement ("GPA"), the offer was contingent upon all four (4) Defendants accepting their respective negotiations and being

1 sentenced. All Parties agreed that the State would have the right to argue for Life  
2 without the possibility of Parole, and the Defense will argue for Life with the possibility  
3 of Parole after fifteen (15) years. All Parties agreed that no one would seek a term of  
4 years. (See GPA).

5 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24,  
6 2019, Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro  
7 ("Petitioner's Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life  
without the possibility of Parole in the Nevada Department of Corrections.

8 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's  
9 Judgment of Conviction. Remittitur issued on November 17, 2020.

10 Petitioner Luis A. Castro sent his pro per Petition for Writ of Habeas Corpus and  
11 to Withdraw Guilty Plea and a separate Ex Parte Motion for Appointment of Counsel  
12 and Request for Evidentiary Hearing on May 12, 2021. Thereafter, both were received  
13 by the Clerk of Court and e-filed on June 7, 2021. On June 22, 2021, Petitioner sent a  
14 Supplement to Petition for Writ of Habeas Corpus, which was received by the Clerk of  
Court and e-filed on July 6, 2021.

#### 15 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

16 Petitioner seeks to withdraw his guilty plea entered on 2/4/19 on the basis he  
17 was denied his right to effective assistance of counsel during the plea-bargain process,  
18 and that his plea was not given voluntarily or intelligently. Petitioner states he was not  
19 competent to enter the plea because of his seventh-grade education, and his psychiatric  
20 and medical conditions at the time of his plea.

21 First, Petitioner asserts that at the time he entered his guilty plea, "he was  
22 heavily medicated and not competent, nor able to fully appreciate, understand, and  
23 waive his fundamental Constitutional rights." He further states that "the Court  
24 remained oblivious to the most vital aspect of the plea colloquy, which centered on his  
25 perception and mental health state at the time the plea was induced." (See Petition at  
26 pg. 3 of 14). Moreover, an evidentiary hearing will clearly establish that the mental  
27 health "crisis and a newly prescribed and substantially powerful daily antipsychotic  
28 medication had adversely affected and impacted his competency during the plea." *Id.*

1       Petitioner argues that a review of the transcripts of the plea hearing will not  
2 clearly establish he fully understood his rights. Only an evidentiary hearing will  
3 definitely establish his psychotic condition at the time of his plea, which precluded his  
4 ability to voluntarily and intelligently plea guilty. Petitioner cites to *Wilkins v.*  
5 *Bowersox*, 145 F.3d 1006 (8th Cir. 1998), as support for his argument. Petitioner  
6 argues that he is an unsophisticated person who was able to correctly answer simple  
7 questions during the plea canvas at defense counsel's direction, but that is not enough  
8 to establish that he fully understood what rights he gave up or what duties his attorney  
failed to perform.

9       Given his seventh-grade education, history of drug abuse, and inherited bipolar  
10 disorder, Petitioner asserts that his attorney, Mr. Warren Geller, was able to easily  
11 instruct and/or manipulate him to answer every question of the Court by simply  
12 responding "yes" to every question. He suggests that on page 7 of the plea canvass,  
13 there is evidence that he was poorly advised by counsel. Petitioner argues that Mr.  
14 Geller did not discuss any of the immigration consequences of a guilty plea with  
15 Petitioner, and consequently, the plea must be found involuntary.

16       Petitioner argues his guilty plea must be withdrawn because it was  
17 fundamentally unfair and manifested injustice, because Mr. Geller "talk[ed] him into  
18 accepting a 'blind plea' that did not benefit him at all." Petitioner suggests that he was  
19 on suicide crisis placement and then discharged with newly prescribed anti-psychotic  
20 medication, shortly before the plea, and Mr. Geller should have alerted the Court that  
21 these changes had a substantive cognitive impact on him. Further, Petitioner argues  
22 that the State will not be prejudiced by his withdrawal of plea because the case is "not  
so old" and the totality of the circumstance's manifest injustice.

23       According to Petitioner, Mr. Geller intimidated and misinformed Petitioner's  
24 mother, in order to force Petitioner into accepting a plea, because otherwise she would  
25 withdraw her support from him. Petitioner alleges that Mr. Geller assured his mother  
26 that he would receive a sentence of 15 years to life with the possibility of parole.  
27 Because he did not receive a benefit from the plea agreement, Petitioner's Sixth  
28 Amendment rights were violated.

1       Petitioner takes issue with the District Court's decision to sentence him to life  
2 without the possibility of parole. While he understands the Court had wide discretion to  
3 impose a sentence and that the sentence imposed on him was within the statutory limit,  
4 Petitioner argues his sentence is not in the best interest of judicial proceedings.  
5 Petitioner argues that it doesn't make sense for him to take a plea for a sentence that  
6 would have been the same had he gone to trial. Had this case gone to trial, the evidence  
7 would have revealed that he played a minimal role in the crime, that he tried to stop his  
8 co-defendants, the only reason he did not call the police was out of fear for his family,  
and that there was no DNA evidence.

9       He argues that the ultimate sentence imposed shocks the conscience given his  
10 lack of prior convictions for violent offenses, the fact he left the scene, and that he was  
11 not aware the crime would become violent. Petitioner states that his sentence of life  
12 without the possibility of parole "is so unreasonably disproportionate to the offense and  
13 [his] role in the offense as to shock the conscience and amounts to cruel and unusual  
14 punishment in violation of the Eighth Amendment of the United States Constitution  
15 and Article I, Section VI of the Nevada Constitution." (See Petition at pg. 11 of 14.)

16       In his "Supplemental Petition," Petitioner focuses on Mr. Geller's alleged  
17 ineffective assistance of counsel. Petitioner argues that Mr. Geller was ineffective by  
18 failing "to object and/or argue the Court's unreasonable demand. The demand that the  
19 acceptance of the plea was contingent upon all four (4) Defendants accepting their  
20 respective negotiations." (See Supplemental Petition at pg. 6 of 15).

21       Petitioner again states that the plea agreement resulted in the same, or a worse  
22 outcome than if the case had gone to trial, because the State would not have been able  
23 to prove its case. Had the case gone to trial, the "facts" would have been revealed,  
24 including that the prosecution coached the victim into identifying Petitioner as one of  
the people who harmed him. And trial could have shown Petitioner lacked the mental  
capacity to orchestrate the ordeal.

25       According to Petitioner, Mr. Geller's counsel constituted "as a 'Trump Con'-  
26 fraudulent legal representation," because he told Petitioner's parents that the sentence  
27 would range between 15 to 25 years in prison if he accepted. Petitioner stated that his  
28 parents then threatened him with loss of support if he did not accept the offer, which  
left him no alternative but to take the guilty plea. Mr. Geller was paid \$85,000.00 to

1 defend and/or negotiate a fair sentence on behalf of petitioner. Petitioner stated Mr.  
2 Geller failed to sever Petitioner's case from the co-defendants, and provided a "lack of  
3 legal representation" which "was a disgrace and amounted to beguilement." (See  
4 Supplemental Petition at pg. 6 of 15).

5 Petitioner argues that it is "very unlikely [Mr. Geller] spen[t] more than ten  
6 hours working on this case, averaging \$8,500.00 an hour. For this hourly rate he could  
7 have tried to be an effective attorney or at the very, very minimum, negotiated the plea-  
8 sentence." (See Supplemental Petition at pg. 8 of 15.)

9 In his Supplement, Petitioner again argues that the Court's sentence was  
10 disproportionate, and constituted cruel and unusual punishment in violation of the  
11 Eighth Amendment.

12 Finally, Petitioner also argues that an evidentiary hearing is necessary so that his  
13 parents can testify about Mr. Geller's alleged promise to induce Petitioner to accept the  
14 plea offer. The evidence is necessary in order for the Court to determine if Petitioner  
15 was afforded constitutionally sufficient advice so that he could intelligently and  
16 knowingly waive his important constitutional trial.

17 The Court notes that the Petitioner attached as an exhibit to his Supplement, a  
18 letter allegedly from his parents supporting his arguments regarding Mr. Geller.

19 With regard to the Petitioner's request for appointment of counsel, Petitioner  
20 argues that the Court should consider that his Writ of Habeas Corpus has real merit.  
21 Further, the Court should consider the factual complexity of this case, the ability of the  
22 indigent to investigate the facts, the existence of conflicting testimony, the ability of the  
23 indigent to present his claim(s) and the complexity of the legal issues.

24 In Return, the State first notes the procedural and factual background of this  
25 matter and the underlying criminal case. Because Petitioner's Supplemental Petition  
26 and Memo in Support were filed after he filed this Petition and filed without leave of  
27 Court, the State argues those pleading should be stricken and/or any new claims or  
28 allegations contained therein should be summarily denied, pursuant to NRS 34.750 (5).  
Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a  
petitioner from filing any additional pleadings or supplements, except for those  
specifically provided for in subsections (2)-(4), unless ordered by the Court.

1 With regard to Petitioner's argument that his guilty plea was involuntary  
2 because he was mentally incompetent during the plea canvass and "did not have the  
3 mental capacity or fully understand his rights and did not know what he was facing  
4 when he pled guilty," the State contends this claim is belied by the record.  
5 To determine whether a guilty plea was voluntarily entered, the Court will review the  
6 totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at 271,  
721 P.2d at 367. A proper plea canvass should reflect that:

7 [T]he defendant knowingly waived his privilege against self-incrimination, the  
8 right to trial by jury, and the right to confront his accusers; (2) the plea was  
9 voluntarily, was not coerced, and was not the result of a promise of leniency; (3)  
10 the defendant understood the consequences of his plea and the range of  
the punishments; and (4) the defendant understood the nature of the charge, i.e.,  
the elements of the crime.

11 *Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
12 Nev. 774, 476 P.2d 950 (1970)).

13 As an initial matter, Petitioner attempts to draw similarities between this case  
14 and *Wilkins v. Bowersox*, 145 P.3d 1006 (8th Cir. 1998), but the State argues that  
15 Eighth Circuit case law is irrelevant and inapplicable here, particularly in light of the  
16 fact that the totality of the circumstances establish that Petitioner's plea was  
17 voluntarily, knowingly, and intelligently entered. First, Petitioner signed his GPA and  
18 affirmed that he was "signing this agreement voluntarily, after consultation with [his]  
19 attorney, and [was] not acting under duress or 'coercion[.]'" (GPA, at pg. 5.) Petitioner  
20 further affirmed that he was not "under the influence of any intoxicating liquor-, a  
21 controlled substance or other drug which would in any manner impair [his] ability to  
22 comprehend or understand [the] agreement or the proceedings surrounding [the] entry  
of [the] plea." (GPA, at pg. 5).

23 Next, despite Petitioner's claim to the contrary, his answers during his plea  
24 colloquy were not perfunctory affirmations. Petitioner's answers during the plea  
25 canvass further bely any claim that Petitioner was not competent to plead guilty or did  
26 not understand what he was pleading guilty to. See Recorder's Transcript of Hearing-  
27 Entry of Plea ("RT: EOP"), at 45-6 (February 4, 2019).

28 Additionally, Petitioner's allegation that his plea was invalid because he was on  
suicide watch in the days preceding his guilty plea is nothing but a bare and naked  
allegation that his unsupported by the record. According to the sentencing

1 memorandum filed by counsel prior to sentencing, Petitioner received three  
2 neuropsychological evaluations on February 21, March 5, and March 7, 2019, after he  
3 entered his plea. (Petitioner's Sentencing Memo at pg. 11). However, the only suicide  
4 attempt mentioned in those evaluations is an incident from years prior to Petitioner's  
5 incarceration. *Id.* at 15. Therefore, the claim that Petitioner was on suicide watch is  
6 unfounded and belied by the reports provided by the defense in preparation for  
7 sentencing. Accordingly, Petitioner's claim that he was not competent to plead guilty  
8 fails.

9 In response to Petitioner's argument that the guilty plea was entered into with  
10 effective assistance of counsel, the State argues that this also fails. Petitioner  
11 acknowledges that his sentence is legal but believes that his sentence is disproportion  
12 and shocks the conscience because he did not have any prior criminal history, there was  
13 no evidence of his DNA at the crime scene, and Petitioner suffers from various mental  
14 conditions, and this also fails. The State argues that Petitioner's signature on his GPA  
15 and answers during his plea canvass belie any claim of ineffective assistance of counsel.  
16 Petitioner claims that his counsel did not discuss the consequences of the plea on  
17 Petitioner's immigration status, but this is completely unfounded and belied by the  
18 record. By signing the GPA, Petitioner affirmed that he did understand the  
19 immigration consequences. (See GPA, at pgs. 3-4). Moreover, during the plea canvass,  
20 Petitioner and his attorney discussed the immigration consequence. (See RT: EOP, at  
21 7-8). Additionally, this claim is belied by the record at sentencing. In the Sentencing  
22 Memo, counsel stated, "the parole board may deem it appropriate to release him to  
23 Immigration and Customs Enforcement for removal from the United States." (See  
24 Petitioner's Sentencing Memo at 7-8). During sentencing, Petitioner's counsel  
25 referenced the possibility of Petitioner's deportation to Mexico multiple times and even  
26 used that fact to argue in favor of possible parole. Recorder's Transcript of Proceedings  
27 Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019). Specifically, counsel  
28 stated, "There is an ICE hold. If...the Court...granted the defense's request for parole  
eligibility at 15 years...the parole board would have the option to say, you know what  
federal government, now you can take Mr. Castro and deport him to Mexico...if the  
Court sentences him to life without, no matter what the circumstances are, we're always  
going to be paying for his incarceration." *Id.* at 7-8. Additionally, Petitioner addressed

1 the court and made no mention that he was never informed of or advised about  
2 potential immigration consequences. (*Id.* at 10- 11). Therefore, Petitioner's claim that  
3 he was not aware of the consequences of immigration fails as it is belied by the record.

4 With regard to Petitioner's argument that counsel intimidated and lied to  
5 Petitioner's parents, in order to induce Petitioner into pleading guilty, this is a bare and  
6 naked allegation suitable only for summary denial. In signing the GPA, Petitioner  
7 confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty  
8 plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was]  
9 satisfied by the services provided by [his] attorney." Additionally, when Petitioner  
10 signed the GPA, he acknowledged that he understood that he was waiving his right to a  
11 jury trial. (GPA at 4). Moreover, during the plea canvass, Petitioner confirmed that he  
12 was waiving his right to challenge the evidence at trial. (RT: EOP, at 5-6). Further,  
13 Petitioner has failed to articulate what other investigation or challenge to the evidence  
14 counsel should have engaged in, prior to Petitioner's guilty plea that would have  
15 resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This  
16 failure is fatal. *Hill*. 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot  
17 be deemed ineffective. Specifically, Petitioner further confirmed that he was satisfied  
18 with counsel during his plea canvass and affirmed that he had not been threatened into  
19 pleading guilty RT: EOP, at 4-7.

20 Petitioner's claim that counsel promised him a sentence of fifteen (15) years to  
21 life, or any other sentence, is a bare and naked claim that is entirely belied by the  
22 record. Petitioner's signed GPA first states that pursuant to the negotiations, while  
23 counsel could argue for a sentence of fifteen (15) years to life, Petitioner understood he  
24 was not guaranteed that sentence. GPA at 3. Petitioner's answers during the plea  
25 canvass further confirms that Petitioner understood the terms of the negotiations and  
26 belie any claim that he believed he would receive a particular sentence RT: EOP, at 6.  
27 While counsel indeed argued during sentencing that Petitioner should receive a  
28 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did  
not honor that request does not render counsel deficient.

Petitioner's claim that his sentence of life without the possibility of parole  
suggests that counsel was ineffective during the plea negotiations fails. Counsel filed a  
sixty-eight (68) page sentencing memo, which included a detailed history of



1 Petitioner's upbringing, a neuropsychological evaluation that was completed at  
2 Attorney Geller's request, and multiple letters of support for Petitioner. In this  
3 sentencing memo, Attorney Geller made a passionate argument for the possibility of  
4 parole based on all of the applicable mitigating factors. Petitioner's Sentencing Memo  
5 at 6-8.

6 Counsel then made a similarly passionate argument during the sentencing  
7 hearing highlighting (1) Petitioner's lack of criminal history; (2) childhood trauma that  
8 led to self-medicating with drugs; (3) the support Petitioner had from his family; (4)  
9 Parole and Probation's recommended sentence of fifteen (15) years to life; (5)  
10 Petitioner's consistent claim that he was not one of the people who handled the weapon  
11 or touched the victim; (6) DNA results showing that Petitioner's DNA was not on the  
12 weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance camera  
13 footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.  
14 Indeed, the record is clear that the district court acknowledged that while a defendant's  
15 lack of criminal history and obvious substance abuse problems tend to incline the court  
16 to be merciful at sentence, neither factor negated the "horrific crimes" committed. *Id.*  
17 at 23-24.

18 Further, the State also notes that Petitioner was sentenced with his three co-  
19 defendants, all of whom entered into the same plea negotiations, and all of whom  
20 received the same sentence of life without the possibility of parole. Of the other co-  
21 defendants, only co-defendant Edward Honabach filed a Post-Conviction Writ of  
22 Habeas Corpus ("Honabach's Petition"). See *Honabach v. William Gittere*, A-20-  
23 812948-W, Petition Post-Conviction Writ of Habeas Corpus filed March 27, 2020). In  
24 Honabach's Petition, Honabach made similar claims to those contained in this instant  
25 Petition, in that he claimed his plea was involuntarily entered and his counsel was  
26 ineffective because he was not advised that he could receive life without the possibility  
27 of parole. *Id.* The Court summarily denied Honabach's Petition, finding that the Guilty  
28 Plea Agreement and the record of plea canvass proceedings demonstrate that  
Honabach's "guilty plea was made freely and voluntarily, and that he understood the  
nature of the offense and the consequences of his plea." *Honabach v. William Gittere*,  
A-20-812948-W, Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23,  
2020). Because Petitioner raises factually similar claims, signed the same Guilty Plea

1 Agreement, and was canvassed during the same proceeding as Honabach, the Court's  
2 reasoning and denial of Honabach's petition suggests that Petitioner's instant petition  
3 should be summarily denied.

4 With regard to Petitioner's claim that his sentence is cruel and unusual, this is  
5 not a claim of ineffective assistance of counsel, nor is it a challenge to the validity of  
6 Petitioner's guilty plea. Accordingly, it should have been raised on direct appeal, and is  
7 beyond the scope of habeas proceedings and therefore waived. *Franklin*, 110 Nev. at  
8 752, 877 P.2d at 1059. Further, Petitioner already raised this claim which was rejected  
9 by the Nevada Court of Appeals.

10 The Court of Appeals already ruled that although Castro claimed his sentence  
11 constitutes cruel and unusual punishment, the sentence falls within the parameters of  
12 the relevant statute. See NRS 200.320(1)(a). He did not allege that the statute is  
13 unconstitutional, and the Court concluded that the sentence imposed was not grossly  
14 disproportionate to his crime and did not constitute cruel and unusual punishment.  
15 Order of Affirmance, *State v. Castro*, Docket No: 78643-COA, at 3-4 (filed August 12,  
16 2020).

17 Based on this ruling by the Court of Appeals, the State argues that this claim is  
18 barred by the doctrine of law of the case. "The law of a first appeal is law of the case on  
19 all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91  
20 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343- 455  
21 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more  
22 detailed and precisely focused argument subsequently made after reflection upon the  
23 previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,  
24 issues previously decided on direct appeal may not be reargued in a habeas petition.  
25 *Pellegrini v. State*, 117 Nev. 860, 879, 34P.3d519, 532 (2001) (citing *McNelson v. State*,  
26 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot  
27 overrule the Nevada Supreme Court. NEV. CONST. Art. VI§ 6. Accordingly, by simply  
28 continuing to file petitions with the same arguments, Petitioner's claim is barred by the  
29 doctrine of the law of the case. *Id.*; *Hall v. State*, 91Nev.314, 316, 535 P.2d 797, 799  
30 (1975).

31 The Eighth Amendment to the United States Constitution as well as Article I,  
32 Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual

1 punishment. The Nevada Supreme Court has stated that "[a] sentence within the  
2 statutory limits is not 'cruel and unusual punishment unless the statute fixing  
3 punishment is unconstitutional or the sentence is so unreasonably disproportionate to  
4 the offense as to shock the conscience.'" *Allred v. State*, 120 Nev. 410, 92 P.2d 1246,  
5 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)  
6 (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).  
7 As long as the sentence is within the limits set by the legislature, a sentence will  
8 normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev. 344, 871 P.2d  
9 950 (1994).

10 The Nevada Supreme Court has consistently echoed its standard of review for  
11 claims of excessive criminal sentences: "[r]egardless of its severity, a sentence that is  
12 'within the statutory limits is not 'cruel and unusual punishment unless the statute  
13 fixing punishment is unconstitutional or the sentence is so unreasonably  
14 disproportionate to the offense as to shock the conscience.'" *Harte v. State*, 132 Nev.  
15 410, 373 P.3d 98 (2016) (internal quotations omitted). The *Harte* Court also expressly  
16 held that it will "not review nondeath sentences for excessiveness." *Id.* In this case,  
17 Petitioner acknowledged as part of his guilty plea that the State would have the right to  
18 argue for a sentence of life without the possibility of parole. While Petitioner views that  
19 sentence as harsh, he was involved in the kidnapping, torturing, and mutilation of the  
20 victim and an attempt to burn down the location of the crime after the defendants  
21 believed the victim had died. In fact, the sentencing judge stated, "if you had been  
22 successful in this, this would have been a capital murder case and you all would be  
23 looking at potentially a capital sentence." Therefore, the harshness of the penalty  
24 imposed is not disproportionate to the crime. Further, in sentencing, the Court did  
25 consider all of the mitigating factors Petitioner raises again here.

26 As for Petitioner's request for appointment of counsel, the State argues that  
27 Petitioner has not demonstrated that counsel should be appointed pursuant to NRS  
28 34.750. Additionally, Petitioner's request should be summarily denied because all of his  
claims are belied and repelled by the record. *Hargrove v. State*, 100 Nev. 498, 502, 686  
P.2d 222, 225 (1984). Petitioner has failed to include any factual allegations in the  
initial Petition that demonstrate counsel should be appointed. Although the  
consequences Petitioner faces are severe as he is serving life without the possibility of

1 parole, that fact alone does not require the appointment of counsel. The issues are not  
2 difficult because Petitioner's claims are meritless and belied by the record as discussed  
3 supra. Despite the claims' futility, Petitioner does not and cannot demonstrate that he  
4 had any trouble raising the issue

5 Additionally, there has been no indication that Petitioner is unable to  
6 comprehend the proceedings here. He managed to file a Motion to Withdraw Counsel,  
7 this instant Petition, and two supplemental pleadings without the assistance of counsel.  
8 Finally, counsel is not necessary to proceed with further discovery in this case.

9 Petitioner himself indicates that he has provided the Court with the information  
10 needed to grant him relief. Due to habeas relief not being warranted, there is no need  
11 for additional discovery, let alone counsel's assistance to conduct such investigation

12 Lastly, the State argues that Petitioner is not entitled to an evidentiary hearing.  
13 All of the Petitioner's factual assertions are belied by the record in this case. Every  
14 claim is nothing but a bare and naked assertion that is repelled by the record. As all of  
15 Petitioner's claims fail, he has likewise failed to demonstrate that the record needs to be  
16 expanded through an evidentiary hearing. Therefore, the Petition can be resolved on  
17 the pleadings and an evidentiary hearing is not required, nor is Petitioner entitled to  
18 one.

19 In Reply, Petitioner argues that it is perplexing and doubtful that an appellate  
20 counsel would address his own ineffectiveness while he/she prepare[s] [a] brief on  
21 direct appeal, on behalf of his/her client. He states that he is entitled to appointment of  
22 counsel under the Sixth Amendment of the United States Constitution. Petitioner  
23 summarizes the same arguments he made in his other briefing, and adds that the  
24 appointment of counsel is "the only humanly fair solution."

#### 25 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

26 As the "plea canvass" is at issue here, the Court herein reviews the entire plea  
27 canvass pertaining to this Petitioner, as follows:

28 THE COURT: Okay. I've got to do a plea canvas with each of you individually.  
I'm just going to do them in the order that they're in the pleadings. So We'll do  
Luis Angel Castro first. The rest of you can sit down if you want.

Mr. Castro, give me your full legal [name].

THE DEFENDANT: Luis Angel Castro Morales.

THE COURT: How old are you, sir?

THE DEFENDANT: 32.

THE COURT: How far did you go in school.

1 THE DEFENDANT: Tenth grade.  
2 THE COURT: Do you read, write, and understand the English language?  
3 THE DEFENDANT: The best I can.  
4 THE COURT: What does that mean?  
5 THE WITNESS: Yes.  
6 THE COURT: Have you seen a copy of the amended information in this case  
7 charging you with first degree kidnapping resulting in substantial bodily harm,  
8 which is a category A. Have you seen that?  
9 THE DEFENDANT: Yes, sir.  
10 THE COURT: Did you have a chance to read that and discuss it with your  
11 attorney?  
12 THE DEFENDANT: Yes, I have.  
13 THE COURT: With regard to that charge, first degree kidnapping resulting in  
14 substantial bodily harm, how do you plead, guilty or not guilty?  
15 THE DEFENDANT: Guilty.  
16 THE COURT: Before I can accept your plea of guilty, I have to be convinced that  
17 your plea is freely and voluntarily made. Are you making your plea freely and  
18 voluntarily?  
19 THE DEFENDANT: Yes, I am, sir.  
20 THE COURT: Has anybody forced you or coerced you to enter that plea?  
21 THE DEFENDANT: No, sir.  
22 THE COURT: Are you making that plea because you're, in fact, guilty of that  
23 charge?  
24 THE DEFENDANT: Yes, sir.  
25 THE COURT: Has anybody made any promises or guarantees to you other than  
26 what's been stated in open court and what's contained in the guilty plea  
27 agreement?  
28 THE DEFENDANT: No, sir.  
THE COURT: In looking at the guilty plea agreement, it looks like you signed  
this on page 5. It's dated February 4. Did you read and sign that today?  
THE DEFENDANT: Yes, sir.  
THE COURT: Did you understand it before you signed it?  
THE DEFENDANT: Yes, sir.  
THE COURT: You had a chance to discuss it with your attorney, and he  
answered any questions you might have had about it?  
THE DEFENDANT: Yes, I have.  
THE COURT: You understand that by signing it, you're agreeing that you read  
and understood it; correct?  
THE DEFENDANT: That is correct.  
THE COURT: Also by signing that document, you're agreeing to waive certain  
important constitutional rights like the right to be able to confront your accuser,  
go to trial and put on evidence on your own behalf. You understand that?  
THE DEFENDANT: I understand, sir.  
THE COURT: Are you currently suffering from any emotional or physical  
distress that's caused you to enter this plea?  
THE DEFENDANT: No, sir.

1 THE COURT: Are you currently under the influence on any alcohol, medication,  
2 narcotics or any substance that might affect your ability to understand these  
3 documents or the process that we're going through?  
4 THE DEFENDANT: No, sir.  
5 THE COURT: Do you understand that in the guilty plea agreement it says that  
6 the possibility of sentence is 15 to 40 years or for minimum of 15 years and a  
7 maximum of life or life without parole? Do you understand that those are the  
8 options?  
9 THE DEFENDANT: Yes, sir.  
10 THE COURT: Do you understand that sentencing is strictly up to the Court, and  
11 nobody can promise you probation, leniency, or any kind of special treatment;  
12 correct?  
13 THE DEFENDANT: That's correct.  
14 THE COURT: Do you have any questions that you want to ask of myself or the  
15 State or your counsel before we proceed?  
16 THE DEFENDANT: No, sir.  
17 THE COURT: Has your attorney made any promises to you that are not  
18 contained in the guilty plea agreement?  
19 THE DEFENDANT: No, sir.  
20 THE COURT: Based on all the facts and circumstances, are you satisfied with the  
21 services of your attorney?  
22 THE DEFENDANT: Yes, sir.  
23 THE COURT: Are you a U.S. citizen?  
24 THE DEFENDANT: No, sir.  
25 THE COURT: Do you understand that there are some charges that have adverse  
26 immigration consequences and may result in deportation?  
27 THE DEFENDANT: That is correct.  
28 THE COURT: Have you had the chance to discuss any immigration issues with  
your attorney, and he's answered any questions you have?  
THE DEFENDANT: To this point, yes and no, but I'll just say yes.  
MR. GELLER: Judge, I can represent to the Court, I've been in touch with his  
immigration attorney, and we've been in communication. I did let my client  
know today, as well as previously, that there's a substantial probability he'll be  
deported after he serves a period of incarceration.  
THE COURT: Do you understand that?  
THE DEFENDANT: Yes, sir.  
THE COURT: You still agree with the terms as set forth in the guilty plea  
agreement?  
THE DEFENDANT: Yes.  
THE COURT: So I have to go through the amended information with you to  
make sure that there's a factual basis for your plea. According to the  
information, it says that,  
"On or about the 7th day of March 2016 in Clark County, Nevada, contrary to the  
laws of the State of Nevada, you did willfully, unlawfully, feloniously seize,  
confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away Jose Ortiz  
Salazar, a human  
being, with the intent to hold or detain Jose Ortiz Salazar against his will and  
without his consent for the purpose of committing murder and/or robbery with

1 substantial bodily harm. The defendants being criminally liable under one or  
2 more of the following princip[les] of criminal liability, to wit: One, by directly  
3 committing the crime or by; two, aiding or abetting in the commission of the  
4 crime with the intent that the crime be committed by counseling, encouraging,  
5 hiring, commanding, inducing or otherwise procuring the other to commit the  
6 crime; and/or, three, pursuant to conspiracy to commit the crime with the intent  
7 that the crime be committed, the defendants aiding or abetting or conspiring,  
8 defendants acting in concert throughout." Is that what you did?  
9 THE DEFENDANT: According to this, yes.  
10 THE COURT: The question is, is that what you did?  
11 THE DEFENDANT: Yes.  
12 THE COURT: Okay. Because, I mean, if you don't think that's what you did, then  
13 you can't be freely and voluntarily accepting the plea.  
14 THE DEFENDANT: Yes.  
15 THE COURT: You agree that's what you did; correct?  
16 THE WITNESS: Yes.  
17 THE COURT: All right. The Court hereby finds the defendant's plea of guilty is  
18 freely and voluntarily made. He appears to understand the nature of the offense  
19 and the consequences of the plea. I'll therefore accept your plea of guilty. We'll  
20 refer this to the Division of Parole and Probation for preparation of the PSI.  
21 We'll set for sentencing hearing for --  
22 THE CLERK: March 26th, 8:30.

23 Transcript of Plea Canvass, 2/4/19.

24 In determining whether a guilty plea was voluntarily entered, the Court reviews  
25 the totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at  
26 271, 721 P.2d at 367. A proper plea canvass should reflect that:

27 [T]he defendant knowingly waived his privilege against self-incrimination, the  
28 right to trial by jury, and the right to confront his accusers; (2) the plea was  
voluntarily, was not coerced, and was not the result of a promise of leniency; (3)  
the defendant understood the consequences of his plea and the range of  
punishments; and (4) the defendant understood the nature of the charge, i.e.,  
the elements of the crime.

*Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
Nev. 774, 476 P.2d 950 (1970)).

The requirements of a proper plea canvass were met in the canvass conducted by  
the Court on February 4, 2019.

Pursuant to NRS 34.810, "The court shall dismiss a petition if the court  
determines that: (a) the petitioner's conviction was upon a plea of guilty . . . and the  
petition is not based upon an allegation that the plea was involuntarily or unknowingly

1 entered or that the plea was entered without effective assistance of counsel.” NRS  
2 34.810(1)(a).

3 Although the Defendant pled guilty, he is alleging that his plea was involuntary  
4 or unknowingly entered, and he further is arguing ineffective assistance of counsel.

5 In considering a challenge relating to “ineffective assistance of counsel,” the U.S.  
6 Supreme Court has stated the following:

7 Judicial scrutiny of counsel's performance must be highly deferential. It is all too  
8 tempting for a defendant to second-guess counsel's assistance after conviction or  
9 adverse sentence, and it is all too easy for a court, examining counsel's defense  
10 after it has proved unsuccessful, to conclude that a particular act or omission of  
11 counsel was unreasonable. *Cf. Engle v. Isaac*, 456 U.S. 107, 133–134, 102 S.Ct.  
12 1558, 1574–1575, 71 L.Ed.2d 783 (1982). A fair assessment of attorney  
13 performance requires that every effort be made to eliminate the distorting  
14 effects of hindsight, to reconstruct the circumstances of counsel's challenged  
15 conduct, and to evaluate the conduct from counsel's perspective at the time.  
16 Because of the difficulties inherent in making the evaluation, a court must  
17 indulge a strong presumption that counsel's conduct falls within the wide range  
18 of reasonable professional assistance; that is, the defendant must overcome the  
19 presumption that, under the circumstances, the challenged action “might be  
20 considered sound trial strategy.” See *Michel v. Louisiana*, supra, 350 U.S., at  
21 101, 76 S.Ct., at 164. There are countless ways to provide effective assistance in  
22 any given case. Even the best criminal defense attorneys would not defend a  
23 particular client in the same way. See Goodpaster, *The Trial for Life: Effective*  
24 *Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.Rev. 299, 343 (1983).

18 *Strickland v. Washington*, 466 U.S. 668, 689-690, 104 S.Ct. 2052, 2066 (1984).

19 The Court indicated that there is a two-prong test: The first prong is “whether,  
20 in light of all the circumstances, the identified acts or omissions were outside the wide  
21 range of professionally competent assistance,” recognizing that “counsel is strongly  
22 presumed to have rendered adequate assistance and made all significant decisions in  
23 the exercise of reasonable professional judgment.” *Strickland* at 690. The second  
24 prong is that “The defendant must show that there is a reasonable probability that, but  
25 for counsel’s unprofessional errors, the result of the proceeding would have been  
26 different. A reasonable probability is a probability sufficient to undermine confidence  
27 in the outcome.” *Strickland* at 694.

27 Performance of counsel is judged against an objective standard for  
28 reasonableness and is deficient when it falls below that standard. *State v. Powell*, 122  
Nev. 751, 759, 138 P.3d 453, 458 (2006); *Means v. State*, 120 Nev. 1001, 103 P.3d 25  
(2004); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102 (1996).



1 The Nevada Supreme Court has stated the following relating to the “prejudice”  
2 requirement:

3 In meeting the “prejudice” requirement, the defendant must show a reasonable  
4 probability that, but for counsel's errors, the result of the trial would have been  
5 different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068. When a conviction is  
6 the result of a guilty plea, [t]he second, or “prejudice,” requirement ... focuses on  
7 whether counsel's constitutionally ineffective performance affected the outcome  
8 of the plea process. In other words, in order to satisfy the “prejudice”  
9 requirement, the defendant must show that there is a reasonable probability  
10 that, but for counsel's errors, he would not have pleaded guilty and would have  
11 insisted on going to trial.

*Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)  
(emphasis added); see also *State v. Langarica*, 107 Nev. 932, 933, 822 P.2d  
1110, 1111 (1991), cert. denied, 506 U.S. 924, 113 S.Ct. 346, 121 L.Ed.2d 261  
(1992). “A reasonable probability is a probability sufficient to undermine  
confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068.

12 *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102 (1996).

13 In a very recent case, the Nevada Supreme Court summarized the analysis which  
14 the Court should undertake when considering an ineffective assistance claim. The  
15 Court stated the following:

16 To prove ineffective assistance of counsel, a petitioner must show “(1) that  
17 counsel's performance was deficient, and (2) that the deficient performance  
18 prejudiced the defense.” *Kirksey*, 112 Nev. at 987, 923 P.2d at 1107 (internal  
19 quotation marks omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 687,  
20 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The first prong of this test asks whether  
21 counsel's representation fell “below an objective standard of reasonableness” as  
22 evaluated from counsel's perspective at the time. *Id.* at 987-88, 923 P.2d at 1107.  
23 The second prong asks whether there is “a reasonable probability that, but for  
24 counsel's errors, the result of the [proceeding] would have been different.” *Id.* at  
25 988, 923 P.2d at 1107. We give deference to the district court's factual findings if  
26 supported by substantial evidence and not clearly erroneous, but we review the  
27 court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev.  
28 682, 686, 120 P.3d 1164, 1166 (2005). Both components of the inquiry must be  
shown. *Strickland*, 466 U.S. at 697, 104 S.Ct. 2052.

24 *Gonzales v. State*, 137 Nev.Adv.Op. 40 (7/29/21).

25 With regard to the Petitioner's argument that the Court's sentence constitutes  
26 “cruel and unusual punishment,” the Court of Appeals has already addressed that  
27 argument, and their decision is the Law of the Case. The Court of Appeals stated the  
28 following:

... Castro claims his sentence constitutes cruel and unusual punishment for the  
following reasons. He did not have a history of violent offenses and was under

1 the influence of drugs when he committed the crime. He was not aware that the  
2 crime would become so violent and left when it became violent. His DNA was  
3 not found on the weapon. He did not call the police because he was afraid that  
4 his codefendants would harm his family. He has PTSD symptoms; bipolar  
5 symptoms; and suffers from depression, anxiety, and drug addiction. And he  
6 once attempted suicide.

7 Regardless of its severity, a sentence that is within the statutory limits is  
8 not “cruel and unusual punishment unless the statute fixing punishment is  
9 unconstitutional or the sentence is so unreasonably disproportionate to the  
10 offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
11 282, 284 (1996)(quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,  
12 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01  
13 (1991)(plurality opinion)(explaining the Eighth Amendment does not require  
14 strict proportionality between crime and sentence; it forbids only an extreme  
15 sentence that is grossly disproportionate to the crime).

16 Here, Castro’s life-without-the-possibility-of-parole sentence falls within  
17 the parameters of the relevant statute. See NRS 200.320(1)(a). He does not  
18 allege that the statute is unconstitutional. And we conclude the sentence  
19 imposed is not grossly disproportionate to his crime and does not constitute  
20 cruel and unusual punishment.

21 (Castro v. Nevada, Court of Appeals, Order of Affirmance dated 12/12/20, Case 78643-  
22 COA).

23 As indicated above, the Eighth Amendment to the United States Constitution as  
24 well as Article I, Section 6 of the Nevada Constitution prohibit the imposition of cruel  
25 and unusual punishment. The Nevada Supreme Court has stated that “[a] sentence  
26 within the statutory limits is not ‘cruel and unusual punishment unless the statute  
27 fixing punishment is unconstitutional or the sentence is so unreasonably  
28 disproportionate to the offense as to shock the conscience.’” *Allred v. State*, 120 Nev.  
410, 92 P.2d 1246, 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,  
221-22 (1979))). And, as long as the sentence is within the limits set by the legislature, a  
sentence will normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev.  
344, 871 P.2d 950 (1994). Petitioner argues now that his sentence is disproportionate  
and shocks the conscience. While he may not have used the “buzz words,” of “shocks  
the conscience” in his appeal, the Court of Appeals previously held that the sentence  
was “not grossly disproportionate to his crime and does not constitute cruel and  
unusual punishment.” *Castro v. Nevada*, Court of Appeals, Order of Affirmance dated  
12/12/20, Case 78643-COA. The Court of Appeals already analyzed the Eighth

1 Amendment argument of “cruel and unusual punishment,” and found against the  
2 Petitioner on that issue. That ruling is the law of the case. *Hall v. State*, 91 Nev. 314,  
3 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343, 455 P.2d 34,  
4 38 (1969)).

5 Although the Petitioner is now unhappy with his sentence, the Guilty Plea  
6 Agreement (GPA) that he entered into specifically indicated the following:

7 This offer is conditional upon all four (4) Defendants accepting their  
8 respective negotiations and being sentenced. All Parties agree the State will  
9 have the right to argue for Life without the possibility of Parole, and the Defense  
will argue for Life with the possibility of Parole after fifteen (15) years. All  
parties agree that no one will seek the term of years.

10 GPA filed 2/4/19, at pg. 1.

11 At the Sentencing Hearing, defense counsel argued for Life “with” the possibility  
12 of parole, and the State argued for Life “without” the possibility of parole. The  
13 arguments were exactly what the Defendant agreed the arguments would be. When the  
14 Court sentenced each of the Defendants, the Court stated the following:

15 I want to be merciful, but at the same time, I know that justice has to be  
16 done. And we have a victim who, but for the fact that he lived against what you  
all thought -- my understanding is not only was he tortured and mutilated in this  
17 room for a period of time, for a period of hours, but that everybody thought he  
was dead, tried to burn the house down around him. And if you had been  
18 successful in this, this would have been a capital murder case and you all would  
be looking at potentially a capital sentence.

19 I have a hard time with the pictures that I've seen and the horrible  
injuries that were inflicted upon this poor victim. I understand that he is not the  
20 pillar of our community either, but that doesn't justify the things that were done  
to him over \$50. And that almost makes it worse because that was the basis for  
21 this, is him not being able to come up with \$50.

22 So . . . . I'm going to go ahead and sentence each of you to life in the  
Nevada Department of Corrections without the possibility of parole. I  
23 understand that that is a difficult sentence for you to have to deal with. It's a  
difficult sentence for me to have to give, but I don't see any redeeming qualities.  
24 I would like to be merciful, but I don't think that this is a crime that -- I don't  
think the community wants you back out on the streets. So that will be the  
25 sentence. I don't think credit time served matters.

26 . . . .

27 (Transcript of Sentencing Hearing 3/26/19, pgs. 23-24).

28 The Petitioner argues that his plea was not entered freely and voluntarily, but his  
claim is belied by the record, as set forth above. He acknowledged, both in his GPA and

1 orally before the Court, what the possibilities would be, and he acknowledged that  
2 sentencing was strictly up to the Court. Further he acknowledged that he had discussed  
3 immigration issues with his attorney, and that he still wanted to enter into the GPA,  
4 and accept the terms thereof. Based on the GPA and the plea canvass, and the totality  
5 of the circumstances in the case, the Court finds that the Defendant's guilty plea was  
6 made freely and voluntarily, and that he understood the nature of the offense and the  
7 consequences of his plea.

8 The Petitioner's argument that counsel promised the Petitioner and Petitioner's  
9 family that he would receive fifteen (15) years to life, is a bare and naked allegation that  
10 is unsupported in the record, and is actually belied by the record. Both the GPA signed  
11 by the Petitioner, as well as the oral plea canvass, specifically informed the Petitioner  
12 that the State would be arguing for life without the possibility of parole, and that  
13 sentencing was at the discretion of the Judge.<sup>1</sup> Petitioner argues, and submitted a letter  
14 from his parents, suggesting that counsel made misrepresentations to Petitioner's  
15 parents, but his parents did not accept the plea – Defendant did. And there is no  
16 evidence that Defendant's plea was anything but knowing, willing, and voluntary.

17 Further, Petitioner's argument that counsel was ineffective for failing to inform  
18 him of the immigration consequences of his plea, is equally belied by the record. <sup>2</sup>

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19 <sup>1</sup> The GPA specifically states, "I have not been promised or guaranteed any particular sentence by anyone. I know that  
20 my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the  
21 State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the  
22 recommendation." (See GPA at pg. 3). Additionally, in the oral plea canvass, the following interaction occurred:

23 THE COURT: Do you understand that in the guilty plea agreement it says that the possibility of sentence is 15 to 40  
24 years or for minimum of 15 years and a maximum of life or life without parole? Do you understand that those are the  
25 options?

26 THE DEFENDANT: Yes, sir.

27 THE COURT: Do you understand that sentencing is strictly up to the Court, and nobody can promise you probation,  
28 leniency, or any kind of special treatment; correct?

THE DEFENDANT: That's correct.

(See Plea Canvass of 2/4/19.)

<sup>2</sup> In the GPA, signed by the Defendant, he agreed to the following:

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious  
negative immigration consequences including but not limited to:

1. The removal from the United States through deportation; . . .

. . . .

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not  
result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a  
legal resident.

. . . .

(See GPA at pg. 3)

Additionally, during the oral plea canvass, the following took place:

THE COURT: Are you a U.S. citizen?

THE DEFENDANT: No, sir.

1 In reviewing the Petitioner's arguments regarding ineffective assistance of  
2 counsel, in totality, the Court finds and concludes that the Petitioner has failed to meet  
3 the standard set forth in *Strickland*. The Court finds that there is insufficient evidence  
4 to support the conclusion that counsel's actions were objectively unreasonable.  
5 Further, there is insufficient evidence suggesting that the result of the proceeding  
6 would have been different if counsel had said or done things differently. Consequently,  
7 there is no prejudice to the Defendant.

8 Inasmuch as the Petition requested a "withdrawal of plea," such request is  
9 improper for a Writ of Habeas Corpus, but insofar as the issues have been addressed  
10 herein, the request is denied.

11 Petitioner argues that at the time he entered his guilty plea he was heavily  
12 medicated, not competent, and not able to understand the Constitutional rights he was  
13 waiving. Such allegations are bare and naked allegations, and are belied by the record.<sup>3</sup>

14 THE COURT: Do you understand that there are some charges that have adverse immigration consequences  
15 and may result in deportation?

16 THE DEFENDANT: That is correct.

17 THE COURT: Have you had the chance to discuss any immigration issues with your attorney, and he's  
18 answered any questions you have?

19 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

20 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his immigration attorney, and  
21 we've been in communication. I did let my client know today, as well as previously, that there's a substantial  
22 probability he'll be deported after he serves a period of incarceration.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You still agree with the terms as set forth in the guilty plea agreement?

26 THE DEFENDANT: Yes.

27 (See transcript of plea canvass 2/4/19).

28 <sup>3</sup> The Petitioner was asked about his "understanding," and whether he was under the "influence" of anything at the time  
of the plea canvass, and he stated as follows:

THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated  
February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he answered any questions you might  
have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional  
rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf.  
You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter  
this plea?

THE DEFENDANT: No, sir.

1       Petitioner requests an Evidentiary Hearing, but the issues he believes require an  
2 evidentiary hearing have already been addressed by the Court, and the Petitioner's  
3 arguments are belied by the record. Consequently, the Court does not believe that an  
4 Evidentiary Hearing would be necessary, and instead it would be a waste of judicial  
5 resources.

6       With regard to the Petitioner's request for appointment of counsel, NRS 171.188  
7 provides that an indigent defendant may request appointment of counsel, and pursuant  
8 to NRS 178.397, an indigent defendant accused of a felony or gross misdemeanor is  
9 entitled to counsel at every stage of the proceedings, from the initial appearance  
10 through appeal, unless he waives such appointment. But pursuant to *Coleman v.*  
11 *Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991), there is no Sixth Amendment  
12 right to post-conviction counsel. See also *McKague v. Warden*, 112 Nev. 159, 163, 912  
13 P.2d 255, 258 (1996). NRS 34.750 provides the Court with discretion to appoint post-  
14 conviction counsel, after considering whether 1) the issues presented are difficult; 2)  
15 the petitioner is unable to comprehend the proceedings; or 3) counsel is needed to  
16 proceed with discovery. In analyzing these factors, this Court finds and concludes that  
17 while many issues have been raised in the Petition, they do not appear to be "complex"  
18 issues. The Petition is comprehensive and somewhat organized, especially for a pro-se  
19 Petitioner, and consequently, the Court cannot find that Petitioner would be "unable to  
20 comprehend the proceedings," or need assistance in filing any documents, as he  
21 appears to be very capable of doing so on his own. Finally, there is not even a

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THE COURT: Are you currently under the influence on any alcohol, medication, narcotics or any substance  
that might affect your ability to understand these documents or the process that we're going through?

THE DEFENDANT: No, sir.

(See transcript of plea canvass 2/4/19).

1 suggestion that discovery is necessary. Consequently, the Petitioner's request for  
2 appointment of counsel must be denied.

3 ORDER/CONCLUSION

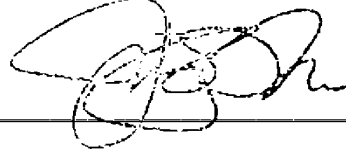
4 Based upon the foregoing, and good cause appearing,

5 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is hereby  
6 DENIED. Petitioner's request for an Evidentiary Hearing is also DENIED. And finally,  
7 Petitioner's request for appointment of counsel is also DENIED.

8 The Court requests that the State process the Notice of Entry relative to this  
9 Order.

10 Because this matter has been decided on the pleadings, the hearing scheduled  
11 for 9/23/21 will be taken off calendar, and consequently, there is no need for any  
12 parties or attorneys to appear.

13 Dated this 21st day of September, 2021

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17 4F9 B1F 0283 78E0  
18 Jerry A. Wiess  
19 District Court Judge  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

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 9/22/2021

16 Luis Castro

#1214547  
ESP  
P.O. Box 1989  
Ely, NV, 89301

17  
18  
19 Steven Wolfson

Clark County District Attorney  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV, 89155



Case No. A-21-835827-W

Dept. No. 30

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

LUIS CASTRO

Petitioner/Plaintiff,

vs.

STATE OF NEVADA

Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that LUIS CASTRO, Petitioner/Defendant  
above named, hereby appeals to the Court of Appeals for the State of Nevada from the final  
judgment / order (PETITION FOR WRIT OF HABEAS CORPUS AND RE:  
PLAINTIFF'S MOTION FOR APPEAL OF COURT ORDER FOR EVIDENTIARY HEARING)

Entered in this action on the 21<sup>ST</sup> day of September, 2021.

Dated this 8<sup>TH</sup> day of October, 2021.

CLERK OF THE COURT

OCT 18 2021

RECEIVED

NDOC # 1214547

Appellant - Pro Per  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

**CERTIFICATE OF SERVICE BY MAIL**

I, Luis Castro, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 8<sup>th</sup> day of October, 2021, I served a true and correct copy of the above-entitled NOTICE OF APPEAL postage prepaid and addressed as follows:

AARON FORD  
NEVADA ATTORNEY GENERAL  
100 N. CARSON ST.  
CARSON CITY, NV.  
89701-4712

STEVEN WOLFSON  
CLARK CO. DISTRICT ATTORNEY  
2100 LEWIS AVE, 3<sup>RD</sup> FL.  
LAS VEGAS, NV.  
89155-2212

Signature

Print Name

Luis Castro #124547  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Luis Castro, NDOC# 1214547,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 8<sup>th</sup> DAY OF October, 20 21.

SIGNATURE: 

INMATE PRINTED NAME: Luis Castro

INMATE NDOC # 1214547

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

For: Mr. Luis Castro  
ESD-# 1214547  
D.O. Bork 1989  
ELY, NV 89301

10. Clerk of the Court  
200 Lewis Ave, 3rd FL.  
Las Vegas, Nevada  
89155-1160

Las Vegas PD DC 89199  
FRI 15 OCT 2021 PM



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10-14-21

~~20/5/21~~

Boysen

Good Mail  
Confidential



*Steven D. Grierson*

1. Case No. A-21-835827

Dept No. 30

2.

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

5.

6. LUIS CASTRO,

7. PETITIONER,

8.

vs

NOTICE OF APPEAL

9. STATE OF NEVADA,

10. RESPONDENT,

11.

12. NOTICE IS HEREBY GIVEN LUIS CASTRO, PETITIONER,  
13. ABOVE NAMED, HEREBY APPEAL TO THE COURT OF  
14. APPEALS FOR THE STATE OF NEVADA FROM THE  
15. FINAL JUDGMENT - ORDER RE: PETITION FOR WRIT OF  
16. HABEAS CORPUS, AND RE: PETITION FOR APPOINTMENT  
17. OF COUNSEL AND EVIDENTIARY HEARING.

18. ENTERED IN THIS ACTION ON THE 21<sup>st</sup> DAY OF SEPTEMBER, 2021

19. DATED THIS 8<sup>th</sup> DAY OCTOBER, 2021

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*[Signature]*  
NOTICE - # 1214547

APPELLANT- PRO SE  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV, 89301

CLERK OF THE COURT

OCT 19 2021

RECEIVED

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCF Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein  
and that on this 8<sup>th</sup> day of October, 20 21, I mailed a true and correct copy of this  
foregoing Notice of Appeal to the following:

NV. A.C.  
100 No. CARSON ST  
CARSON CITY, NV.  
89701-4717

CLARK Co. D.A.  
200 LEWIS AVE, 3<sup>rd</sup> FL  
LAS VEGAS, NV.  
89155-2212

CLERK OF THE COURT  
200 LEWIS AVE, 3<sup>rd</sup> FL  
LAS VEGAS, NV  
89155-1160

BY: 

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Luis Castro, NDOC# 1214547,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 8<sup>TH</sup> DAY OF October, 20 21.

SIGNATURE: 

INMATE PRINTED NAME: Luis Castro

INMATE NDOC # 1214547

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301



CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein  
and that on this 8<sup>TH</sup> day of October, 2021, I mailed a true and correct copy of this  
foregoing Notice of Appeal to the following:

NV. A. G.  
300 No. Carson St  
Carson City, NV,  
89701-4717

Clark Co. Dist. Att'y  
200 Lewis Ave., 3rd Fl.  
Las Vegas, NV  
89155-2212

CLK. OF THE CT.  
200 Lewis Ave., 3rd Fl.  
Las Vegas, NV  
89155-1160

BY: 

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Luis CASTRO, NDOC# 1214547,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 8<sup>TH</sup> DAY OF October, 20 21.

SIGNATURE: Luis A. Castro

INMATE PRINTED NAME: Luis Castro

INMATE NDOC # 1214547

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

Re: Mc. Luis Castro  
ESP-#1214547  
PO Box 1989  
Eliz. NV. 89301



US PO  
ZIP 893  
02 4W  
000034

To: CLERK OF THE COURT  
8th JUD. DISTRICT CT.  
200 Lewis Ave., 2nd FL.  
Las Vegas, NV.  
89155-1160

ATTN: Notice of Appeal  
DIVISION

LEGAL MAIL

LEGAL MAIL



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

LUIS ANGEL CASTRO,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-21-835827-W

Dept No: XXX

**CASE APPEAL STATEMENT**

1. Appellant(s): Luis A. Castro

2. Judge: Jerry A. Wiese

3. Appellant(s): Luis A. Castro

Counsel:

Luis A. Castro #1214547

P.O. Box 1989

Ely, NV 89301

4. Respondent (s): The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney

200 Lewis Ave.

Las Vegas, NV 89155-2212

A-21-835827-W

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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: June 7, 2021
- 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 20 day of October 2021.

Steven D. Grierson, Clerk of the Court

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

cc: Luis A. Castro



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

LUIS ANGEL CASTRO,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-21-835827-W

Dept No: XXX

**CASE APPEAL STATEMENT**

1. Appellant(s): Luis A. Castro

2. Judge: Jerry A. Wiese

3. Appellant(s): Luis A. Castro

Counsel:

Luis A. Castro #1214547

P.O. Box 1989

Ely, NV 89301

4. Respondent (s): The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney

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: June 7, 2021
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 20 day of October 2021.

Steven D. Grierson, Clerk of the Court

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

cc: Luis A. Castro

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 23, 2021**

---

A-21-835827-W	Luis Castro, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

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**August 23, 2021      3:00 AM      Minute Order**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** Chambers

**COURT CLERK:** Lauren Kidd

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- At the request of Court, for judicial economy, the Petition for Writ of Habeas Corpus and Motion of Appointment of Counsel currently scheduled for August 26, 2021 is RESCHEDULED to September, 23 2021 at 8:30 a.m.

CLERK'S NOTE: A copy of the above minute order was distributed to Luis Angel Castro, ESP#1214547, P.O. Box 1989, Ely, NV 89301.



# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated November 9, 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 182.

LUIS ANGEL CASTRO,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

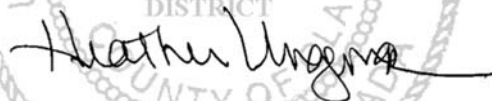
Case No: A-21-835827-W

Dept. No: XXX

now on file and of record in this office.

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

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

