

FILED

FEB - 7 2022

Erin Ware
#1017483
PO BOX 7000
Carson City NV 89702

Elizabeth A. Brown
CLERK OF COURT
Electronically Filed
Feb 22 2022 11:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court of Nevada
District of Nevada

Erin Ware
Petitioner,

case NO: C-15-310099-1

consolidated with C-16-311782-1

VS.

The State of Nevada
Respondent,

Motion for appeal of findings and
facts, conclusions of law and order
(Habeus Corpus)

Plaintiff, Erin Ware comes before the honorable judge
as a pro se litigant to appeal the findings of the Habeus
Corpus motion.

C-15-310099-1
NOASC
Notice of Appeal (Criminal)
4982974



Points and authorities

On April 10, 2018 I was sentenced to 17-50 years
of imprisonment. I was represented by Josh
Tomscheck. This particular lawyer was ineffective
during the period of my case. During my trial I
was offered a deal 20-50 years which I
turned down. All counsel left to quarters and came
back to court with a new deal of 17-50 years.
I turned that deal down as well. My

RECEIVED
APPEALS

FEB 18 2022

CLERK OF THE COURT

RECEIVED

FEB 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

2

lawyer stated in court that he knows this judge and she would not give me 17 years on the back end, he stated the most I would receive is 13 years on the back end. I did not want to take the plea deal. My lawyer contacted my mother explaining the situation and was continually recommending I enter the plea deal. During the case, I asked for a private investigator and an expert witness to help defend my case and I was never granted the opportunity. I rarely had a chance to visit with this lawyer due to him stating "He is busy," and doesn't have time." I did not have a fair opportunity to fight my case and prove my innocence. The state claims that I entered the plea to avoid life in prison. This statement is false due to I am a dialysis patient which has been on dialysis presently over 12 years. The average lifespan of an dialysis patient is 10 years. At this time I had been on dialysis for 8 years so I already had it set that I would die in prison due to health reasons so it wouldn't of mattered if I was sentenced to life. I wanted to defend myself and prove my innocence but my lawyer refused to go on with my trial and blatantly refused to effectively

assist my defense. If the counsel would of effectively defended me I would of insisted on continuing my trial. Counsel displayed many errors. Many motions were presented to counsel and the counsel refused to serve the court the motions. Motions of violations of my 1st, 4th, and 14th amendmant. Lead detective Lance Spotto was often showing up to the Hospital continually questioning me about this current case while I was ~~under~~ sedated with heavy medication on several occassions. I let the watch Commander of Clark County Jail know of this and I informed my counsel of this and to no avail no action was taken. This current detective would sit a full 12 hours at a time consistently trying to question me after I was incarcerated on this case. ~~times~~ Lance Spotto was released from LVMPD due to unknown reasons. He blately tampered with a witness by harrassing me and questioning me several times while I was sedated with medication and the case was still open. My counsel Josh Tomsheck failed to investigate my case. If I would of obtained an expert witness would of proved several instances of why I am not the perp. There was several blood samples and none matched me. There were several

4

finger prints and none matched me but as you can see on video footage the perp touched several things. The victim Ruth Garn picked out another person in photo line-up and she states she shot the person who robbed her. I was not shot. 2 days after Ruth Garn was interviewed, Jaime Nourie was interviewed and picked me out of the photo line up after she was coerced. Detectives had insight that I was the person of interest from an informant Corey Nolen. Once detectives interviewed Ruth Garn and she picked someone else out of the photo lineup detectives felt like ~~their~~^{their} case was going down hill so when they interviewed Jaime Nourie they coerced her into picking me out of photo lineup. During her interview (Jaime Nourie) she was asked did she know what type of gun was used, she didn't know. But on her 2nd interview she turned into a gun expert and she knew exactly what type of gun was used but the day of the crime during her interview she admitted she had no clue what type of gun the perpetrator had. She just knew the gun was black. Once I was sentenced Jaime Nourie stopped my girlfriend at the time and told her if

5

there is anything she can do to help she can. Ms. Naurie knows that detectives coerced her and she felt guilty. The state claims there was a cup in the trash can that had my DNA on it but a motion was filed to suppress evidence because the cup nor the trash were put in the evidence vault. This is only evidence that state claims can put me at the ~~scene~~ scene of the crime. It could have been plenty of cups in the trash that could of proved someone else did the crime but the trash was disposed of. This hindered me from defending myself in this case. With all of the points above proved prejudiced and hindered my ability at a chance of a fair trial.

Conclusions

Plaintiff begs the court to please overturn the present case and give the Plaintiff a fair chance of a new trial. Please Consider his request.

Erin Ware
#1017483
PO BOX 7000
Carson City NV
89707

Certificate Of mailing

I hereby certify that service of the above and foregoing was made ~~this~~ 1st day of february, 2022 by depositing in the U.S. mail, postage prepaid, addressed to

Clerk of Court
201 South Carson Street ^{suite 201}
Carson City NV 89701

~~Erin Ware~~
By Erin Ware #1077483
pro se litigant

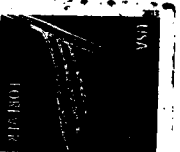
Erin Ware #1017483
NNCC
PO BOX 7000
Carson City NV 89702

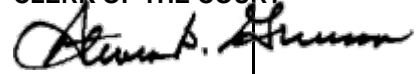
NORTHERN NEVADA CORRECTIONAL CENTER

FEB 0 3 2022

LEGAL

Clerk of Court
Supreme Court of Nevada
201 South Carson Street, Suite 201
Carson City NV 89701





1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 ERIN DESHAUN WARE,

14 Defendant(s),
15

Case No: C-15-310099-1

Consolidated with C-16-311782-1

Dept No: XXI

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Erin Ware

20 2. Judge: Bita Yeager

21 3. Appellant(s): Erin Ware

22 Counsel:

23 Erin Ware #1017483
24 P.O. Box 7000
Carson City, NV 89702

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

9. Date Commenced in District Court: October 15, 2015

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 18 day of February 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Erin Ware

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY
CASE NO. C-15-310099-1

State of Nevada
vs
Erin Ware

§ Location: Department 21
§ Judicial Officer: Clark Newberry, Tara
§ Filed on: 10/15/2015
§ Case Number History:
§ Cross-Reference Case Number: C310099
§ Defendant's Scope ID #: 2652033
§ ITAG Booking Number: 0
§ ITAG Case ID: 1713717
§ Lower Court Case # Root: 15F10849
§ Lower Court Case Number: 15F10849X
§ Metro Event Number: 1506102629

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
Jurisdiction: District Court					
1. ROBBERY WITH USE OF A DEADLY WEAPON PCN: 0029612068 ACN: 1506102629 Filed As: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON Arrest: 06/10/2015 MET - Metro	200.380	F	06/10/2015	Case Status:	04/11/2018 Closed
2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Filed As: ROBBERY WITH USE OF A DEADLY WEAPON	200.010	F	06/10/2015		
3. SOLICITATION TO COMMIT MURDER Filed As: ROBBERY WITH USE OF A DEADLY WEAPON	199.500.2	F	06/10/2015		
4. BATTERY WITH INTENT TO COMMIT A CRIME	200.400.2	F	06/10/2015		
5. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM	200.481.2e2	F	06/10/2015		
6. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	200.010	F	06/10/2015		
7. ASSAULT WITH USE OF A DEADLY WEAPON	200.471.2b	F	06/10/2015		
8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/10/2015		
9. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/10/2015		
10. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/10/2015		
11. OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON	202.360.1	F	06/10/2015		
12. SOLICITATION TO COMMIT MURDER	199.500.2	F	06/10/2015		

Related Cases

A-21-842235-W (Writ Related Case)
C-16-311782-1 (Consolidated)

Statistical Closures

04/11/2018 Guilty Plea with Sentence (before trial) (CR)

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number C-15-310099-1
Court Department 21
Date Assigned 01/04/2021

CASE SUMMARY**CASE No. C-15-310099-1**
Clark Newberry, Tara

Judicial Officer







PARTY INFORMATION

Defendant	Ware, Erin Deshaun	<i>Lead Attorneys</i>
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
10/15/2015	 Criminal Bindover Packet Justice Court [1]	<i>In</i> #1
10/16/2015	 Information [2] Information	<i>In</i> #2
10/20/2015	 Amended Information [3] Amended Information	<i>In</i> #3
10/27/2015	 Amended Information [4] Second Amended Information	<i>In</i> #4
11/06/2015	 Notice of Witnesses and/or Expert Witnesses [5] Notice of Witnesses and/or Expert Witnesses [NRS 174.234]	<i>In</i> #5
11/12/2015	 Notice of Witnesses and/or Expert Witnesses [6] Notice of Witnesses and/or Expert Witnesses	<i>In</i> #6
11/14/2015	 Transcript of Proceedings [7] Reporter's Transcript of Preliminary Hearing, October 15, 2015	<i>In</i> #7
02/01/2016	 Motion [8] Notice of Motion and Motion to Consolidate, or in the Alternative, Motion to Admit Evidence of Other Acts Pursuant to NRS 48.045(2)	<i>In</i> #8
02/04/2016	 Motion [9] Notice of Motion and Motion to Permit the State to Introduce Res Gestae Evidence and Evidence of Flight	<i>In</i> #9
02/10/2016	 Notice of Witnesses and/or Expert Witnesses [10] Second Supplemental Notice of Witnesses and/or Expert Witnesses	<i>In</i> #1
02/18/2016	 Order to Release Medical Records [11] Ex Parte Motion and Order Releasing All Medical Records	<i>In</i> #1
02/19/2016	 Opposition to Motion [12] Defendant's Opposition to State's Motion to Consolidate, or in the Alternative, Motion to Admit Evidence of Other	<i>In</i> #1

CASE SUMMARY
CASE NO. C-15-310099-1











Acts Pursuant to NRS 48.045(2)

02/22/2016	 Opposition to Motion <i>[13] Defendant's Opposition to State's Motion to Permit the State to Introduce Res Gestae Evidence and Evidence of Flight</i>	In #1
05/11/2016	 Document Filed <i>[14] Decision and Order</i>	In #1
05/12/2016	 Decision <i>[15] Decision and Order</i>	In #1
06/27/2016	 Motion <i>[16] Defendant's Motion for Bail Reduction</i>	In #1
06/29/2016	 Opposition <i>[17] State's Opposition to Defendant's Motion to Reduce Bail</i>	In #1
07/06/2016	 Amended Information <i>[18] Third Amended Information</i>	In #1
08/04/2016	 Motion <i>[19] Motion to Continue Trial</i>	In #1
08/05/2016	 Opposition <i>[20] State's Opposition to Defendant's Motion to Continue Trial</i>	In #2
08/12/2016	 Motion <i>[21] Motion for Discovery</i>	In #2
08/12/2016	 Order to Release Medical Records <i>[22] Order Releasing Medical Records</i>	In #2
08/18/2016	 Opposition <i>[23] Opposition to Defendant's Motion for Discovery</i>	In #2
12/07/2016	 Notice of Witnesses and/or Expert Witnesses <i>[24] Third Supplemental Notice of Witnesses and/or Expert Witnesses</i>	In #2
12/08/2016	 Notice of Witnesses and/or Expert Witnesses <i>[25] Fourth Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]</i>	In #2
12/21/2016	 Motion <i>[26] Motion to Dismiss for Failure to Preserve Exculpatory Evidence</i>	In #2
12/27/2016	 Opposition <i>[27] State's Opposition to Defendant's Motion to Dismiss Due to Failure to Preserve Exculpatory Evidence</i>	In #2

CASE SUMMARY
CASE NO. C-15-310099-1

12/30/2016	 Motion <i>[28] Motion to Dismiss for Violations of Defendant's Fifth, Sixth, and Fourteenth Amendment Rights, or in the Alternative, Motion to Suppress</i>	In #2
12/30/2016	 Supplement <i>[29] Supplement to Defendant's Motion to Dismiss for Violations of Defendant's Fifth, Sixth, and Fourteenth Amendment Rights</i>	In #2
01/06/2017	 Motion <i>[30] Motion to Withdraw</i>	In #2
07/21/2017	 Motion Filed By: Defendant Ware, Erin Deshaun <i>[31] Motion to Authorize Clark County Detention Center to Procure Prescription Eyewear for Defendant</i>	In #2
07/27/2017	 Opposition Filed By: Plaintiff State of Nevada <i>[32] Specially Appearing Interested Party Sheriff Lombardo's Opposition to Motion to Authorize Clark County Detention Center to Procure Prescription Eyewear for Defendant</i>	In #2
08/15/2017	 Motion Filed By: Defendant Ware, Erin Deshaun <i>[33] Motion to Continue Trial Date</i>	In #2
10/25/2017	 Order to Transport Defendant Party: Defendant Ware, Erin Deshaun <i>[34] Order for Transport</i>	In #2
01/30/2018	 Notice of Witnesses Party: Defendant Ware, Erin Deshaun <i>[35] Notice of Alibi Witnesses and Notice of Witnesses</i>	In #2
02/06/2018	 Opposition <i>[36] State's Opposition to Defendant's Motion to Dismiss Due to Continued State Misconduct and Violations of Defendant's Fifth, Sixth, and Fourteenth Amendment Rights, or in the Alternative, Motion to Suppress</i>	In #2
02/07/2018	 Guilty Plea Agreement <i>[37] Guilty Plea Agreement</i>	In #2
02/07/2018	 Amended Information <i>[38] Fourth Amended Information</i>	In #2
03/22/2018	 PSI <i>[39]</i>	In #2
04/11/2018	 Criminal Order to Statistically Close Case <i>[40] Criminal Order to Statistically Close Case</i>	In #4

CASE SUMMARY**CASE NO. C-15-310099-1**

04/19/2018	 Judgment of Conviction <i>[41] JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>	In #4
01/07/2019	Case Reassigned to Department 18 <i>Judicial Reassignment - From Judge Togliatti to Judge Holthus</i>	
01/04/2021	Case Reassigned to Department 21 <i>Judicial Reassignment to Judge Tara Clark Newberry</i>	
03/22/2021	 Motion to Modify Sentence Filed By: Defendant Ware, Erin Deshaun <i>[42] Motion for Modification of Sentence or Correct Illegal Sentence</i>	In #4
04/06/2021	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>[43] State's Opposition to Defendant's Motion for Modification of Sentence and/or Correct Illegal Sentence</i>	In #4
04/21/2021	 Motion Filed By: Defendant Ware, Erin Deshaun <i>[44] Motion for Mercy/Compassionate Release</i>	In #4
05/10/2021	 Response <i>[45] State's Response to Defendant's Motion for Compassionate Release</i>	In #4
05/24/2021	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>[46] ORDER DENYING DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE AND/OR CORRECT ILLEGAL SENTENCE</i>	In #4
01/04/2022	 Findings of Fact, Conclusions of Law and Order <i>[47] Findings of Fact, Conclusions of Law and Order</i>	In #4
01/06/2022	 Notice of Entry Filed By: Defendant Ware, Erin Deshaun <i>[48] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	In #4
02/07/2022	 Notice of Appeal (Criminal) <i>[49] Motion for Appeal of Findings and Facts, Conclusions of Law and Order (Habeas Corpus)</i>	In #4
02/18/2022	 Case Appeal Statement <i>Case Appeal Statement</i>	In #5
<u>DISPOSITIONS</u>		
02/07/2018	Disposition (Judicial Officer: Togliatti, Jennifer) 4. BATTERY WITH INTENT TO COMMIT A CRIME Amended Information Filed/Charges Not Addressed PCN: Sequence: 5. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM Amended Information Filed/Charges Not Addressed PCN: Sequence:	

CASE SUMMARY
CASE NO. C-15-310099-1

6. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
7. ASSAULT WITH USE OF A DEADLY WEAPON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
9. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
10. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
11. OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
12. SOLICITATION TO COMMIT MURDER
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

02/07/2018 **Plea** (Judicial Officer: Togliatti, Jennifer)

1. ROBBERY WITH USE OF A DEADLY WEAPON
Guilty
PCN: 0029612068 Sequence:
2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
Guilty
PCN: Sequence:
3. SOLICITATION TO COMMIT MURDER
Guilty
PCN: Sequence:

04/10/2018 **Disposition** (Judicial Officer: Togliatti, Jennifer)

1. ROBBERY WITH USE OF A DEADLY WEAPON
Guilty
PCN: 0029612068 Sequence:
2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
Guilty
PCN: Sequence:
3. SOLICITATION TO COMMIT MURDER
Guilty
PCN: Sequence:

04/10/2018 **Adult Adjudication** (Judicial Officer: Togliatti, Jennifer)

1. ROBBERY WITH USE OF A DEADLY WEAPON
06/10/2015 (F) 200.380 (DC50138)
PCN: 0029612068 Sequence:

CASE SUMMARY

CASE NO. C-15-310099-1

Sentenced to Nevada Dept. of Corrections
Term: Minimum:72 Months, Maximum:180 Months
Consecutive Enhancement:Use of a Deadly Weapon, Minimum:12 Months, Maximum:120 Months


04/10/2018 **Adult Adjudication** (Judicial Officer: Togliatti, Jennifer)
2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
06/10/2015 (F) 200.010 (DC50031)
PCN: Sequence:


Sentenced to Nevada Dept. of Corrections
Term: Minimum:72 Months, Maximum:180 Months
Consecutive Enhancement:Use of a Deadly Weapon, Minimum:48 Months, Maximum:120 Months
Consecutive: Charge 1


04/10/2018 **Adult Adjudication** (Judicial Officer: Togliatti, Jennifer)
3. SOLICITATION TO COMMIT MURDER
06/10/2015 (F) 199.500.2 (DC50037)
PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
Term: Minimum:48 Months, Maximum:180 Months
Concurrent: Charge 1 & 2
Credit for Time Served: 971 Days
Other Fees
1. , \$48,823.79 To Victim's of Crime
Fee Totals:
Administrative
Assessment Fee 25.00
\$25
Fee Totals \$ 25.00
\$150 Taken

HEARINGS





10/19/2015  **Initial Arraignment** (10:00 AM) (Judicial Officer: De La Garza, Melisa)
Matter Continued;
Journal Entry Details:
Court noted the lack of appearance made by the defendant today. Attorney Waldo states the defendant was taken to the hospital today. Therefore, COURT ORDERED, matter CONTINUED as requested by defense. There was no opposition made by the state. CUSTODY 10/27/15 10:00 A.M. ARRAIGNMENT CONTINUED (LLA) ;

10/27/2015  **Arraignment Continued** (10:00 AM) (Judicial Officer: De La Garza, Melisa)
Trial Date Set;
Journal Entry Details:
DEFT. WARE ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. As the available trial dates within the 60-day limit will not allow his/her attorney adequate preparation time, Deft. WAIVED ELEVEN (11) DAYS to the next criminal trial stack. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript. CUSTODY 12/17/15 9:00 AM CALENDAR CALL (DEPT. 9) 1/04/16 10:30 AM JURY TRIAL (DEPT. 9);

12/17/2015  **Calendar Call** (9:00 AM) (Judicial Officer: Barker, David)
Vacated and Reset;
Journal Entry Details:
Ms. Waldo advised she is not ready for trial and made an oral request to continue, noting the Defendant is willing to waive her speedy trial rights. Further, Ms. Waldo advised there is a lot of discovery, additional investigation must be done, and she will need to retain an expert. Upon Court's inquiry, Defendant WAIVED her speedy trial rights. State advised it was ready for trial and noted all forensic testing was done before the preliminary hearing. Further, State advised a detective file review has been completed and all discovery has been provided. State requested a quick trial setting and advised it is not opposed to the continuance. COURT ORDERED, oral request to continue GRANTED; trial date VACATED and RESET. CUSTODY 03/17/16 9:00 AM CALENDAR CALL 03/28/16 10:30 AM JURY TRIAL;

CASE SUMMARY

CASE NO. C-15-310099-1

01/04/2016	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Togliatti, Jennifer) <i>Vacated - per Judge</i>
02/25/2016	 Motion to Consolidate (9:00 AM) (Judicial Officer: Togliatti, Jennifer) 02/25/2016, 03/01/2016, 03/09/2016 <i>State's Motion to Consolidate, or in the Alternative, Motion to Admit Evidence of Other Acts Pursuant to NRS 48.045 (2)</i> Continued; Continued; Matter Heard; Journal Entry Details: <i>See written decision filed 5/11/16.;</i> Continued; Continued; Matter Heard; Continued; Continued; Matter Heard;
02/25/2016	 Motion (9:00 AM) (Judicial Officer: Togliatti, Jennifer) 02/25/2016, 03/01/2016, 03/09/2016 <i>State's Motion to Permit the State to Introduce Res Gestae Evidence and Evidence of Flight</i> Continued; Continued; Matter Heard; Journal Entry Details: <i>See written decision filed 5/11/16.;</i> Continued; Continued; Matter Heard; Continued; Continued; Matter Heard;
02/25/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Togliatti, Jennifer) Matter Heard; Journal Entry Details: STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) ... STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT CONFERENCE AT THE BENCH. COURT <i>advised that based on it's schedule it has not had enough time to review the motions and ORDERED, matter CONTINUED. Further, COURT noted Ms. Gregory advised at the bench she does not anticipate being ready for trial and at her request ORDERED, calendar call and trial date VACATED and matter SET for status check. Upon Court's inquiry, Defendant advised he understands. State objected to resetting the trial noting all discovery, including the DNA testing, has been provided and they are ready for trial. Ms. Gregory argued it takes time to review the DNA. COURT ORDERED, oral request to vacate the trial date GRANTED; matter SET for status check. COURT FURTHER ORDERED, motions CONTINUED. CUSTODY (COC) 3/1/16 9:00 AM STATUS CHECK: RESET TRIAL DATE / STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) / STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT ;</i>
03/01/2016	Status Check: Reset Trial Date (9:00 AM) (Judicial Officer: Togliatti, Jennifer) Matter Heard;
03/01/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Togliatti, Jennifer) Matter Heard; Journal Entry Details: STATUS CHECK: RESET TRIAL DATE ... STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) ... STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT


CASE SUMMARY


CASE NO. C-15-310099-1

TO NRS 48.045(2) Argument in support of the motion by State, noting the evidence is cross admissible. Argument against the motion by Ms. Gregory, noting they are separate case and not relevant to identity or cross admissibility. COURT ORDERED, matter CONTINUED to the Court's chamber calendar for decision. STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT Argument in support of their respective positions by counsel. COURT ORDERED, matter CONTINUED to the Court's chamber calendar for decision. STATUS CHECK: RESET TRIAL DATE Colloquy regarding trial date. COURT ORDERED, matter SET for trial. CUSTODY (COC) 3/9/16 (CHAMBERS) STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) / STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT 8/11/16 9:00 AM CALENDAR CALL 8/22/16 10:30 AM JURY TRIAL;


03/17/2016 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
Vacated - per Judge

03/28/2016 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer: Togliatti, Jennifer)
Vacated - per Judge


06/30/2016  **Motion to Reduce** (9:00 AM) (Judicial Officer: Bixler, James)
Defendant's Motion for Bail Reduction
Denied;
Journal Entry Details:
Upon Court's inquiry, counsel advised this case has already been consolidated. Ms. Waldo provided a letter from the Defendant to the Court. Argument in support of the motion by Ms. Waldo. Statement by Defendant. COURT ORDERED, motion DENIED. CUSTODY (COC);

08/11/2016  **Calendar Call** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
08/11/2016, 08/16/2016
Continued;
Trial Date Set;
Journal Entry Details:
COURT STATED it already GRANTED the Defense Motion to Continue, however, continued the Calendar Call for resetting of the Trial. CONFERENCE AT BENCH. COURT ORDERED, Trial VACATED and RESET to the dates selected at the bench. CUSTODY (COC) 11/8/16 9:00 AM STATUS CHECK: TRIAL READINESS 1/12/17 9:00 AM CALENDAR CALL 1/23/17 10:30 AM JURY TRIAL ;
Continued;
Trial Date Set;

08/11/2016 **Motion to Continue Trial** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
Defendant's Motion to Continue Trial
Granted;

08/11/2016  **All Pending Motions** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
Calendar Call and Deft's Motion to Continue Trial
Continued;
Journal Entry Details:
CALENDAR CALL...DEFT'S MOTION TO CONTINUE TRIAL COURT noted, the Deft. has a pending Motion to Continue Trial set for next week. COURT suggested it be addressed today. Ms. Gregory, Esq. advised there is new information just received that causes the Defense to need to do more investigation. Ms. Rhoades, Esq. advised the new cases have nothing to do with these charges and the State opposes a continuance. COURT FINDS, good cause shown on the consolidated case for additional discovery and because a part of this case is much older than the other part, and ORDERED, GRANTED the Deft's request to Continue over the State's opposition. BENCH CONFERENCE. Pursuant to the conference at the bench, counsel were not sure about their respective trial schedules, therefore the COURT ORDERED, Calendar Call is CONTINUED and the Trial will be reset next date. CUSTODY (COC) CONTINUED TO: 8/16/16 9:00 A.M. ;

08/22/2016 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer: Togliatti, Jennifer)
Vacated

08/23/2016  **Motion for Discovery** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
Defendant's Motion for Discovery
Granted in Part;

CASE SUMMARY
CASE NO. C-15-310099-1

Journal Entry Details:

Arguments by counsel regarding the merits of the motion. COURT ORDERED, Motion GRANTED IN PART/DENIED IN PART as follows: 1. As to A through H, DENIED, with the exception of all case detective notes, expert notes, including fingerprint and DNA filed. DA to inquiry as to patrol officers and notes. 2. As to audio, State advised audio has been provided. 3. As to compensation beyond witness fees, Ms. Mercer advised she is not aware of any. In camera production for victim and witness assistance, GRANTED. As to criminal history of all state witnesses court directed State to run NCIC, Court noted it does not require police personal and advised State to provide at status check trial readiness. 4. RESOLVED. 5. Request for detective secret witness or otherwise, GRANTED. 6. As to Statements, GRANTED; State required to provide known inconsistent statements. 7. Updated witness contact information, GRANTED as required by statute. 8. Search warrant report, DENIED WITHOUT PREJUDICE. 9. GRANTED IN PART; Granted for in-camera review - GPA and discovery required in any case Defendant has/DENIED IN PART as to PSI. 10. Motion GRANTED. Ms. Waldo to prepare the order. ;

11/08/2016



Status Check (9:00 AM) (Judicial Officer: Togliatti, Jennifer)

Status Check: Trial Readiness

Matter Heard;

Journal Entry Details:

Ms. Waldo advised the State provided the detective's notes. State provided the Court with NCIC for review. Court noted Trudy Presutti has no discoverable convictions and Jaime Nourie, Rafeal Perez, and Ruth Garn have a date of birth and social security number and no other entry. Ms. Waldo advised there are additional motions to file but anticipates being ready for trial. State advised the police reports and underlying data for the fingerprint analysis have been requested. Further, State advised there are no victim payouts. CUSTODY(COC);

01/03/2017



Motion to Dismiss (9:00 AM) (Judicial Officer: Togliatti, Jennifer)

Defendant's Motion to Dismiss for Failure to Preserve Exculpatory Evidence

Denied;

Journal Entry Details:

Ms. Gregory argued in support of the motion. State argued against the motion. Further argument by Ms. Gregory. COURT FINDS that there was no bad faith or gross negligence and ORDERED, motion DENIED. State to prepare the order. CUSTODY (COC);

01/10/2017

Motion to Dismiss (9:00 AM) (Judicial Officer: Togliatti, Jennifer)

Motion to Dismiss for Violations of Defendant's Fifth, Sixth, and Fourteenth Amendment Rights, or in the Alternative, Motion to Suppress Off Calendar;

01/10/2017

Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer: Togliatti, Jennifer)

Jennifer M. Waldo, Esq. and Amanda S. Gregory, Esq.'s Motion to Withdraw Due to Conflict Granted;

01/10/2017



All Pending Motions (9:00 AM) (Judicial Officer: Togliatti, Jennifer)

Matter Heard;





Journal Entry Details:

DEFENDANT'S MOTION TO DISMISS DUE TO CONTINUED STATE MISCONDUCT AND VIOLATIONS OF DEFENDANT'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS, OR IN THE ALTERNATIVE, MOTION TO SUPPRESS ... JENNIFER M. WALDO, ESQ. AND AMANDA S. GREGORY, ESQ.'S MOTION TO WITHDRAW DUE TO CONFLICT COURT ORDERED, hearing conducted UNDER SEAL. COURT ORDERED, no CD s or transcripts are to be released without a Court s order. Ms. Gregory advised there are several potential conflicts. Further, Ms. Gregory advised that a detective spoke to the Defendant while he was at the hospital about her and that she filed a report with internal affairs. Ms. Gregory advised the Defendant is not a witness in the internal affairs investigation. State advised its understanding was that the conversation was personal in nature and not about the case. Ms. Gregory advised the Defendant was interviewed by internal affairs after the meeting in chambers and he advised the case was discussed. COURT ORDERED, Motion to Withdraw GRANTED, Motion to Dismiss OFF CALENDAR. Statement by Defendant. Matter TRAILED. Matter RECALLED. COURT advised it spoke to the Office of Indigent Defense and ORDERED, matter SET for Status Check. COURT FURTHER ORDERED, calendar call VACATED and RESET. Court noted the trial date STANDS, however, it realizes the trial will not go forward. Ms. Gregory advised the Defendant gave his permission for her to speak to his new counsel. State advised Mr. Paulson of the Public Defender's office cannot accept the appointment due to conflict. CUSTODY (COC) 1/17/17 9:00 AM CALENDAR CALL / STATUS CHECK: APPOINTMENT OF COUNSEL;

01/17/2017

Calendar Call (9:00 AM) (Judicial Officer: Togliatti, Jennifer)

CASE SUMMARY
CASE NO. C-15-310099-1

01/17/2017	<p>All Pending Motions (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Appointment of New Counsel</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED. MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting. CUSTODY (COC) 2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING;</i></p> <p><i>CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED. MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting. CUSTODY (COC) 2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING;</i></p>
01/17/2017	<p> All Pending Motions (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED. MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting. CUSTODY (COC) 2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING;</i></p>
01/23/2017	<p>CANCELED Jury Trial (10:30 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Vacated - per Judge</i></p>
02/07/2017	<p> Status Check (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Status Check: Reset Trial (consolidated with C311782)</i></p> <p>Trial Date Set;</p> <p>Journal Entry Details:</p> <p><i>Mr. Tomsheck advised he met with the Defendant and requested a trial date be set. COURT ORDERED, matter SET for trial. CUSTODY (COC) 8/17/17 9:00 AM CALENDAR CALL 8/28/17 10:30 AM JURY TRIAL ;</i></p>
08/01/2017	<p> Motion (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Defendant's Motion to Authorize Clark County Detention Center to Procure Prescription Eyewear for Defendant</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Also present: Martina Geinzer, Esq. on behalf of LVMPD. Court noted the Office of Indigent Defense is normally responsible for approving these types of things. Court advised counsel to have Mr. Christensen approve it and to submit an order. Ms. Geinzer advised she will e-mail the order that must be used to counsel. Upon Court's inquiry, State advised it will be ready for trial. Mr. Tomsheck advised he will not be ready for trial and will file a motion. CUSTODY (COC);</i></p>
08/17/2017	<p> Calendar Call (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>Vacated and Reset;</p> <p>Journal Entry Details:</p> <p><i>Colloquy regarding Motion to Continue. State advised it would have been prepared for trial. COURT ORDERED, Motion to Continue GRANTED; trial date VACATED and RESET. CUSTODY (COC) 11/14/17 9:00 AM STATUS CHECK: TRIAL READINESS 1/25/18 9:00 AM CALENDAR CALL 2/5/18 10:30 AM JURY TRIAL ;</i></p>
08/28/2017	<p>CANCELED Jury Trial (10:30 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Vacated - per Judge</i></p>
08/29/2017	<p>CANCELED Motion to Continue Trial (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Vacated - Moot</i></p> <p><i>Defendant's Motion to Continue Trial Date</i></p>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-15-310099-1


11/14/2017	<p>Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>Matter Heard; Journal Entry Details: <i>Mr. Tomsheck stated that barring some unforeseen circumstance, he anticipates being ready for the current trial setting in February. Court stated if something comes up, counsel is to file a written motion, otherwise it will count on the case being a significant priority on the Stack. Accordingly, COURT ORDERED, Trial Date STANDS. CUSTODY (COC);</i></p>
01/25/2018	<p> Calendar Call (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>01/25/2018, 01/30/2018 Continued; Trial Date Set; Journal Entry Details: <i>CONFERENCE AT THE BENCH. Court noted parties have advised there will be 15 - 20 witnesses and the Defense has reserved the right to call anyone on the State's witness list. Further, Court advised parties state trial will take 1 1/2 - 2 weeks. COURT ORDERED, matter SET for trial. Colloquy regarding schedule. Court noted a record of the offer will be made on the first day of trial. CUSTODY (COC) 2/7/18 9:30 AM JURY TRIAL;</i> Continued; Trial Date Set; Journal Entry Details: <i>Mr. Tomsheck announced ready for trial, however; Mr. Tomsheck advised the State extended an offer yesterday and indicated it would request the trial date stand with a status check next week on possible negotiations. COURT ORDERED, matter CONTINUED, noting it will make a record of the offer next week. CUSTODY (COC) CONTINUED TO: 1/30/18 9:00 AM;</i></p>
02/07/2018	<p>Jury Trial (9:30 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>Plea Entered;</p>
02/07/2018	<p>Motion (9:30 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p><i>Motion to Dismiss Due to Continued State Misconduct and Violations of Defendant's Fifth, Sixth and Fourteenth Amendment Rights, or in the Alternative, Motion to Suppress</i> Denied;</p>
02/07/2018	<p> All Pending Motions (9:30 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>Matter Heard; Journal Entry Details: <i>JURY TRIAL ... DEFENDANT'S MOTION TO DISMISS DUE TO CONTINUED STATE MISCONDUCT AND VIOLATIONS OF DEFENDANT'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS, OR IN THE ALTERNATIVE, MOTION TO SUPPRESS Fourth Amended Information FILED IN OPEN COURT. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. Mr. Tomsheck advised he received approval from the Office of Indigent Defense for co - counsel. Further, Mr. Tomsheck advised Dan Hill will be co - counsel, but will not likely be here today. Court noted it will read an instruction. State made a record of the offer to the Defendant: plead to one count of attempt murder with use, robbery with use, and solicitation to commit murder with a stipulated 20 - 50 years and another case will be dismissed. Defendant canvassed as to offer and confirmed he rejected it. Mr. Tomsheck advised the State presented what it indicated would be their best and final offer. Additionally, Mr. Tomsheck advised the Defendant has a felony conviction in C240973 and if convicted he would be a mandatory habitual criminal with a possible sentence of life without the possibility of parole. Mr. Tomsheck advised he did make a counter offer which the State has rejected. Colloquy regarding motion. Counsel submitted. COURT stated its findings and ORDERED, motion DENIED; State to prepare the order. Colloquy regarding schedule and jury selection. PROSPECTIVE JURY PANEL PRESENT. Voir dire. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. WARE ARRAIGNED AND PLED GUILTY TO COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 3 - SOLICITATION TO COMMIT MURDER (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. PROSPECTIVE JURY PANEL PRESENT. Defendant not present. Prospective jury panel thanked and excused. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. Colloquy regarding sentencing date. COURT ORDERED, sentencing date VACATED and RESET; Mr. Tomsheck to notify Defendant of the new sentencing date. CUSTODY 4/10/18 9:00 AM SENTENCING;</i></p>
04/10/2018	<p> Sentencing (9:00 AM) (Judicial Officer: Togliatti, Jennifer)</p> <p>Defendant Sentenced; Journal Entry Details:</p>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-15-310099-1

Mr. Tomsheck advised there are errors in the PSI and detailed the errors for the Court. Court noted the District Attorney has records with respect the juvenile entry. Matter TRAILED. Matter RECALLED. COURT ORDERED, PSI AMENDED in the Judgment of Conviction (JOC) as follows: At page 6 under Institution / Supervision Adjustment, case C274352 is to be amended to reflect Attempt Burglary, not Attempt Robbery; at page 6 under Offense Synopsis redact "punched" and replace with "shot at least three times" not four times; and "fled with \$400.00" is to be redacted and replaced with "only fled the business with revolver". DEFT WARE ADJUDGED GUILTY of COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 3 - SOLICITATION TO COMMIT MURDER (F). Argument by State. Statement by Defendant. Argument by Mr. Tomsheck. Ruth Garn and Jamie Nourie sworn and testified. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, credit for time served for DNA test and DNA fee taken 5/10/08, and \$49,823.79 in RESTITUTION to Victim's of Crime, Defendant SENTENCED as to COUNT 1 - to a MINIMUM of SEVENTY TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon; COUNT 2 - to a MINIMUM of SEVENTY TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon, Count 2 to run CONSECUTIVE to Count 1; COUNT 3 - to a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC), Count 3 to run CONCURRENT with Counts 1 and 2; for a TOTAL AGGREGATE SENTENCE OF to a MINIMUM of SEVENTEEN (17) YEARS and a MAXIMUM of FIFTY (50) YEARS in the Nevada Department of Corrections (NDC) with NINE HUNDRED SEVENTY ONE (971) DAYS credit for time served. CASE CLOSED. NDC;

04/13/2021  **Motion to Modify Sentence** (1:30 PM) (Judicial Officer: Clark Newberry, Tara)

04/13/2021, 04/20/2021

Matter Continued;

Denied;

Journal Entry Details:


Defendant not present; incarcerated in the Nevada Department of Corrections (NDC). Mr. Tomsheck advised Defendant filed a motion. Mr. Tomsheck made an oral motion to withdraw. No objection from Ms. Thomson. COURT NOTED as to the Motion to Modify Sentence, the Court adopted the reasons of the State on page five. As to the health issues the Court did not have the jurisdiction, it was not properly brought, and it may be a civil matter. Therefore, COURT ORDERED, Motion to Modify Sentence DENIED it was not an illegal sentence. State to prepare the Order. COURT ADDITIONALLY ORDERED, Joshua L. Tomsheck's oral Motion to Withdraw GRANTED. CUSTODY (COC);

Matter Continued;

Denied;

Journal Entry Details:

Defendant not present; incarcerated in the Nevada Department of Corrections (NDOC). Joshua L. Tomsheck, Esq. also not present. Matter submitted by Ms. Thomas. COURT NOTED this matter may need to be continued for Mr. Tomsheck's presence so that he may withdraw in order for the Court to consider the motion. COURT ORDERED, matter CONTINUED. Ms. Thomas advised she would reach out to Mr. Tomsheck to file a motion to withdraw. CUSTODY (COC) CONTINUED TO: 04/20/21 3:00 PM;

05/13/2021  **Motion** (1:30 PM) (Judicial Officer: Clark Newberry, Tara)

Defendant's Motion for Mercy/Compassionate Release

Motion Denied; Defendant's Motion for Mercy/Compassionate Release

Journal Entry Details:

Court noted Deft. is already in custody and serving his sentence. Court stated Mr. Tomsheck was not present and had not withdrawn. Court FINDS Deft. is represented by counsel and did not serve motion on the Attorney General's office, therefore, ORDERED motion DENIED; Deft. may file for dismissal of counsel or counsel must withdraw. Court will prepare an order. CUSTODY (COC) CLERK'S NOTE: Subsequent to the May 13, 2021 Hearing, the Court having reviewed the April 20, 2021 minutes FINDS the Court had previously granted Mr. Tomsheck s Oral Motion to Withdraw as Counsel of Record for Defendant Erin Ware. COURT ORDERED the ruling as to Defendant s Motion for Mercy/Compassionate Release STANDS; State to prepare the Order. A copy of this minute order was distributed to all registered parties via Odyssey File and Serve and mailed to: Erin Ware, #1017483, Northern Nevada Correctional center, P.O. Box 7000, Carson City, Nevada 89702, 1721 E. Snyder Ave., Carson City, Nevada 89701. // cbm 06-28-2021;

DATE

FINANCIAL INFORMATION

Defendant Ware, Erin Deshaun

Total Charges

47.50

Total Payments and Credits

22.50

CASE SUMMARY

CASE NO. C-15-310099-1

Balance Due as of 2/18/2022

25.00

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIN DESHAUN WARE,
#2652033,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-842235-W

C-15-310099-1

DEPT NO: XXI

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: December 21, 2021

TIME OF HEARING: 1:30 PM

THIS CAUSE having come on for hearing before the Honorable BITA YEAGER, District Judge, on the 21st day of December, 2021, the Petitioner being not present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through WILLIAM J. MERBACK, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 16, 2015, Erin Deshaun Ware ("Petitioner") was charged via Information with Count One: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Category B Felony – NRS 205.060); Count Two: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Three: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Four: BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400.2); Count Five: BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); Count Six: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count Seven: ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); Count Eight: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Nine: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Ten: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); and Count Eleven: OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360).

This Information was amended on October 20, 2015, and again on October 27, 2015. On July 6, 2016, the Information was again amended, this time adding Count Twelve: SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2).

Petitioner’s jury trial began February 7, 2018. After voir dire, he pled guilty to Count One: Attempt Murder with Use of a Deadly Weapon; Count Two: Robbery with Use of a Deadly Weapon; and Count Three: Solicitation to Commit Murder. The Guilty Plea Agreement (“GPA”) described the deal as follows:

As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of corrections. As to the charge of Attempt Murder with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven (7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly

1 Weapon count. As to the charge of Solicitation to Commit Murder, the State
2 agrees to make no recommendation and agrees to run the sentence on that
3 count concurrently. Additionally, the State agrees to dismiss Case No.
C317264 after sentencing in this case.

4 GPA at 1-2. In Case No. C317264, Petitioner faced five counts, including robbery, battery,
5 and burglary.

6 Petitioner was sentenced on April 10, 2018. For Count One, he was sentenced to a
7 minimum of seventy-two (72) months to a maximum of one hundred eighty (180) months in
8 the Nevada Department of Corrections plus a consecutive term of twelve (12) to one hundred
9 twenty (120) months for the Use of a Deadly Weapon. For Count Two, he was sentenced to a
10 minimum of seventy-two (72) months to a maximum of one hundred eighty months (180) in
11 the Nevada Department of Corrections plus a consecutive term of forty-eight (48) to one
12 hundred twenty (120) months for the Use of a Deadly Weapon, to run consecutive to Count
13 One. For Count Three, he was sentenced to a minimum of forty-eight (48) months to a
14 maximum of one hundred eighty (180) months in the Nevada Department of Corrections, to
15 run concurrent with Counts One and Two. He received an aggregate total sentence of
16 seventeen (17) to fifty (50) years, with 971 days credit for time served.

17 The Judgment of Conviction was filed April 19, 2018. This Petition for Writ of Habeas
18 Corpus was filed October 6, 2021. The State filed its response on November 02, 2021.
19 Following a hearing on December 21, 2021, this Court finds and concludes as follows:

20 ANALYSIS

21 **I. THIS PETITION IS PROCEDURALLY-BARRED**

22 **A. The Petition is time-barred.**

23 The Petition is time-barred pursuant to NRS 34.726(1):

24 Unless there is good cause shown for delay, a petition that challenges the
25 validity of a judgment or sentence must be filed within 1 year of the entry
26 of the judgment of conviction or, if an appeal has been taken from the
27 judgment, within 1 year after the Supreme Court issues its remittitur. For
28 the purposes of this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 1 (a) That the delay is not the fault of the petitioner; and
2 (b) That dismissal of the petition as untimely will unduly prejudice
3 the petitioner.

4 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
5 meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the
6 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
7 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued.
8 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
11 petition filed two (2) days late despite evidence presented by the defendant that he purchased
12 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
13 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
14 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no
15 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
16 postal system. Id. at 595, 53 P.3d at 903.

17 This is not a case in which the Judgment of Conviction was not final. See, e.g., Johnson
18 v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant’s conviction was not
19 final until the district court entered a new Judgment of Conviction on counts the district court
20 had vacated; Whitehead v. State, 128 Nev. 259, 285 P.3d 1053 (2012) (holding that a judgment
21 of conviction imposing restitution in an unspecified amount is not final and therefore does not
22 trigger the one-year period for filing a habeas petition).

23 Here, Petitioner’s Judgment of Conviction was filed on April 19, 2018. He had until
24 April 19, 2019, to file a timely petition. Petitioner did not file this Petition until October 6,
25 2021, more than two years too late. Because Petitioner has not shown good cause and actual
26 prejudice to overcome the procedural bars under NRS 34.726(1), this Petition and Supplement
27 must be denied.
28

1 **B. Application of the procedural bars is mandatory.**

2 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
3 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
4 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
5 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
6 is mandatory," noting:

7 Habeas corpus petitions that are filed many years after conviction are an
8 unreasonable burden on the criminal justice system. The necessity for a
9 workable system dictates that there must exist a time when a criminal
10 conviction is final.

11 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
12 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
13 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
14 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
15 apply the statutory procedural bars; the rules *must* be applied.

16 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
17 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of
18 the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
19 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
20 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The
21 procedural bars are so fundamental to the post-conviction process that they must be applied
22 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
23 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.
24 173, 180-81, 69 P.3d 676, 681-82 (2003).

25 **C. Only good cause and actual prejudice can overcome the procedural bars**

26 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
27 and proving specific facts that demonstrate good cause for his failure to present his claim in
28 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “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) (emphasis added).

“To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external impediment could be “that the factual or legal basis for a claim was not reasonably available to counsel, or that ‘some interference by officials’ made compliance impracticable.” Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

The Nevada Supreme Court has clarified that a defendant cannot attempt to manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel to forward a copy of the file to a petitioner have been found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

A petitioner raising good cause to excuse procedural bars must do so within a reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34

1 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
2 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
3 available to the petitioner during the statutory time period did not constitute good cause to
4 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
5 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
6 453 120 S. Ct. 1587, 1592 (2000).

7 Petitioner asserts no good cause to delay his filing of this Petition. When asked if he
8 were filing outside the procedural time frame, Petitioner said, “Yes. I had no knowledge that
9 I had a time limit to do any appeals.”¹ Petition at 6. He then asserts, “I didn’t know that I could
10 appeal the court’s decision. My counsel never informed me that I could appeal.” Petition at 4.

11 Counsel has no constitutional obligation to inform or consult with a defendant regarding
12 his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Toston
13 v. State, 127 Nev. 971, 267 P.3d 795 (2011). Rather, the duty arises “only when the defendant
14 inquires about the right to appeal or in circumstances where the defendant may benefit from
15 receiving advice about the right to a direct appeal, ‘such as the existence of a direct appeal
16 claim that has reasonable likelihood of success.’” Id. (quoting Thomas v. State, 115 Nev. 148,
17 150, 979 P.2d 222, 223 (1999)). When a defendant who pled guilty claims he was deprived of
18 the right to appeal, “the court must consider such factors as whether the defendant received
19 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
20 some or all appeal rights.” Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000).

21 Here, Petitioner expressly waived his appeal rights and his counsel was fully aware of
22 this waiver. GPA at 4-5, 7. He affirmed:

23 By entering my plea of guilty, I understand that I am waving and forever giving
24 up the following rights and privileges:

25 ...

26 The right to appeal the conviction with the assistance of an attorney either
27 appointed or retained, unless specifically reserved in writing and agreed upon as

28

¹ Petitioner appears to conflate direct appeals and habeas.

provided in NRS 174.035(3). I understand this means *I am unconditionally waiving my right to a direct appeal of this conviction*, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

GPA at 5 (emphasis added).

Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Petitioner shows no impediment external to the defense that excuses his sitting on his appellate rights for years.

D. Petitioner fails to meet his burden to overcome the procedural bars

To demonstrate prejudice to overcome the procedural bars, a defendant must show “not merely that the errors of [the proceeding] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

Petitioner’s claim that his attorney coerced him into pleading guilty was available during the statutory time period for the filing of a habeas petition, so it cannot constitute good cause for failing to file an appeal on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Petition is procedurally barred.

II. COUNSEL WAS NOT INEFFECTIVE UNDER STRICKLAND

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The United States Supreme Court has long recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,

1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

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

14 The court begins with the presumption of effectiveness and then must determine
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
16 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyme v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 The role of a court in considering allegations of ineffective assistance of counsel is “not
26 to pass upon the merits of the action not taken but to determine whether, under the particular
27 facts and circumstances of the case, trial counsel failed to render reasonably effective
28 assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does

1 not mean that the court should “second guess reasoned choices between trial tactics nor does
2 it mean that defense counsel, to protect himself against allegations of inadequacy, must make
3 every conceivable motion no matter how remote the possibilities are of success.” Id. To be
4 effective, the constitution “does not require that counsel do what is impossible or unethical. If
5 there is no bona fide defense to the charge, counsel cannot create one and may disserve the
6 interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648,
7 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

8 “There are countless ways to provide effective assistance in any given case. Even the
9 best criminal defense attorneys would not defend a particular client in the same way.”
10 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
11 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
13 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
14 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
15 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

16 Even if a defendant can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064-65, 2068).

23 Ineffective assistance of counsel does not exist where a defense attorney makes “a
24 reasoned plea recommendation which hindsight reveals to be unwise” or where an attorney
25 relies “on an ultimately unsuccessful defense tactic.” Larson v. State, 104 Nev. 691, 694, 766
26 P.2d 261, 263 (1988).

27 When a conviction is the result of a guilty plea, a defendant must show that there is a
28 “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and

1 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
2 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
3 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

4 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
5 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
6 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
7 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
8 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
9 that a defendant lacked standing to challenge the validity of a plea agreement because he had
10 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
11 468, 477, 958 P.2d 91, 96 (1998).

12 Further, the Nevada Supreme Court has explained:

13 [A] guilty plea represents a break in the chain of events which has
14 preceded it in the criminal process. When a criminal defendant has
15 solemnly admitted in open court that he is in fact guilty of the offense
16 with which he is charged, he may not thereafter raise independent
17 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

18 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
19 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)).

20 Indeed, entry of a guilty plea “waive[s] all constitutional claims based on events
21 occurring prior to the entry of the plea[], except those involving voluntariness of the plea[]
22 [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also, Kirksey, 112 Nev. at 999, 923 P.2d
23 at 1114 (“Where the defendant has pleaded guilty, the only claims that may be raised thereafter
24 are those involving the voluntariness of the plea itself and the effectiveness of counsel.”).

25 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
26 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
27 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered
28 into on the advice of counsel, and the burden is on a defendant to show that the plea was not

1 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
2 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107
3 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly
4 advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer
5 is the defendant's. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

6 **A. Coercion to accept plea bargain**

7 Petitioner alleges his attorney coerced him into pleading guilty. Petition at 8. It must be
8 noted that Petitioner *had* a trial. The State was ready to present its case, its witnesses were
9 under subpoena, and the jury had endured voir dire. Then, at the very precipice of trial,
10 Petitioner pled guilty. He had the option of facing trial on his original twelve felony charges
11 and chose *not* to proceed. He chose instead to plead guilty to three felonies, thereby reducing
12 his sentence exposure significantly. It is disingenuous for Petitioner to now lament the lack of
13 trial in his case, when all preparations for trial had already occurred.

14 At his trial before voir dire, while the prospective jurors were outside the room, the
15 State made an offer to Petitioner on the record. This offer called for a stipulated 20-50 year
16 sentence for the three felonies, as well as dismissal of the other five felonies and Case No.
17 C240973. Petitioner rejected this offer in open court. Petitioner's counsel pointed out to him
18 that he faced habitual criminal treatment, which carried a possible sentence of life without the
19 possibility of parole. After voir dire, Petitioner accepted the State's offer.

20 Petitioner's cases are to no avail. In the first, United States v. Sanchez, 2013 WL
21 8291618, (C.D. Cal. Nov. 7, 2013), Petitioner states the inmate was pressured to plead guilty
22 by his lawyer. Petition at 8. However, the court did *not* find the defense lawyer applied undue
23 pressure on the defendant to plead guilty and the court did not grant him relief. Id. "If the Court
24 credited this declaration, it would tend to show, at most, that Sanchez felt harried, anxious,
25 frightened, upset, and perceived that his lawyer was pressuring him too much to take the plea,
26 not that his lawyer acted incompetently in persistently urging Sanchez to do so." Id. at *7. The
27 defendant, like Petitioner here, benefited from a reduced sentence based on reduced charges.
28 "In light of this substantial sentence 'savings' which the plea achieved relative to potential

convictions at trial, and the colorable evidence against Sanchez, the Court cannot say it was irrational for counsel to recommend and Sanchez to take the plea.” Id. at *16.

The second cited case, Key v. United States, 2017 WL 6884120, (E.D. Tex. Nov. 20, 2017), is included as one showing promises made but not kept. Petition at 8. There, the defendant alleged his attorney failed to keep his promises, but the court found no merit to this claim. Id. “Movant has failed to meet his burden of proving that his guilty plea was based on an unkept promise, or that counsel provided ineffective assistance by failing to raise this issue.” Id. at *2.

The third case is included as an example of a “lawyer [who] advises the victim to take the plea deal.”² Petition at 8. Woodard v. Collins, 898 F.2d 1027 (5th Cir. 1990), explores an attorney’s failure to investigate before advising his client to plead guilty. The attorney investigated one crime but allowed his client to plead to another, so the court remanded the case. Id. “On remand, the district court must make findings to determine whether Woodard suffered prejudice.” Id. at 1029.

Petitioner’s final case is Eldridge v. Atkins, 665 F.2d 228, 236 (8th Cir. 1981). There, Eldridge’s attorney did not interview alibi witnesses or subpoena them for trial, and the court found this to be ineffective. Id. “Trial counsel did none of these things and petitioner was materially prejudiced by counsel's failure.” Id.

These cases are not directly relevant to Petitioner’s situation. The Sanchez defendant was not in fact pressured to plead guilty. The Key defendant failed to show he pled based on any unfulfilled promises. The Woodard attorney failed to investigate the evidence before advising his client to plead. The Eldridge attorney did not interview alibi witnesses before trial. Petitioner here fails to show he was pressured to plead guilty or that his plea was based on any unfulfilled promises. He does not show what a better investigation would have revealed or what any witnesses may have testified to if he went to trial.

² Petitioner may have intended to say the lawyer in the cited case advised the “defendant,” not the victim. There is no assertion here that an attorney advised any of the victims Petitioner held at gunpoint or shot.

1 Petitioner admits he turned down a more favorable deal from the State long before his
2 case proceeded to trial. Petition at 7. He then states that “[i]f I had it my way I would of kept
3 Amanda Gregory as my lawyer and went to trial or accepted the 8-20 year deal.” Petition at
4 7.5.³ Petitioner makes no showing that if he had turned down the State’s offer on the day of
5 trial, the State would have renewed the offer he had rejected before. By preparing its case for
6 trial, the State had the opportunity to evaluate the strength of its case and choose what, if any,
7 offer it was willing to make once the jury venire had gathered. Further, Attorney Gregory was
8 not an option, as she had recused herself due to a conflict of interest.

9 Petitioner claims he “would of never accepted the deal if Josh Tomsheck wouldn’t of
10 persuaded me and my family in to taking this deal.” Petition at 7-7.5. It is not ineffective for
11 an attorney to recommend a favorable plea deal, particularly when the State is ready to present
12 its case to the jury that day. Petitioner, rather than having succumbed to the wily persuasions
13 of his attorney, may have accepted the deal because pleading to three felonies is categorically
14 better than being found guilty of twelve felonies as a habitual offender.

15 **B. Failure to investigate**

16 A defendant who contends his attorney was ineffective because he did not adequately
17 investigate must show how a better investigation would have changed the outcome of trial.
18 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity
19 what the investigation would have revealed and how it would have altered the outcome of the
20 trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

21 “[D]efense counsel has a duty ‘to make reasonable investigations or to make a
22 reasonable decision that makes particular investigations unnecessary.’” State v. Love, 109 Nev.
23 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066).
24 A decision “not to investigate must be directly assessed for reasonableness in all the
25 circumstances, applying a heavy measure of deference to counsel’s judgment.” Id. Moreover,
26 “[a] decision not to call a witness will not generally constitute ineffective assistance of
27 counsel” Id. at 1145, 865 P.2d at 328.

28 ³ This page occurs between pages 7 and 8.

1 Moreover, a defendant is not entitled to a particular “relationship” with his attorney.
2 Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for
3 any specific amount of communication as long as counsel is reasonably effective in his
4 representation. Id.

5 Petitioner states his attorney “never hired an private investigator nor any expert
6 witnesses to help my defense.” Petition at 7. He does not, however, allege what circumstances
7 an investigator could have discovered that would have aided his defense, or what expert
8 witnesses could have contributed. See Love, 109 Nev. at 1138, 865 P.2d at 323. Since this case
9 did not go to trial, Petitioner’s claim that his attorney was not ready for trial is a bare and naked
10 allegation, suitable for summary dismissal under Hargrove, 100 Nev. at 502, 686 P.2d at 225;
11 NRS 34.735(6).

12 **C. Broken promises**

13 Next, Petitioner asserts his attorney made promises that were not adhered to. Petition
14 at 7. He does not name any promise made but broken. A party seeking review bears the
15 responsibility “to cogently argue, and present relevant authority” to support his assertions.
16 Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). The closest Petitioner comes to his
17 burden is to state his attorney claimed to have a good rapport with the judge and predicted that
18 his sentence would be less than 17-50 years. Petition at 7. A prediction is not a promise.

19 As proof this “promise” was broken, Petitioner says he was “maxxed out and none of
20 them promises ever benefited me.” Petition at 7. He was not, in fact, sentenced to the maximum
21 he could receive for the three Category “B” felonies he pled guilty to. Each had a potential
22 sentence of 1-20 years, and each could have run consecutively. NRS 193.130. Additionally,
23 the deadly weapons enhancement for two of his crimes entailed an additional 1-20 year penalty
24 each, consecutive to the underlying offense. NRS 193.165. Any of these could be consecutive
25 to the others, so that he faced a potential 100 years for these crimes. Petitioner only received
26 an aggregate sentence of 17-50 years, significantly better than he could have done, and better
27 than his plea deal contemplated.
28

1 Under the Strickland standard, Petitioner must show his attorney's representation fell
2 below an objective standard of reasonableness and that but for counsel's errors, there was a
3 reasonable probability that the results of the proceedings would have been different. Petitioner
4 has failed to meet this high burden.

5 Petitioner pled guilty because he was convinced doing so was in his best interests. He
6 may not now exhibit buyer's remorse after having received the benefit of his bargain. This
7 Petition is time-barred, with no good cause or prejudice shown to permit it to evade the
8 procedural bars.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
11 shall be, and it is, hereby denied.

12 Dated this 4th day of January, 2022

13 

14
15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

0EA 7B3 847F FC84
Bita Yeager
District Court Judge

17 BY /s/ John Afshar
18 JOHN AFSHAR
19 Deputy District Attorney
Nevada Bar #14408
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this ____ day of
3 January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 ERIN WARE, 1017483
5 N.N.C.C.
6 PO BOX 7000
CARSON CITY, NV 89701

7 BY /s/ *E. Del Padre*
8 E. DEL PADRE
9 Secretary for the District Attorney's Office
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ed/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Erin Ware, Plaintiff(s)

CASE NO: A-21-842235-W

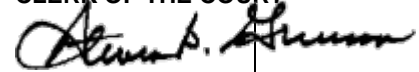
7 vs.

DEPT. NO. Department 21

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIN WARE,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-15-310099-1

Consolidated with C-16-311782-1

Dept No: XXI

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on January 4, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on January 6, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 6 day of January 2022, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Erin Ware # 1017483
P.O. Box 7000
Carson City, NV 89702

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIN DESHAUN WARE,
#2652033,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-842235-W

C-15-310099-1

DEPT NO: XXI

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: December 21, 2021

TIME OF HEARING: 1:30 PM

THIS CAUSE having come on for hearing before the Honorable BITA YEAGER, District Judge, on the 21st day of December, 2021, the Petitioner being not present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through WILLIAM J. MERBACK, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 16, 2015, Erin Deshaun Ware ("Petitioner") was charged via Information with Count One: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Category B Felony – NRS 205.060); Count Two: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Three: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Four: BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400.2); Count Five: BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); Count Six: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count Seven: ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); Count Eight: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Nine: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Ten: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); and Count Eleven: OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360).

This Information was amended on October 20, 2015, and again on October 27, 2015. On July 6, 2016, the Information was again amended, this time adding Count Twelve: SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2).

Petitioner's jury trial began February 7, 2018. After voir dire, he pled guilty to Count One: Attempt Murder with Use of a Deadly Weapon; Count Two: Robbery with Use of a Deadly Weapon; and Count Three: Solicitation to Commit Murder. The Guilty Plea Agreement ("GPA") described the deal as follows:

As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of corrections. As to the charge of Attempt Murder with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven (7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly

1 Weapon count. As to the charge of Solicitation to Commit Murder, the State
2 agrees to make no recommendation and agrees to run the sentence on that
3 count concurrently. Additionally, the State agrees to dismiss Case No.
C317264 after sentencing in this case.

4 GPA at 1-2. In Case No. C317264, Petitioner faced five counts, including robbery, battery,
5 and burglary.

6 Petitioner was sentenced on April 10, 2018. For Count One, he was sentenced to a
7 minimum of seventy-two (72) months to a maximum of one hundred eighty (180) months in
8 the Nevada Department of Corrections plus a consecutive term of twelve (12) to one hundred
9 twenty (120) months for the Use of a Deadly Weapon. For Count Two, he was sentenced to a
10 minimum of seventy-two (72) months to a maximum of one hundred eighty months (180) in
11 the Nevada Department of Corrections plus a consecutive term of forty-eight (48) to one
12 hundred twenty (120) months for the Use of a Deadly Weapon, to run consecutive to Count
13 One. For Count Three, he was sentenced to a minimum of forty-eight (48) months to a
14 maximum of one hundred eighty (180) months in the Nevada Department of Corrections, to
15 run concurrent with Counts One and Two. He received an aggregate total sentence of
16 seventeen (17) to fifty (50) years, with 971 days credit for time served.

17 The Judgment of Conviction was filed April 19, 2018. This Petition for Writ of Habeas
18 Corpus was filed October 6, 2021. The State filed its response on November 02, 2021.
19 Following a hearing on December 21, 2021, this Court finds and concludes as follows:

20 ANALYSIS

21 **I. THIS PETITION IS PROCEDURALLY-BARRED**

22 **A. The Petition is time-barred.**

23 The Petition is time-barred pursuant to NRS 34.726(1):

24 Unless there is good cause shown for delay, a petition that challenges the
25 validity of a judgment or sentence must be filed within 1 year of the entry
26 of the judgment of conviction or, if an appeal has been taken from the
27 judgment, within 1 year after the Supreme Court issues its remittitur. For
28 the purposes of this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 1 (a) That the delay is not the fault of the petitioner; and
2 (b) That dismissal of the petition as untimely will unduly prejudice
3 the petitioner.

4 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
5 meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the
6 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
7 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued.
8 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
11 petition filed two (2) days late despite evidence presented by the defendant that he purchased
12 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
13 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
14 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no
15 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
16 postal system. Id. at 595, 53 P.3d at 903.

17 This is not a case in which the Judgment of Conviction was not final. See, e.g., Johnson
18 v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant’s conviction was not
19 final until the district court entered a new Judgment of Conviction on counts the district court
20 had vacated; Whitehead v. State, 128 Nev. 259, 285 P.3d 1053 (2012) (holding that a judgment
21 of conviction imposing restitution in an unspecified amount is not final and therefore does not
22 trigger the one-year period for filing a habeas petition).

23 Here, Petitioner’s Judgment of Conviction was filed on April 19, 2018. He had until
24 April 19, 2019, to file a timely petition. Petitioner did not file this Petition until October 6,
25 2021, more than two years too late. Because Petitioner has not shown good cause and actual
26 prejudice to overcome the procedural bars under NRS 34.726(1), this Petition and Supplement
27 must be denied.
28

1 **B. Application of the procedural bars is mandatory.**

2 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
3 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
4 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
5 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
6 is mandatory," noting:

7 Habeas corpus petitions that are filed many years after conviction are an
8 unreasonable burden on the criminal justice system. The necessity for a
9 workable system dictates that there must exist a time when a criminal
10 conviction is final.

11 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
12 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
13 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
14 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
15 apply the statutory procedural bars; the rules *must* be applied.

16 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
17 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of
18 the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
19 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
20 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The
21 procedural bars are so fundamental to the post-conviction process that they must be applied
22 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
23 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.
24 173, 180-81, 69 P.3d 676, 681-82 (2003).

25 **C. Only good cause and actual prejudice can overcome the procedural bars**

26 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
27 and proving specific facts that demonstrate good cause for his failure to present his claim in
28 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “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) (emphasis added).

“To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external impediment could be “that the factual or legal basis for a claim was not reasonably available to counsel, or that ‘some interference by officials’ made compliance impracticable.” Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

The Nevada Supreme Court has clarified that a defendant cannot attempt to manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel to forward a copy of the file to a petitioner have been found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

A petitioner raising good cause to excuse procedural bars must do so within a reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34

1 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
2 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
3 available to the petitioner during the statutory time period did not constitute good cause to
4 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
5 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
6 453 120 S. Ct. 1587, 1592 (2000).

7 Petitioner asserts no good cause to delay his filing of this Petition. When asked if he
8 were filing outside the procedural time frame, Petitioner said, “Yes. I had no knowledge that
9 I had a time limit to do any appeals.”¹ Petition at 6. He then asserts, “I didn’t know that I could
10 appeal the court’s decision. My counsel never informed me that I could appeal.” Petition at 4.

11 Counsel has no constitutional obligation to inform or consult with a defendant regarding
12 his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Toston
13 v. State, 127 Nev. 971, 267 P.3d 795 (2011). Rather, the duty arises “only when the defendant
14 inquires about the right to appeal or in circumstances where the defendant may benefit from
15 receiving advice about the right to a direct appeal, ‘such as the existence of a direct appeal
16 claim that has reasonable likelihood of success.’” Id. (quoting Thomas v. State, 115 Nev. 148,
17 150, 979 P.2d 222, 223 (1999)). When a defendant who pled guilty claims he was deprived of
18 the right to appeal, “the court must consider such factors as whether the defendant received
19 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
20 some or all appeal rights.” Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000).

21 Here, Petitioner expressly waived his appeal rights and his counsel was fully aware of
22 this waiver. GPA at 4-5, 7. He affirmed:

23 By entering my plea of guilty, I understand that I am waving and forever giving
24 up the following rights and privileges:

25 ...

26 The right to appeal the conviction with the assistance of an attorney either
27 appointed or retained, unless specifically reserved in writing and agreed upon as

28 ¹ Petitioner appears to conflate direct appeals and habeas.

provided in NRS 174.035(3). I understand this means *I am unconditionally waiving my right to a direct appeal of this conviction*, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

GPA at 5 (emphasis added).

Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Petitioner shows no impediment external to the defense that excuses his sitting on his appellate rights for years.

D. Petitioner fails to meet his burden to overcome the procedural bars

To demonstrate prejudice to overcome the procedural bars, a defendant must show “not merely that the errors of [the proceeding] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

Petitioner’s claim that his attorney coerced him into pleading guilty was available during the statutory time period for the filing of a habeas petition, so it cannot constitute good cause for failing to file an appeal on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Petition is procedurally barred.

II. COUNSEL WAS NOT INEFFECTIVE UNDER STRICKLAND

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The United States Supreme Court has long recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,

1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

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

14 The court begins with the presumption of effectiveness and then must determine
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
16 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyme v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 The role of a court in considering allegations of ineffective assistance of counsel is “not
26 to pass upon the merits of the action not taken but to determine whether, under the particular
27 facts and circumstances of the case, trial counsel failed to render reasonably effective
28 assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does

1 not mean that the court should “second guess reasoned choices between trial tactics nor does
2 it mean that defense counsel, to protect himself against allegations of inadequacy, must make
3 every conceivable motion no matter how remote the possibilities are of success.” Id. To be
4 effective, the constitution “does not require that counsel do what is impossible or unethical. If
5 there is no bona fide defense to the charge, counsel cannot create one and may disserve the
6 interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648,
7 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

8 “There are countless ways to provide effective assistance in any given case. Even the
9 best criminal defense attorneys would not defend a particular client in the same way.”
10 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
11 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
13 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
14 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
15 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

16 Even if a defendant can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064-65, 2068).

23 Ineffective assistance of counsel does not exist where a defense attorney makes “a
24 reasoned plea recommendation which hindsight reveals to be unwise” or where an attorney
25 relies “on an ultimately unsuccessful defense tactic.” Larson v. State, 104 Nev. 691, 694, 766
26 P.2d 261, 263 (1988).

27 When a conviction is the result of a guilty plea, a defendant must show that there is a
28 “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and

1 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
2 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
3 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

4 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
5 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
6 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
7 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
8 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
9 that a defendant lacked standing to challenge the validity of a plea agreement because he had
10 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
11 468, 477, 958 P.2d 91, 96 (1998).

12 Further, the Nevada Supreme Court has explained:

13 [A] guilty plea represents a break in the chain of events which has
14 preceded it in the criminal process. When a criminal defendant has
15 solemnly admitted in open court that he is in fact guilty of the offense
16 with which he is charged, he may not thereafter raise independent
17 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

18 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
19 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)).

20 Indeed, entry of a guilty plea “waive[s] all constitutional claims based on events
21 occurring prior to the entry of the plea[], except those involving voluntariness of the plea[]
22 [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also, Kirksey, 112 Nev. at 999, 923 P.2d
23 at 1114 (“Where the defendant has pleaded guilty, the only claims that may be raised thereafter
24 are those involving the voluntariness of the plea itself and the effectiveness of counsel.”).

25 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
26 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
27 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered
28 into on the advice of counsel, and the burden is on a defendant to show that the plea was not

1 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
2 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107
3 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly
4 advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer
5 is the defendant's. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

6 **A. Coercion to accept plea bargain**

7 Petitioner alleges his attorney coerced him into pleading guilty. Petition at 8. It must be
8 noted that Petitioner *had* a trial. The State was ready to present its case, its witnesses were
9 under subpoena, and the jury had endured voir dire. Then, at the very precipice of trial,
10 Petitioner pled guilty. He had the option of facing trial on his original twelve felony charges
11 and chose *not* to proceed. He chose instead to plead guilty to three felonies, thereby reducing
12 his sentence exposure significantly. It is disingenuous for Petitioner to now lament the lack of
13 trial in his case, when all preparations for trial had already occurred.

14 At his trial before voir dire, while the prospective jurors were outside the room, the
15 State made an offer to Petitioner on the record. This offer called for a stipulated 20-50 year
16 sentence for the three felonies, as well as dismissal of the other five felonies and Case No.
17 C240973. Petitioner rejected this offer in open court. Petitioner's counsel pointed out to him
18 that he faced habitual criminal treatment, which carried a possible sentence of life without the
19 possibility of parole. After voir dire, Petitioner accepted the State's offer.

20 Petitioner's cases are to no avail. In the first, United States v. Sanchez, 2013 WL
21 8291618, (C.D. Cal. Nov. 7, 2013), Petitioner states the inmate was pressured to plead guilty
22 by his lawyer. Petition at 8. However, the court did *not* find the defense lawyer applied undue
23 pressure on the defendant to plead guilty and the court did not grant him relief. Id. "If the Court
24 credited this declaration, it would tend to show, at most, that Sanchez felt harried, anxious,
25 frightened, upset, and perceived that his lawyer was pressuring him too much to take the plea,
26 not that his lawyer acted incompetently in persistently urging Sanchez to do so." Id. at *7. The
27 defendant, like Petitioner here, benefited from a reduced sentence based on reduced charges.
28 "In light of this substantial sentence 'savings' which the plea achieved relative to potential

1 convictions at trial, and the colorable evidence against Sanchez, the Court cannot say it was
2 irrational for counsel to recommend and Sanchez to take the plea.” Id. at *16.

3 The second cited case, Key v. United States, 2017 WL 6884120, (E.D. Tex. Nov. 20,
4 2017), is included as one showing promises made but not kept. Petition at 8. There, the
5 defendant alleged his attorney failed to keep his promises, but the court found no merit to this
6 claim. Id. “Movant has failed to meet his burden of proving that his guilty plea was based on
7 an unkept promise, or that counsel provided ineffective assistance by failing to raise this
8 issue.” Id. at *2.

9 The third case is included as an example of a “lawyer [who] advises the victim to take
10 the plea deal.”² Petition at 8. Woodard v. Collins, 898 F.2d 1027 (5th Cir. 1990), explores an
11 attorney’s failure to investigate before advising his client to plead guilty. The attorney
12 investigated one crime but allowed his client to plead to another, so the court remanded the
13 case. Id. “On remand, the district court must make findings to determine whether Woodard
14 suffered prejudice.” Id. at 1029.

15 Petitioner’s final case is Eldridge v. Atkins, 665 F.2d 228, 236 (8th Cir. 1981). There,
16 Eldridge’s attorney did not interview alibi witnesses or subpoena them for trial, and the court
17 found this to be ineffective. Id. “Trial counsel did none of these things and petitioner was
18 materially prejudiced by counsel's failure.” Id.

19 These cases are not directly relevant to Petitioner’s situation. The Sanchez defendant
20 was not in fact pressured to plead guilty. The Key defendant failed to show he pled based on
21 any unfulfilled promises. The Woodard attorney failed to investigate the evidence before
22 advising his client to plead. The Eldridge attorney did not interview alibi witnesses before trial.
23 Petitioner here fails to show he was pressured to plead guilty or that his plea was based on any
24 unfulfilled promises. He does not show what a better investigation would have revealed or
25 what any witnesses may have testified to if he went to trial.

26
27
28 ² Petitioner may have intended to say the lawyer in the cited case advised the “defendant,” not the victim. There is no
assertion here that an attorney advised any of the victims Petitioner held at gunpoint or shot.

1 Petitioner admits he turned down a more favorable deal from the State long before his
2 case proceeded to trial. Petition at 7. He then states that “[i]f I had it my way I would of kept
3 Amanda Gregory as my lawyer and went to trial or accepted the 8-20 year deal.” Petition at
4 7.5.³ Petitioner makes no showing that if he had turned down the State’s offer on the day of
5 trial, the State would have renewed the offer he had rejected before. By preparing its case for
6 trial, the State had the opportunity to evaluate the strength of its case and choose what, if any,
7 offer it was willing to make once the jury venire had gathered. Further, Attorney Gregory was
8 not an option, as she had recused herself due to a conflict of interest.

9 Petitioner claims he “would of never accepted the deal if Josh Tomsheck wouldn’t of
10 persuaded me and my family in to taking this deal.” Petition at 7-7.5. It is not ineffective for
11 an attorney to recommend a favorable plea deal, particularly when the State is ready to present
12 its case to the jury that day. Petitioner, rather than having succumbed to the wily persuasions
13 of his attorney, may have accepted the deal because pleading to three felonies is categorically
14 better than being found guilty of twelve felonies as a habitual offender.

15 **B. Failure to investigate**

16 A defendant who contends his attorney was ineffective because he did not adequately
17 investigate must show how a better investigation would have changed the outcome of trial.
18 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity
19 what the investigation would have revealed and how it would have altered the outcome of the
20 trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

21 “[D]efense counsel has a duty ‘to make reasonable investigations or to make a
22 reasonable decision that makes particular investigations unnecessary.’” State v. Love, 109 Nev.
23 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066).
24 A decision “not to investigate must be directly assessed for reasonableness in all the
25 circumstances, applying a heavy measure of deference to counsel’s judgment.” Id. Moreover,
26 “[a] decision not to call a witness will not generally constitute ineffective assistance of
27 counsel” Id. at 1145, 865 P.2d at 328.

28 ³ This page occurs between pages 7 and 8.

1 Moreover, a defendant is not entitled to a particular “relationship” with his attorney.
2 Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for
3 any specific amount of communication as long as counsel is reasonably effective in his
4 representation. Id.

5 Petitioner states his attorney “never hired an private investigator nor any expert
6 witnesses to help my defense.” Petition at 7. He does not, however, allege what circumstances
7 an investigator could have discovered that would have aided his defense, or what expert
8 witnesses could have contributed. See Love, 109 Nev. at 1138, 865 P.2d at 323. Since this case
9 did not go to trial, Petitioner’s claim that his attorney was not ready for trial is a bare and naked
10 allegation, suitable for summary dismissal under Hargrove, 100 Nev. at 502, 686 P.2d at 225;
11 NRS 34.735(6).

12 **C. Broken promises**

13 Next, Petitioner asserts his attorney made promises that were not adhered to. Petition
14 at 7. He does not name any promise made but broken. A party seeking review bears the
15 responsibility “to cogently argue, and present relevant authority” to support his assertions.
16 Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). The closest Petitioner comes to his
17 burden is to state his attorney claimed to have a good rapport with the judge and predicted that
18 his sentence would be less than 17-50 years. Petition at 7. A prediction is not a promise.

19 As proof this “promise” was broken, Petitioner says he was “maxxed out and none of
20 them promises ever benefited me.” Petition at 7. He was not, in fact, sentenced to the maximum
21 he could receive for the three Category “B” felonies he pled guilty to. Each had a potential
22 sentence of 1-20 years, and each could have run consecutively. NRS 193.130. Additionally,
23 the deadly weapons enhancement for two of his crimes entailed an additional 1-20 year penalty
24 each, consecutive to the underlying offense. NRS 193.165. Any of these could be consecutive
25 to the others, so that he faced a potential 100 years for these crimes. Petitioner only received
26 an aggregate sentence of 17-50 years, significantly better than he could have done, and better
27 than his plea deal contemplated.
28

1 Under the Strickland standard, Petitioner must show his attorney's representation fell
2 below an objective standard of reasonableness and that but for counsel's errors, there was a
3 reasonable probability that the results of the proceedings would have been different. Petitioner
4 has failed to meet this high burden.

5 Petitioner pled guilty because he was convinced doing so was in his best interests. He
6 may not now exhibit buyer's remorse after having received the benefit of his bargain. This
7 Petition is time-barred, with no good cause or prejudice shown to permit it to evade the
8 procedural bars.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
11 shall be, and it is, hereby denied.

12 Dated this 4th day of January, 2022

13 

14
15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

0EA 7B3 847F FC84
Bita Yeager
District Court Judge

17 BY /s/ John Afshar
18 JOHN AFSHAR
19 Deputy District Attorney
Nevada Bar #14408
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this ____ day of
3 January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 ERIN WARE, 1017483
5 N.N.C.C.
6 PO BOX 7000
CARSON CITY, NV 89701

7 BY /s/ *E. Del Padre*
8 E. DEL PADRE
Secretary for the District Attorney's Office

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ed/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Erin Ware, Plaintiff(s)

CASE NO: A-21-842235-W

7 vs.

DEPT. NO. Department 21

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 19, 2015

C-15-310099-1 State of Nevada
 vs
 Erin Ware

October 19, 2015 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Laurent, Christopher J Attorney
 State of Nevada Plaintiff
 Waldo, Jennifer M. Attorney

JOURNAL ENTRIES

- Court noted the lack of appearance made by the defendant today. Attorney Waldo states the defendant was taken to the hospital today. Therefore, COURT ORDERED, matter CONTINUED as requested by defense. There was no opposition made by the state.

CUSTODY

10/27/15 10:00 A.M. ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 27, 2015

C-15-310099-1 State of Nevada
 vs
 Erin Ware

October 27, 2015 10:00 AM Arraignment Continued

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Gregory, Amanda S., ESQ Attorney
 State of Nevada Plaintiff
 Ware, Erin Deshaun Defendant
 Wiborg, Erika L. Attorney

JOURNAL ENTRIES

- DEFT. WARE ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. As the available trial dates within the 60-day limit will not allow his/her attorney adequate preparation time, Deft. WAIVED ELEVEN (11) DAYS to the next criminal trial stack. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

12/17/15 9:00 AM CALENDAR CALL (DEPT. 9)

1/04/16 10:30 AM JURY TRIAL (DEPT. 9)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 17, 2015

C-15-310099-1 State of Nevada
 vs
 Erin Ware

December 17, 2015 9:00 AM Calendar Call

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Mercer, Elizabeth A.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Waldo, Jennifer M.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Ms. Waldo advised she is not ready for trial and made an oral request to continue, noting the Defendant is willing to waive her speedy trial rights. Further, Ms. Waldo advised there is a lot of discovery, additional investigation must be done, and she will need to retain an expert. Upon Court's inquiry, Defendant WAIVED her speedy trial rights. State advised it was ready for trial and noted all forensic testing was done before the preliminary hearing. Further, State advised a detective file review has been completed and all discovery has been provided. State requested a quick trial setting and advised it is not opposed to the continuance. COURT ORDERED, oral request to continue GRANTED; trial date VACATED and RESET.

CUSTODY

03/17/16 9:00 AM CALENDAR CALL

03/28/16 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

February 25, 2016 9:00 AM All Pending Motions

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo
Skye Endresen

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Gregory, Amanda S., ESQ	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) ... STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

CONFERENCE AT THE BENCH. COURT advised that based on it's schedule it has not had enough time to review the motions and ORDERED, matter CONTINUED. Further, COURT noted Ms. Gregory advised at the bench she does not anticipate being ready for trial and at her request ORDERED, calendar call and trial date VACATED and matter SET for status check. Upon Court's inquiry, Defendant advised he understands. State objected to resetting the trial noting all discovery, including the DNA testing, has been provided and they are ready for trial. Ms. Gregory argued it takes time to review the DNA. COURT ORDERED, oral request to vacate the trial date GRANTED; matter SET for status check. COURT FURTHER ORDERED, motions CONTINUED.

CUSTODY (COC)

3/1/16 9:00 AM STATUS CHECK: RESET TRIAL DATE / STATE'S MOTION TO CONSOLIDATE,
OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO
NRS 48.045(2) / STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE
EVIDENCE AND EVIDENCE OF FLIGHT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 01, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

March 01, 2016

9:00 AM

All Pending Motions

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:

Gregory, Amanda S., ESQ
Rhoades, Kristina A.
State of Nevada
Ware, Erin Deshaun

Attorney
Attorney
Plaintiff
Defendant

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL DATE ... STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) ... STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2)

Argument in support of the motion by State, noting the evidence is cross admissible. Argument against the motion by Ms. Gregory, noting they are separate case and not relevant to identity or cross admissibility. COURT ORDERED, matter CONTINUED to the Court's chamber calendar for decision.

STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

Argument in support of their respective positions by counsel. COURT ORDERED, matter

CONTINUED to the Court's chamber calendar for decision.

STATUS CHECK: RESET TRIAL DATE

Colloquy regarding trial date. COURT ORDERED, matter SET for trial.

CUSTODY (COC)

3/9/16 (CHAMBERS) STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE,
MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) / STATE'S
MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE
OF FLIGHT

8/11/16 9:00 AM CALENDAR CALL

8/22/16 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 09, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

March 09, 2016

3:00 AM

Motion to Consolidate

HEARD BY: Togliatti, Jennifer

COURTROOM: No Location

COURT CLERK: Athena Trujillo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- See written decision filed 5/11/16.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 09, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

March 09, 2016 3:00 AM Motion

HEARD BY: Togliatti, Jennifer

COURTROOM: No Location

COURT CLERK: Athena Trujillo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- See written decision filed 5/11/16.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 30, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

June 30, 2016

9:00 AM

Motion to Reduce

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Mercer, Elizabeth A. Attorney
 State of Nevada Plaintiff
 Waldo, Jennifer M. Attorney
 Ware, Erin Deshaun Defendant

JOURNAL ENTRIES

- Upon Court's inquiry, counsel advised this case has already been consolidated. Ms. Waldo provided a letter from the Defendant to the Court. Argument in support of the motion by Ms. Waldo. Statement by Defendant. COURT ORDERED, motion DENIED.

CUSTODY (COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 11, 2016**

C-15-310099-1 State of Nevada
vs
Erin Ware

August 11, 2016**9:00 AM****All Pending Motions****HEARD BY:** Togliatti, Jennifer**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Jennifer Kimmel**RECORDER:** Yvette G. Sison**REPORTER:****PARTIES**

PRESENT:	Gregory, Amanda S.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Waldo, Jennifer M.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- CALENDAR CALL...DEFT'S MOTION TO CONTINUE TRIAL

COURT noted, the Deft. has a pending Motion to Continue Trial set for next week. COURT suggested it be addressed today. Ms. Gregory, Esq. advised there is new information just received that causes the Defense to need to do more investigation. Ms. Rhoades, Esq. advised the new cases have nothing to do with these charges and the State opposes a continuance. COURT FINDS, good cause shown on the consolidated case for additional discovery and because a part of this case is much older than the other part, and ORDERED, GRANTED the Deft's request to Continue over the State's opposition.

BENCH CONFERENCE. Pursuant to the conference at the bench, counsel were not sure about their respective trial schedules, therefore the COURT ORDERED, Calendar Call is CONTINUED and the Trial will be reset next date.

CUSTODY (COC)

CONTINUED TO: 8/16/16 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 16, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

August 16, 2016 9:00 AM Calendar Call

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Skye Endresen

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Mercer, Elizabeth A. Attorney
 State of Nevada Plaintiff
 Waldo, Jennifer M. Attorney
 Ware, Erin Deshaun Defendant

JOURNAL ENTRIES

- COURT STATED it already GRANTED the Defense Motion to Continue, however, continued the Calendar Call for resetting of the Trial. CONFERENCE AT BENCH. COURT ORDERED, Trial VACATED and RESET to the dates selected at the bench.

CUSTODY (COC)

11/8/16 9:00 AM STATUS CHECK: TRIAL READINESS

1/12/17 9:00 AM CALENDAR CALL

1/23/17 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 23, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

August 23, 2016 9:00 AM Motion for Discovery

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keri Cromer
 Olivia Black

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Mercer, Elizabeth A.	Attorney
	State of Nevada	Plaintiff
	Waldo, Jennifer M.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Arguments by counsel regarding the merits of the motion. COURT ORDERED, Motion GRANTED IN PART/DENIED IN PART as follows:

1. As to A through H, DENIED, with the exception of all case detective notes, expert notes, including fingerprint and DNA filed. DA to inquiry as to patrol officers and notes.
2. As to audio, State advised audio has been provided.
3. As to compensation beyond witness fees, Ms. Mercer advised she is not aware of any. In camera production for victim and witness assistance, GRANTED. As to criminal history of all state witnesses court directed State to run NCIC, Court noted it does not require police personal and advised State to provide at status check trial readiness.
4. RESOLVED.

5. Request for detective secret witness or otherwise, GRANTED.
6. As to Statements, GRANTED; State required to provide known inconsistent statements.
7. Updated witness contact information, GRANTED as required by statute.
8. Search warrant report, DENIED WITHOUT PREJUDICE.
9. GRANTED IN PART; Granted for in-camera review - GPA and discovery required in any case Defendant has/DENIED IN PART as to PSI.
10. Motion GRANTED.

Ms. Waldo to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 08, 2016

C-15-310099-1 State of Nevada
 vs
 Erin Ware

November 08, 2016 9:00 AM Status Check

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Mercer, Elizabeth A.	Attorney
	State of Nevada	Plaintiff
	Waldo, Jennifer M.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Ms. Waldo advised the State provided the detective's notes. State provided the Court with NCIC for review. Court noted Trudy Presutti has no discoverable convictions and Jaime Nourie, Rafeal Perez, and Ruth Garn have a date of birth and social security number and no other entry. Ms. Waldo advised there are additional motions to file but anticipates being ready for trial. State advised the police reports and underlying data for the fingerprint analysis have been requested. Further, State advised there are no victim payouts.

CUSTODY(COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 03, 2017

C-15-310099-1 State of Nevada
 vs
 Erin Ware

January 03, 2017 9:00 AM Motion to Dismiss

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:	Gregory, Amanda S.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Ms. Gregory argued in support of the motion. State argued against the motion. Further argument by Ms. Gregory. COURT FINDS that there was no bad faith or gross negligence and ORDERED, motion DENIED. State to prepare the order.

CUSTODY (COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 10, 2017**

C-15-310099-1 State of Nevada
vs
Erin Ware

January 10, 2017 9:00 AM All Pending Motions

HEARD BY: Togliatti, Jennifer**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Athena Trujillo**RECORDER:** Yvette G. Sison**REPORTER:****PARTIES**

PRESENT:	Gregory, Amanda S.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Waldo, Jennifer M.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS DUE TO CONTINUED STATE MISCONDUCT AND VIOLATIONS OF DEFENDANT'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS, OR IN THE ALTERNATIVE, MOTION TO SUPPRESS ... JENNIFER M. WALDO, ESQ. AND AMANDA S. GREGORY, ESQ.'S MOTION TO WITHDRAW DUE TO CONFLICT

COURT ORDERED, hearing conducted UNDER SEAL. COURT ORDERED, no CD s or transcripts are to be released without a Court s order. Ms. Gregory advised there are several potential conflicts. Further, Ms. Gregory advised that a detective spoke to the Defendant while he was at the hospital about her and that she filed a report with internal affairs. Ms. Gregory advised the Defendant is not a witness in the internal affairs investigation. State advised its understanding was that the conversation was personal in nature and not about the case. Ms. Gregory advised the Defendant was interviewed by internal affairs after the meeting in chambers and he advised the case was discussed. COURT ORDERED, Motion to Withdraw GRANTED, Motion to Dismiss OFF CALENDAR. Statement by Defendant. Matter TRAILED. Matter RECALLED. COURT advised it spoke to the

Office of Indigent Defense and ORDERED, matter SET for Status Check. COURT FURTHER ORDERED, calendar call VACATED and RESET. Court noted the trial date STANDS, however, it realizes the trial will not go forward. Ms. Gregory advised the Defendant gave his permission for her to speak to his new counsel. State advised Mr. Paulson of the Public Defender's office cannot accept the appointment due to conflict.

CUSTODY (COC)

1/17/17 9:00 AM CALENDAR CALL / STATUS CHECK: APPOINTMENT OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 17, 2017

C-15-310099-1 State of Nevada
 vs
 Erin Ware

January 17, 2017 9:00 AM All Pending Motions

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Natalie Ortega

RECORDER: Yvette G. Sison

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL

CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED.

MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting.

CUSTODY (COC)

2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING

- CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL

CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED.

MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he

would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting.

CUSTODY (COC)

2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 17, 2017

C-15-310099-1 State of Nevada
 vs
 Erin Ware

January 17, 2017 9:00 AM All Pending Motions

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Natalie Ortega

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL

CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED.

MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting.

CUSTODY (COC)

2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 07, 2017

C-15-310099-1 State of Nevada
 vs
 Erin Ware

February 07, 2017 9:00 AM Status Check

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck advised he met with the Defendant and requested a trial date be set. COURT ORDERED, matter SET for trial.

CUSTODY (COC)

8/17/17 9:00 AM CALENDAR CALL

8/28/17 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 01, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

August 01, 2017 9:00 AM Motion

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Also present: Martina Geinzer, Esq. on behalf of LVMPD.

Court noted the Office of Indigent Defense is normally responsible for approving these types of things. Court advised counsel to have Mr. Christensen approve it and to submit an order. Ms. Geinzer advised she will e-mail the order that must be used to counsel. Upon Court's inquiry, State advised it will be ready for trial. Mr. Tomsheck advised he will not be ready for trial and will file a motion.

CUSTODY (COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 17, 2017

C-15-310099-1 State of Nevada
 vs
 Erin Ware

August 17, 2017 9:00 AM Calendar Call

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Mercer, Elizabeth A. Attorney
 State of Nevada Plaintiff
 Tomsheck, Joshua L. Attorney
 Ware, Erin Deshaun Defendant

JOURNAL ENTRIES

- Colloquy regarding Motion to Continue. State advised it would have been prepared for trial.
COURT ORDERED, Motion to Continue GRANTED; trial date VACATED and RESET.

CUSTODY (COC)

11/14/17 9:00 AM STATUS CHECK: TRIAL READINESS

1/25/18 9:00 AM CALENDAR CALL

2/5/18 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 14, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

November 14, 2017 9:00 AM

**Status Check: Trial
Readiness**

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Tena Jolley

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Albritton, Alicia A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck stated that barring some unforeseen circumstance, he anticipates being ready for the current trial setting in February. Court stated if something comes up, counsel is to file a written motion, otherwise it will count on the case being a significant priority on the Stack. Accordingly, COURT ORDERED, Trial Date STANDS.

CUSTODY (COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 25, 2018

C-15-310099-1 State of Nevada
 vs
 Erin Ware

January 25, 2018 9:00 AM Calendar Call

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck announced ready for trial, however; Mr. Tomsheck advised the State extended an offer yesterday and indicated it would request the trial date stand with a status check next week on possible negotiations. COURT ORDERED, matter CONTINUED, noting it will make a record of the offer next week.

CUSTODY (COC)

CONTINUED TO: 1/30/18 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 30, 2018

C-15-310099-1 State of Nevada
vs
Erin Ware

January 30, 2018 9:00 AM Calendar Call

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Mercer, Elizabeth A.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- CONFERENCE AT THE BENCH. Court noted parties have advised there will be 15 - 20 witnesses and the Defense has reserved the right to call anyone on the State's witness list. Further, Court advised parties state trial will take 1 1/2 - 2 weeks. COURT ORDERED, matter SET for trial. Colloquy regarding schedule. Court noted a record of the offer will be made on the first day of trial.

CUSTODY (COC)

2/7/18 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 07, 2018

C-15-310099-1 State of Nevada
 vs
 Erin Ware

February 07, 2018 9:30 AM All Pending Motions

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Mercer, Elizabeth A.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- JURY TRIAL ... DEFENDANT'S MOTION TO DISMISS DUE TO CONTINUED STATE MISCONDUCT AND VIOLATIONS OF DEFENDANT'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS, OR IN THE ALTERNATIVE, MOTION TO SUPPRESS

Fourth Amended Information FILED IN OPEN COURT.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL.

Mr. Tomsheck advised he received approval from the Office of Indigent Defense for co - counsel. Further, Mr. Tomsheck advised Dan Hill will be co - counsel, but will not likely be here today. Court noted it will read an instruction. State made a record of the offer to the Defendant: plead to one count of attempt murder with use, robbery with use, and solicitation to commit murder with a stipulated 20 - 50 years and another case will be dismissed. Defendant canvassed as to offer and confirmed he rejected it. Mr. Tomsheck advised the State presented what it indicated would be their best and final offer. Additionally, Mr. Tomsheck advised the Defendant has a felony conviction in C240973 and if

convicted he would be a mandatory habitual criminal with a possible sentence of life without the possibility of parole. Mr. Tomsheck advised he did make a counter offer which the State has rejected. Colloquy regarding motion. Counsel submitted. COURT stated its findings and ORDERED, motion DENIED; State to prepare the order. Colloquy regarding schedule and jury selection.

PROSPECTIVE JURY PANEL PRESENT.
Voir dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL.
NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. WARE ARRAIGNED AND PLED GUILTY TO COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 3 - SOLICITATION TO COMMIT MURDER (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing.

PROSPECTIVE JURY PANEL PRESENT.
Defendant not present. Prospective jury panel thanked and excused.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL.
Colloquy regarding sentencing date. COURT ORDERED, sentencing date VACATED and RESET; Mr. Tomsheck to notify Defendant of the new sentencing date.

CUSTODY

4/10/18 9:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 10, 2018**

C-15-310099-1 State of Nevada
vs
Erin Ware

April 10, 2018**9:00 AM****Sentencing****HEARD BY:** Togliatti, Jennifer**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Athena Trujillo**RECORDER:** Yvette G. Sison**REPORTER:****PARTIES**

PRESENT:	Mercer, Elizabeth A.	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	Tomsheck, Joshua L.	Attorney
	Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck advised there are errors in the PSI and detailed the errors for the Court. Court noted the District Attorney has records with respect the juvenile entry. Matter TRAILED.

Matter RECALLED. COURT ORDERED, PSI AMENDED in the Judgment of Conviction (JOC) as follows: At page 6 under Institution / Supervision Adjustment, case C274352 is to be amended to reflect Attempt Burglary, not Attempt Robbery; at page 6 under Offense Synopsis redact "punched" and replace with "shot at least three times" not four times; and "fled with \$400.00" is to be redacted and replaced with "only fled the business with revolver". DEFT WARE ADJUDGED GUILTY of COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 3 - SOLICITATION TO COMMIT MURDER (F). Argument by State. Statement by Defendant. Argument by Mr. Tomsheck. Ruth Garn and Jamie Nourie sworn and testified. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, credit for time served for DNA test and DNA fee taken 5/10/08, and \$49,823.79 in RESTITUTION to Victim's of Crime, Defendant SENTENCED as to

COUNT 1 - to a MINIMUM of SEVENTY TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon;

COUNT 2 - to a MINIMUM of SEVENTY TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon, Count 2 to run CONSECUTIVE to Count 1;

COUNT 3 - to a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC), Count 3 to run CONCURRENT with Counts 1 and 2;

for a TOTAL AGGREGATE SENTENCE OF to a MINIMUM of SEVENTEEN (17) YEARS and a MAXIMUM of FIFTY (50) YEARS in the Nevada Department of Corrections (NDC) with NINE HUNDRED SEVENTY ONE (971) DAYS credit for time served. CASE CLOSED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 13, 2021

C-15-310099-1 State of Nevada
 vs
 Erin Ware

April 13, 2021 1:30 PM Motion to Modify Sentence

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Natalie Ortega

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Thomas, Morgan B.A. Attorney

JOURNAL ENTRIES

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDOC). Joshua L. Tomscheck, Esq. also not present.

Matter submitted by Ms. Thomas. COURT NOTED this matter may need to be continued for Mr. Tomscheck's presence so that he may withdraw in order for the Court to consider the motion. COURT ORDERED, matter CONTINUED. Ms. Thomas advised she would reach out to Mr. Tomscheck to file a motion to withdraw.

CUSTODY (COC)

CONTINUED TO: 04/20/21 3:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 20, 2021

C-15-310099-1 State of Nevada
 vs
 Erin Ware

April 20, 2021

3:00 PM

Motion to Modify Sentence

HEARD BY: Clark Newberry, Tara

COURTROOM: RJC Courtroom 16C

COURT CLERK: Natalie Ortega

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:

State of Nevada
Thomson, Megan
Tomsheck, Joshua L.

Plaintiff
Attorney
Attorney

JOURNAL ENTRIES

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDC).

Mr. Tomsheck advised Defendant filed a motion. Mr. Tomsheck made an oral motion to withdraw. No objection from Ms. Thomson. COURT NOTED as to the Motion to Modify Sentence, the Court adopted the reasons of the State on page five. As to the health issues the Court did not have the jurisdiction, it was not properly brought, and it may be a civil matter. Therefore, COURT ORDERED, Motion to Modify Sentence DENIED it was not an illegal sentence. State to prepare the Order. COURT ADDITIONALLY ORDERED, Joshua L. Tomsheck's oral Motion to Withdraw GRANTED.

CUSTODY (COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 13, 2021**

C-15-310099-1 State of Nevada
vs
Erin Ware

May 13, 2021**1:30 PM****Motion**

**Defendant's Motion
for
Mercy/Compassionate
Release**

HEARD BY: Clark Newberry, Tara**COURTROOM:** RJC Courtroom 16C**COURT CLERK:** Carina Bracamontez-Munguia**RECORDER:** Toshiana Pierson**REPORTER:****PARTIES**

PRESENT: Mercer, Elizabeth A. Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Deft. is already in custody and serving his sentence. Court stated Mr. Tomsheck was not present and had not withdrawn. Court FINDS Deft. is represented by counsel and did not serve motion on the Attorney General's office, therefore, ORDERED motion DENIED; Deft. may file for dismissal of counsel or counsel must withdraw. Court will prepare an order.

CUSTODY (COC)

CLERK'S NOTE: Subsequent to the May 13, 2021 Hearing, the Court having reviewed the April 20, 2021 minutes FINDS the Court had previously granted Mr. Tomsheck's Oral Motion to Withdraw as Counsel of Record for Defendant Erin Ware. COURT ORDERED the ruling as to Defendant's Motion for Mercy/Compassionate Release STANDS; State to prepare the Order. A copy of this minute order was distributed to all registered parties via Odyssey File and Serve and mailed to: Erin Ware, #1017483, Northern Nevada Correctional center, P.O. Box 7000, Carson City, Nevada 89702, 1721 E. Snyder Ave., Carson City, Nevada 89701. // cbm 06-28-2021

EXHIBIT(S) LIST

Case No.: C310099

Hearing / Trial Date: 4/10/18

Dept. No.: 9

Judge: Jennifer Togliatti

Court Clerk: Athena Trujillo

Plaintiff: State of Nevada

Recorder / Reporter: Yvette Sison

Counsel for Plaintiff: E. Mercer &

K. Rhoades

Defendant: Erin Ware

Counsel for Defendant: J. Tomsheck

VS.

HEARING / TRIAL BEFORE THE COURT

State's EXHIBITS

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

MOTION FOR APPEAL OF FINDINGS AND FACTS, CONCLUSIONS OF LAW AND ORDER (HABEUS CORPUS); CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

ERIN DESHAUN WARE,

Defendant(s).

Case No: C-15-310099-1

Consolidated with C-16-311782-1

Dept No: XXI

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 18 day of February 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk