

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS CASTRO,  
Appellant,  
v.  
THE STATE OF NEVADA,  
Respondent.

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Case No. 83680

**RESPONDENT'S ANSWERING BRIEF**

**Appeal From Denial of Petition for Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District Court, Clark County**

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**ROUTING STATEMENT**

This case is not presumptively assigned to the Nevada Court of Appeals because it is a postconviction appeal challenging a judgment of conviction based on a plea of guilty involving a category A felony. NRAP 17(b)(3). However, the Nevada Supreme Court has assigned this matter to the Nevada Court of Appeals.

**STATEMENT OF THE ISSUE(S)**

1. Whether the district court properly found that counsel's communication with Castro's parents regarding the plea negotiations did not result in his parents coercing Castro to enter a plea, and thus, did not demonstrate ineffective assistance of counsel warranting relief.

2. Whether the district court properly denied Castro’s Petition for Writ of Habeas Corpus (Post-Conviction) without conducting an evidentiary hearing.<sup>1</sup>

### **STATEMENT OF THE CASE**

Following a preliminary hearing, the State filed an Information on April 12, 2016, charging Appellant Luis Angel Castro (hereinafter “Castro”) with eight counts in Case No. C-16-314092-1. See Record on Appeal, Volume 1 (“1 ROA”) at 106–13; 217. These included:

- Count 1 – Conspiracy to Commit Murder (Category B Felony - NRS 200.010, 200.030, 199.480 - NOC 50038);
- Count 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031);
- Count 3 – Mayhem with Use of a Deadly Weapon (Category B Felony - NRS 200.280, 193.165 - NOC 50045);
- Count 4 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony - NRS 200.481 - NOC 50226);
- Count 5 – First Degree Kidnapping with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category A Felony - NRS 200.310, 200.320, 193.165 - NOC 50056);
- Count 6 – Extortion with Use of a Deadly Weapon (Category B Felony - NRS 205.320, 193.165 - NOC 50620);
- Count 7 – Robbery with Use of a Deadly Weapon (Category B Felony - NRS 200.380, 193.165 - NOC 50138);
- Count 8 – First Degree Arson (Category B Felony – NRS 205.010 – NOC 50414).

Id. Castro was one of four co-defendants. Id. at 106.

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<sup>1</sup> It is the State’s understanding based on the Order Directing Response that the Court is only requesting briefing on one issue; however, the State respectfully requests an opportunity for supplemental briefing should the Court require a response to the other issues as well.

On February 4, 2019, after four continued trial dates, Castro and his co-defendants ultimately pled guilty on the first day of trial. See Record on Appeal, Volume 2 (“2 ROA”) at 336–41. On that same date, an Amended Information and Guilty Plea Agreement (“GPA”) was filed in open court, memorializing that Castro agreed to plead guilty to one count of First Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony - NRS 200.310, 200.320 - NOC 50052). 2 ROA 336–43.

On March 22, 2019, the State filed a Sentencing Memorandum. 2 ROA 355–85. On March 24, 2019, Castro filed a Sentencing Memorandum on Behalf of Defendant Luis Castro. 2 ROA 386–453. On March 26, 2019, Castro was sentenced to life without the possibility of parole in the Nevada Department of Corrections. 2 ROA 454–55. Castro’s Judgment of Conviction was filed on March 28, 2019. Id.

On August 12, 2020, the Nevada Court of Appeals affirmed Castro’s Judgment of Conviction. See Record on Appeal, Volume 3 (“3 ROA”) at 560–63. Remittitur issued on November 17, 2020. 3 ROA 565.

On June 7, 2021, Castro filed a pro per Petition for Writ of Habeas Corpus (Post Conviction - NRS 34.740) and to Withdraw Guilty Plea (Pursuant to NRS 176.165) (“Petition”), a Request for Submission, an Ex Parte Motion for Appointment of Counsel, and a Request for Evidentiary Hearing. See Record on Appeal, Volume 1, A-21-835827-W (“1 ROA-A”) at 1–17, 22–27 . On July 6, 2021,

Castro filed a Request for Submission of Pleading and a Supplement to Petition for Writ of Habeas Corpus (“Supplemental Petition”). 1 ROA-A 38–57. On July 14, 2021, Castro filed a Memorandum of Facts and Law in Support of Petitioner’s Motion for Appointment of Counsel (“Memo In Support”), a Request for Submission of Pleadings, and a Judicial Notice. 1 ROA-A 58–69. On July 22, 2021, Castro filed an Addendum to Ex Parte Motion for Appointment of Counsel and Request for an Evidentiary Hearing, and a Declaration in Support of Ex Parte Motion for Appointment of Counsel and Request for an Evidentiary Hearing. 1 ROA-A 70–77.<sup>2</sup> On July 27, 2021, the State filed its Response to Castro’s Petition and Supplemental Petition. 1 ROA-A 78–103. On August 26, 2021, Castro filed a Reply to the State's Response to Petitioner's Petition and Supplemental Petition. 1 ROA-A 104–17.

On September 21, 2021, Castro’s Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel and for Evidentiary hearing were denied by the

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<sup>2</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 Castro’s Supplemental Petition, Memo in Support, and various other pleadings were filed after he filed his Petition and filed without leave of this Court, the district court was permitted to strike and/or summarily deny any new claims or allegations contained therein. See NRS 34.750(5). Nevertheless, the district court appeared to accept at least Castro’s Supplemental Petition.



district court; the district court's Findings of Fact, Conclusions of Law and Order ("Findings") was filed on that same date. 1 ROA-A 118–140.

On October 19, 2021, Castro filed his Notice of Appeal from the district court's denial of his habeas effort. 1 ROA-A 167–77. Castro filed his Informal Opening Brief ("AOB") on December 6, 2021.

### **STATEMENT OF THE FACTS**

At sentencing, the district court relied on the following facts contained in Castro's Presentence Investigation Report ("PSI")<sup>3</sup>:

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

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

Officers and detectives arrived on the scene and set a perimeter around the crime scene while firefighters battled the residential fire.

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<sup>3</sup> The district court also relied on the State's Sentencing Memorandum filed on March 22, 2019, and Castro's Sentencing Memorandum and letters of support filed on March 24, 2019. See 3 ROA 508.

Detectives interviewed each witness individually on scene. All witnesses confirmed 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.

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

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

Detectives returned to the hospital and continued to interview the victim. The victim reported he was taken in a pickup truck to an unknown house. Once at the home, Mr. Castro bound the victim's hands/wrists and ankles/knees. He stated that he remembers making three phone calls asking 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 presented to the victim who confirmed that Ms. Jimenez was present and involved in his torture. A search of Mr. Honabach's residence was completed where detectives found numerous knives inside the home and the vehicle. They also found a machete and twine inside the vehicle.

On March 10, 2016, detectives interviewed Ms. Jimenez. She confessed to being present during the brutal attempt murder and arson where the incident occurred. Her version of the incident was similar to the victim's account. She stated that on March 7, 2016, Mr. Honabach, Mr. Castro and an unknown male went to pick up the victim. Ms. Jimenez reported that the victim owed \$200.00 in United States currency for a drug debt. A short time later, Mr. Honabach, Mr. Castro and the unknown male arrived with the victim to the residence the incident occurred at. Ms. Jimenez was already present at the residence as Mr. Castro and Mr. Honabach had dropped her off prior to picking up the victim. Once inside the residence, Mr. Honabach and Mr. Castro confronted the victim about the money he owed them. The victim told them he was working on getting the money and asked Mr. Honabach and Mr. Castro for another week to pay off the debt. Mr. Honabach and Mr. Castro became physical with the victim and forced him into a chair and bound his hands and legs with rope found in the home. Ms. Jimenez reported that Mr. Honabach, Mr. Castro and the unknown male started punching the victim. Mr. Honabach then brandished a pocket knife and

stabbed the victim three times in his right shoulder area. The victim pleaded for them to stop. Mr. Honabach asked Mr. Castro what he wanted to do and Mr. Castro stated “we have gone this far, let's finish it.” At that point, Mr. Honabach pulled the victim's hair and Mr. Castro took the knife and cut the victim's throat. Ms. Jimenez advised that they all believed the victim to be dead so began to gather paper 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.

2 ROA 344–54<sup>4</sup>; 3 ROA 505–28.

### **SUMMARY OF THE ARGUMENT**

The district court properly found that counsel's communication with Castro's parents regarding the plea negotiations did not result in his parents coercing Castro to enter a plea. Consequently, the district court properly found that Castro did not demonstrate ineffective assistance of counsel warranting relief. Additionally, the

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<sup>4</sup> The Table of Contents for the ROA indicates that 2 ROA 344-54 is Castro's Pre-Sentence Investigation Report. Because it is confidential, the State assumes that is accurate.

district court properly denied Castro's Petition for Writ of Habeas Corpus (Post-Conviction) without conducting an evidentiary hearing.

All of Castro's factual assertions are belied by the record in this case. Every claim is nothing but a bare and naked assertion that is repelled by the record. Because each of Castro's claims are without merit, he has likewise failed to demonstrate that the record needs to be expanded through an evidentiary hearing. Therefore, the district court's denial of Castro's Petition for Writ of Habeas Corpus (Post-Conviction) without an evidentiary hearing should be affirmed.

### **ARGUMENT**

#### **I. THE DISTRICT COURT PROPERLY FOUND THAT COUNSEL'S COMMUNICATION WITH CASTRO'S PARENTS REGARDING THE PLEA NEGOTIATIONS DID NOT RESULT IN HIS PARENTS COERCING CASTRO TO ENTER A PLEA, AND THUS, DID NOT DEMONSTRATE INEFFECTIVE ASSISTANCE OF COUNSEL WARRANTING RELIEF**

A claim of ineffective assistance of counsel presents a mixed question of law and fact that is subject to independent review. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). This Court gives deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle

him to relief. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this Court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Id. In determining the validity of a guilty plea, this Court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986).

Castro claims that trial counsel was ineffective during the plea process because counsel's communication with his parents regarding the plea negotiations resulted in his parents coercing Castro to enter a plea. See 1 ROA-A 1–17; see also AOB 3–5.

To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for

counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hal v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry—deficiency and prejudice—must be shown. Strickland, 466 U.S. at 687.

***A. Castro's claim that counsel's communication with his parents regarding the plea negotiations resulted in his parents coercing Castro to enter a plea is nothing but a bare and naked assertion that is belied by the record***

Castro claims that counsel's communication with his parents regarding the plea negotiations resulted in his parents coercing Castro to enter a plea. See 1 ROA-A 1–17; see also AOB 3–5. Specifically, in his Petition, Castro alleged that:

Defense counsel intimidated and misinformed [Castro's] mother in order to force [Castro] to accept the plea. Since if he didn't accept the plea she would withdraw her support her him. Counsel assured [Castro's] mother that he [would] receive a sentence of 15 years to life with the possibility of parole.

1 ROA-A 9–10. However, the district court properly ruled that this claim is nothing but a bare and naked assertion that is belied by the record, and thus, did not demonstrate ineffective assistance of counsel warranting relief. 1 ROA-A 118–140. Specifically, the district court found that:

With regard to Petitioner's argument that counsel intimidated and lied to Petitioner's parents, in order to induce Petitioner into pleading guilty, this 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." Additionally, when

Petitioner signed the GPA, he acknowledged that he understood that he was waiving his right to a jury trial. (GPA at 4). Moreover, during the plea canvass, Petitioner confirmed that he was waiving his right to challenge the evidence at trial. (RT: EOP, at 5-6). Further, Petitioner has failed to articulate what other investigation or challenge 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. 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. RT: EOP, at 4-7.

1 ROA-A 125.

In his instant AOB, Castro now alleges the district court should have appointed new counsel and conducted an evidentiary “to address the assertion – discussion between Castro’s parents and [counsel] made outside the record and only witnessed by each other”. AOB 5. Additionally, Castro alleges “Appellant should be entitled to expand the record to include defense counsel’s false statement to Appellant’s parents, since it had a direct effect in Appellant’s acceptance of the plea”. Id.

This claim, both below and now on appeal, does not entitle Castro to relief. First, even if counsel *did* misinform Castro’s mother (or parents) about the guilty plea agreement, that fact is irrelevant. Castro’s mother was not charged with a crime, or entitled to counsel, much less the effective assistance of counsel. McKague v. Whitley, 112 Nev. 159, 164–65, 912 P.2d 255, 258 (1996) (“Where there is no right to counsel there can be no deprivation of effective assistance of counsel...”.) Castro’s



claim that any asserted misinformation caused his mother to coerce him into entering a plea is belied by the record, as demonstrated below. And, whether Castro's mother (or parents) correctly understood the potential sentence that could be imposed, the record is clear that *Castro* understood. Those facts – that Castro understood the potential sentence and was not coerced – are the only facts pertinent to counsel's obligation to perform effectively. As the district court found:

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

1 ROA-A 137 (emphasis added).

The Nevada Supreme Court has held that the decision to plead guilty lies solely with a defendant; therefore, the district court correctly determined that Castro could not demonstrate prejudice. Rhyne, 118 Nev. at 8, 38 P.3d at 167-68 (explaining, “[o]nly the defendant...can make certain fundamental decisions...”).

Not only is Castro's claim belied by Castro's own statements, but Castro fails to support this claim with specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Although he claims counsel's communication

with his parents regarding the plea negotiations resulted in his parents coercing him to enter a plea, he fails to allege what specific statements counsel made to his parents, how the alleged statements affected his behavior to plead guilty in this case, or how they may have reduced his level of culpability.

The district court found that Castro understood the potential sentences he faced, belying his claim that counsel promised him any different sentence. Specifically, the district court found that:

Petitioner's claim that counsel promised him a sentence of fifteen (15) years to 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. GPA at 3. Petitioner's answers during the plea canvass further confirms that Petitioner understood the terms of the negotiations and belie any claim that he believed he would receive a particular sentence RT: EOP, at 6. While counsel indeed argued during sentencing that Petitioner should receive a sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did not honor that request does not render counsel deficient.

1 ROA-A 125. The district court's finding is supported by substantial evidence. A GPA was filed in open court, memorializing that Castro agreed to plead guilty to one count of First Degree Kidnapping Resulting in Substantial Bodily Harm. 2 ROA 336-43. In so agreeing, Castro acknowledged:

This offer is conditional upon all four (4) Defendants accepting their respective negotiations and being sentenced. All Parties agree the State will 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.

2 ROA 336. Castro also acknowledged:

I understand that as a consequence of my plea of guilty The Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than FIFTEEN (15) years and a maximum term of not more than FORTY (40) years, OR for a minimum term of not less than FIFTEEN (15) years and a maximum term of LIFE, *OR LIFE WITHOUT PAROLE*. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that the law requires me to pay an Administrative Assessment Fee.

2 ROA 337 (emphasis added). Additionally, before accepting Castro's GPA, the district court specifically canvassed Castro regarding whether he understood the potential sentences and he affirmed that he did in the following exchange:

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

**THE DEFENDANT:** Yes, sir.

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

**THE DEFENDANT:** That's correct.

2 ROA 481–82 (emphasis added). Further, the district court found that the sentencing arguments were exactly what Castro agreed upon, belying his claim that he did not understand the potential sentences. Specifically, the district court found that:

At the Sentencing Hearing, defense counsel argued for Life “with” the possibility of parole, and the State argued for Life “without” the possibility of parole. The arguments were exactly what the Defendant agreed the arguments would be.

1 ROA-A 136.

The district court also found that Castro’s claim that he was coerced into entering his plea was belied by the record. This finding, too, is supported by substantial evidence. In the GPA Castro affirmed that “[he had] not been promised or guaranteed any particular sentence by anyone” and “[he knew] that [his] sentence [was] to be determined by the Court within the limits prescribed by statute”. 2 ROA 338. Castro also affirmed that “[he understood] that if [his] attorney or the State of Nevada or both recommend[ed] any specific punishment to the Court, the Court [was] not obligated to accept the recommendation”. Id.

Castro agreed with the following statements:

#### VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies, and circumstances which may be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consulting with my attorney, and *I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.*

I am not now under the influence of any intoxicating liquor, a controlled substance or other drugs which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney

2 ROA 340 (emphasis added).

Before accepting Castro's GPA, the district court specifically canvassed Castro regarding whether he was coerced or had been promised anything not contained within the guilty plea agreement. See 2 ROA 476–80; see also 3 ROA 481–85. The district court engaged in the following exchange with Castro:

**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.

**THE COURT:** Has *anybody* forced you or coerced you to accept that plea?

**THE DEFENDANT:** No, sir.

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

**THE DEFENDANT:** Yes, sir.

**THE COURT:** Has *anybody* made any promises or guarantees to you other than what's been stated in open court and what's contained in the guilty plea agreement?

**THE DEFENDANT:** No, sir.

2 ROA 479–80 (emphasis added). The district court then canvassed Castro regarding whether he was suffering from any emotional or physical distress, was impaired,

understood his potential consequences, had any additional questions, was made any additional promises by his attorney, and was happy with his attorney:

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

**THE DEFENDANT:** No, sir.

**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?

**THE DEFENDANT:** No, sir.

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

**THE DEFENDANT:** Yes, sir.

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

**THE DEFENDANT:** That's correct.

**THE COURT:** Do you have any questions that you want to ask of myself or the State or your counsel before we proceed?

**THE DEFENDANT:** No, sir.

**THE COURT:** *Has your attorney made any promise to you that are not contained in the guilty plea agreement?*

**THE DEFENDANT:** No, sir.

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

**THE DEFENDANT:** Yes, sir.

2 ROA 481–82 (emphasis added).

The district court's canvass was broad, not just asking whether *counsel* had forced or coerced Castro into pleading guilty or had made any undisclosed promises or guarantees to Castro, but whether *anybody*, including his parents, had. Castro specifically represented that no one had forced him to enter the plea, or made any

undisclosed promises or guarantees. Accordingly, after canvassing Castro, the district court found that Castro's guilty plea was freely and voluntarily made, and accepted the same. 3 ROA 484.

In Castro's Sentencing Memorandum, filed prior to sentencing, numerous letters of support were submitted from Castro's friends and family, including a letter from his mother. 2 ROA 386–453. At no point does Castro's mother even hint at any asserted coercion placed upon her by Castro's counsel, or suggest that she encouraged Castro to enter the plea. Id.

At sentencing, Castro addressed the district court directly. See 3 ROA 514–15. He never said anything about counsel misadvising his parents, nor anything about his parents putting pressure on him to accept a deal. Id. He also did not express any dissatisfaction whatsoever with his attorney. The only thing he did do, repeatedly, is admit his guilt. Id.

As such, this claim is nothing but a bare and naked assertion that is belied by the record, and this Court should conclude the district court did not err by denying this claim.

***B. The district court correctly reviewed the “totality of the circumstances” regarding Castro’s guilty plea, and correctly found the same to pass constitutional muster***

The district court's Findings reflect that the district court did, in fact, conduct a proper “totality of the circumstances” review of Castro's guilty plea. See 1 ROA-

A 118–140. While Castro now broadly contends that counsel’s communication with his parents regarding the plea negotiations resulted in his parents coercing Castro to enter a plea, Castro cannot point to any part of the record to support such an assertion. See 1 ROA-A 1–17; see also AOB 3–5.

The Nevada Supreme Court has explained that, after sentencing, a defendant’s guilty plea may only be withdrawn to correct “manifest injustice.” Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). Guilty pleas are presumptively valid – defendants bear the burden to show that their plea was not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The Baal Court qualified that “manifest injustice” does not exist if a defendant enters his or her plea voluntarily. 106 Nev. at 72, 787 P.2d at 394.

The Bryant Court described a “totality of the circumstances review” to determine the voluntariness of a guilty plea. 102 Nev. at 271, 721 P.2d at 367. A proper plea canvass should reflect (1) a defendant’s knowing waiver of his privilege against self-incrimination, his right to a jury trial, and his right to confront his accusers, (2) the defendant’s plea was voluntary, not coerced, and not the product of any promise of leniency, (3) the defendant understood the consequences and potential punishments for his plea, and (4) the defendant understood the nature of the charge(s) against him. See Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983). There is no need, however, for a ritualistic plea canvass, nor for the



“articulation of talismanic phrases,” but rather, that the record demonstrate that the defendant entered his guilty plea understandingly and voluntarily. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973).

The district court found that Castro’s guilty plea was made freely and voluntarily based on the GPA, plea canvass, and totality of the circumstances, belying his claim that he was coerced into entering the plea. Specifically, the district court found that:

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

1 ROA-A 136–37.

Any claim that Castro was coerced into entering the plea is belied by the record and suitable for summary denial. See 2 ROA 336–43; see also 2 ROA 476–80; 3 ROA 481–85. In his GPA, Castro acknowledged that he waived certain rights and privileges. 2 ROA 336–43. He acknowledged that no promises could be made

regarding the outcome of sentencing. 2 ROA 338. In both the district court's canvassing and his GPA, Castro showed that he understood the nature of his crime as well the terms of the plea. See 2 ROA 336–43; see also 2 ROA 476–80; 3 ROA 481–85.

Therefore, because the district court correctly reviewed the “totality of the circumstances” regarding Castro's guilty plea, and found the same to pass constitutional muster, and because Castro's instant contention is meritless, this Court should affirm the district court's Findings.

## **II. THE DISTRICT COURT PROPERLY DENIED CASTRO'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) WITHOUT CONDUCTING AN EVIDENTIARY HEARING**

Castro concludes with an assertion that he was entitled to an evidentiary hearing on his post-conviction concerns. AOB at 8. However, the district court correctly determined that no evidentiary hearing was necessary, as each of Castro's claims are without merit. 1 ROA-A 118–140.

If a petition can be resolved without expanding the record, no evidentiary hearing is necessary. NRS 34.770; Marshall, 110 Nev. 1328, 885 P.2d 603. Further, “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record.” Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Moreover, the Nevada Supreme Court has determined that it is improper to conduct an evidentiary hearing simply to make a

complete record. See State v. Eighth Judicial Dist. Ct., 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of...the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

Because each of Castro’s claims are without merit, he has likewise failed to demonstrate that the record needs to be expanded through an evidentiary hearing. Even if it were assumed that counsel misinformed Castro’s parents about the terms of the plea agreement, that is not a ground for relief because: (1) the record is clear that *Castro* was correctly informed about the plea agreement through the written GPA itself and the canvass, as well as arguments at sentencing; (2) Castro’s parents were not entitled to counsel or the effective assistance thereof, nor were they entitled to understand, accept, or agree to any plea deal because the choice to enter the plea was *Castro’s* alone to make; and (3) any claim that Castro’s parents coerced him into entering the plea, whether based on asserted misinformation or otherwise, was belied by Castro’s plea canvass and representations to the Court. Accordingly, even if the assertion that counsel was deficient for misrepresenting information to Castro’s parents was assumed to be true, an evidentiary hearing was not warranted because it was not a fact *which would entitle Castro to relief*. Therefore, the district court did not err in denying Castro’s pleadings without an evidentiary hearing.

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## **CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Court AFFIRM the district court's denial of Castro's Petition for Writ of Habeas Corpus (Post-Conviction) without an evidentiary hearing.

Dated this 11<sup>th</sup> day of May, 2022.

Respectfully submitted,

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BY */s/ John T. Afshar*

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## **CERTIFICATE OF COMPLIANCE**

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 6,285 words and 24 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 11<sup>th</sup> day of May, 2022.

Respectfully submitted

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 11<sup>th</sup> day of May, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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