

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 17 2022 02:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DEMARENE COLEMAN,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: 05C215295-1

Docket No: 84292

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
DEMARENE COLEMAN # 1007335,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

INDEX

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 242
2	243 - 484
3	485 - 525

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	12/29/2005	Amended Affidavit of Carmine J. Colucci in Support of Petition for Writ of Habeas Corpus	145 - 146
1	5/25/2007	Amended Information	191 - 192
1	5/30/2007	Amended Information	203 - 204
2	2/24/2022	Case Appeal Statement	478 - 479
1	12/23/2005	Certificate of Mailing	144 - 144
1	12/20/2005	Certificate of Service	133 - 134
1	12/21/2005	Certificate of Service	137 - 138
1	12/29/2005	Certificate of Service	147 - 148
3	3/17/2022	Certification of Copy and Transmittal of Record	
1	9/20/2005	Criminal Bindover (Confidential)	4 - 57
2	2/23/2022	Designation of Record on Appeal	477 - 477
2	3/17/2022	District Court Minutes (Continued)	483 - 484
3	3/17/2022	District Court Minutes (Continuation)	485 - 525
1	10/7/2005	Ex Parte Motion for Appointment of Investigator	58 - 61
1	12/7/2005	Ex Parte Motion for Appointment of Investigator	121 - 123
1	11/8/2005	Ex Parte Motion for Release of Medical Records	91 - 92
1	11/8/2005	Ex Parte Motion for Release of Medical Records	93 - 94
2	6/14/2021	Financial Certificate (On Motion for Leave to Proceed in Forma Pauperis) (Confidential)	346 - 346
1	12/29/2006	Findings of Competency	181 - 182

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	2/26/2009	Findings of Fact, Conclusions of Law and Order	308 - 314
2	2/19/2020	First Amendment to Petition for Writ of Mandamus Pursuant to NRS 34.185	330 - 345
1	6/7/2007	Guilty Plea Agreement	205 - 212
1	5/29/2007	Guilty Plea Agreement Amended by Interlineation	195 - 202
1	9/20/2005	Information	1 - 3
2	8/22/2007	Judgment of Conviction (Plea of Guilty)	246 - 247
2	9/6/2007	Judgment of Conviction (Plea of Guilty)	248 - 249
1	10/13/2006	Media Request and Order for Camera Access to Court Proceedings	177 - 178
2	8/19/2008	Memorandum in Support of Petition for Writ of Habeas Corpus (Post Conviction)	274 - 290
2	8/19/2008	Motion for Appointment of Counsel; Request for Evidentiary Hearing	270 - 273
2	8/19/2008	Motion for Leave to Proceed in Forma Pauperis (Confidential)	264 - 269
1	2/27/2006	Motion in Limine	165 - 172
2	6/14/2021	Motion to Appoint Counsel	347 - 404
2	7/1/2019	Motion to Obtain a Copy of a Sealed Record (Presentence Investigation Report - NRS 176.156) On an Order Shortening Time; Notice of Motion and Motion	324 - 329
1	10/25/2005	Motion to Withdraw As Counsel	85 - 89
1	8/7/2007	Motion to Withdraw Guilty Plea	228 - 232
2	2/23/2022	Notice of Appeal	471 - 476
2	2/27/2009	Notice of Entry of Decision and Order	315 - 322

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	10/24/2005	Notice of Expert Witnesses [NRS 174.234(2)]	64 - 80
2	12/2/2008	Notice of Hearing	304 - 305
2	1/7/2022	Notice of Motion	465 - 465
2	1/7/2022	Notice of Motion; Motion for Modification of Sentence	408 - 464
1	10/24/2005	Notice of Witnesses [NRS 174.234(1)(a)]	81 - 84
1	5/25/2007	Notice of Witnesses Pursuant to NRS 174.234	183 - 190
1	10/13/2005	Order	62 - 63
1	11/30/2005	Order	120 - 120
1	12/13/2005	Order	124 - 125
1	12/23/2005	Order	139 - 140
2	8/6/2021	Order Denying Defendant's Motion for Appointment of Attorney	405 - 407
2	3/8/2022	Order Denying Defendant's Motion for Modification of Sentence	480 - 482
1	2/2/2006	Order Denying Defendant's Writ of Habeas Corpus	163 - 164
2	8/27/2008	Order for Petition for Writ of Habeas Corpus	291 - 291
2	12/10/2008	Order for Production of Inmate Demarene Coleman, BAC 31007335	306 - 307
1	8/28/2006	Order of Commitment	174 - 176
1	11/15/2005	Order Releasing Medical Records	116 - 117
1	11/18/2005	Order Releasing Medical Records	118 - 119
1	12/11/2006	Order to Transport Defendant from Lake's Crossing	179 - 180
1	12/20/2005	Petition for Writ of Habeas Corpus	126 - 132

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	8/19/2008	Petition for Writ of Habeas Corpus (Postconviction)	253 - 263
2	7/29/2009	Petition; Order Honorably Discharging Probationer	323 - 323
1	7/16/2007	Presentence Investigation Report (Unfiled) Confidential	213 - 219
2	10/4/2007	Probation Agreement and Rules; Order Admitting Defendant to Probation and Fixing the Terms Thereof	250 - 251
1	11/1/2005	Receipt of Copy	90 - 90
1	12/23/2005	Receipt of Copy	143 - 143
1	2/27/2006	Receipt of Copy	173 - 173
1	8/7/2007	Receipt of Copy	233 - 233
1	1/23/2006	Reply to State's Return to Defendant's Writ of Habeas Corpus	159 - 162
1	1/20/2006	Return to Writ of Habeas Corpus	149 - 158
1	5/29/2007	Second Amended Information	193 - 194
2	1/25/2022	State's Opposition to Defendant's Motion for Modification of Sentence	466 - 470
1	8/13/2007	State's Opposition to Defendant's Motion to Withdraw Guilty Plea (Continued)	234 - 242
2	8/13/2007	State's Opposition to Defendant's Motion to Withdraw Guilty Plea (Continuation)	243 - 245
2	10/28/2008	State's Response to Defendant's Petition for Writ of Habeas Corpus	292 - 303
1	12/21/2005	Stipulation and Order for Extension of Time to File Petition for Writ of Habeas Corpus	135 - 136
1	7/24/2007	Transcript of Hearing Held on May 29, 2007	220 - 227

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	11/10/2005	Transcript of Hearing Held on September 16, 2005	95 - 115
2	8/10/2008	Unsigned Document(s) - Order Appointing Counsel	252 - 252
1	12/23/2005	Writ of Habeas Corpus	141 - 142

1 weapon you face a minimum term of two years, not less than two years, and a
2 maximum term of not more than 10 years in the Nevada Department of
3 Corrections, and a possible fine of up to \$10,000; do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that sentencing is completely up to
6 the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay, so even if though they're recommending something
9 to me, sentencing is always completely up to the Court; do you understand
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. All right, before you signed this document, Mr.
13 Coleman, did you talk about your case with your attorney --

14 THE DEFENDANT: Yes.

15 THE COURT: -- Mr. Colucci?

16 THE DEFENDANT: Yes.

17 THE COURT: Did he answer all your questions?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, are you pleading guilty because on or about July
20 10th, 2005, in Clark County, state of Nevada, you did willfully, feloniously
21 without authority of law, and with premeditation and deliberation with malice
22 aforethought kill Tanzie Austin, a human being, by you shooting at or into the
23 body of Tanzie Austin; is that what you did?

24 THE DEFENDANT: Yes.

25 THE COURT: And in Count 2, also on that date in Clark County, state

1 of Nevada, did you also willfully, unlawfully, and feloniously use force or
2 violence upon the person of another, Monica Ramsey and/or Andrea Cooper,
3 with use of a deadly weapon, you shooting at or into the body of Monica
4 Ramsey and/or Andrea Cooper?

5 THE DEFENDANT: Yes.

6 THE COURT: The Court finds Defendant's pleas are freely and
7 voluntarily given. He understands the nature and consequence of his pleas and
8 therefore accepts his plea. We'll set this over for sentencing on --

9 THE CLERK: It'll be July 24th at 8:30.

10 THE COURT: Thank you very much, Mr. Coleman and Mr. Colucci, and

11 --

12 MR. COLUCCI: Your Honor, before we adjourn may I approach with the
13 State?

14 THE COURT: Yes.

15 MR. COLUCCI: Thank you.

16 THE COURT: Do you need Mister -- have a seat Mr. Coleman.

17 [Bench conference]

18 THE COURT: All right, and then so -- did we get a sentencing date?

19 THE CLERK: Yeah, July 24th.

20 THE COURT: All right.

21 THE COURT: And thank you all very much for your work.

22 MR. COLUCCI: Judge, just for the record, in talking to Mr. Coleman
23 because he's now not understanding the possibilities here, I just wanted to put
24 on the record, if that's okay with the Court, that generally the Court will follow
25 the recommendation of the State and the defense unless there is some --

1 something drastic --

2 THE COURT: Extraordinary reason, but I mean this is something that
3 the two of you have agreed to. I will ordinarily follow what you've agreed to. I
4 understand that this is what made this negotiation go forward. I can't say
5 100%, but in all likelihood it's what I'm going to do. So I just need you to
6 initial that so that you understand what all of the possible punishments are.
7 That doesn't mean I'm going to do it, it just means that I need for you to
8 understand it's possible.

9 All right, so let's file that and let's make sure that gets filed with
10 Sandra, and thank you all very much. Thank you Mr. Colucci.

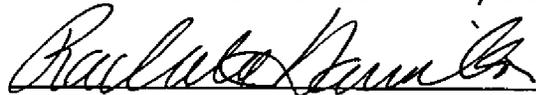
11 MR. COLUCCI: Thank you, Your Honor, for your patience.

12 THE COURT: No problem; and there you go Sandra, and we're all set.

13 Thank you, we'll see you at sentencing.
14
15
16

[Proceeding concluded]
17
18
19

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

21 

22 RACHELLE HAMILTON
23 Recorder/Transcriber
24
25

9

JOCP

ORIGINAL

FILED
AUG 22 8 01 AM '07

[Signature]
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEMARENE COLEMAN
#1963947

Defendant.

CASE NO. C215295

DEPT. NO. V

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – FIRST DEGREE MURDER

(Category A Felony) in violation of NRS 200.010, 200.030, and COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.481;

thereafter, on the 14TH day of August, 2007, the Defendant was present in court for sentencing with his counsel CARMINE COLUCCI, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced to

the Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a

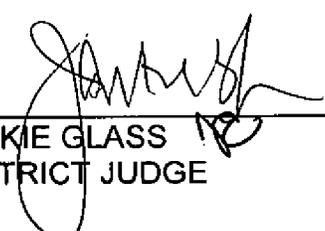
RECEIVED

AUG 22 2007

CLERK OF THE COURT

1 MAXIMUM of FIFTY (50) YEARS with a MINIMUM parole eligibility of TWENTY (20)
2 YEARS; as to COUNT 2 - to a MAXIMUM of ONE HUNDRED TWENTY (120)
3 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, to run
4 CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE (755) DAYS credit
5 for time served.
6

7
8 DATED this 20 day of August, 2007.
9

10
11 
12 JACKIE GLASS
13 DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL

FILED

SEP 6 1 08 PM '07

Chaf Shaw
CLERK OF THE COURT

1 **JOCP**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 MONTELLE RENNE MOTLEY, aka
12 Montelle Renee Motley, #1581681
13 Defendant.

Case No: C215295

Dept No: V

14 JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of CONSPIRACY TO COMMIT BATTERY WITH USE OF A
18 DEADLY WEAPON (Gross Misdemeanor), in violation of NRS 199.480, 200.481;
19 thereafter, on the 21st day of August, 2007, the Defendant was present in court for
20 sentencing with his counsel, BRIAN BLOOMFIELD, ESQ., and good cause appearing,

21 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
22 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis fee
23 including submission to testing to determine genetic markers and/or secretor status, the
24 Defendant is sentenced as follows: to TWELVE (12) MONTHS in the CLARK COUNTY
25 DETENTION CENTER; sentence SUSPENDED, PROBATION for an indeterminate period
26 not to exceed TWO (2) YEARS. CONDITIONS:

27 1. Deft. shall submit his/her person, property, place of residence, vehicle or areas under
28 his/her control to search at any time, with or without a search warrant or warrant of arrest,

RECEIVED

SEP 06 2007

CLERK OF THE COURT

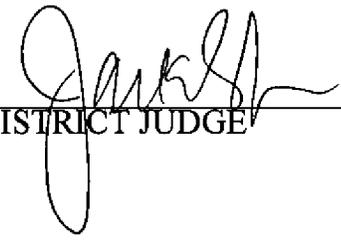
CLERK OF THE COURT

AUG 30 2007

RECEIVED

- 1 for evidence of a crime or violation of probation by the Division of Parole and Probation or
2 its agent.
- 3 2. Comply with any curfew imposed by P&P.
 - 4 3. Obtain and maintain full-time employment.
 - 5 4. Have no contact whatsoever with the two other victims.
 - 6 5. Complete a substance abuse counseling program.
 - 7 6. Submit to random U/A's.

8 DATED this 4 day of Sept ~~August~~, 2007.


DISTRICT JUDGE



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

sam

168

FILED
Required to pay \$25 Administrative Assessment fee, submit to DNA testing and pay the \$150.00 Analysis Fee to the County Clerk's Office, 200 Lewis Avenue, Las Vegas, Nevada, 89155.

OCT 4 5 23 PM '07
CLERK OF THE COURT

PROBATION AGREEMENT AND RULES

Criminal Case No. C215295

THE STATE OF NEVADA, Plaintiff
vs.
MOTLEY, Montelle Renne
aka Montelle Renee Motley, Defendant

**ORDER ADMITTING DEFENDANT TO PROBATION
AND FIXING THE TERMS THEREOF**

DEFENDANT is guilty of the Crime of **Conspiracy to Commit Battery With Use of a Deadly Weapon**, a **Gross Misdemeanor**.
DEFENDANT is sentenced to a term of imprisonment in the **Clark County Detention Center** for **12 months**. Execution of that sentence is suspended and the DEFENDANT is hereby admitted to probation for indeterminate period not to exceed **2 years** under the following conditions:

- Reporting:** You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
- Residence:** You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
- Intoxicants:** You shall not consume any alcoholic beverages to excess. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
- Controlled Substances:** You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
- Weapons:** You shall not possess, have access to, or have under your control, any type of weapon.
- Search:** You shall submit your person, place of residence, vehicle or areas under your control to search at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
- Associates:** You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
- Directives and Conduct:** You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
- Laws:** You shall comply with all municipal, county, state, and federal laws and ordinances.
- Out-of-State Travel:** You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
- Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
- Financial Obligations:** You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation.
- Special Conditions ordered by the Court as set forth in the attached Judgement of Conviction and incorporated herein by reference.**

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this 2nd day of Oct 07, in the 88 Judicial District Court of the State of Nevada, in and for the County of Clark.

Jackie Glass
District Judge Jackie Glass/Date

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

Montelle R. Motley 9.26.07
Probationer Montelle Renee Motley/Date

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.
APPROVED: *S. M. French*
Probation Officer S. M. French/Date

CLERK OF THE COURT
OCT 19 2007
9/19/07/kmdj

PROBATION AGREEMENT SPECIAL CONDITIONS ADDENDUM

File # V08-0883

Criminal Case No. C215295

MOTLEY, Montelle Renne
aka Montelle Renee Motley

Defendant

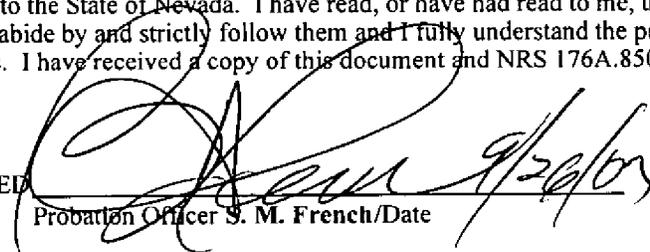
Special Conditions of your probation:

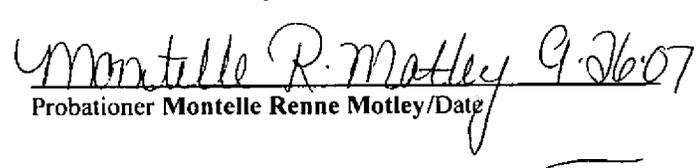
1. Search;
2. Comply with any curfew imposed;
3. Obtain/maintain full-time employment;
4. Have no contact whatsoever with the two other victims;
5. Complete a Substance Abuse Counseling program;
6. Submit to random UA's.

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

APPROVED


Probation Officer S. M. French/Date


Probationer Montelle Renne Motley/Date

9/19/07/kmd

Case No. C215295

Dept. No. V

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR
THE COUNTY OF Clark

Demarene Coleman
Petitioner,

-vs-

R.B. McDaniel "Warden"
Respondents.

ORDER APPOINTING COUNSEL

Petitioner, Demarene Coleman, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that Demarene Coleman, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this 10 day of August, 2008.

Submitted by:

DISTRICT COURT JUDGE

Demarene Coleman
Petitioner, In Proper Person

24

Case No. C215295

FILED

Dept. No. V

2008 AUG 19 A 9:09

IN THE 8th JUDICIAL DISTRICT COURT OF THE CLARK COUNTY OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

Demarene Coleman
Petitioner,

v.

E. K. McDaniel
Respondent.

**PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)**

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Ely State Prison, White Pine County

2. Name and location of court which entered the judgment of conviction under attack: 8th Judicial District Court, Las Vegas, Nevada, Clark County

3. Date of judgment of conviction: Aug 20, 2007

4. Case number: C 215295

5. (a) Length of sentence: Fifty (50) years, Parole eligibility after twenty (20) years; Count 2 Minimum term of not less than (2) years and a maximum term of not more than Ten (10) years. The minimum term of imprisonment

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No

If "yes", list crime, case number and sentence being served at this time: ~~_____~~

7. Nature of offense involved in conviction being challenged: First Degree Murder & Battery w/ Deadly Weapon

8. What was your plea? (check one):

(a) Not guilty _____ (b) Guilty (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

Plea Negotiation - Motion to withdraw guilty plea denied on August 20, 2007. See Attached motion to withdraw plea & Affidavit of Mr. Coleman

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one) N/A

(a) Jury _____ (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No N/A

12. Did you appeal from the judgment of conviction? Yes _____ No N/A

13. If you did appeal, answer the following:

(a) Name of Court: N/A

(b) Case number or citation: N/A

(c) Result: N/A

(d) Date of result: August 20, 2007 - Attach Copy
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: Motion to Withdraw guilty plea was not - Appealed - cause defence Counsel drop the Case

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes No

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: 8th Judicial District Court

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: 8th Judicial District Court

(2) Nature of proceeding: Motion to Withdraw guilty plea

(3) Grounds raised: Petitioner did not freely, voluntarily and knowingly accept Guilty plea

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result: Motion Denied

(6) Date of result: August 20, 2007

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes No

Citation or date of decision: _____

(2) Second petition, application or motion? Yes No

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Petitioner suffered from influence of Medication, coupled with years of substance abuse and do not understand legal alternatives.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify: None

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

All the grounds listed are appropriately suitable to be raised and or presented in first petition for Post Conviction Relief

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) No delay, petition is on time

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No

If yes, state what court and case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Mr. Carmine J. Polucci, Esq

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No

If yes, specify where and when it is to be served, if you know: _____

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) **Ground One:** Petitioner's Plea Was Involuntary Due To In-effective Assistance of Counsel. In violation of Petitioner's 6th & 14th Amendment Right

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

Supporting Facts continues on Page 5B Herein

(b) **Ground Two:** Ineffective Assistance of Counsel When Counsel Failed to move to withdraw Guilty Plea before It was Accepted By District Court

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

Supporting Facts continues on Page 5C Herein

(c) **Ground Three:** whether Reversible Error When State Court Fail to Ask or Acknowledge prior to plea whether petitioner had taken His Medication

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

Supporting Facts continues on Page 5D Herein

(d) **Ground Four:**

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 10 day of the month of August of the year 2008.

Demarene Coleman
Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Demarene Coleman
Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Demarene Coleman, hereby certify pursuant to N.R.C.P. 5(b), that on this 10 day of the month of August, of the year 2008, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

Respondent prison or jail official

Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

District Attorney of County of Conviction

Address

Demarene Coleman
Signature of Petitioner

50.

Continuation of Supporting Facts To Ground 1

Here petitioner's defense Counsel's observations that petitioner suffered from years of substance abuse, and educational deficiencies, coupled with the fact his client was under the influence of antidepressant medication administered by the jail during the Voir Dire proceedings, "Counsel interveined the court during the jury selection process to plea bargain its case because petitioner was incompetent to stand trial" This was a manifest injustice, justifying withdrawal of guilty plea, because if petitioner was incompetent to stand trial, then by definition he was incompetent to plead guilty. Although, petitioner entered a guilty plea when he answered series of questions regarding his guilt, he did not fully believe to be pleading guilty. Responses "yes" "yes" "yes" was coercion by counsel and should not be taken to hear that petitioner intended to plea guilty or affirmatively admitted guilt. There's reasonable probability that counsel's unprofessional error in grossly allowing petitioner to plea while intoxicated undoubtedly impacted petitioner's ~~and~~ abilities to rationally form decisions himself, such as agreeing to plead guilty on negotiations. "with the advice of competent counsel, petitioner would never have accepted negotiations or plead."

Continuation of Supporting To Ground (2)

Petitioner was denied to move to withdraw guilty plea before it was accepted by district court, because a motion for competency hearing was likely to succeed and would have required adequate evaluation to determine petitioner's competency to plead while intoxicated under the influence of drug medication administered by the jail, during time of plea hearing. "Petitioner's lack of comprehension to understand the stipulations as the functional equivalent of the guilty plea and failure to understand of the consequences of his pleading guilty are based on his long history of substance abuse, minimum education and medicated state at the time of plea precluded petitioner having entered a intelligently, knowingly and voluntarily plea of guilty

Continuation of Supporting Facts To Ground 3

Here, the state court did not do an adequate job ensuring voluntariness, despite addressing petitioner in open court on elements of charges, plea invalid where only response elicited from petitioner was "yes" "yes" "yes". On several occasions during the on-record voluntariness inquiry the judge had to ask petitioner to "repeat his response". The court had reasonable cause to doubt competency to plead guilty when petitioner spoked spurry and was unable to stand for long period of time. Petitioner's competence depended on medication administered by the jail. Jail records indicate the medications - which clouded petitioner decision-making throughout the state proceedings. The court was very much aware of both the complexity of the charges and the sophistication of petitioner spurry speech and ability to stand only for a short period. Should've been a eye-opening sign that petitioner was incompetent to make a valid guilty plea, and should be grounds for setting aside guilty plea. An evidentiary hearing is necessary ~~to determine whether plea was made knowingly, intelligently and voluntarily or due process violated before plea entered~~ to determine whether plea was made knowingly, intelligently and voluntarily or due process violated before plea entered.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Petition For Writ Of Habeas Corpus (Post Conviction)
(Title of Document)

filed in District Court Case No. C 215295

Does not contain the social security number of any person.

-OR-

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

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

Pursuant to NRS's
(State specific law)

-OR-

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

Demawene Coleman
(Signature)

8/10/08
(Date)

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
264 - 269
WILL FOLLOW VIA
U.S. MAIL**

2

FILED

Case No. C215295

Dept. No. V

2008 AUG 19 A 9 09

[Signature]
CLERK OF THE COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

Demarene Coleman
Petitioner,

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-vs-

E.B. McDaniel - "Warden"
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, Demarene Coleman, proceeding pro se, within the above entitled cause of action and respectfully requests this Court to consider the appointment of counsel for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner Demarene Coleman, in state custody, pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the following:

1. The merits of claims for relief in this action are of Constitutional dimension, and Petitioner is likely to succeed in this case.

CLERK OF THE COURT

AUG 18 2008

RECEIVED

2. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 10 day of August, 2008.

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Demarene Coleman
Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 10 day of August, 2008.

Demarene Coleman
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, Demarene Coleman, hereby certify pursuant to N.R.C.P.
5(b), that on this 10 day of August, of the year 2008, I mailed a true and
correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of
Motion for Leave to Proceed in Forma Pauperis; Motion fore the Appointment of Counsel; and Request for
Evidentiary Hearing, addressed to:

_____	_____	_____
Name	Name	Name
_____	_____	_____
_____	_____	_____
Address	Address	Address

Petitioner

FILED

DEMARENE COLEMAN
 E.S. #
 POST OFFICE BOX-1989
 ELY, NEVADA - 89301
 PETITIONER IN PRO SE

AUG. 19 A 9:09
 CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

DEMARENE COLEMAN
PETITIONER,

VS.

CASE NO.
C-215295

E. K. McDaniel et al.
RESPONDENT

MEMORANDUM IN SUPPORT
OF PETITION FOR WRIT OF
HABEAS CORPUS (POST CON-
VICTION)

COMES NOW, DEMARENE
 COLEMAN, BY AND THROUGH
 HIS PROPER PERSON AND
 RESPECTFULLY MOVES THIS
 COURT PURSUANT TO RULE 12
 OF THE DISTRICT COURT RULES
 OF PRACTICE AND NRS 34.300
 TO FILE THE ABOVE AND FORE-
 GOING MEMORANDUM.

COLEMAN, IN THIS MEMO-
RANDUM IN SUPPORT OF

PETITION FOR WRIT OF HABEAS-CORPUS, RAISES GROUNDS THAT HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL, AS ARTICULATED IN THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND COLEMAN'S RIGHT TO EQUAL PROTECTION AND DUE PROCESS HAVE BEEN VIOLATED.

FURTHER, THIS MEMORANDUM IS MADE AND BASED UPON ALL DOCUMENTS, PAPERS, AND PLEADINGS ON FILE HEREIN, THE ATTACHED EXHIBITS AND ANY ARGUMENTS PRESENTED IN THE DISTRICT COURT AT AN EVIDENTIARY HEARING ON COLEMAN'S PETITION FOR WRIT OF HABEAS CORPUS.

BY Demarene Coleman 1007335
DEMARENE COLEMAN
PETITIONER IN-PRO SE

APPLICABLE LAW STANDARD FOR THE EFFECTIVE ASSISTANCE OF COUNSEL

PETITIONER, DEMARENNE COLEMAN, (HEREINAFTER "COLEMAN") HAS NO CHOICE AND MUST RAISE THE QUESTIONS REGARDING THE EFFECTIVENESS OF HIS COUNSEL THROUGH THE FORUM OF A PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION). SEE FRANKLIN V. STATE, 877 P.2d 1058 (NEV. 1994). THE QUESTION OF INEFFECTIVE ASSISTANCE OF COUNSEL SHOULD NOT BE CONSIDERED IN A DIRECT APPEAL FROM A JUDGMENT OF CONVICTION. INSTEAD, THE GROUNDS SHOULD BE RAISED IN THE FIRST INSTANCE IN THE DISTRICT COURT IN A PETITION FOR POST-CONVICTION RELIEF. SEE WALLACH V. STATE, 796 P.2d 224 (NEV. 1990) BENNETT V. STATE, 901 P.2d 676 (NEV. 1995)

THUS, COLEMAN IS PROPERLY BEFORE THIS COURT ON HIS CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF FACTS

ON OR ABOUT JULY 10, 2005, PETITIONER, DEMIARRENE COLEMAN WAS CHARGED WITH THE CRIMES OF TRAFFERY WITH THE USE OF A DEADLY WEAPON AND MURDER WITH THE USE OF A DEADLY WEAPON.

ON SEPTEMBER 16, 2005 COLEMAN'S PRELIMINARY HEARING WAS CONDUCTED. AT THE CONCLUSION OF THE PRELIMINARY HEARING COLEMAN WAS BOUND OVER TO THE DISTRICT COURT ON ALL COUNTS.

ON MAY 29, 2007, COLEMAN, IN ACCORDANCE WITH A (MISUNDERSTOOD) PLEA AGREEMENT, PLEADED GUILTY TO COUNT 1, FIRST

DEGREE MURDER (NRS 200.010) AND BATTERY WITH THE USE OF A DEADLY WEAPON (NRS 200.4810).

SHORTLY THEREAFTER, HOWEVER, COLEMAN ADVISED HIS COUNSEL OF HIS DESIRE TO WITHDRAW THE GUILTY PLEA. THE REQUEST WAS BASED UPON HIS MINIMAL EDUCATION AND MEDICATED STATE AT THE TIME OF THE PLEA.

ON AUGUST 7, 2007, COUNSEL FILED A "MOTION TO WITHDRAW GUILTY PLEA" (SEE EXHIBIT #1). THE COURT SUBSEQUENTLY HELD A HEARING, THEREBY DENYING THE MOTION TO WITHDRAW THE GUILTY PLEA. DESPITE BEING REQUESTED TO DO SO BY MR. COLEMAN, COUNSEL FAILED TO APPEAL THE DISTRICT COURT'S DENIAL OF THE MOTION TO WITHDRAW

THE GUILTY PLEA. THE INSTANT PETITION ENDS.

ARGUMENT

M. COUNSEL FOR COLEMAN WAS INEFFECTIVE FOR FAILING TO APPEAL THE DISTRICT COURT'S DENIAL OF THE MOTION TO WITHDRAW GUILTY PLEA.

COLEMAN CONTENTS THAT HIS ATTORNEY WAS INEFFECTIVE FOR FAILING TO APPEAL THE DISTRICT COURT'S DENIAL OF THE MOTION TO WITHDRAW GUILTY PLEA AFTER BEING REQUESTED TO DO SO. HE FRAMES THIS CLAIM BY ARGUING THAT HE WAS DENIED HIS RIGHT TO APPEAL IN VIOLATION OF LOZADA V. STATE, 871 P.2D 944 (NEV. 1994) AND PARTICULARLY UNDER THAT CASES HOLDING THAT "COUNSEL HAS A DUTY TO INFORM CONVICTED CLIENT OF RIGHT TO APPEAL AND OF PROCEDURES FOR FILING SUCH."

"AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM HAS TWO COMPONENTS: A PETITIONER MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT, AND THAT THE DEFICIENCY PREJUDICED THE DEFENSE." WIGGINS, 123 S. CT AT 2527. IN EVALUATING WHETHER THE PERFORMANCE OF COUNSEL WAS DEFICIENT, THE RELEVANT QUESTION IS WHETHER "COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS." STRICKLAND, 466 U.S. AT 688. IN CONSIDERING PREJUDICE, THE APPROPRIATE INQUIRY IS WHETHER THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE OUTCOME OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. WILLIAMS, 120 S. CT 1495 (2000)

DEMARENTE COLEMAN WAS REPRESENTED BY CARMINE COUCCI, A CRIMINAL DEFENSE ATTORNEY. COLEMAN PLED GUILTY TO FIRST DEGREE MURDER AND BATTERY AND WAS SENTENCED TO 20 TO 50 YEARS IN PRISON. AFTER AN UNSUCCESSFUL REQUEST TO WITHDRAW HIS PLEA, COLEMAN ADVISED COUCCI THAT HE WANTED TO APPEAL THE DISTRICT COURT'S DENIAL OF HIS REQUEST, AND WAS INFORMED THAT THE ATTORNEY WOULD PERFECT AN APPEAL. INTERESTINGLY, NO APPEAL WAS EVER FILED ON THE PART OF COUNSEL. CONTRARY TO RELEVANT CASE LAW, COUNSEL'S FAILURE TO FILE THE APPEAL WAS WITHOUT THE CONSENT OF MR. COLEMAN.

IN FERGUSON V. U.S., THE COURT RECOGNIZED THAT THE FAILURE OF AN ATTORNEY TO FILE AN APPEAL WHERE

THE DEFENDANT REQUEST
SUCH AN APPEAL CONSTIT-
UTES INEFFECTIVE ASSISTANCE
OF COUNSEL. 699 F.2d 1071.
THE COURT NOTED:

BECAUSE FERGUSON WAS ENTITLED
TO APPEAL HIS SENTENCE EVEN
THOUGH HE PLED GUILTY, THE
FAILURE TO FILE AN APPEAL
CONSTITUTES INEFFECTIVE ASSISTANCE
OF COUNSEL. WE REVERSE WITH
INSTRUCTIONS TO GRANT RELIEF ALL-
OWING A DIRECT APPEAL.

THE INSTANT CASE IS
ANALOGOUS TO FERGUSON.
LIKE IN FERGUSON, COLEMAN
WAS ENTITLED TO APPEAL
HIS SENTENCE EVEN THOUGH
HE PLED GUILTY. AS IN
FERGUSON, COLEMAN HAD
ADVISED HIS COUNSEL THAT
HE WANTED TO APPEAL
THE SENTENCE.

THE FACTS OF MR.
COLEMAN'S SITUATION ARISE
TO A LEVEL FOUND TRY
SEVERAL COURTS TO HAVE
RENDERED COUNSEL'S PER-
FORMANCE OBJECTIVELY

UNREASONABLE. SEE MARTIN V. UNITED STATES, 81 F.2d 1083 (11th CIR. 1993) ("ATTORNEY'S FAILURE TO FILE APPEAL AFTER BEING REQUESTED TO DO SO BY DEFENDANT CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL"). SEE ALSO MONTEN-OLINO V. UNITED STATES, 68 F.2d 416 (6th CIR. 1995) ("COUNSEL INEFFECTIVE FOR FAILURE TO FILE NOTICE OF APPEAL AFTER REQUEST BY DEFENDANT, EVEN IF DEFENDANT PLEADED GUILTY").

IN LIGHT OF THE GRAVITY OF THIS CASE, IT WAS CRITICALLY IMPORTANT THAT DEFENSE COUNSEL APPEAL THE DISTRICT COURT'S DENIAL OF COLEMAN'S MOTION TO WITHDRAW GUILTY PLEA.* THE INABILITY, (INCLUDING THE INABILITY TO EVEN ATTEMPT TO APPEAL THE

Demarene Coleman 1007335

* COUNSEL WERE RAISING THE ISSUE OF PLEA WITHDRAWAL ON THE PART OF MR. COLEMAN OFFICIALLY PRESERVED IT FOR APPEAL.

DECISION DOES NOT REACH A REASONABLY EFFECTIVE STANDARD. THUS, COUNSEL HAS NEGLECTED TO FULFILL THE FIRST PRONG OF THE STRICKLAND ANALYSIS BY UNREASONABLY DENYING HER CLIENT THE RIGHT TO APPEAL.

.... UNLIKE, COLEMAN WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE, AS IT IS "REASONABLY PROBABLY" THAT, HAD COUNSEL APPEALED THE DISTRICT COURT'S DENIAL OF THE MOTION TO WITHDRAW GUILTY PLEA - BASED UPON COLEMAN'S LIMITED EDUCATION AND MEDICATED STATE AT THE TIME OF THE PLEA - A MORE FAVORABLE RESULT WOULD HAVE BEEN OBTAINED. SEE *LOSMADO V. DEEDS*, 964 F.2d 958 (7th CIR. 1992) ("PREJUDICE IS PRESUMED WHEN A PETITIONER ESTABLISHES THAT

COUNSEL'S FAILURE TO FILE A NOTICE OF APPEAL WAS WITHOUT THE PETITIONER'S CONSENT).

CONCLUSION

WHEREFORE, BASED UPON THE FOREGOING REASONS, COLEMAN SHOULD BE GRANTED A FRESH APPEAL WITH THE ASSISTANCE OF APPOINTED COUNSEL.

CERTIFICATE OF MAILING

I, DEMARENE COLEMAN, DO HEREBY CERTIFY THAT I SENT A TRUE AND CORRECT COPY OF THE AFORESAID "MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS" TO THE FOLLOWING:

JAMES SWEETIN
 DISTRICT ATTORNEY
 200 LEWIS AVENUE
 LAS VEGAS, NEVADA
 89155

1 MOT
2 CARMINE J. COLUCCI, ESQ.
3 CARMINE J. COLUCCI, CHTD.
4 Nevada Bar #000881
5 629 South Sixth Street
6 Las Vegas, Nevada 89101-6919
7 (702) 384-1274
8 Attorney for Defendant
9 *DEMARENE COLEMAN*

DISTRICT COURT
CLARK COUNTY, NEVADA

8 STATE OF NEVADA,)
9 Plaintiff,)
10 VS.)
11 DEMARENE COLEMAN,)
12 Defendant.)

CASE NO.: C 215295
DEPT. NO.: V

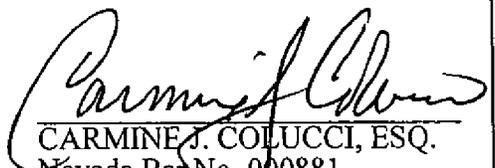
HEARING DATE:
HEARING TIME:

MOTION TO WITHDRAW GUILTY PLEA

15 COMES NOW, the Defendant DEMARENE COLEMAN, by and through his attorney
16 CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., and
17 moves this Court for its Order allowing him to withdraw his guilty plea to Count 1, First
18 Degree Murder (NRS 200.010, 200.030) and Count 2, Battery With Use of a Deadly Weapon
19 (NRS 200.481) for the reasons set forth in the Points and Authorities submitted herewith and
20 the affidavit of Defendant DEMARENE COLEMAN attached hereto.

21 DATED this August *7th*, 2007.

CARMINE J. COLUCCI, CHTD.


CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 S. Sixth Street
Las Vegas, Nevada 89101-6919
Attorney for Defendant
DEMARENE COLEMAN

27 RECEIVED
28 AUG 18 2008
CLERK OF THE COURT

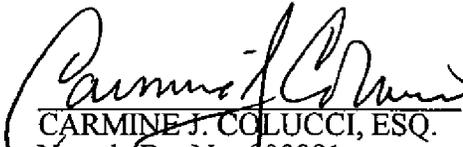
1 NOTICE OF MOTION

2 TO: THE STATE OF NEVADA, Plaintiff; and
3 TO: DAVID ROGER, DISTRICT ATTORNEY, its Attorney:

4 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned
5 will bring the foregoing Motion To Withdraw Guilty Plea on for hearing before this Court at
6 the Courtroom of the above-entitled Court on the _____ day of August 2007, at the hour
7 of _____ a.m. of said day, or as soon thereafter as Counsel can be heard.

8 DATED this August 7th, 2007.

9 CARMINE J. COLUCCI, CHTD.

10 
11 CARMINE J. COLUCCI, ESQ.
12 Nevada Bar No. 000881
13 629 S. Sixth Street
14 Las Vegas, Nevada 89101-6919
15 (702) 384-1274
16 Attorney for Defendant
17 DEMARENE COLEMAN

16 POINTS AND AUTHORITIES

17 On May 29, 2007, Defendant DEMARENE COLEMAN, plead guilty to Count 1, First
18 Degree Murder (NRS 200.010, 200.030) and Count 2, Battery With Use of a Deadly Weapon
19 (NRS 200.4810 before the Honorable Jackie Glass in the Eighth Judicial District Court. For
20 the reasons set forth below, Defendant now seeks an Order from this Court allowing him to
21 withdraw his guilty plea.

22 The Defendant asserts that he has a minimal education and was under the influence of
23 medication that precluded his ability to fully comprehend and appreciate the consequences of
24 pleading guilty to the charges of First Degree Murder and Battery With Use of a Deadly
25 Weapon. The Defendant's lack of comprehension and failure to understand of the
26 consequences of his pleading guilty are based on his minimal education and medicated state at
27 the time of the plea precludes Defendant having entered a knowing and voluntarily plea of
28 guilty.

1 **DISCUSSION**

2 An appellate court should review the entire record and look to the totality of the facts
3 and circumstances of a defendant's case to determine whether the defendant entered his plea
4 with an actual understanding of the nature of the charges against him. Marshall v. Louberger,
5 459 U.S. 422, 103 S.Ct. 843 (1983) and Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. (1976).
6 The court must be able to conclude from the oral canvass, any written plea memorandum, and
7 the circumstances surrounding the execution of the memorandum (i.e., did the defendant read
8 it, have any questions about it, etc.) that the defendant's plea was freely, voluntarily, and
9 knowingly made. No specific formula for making this determination is required. Each case
10 must be decided upon the facts and circumstances of that individual case. State v. Freese, 116
11 Nev. 1097, 1107; 13 P.3d 442, 449 (2000).

12 The Defendant, Mr. Coleman was a poor student who only completed ten years of
13 education, poorly equipping him with the skills to adequately read, write and understand the
14 English Language. Coupled with his educational deficiencies the Mr. Coleman has been using
15 drugs for the last seven years which has undoubtedly impacted his cognitive abilities to
16 rationally form decisions, such as agreeing to the plea agreement. Mr. Coleman recently
17 informed counsel that he had been under the influence of drug medication administered at the
18 jail and would never have accepted the negotiations had he understood that the Court might not
19 run the sentences concurrently.

20 In conclusion, a review of the Defendant's attached affidavit hereto, supports his
21 assertion that his educational abilities relating to reading, writing and comprehension are
22 deficient when taken in conjunction with his medicated status his plea was not freely,

23 \\\

24 \\\

25 \\\

26 \\\

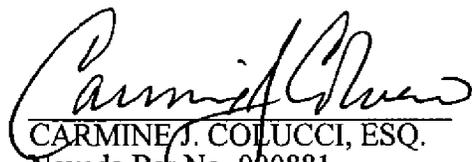
27 \\\

28 \\\

1 knowingly and voluntarily entered. He should therefore be allowed to withdraw his plea and
2 proceed to trial on the original charges.

3 DATED this August 7th 2007.

CARMINE J. COLUCCI, CHTD.



CARMINE J. COLUCCI, ESQ.
Nevada Bar No. 000881
629 S. Sixth Street
Las Vegas, Nevada 89101-6919
Attorney for Defendant
DEMARENE COLEMAN

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

7

FILED

2008 AUG 27 P 12:12

DISTRICT COURT
CLARK COUNTY, NEVADA

[Signature]
CLERK OF THE COURT

1 PPOW

5 DEMARENE COLEMAN,
6 Petitioner,

7 vs.

8 E.K. McDANIEL,
9 Respondent,

Case No: C215295
Dept No: 5

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

11 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
12 August 19, 2008. The Court has reviewed the petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

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

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

19
20 Calendar on the 18th day of November, 2008, at the hour of

21
22 8:30 am clock for further proceedings.

[Signature]
District Court Judge

[Handwritten initials]
22
23

RECEIVED
AUG 27 2008
CLERK OF THE COURT


CLERK OF THE COURT

1 **RSPN**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Chief Deputy District Attorney
7 Nevada Bar #006639
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10	THE STATE OF NEVADA,)	CASE NO: C215295
11	Plaintiff,)	DEPT NO: V
12	-vs-)	
13	DEMARENE COLEMAN,)	
14	#1963947)	
15	Defendant.)	

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR
WRIT OF HABEAS CORPUS**

DATE OF HEARING: November 18, 2008
TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 J. TIMOTHY FATTIG, Chief Deputy District Attorney, and hereby submits the attached
22 Points and Authorities in Opposition to Defendant's Petition for Writ of Habeas Corpus.

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

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 20, 2005, Defendant was charged by way of Information with
4 MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010, 200.030,
5 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS
6 200.010, 200.030, 193.330, 193.165); and ACCESSORY TO MURDER (Felony – NRS
7 200.010, 200.030, 195.030, 195.040).

8 On August 22, 2006, the district court held a hearing to determine Defendant’s
9 competency. The court found that the Defendant was not competent and remanded him to
10 the custody of the Division of Mental Health Development Services for detention and
11 treatment. An Order of Commitment was filed on August 28, 2006. On December 12, 2006,
12 the district court, after reviewing the doctors’ reports, held that Defendant was competent.
13 On December 29, 2006, the court filed its Findings of Competency.

14 On May 29, 2007, Defendant entered into a Guilty Plea Agreement and pled guilty to
15 FIRST DEGREE MURDER and BATTERY WITH USE OF A DEADLY WEAPON, the
16 charges set forth in the Amended Information filed that same day.

17 On July 24, 2007, the date set for sentencing, defense counsel Carmine Colucci,
18 requested a continuance for leave to file a Motion to Withdraw Guilty Plea. That same day,
19 the court granted Defendant’s request for a continuance. On August 7, 2007, Defendant
20 filed a Motion to Withdraw Guilty Plea. On August 13, 2007, the State filed its Opposition.
21 On August 14, 2007, the district court denied Defendant’s Motion to Withdraw Guilty Plea
22 and sentenced Defendant as follows: As to Count 1 – to a MAXIMUM of FIFTY YEARS
23 with a MINIMUM of parole eligibility of FORTY-EIGHT (48) MONTHS to run
24 CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE DAYS credit for
25 time served. A Judgment of Conviction was filed on August 22, 2007.

26 Defendant filed the instant petition on August 19, 2008. The State’s Response is as
27 follows:

28 //

1 **ARGUMENT**

2 **I. DEFENDANT'S PLEA WAS FREELY, VOLUNTARILY AND**
3 **KNOWINGLY ENTERED**

4 Pursuant to NRS 176.165, a defendant's guilty plea can only be withdrawn after
5 sentencing to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d
6 391, 394 (1990). Three important factors in making the determination of the presence of a
7 "manifest injustice" are whether the defendant: 1) acted voluntarily; 2) understood the nature
8 of the charges against him; and 3) understood the consequences of his plea. Wilson v. State,
9 99 Nev. 362, 373, 664 P.2d 328, 334 (1983).

10 A plea of guilty is presumptively valid, particularly where it is entered into on the
11 advice of counsel. Jeziarski v. State, 107 Nev. 395, 812 P.2d 355 (1991). The Defendant
12 has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v.
13 State, 102 Nev. 268, 721 P.2d 364 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980);
14 Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985).

15 In determining whether a guilty plea is knowingly and voluntarily entered, the court
16 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102
17 Nev. at 271. The proper standard set forth in Bryant requires the trial court to personally
18 address a defendant at the time he enters his plea in order to determine whether he
19 understands the nature of the charges to which he is pleading. Id. at 271; State v. Freese, 116
20 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of pleas of
21 guilty "do not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev.
22 573, 575, 516 P.2d 1403, 1404 (1973). It requires only "that the record affirmatively
23 disclose that a defendant who pleaded guilty entered his plea understandingly and
24 voluntarily." Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970);
25 United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

26 In this case, Defendant fails to establish that his plea was not knowingly and
27 voluntarily entered. During his plea canvass the Court entered into a detailed colloquy with
28 Defendant regarding the specifics surrounding his plea, the consequences of it, and the
discretion the Court had regarding the sentence ultimately imposed notwithstanding

1 negotiations between the State and his counsel. First, the court inquired to determine
2 whether Defendant understood the charges to which he was pleading guilty, as demonstrated
3 by the following exchange:

4 THE COURT: Do you read, write, and understand the English
5 language?

6 THE DEFENDANT: Yes.

7 THE COURT: I have a copy of an amended information – thank
8 you – that contains the charges of first degree murder and battery
9 with use of a deadly weapon. Did you receive this document?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you read over it?

12 THE DEFENDANT: [Indiscernible]

13 THE COURT: I need you to just speak up a little more.

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand both of those charges?

16 THE DEFENDANT: Yes.

17 THE COURT: All right, as to Count 1, first-degree murder, how
18 do you plead?

19 THE DEFENDANT: Guilty.

20 THE COURT: As to Count 2, battery with use of a deadly
21 weapon, how do you plead?

22 THE DEFENDANT: Guilty.

23 THE COURT: The negotiation is as follows: both parties agree
24 to recommend 20 to 50 years in the Nevada Department of
25 Correction and the State will not oppose – and that would be on
26 the murder count.

27 MR. COLUCCI: Right.

28 THE COURT: And the State will not oppose concurrent time
between the counts. Is that your complete understanding of what
the negotiations are?

THE DEFENDANT: Yes.

Next, the court inquired into the voluntariness of Defendant's plea by engaging
Defendant in the following discussion:

1 THE COURT: Is anyone forcing you to plead guilty?

2 DEFENDANT: No.

3 THE COURT: You're pleading guilty freely and voluntarily?

4 THE DEFENDANT: Yes.

5 THE COURT: All right, I have a guilty plea agreement here and
6 on page five there's a signature line with a signature above your
name. Did you sign this?

7 THE DEFENDANT: Yes.

8 THE COURT: Before you signed it did you read it over?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you understand everything in it?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that as a result of your plea
13 you're giving up certain valuable constitutional rights; those
rights were listed for you in your guilty plea agreement?

14 THE DEFENDANT: Yes.

15 The court then went to great lengths to explain the different sentencing possibilities
16 Defendant faced as a result of entering into the Guilty Plea Agreement, as demonstrated by
17 the following inquiry:

18 THE COURT: So, I'm going to write that in here and –
19 afterwards, but I want to ask you if you understand, I know the
20 deal is to recommend to me the term of 50 years, with parole
21 eligibility beginning at 20, but I need for you to understand that
there are possibilities here. One is life with parole eligibility, one
with life with no parole, or the term of years which is 20 to 50;
do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that all of those possible
24 punishments there is no option for any probation, that on a
charge of murder you must be sentenced to prison; do you
25 understand that?

26 THE DEFENDANT: Yes.

27 THE COURT: Okay, and do you understand that I am going to
28 write in the third option into this guilty plea agreement and I'm
going to put my initials by it so that you – and this record will

1 also indicate that you've been advised of all the possible
punishments that face you. Do you understand?

2 THE DEFENDANT: Yes. Yes.

3 THE COURT: I really need you to speak up.

4 On the other, Count 2, which is the battery with use of a
5 deadly weapon you face a minimum term of two years, not less
6 than two years, and a maximum term of not more than 10 years
in the Nevada Department of Corrections, and a possible fine of
up to \$10,000; do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that sentencing is completely
up to the Court?

9 THE DEFENDANT: Yes.

10 The court also engaged Defendant in the following dialogue to assure that Defendant
11 entered into the Guilty Plea Agreement with the advice of counsel.

12 THE COURT: All right, after you signed this document, Mr.
13 Coleman, did you talk about your case with your attorney –

14 THE DEFENDANT: Yes.

15 THE COURT: -- Mr. Colucci?

16 THE DEFENDANT: Yes.

17 THE COURT: Did he answer your questions?

18 THE DEFENDANT: Yes.

19 In addition, after speaking with Defendant and realizing that Defendant may not have
20 understood the possible sentences, defense counsel asked the court for clarification:

21 MR. COLUCCI: Judge, just for the record, in talking with Mr.
22 Coleman because he's now not understanding the possibilities
23 here, I just wanted to put on the record, if that's okay with the
Court, that generally the Court will follow the recommendation
of the State and the defense unless there is some – something
24 drastic –

25 THE COURT: Extraordinary reason, but I mean this is
26 something that the two of you have agreed to. I will ordinarily
follow what you've agreed to. I understand that this is what
27 made this negotiation go forward. I can't say 100%, but in all
likelihood it's what I am going to do. So I just need you to initial
28 that so that you understand what all of the possible punishments
are. That doesn't mean I'm going to do it, it just means that I
need for you to understand it's possible.

1 Lastly, by signing the Guilty Plea Agreement, Defendant attested to the following:

2 I hereby agree to plead guilty to: Count 1 – FIRST DEGREE
3 MURDER (Category A Felony – NRS 200.010, 200.030) and
4 Count 2 – BATTERY WITH USE OF A DEADLY WEAPON
5 (Category B Felony – NRS 200.481), as more fully alleged in the
6 charging document attached hereto as “Exhibit 1”.

7 My decision to plead guilty is based upon the plea agreement in
8 this case which is as follows:

9 Both parties agree to recommend twenty (20) to fifty (50) years
10 in the Nevada Department of Corrections. The State will not
11 oppose the concurrent time between the counts.

12 ...

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

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

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

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

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

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

29 ...

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

33 Thus, the record affirmatively evidences that Defendant entered into his plea
34 knowingly and voluntarily. As such, Defendant’s petition should be denied.

35 ///

1 **II. DEFENDANT CANNOT REPUDIATE CHALLENGED PORTIONS**
2 **OF THE GUILTY PLEA AGREEMENT**

3 In his petition, Defendant argues that his responses to the questions asked during the
4 plea canvass was a result of “coercion by counsel and should not be taken to heart that
5 petitioner intended to plea[d] guilty or affirmatively admitted guilt.” However, the record
6 contradicts Defendant’s claims that he was drugged and did not know what he was doing. In
7 signing the guilty plea agreement, Defendant attested to the following:

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

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

16 Thus, the record clearly demonstrates that Defendant was not coerced into entering a
17 plea or that he was under the influence of a substance that would impair his ability to
18 comprehend the nature of the proceedings. Moreover, “[W]hen an accused expressly
19 represents in open court that his guilty plea is voluntary, he may not ordinarily repudiate his
20 statements to sentencing judge.” Lundy v. Warden, 89 Nev. 860; 34 P.3d 519 (2001).
21 Consequently, Defendant cannot repudiate the foregoing portions of the Guilty Plea
22 Agreement per Lundy and his petition should be denied.

23 **III. DEFENDANT’S CLAIMS OF INEFFECTIVE ASSISTANCE OF**
24 **COUNSEL ARE TOO VAGUE TO WARRANT RELIEF**

25 The Sixth Amendment provides that, “[i]n all criminal prosecutions, the accused shall
26 enjoy the right . . . to have the Assistance of Counsel for his defense.” This court has long
27 recognized that “the right to counsel is the right to the effective assistance of counsel.”
28 Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984) (quoting
McMann v. Richardson, 397 U.S. 759, 771 n.14, 90 S. Ct. 1441, 1449 n.14 (1970)); see also
State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). A defendant making a claim

1 of ineffective assistance of counsel must show both that counsel's performance was deficient
2 and that the deficient performance prejudiced the defendant. See Warden, Nevada State
3 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part
4 test in Nevada).

5 Counsel's performance is deficient if "counsel's representation fell below an
6 objective standard of reasonableness." Strickland, 466 U.S. at 688, 104 S. Ct. at 2064.
7 "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is
8 '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v.
9 Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting
10 McMann, 397 U.S. at 771, 90 S.Ct. at 1449 (1970)).

11 The court begins with the presumption of effectiveness and then must determine
12 whether the defendant has demonstrated by a preponderance of the evidence that counsel
13 was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a court in
14 considering an allegation of ineffective assistance of counsel is "not to pass upon the merits
15 of the action not taken but to determine whether, under the particular facts and circumstances
16 of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State,
17 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162,
18 1166 (9th Cir. 1977)).

19 This analysis means the court should neither "second guess reasoned choices between
20 trial tactics nor does it mean that defense counsel, to protect himself against allegations of
21 inadequacy, must make every conceivable motion no matter how remote the possibilities are
22 of success." Donovan, 94 Nev. at 675, 584 P.2d at 711. In essence, the court must "judge
23 the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed
24 as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

25 Effective counsel does not mean errorless counsel, but rather counsel whose
26 assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v.
27 Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v.
28 Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)). Based on the above law, the

1 role of a court in considering allegations of ineffective assistance of counsel is “not to pass
2 upon the merits of the action not taken but to determine whether, under the particular facts
3 and circumstances of the case, trial counsel failed to render reasonably effective assistance.”
4 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,
5 551 F.2d 1162, 1166 (9th Cir. 1977)).

6 Even if a defendant can demonstrate that his counsel's representation fell below an
7 objective standard of reasonableness, he must still demonstrate prejudice and show a
8 reasonable probability that, but for counsel’s errors, the result of the trial would have been
9 different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
10 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
11 sufficient to undermine confidence in the outcome.” McNelton, 115 Nev. at 403, 990 P.2d at
12 1268 (citing Strickland, 466 U.S. at 687-89 & 694, 104 S. Ct. at 2064-65 & 2068.).

13 Moreover, claims asserted in a petition for post-conviction relief must be supported
14 with specific factual allegations, which if true, would entitle the petitioner to relief.
15 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
16 allegations are not sufficient, nor are those belied and repelled by the record. Id.

17 NRS 34.735(6) states in relevant part:

18 You *must* allege specific facts supporting the claims in the
19 petition you file seeking relief from any conviction or sentence.
20 Failure to allege specific facts rather than just conclusions may
cause your petition to be dismissed. (Emphasis added).

21 In this case, other than the claim that counsel disregarded Defendant’s request to
22 appeal from the denial of his motion to withdraw his guilty plea, Defendant has made only
23 bare claims of ineffective assistance of counsel which do not warrant relief per Hargrove and
24 NRS 34.34735(6). Thus, all claims not concerning the request for appeal should be denied.

25 ///

26 ///

27 ///

28

1 **IV. THE COURT SHOULD CONDUCT A LIMITED EVIDENTIARY**
2 **HEARING TO DETERMINE WHETHER DEFENDANT WAS**
3 **DEPRIVED OF HIS RIGHT TO AN APPEAL**

4 The State respectfully requests that this court schedule a limited hearing into
5 Defendant's claim that his attorney disregarded his request to appeal from the denial of his
6 motion to withdraw his guilty plea to determine per Roe v. Ortega, 528 U.S. 470, 120 S.Ct.
7 1029 (2000) whether Defendant is entitled to a "Lozada" appeal. All of Defendant's other
8 claims can be resolved without expanding the record so no further evidentiary hearing is
9 needed. See Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994).

10 **V. DEFENDANT IS NOT ENTITLED TO POST CONVICTION**
11 **COUNSEL**

12 There is no federal constitutional right under the Sixth Amendment and no state
13 constitutional right to counsel in post-conviction relief proceedings. Coleman v. Thompson,
14 501 U.S. 722, 725, 111 S. Ct.2546, 2552 (1991); McKague v. Warden, 112 Nev. 159, 163,
15 912 P.2d 255, 257-58 (1996). However, a district court judge has the discretion to appoint
16 counsel under the following conditions pursuant to NRS 34.750:

17 A petition may allege that the petitioner is unable to pay the costs
18 of the proceedings or to employ counsel. If the court is satisfied
19 that the allegation of indigency is true and the petition is not
20 dismissed summarily, the court may appoint counsel at the time
21 the court orders the filing of an answer and a return. In making
22 its determination, the court may consider whether:

- 23 (a) the issues are difficult;
- 24 (b) the petitioner is unable to comprehend the
25 proceedings; or
- 26 (c) counsel is necessary to proceed with discovery.

27 (emphasis added).

28 NRS 34.750 (1999).

 Here, Defendant is requesting court appointed counsel to assist him in pursuing a Post
Conviction Petition of Writ of Habeas Corpus. However, it is clear that Defendant is not
entitled to post conviction counsel because Defendant has already been convicted and his
petition will likely be dismissed summarily. In addition, if the court does set a limited

1 hearing into the issue of deprivation of appeal, the issue is so simple that Defendant does not
2 need the assistance of counsel. Thus, Defendant's request for counsel should be denied.

3 **CONCLUSION**

4 Based on the aforementioned arguments, the State respectfully requests that the Court
5 set a limited evidentiary hearing on the issue of deprivation of appeal and deny all other
6 claims raised in Defendant's petition.

7
8 DATED this 28th day of October, 2008.

9 Respectfully submitted,

10 DAVID ROGER
11 Clark County District Attorney
12 Nevada Bar #002781

13
14 BY /s/ J. Timothy Fattig
15 J. TIMOTHY FATTIG
16 Chief Deputy District Attorney
17 Nevada Bar #006639

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing, was made this 28th day of
20 October, 2008, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 DEMARENE COLEMAN, ID #1963947
22 P.O. BOX 1989
23 ELY, NV 89301

24 /s/ C. Bush
25 Secretary for the District Attorney's Office

26
27
28 ab/JTF/ckb


CLERK OF THE COURT

1 **NOTC**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Chief Deputy District Attorney
7 Nevada Bar #006639
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10	THE STATE OF NEVADA,)		
11)	Case No.	C215295
12	Plaintiff,)	Dept No.	V
13	-vs-)		
14	DEMARENE COLEMAN,)		
15	#1963947)		
	Defendant.)		

NOTICE OF HEARING

17 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
18 will bring the foregoing motion on for setting before the above entitled Court, in Department
19 V thereof, on Thursday, the 29th day of January, 2009, at the hour of 11:00 o'clock AM, or
20 as soon thereafter as counsel may be heard.

21 DATED this 2nd day of December, 2008.

23 DAVID ROGER
24 Clark County District Attorney
25 Nevada Bar #002781

26
27 BY /s/ J. Timothy Fattig
28 J. TIMOTHY FATTIG
Chief Deputy District Attorney
Nevada Bar #006639

1 CERTIFICATE OF MAILING

2
3 I hereby certify that service of the above and foregoing, was made this 2nd day of
4 December, 2008, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

5
6 DEMARENE COLEMAN, BAC #1007335
7 P.O. BOX 1989
8 ELY, NEVADA 89301

9 /s/ C. Bush
10 Secretary for the District Attorney's Office

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ckb

1 OPI
 2 DAVID ROGER
 Clark County District Attorney
 Nevada Bar #002781
 3 J. TIMOTHY FATTIG
 Chief Deputy District Attorney
 Nevada Bar #006639
 4 200 Lewis Avenue
 5 Las Vegas, Nevada 89155-2212
 (702) 671-2500
 6 Attorney for Plaintiff

FILED

DEC 10 3 22 PM '08

E. J. Smith
 CLERK OF THE COURT

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

CASE NO: C215295

11 -vs-)

DEPT NO: V

12 DEMARENE COLEMAN,
 #1963947)

13 Defendant.)
 14

15 **ORDER FOR PRODUCTION OF INMATE**
 16 **DEMARENE COLEMAN, BAC #1007335**

17 DATE OF HEARING: January 29, 2009
 TIME OF HEARING: 11:00 A.M.

19 TO: E.K. McDANIEL, Warden of the Ely State Prison;

20 TO: DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada

21 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID
 22 ROGER, District Attorney, through J. TIMOTHY FATTIG, Chief Deputy District Attorney,
 23 and good cause appearing therefor,

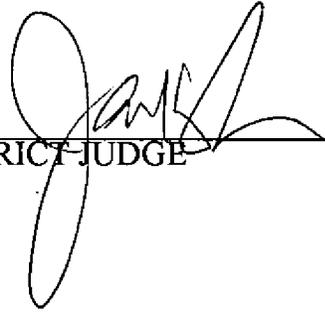
24 IT IS HEREBY ORDERED that E.K. McDANIEL, Warden of the Ely State Prison
 25 shall be, and is, hereby directed to produce DEMARENE COLEMAN, in Case No.
 26 C215295, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said
 27 Defendant is currently incarcerated in the Ely State Prison located in Ely, Nevada and his
 28 presence will be required in Las Vegas, Nevada commencing on January 29, 2009, at the

RECEIVED
 DEC 10 2008
 CLERK OF THE COURT

1 hour of 11:00 o'clock A.M. and continuing until completion of the prosecution's case against
2 the said Defendant.

3 IT IS FURTHER ORDERED that DOUGLAS C. GILLESPIE, Sheriff of Clark
4 County, Nevada, shall accept and retain custody of the said in the Clark County Detention
5 Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the
6 further Order of this Court; or in the alternative shall make all arrangements for the
7 transportation of the said Defendant to and from the Ely State Prison facility which are
8 necessary to insure the Defendant's appearance in Clark County pending completion of said
9 matter, or until further Order of this Court.

10 DATED this 9 day of December, 2008.



DISTRICT JUDGE DML

13 DAVID ROGER
14 DISTRICT ATTORNEY
15 Nevada Bar #002781

16 BY 

17 J. TIMOTHY FATTIG
18 Chief Deputy District Attorney
19 Nevada Bar #006639

20
21
22
23
24
25
26
27
28

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

ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

FEB 26 8 31 AM '09

E. J. [Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
DEMARENE COLEMAN, #1963947
Defendant.

CASE NO: C215295
DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: January 29, 2009
TIME OF HEARING: 11:00 A.M.

THIS CAUSE having come on for hearing before the Honorable Michael Villani, District Judge, on the 29th day of January, 2009, the Petitioner being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through H. LEON SIMON, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, the testimony of Defendant's former attorney, Carmine Colucci, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 20, 2005, Defendant was charged by way of Information with MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,

RECEIVED BY
DEPT. 17-ON
FEB 23 2009

RECEIVED

FEB 26 2009

308
CLERK OF THE COURT

- 1 200.030, 193.330, 193.165); and ACCESSORY TO MURDER (Felony – NRS 200.010,
2 200.030, 195.030, 195.040).
- 3 2. On August 22, 2006, the district court held a hearing to determine Defendant's
4 competency. The court found that the Defendant was not competent and remanded him
5 to the custody of the Division of Mental Health Development Services for detention and
6 treatment. An Order of Commitment was filed on August 28, 2006. On December 12,
7 2006, the district court, after reviewing the doctors' reports, held that Defendant was
8 competent. On December 29, 2006, the court filed its Findings of Competency.
- 9 3. On May 29, 2007, Defendant entered into a Guilty Plea Agreement and pled guilty to
10 FIRST DEGREE MURDER and BATTERY WITH USE OF A DEADLY WEAPON,
11 the charges set forth in the Amended Information filed that same day.
- 12 4. On July 24, 2007, the date set for sentencing, defense counsel Carmine Colucci,
13 requested a continuance for leave to file a Motion to Withdraw Guilty Plea. That same
14 day, the court granted Defendant's request for a continuance. On August 7, 2007,
15 Defendant filed a Motion to Withdraw Guilty Plea. On August 13, 2007, the State filed
16 its Opposition. On August 14, 2007, the district court denied Defendant's Motion to
17 Withdraw Guilty Plea and sentenced Defendant as follows: As to Count 1 – to a
18 MAXIMUM of FIFTY YEARS with a MINIMUM parole eligibility of TWENTY (20)
19 YEARS; As to Count 2 – to a MAXIMUM of ONE HUNDRED TWENTY (120)
20 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS to run
21 CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE DAYS credit for
22 time served. A Judgment of Conviction was filed on August 22, 2007.
- 23 5. Defendant filed the instant petition on August 19, 2008. The State's Response was filed
24 on October 28, 2008.
- 25 6. The court held a limited evidentiary hearing to determine whether Defendant was
26 deprived of his right to an appeal.
- 27 7. Defendant was represented by Mr. Carmine Collucci, Esq. Mr. Colluci was first licensed
28 to practice law in Nevada in September 1977. He has been in private practice since then

1 and currently handles a case load that is 95% criminal defense. As of the spring of 2007,
2 Mr. Collucci had represented thousands of defendants.

3 8. On August 14, 2007, immediately after Defendant was sentenced, Mr. Collucci moved to
4 withdraw as counsel. The court so ordered.

5 9. Mr. Collucci had no contact with Defendant after he withdrew as counsel. Defendant
6 never asked him to file an appeal. Defendant did not have any non-frivolous issues to
7 raise on appeal. Mr. Collucci did not tell Defendant that he could not appeal.

8 10. Defendant had no contact with Mr. Collucci after sentencing.

9 11. Defendant was not deprived of his right to an appeal.

10 12. Defendant's plea was freely, voluntarily and knowingly entered.

11 13. Defendant cannot repudiate the challenged portions of the Guilty Plea Agreement.

12 14. Defendant's claims of ineffective assistance of counsel are too vague to warrant relief.

13 15. Defendant is not entitled to post conviction counsel.

14 CONCLUSIONS OF LAW

15 1. Pursuant to NRS 176.165, a defendant's guilty plea can only be withdrawn after
16 sentencing to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787
17 P.2d 391, 394 (1990).

18 2. Three important factors in making the determination of the presence of a "manifest
19 injustice" are whether the defendant: 1) acted voluntarily; 2) understood the nature of the
20 charges against him; and 3) understood the consequences of his plea. Wilson v. State, 99
21 Nev. 362, 373, 664 P.2d 328, 334 (1983).

22 3. A plea of guilty is presumptively valid, particularly where it is entered into on the advice
23 of counsel. Jeziarski v. State, 107 Nev. 395, 812 P.2d 355 (1991).

24 4. A defendant has the burden of proving that the plea was not entered knowingly or
25 voluntarily. Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Wynn v. State, 96 Nev.
26 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985).

27 5. In determining whether a guilty plea is knowingly and voluntarily entered, the court will
28 review the totality of the circumstances surrounding the defendant's plea. Bryant, 102

1 Nev. at 271.

- 2 6. The proper standard set forth in Bryant requires the trial court to personally address a
3 defendant at the time he enters his plea in order to determine whether he understands the
4 nature of the charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev. 1097,
5 1105, 13 P.3d 442, 448 (2000).
- 6 7. The guidelines for voluntariness of pleas of guilty “do not require the articulation of
7 talismanic phrases.” Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973).
8 It requires only “that the record affirmatively disclose that a defendant who pleaded
9 guilty entered his plea understandingly and voluntarily.” Brady v. United States, 397
10 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303
11 (9th Cir. 1973).
- 12 8. “[W]hen an accused expressly represents in open court that his guilty plea is voluntary,
13 he may not ordinarily repudiate his statements to sentencing judge.” Lundy v. Warden,
14 89 Nev. 860; 34 P.3d 519 (2001).
- 15 9. The Sixth Amendment provides that, “[i]n all criminal prosecutions, the accused shall
16 enjoy the right . . . to have the Assistance of Counsel for his defense.” This court has
17 long recognized that “the right to counsel is the right to the effective assistance of
18 counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984)
19 (quoting McMann v. Richardson, 397 U.S. 759, 771 n.14, 90 S. Ct. 1441, 1449 n.14
20 (1970)); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).
- 21 10. A defendant making a claim of ineffective assistance of counsel must show both that
22 counsel’s performance was deficient and that the deficient performance prejudiced the
23 defendant. See Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504,
24 505 (1984) (adopting Strickland two-part test in Nevada).
- 25 11. Counsel’s performance is deficient if “counsel’s representation fell below an objective
26 standard of reasonableness.” Strickland, 466 U.S. at 688, 104 S. Ct. at 2064.
- 27 12. “Effective counsel does not mean errorless counsel, but rather counsel whose assistance
28 is [w]ithin the range of competence demanded of attorneys in criminal cases.” Jackson

1 v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting
2 McMann, 397 U.S. at 771, 90 S.Ct. at 1449 (1970)).

3 13. The court begins with the presumption of effectiveness and then must determine whether
4 the defendant has demonstrated by a preponderance of the evidence that counsel was
5 ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004).

6 14. The role of a court in considering an allegation of ineffective assistance of counsel is “not
7 to pass upon the merits of the action not taken but to determine whether, under the
8 particular facts and circumstances of the case, trial counsel failed to render reasonably
9 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)
10 (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

11 15. This analysis means the court should neither “second guess reasoned choices between
12 trial tactics nor does it mean that defense counsel, to protect himself against allegations
13 of inadequacy, must make every conceivable motion no matter how remote the
14 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711.

15 16. The court must “judge the reasonableness of counsel's challenged conduct on the facts of
16 the particular case, viewed as of the time of counsel's conduct.” Strickland, 466 U.S. at
17 690, 104 S. Ct. at 2066.

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

23 18. “A reasonable probability is a probability sufficient to undermine confidence in the
24 outcome.” McNelson, 115 Nev. at 403, 990 P.2d at 1268 (citing Strickland, 466 U.S. at
25 687-89 & 694, 104 S. Ct. at 2064-65 & 2068.).

26 19. Moreover, claims asserted in a petition for post-conviction relief must be supported with
27 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove
28 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations

1 are not sufficient, nor are those belied and repelled by the record. Id.

2 20. NRS 34.735(6) states in relevant part:

3 You *must* allege specific facts supporting the claims in the
4 petition you file seeking relief from any conviction or sentence.
5 Failure to allege specific facts rather than just conclusions may
6 cause your petition to be dismissed. (Emphasis added).

7 21. Factors to be considered in determining whether a defendant was denied his right to an
8 appeal include: 1) whether his conviction was the result of a guilty plea or a trial; 2)
9 whether the defendant asked his attorney to appeal; and 3) whether the defendant had any
10 non-frivolous issues to raise on appeal. Roe v. Ortega, 528 U.S. 470, 120 S.Ct. 1029
11 (2000).

12 22. A defendant is entitled to an evidentiary hearing “when a petition for post-conviction
13 relief raises claims supported by specific factual allegations which, if true, would entitle
14 the petitioner to relief ... unless those claims are repelled by the record.” Marshall v.
15 State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994).

16 23. There is no federal constitutional right under the Sixth Amendment and no state
17 constitutional right to counsel in post-conviction relief proceedings. Coleman v.
18 Thompson, 501 U.S. 722, 725, 111 S. Ct. 2546, 2552 (1991); McKague v. Warden, 112
19 Nev. 159, 163, 912 P.2d 255, 257-58 (1996).

20 24. A district court judge has the discretion to appoint counsel under the following conditions
21 pursuant to NRS 34.750:

22 A petition may allege that the petitioner is unable to pay the costs of
23 the proceedings or to employ counsel. If the court is satisfied that
24 the allegation of indigency is true and the petition is not dismissed
25 summarily, the court may appoint counsel at the time the court
26 orders the filing of an answer and a return. In making its
27 determination, the court may consider whether:

- 28 (a) the issues are difficult;
- (b) the petitioner is unable to comprehend the proceedings; or
- (c) counsel is necessary to proceed with discovery.

(emphasis added).

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

ORDER

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

DATED this 25 day of February, 2009.



DISTRICT JUDGE

mlh

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY



H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411

FILED

FEB 27 2009

E. A. Friedland
CLERK OF COURT

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 DEMARENE COLEMAN,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: C215295
Dept No: XVII

10 NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on February 26, 2009, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on February 27, 2009.

16 EDWARD A. FRIEDLAND, CLERK OF THE COURT

17 By: *Brandi J. Wendel*
18 Brandi J. Wendel, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 27 day of February 2009, I placed a copy of this Notice of Entry of Decision
21 and Order in:

22 The bin(s) located in the Office of the District Court Clerk of:
23 Clark County District Attorney's Office
Attorney General's Office - Appellate Division

- 24 The United States mail addressed as follows:
25 Demarene Coleman # 1007335
26 P.O. Box 1989
Ely, NV 89301

27 *Brandi J. Wendel*
28 Brandi J. Wendel, Deputy Clerk

13

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

ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

FEB 26 8 31 AM '09

E. J. ...
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEMARENE COLEMAN, #1963947.
Defendant.

CASE NO: C215295
DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: January 29, 2009
TIME OF HEARING: 11:00 A.M.

THIS CAUSE having come on for hearing before the Honorable Michael Villani, District Judge, on the 29th day of January, 2009, the Petitioner being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through H. LEON SIMON, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, the testimony of Defendant's former attorney, Carmine Colucci, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 20, 2005, Defendant was charged by way of Information with MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,

RECEIVED

FEB 26 2009

316
CLERK OF THE COURT

RECEIVED BY
DEPT. 1728

FEB 23 2009

1 200.030, 193.330, 193.165); and ACCESSORY TO MURDER (Felony – NRS 200.010,
2 200.030, 195.030, 195.040).

3 2. On August 22, 2006, the district court held a hearing to determine Defendant's
4 competency. The court found that the Defendant was not competent and remanded him
5 to the custody of the Division of Mental Health Development Services for detention and
6 treatment. An Order of Commitment was filed on August 28, 2006. On December 12,
7 2006, the district court, after reviewing the doctors' reports, held that Defendant was
8 competent. On December 29, 2006, the court filed its Findings of Competency.

9 3. On May 29, 2007, Defendant entered into a Guilty Plea Agreement and pled guilty to
10 FIRST DEGREE MURDER and BATTERY WITH USE OF A DEADLY WEAPON,
11 the charges set forth in the Amended Information filed that same day.

12 4. On July 24, 2007, the date set for sentencing, defense counsel Carmine Colucci,
13 requested a continuance for leave to file a Motion to Withdraw Guilty Plea. That same
14 day, the court granted Defendant's request for a continuance. On August 7, 2007,
15 Defendant filed a Motion to Withdraw Guilty Plea. On August 13, 2007, the State filed
16 its Opposition. On August 14, 2007, the district court denied Defendant's Motion to
17 Withdraw Guilty Plea and sentenced Defendant as follows: As to Count 1 – to a
18 MAXIMUM of FIFTY YEARS with a MINIMUM parole eligibility of TWENTY (20)
19 YEARS; As to Count 2 – to a MAXIMUM of ONE HUNDRED TWENTY (120)
20 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS to run
21 CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE DAYS credit for
22 time served. A Judgment of Conviction was filed on August 22, 2007.

23 5. Defendant filed the instant petition on August 19, 2008. The State's Response was filed
24 on October 28, 2008.

25 6. The court held a limited evidentiary hearing to determine whether Defendant was
26 deprived of his right to an appeal.

27 7. Defendant was represented by Mr. Carmine Collucci, Esq. Mr. Colluci was first licensed
28 to practice law in Nevada in September 1977. He has been in private practice since then

1 and currently handles a case load that is 95% criminal defense. As of the spring of 2007,
2 Mr. Collucci had represented thousands of defendants.

3 8. On August 14, 2007, immediately after Defendant was sentenced, Mr. Collucci moved to
4 withdraw as counsel. The court so ordered.

5 9. Mr. Collucci had no contact with Defendant after he withdrew as counsel. Defendant
6 never asked him to file an appeal. Defendant did not have any non-frivolous issues to
7 raise on appeal. Mr. Collucci did not tell Defendant that he could not appeal.

8 10. Defendant had no contact with Mr. Collucci after sentencing.

9 11. Defendant was not deprived of his right to an appeal.

10 12. Defendant's plea was freely, voluntarily and knowingly entered.

11 13. Defendant cannot repudiate the challenged portions of the Guilty Plea Agreement.

12 14. Defendant's claims of ineffective assistance of counsel are too vague to warrant relief.

13 15. Defendant is not entitled to post conviction counsel.

14 CONCLUSIONS OF LAW

15 1. Pursuant to NRS 176.165, a defendant's guilty plea can only be withdrawn after
16 sentencing to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787
17 P.2d 391, 394 (1990).

18 2. Three important factors in making the determination of the presence of a "manifest
19 injustice" are whether the defendant: 1) acted voluntarily; 2) understood the nature of the
20 charges against him; and 3) understood the consequences of his plea. Wilson v. State, 99
21 Nev. 362, 373, 664 P.2d 328, 334 (1983).

22 3. A plea of guilty is presumptively valid, particularly where it is entered into on the advice
23 of counsel. Jeziarski v. State, 107 Nev. 395, 812 P.2d 355 (1991).

24 4. A defendant has the burden of proving that the plea was not entered knowingly or
25 voluntarily. Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Wynn v. State, 96 Nev.
26 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985).

27 5. In determining whether a guilty plea is knowingly and voluntarily entered, the court will
28 review the totality of the circumstances surrounding the defendant's plea. Bryant, 102

- 1 Nev. at 271.
- 2 6. The proper standard set forth in Bryant requires the trial court to personally address a
3 defendant at the time he enters his plea in order to determine whether he understands the
4 nature of the charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev. 1097,
5 1105, 13 P.3d 442, 448 (2000).
- 6 7. The guidelines for voluntariness of pleas of guilty “do not require the articulation of
7 talismanic phrases.” Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973).
8 It requires only “that the record affirmatively disclose that a defendant who pleaded
9 guilty entered his plea understandingly and voluntarily.” Brady v. United States, 397
10 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303
11 (9th Cir. 1973).
- 12 8. “[W]hen an accused expressly represents in open court that his guilty plea is voluntary,
13 he may not ordinarily repudiate his statements to sentencing judge.” Lundy v. Warden,
14 89 Nev. 860; 34 P.3d 519 (2001).
- 15 9. The Sixth Amendment provides that, “[i]n all criminal prosecutions, the accused shall
16 enjoy the right . . . to have the Assistance of Counsel for his defense.” This court has
17 long recognized that “the right to counsel is the right to the effective assistance of
18 counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984)
19 (quoting McMann v. Richardson, 397 U.S. 759, 771 n.14, 90 S. Ct. 1441, 1449 n.14
20 (1970)); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).
- 21 10. A defendant making a claim of ineffective assistance of counsel must show both that
22 counsel’s performance was deficient and that the deficient performance prejudiced the
23 defendant. See Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504,
24 505 (1984) (adopting Strickland two-part test in Nevada).
- 25 11. Counsel’s performance is deficient if “counsel’s representation fell below an objective
26 standard of reasonableness.” Strickland, 466 U.S. at 688, 104 S. Ct. at 2064.
- 27 12. “Effective counsel does not mean errorless counsel, but rather counsel whose assistance
28 is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson

1 v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting
2 McMann, 397 U.S. at, 771, 90 S.Ct. at 1449 (1970)).

3 13. The court begins with the presumption of effectiveness and then must determine whether
4 the defendant has demonstrated by a preponderance of the evidence that counsel was
5 ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004).

6 14. The role of a court in considering an allegation of ineffective assistance of counsel is "not
7 to pass upon the merits of the action not taken but to determine whether, under the
8 particular facts and circumstances of the case, trial counsel failed to render reasonably
9 effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)
10 (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

11 15. This analysis means the court should neither "second guess reasoned choices between
12 trial tactics nor does it mean that defense counsel, to protect himself against allegations
13 of inadequacy, must make every conceivable motion no matter how remote the
14 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711.

15 16. The court must "judge the reasonableness of counsel's challenged conduct on the facts of
16 the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at
17 690, 104 S. Ct. at 2066.

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

23 18. "A reasonable probability is a probability sufficient to undermine confidence in the
24 outcome." McNelson, 115 Nev. at 403, 990 P.2d at 1268 (citing Strickland, 466 U.S. at
25 687-89 & 694, 104 S. Ct. at 2064-65 & 2068.).

26 19. Moreover, claims asserted in a petition for post-conviction relief must be supported with
27 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove
28 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations

1 are not sufficient, nor are those belied and repelled by the record. Id.

2 20. NRS 34.735(6) states in relevant part:

3 You *must* allege specific facts supporting the claims in the
4 petition you file seeking relief from any conviction or sentence.
5 Failure to allege specific facts rather than just conclusions may
6 cause your petition to be dismissed. (Emphasis added).

7 21. Factors to be considered in determining whether a defendant was denied his right to an
8 appeal include: 1) whether his conviction was the result of a guilty plea or a trial; 2)
9 whether the defendant asked his attorney to appeal; and 3) whether the defendant had any
10 non-frivolous issues to raise on appeal. Roe v. Ortega, 528 U.S. 470, 120 S.Ct. 1029
11 (2000).

12 22. A defendant is entitled to an evidentiary hearing "when a petition for post-conviction
13 relief raises claims supported by specific factual allegations which, if true, would entitle
14 the petitioner to relief ... unless those claims are repelled by the record." Marshall v.
15 State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994).

16 23. There is no federal constitutional right under the Sixth Amendment and no state
17 constitutional right to counsel in post-conviction relief proceedings. Coleman v.
18 Thompson, 501 U.S. 722, 725, 111 S. Ct. 2546, 2552 (1991); McKague v. Warden, 112
19 Nev. 159, 163, 912 P.2d 255, 257-58 (1996).

20 24. A district court judge has the discretion to appoint counsel under the following conditions
21 pursuant to NRS 34.750:

22 A petition may allege that the petitioner is unable to pay the costs of
23 the proceedings or to employ counsel. If the court is satisfied that
24 the allegation of indigency is true and the petition is not dismissed
25 summarily, the court may appoint counsel at the time the court
26 orders the filing of an answer and a return. In making its
27 determination, the court may consider whether:

- 28 (a) the issues are difficult;
- (b) the petitioner is unable to comprehend the proceedings; or
- (c) counsel is necessary to proceed with discovery.

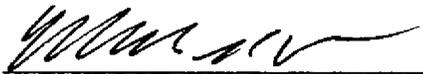
(emphasis added).

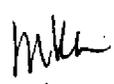
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

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

DATED this 25 day of February, 2009.


DISTRICT JUDGE



DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY 
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411

33

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

FILED

* * *

THE STATE OF NEVADA,

Plaintiff

JUL 29 11 12 AM '09

vs.

}

E. D. French
CLERK OF THE COURT

MOTLEY, Montelle Renne
Aka Montelle Renee Motley

Defendant

PETITION

To the Honorable Judge Michael P. Villani, of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, the Undersigned Chief Probation Officer for the State of Nevada now reports as follows concerning the above Defendant: Said Defendant was placed on probation by order of this Court for a term not to exceed 2 years, said Order being dated the 21st day of August, 2007. Said Probationer has satisfactorily complied with all of the conditions of probation, while under supervision in the State of Nevada.

THEREFORE, the undersigned recommends that said Probationer receive an Honorable Discharge and be released from further supervision.

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Dated this 9th day of July, 2009.

RECEIVED
JUL 29 2009
CLERK OF THE COURT

Bernard W. Curtis
Bernard W. Curtis, Chief Parole and Probation

* * * * *

ORDER HONORABLY DISCHARGING PROBATIONER

In this cause it appearing that the above-named Defendant was heretofore placed on probation under the authority of the Chief Parole and Probation Officer of the State of Nevada, and it further appearing from the petition of said Probation Officer that the period of such probation expires upon Judge's signature.

IT IS THEREFORE ORDERED that said Probationer be, and is hereby granted an Honorable Discharge from supervision and from any obligation respecting the conditions of said probation, having complied with conditions of said probation previously imposed by this court.

Michael P. Villani
Michael P. Villani, District Judge

Dated this 28 day of July, 2009

D-A - copy

19

Demarene Coleman 1007335
First and Last Name NDOC #

FILED

JUL 01 2019

Indian Springs, Nevada 89070
Defendant in Proper Person

Alvin D. Johnson
CLERK OF COURT

*PPD
DA*

8th Judicial District Court

Clark County, Nevada

The State of Nevada,
Plaintiff,

Case No. C215295
Dept. No. V

vs.

MOTION TO OBTAIN A COPY OF A SEALED
RECORD (Presentence Investigation Report -
NRS 176.156) ON AN ORDER SHORTENING TIME

Demarene Coleman
(First and Last Name)

Defendant.

*7-24-19
9:00 AM*

NOTICE OF MOTION AND MOTION

TO: The Plaintiff, The State of Nevada, by and through the Clark County
District Attorney's Office:

PLEASE TAKE NOTICE that Defendant's Motion to Obtain a Copy of a Sealed
Record (Presentence Investigation Report - NRS 176.156) will come for hearing before
the above-entitled Court on the ___ day of _____, 201_, at the hour of ___
o'clock ___ M. in Department ___ of said Court. [Leave Blank Clerk will fill-in]

COMES NOW, Defendant Demarene Coleman, in proper person, and hereby
(first and last name)
submits his Motion to Obtain a Copy of a Sealed Record (Pre-Sentence Investigation
Report) on an Order Shortening Time. Defendant asks that his presence be waived at
any hearing, if any, and that this matter be submitted on the pleadings, upon receipt of
the Opposition (if any) by Plaintiff and his Reply (if an Opposition is filed).

This Motion is made and based upon the attached Memorandum of Points and

RECEIVED
JUL 01 2019

CLERK OF THE COURT

Authorities, all papers and pleadings on file, as well as any additional facts, law, argument, witnesses or evidence that may be presented at the hearing of this matter, if any.

Dated this 13th day of JUNE, 2019

Demarene Coleman 1007335

First and Last Name NDOC #

Indian Springs, Nevada 89070
Defendant in Proper Person

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Defendant brings the instant Motion, in proper person, in order to obtain a copy of his presentence investigation report (PSI). This report is needed in order for the Defendant to pursue:

(Circle all that may apply)

1. The appeal of his conviction;
2. The post conviction writ process;
3. Sentence modification;
4. Challenge how the NDOC is calculating his sentence;
5. For an upcoming Parole Board Hearing; or
6. For the Pardons Board.

Defendant has been directed to obtain one from the Court having first contacted both his attorney and being told that it cannot be obtained by mail from Parole and Probation and will not be furnished by the Nevada Department of Corrections. Since the legislature has made PSI's sealed records he now seeks an order unsealing same and to direct the clerk to provide his a copy.

II. Relevant Facts, Law and Argument

As stated above, Defendant needs a copy of his Pre-Sentence Investigation Report.

Defendant has attempted to obtain the report from the prison, who directed him to his attorney; and from his attorney, who then directed him to request it from the Clerk of the Court. NRS 176.156, entitled "Disclosure of report of presentence or general investigation; persons entitled to use report; confidentiality of report," provides in pertinent part as follows:

5. Except for the disclosures required by subsections 1 to 4, inclusive, a report of a presentence investigation or general investigation and the sources of information for such a report are confidential and must not be made a part of any public record.

Defendant therefore asks that this Court direct the clerk to provide him a copy of his pre-sentence investigation report from the files in Case No. C 215295 as it is the only source for Defendant to obtain a copy of this document. Defendant is indigent, but if the Court feels, under the facts and circumstances, that Defendant should pay for a copy of the PSI, that the amount be charged to his NDOC inmate account and the copy of the PSI be transmitted to him.

Defendant is making this Motion and requesting it be heard on an Order Shortening Time, pursuant to Local Rule 11, and in good faith, so that his request can be expedited to ensure that he is able to comply with any deadlines applicable to the proceedings in which the PSI is required as outlined in the introduction above.

III. Conclusion

THEREFORE, based upon the foregoing, Defendant respectfully requests that this Court:

1. Unseal his Pre-Sentence Investigation Report;

2. Order that the Clerk provide him a copy of his Presentence Investigation Report once it is unsealed;

3. That this matter be allowed to proceed Ex-Parte and on an Order Shortening Time; and

4. Any further and necessary relief as deemed appropriate by this Court.

"I declare under penalty of perjury under the law of the State of Nevada (NRS 53.045) that the foregoing is true and correct."

Dated this 13th day of JUNE, 2019

Demarene Coleman 1007335
First and Last Name NDOC #

Indian Springs, Nevada 89070
Defendant in Proper Person

AFFIRMATION PURSUANT TO NRS 239.030

The undersigned does hereby affirm that the preceding Defendant's Motion to Obtain a Copy of a Sealed Record (Presentence Investigation Report - NRS 176.156), filed in District Court Case Number C215295 does not contain the social security number of any person.

Dated this 13th day of JUNE, 2019

Demarene Coleman 1007335
First and Last Name NDOC #

Indian Springs, Nevada 89070
Defendant in Proper Person

CERTIFICATE OF SERVICE BY MAILING

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

I, Demarene Coleman, hereby certify, pursuant to NRCP 5(b), that on this 13th day of June, 2019, I mailed a true and correct copy of the foregoing, "Motion To Obtain A Copy OF A Sealed Record (Presentence Investigation) Report" by depositing it in the Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven D-Grierson
Clerk of The Court
200 Lewis Ave 3rd Floor
Las Vegas, NV
89155-1160

Steve Wolfson
District Attorney
200 Lewis Ave
Las Vegas, NV
89155-2212

CC:FILE

DATED: this 13th day of June, 2019.

Demarene Coleman 1007335
Demarene Coleman #1007335
/In Propria Personam

IN FORMA PAUPERIS:

Demetrius Coleman #1007335

SDEC

PO Box 2008

Indian Springs NV 89070

2381622
816

POSTAGE
08/26/2015
USPS STAGE \$001.15
FIRST CLASS PERMIT NO. 2575
INDIAN SPRINGS NV 89070
01512600516

Steven D Emerson

Clerk of The Court

200 Lewis Ave 3rd Floor

Las Vegas NV

8155-1160

Demarene Coleman ID NO. 1007335

FILED

FEB 19 2020

Ann L. Blum
CLERK OF COURT

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

IN THE EIGHT JUDICIAL DISTRICT COURT
STATE OF NEVADA
CLARK COUNTY

March 18, 2020
9:00 AM

Demarene Coleman
Petitioner

CASE NO.: C-215295

v. The State of Nevada, Ex al;
The NDOC, Exal, J Hiderbrand, W Sandie
Dewayne Deal, OMD, J. Dzurenda, Director

DEPT. NO.: 5

DOCKET: Writ of Mandamus pursuant
to (NRS 34.185)

Respondents

First Amendment Petition For Writ OF Mandamus
Pursuant TO NRS.34.185

COMES NOW, Prose, Petitioner Demarene Coleman, herein above respectfully
moves this Honorable Court for an Writ of mandamus directing the respondents
to comply with (NRS 209.4465 (1a) (7a) (7b)) and relieve him of the
ex post facto application of NRS 209.4465 (8).

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities,

DATED: this 5th day of February, 2020

BY: Demarene Coleman

#1007335

Defendant In Proper Personam

RECEIVED

FEB 19 2020

CLERK OF THE COURT

1 as this section does not apply to his case, also the Nevada Supreme
2 Court holding in Williams v State Dept of Corr 133 Nev Adv Op 75,402
3 P3d 1260 (2017) and Vonseydewitz v Legrand case NO.66159 (2015) and
4 immediately apply 20 days a month to both the Minimum and Maximum
5 of the petitioners sentence. Despite the clear and unequivocal ruling,
6 the respondents have not applied these credits. this failure results in
7 a clear **due process and equal protection violation** as it effect the petiti
8 oners Overall Sentence. This petition is fashioned in accordance with

9 NRAP Rule 21

1) Statement of Facts

10 on July 10th 2005 petitioner Committed his offence
11 petitioner was sentence August 14th 2007 to Maximum Term of Fifty (50)
12 years with a Minimum "Parole eligibility" of Twenty (20) years (as
13 for Count one) & a Maximum Term of one Hundred Twenty months ⁽¹²⁰⁾ (18)
14 with a Minimum "Parole eligibility" of forty-eight months to run
15 concurrent to Count one (1) (as for Count Two, petitioner was, in
16 addition, given credit for a Total of seven Hundred Fifty-Five Days
17 for credit for Time Served (755 days). This petition should

18 **not be construed as a writ of habeas Corpus** as it deals directly
19 with already established Law of the case which the respondents
20 have blatantly refused to comply with the Supreme Court rulings as
21 such the writ must issue. petitioner meets all standards set for by
22 the Nevada supreme court ruling in Williams and Vonseydewitz and therefore
23 demands issuance of the writ of mandamus within 30 Days as required
24 by NBS 34.185 petitioner is being subjected to **ex-post-Facto**
25 application of NBS 209.4465(8) which did not exist prior to 2007 and
26 does not allow for retroactive application of the exemptions. this **Violation**
27 **of the petitioners Constitutional right must cease immediately.**

II. STATEMENT OF FACTS

2) Issues Presented The petitioner present the following issues to this Court: a) petitioner is being deprived of statutory credits which will substantially ~~lessen~~ lessen the time spent on these prison sentences. B) This deprivation is preventing the petitioner from participating in minimum custody programs which would further lessen time spent. C) petitioner has been subjected to the ex-post-Facto application of NRS.209.4465(8) which did not exist when petitioner committed his offence July 10th 2005 (see Exhibit A, Inmate Grievance Report) D) Legislature did not intend to prohibit NRS 209.4465(7b) under the second statute, which is "Parole eligibility" statute. (see Exhibit B, Vonseydewitz Vs. Legrand Supreme Court of Nevada, 2015 Nev. Unpub Lexis 778 NO. 66159 June 24, 2015 Filed, Order of Reversal and Remand). E) Due to the Constitutional deprivations, petitioner is entitled to fair and just compensation, as to Article 4 sec 2, and 14th Amendment, sec.1

3) Relief Sought The petitioner seeks relief as follow: 1) That this court immediately issue a writ of mandamus ordering the respondents to properly apply and Calculate 30days per month to both the Minimum and Maximum of petitioners sentence as intended in NRS 209.4465 (6) (4) (7a) (7b). 2) order appropriate compensation to be paid for the Constitutional deprivation suffered in accordance with NRS 34.270 3) Order respondents to ~~show~~ Show Proof of the ~~calculation~~ Calculation and application of the statutory credits within 30days as prescribed by NRS 34.185 4) order respondents to take notice of the following set forth in the U.S. Constitution (see Exhibit C Definition Black's Law Dictionary). petitioner is entitled to the issuance of this writ of mandamus to compel the respondents to perform an act which the law especially enjoins as a duty. Another remedy is insufficient or unable to address this issue.

The respondent ~~ex-post-Facto~~ application of NRS 209.4465 (a) (4) (7a) (7b) violates the petitioners Constitutional Rights to be free from ex-post-Facto law Article 1, sec 10, and also violates Article 4 sec 2, privileges and immunities, the 9th Amendment. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage other retained by the people. the 14th Amendment Due process, and equal protection of the law. Assuch in order to protect the petitioner from further deprivation and to fairly compensate the petitioner for the deprivations suffered this mandamus must issue 5) Conclusion. In Conclusion the petitioner has shown that the extraordinary relief of mandamus is necessary and warranted in this case

Respectfully Submitted

DATED this ~~3rd~~^{5th} day of February, 2020.

D. Coleman
Signature of Appellant

Demarene Coleman
Print Name of Appellant

Exhibit A

exhibit A show the violation of the ex-post-Facto law by the NDOC
as to NBS 209.4465(8) Through the Inmate Grievance Report
on All three Grievance Levels. (see Attach)





State of Nevada
Department of Corrections

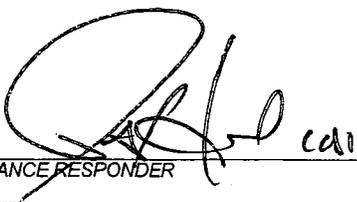
4

INMATE GRIEVANCE REPORT

ISSUE ID# 20063022609

ISSUE DATE: 04/29/2016

INMATE NAME		NDOC ID	TRANSACTION TYPE	ASSIGNED TO	
COLEMAN, DEMARENE		1007335	RTRN_INF	JHILDERBRAND	
LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING	USER ID	STATUS
IF	06/15/2016	4	Denied	CGORSLINE	A
INMATE COMPLAINT					
OFFICIAL RESPONSE					
<p>The recent Nevada Supreme Court case related to AB 510 credits being applied to a particular minimum term does not apply to any inmates other than the inmate specified in the Order. The Order specifically stipulates that "An unpublished order shall not be regarded as precedent and shall not be cited as legal authority." If and when anything would change which would impact other NDOC inmates, the NDOC will put out an announcement to inform staff and inmates accordingly.</p> <p>Grievance Denied</p>					



GRIEVANCE RESPONDER

Report Name: NVRIGR
Reference Name: NOTIS-RPT-OR-0217.2
Run Date: JUN-15-16 01:45 PM

RECEIVED

Page 1 of 1
JUL 11 2016

Levelock Correctional Center
Gardnerville



State of Nevada
Department of Corrections

INMATE GRIEVANCE REPORT

ISSUE ID# 20063022609

ISSUE DATE: 04/29/2016

INMATE NAME COLEMAN, DEMARENE		NDOC ID 1007335	TRANSACTION TYPE RTRN_L1	ASSIGNED TO WSANDIE
LEVEL 1	TRANSACTION DATE 07/20/2016	DAYS LEFT 4	FINDING Denied	USER ID CGORSLINE
STATUS A				

INMATE COMPLAINT

OFFICIAL RESPONSE

The response to your informal grievance was correct and adequate. Furthermore, per the current interpretation, set down by the Nevada Attorney General's Office and followed by the NDOC, of NRS 209.4465(9)(c)(d), your offense, and sentence structure, are not eligible for minimum credit deductions.
Grievance Denied

GRIEVANCE RESPONDER

Report Name: NVRIGR
Reference Name: NOTIS-RPT-OR-0217.2
Run Date: JUL-20-16 04:50 PM

Exhibit B

Exhibit B shows that the Nevada Supreme Court clearly states that Legislature DID NOT intend to prohibit the "Parole-eligibility" sentence statute under NRS 209.4465(7b) both Sentencing statutes are entitled to NRS 209.4465(1a)(4)(7b)(7a) (See Vonseydewitz vs. Legrand, 2015, NO. 66159, June 24, Order of Reversal and Remand) also see Vonseydewitz vs Legrand order to show cause) It clearly state The legislative history of NRS 209.4465 is silent as to its intent regarding parole However a person becomes eligible for parole once they have served the minimum term of imprisonment, and since 209.4465(7b) allows for the application of statutory credits to parole eligibility the plain language of the statute cannot be "interpreted in a way that renders them compatible, not contradictory the newer and more specific statute should generally take precedence NRS 209.4465(7b) is the more recently enacted statute and its specific provision allowing the deduction of statutory credits from eligibility for parole should take precedence the NRS 209.4465(7b) would be the controlling statute for determining term of imprisonment not allowing "Parole-eligibility" sentencing statutes are absolute Unconstitutional, legislatur is the branch of government responsible for making statutory laws. Statutory laws is the body of law driven from statutes rather than from Constitutions or judicial decisions. Judicial Branch is the branch of government consisting of the court whose function is to interpret, apply and generally administer and enforce

1 the laws. legislative power is to make laws and to alter
2 them at discretion. a legislative body's exclusive authority
3 to make amend and repeal laws. Under Federal law this
4 power is vested in Congress consisting of the House of
5 Representatives and the Senate. A legislative body may
6 delegate a portion of its lawmaking authority to agencies
7 within the executive branch for purpose of rulemaking and
8 regulation. Those reason are absolute why denial of "Parole-
9 eligibility" sentencing statutes are clearly Unconstitutional
10 (see Williams vs State Dept of Corr 133 Nev Adv op 75,402
11 P3d 1260 (2017) The Court interpretation of NRS 209.4465(7b)
12 applies only to crimes committed on or between July 17, 1997
13 the effective date of NRS 209.4465 and June 30, 2007. NRS 209.4465(7b)
14 shall not be construed to deny or disparage petitioner of credits
15 to his minimum sentence. Petitioner Crime without any
16 Doubt was committed before June 30, 2007

17
18
19
20
21
22
23
24
25
26
27

parole." 1997 Nev. Stat., ch. 641, § 4, at 3175. The statute also contained an exception: Credits would not apply to parole eligibility if "the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." *Id.*

Vonseydewitz was sentenced pursuant to NRS 193.330(1)(a)(1), which provides for a sentence of "a minimum term of not less than 2 years and a maximum term of not more than 20 years." NDOC appears to be applying NRS 209.4465(7)(b)'s exception to Vonseydewitz and is not deducting his statutory credits from his minimum sentence.

Although NRS 193.330(1)(a)(1) provided for a minimum term of not less than two years, it does not necessarily follow that it specified a minimum sentence that must be served before Vonseydewitz becomes eligible for parole. "[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results." *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (quoting *S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)).

During the relevant time period, Nevada's sentencing statutes primarily phrased parolable sentences³ in one of two ways. See 1995 Nev. Stat., ch. 443, § 1, at 1167-68 (NRS 193.130). The first way was expressed as a "minimum-maximum" statute, which provided for a sentence of "a minimum term of not less than [x] years and a maximum term of not more than [y] years." See, e.g., NRS 193.330(1)(a)(1), (2); accord NRS 200.730(2); NRS 193.130(2)(b); see also 1995 Nev. Stat., ch. 443, § 1, at 1167-68 (NRS 193.130(2)(e)). The second way was expressed as a "parole" statute, e.g., *Second Statute* which provided for a "[maximum sentence], with eligibility for parole beginning when a minimum of [x] years has been served." See, e.g., NRS 200.030(4)(b)(2), (3); NRS 200.320; NRS 200.366(2)(a)(2).

Had the Legislature intended minimum-maximum sentencing statutes to satisfy NRS 209.4465(7)(b)'s exception, it could readily have done so by using the parole-eligibility verbiage. But "a material variation in terms suggests a variation in meaning." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012); see also *Sheriff v. Andrews*, 128 Nev. 544, 128 Nev. Adv. Rep. 51, 286 P.3d 262, 264 (2012) (stating that "the Legislature clearly knows how to prohibit a conduct under one statute and does not prohibit it under a second statute if the Legislature did intend to prohibit it under [the second statute]"). The very different verbiage that parole-eligibility and minimum-maximum sentencing statutes used to indicate the minimum sentence a court could impose would thus be expected to have had some meaning. Parole-eligibility statutes clearly fell within NRS 209.4465(7)(b)'s exception because they specified that eligibility for parole began only after the minimum sentence was served. In turn, the lack of reference to parole eligibility in a minimum-maximum statute suggests that the minimum term imposed was not the minimum term that must be served before an offender was eligible for parole.

Further, adopting the Warden's interpretation would have rendered NRS 209.4465(7)(b) nugatory in its entirety from its inception. "[N]o part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided." *Indep. Am. Party v. Lau*, 110 Nev. 1151, 1154, 880 P.2d 1391, 1392 (1994) (quotations omitted); Scalia & Garner, *supra*, at 176. Parole-eligibility statutes clearly fell within NRS 209.4465(7)(b)'s exception, and if minimum-maximum statutes also did, then the exception would have swallowed the whole, depriving NRS 209.4465(7)(b)'s general rule that statutory credits "[a]pply to eligibility for parole" of any applicability.

Rather than relying on the meaning of the relevant statutes, the Warden turned to statutory history to rebut Vonseydewitz's claims. However, this was premature without first having established that the meaning of the statutes was not plain. See *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644,

Exhibit C

exhibit C show the followings of the US Constitutional Rights
Definitions from Black's Law Dictionary.

Privilege - A special legal right, exemption, or immunity granted to a person or class of person; an exception to a duty.

Special - of relating to or designating a species, kind or individual thing 2) (of a statute, rule etc) designed for a particular purpose. 3) (of powers, etc) unusual; extraordinary.

Immunity - Any exemption from a duty liability or service of process.

Equal Protection - The Constitutional guarantee under the 14th Amendment that the government must treat a person or class of persons the same as it treat other persons or classes in like circumstances.

~~Article VI, Clause 2~~ This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States shall be bound by Oath or Affirmation, to support this Constitution.

Exhibit D

Article IV, and Amendment XIV clearly states

The Citizens of each state shall be entitled to All
of Citizens in the Several states

All person born or naturalized in the United
States, and states and of the state wherein they reside.

of citizens of the United states; nor shall
any state deprive any person of life, liberty, or property,
without due process of law

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

CERTIFICATE OF SERVICE BY MAILING

I, Demarene Coleman, hereby certify, pursuant to NRCP 5(b), that on this 5th
day of February, 2020, I mailed a true and correct copy of the foregoing, "First Amendment
Petition for Writ of Mandamus pursuant to NRS 34.185"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Steven D. Grierson Clerk of
The Court 200 Lewis Avenue
3rd Floor Las Vegas, NV
89155-1160

Steve Wolfson Districtt
Attorney 200 Lewis Avenue
Las Vegas NV. 89155-2212

Aaron D. Ford Deputy Attorney
General State of Nevada 555 E
Washington Ave, st 3900 Las
Vegas Nevada 89101-1068

CC:FILE

DATED: this 5th day of February, 2020

Demarene Coleman
#1007335
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding First Amend

ment Petition For Writ of Mandamus pursuant to NRS 34.185
(Title of Document)

filed in District Court Case number C-215295

Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-or-

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

D. Coleman UCC1-308 without prejudice
Signature

2-5-20
Date

Demarene Coleman
Print Name

First Amendment Petition Writ Mandamus
Title

Demarene Coleman #1007335

: P.O. Box 208

Indian Springs, NV. 89070

CONFIDENTIAL

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
346 - 346
WILL FOLLOW VIA
U.S. MAIL**

1 DEMARENE COLEMAN
Defendant / In Propria Persona
2 SDC, Post Office Box-208
Indian Springs, Nevada.89070-0208.

FILED
JUN 14 2021

Alan J. Williams
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

PP
DA

7 THE STATE OF NEVADA,)
Plaintiff,)
8 Vs.)
9 DEMARENE COLEMAN,)
Defendant.)

Case No. 05C215295-1
Dept. No. Dept. 17
Docket 1

MOTION TO APPOINT COUNSEL

Date Of Hearing:
Time Of Hearing: July 9, 2021
8:30 AM

17 COMES NOW the Defendant Demarene Coleman in proper person and
18 hereby moves this Honorable Court for an ORDER granting him Counsel in the herein
19 proceeding action.

20 This Motion is made and based upon all papers and pleadings on File herein
21 and attached Points and Authorities.

23 Dated: This 27th Day of May, 20 21.

Respectfully Submitted,

BY: Demarene Coleman
Demarene Coleman #1007335
Defendant, In Forma Pauperis:

POINTS AND AUTHORITIES

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

NRS.34.750 Appointment of Counsel for indigents;pleading sippemental to
petitiion;response to dismiss:

"If the Court is satisfied that the allegation of indigency is True and the
petition is Not dismissed summarily,the Court may appoint counsel to represent
the-"petitioner/defendant."

NRS.171.188 Procedure for appointment of attorney for indigent defendant:

"Any defendant charged with a public offense who is an indigent may, by oral
statement to the District Judge,justice of the peace,municipal judge or master,
request the appointment of an attorney to represent him."

NRS 178.397 Assignment of counsel;

"Every defendant accused of a gross misdemeanor or felony who is financially
unable to obtain counsel is entitled to have counsel assigned to represent him at
every stage of the proceedings from his initial appearance before a magistrate or
the court through appeal,unless he waives such appointment."

WHEREFORE ,petitioner/defendant,prays this Honorable Court will grant his
motion for the appointment of counsel to allow him the assistance that is needed
to insure that justice is served.

Dated:This 27 Day Of May ,20 21.

Respectfully Submitted,

BY: Demarlene Coleman
Demarlene Coleman # 10073-5
Defendant, In Forma Pauperis:

////
////
////

ADDITIONAL FACTS OF THE CASE:

1 1) plaintiff's imprisonment will is greatly limited his ability
2 to prepare for arguments is case of a court hearing due to the
3 Covid 19 situation at SDCC where prisoners have not been permitted
4 to access to the prison Law Library, for legal research moreover
5 no legal books federal Courts rule materials etc. are allowed to be
6 checked out the Law Library

7
8 2) The issues in this case is complex, without Counsel plaintiff will
9 be handicap, and will more likely not receive a fair Hearing

10
11 3) A hearing in this case will likely involve misleading information
12 involving petitioner Specific Performance motion and argument
13 in the motion, which Counsel would assist plaintiff with in
14 presenting this motion which could determine the out come of
15 The Hearing

16
17 4) The Defendant not being of sound legal mind hereby, ask that
18 the court not hold the defendant to the same standard as a
19 member of the legal profession

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

AFFIDAVIT OF: Demarene Coleman

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, Demarene Coleman the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following:

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 27 Day of May

2021.

BY: Demarene Coleman
Demarene Coleman # 1007335
Post Office Box-203 (SDCC)
Indian Springs, Nevada 89070
Affiant, In Propria Personam:

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

CERTIFICATE OF SERVICE BY MAILING

I, Demarene Coleman, hereby certify, pursuant to NRCP 5(b), that on this 27th
day of May, 2021, I mailed a true and correct copy of the foregoing, "Motion To
Appoint Counsel"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Steven D. Grieson
Clerk OF The Court
200 Lewis Ave 3rd Floor
Las Vegas NV
89155-1160

Steve Wolfson
District Attorney
200 Lewis Ave
Las Vegas, NV
89155-2212

CC:FILE

DATED: this 27th day of May, 2021.

Demarene Coleman
Demarene Coleman # 1007335
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Motion to Appoint Counsel
(Title of Document)

filed in District Court Case number C215295

Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-or-

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

Demarene Coleman
Signature

5/27/21
Date

Demarene Coleman
Print Name

Title

Exhibits Attached

- 1) Motion For "First Instance" "Specific Performance"
- 2) Exhibit "A" Plea Agreement
- 3) Exhibit "B" PSI
- 4) Exhibit "C" Entry of Plea
- 5) Exhibit "D" J.O.C
- 6) Exhibit "E" Court Minutes of Sentencing
- 7) Exhibit "F" Criminal Complaint

1 Demarene Coleman ID NO. 1007335

2 SOUTHERN DESERT CORRECTIONAL CTN.
3 20825 COLD CREEK RD.
4 P.O. BOX 208
5 INDIAN SPRINGS, NV 89070

6 IN THE EIGHTH JUDICIAL DISTRICT
7 COURT STATE OF NEVADA
8 COUNTY OF CLARK

9 THE STATE OF NEVADA

10 vs.

11 DEMARENE COLEMAN

CASE NO.: C215295

DEPT. NO.: 5

DOCKET: _____

12
13 Motion For A "Specific Performance" to Correct Guilty Plea
14 Agreement as to Both parties Agreed to Twenty (20) to Fifty (50)
15 years

16
17
18 COMES NOW, Prose, Petitioner Demarene Coleman, herein above respectfully
19 moves this Honorable Court for an "First Instance" Specific Performance to
20 have Guilty Plea Agreement Corrected to (Twenty (20) to Fifty (50))
21 As agreed Upon by Both parties

22 This Motion is made and based upon the accompanying Memorandum of Points and
23 Authorities,

24 DATED: this 27th day of May, 2021

25 BY: Demarene Coleman

26 DEMARENECOLEMAN # 1007335

27 Defendant In Proper Personam
28

ADDITIONAL FACTS OF THE CASE:

1 Petitioner is an inmate of the N.D.O.C Southern Desert Correctional
2 Center who has been incarcerated since July 19th 2005 in
3 (See: Exhibit "D" J.O.C) of Count one (1) First Degree Murder
4 (Category A Felony ^{NRS 200.010} NRS 200.030) & Count = Two (2) Battery with use
5 of a Deadly Weapon (Category B Felony NRS 200.481)
6 (See: August 22nd Stamped Filed J.O.C 2007 case # C215295)
7 Nev Eight Judicial District Court Department Five (5)

8
9 Sentence;
10 Petitioner was sentenced by Judge Jackie Glass
11 To a Maximum Term of Fifty (50) years with a Minimum "Parole
12 Eligibility" of Twenty (20) years (as for Count one) & a Maximum
13 Term of; One Hundred Twenty Months with a Minimum "Parole
14 Eligibility" of Forty-Eight Months ⁽¹²⁰⁾ (48) to run concurrent to
15 Count one (1) (As for Count Two (2))

16
17 Petitioner was in addition given credit for a total of
18 Seven Hundred Fifty Five days for credit for Time Served (755)
19 petitioner was represented by his The Counsel
20 Carmine Colucci ESQ

21
22 Petitioner now is presenting this said Motion as Pro Per
23 Status seeking this Courts Review and order as a "First Insta
24 nce" "Specific Performance" Motion

1 The State of Nevada there is Three Different Sentencing Statute
2 that Defendants receive when sentenced to a prison term They are
3 "Minimum-Maximum Statute" "Parole-Eligibility Statute" and "Determinate
4 Sentence Statute" They are Expressed

5
6 **Minimum-Maximum** - which provided for a sentence of a Maximum
7 Term of not less than (X) years and a Maximum term of not more
8 than (Y) years

9
10 **Parole-Eligibility** - which provided for maximum sentence with eligibility
11 for parole beginning when a minimum of (X) years has been served

12
13 **Determinate Sentence** - A sentence for a fixed rather than indetermi
14 nate length of time

15
16 **Note*** In the years between 1997-2007 the "Minimum-Maximum Statute"
17 allowed for inmates to receive good time credits and meritorious credits
18 from their minimum and maximum term of their sentence which gives an
19 inmate the opportunity to go to parole board earlier than expected
20 because it does not mention parole eligibility within the statute

21
22 **Note*** The "Parole-Eligibility Statute" does not let good time credit or
23 meritorious credits apply to their minimum term because it express that
24 with eligibility for parole beginning when a minimum of (X) years has
25 been served, you can only receive good time credits from the Maximum
26 term This statute has no chance to go to an early parole board

1 Petitioner initial charges whereas follows

2 Count 1- Murder with use of a Deadly Weapon

3 Count 2- Attempt Murder with use of a Deadly Weapon

4 Count 3- Attempt Murder with use of a Deadly Weapon (see; Exhibit
5 "F" Criminal Complaint)

6
7 To get a guilty Plea, from Defendant. The District Attorney offered the
8 Defendant as a guilty plea agreement. for Count 1- First Degree Murder
9 (Category A Felony) Count 2- Battery with the use of a Deadly Weapon
10 (Category B Felony) Twenty (20) to Fifty (50) years

11
12 Defendant Accepted the guilty plea Agreement. Both parties agreed to
13 recommend Twenty (20) to Fifty (50) years in the N.D.O.C. the Judge Accepted
14 the plea Agreement (see; Exhibit "E" Entry of Plea)

15
16 The Plea Agreement of (20 to 50) does not mention anything about parole
17 eligibility within the initial agreement (see; Plea Agreement Exhibit "A") and
18 (see; Exhibit "B" PSI)

19
20 Petitioner would like this Court's Interpretation of both the
21 Sentencing Statute of (Minimum-Maximum Statute) and (Parole-Eligibility)
22 and What Statute does the Twenty (20) to Fifty (50) years falls under.
23 Petitioner is not convinced that it is the Parole-Eligibility

1 The judge went on record to accept Defendant guilty plea but instead
2 sentence Defendant to a "Parole-Eligibility Statute". petitione should have
3 been sentence to a Minimum-Maximum Statute. At time of Negotiation.
4 Defendant was not informed by Attorney, or District Attorney, that these
5 Sentencing Statute played a major factor in Sentencing. Defendant
6 recognized that the Maximum of Fifty (50) years with a Minimum parole-eligibility
7 of Twenty (20) years Was Not the initial plea agreement. Defendant told
8 Attorney on record that he was not understanding these possibilities and
9 consequences. The judge also went on record to say she will ordinarily
10 follow what was agreed to, and she understood that this is what made the
11 negotiation go forward (see; Exhibit "C" Entry or Plea, pg 8)

12
13 Defendant informed Attorney at plea entry hearing that the sentence was not
14 what both parties agreed to. Defendant also informed attorney he would like
15 to withdraw plea, if it was not the (20 to 50) years. on sentencing date
16 July 24. Attorney requested a Continuance for leave to file a motion to
17 withdraw guilty plea. The motion was heard Aug. 14 2007. the district Court
18 denied motion to withdraw guilty plea, and sentence defendant as Followed
19 To a Maximum of Fifty (50) years with a Minimum of Parole-Eligibility of Twenty
20 (20) years to run Concurrent with Count 2 - A Maximum (20) months with a
21 Minimum parole-eligibility of (48) month to run Concurrent with (755) days
22 (see; Exhibit "D" J.O.C.) also (see; Exhibit "E" court minutes of sentencing
23 date, and Exhibit "A" Plea Agreement, pg 1 these are the correct Sentences
24 Defendant should have received)

1 The Failure to inform Defendant of Sentencing Statute, that defendant
2 get Sentence by is Deliberate Indifference and prejudice it can
3 effect the amount of time that can be served. This was a total
4 Failure of Consideration, and makes this plea deal Infirm and
5 Cause for resentencing

6
7 When a district court accept a defendant guilty plea, it Must
8 act with utmost solicitude to ensure that a defendant has full
9 understanding of both the nature of the charges and the direct
10 Consequences arising from a plea of guilty. A consequence is deemed
11 direct if it has a definite immediate and largely automatic effect
12 on the range of the defendant punishment (See; Banka vs Nev (2020)
13 Lexis 74; 136 Nev. Adv. Rep. 81. No. 80181 Dec 10, 2020 Filed)

14
15 Defendant guilty plea to First Degree Murder was not knowingly
16 intelligently or voluntarily entered with an understanding of the
17 possibility or the consequences of the plea in violation of his right
18 to Due process of Law guarantee by the Fifth and Fourteenth amend
19 ment. What was agreed to was, what was recommended, (Twenty
20 (20) to Fifty (50) years) is what was understood not a Maximum of Fifty
21 (50) years with parole-eligibility at Twenty (20) year. The lack of underst
22 anding is on the record (See: Exhibit "A" Plea Agreement Pg. 7)

1 Both parties agreed to Twenty (20) to Fifty (50) years in the NDOC.
2 Defendant Did Not, and would have Not, agreed to the plea agreement if
3 from the initial start, would have said A Maximum of Fifty (50) years
4 with a Minimum parole-eligibility of twenty (20) years. The initial
5 (20 to 50) Does Not Mention anything of parole-eligibility within the
6 Twenty (20) to Fifty (50) years in the plea agreement on pg 1 (See; Exhibit "A"
7 plea Agreement, pg 1) or no time during negotiation, parole-eligibility Not
8 being mentioned in the initial beginning of the (20 to 50) falls within the
9 Minimum-Maximum Statute, parole-eligibility being mentioned within the
10 Maximum of Fifty (50) years with a Minimum parole-eligibility of Twenty (20)
11 years, makes this sentence a parole-eligibility statute, which both parties
12 Did Not Agree to (See; Statley vs Nev 106 NV 75; 787 P.2d 396, 1990 Nev. Lexis
13 23, No 19599) The basis for the district court judgment was that the plea
14 bargain had been breached; at no time did the district court indicate that it
15 believed that its prior judgment had been based on an incorrect interpretation
16 of the law. the sentence was based on an incorrect interpretation of the
17 statute. The district Court retains jurisdiction to Correct any Sentence at
18 any Time.

19
20 When the State enters a plea agreement, it is held to the Most
21 Meticulous Standards of both promise and performance... The Violation of the
22 terms or the spirit of the plea bargain requires reversal (see; Citti vs Nev
23 107 Nev 81; 807 P.2d 724; 1991 Nev Lexis 12, No 20934)

1 The (20 to 50) plea Agreement should receive the exact same consideration
2 as in the case of (Vonseydewitz vs Legrand 2015 Nev unpub Lexis 778 No 66159
3 June 24, 2015) If the District Attorney had intended for Defendant to be sente
4 nce under the parole-eligibility statute should have been mentioned in the
5 initial start of the Plea Agreement, as the legislature had use the
6 verbiage. instead the plea agreement read as follows (Both parties agree
7 to recommend Twenty(20) to Fifty(50) years in the N.D.O.C The State
8 will not oppose Concurrent time between the counts (see; Exhibit "A"
9 plea Agreement pg. 1)

11 The lack of reference to parole-eligibility in the initial beginning of the
12 plea agreement, Defendant should Not have been sentence to a Maximum
13 of Fifty(50) years with a Minimum parole-eligibility of Twenty (20) years.
14 This should be an invalid plea agreement, also a breach of agreement.
15 Petitioner should receive an Immediate "Specific Performance" to
16 correct sentence.

18 Though plea agreement are generally analyzed under contract law if
19 language of agreement is ambiguous Court Must consider "Essence of
20 the particular agreement" and parties reasonable expectation because of
21 special public interest in context of plea bargain (see; Santobello vs New
22 York 404 us. 257, 30 L.Ed 2d 427, 92 Sct 495) Also (see; Citti vs Nev. 107 Nev 89; 807
23 P.2d 724; 1991 Nev Lexis 12 No 20934) The language of plea agreement was
24 (Twenty (20) to Fifty(50) years in the N.D.O.C. The State will not oppose concurrent
25 Time between the counts) (see; Exhibit "A" Plea Agreement, pg. 1)

1 A Court of appeals reviews plea agreement using ordinary rules of **Contract**
2 **Interpretation** but is mindful of the special public interest concerns that
3 arise in the plea agreement context accordingly it reviews the **language**
4 of the **plea agreement** objectively and hold the government to the **literal**
5 **terms** of the plea agreement therefore when a plea agreement is **unambiguous**
6 on its face the court generally interprets the agreement according to its
7 **plain meaning** when the **language** of an agreement is **ambiguous**, however
8 the **essence** of the **particular agreement** and the government conduct relating
9 to its obligation in that case are **determinative** the court interprets the
10 **term** of the agreement according to the parties reasonable expectation
11 and **construe** any **ambiguities** against the **Drafter** the government and in
12 **Favor** of the **Defendant**. The government **Must** **Fullfill** any **promise** that
13 it **Expressly** or **impliedly** makes in **Exchange** for a Defendant guilty plea
14 the remedy for breach of a plea agreement is **Specific Performance** and a
15 **remand** for **resentencing** before a different judge or a **Remand** to permit
16 the Defendant to **Withdraw his plea** (see; *Santobello vs New York* 404 US 257
17 262 92 S.ct 495 30 L.Ed.2d 427 (1971)) Also (see; *Citti vs Nev.* 107 Nev. 89; 807 Pad
18 724; 1991 Nev Lexis 12 No 20934)

1 Note* It is a Cardinal principle of Contract Law that No term of a
2 Contract should be Construed to be in Conflict with another
3 unless no other reasonable construction is possible

4
5 (see; McCarthy vs US 394, 466, 459, 89 S.Ct 1166 22 L.Ed 2d 418 (1969))

6 The prejudice inheres in a failure to comply with Rule 11 for
7 noncompliance deprives the defendant of the rules procedural
8 safeguards which are designed to facilitate a more accurate determina
9 tion of the Voluntariness of his plea our holding is that a defendant
10 whose plea has been accepted in Violation of Rule 11 should be afforded
11 the opportunity to plead anew (see; Exhibit "A" Plea Agreement, and Also
12 Exhibit "C" Entry of Plea) Defendant lach of understanding, and incorrect
13 Sentence.

14
15 A party's right under a plea agreement are limited by what the parties
16 in fact agreed to Agreement the government and defense have
17 actually agreed on what amounts to an appropriate sentence or have
18 agreed to one of the Specified Components. The amendment also ma
19 kes it clear that this agreement is binding on the court when acc-
20 epted, it is the situation under the current rule the court retains
21 absolute discretion whether to accept a plea agreement
22 (see; Santobello vs New York, 404 us 257, 30 L Ed 2d 427, 92 S.Ct 495)

1 This plea agreement of (20 to 50) was used to induce Defendant to plead
2 guilty. Trial Counsel and District Attorney promised the defendant would
3 receive a Specific Sentence, which was used to induce his guilty. This
4 constitutes for ineffective assistance of Counsel, and requires an evidenti-
5 ary hearing to resolve the claim (see; US vs Espinozo 866 F.2d 1067 (9th cir
6 1988) Counsel allowed without objection for the judge to sentence Defendant
7 to what is an parole-eligibility statute. The lack of reference of parole-
8 eligibility in the initial (20 to 50) is not an parole-eligibility statute.
9 The initial (20 to 50) is an Minimum-Maximum Statute.

11 Acceptance of the plea agreement binds the court to the initial agree-
12 ment that both parties agreed to that is, Twenty (20) to Fifty (50) years. This
13 is more Favorable to defendant (Rule 11)

14 (see; Santobello vs New York, 404. us. 257, 30 L Ed 2d, 427, 92 Sct 495)

15 (see; Citti vs Nev 107 Nev 89; 807 P.2d 724; 1991 Nev. Lexis 12 No 20934)

17 Sentencing Statute are very important Factor when it comes to Effect and
18 the range and punishment. Defendant should have been made aware of the
19 Sentencing Statute, some where along the lines of the Plea Agreement Negotiat-
20 ion, Entry of Plea, or at Sentencing. At no point in time was Defendant
21 Informed of Sentencing Statute. (see; Boykin vs Alabama 395 us. 238, 89 S. ct
22 1709, 23 L Ed 2d 274 (1969)). Federal Rule 11 prescribes the advice which the
23 court must give to the defendant as a prerequisite to the acceptance of a
24 plea of guilty. The former rule required that the court determine that the plea
25 was made with "understanding of the nature of the charge and the consequences
26 of the plea" The amendment identifies more specifically what must be explained
27 to the defendat and also codifies, in the rule the requirement of (Boykin vs Alabama
28 395, us. 238, 89 S. ct 1709, 23 L. Ed. 2d 274) (see; Exhibit "A" Plea Agreement and Exhibit "C" Entry of
Plea)

1 Defendant was induce to believe that he would receive the
2 Minimum-Maximum Sentence statute (20 to 50) because the lack of
3 reference to parole-eligibility to the initial offer. Sentencing
4 Defendant to a Maximum Fifty (50) years with parole-eligibility begin-
5 ing at Twenty (20) years. this cause Deliberate Indifference, and prejudice
6 This was done to get defendant guilty plea. This shows Bad Faith on the
7 Court behalf. The district Attorney, Judge, and Attorney for Defendant.
8 all are Educated to Law, unlike Defendant. They all where aware of
9 these Sentencing Statute the court sentence defendant by. This Violates
10 defendant Fifth, and Fourteenth amendment right to Due Process, and
11 Act 1, Sec 10. impairing the obligation of Contracts

12 Conclusion

13
14
15 Given the Veracity of the Above the Defendant would request The Following
16 relies

17
18 1) A Specific Performance to move the Trial Court to Amend the J.O.C in
19 case No C215295 to reflect the sentence as 20 year Minimum to 50 years
20 Maximum as agreed to in the guilty plea agreement (pg 1)

21
22 2) or Resentence Defendant to a Maximum 25 years with parole-eligibility at 10
23 years Minimum

24
25 For these formentioned reasons it is more than evident that petitioner is
26 entitled to Specific Performance or resentencing or any relief deemed necessary
27 by this Court. Where for petitioner prays to have his Motion to Specific Perfo-
28 rmance Granted..... Respectfully Submitted

CERTIFICATE OF SERVICE BY MAILING

I, Demarene Coleman, hereby certify, pursuant to NRCP 5(b), that on this 27th
day of May, 2021, I mailed a true and correct copy of the foregoing, "Motion For
"First Instance" "Specific Performance" to Correct G.P.A"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Steven D Grierson
Clerk of The Court
200 Lewis Ave 3rd Floor
Las Vegas, NV
89155-1160

Aaron D. Ford Deputy Attorney
General State of Nevada 555 E
Washington Ave Ste 3900 Las
Vegas NV 89101-1068

Steve Wolfson
District Attorney
200 Lewis Ave
Las Vegas NV
89155-2212

CC:FILE

DATED: this 27th day of May, 2021.

Demarene Coleman 1007335
Demarene Coleman #
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

"First Instance" "Specific Performance"
(Title of Document)

filed in District Court Case number C 215295

Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-or-

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

Demarene Coleman
Signature

5/27/21
Date

Demarene Coleman
Print Name

Title

Exhibit "A"

Plea Agreement

1 **GMEM**
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DEMARENE COLEMAN,
13 #1963947

14 Defendant.

CASE NO: C215295
DEPT NO: V

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: **COUNT 1 – FIRST DEGREE MURDER**
17 **(Category A Felony - NRS 200.010, 200.030)** and **COUNT 2 - BATTERY WITH USE**
18 **OF A DEADLY WEAPON (Category B Felony - NRS 200.481)**, as more fully alleged in
19 the charging document attached hereto as Exhibit "1".

20 My decision to plead guilty is based upon the plea agreement in this case which is as
21 follows:

22 ~~Both Parties agree to recommend twenty (20) to fifty (50) years in the Nevada~~
23 ~~Department of Corrections. The State will not oppose concurrent time between the defendants.~~

24 CONSEQUENCES OF THE PLEA

25 I understand that by pleading guilty I admit the facts which support all the elements of
26 the offense(s) to which I now plead as set forth in Exhibit "1".

27 As to **Count 1**, I understand that as a consequence of my plea of guilty the Court
28 must sentence me to imprisonment in the Nevada Department of Corrections for life without

1 the possibility of parole OR a definite term of fifty (50) years with eligibility for parole
2 beginning at twenty ~~(2)~~²⁰ years ~~plus an equal and consecutive term for use of a deadly weapon~~
3 ~~enhancement~~. I understand that the law requires me to pay an Administrative Assessment
4 Fee.

5 As to Count 1, I understand that I am not eligible for probation for the offense to
6 which I am pleading guilty.

7 As to Count 2, I understand that as a consequence of my plea of guilty the Court
8 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
9 term of not less than TWO (2) years and a maximum term of not more than TEN (10) years.
10 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
11 term of imprisonment. I understand that I may also be fined up to \$10,000.00. I understand
12 that the law requires me to pay an Administrative Assessment Fee.

13 I understand that, if appropriate, I will be ordered to make restitution to the victim of
14 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
15 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
16 reimburse the State of Nevada for any expenses related to my extradition, if any.

17 I understand that I am eligible for probation for the offense(s) to which I am pleading
18 guilty. I understand that, except as otherwise provided by statute, the question of whether I
19 receive probation is in the discretion of the sentencing judge.

20 I understand that if more than one sentence of imprisonment is imposed and I am
21 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
22 the sentences served concurrently or consecutively.

23 I also understand that information regarding charges not filed, dismissed charges, or
24 charges to be dismissed pursuant to this agreement may be considered by the judge at
25 sentencing.

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

28 I understand that if my attorney or the State of Nevada or both recommend any

1 specific punishment to the Court, the Court is not obligated to accept the recommendation.

2 I understand that if the State of Nevada has agreed to recommend or stipulate a
3 particular sentence or has agreed not to present argument regarding the sentence, or agreed
4 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
5 when the offense could have been treated as a felony, such agreement is contingent upon my
6 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
7 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
8 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
9 right to argue for any lawful sentence.

10 I understand if the offense(s) to which I am pleading guilty to was committed while I
11 was incarcerated on another charge or while I was on probation or parole that I am not
12 eligible for credit for time served toward the instant offense(s).

13 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
14 United States, I may, in addition to other consequences provided for by federal law, be
15 removed, deported, excluded from entry into the United States or denied naturalization.

16 I understand that the Division of Parole and Probation will prepare a report for the
17 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
18 sentencing, including my criminal history. This report may contain hearsay information
19 regarding my background and criminal history. My attorney and I will each have the
20 opportunity to comment on the information contained in the report at the time of sentencing.
21 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
22 may also comment on this report.

23 WAIVER OF RIGHTS

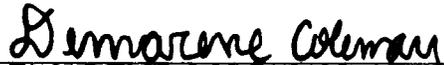
24 By entering my plea of guilty, I understand that I am waiving and forever giving up
25 the following rights and privileges:

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

1 agreement or the proceedings surrounding my entry of this plea.

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

5 DATED this 29 day of May, 2007.

6 
7 DEMARENE COLEMAN
8 Defendant

9 AGREED TO BY:

10  
11 JAMES R. SWEETIN
12 Chief Deputy District Attorney
13 Nevada Bar #005144

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

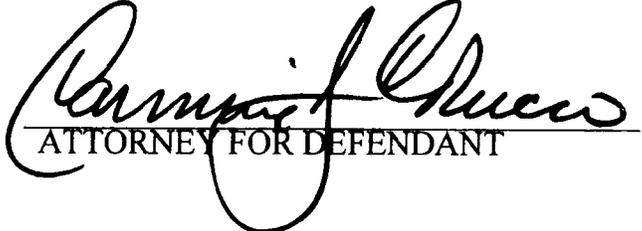
10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 29 day of May, 2007.

19 
20 ATTORNEY FOR DEFENDANT

21
22
23
24
25
26
27
28 sam

1 AINF
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

Case No. C215295
Dept No. V

12 -vs-

13 DEMARENE COLEMAN,
14 #1963947
15 Defendant.

SECOND AMENDED
INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss:

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That DEMARENE COLEMAN, the Defendant(s) above named, having committed
21 the crimes of **FIRST DEGREE MURDER (Category A Felony - NRS 200.010, 200.030)**
22 and **BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS**
23 **200.481)**, on or about the 10th day of July, 2005, within the County of Clark, State of
24 Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
25 and against the peace and dignity of the State of Nevada,

26 COUNT 1 – FIRST DEGREE MURDER

27 did then and there wilfully, feloniously, without authority of law, and with
28 premeditation and deliberation, and with malice aforethought, kill TANZIE AUSTIN, a

1 human being, by defendant shooting at and into the body of the said TANZIE AUSTIN.

2 COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON

3 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
4 person of another, to-wit: MONICA RAMSEY and/or ANDREA COOPER, with use of a
5 deadly weapon, to-wit: defendant shooting at and into the body of the said MONICA
6 RAMSEY and/or ANDREA COOPER.

7
8 DAVID ROGER
DISTRICT ATTORNEY
9 Nevada Bar #002781

10
11
12 BY


13 JAMES R. SWEETIN
Chief Deputy District Attorney
14 Nevada Bar #005144

15
16
17
18
19
20
21
22
23
24
25
26
27
28
Jul 24
8:30 A

DA#05F15000A/sam
LVMPD EV#0507100530
MURD;BWDW - F
(TK4)

Exhibit "B"

PSI



214

Division of Parole and Probation

PRESENTENCE INVESTIGATION REPORT

**The Honorable Jackie Glass
Department V, Clark County
8th Judicial District Court**

Date Report Prepared: July 16, 2007

**Prosecutor: James R. Sweetin, Chief DDA
Defense Attorney: Carmine Colucci, Appointed**

PSI: 256744

I. CASE INFORMATION

**Defendant: Demarene Coleman
Date of Birth: 09-30-1985
Age: 21
SSN: 530-11-9882
Address: 401 Holland Ave
City/State/Zip: Las Vegas, Nevada 89106
Phone: (702) 642-7302
Driver's License: None reported
State: N/A
Status: N/A
POB: Las Vegas, Nevada
US Citizen: Yes
Notification Required Per NRS 630.307: No**

**Case: C215295
ID: 1963947
PCN: 24129955
P&P Bin: 1000842318
FBI: 867852HC5
SID: NV04147423
Alien Registration: N/A
Resident: Yes
Offense Date: 07-10-2005
Arrest Date: 07-19-2005
Plea Date: 05-29-2007
Sentencing Date: 07-24-2007**

II. CHARGE INFORMATION

**Offense: COUNT 1- First Degree Murder (F)
NRS: 200.010, 200.030
NOC: 00092**

Category: A

Penalty: By imprisonment for Life without the possibility of parole; Or for Life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; Or a definite term of fifty 50 years with eligibility for parole beginning when a minimum of twenty 20 years has been served.

**Offense: COUNT 2- Battery With Use Of A Deadly Weapon (F)
NRS: 200.481
NOC: 00148**

Category: B

Penalty: By a minimum term of 2 years and a maximum term of 10 years in the Nevada Department of Corrections and may be fined up to \$10,000.

THIS REPORT NOT TO BE REPRODUCED OR
RELEASED WITHOUT THE AUTHORIZATION OF
ST. OF NV. DEPT. OF PAROLE AND PROBATION
RELEASED TO: _____

III. PLEA NEGOTIATIONS

Both parties agree to recommend twenty (20) to fifty (50) years in the Nevada Department of Corrections. The State will not oppose concurrent time between the counts.

IV. DEFENDANT INFORMATION

Physical Identifiers:

Sex: Male **Race:** Black **Height:** 5'6" **Weight:** 160 (Scope reflects 115)

Hair: Black **Eyes:** Brown

Scars: Scar on right thigh, scar on left forearm

Tattoos (type and location): "Sin City" on right upper arm

Aliases: Demarine Andrew Coleman, Damarene Coleman, Demarien Andrew Coleman

Additional SSNs: None found

Additional DOBs: None found

Social History: The following social history is as related by the defendant and is unverified unless otherwise noted:

Childhood: The defendant's parents separated when he was young and he reported living with each of his parents intermittently. He had a good childhood and reported no incidents of abuse.

Immediate Family Members- Names and Addresses: Mother, Angela Stevenson, father Billy Coleman live locally.

Marital Status: Single

Prior Marriages/Long Term Relationships: None reported

Children (number, sex, age): None reported

Custody Status of Children: N/A

Monthly Child Support Obligation: N/A

Employment Status: Unemployed. The defendant was working with a friend for a period of four months in 2005, for cash and has never had verifiable employment.

Number of Months Employed In The 12 Months Prior To Instant Offense: 0

Income: None reported

Other Sources: None reported

Assets: None reported

Debts: \$245 (Telephone bill)

Education: The defendant completed 10 years of education.

**PRESENTENCE INVESTIGATION REPORT
DEMARENE COLEMAN
CC#: C215295**

PAGE 4

Arrest Date:	Offense:	Disposition:
04-29-2005 (LVMPD)	Citation: Non Medical PCS Less 1 Oz. (M)	05M10533X, on 08-01-2005, convicted of Possession Drugs Not To Be Introduced Into Interstate Commerce (M), with CTS.
07-19-2005 (LVMPD)	1. Murder With Deadly Weapon (F) 2. Attempt Murder With Deadly Weapon (F) RMD: 12-07-2006	CC#C215295, Instant Offense

INSTITUTIONAL/SUPERVISION ADJUSTMENT: N/A

SUPPLEMENTAL INFORMATION: N/A

VI. OFFENSE SYNOPSIS

On July 10, 2005, at approximately 3:14 a.m., the victim Andrea Cooper arrived at the Mobil Gas Station located at 400 N. Eastern Ave, in Ford Explorer, along with another female. A few minutes later four females including Montelle Motley arrived, at the same gas station. The Mobil station's video surveillance camera showed Montelle Motley fighting in front of the store with Andrea Cooper.

According to one of the females that arrived with Montelle Motley, Ms. Motley used a cell phone to call Demarene Coleman prior to their arrival at the gas station. During that phone call Montelle Motley was heard telling Mr. Coleman to come to the Mobil station because she was fighting and she also told him to bring the "heat", indicting a gun. Minutes later Demarene Coleman arrived at the Mobil station as a passenger in a brown four door vehicle.

At 3:30 a.m., Andrea Cooper left the gas station with the another female and Demarene Coleman followed them in the brown four door vehicle. At the same time, the four females walked from the gas station to Mesquite Ave. When they arrived at Mesquite Ave, one of the females told the police that she saw the brown four door parked in the alley south of Mesquite Ave and she saw Demarene Coleman in the alley armed with a handgun.

Andrea Cooper and her friend noticed that they had been followed, so when they arrived at their apartment they informed their male roommates, which included the victim Tanzie Lee Austin. Andrea Cooper and Tanzie Austin went outside into the cul-de-sac and began talking to Demarene Coleman about what had happened at the gas station. While they were all outside talking Monica Ramsey rode up on her bicycle and she began arguing with Tanzie Austin.

Monica Ramsey grabbed Tanzie Austin by the neck and Tanzie Austin began swinging at her. Monica Ramsey then began punching, Tanzie Austin and he threw her on the ground. When this happened Monica Ramsey' daughter was trying to pull Tanzie Austin away. When Monica Ramsey looked up she saw Demarene Coleman standing behind Tanzie Austin and she then she heard two gunshots and she saw Tanzie Austin fall to his knees. Monica Ramsey reported that Tanzie Austin said, "please God don't shoot, Okay man please stop trippin" and then he fell to the ground. Demarene Coleman fired several more shots at Tanzie Austin while he was lying on the ground and Monica Ramsey said that a some point during the shooting she was struck with a bullet to her right thigh, with the

bullet exited her right buttock. While all this was going on Andrea Cooper ran toward a parked vehicle and realized later that she had somehow been shot in the right thigh.

Witnesses told the police that Montelle Motley and the driver of the brown four door left the scene as Demarene Coleman was shooting Tanzie Austin.

When the police and medical personnel arrived at the scene, they found the that Tanzie Austin who had been shot multiple times was pronounced dead at the scene and Andrea Cooper who received a bullet to her right leg and Monica Ramsey who received a bullet to her right thigh were transported to the University Medical Center for medical treatment. During the investigation that followed, the police recovered ten .40 caliber bullet casing from the scene.

The police learned that Montelle Motley and Demarene Coleman lived together at 424 Pioche. On July 14, 2005, a warrant was issued for the arrest of Demarene Coleman and Montelle Motley and they were both subsequently arrested on July 19, 2005, transported to the Clark County Detention Center, where they were both booked accordingly.

VII. CO-OFFENDER'S INFORMATION

Montelle Motley # 1581681- Pled guilty on June 7, 2007, to Conspiracy To Commit Battery With Use Of A Deadly Weapon. Rendition of sentence is scheduled for August 21, 2007, in Dept V.

VIII. DEFENDANT'S STATEMENT

Demarene Coleman was interviewed on July 17, 2007, while incarcerated at the Clark County Detention Center. When asked about the instant offense, he stated that he wishes to rescind his guilty plea but, he has been unable to make contact with his attorney.

IX. VICTIM INFORMATION/STATEMENT

Tanzie Lee Austin (VC2169053) was 41 year of age at the time Demarene Coleman shot him with a .40 caliber handgun on July 10, 2005. Per the Coroner's Report, Tanzie Lee Austin was shot eight times and he was pronounced dead at the scene. The Division did not receive a response from the victim impact questionnaire, sent to the next of kin, nor were we able to make contact with the next of kin by telephone.

The victim Monica Ramsey (VC2155172) did not respond to the victim impact questionnaire sent to her and the Division was unable to make telephone contact with this victim by the known telephone number. What is known is that this victim was shot in the right thigh at the time of the instant offense and as a result, she required medical intervention for her injury.

The victim Andrea Cooper (VC2169054) did not respond to the victim impact questionnaire sent to her and the Division was unable to make telephone contact with this victim by the known telephone number. Andrea Cooper was shot in the right leg at the time of the instant offense and as a result, she required medical intervention for her injury.

The Division was unable to obtain medical cost information from the treating medical facility of the victims, due to the privacy act. The Division was informed that a release of information form signed by the victim is required to legally obtain this information.

The Victim of Crime agency was contacted and they stated that they have no record of services for the victims.

X. CONCLUSION

The Division recommends incarceration for Demarene Coleman. The defendant's prior known criminal history consists of two prior misdemeanor convictions. While Demarene Coleman is only 21 years of age, his use of a handgun on July 10, 2005, caused the death of the victim Tazie Austin, who suffered eight gunshots and died at the scene. The two other victims Andrea Cooper and Monica Ramsey, were also shot by Demarene Coleman during the instant offense, requiring them to have emergency medical intervention. The defendant was unemployed at the time of the instant offense and living with the co-offender, Montelle Motley. Conviction of First Degree Murder requires mandatory incarceration and per the negotiations in this case, the State indicated that they will not oppose concurrent time between the counts.

XI. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: Clark County Detention Center

CTS: 736 Days: 07-2005 to 07-24-2007 (CCDC)

XII. RECOMMENDATIONS

190 Day Regimental Discipline Program: N/A **Deferred Sentence Per NRS 453.3363:** N/A

FEES

Administrative Assessment: \$25 **Chemical/Drug Analysis** N/A **DNA:** \$150 & DNA Testing

Domestic Violence: N/A **Extradition:** N/A

SENTENCE

COUNT 1

Minimum Term: 20 Years **Maximum Term:** 50 Years **Location:** NDOC

Consecutive to/Concurrent With: N/A **Probation Recommended:** No **Probation Term:** N/A

Fine: None **Restitution:** None

**PRESENTENCE INVESTIGATION REPORT
DEMARENE COLEMAN
CC#: C215295**

PAGE 7

COUNT 2

Minimum Term: 48 Months

Maximum Term: 120 Months

Location: NDOC

Concurrent With: Count 1

Probation Recommended: No

Probation Term: N/A

Fine: None

Restitution: None

____ Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

X Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

RESPECTFULLY SUBMITTED,

JOHN ALLAN GONSKA, CHIEF

PREPARED AND APPROVED BY:



Nancy R. Eason,
Parole and Probation Specialist IV
Unit 9
Southern Command, Las Vegas, Nevada

Exhibit "C"

Entry of Plea

ORIGINAL

1 TRAN

Cheryl...
CLERK OF THE COURT

JUL 24 3 06 PM '07

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 DEMARENE COLEMAN,
13 Defendant.

CASE NO. C215295
DEPT. V

BEFORE THE HONORABLE JACKIE GLASS, DISTRICT COURT JUDGE
MAY 29, 2007

**RECORDER'S TRANSCRIPT OF HEARING RE:
ENTRY OF PLEA**

19 APPEARANCES:

20 For the State:

JAMES R. SWEETIN, ESQ.
DANIELLE K. PIEPER, ESQ.
Deputy District Attorneys

21 For the Defendant:

CARMINE J. COLUCCI, ESQ.

25 RECORDED BY: RACHELLE HAMILTON, COURT RECORDER

CLERK OF THE COURT

RECEIVED
JUL 24 2007

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

TUESDAY, MAY 29, 2007

THE COURT: All right, we're on the record in State of Nevada against Demarene Coleman. Mr. Coleman who is present with Mr. Colucci, and we have Mr. Sweetin and Ms. Pieper for the State; and it's my understanding the matter is negotiated.

Mr. Coleman, is Demarene Coleman your true name?

THE DEFENDANT: Demarene Coleman, Your Honor.

THE COURT: Well, okay, sorry. Demarene Coleman, is that your true name?

THE DEFENDANT: Yes.

THE COURT: How old are you?

THE DEFENDANT: Twenty-one.

THE COURT: Okay, I need you to just speak up. Let's move the microphone over a little bit.

All right, Mr. Coleman, how old are you?

THE DEFENDANT: Twenty-one.

THE COURT: How far have you gone in school?

THE DEFENDANT: Eleventh grade.

THE COURT: Do you read, write, and understand the English language?

THE DEFENDANT: Yes.

THE COURT: I have a copy of an amended information -- thank you -- that contains the charges of first degree murder and battery with use of a deadly weapon. Did you receive this document?

THE DEFENDANT: Yes.

1 THE COURT: Have you read it over?

2 THE DEFENDANT: [Indiscernible]

3 THE COURT: I need you to just to speak up a little more.

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand both of those charges?

6 THE DEFENDANT: Yes.

7 THE COURT: All right, as to Count 1, first-degree murder, how do you
8 plead?

9 THE DEFENDANT: Guilty.

10 THE COURT: And as to Count 2, battery with use of a deadly weapon,
11 how do you plead?

12 THE DEFENDANT: Guilty.

13 THE COURT: [REDACTED]
14 [REDACTED]

15 State will not oppose -- and that would be on the murder count.

16 MF. COLUCCI: Right.

17 THE COURT: And the State will not oppose concurrent time between
18 the counts. Is that your complete understanding of what the negotiations are?

19 THE DEFENDANT: Yes.

20 THE COURT: Is anybody forcing you to plead guilty?

21 THE DEFENDANT: [Indiscernible]

22 THE COURT: I need you just to speak up a little --

23 THE DEFENDANT: No.

24 THE COURT: You're pleading guilty freely and voluntarily?

25 THE DEFENDANT: Yes.

1 THE COURT: All right, I have a guilty plea agreement here and on page
2 five there's a signature line with a signature above your name. Did you sign
3 this?

4 THE DEFENDANT: Yes.

5 THE COURT: Before you signed it did you read it over?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you understand everything in it?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that as a result of your plea you're
10 giving up certain valuable constitutional rights; those rights were listed for you
11 in your guilty plea agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you also understand as to Count 1 that you face a --
14 these are the following options that you face: life without the possibility of
15 parole, or a definite term of 50 years with eligibility for parole beginning at 20
16 years. There's no use of a deadly weapon?

17 MS. PIEPER: No.

18 MR. COLUCCI: No use.

19 THE COURT: Okay, so this is messed up. All right, so if you look on
20 page two of the guilty plea agreement it says on line two: plus and equal and
21 consecutive term for use of a deadly weapon. I'm going to take that out, right?

22 MR. COLUCCI: Yes.

23 MS. PIEPER: Yes.

24 THE COURT: So wouldn't there be, as to Count 1, life with, life
25 without, and a term of years, and that's not all in here.

1 MR. SWEETIN: That's true, Judge. There would be -- it would either
2 be life without the possibility of parole --

3 THE COURT: Which we have in here, or a definite term of 50 years
4 with parole eligibility beginning at 20 years, or life with the possibility of parole
5 with parole eligibility being at 20 years.

6 MR. SWEETIN: Twenty years.

7 MS. PIEPER: Twenty years.

8 THE COURT: So I'm going to write that in here and -- afterwards, but I
9 want to ask you if you understand. I know the deal is to recommend to me the
10 term of 50 years with parole eligibility beginning at 20, but I need for you to
11 understand that there are three possibilities here. One is life with parole
12 eligibility at 20 years, one with life with no parole, or the term of years which is
13 the 20 to 50; do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that all of those possible punishments
16 there is no option for any probation, that on a charge of murder you must be
17 sentenced to prison; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, and do you also understand that I am going to
20 write in the third option into this guilty plea agreement and I'm going to put my
21 initials by it so that you -- and this record will also indicate that you've been
22 advised of all the possible punishments that face you. Do you understand?

23 THE DEFENDANT: Yes. Yes.

24 THE COURT: I really need you to speak up.

25 On the other, Count 2, which is the battery with use of a deadly

1 weapon you face a minimum term of two years, not less than two years, and a
2 maximum term of not more than 10 years in the Nevada Department of
3 Corrections, and a possible fine of up to \$10,000; do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that sentencing is completely up to
6 the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay, so even if though they're recommending something
9 to me, sentencing is always completely up to the Court; do you understand
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. All right, before you signed this document, Mr.
13 Coleman, did you talk about your case with your attorney --

14 THE DEFENDANT: Yes.

15 THE COURT: -- Mr. Colucci?

16 THE DEFENDANT: Yes.

17 THE COURT: Did he answer all your questions?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, are you pleading guilty because on or about July
20 10th, 2005, in Clark County, state of Nevada, you did willfully, feloniously
21 without authority of law, and with premeditation and deliberation with malice
22 aforethought kill Tanzie Austin, a human being, by you shooting at or into the
23 body of Tanzie Austin; is that what you did?

24 THE DEFENDANT: Yes.

25 THE COURT: And in Count 2, also on that date in Clark County, state

1 of Nevada, did you also willfully, unlawfully, and feloniously use force or
 2 violence upon the person of another, Monica Ramsey and/or Andrea Cooper,
 3 with use of a deadly weapon, you shooting at or into the body of Monica
 4 Ramsey and/or Andrea Cooper?

5 THE DEFENDANT: Yes.

6 THE COURT: The Court finds Defendant's pleas are freely and
 7 voluntarily given. He understands the nature and consequence of his pleas and
 8 therefore accepts his plea. We'll set this over for sentencing on --

9 THE CLERK: It'll be July 24th at 8:30.

10 THE COURT: Thank you very much, Mr. Coleman and Mr. Colucci, and

11 --

12 MR. COLUCCI: Your Honor, before we adjourn may I approach with the
 13 State?

14 THE COURT: Yes.

15 MR. COLUCCI: Thank you.

16 THE COURT: Do you need Mister -- have a seat Mr. Coleman.

17 [Bench conference]

18 THE COURT: All right, and then so -- did we get a sentencing date?

19 THE CLERK: Yeah, July 24th.

20 THE COURT: All right.

21 THE COURT: And thank you all very much for your work.

22 MR. COLUCCI: ~~Just for the record, in talking to Mr. Coleman~~

23 ~~because he's now got understanding of the possibilities here, I just wanted to put~~

24 ~~on the record, if that's okay with the Court, that generally the Court will follow~~

25 ~~the recommendation of the State on the defendant's behalf.~~

1 something drastic --

2 THE COURT: Extraordinary reason, but I mean this is something that
 3 the two of you have agreed to. I will ordinarily follow what you've agreed to.
 4 understand that this is what made this negotiation go forward. I can't say
 5 100%, but in all likelihood it's what I'm going to do. So I just need you to
 6 initial that so that you understand what all of the possible punishments are.
 7 That doesn't mean I'm going to do it, it just means that I need for you to
 8 understand it's possible.

9 All right, so let's file that and let's make sure that gets filed with
 10 Sandra, and thank you all very much. Thank you Mr. Colucci.

11 MR. COLUCCI: Thank you, Your Honor, for your patience.

12 THE COURT: No problem; and there you go Sandra, and we're all set.

13 Thank you, we'll see you at sentencing.
 14
 15

16 [Proceeding concluded]
 17
 18
 19

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

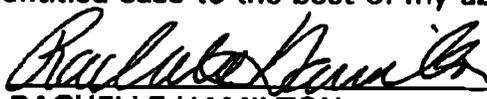
21 
 22 _____
 RACHELLE HAMILTON
 23 Recorder/Transcriber
 24
 25

Exhibit "D"

J.O.C

1 JOCP

FILED

AUG 22 8 01 AM '07

Cheryl [Signature]
CLERK OF THE COURT

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C215295

10 -vs-

DEPT. NO. V

11 DEMARENE COLEMAN
12 #1963947

13 Defendant.

14
15
16 JUDGMENT OF CONVICTION
17 (PLEA OF GUILTY)

18
19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crimes of COUNT 1 – FIRST DEGREE MURDER
21 (Category A Felony) in violation of NRS 200.010, 200.030, and COUNT 2 – BATTERY
22 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.481;
23 thereafter, on the 14TH day of August, 2007, the Defendant was present in court for
24 sentencing with his counsel CARMINE COLUCCI, ESQ., and good cause appearing,
25

26 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
27 addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced to
28 the Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a

1 **MAXIMUM of FIFTY (50) YEARS with a MINIMUM parole eligibility of TWENTY (20)**
2 **YEARS; as to COUNT 2 - to a MAXIMUM of ONE HUNDRED TWENTY (120)**
3 **MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, to run**
4 **CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE (755) DAYS credit**
5 **for time served.**

7
8 DATED this 20 day of August, 2007.

9
10 **JACKIE GLASS**

11 _____
12 **JACKIE GLASS**
13 **DISTRICT JUDGE**

Exhibit "E"

Court Minutes of Sentencing

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES August 14, 2007

05C215295-1 The State of Nevada vs Demarene Coleman

August 14, 2007 8:30 AM All Pending Motions ALL PENDING
MOTIONS (8/14/07)
Court Clerk: Tia
Everett/te
Reporter/Recorder:
Rachelle Hamilton
Heard By: Jackie
Glass

HEARD BY: COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coleman, Demarene Defendant
 Colucci, Carmine J. Attorney
 Sweetin, James R. Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

As to Deft's Motion to Withdraw Guilty Plea:

Mr. Colucci argued Deft. stated he did not understand the consequences of the plea or the possibility of the charges running consecutive instead of concurrent. ~~Mr. Sweetin argued Deft. was fully~~
~~informed of his rights and the consequences of his plea, which he voluntarily~~ Court noted, the plea is valid as it was entered freely and voluntarily; therefore, COURT ORDERED, Motion DENIED and proceed with Sentencing.

As to Sentencing:

DEFT. COLEMAN ADJUDGED GUILTY of COUNT 1 - FIRST DEGREE MURDER (F) AND COUNT

2 - BATTERY WITH USE OF A DEADLY WEAPON (F). Matter submitted. Statement by Deft. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, as to COUNT 1 - Deft. SENTENCED to a MINIMUM of FORTY (40) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) as to COUNT 2 - Deft. SENTENCED to a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT with COUNT 1; SEVEN HUNDRED FIFTY-FIVE (755) DAYS credit for time served.

Mr. Colucci moved to withdraw as counsel. COURT SO ORDERED.

BOND, if any, EXONERATED.

CLERK'S NOTE: minutes corrected to reflect correct sentence for count 1. 8/16/07te

Exhibit "F"

Criminal Complaint

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,)

4 Plaintiff,)

5 -vs-)

6 DEMARENE COLEMAN #1963947,)
7 MONTELLE RENNE MOTLEY, aka,)
8 Montelle Renee Motley #1581681,)

9 Defendants.)

CASE NO: 05F15000A-B

DEPT NO: 4

CRIMINAL COMPLAINT

10 The Defendants above named having committed the crimes of MURDER WITH USE
11 OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165); ATTEMPT
12 MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,
13 193.330, 193.165); and ACCESSORY TO MURDER (Felony - NRS 200.010, 200.030,
14 195.030, 195.040), in the manner following, to-wit: That the said Defendants, on or about
15 the 10th day of July, 2005, at and within the County of Clark, State of Nevada,

16 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

17 Defendant DEMARENE COLEMAN did then and there wilfully, feloniously,
18 without authority of law, and with premeditation and deliberation, and with malice
19 aforethought, kill TANZIE AUSTIN, a human being, by shooting at and into the body of the
20 said TANZIE AUSTIN, with a deadly weapon, to-wit: a firearm.

21 COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

22 Defendant DEMARENE COLEMAN did then and there, without authority of law,
23 and malice aforethought, willfully and feloniously attempt to kill MONICA RAMSEY or the
24 defendant having the intent to kill TANZIE AUSTIN, the intent to kill being transferred to
25 MONICA RAMSEY, a human being, by shooting at and into the body of the said MONICA
26 RAMSEY, with a deadly weapon, to-wit: a firearm.

27 COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

28 Defendant DEMARENE COLEMAN did then and there, without authority of law,

1 and malice aforethought, willfully and feloniously attempt to kill ANDREA COOPER or the
2 defendant having the intent to kill TANZIE AUSTIN, the intent to kill being transferred to
3 ANDREA COOPER, a human being, by shooting at and into the body of the said ANDREA
4 COOPER, with a deadly weapon, to-wit: a firearm.

5 COUNT 4 - ACCESSORY TO MURDER

6 Defendant MONTELLE RENNE MOTLEY, aka Montelle Renee Motley did then
7 and there wilfully, unlawfully and feloniously harbor, conceal, or aid DEMARENE
8 COLEMAN, with the intent that the said DEMARENE COLEMAN might avoid or escape
9 from arrest, trial, conviction, or punishment, having knowledge that the said DEMARENE
10 COLEMAN had committed a felony, to-wit: murder, and was liable to arrest therefore by
11 the said Defendant aiding in obtaining a place for DEMARENE COLEMAN to reside and
12 by providing transportation for him.

13 All of which is contrary to the form, force and effect of Statutes in such cases made
14 and provided and against the peace and dignity of the State of Nevada. Said Complainant
15 makes this declaration subject to the penalty of perjury.

16
17 _____
18 7/15/2005

19
20
21
22
23
24
25
26 05F15000A-B/jgw
27 LVMPD EV# 0507100530
28 MWDW; ATT MWDW;
ACC'Y MURDER - F
(TK4)

Master

FC PKG PTL

05/09/2021

US POSTAGE \$005.50⁰⁰



ZIP 89101
DATE 05/09/2021

----- 2

**NON MACHINABLE MAIL
PLEASE HAND CANCEL**

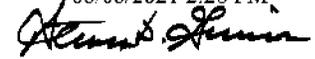
Steven D. Grierson
Clerk of the Court
200 Lewis Ave 3rd Floor
Las Vegas, NV, 89155-1160

Demarene Coleman #1007335

P.O. Box 208 SDCC

Indian Springs, NV 89108

CONFIDENTIAL



CLERK OF THE COURT

1 **ORDR**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MADILYN COLE**
6 **Deputy District Attorney**
7 **Nevada Bar #014693**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**
11 **Plaintiff,**

12 **-vs-**

13 **DEMARENE COLEMAN,**
14 **#1963947**

15 **Defendant.**

CASE NO: 05C215295

DEPT NO: XVII

16 **ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF**
17 **ATTORNEY**

18 **DATE OF HEARING: July 29, 2021**
19 **TIME OF HEARING: 8:30 A.M.**

20 **THIS MATTER** having come on for hearing before the above-entitled Court on the
21 **29th day of July, 2021,** the Defendant not being present, **IN PROPER PERSON,** the Plaintiff
22 **being represented by STEVEN B. WOLFSON,** District Attorney, through **MADILYN COLE,**
23 **Deputy District Attorney,** without argument, based on the pleadings and good cause appearing
24 **therefor,**

25 **///**

26 **///**

27 **///**

28 **///**

1 IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of Attorney,
2 shall be, and it is DENIED.

3 DATED this _____ day of August, 2021.

Dated this 6th day of August, 2021

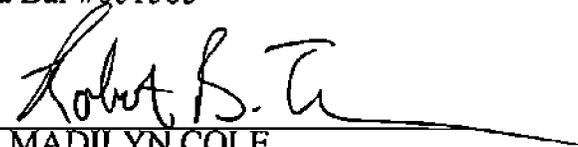


4
5 DISTRICT JUDGE

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

DA9 7AE FE13 C447
Michael Villani
District Court Judge

9 BY



MADILYN COLE
Deputy District Attorney
Nevada Bar #014693

10
11
12
13
14 CERTIFICATE OF SERVICE

15 I certify that on the 3rd day of August, 2021, I mailed a copy of the foregoing Order

16 to:

17 DEMARENE COLEMAN, BAC #1007335
18 SO. DESERT CORRECTIONAL CENTER
19 PO BOX 208
INDIAN SPRINGS, NV 89070

20 BY



Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 mah/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs
Demarene Coleman

CASE NO: 05C215295-1

7 DEPT. NO. Department 17

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.

Original to Court

Demarene Coleman ID NO: 1007335

Southern Desert Correctional Center

Post Office Box 208

Indian Springs, Nevada 89070-0208

FILED

JAN 07 2022

Steph J. Williams
CLERK OF COURT



pp
DA

IN THE JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
FOR THE COUNTY OF

THE STATE OF NEVADA

Plaintiff,

Case No: C215295

v.

Dept. No: 5

DEMARENE COLEMAN
Defendant

February 1, 2022
11:00 AM

NOTICE OF MOTION

MOTIONS FOR MODIFICATION OF SENTENCE

Comes now, Defendant, DEMARENE COLEMAN, pro per, and respectfully moves this Honorable court for a modification of sentence.

This motion is based pursuant to the supporting Points and Authorities attached hereto, NRS 176.555, as well as all papers, pleading, and documents on file herein.

POINTS AND AUTHORITIES

1. STANDARD OF REVIEW

The Nevada Supreme Court has long recognized that Court's have the power and Jurisdiction to Modify a sentence, see, Staley v. State, 787 P.2d 396, 106 Nev. 75 (1990):

"That if a sentencing court pronounces sentence within statutory limits, the court will have Jurisdiction to MODIFY, suspend or other wise correct that sentence if it is based upon materially untrue assumptions or mistakes which work to the extreme detriment of the defendant"

1 Defendant believes that this court has, based upon Staley, the jurisdiction to MODIFY his
2 sentence, due to that sentence being pronounced based upon a Pre-Sentence Investigation Report which
3 did have several material facts in error, which will be discussed below in the statement of facts.

4 Respondent may argue that laches apply due to the fact that three [3] years have passed since
5 sentence was pronounced. However, the Nevada Supreme Court held that such time requirement does not
6 apply to a request for Modification of Sentence, see, Passanisi v. State, 831 P2d 1371, 108 Nev. 318
7 (1995):

8
9 ... "we note that the trial court has inherent authority to correct a sentence at any time if such
10 sentence based on mistake of material fact that worked to the extreme detriment of the defendant.
11 (Citations Omitted). If the trial court has inherent authority to correct a sentence, a Fortiori, it has
12 the power to entertain a motion requesting it to exercise that inherent authority.... Thus, the time
13 limits and other restrictions with respect to a post-conviction relief do not apply to a Motion to
14 Modify a Sentence based on a claim that the sentence was illegal or was based on an untrue
15 assumption of the fact that amounted to denial of due process (Emphasis added) Id. 831 P2d at
16 1372n. 1. See also, Edwards v. State, 918 P2d 321, 324, 112 Nev. 704 (1996).

17 Defendant, as stated above, is alleging that his sentence by this Court was based upon
18 assumptions founded upon his Pre-Sentence Investigation Report (PSI) that had several factors in error,
19 and as such, his constitutional right to due process was violated. See, State v. District Court, 677 P2d
20 1044, 100 Nev. 90 (1984):

21 The district court's inherent authority to correct a judgment or sentence founded on mistake is in
22 accord with the constitutional considerations underlying the sentencing process. The United
23 States Supreme Court has expressly held that where a defendant is sentenced on the basis of
24 materially untrue assumptions concerning his criminal record, "(the) result whether caused by
25 carelessness or design, is inconsistent with due process of law". Townsend v. Burke, 736, 741,
26 68 S. Ct. 12552, 1255, 92 L. Ed. 1690 (1948). Further, the cases clearly established that
27 constitutionally Violate "materially untrue assumptions" concerning a criminal record may arise
28 either as a result of a sentencing judge's correct perception of misapprehension. (Emphasis in
29 original). Id. 677 P2d at 1048 n. 3.

30 Defendant would asks that this Court not perceive this request to be pointing the finger at the
31 Court and saying 'you were wrong' as that is not the case. Defendant is merely requesting that the Court
32 reconsider the sentence that was pronounced based upon mistakes of fact in the PSI report and at
33 sentencing.

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

II. STATEMENT OF FACTS

Petitioner is an inmate of the NDOC Southern Desert Correctional Center who has been incarcerated since July 19th 2005 ie (see Exhibit "D" JOC) of count one (1) First Degree Murder (Category A Felony NRS 200.010 & NRS 200.030) & Count two (2) Battery with use of a Deadly Weapon (Category B Felony NRS 200.481) (see Exhibit "D" JOC August 22nd stamped Filed 2007 Case # C215295) Nev Eight Judicial District Court Department Five (5)

Sentence;

Petitioner was sentenced by Judge Jackie Glass to a "Parole-Eligibility" Sentence Statute to a maximum of Fifty (50) years with a minimum parole-eligibility of Twenty (20) years; as to Count 2 to a maximum of one hundred Twenty (120) months with a minimum parole-eligibility of Forty-Eight (48) months to run Concurrent with Count 1 with Seven hundred Fifty-Five (755) Days Credit for time served (see Exhibit "D" JOC)

Petitioner was represented by his the Counsel Carmine Colucci ESQ

Petitioner now is presenting this said Motion as Pro Per status seeking this Court Review and order as a Motion for Modification of Sentence First Instance Specific Performance

1 This is a Motion for Modification of Sentence. For a "Specific Performance" to
2 have J.O.C in the case of No. 2015295 to reflect the sentence as agreed to in
3 Guilty Plea Agreement To A sentence of A "Minimum-Maximum" Statute
4 Twenty (20) to Fifty (50) years

5
6 This Motion for Modification of Sentence should **Not** be Construed as for
7 Postconviction Relief the disposition of Criminal Charges by agreement
8 between the prosecutor and accused and the adjudicative element in accept
9 in a plea of guilty must be attended by safeguards to insure the
10 defendant what is reasonably due in the Circumstances. While those
11 Circumstances will vary, never the less a constant factor is that when a
12 plea rest in any significant degree on a promise or agreement of the
13 prosecutor, so that it can be said to be part of the inducement or consider
14 ation. Such promise or agreement must be Fulfilled (Federal Rule 11 Pleas)

15
16 The interests of justice and proper recognition of the prosecution's
17 duties in relation to promises made in connection with any agreement
18 on a plea of guilty require that the judgment be vacated and that the
19 case be remanded to the state courts for further consideration as to
20 whether the circumstances require only that there be Specific Performance
21 of the agreement on the pleas (in which case petitioner should be resent
22 enced by a different judge) or petitioner should be afforded the relief he
23 seeks of withdrawing his guilty plea. (see Santobello v New York 404 US
24 257, 30 L Ed 2d 427 92 Sct 495)

1 The Supreme Court of Nevada has held that a petitioner is entitled
2 to "Specific Performance" where the state intentionally breached or reneged
3 on the plea agreement made in connection with a plea bargain most
4 jurisdictions preferring vacation of the plea on the ground of
5 "involuntariness" while a few permit only specific enforcement
6 (Citti v the State of Nevada 107 Nev 89: 807 P.2d 724; 1991 Nev Lexis
7 12 No.20934)

8
9 In choosing a remedy, however, a court ought to accord a
10 defendant's preference considerable, if not controlling, weight in
11 much as the fundamental right flouted by a prosecutor's breach
12 of a plea bargain are those of the defendant, not of the State.
13 (Federal Rule 11 Pleas)

14
15 When the state itself or judge has broken the plea bargain this
16 disappointment cannot time bar petitioner from withdrawing his guilty
17 plea or correcting the plea bargain or reclaiming his right to a trial
18 (Santobello v New York 404 US 257, 30 L Ed 2d 427 92 Sct 495)

19
20 When the state has broken a promise made in return for the
21 agreement to plead guilty this provides the defendant ample
22 justification for rescinding his plea where a promise is "Unfulfilled"
23 (Brady v United States 397 US 742 755 25 L Ed 2d 747 760 90 Sct
24 1463 (1970))

1 The State of Nevada has three different Sentencing statute
2 defendants receive when sentenced to a prison term They are
3 "Minimum-Maximum Statute" "Parole-Eligibility Statute" and
4 "Determinate Sentence Statute" They are Expressed

6 "Minimum-Maximum Statute" - which provided for a sentence of
7 a minimum term of not less than (X) years and a maximum term
8 of not more than (Y) years

11 "Parole-Eligibility Statute" - which provided for a maximum sentence
12 with Eligibility for Parole beginning when a minimum of (X) years
13 has been served

16 "Determinate Sentence Statute" - which provided for a fixed length of
17 time rather than for an unspecified duration only has a
18 maximum term

1 Petitioner initial Charges where as Follows

2 Count 1- Murder with use of a Deadly Weapon

3 Count 2- Attempt Murder with use of a Deadly Weapon

4 Count 3- Attempt Murder with use of a Deadly Weapon

5 (See; Exhibit "F" Criminal Complaint)

7 To get a guilty Plea from Petitioner. The District Attorney Induce

8 Petitioner With a Guilty Plea Agreement For Count 1- First Degree

9 Murder Category A Felony Count 2- Battery with the use of a Deadly

10 Weapon Category B Felony. (Both parties agree to recommend Twenty

11 (20) to Fifty (50) years in the Nevada Department of Corrections. The

12 State will not oppose concurrent time between the Counts) if petiti

13 oner plead guilty the state agreed to drop (with the use of a deadly

14 weapon on count 1 and would drop both Attempt Murders to a

15 Battery with the use of a deadly weapon as to Count 2 and Count 3)

16 (See; Exhibit "A" guilty Plea Agreement) (Exhibit "B" PSI) also (see;

17 Exhibit "F") (Exhibit "G" Second Amended Information)

21 Petitioner accepted the guilty plea. The Judge also accepted the

22 guilty plea which Binds the Court to the plea agreement. The Judge

23 had the Authority to Reject what both parties agreed to instead

24 accepted the guilty plea (see; Federal Rule 11 Pleas) (see; Exhibit "C"

25 Entry of Plea pg 7 and 8)

ADDITIONAL FACTS OF THE CASE:

1 Petitioner Guilty Plea Agreement of Twenty (20) to Fifty (50) years
2 Does Not Mention anything about when "Parole-Eligibility" should be
3 in the initial agreement (see; Exhibit "A" Plea Agreement pg 1) also
4 (see; Exhibit "B" PSI)

5
6 Petitioner would like for this Court and the Superior Courts
7 Interpretation of what sentence statute does petitioners guilty
8 Plea Agreement (Twenty (20) to Fifty (50) years) Falls under when there
9 is no mention of "Parole-Eligibility"? Petitioner is not convinced that
10 it is the "Parole-Eligibility" Statute

11
12 The judge said on record the Court accept Petitioner guilty plea, but
13 instead sentence Petitioner to a "Parole-Eligibility" Statute petitioner
14 should have been sentence to a "Minimum-Maximum" Statute. At Time
15 of negotiation petitioner Was Not informed by Counsel or by District
16 Attorney that the sentencing Statute play a Major Factor when
17 sentencing Defendants. Petitioner recognized that the (Maximum of Fifty
18 (50) years with a minimum parole-eligibility of Twenty (20) years was
19 not the initial agreement) Petitioner told his Counsel ON Record
20 that he was Not understanding these possibilities and consequences.
21 The judge stated on the record she will ordinarily follow what was
22 agreed to and that she understood that this is what made the
23 negotiation go forward (see; Exhibit "C" Entry of Plea pg 3)

1 II. STATEMENT OF FACTS

2 Petitioner informed attorney at entry of plea that the sentence was
3 not what both parties agreed to. Petitioner told attorney that he would
4 like to withdraw the plea if it was not the exact initial Twenty(20)
5 to Fifty(50) agreed to. on sentencing date July 24 2007, attorney
6 requested a continuance for leave to file a motion to withdraw guilty
7 plea. the motion was heard Aug 14, 2007, the district Court denied the
8 motion to withdraw guilty plea, and Sentence Petitioner to a "Parole
9 Eligibility" Statute To a maximum of Fifty(50) years with a minimum
10 of Parole Eligibility of Twenty (20) years. As to Count 2 - to a maximum
11 of one hundred Twenty (120) months with a minimum parole-eligibility
12 of forty eight (48) months to run concurrent with Count 1; with Seven
13 hundred Fifty-Five (755) days credit for time served (see; Exhibit "D" JOC)
14 also (see; Exhibit "E" Court minutes of sentencing date) (see; Exhibit
15 "A" plea agreement) (Exhibit "B" PSI) the three show correct sentence
16
17
18
19
20
21
22
23
24
25
26
27
28

The Failure to inform defendant of sentencing statute is Deliberate
Indifference and prejudice. Sentencing statute can effect the amount
of time that can be served, this was a Total Failure of Consideration
and makes the plea agreement Infirm and cause for Correction of
Sentence statute Petitioner was sentence to, or Resentencing.

When a district Court accept a defendants guilty plea it Must
act with utmost solicitude to ensure that a defendant has full
understanding of both the nature of the charges and the direct
consequence arising from a plea of guilty. A consequence is
deemed direct if it has a definite immediate and largely
automatic effect on the range of the defendants punishment
(see; Banka v Nev (2020) Lexis 74: 136 Nev Adv. Rep. 81 No 80181 Dec 10
2020 Filed)

1 Petitioner guilty plea to First Degree Murder was not knowingly
2 intelligently or voluntarily entered with an understanding of the
3 possibility of the consequences of the plea in violation of his right
4 to Due Process of law Right to Public Trial, and laws impairing
5 the obligation of contracts guaranteed by Art 1 sec 10 Fifth Sixth
6 and Fourteenth amendment. The agreement was to recommend
7 (Twenty (20) to Fifty (50) years) This was the understanding. Not
8 a maximum of Fifty (50) years with parole-eligibility at Twenty
9 (20) years. The lack of understanding is on the Record
10 (see; Exhibit "C" Entry of Plea pg 7)

11
12 Both parties agreed to Twenty (20) to Fifty (50) years in the
13 NDCC. Petitioner Did Not, and would have Not agreed to the
14 plea agreement if it would have been presented as worded in as
15 the "Parole-Eligibility" sentence statute (A maximum of Fifty (50) years
16 with a minimum parole-eligibility of Twenty (20) years)
17 The initial plea agreement Twenty (20) to Fifty (50) Does Not
18 Mention anything of when "Parole-Eligibility" should be within it
19 (see; Exhibit "A" Plea Agreement pg 1) For this to be a valid plea
20 agreement it should have been presented as in the JOC (see;
21 Exhibit "D") "Parole-Eligibility" not being mentioned within the
22 Twenty (20) to Fifty (50) falls under the "Minimum-Maximum"
23 Sentence Statute
24
25
26
27

1 The basis for the district court judgment that the plea bargain
2 had been breached; at no time did the district court indicate that it
3 believed that its prior judgment had been based on an incorrect
4 interpretation of the law the sentence was based on an incorrect
5 interpretation of the statute. The district court retains jurisdiction
6 to correct any sentence at any time (see; Statley v Nev 106 N1
7 75; 787 P.2d 396 1990 Nev Lexis 23 No 8599)

8
9 When the state enters a plea agreement it is held to the Most
10 Meticulous standards of both promise and performance ... The
11 violation of the terms or the spirit of the plea bargain requires
12 reversal (see; Citti v Nev 107 Nev 89; 807 P.2d 724; 1991 Nev Lexis 17
13 No 20934)

14
15 The lack of reference of "Parole Eligibility" in the (20 to 50) plea
16 agreement should receive the exact same interpretation as in
17 the case of (Vonsejdwitz v LeGrand 2015 Nev unpub Lexis 778 No 66199
18 June 24 2015) If the District Attorney had intended for petitioner to be
19 sentence under the "Parole - Eligibility" Sentence Statute. "Parole - Elig-
20 ibility" should have been mentioned in the initial start of the
21 plea agreement as did the legislature had used the verbiage. Instead
22 the verbiage that was used was (Both parties agree to recommend
23 Twenty (20) to Fifty (50) years in the NDOC the state will not oppose
24 concurrent time between the counts) (see; Exhibit "A" Plea Agreement pg 1

ADDITIONAL FACTS OF THE CASE:

1 Petitioner should not have been sentence to a "Parole-Eligibility"
2 Sentence Statute for a maximum of Fifty (50) years with a "parole
3 eligibility" of Twenty (20) years. Because the lack of reference
4 of "parole-eligibility" in the initial beginning of the plea agree-
5 ment. This is an invalid plea agreement also a breach of
6 Contract Petitioner is entitled to immediate "Specific Performance"
7 or Remand for new Sentencing

8
9 Though plea agreement are generally analyzed under
10 Contract Law if language of agreement is ambiguous
11 Courts must consider "Essence of the particular agreement"
12 and parties reasonable expectation because of special public inter-
13 est in context of plea bargain (see; Federal Rule 11) also
14 (see; Santobello v New York 404 US P.2d 724; 1991 Nev Lexis 12.
15 No 20934) The "Essence of the particular agreement" was
16 (Both parties agree to recommend Twenty (20) to Fifty (50) years
17 in the NDOC the state will not oppose Concurrent time between
18 the Counts) (see; Exhibit "A" Plea Agreement pg 1)

1 A Court of appeals reviews plea agreement using ordinary rules of
2 contract interpretation but is mindful of the special public interest
3 concerns that arise in the plea agreement context accordingly it
4 reviews the language of the plea agreement objectively and
5 hold the government to the literal terms of the plea agreement
6 therefore when a plea agreement is unambiguous on its face the
7 court generally interprets the agreement according to its plain
8 meaning when the language of an agreement is ambiguous how
9 ever the essence of the particular agreement and the government
10 conduct relating to its obligation in that case are determinative
11 the court interprets the term of the agreement according to the
12 parties reasonable expectation and construe any ambiguities
13 against the Drafter the government and in favor of the defendant
14 The government must fulfill any promise that it expressly or
15 impliedly makes in exchange for a defendant guilty plea the remedy
16 for breach of a plea agreement is "Specific Performance" and a
17 remand for resentencing. before a different judge or a remand
18 to permit the defendant to withdraw his plea (see, Santobello v
19 New York 404 US 257 262 92 Sct 495 30 L. Ed 2d 427) also (see;
20 Citi v Nev. 107 Nev 89; 807 P.2d 724; 1991 Nev Lexis 12 No 20934)

21
22 Note; It is a Cardinal principle of Contract Law that no term
23 of a contract should be construed to be in conflict with another
24 unless no other reasonable construction is possible
25
26
27

1 The prejudice inheres in a failure to comply with Rule 11 for
2 noncompliance deprives the defendant of the rules procedural
3 safeguards which are designed to facilitate a more accurate
4 determination of the voluntariness of his plea our holding is
5 that a defendant whose plea has been accepted in violation of
6 Rule 11 should be afforded the opportunity to plead anew
7 (see; McCarthy v US 394 466 459 89 Sct 1166 22 L Ed 2d 418 (1968))
8 (see; Exhibit "C" Entry of Plea pg 7)

9
10 A party's right under a plea agreement are limited by what the
11 parties in fact agreed to agreement the government and defense
12 have actually agreed on what amounts to an appropriate sentence
13 or have agreed to one of the specified components the amendment
14 also makes it clear that this agreement is binding on the court
15 when accepted it is the situation under the current rule the
16 court retains absolute discretion whether to accept a plea
17 agreement (see; Santobello v New York 404 US 257 30 L Ed
18 2d 427 92 Sct 495)

19
20 This plea agreement was used to induce petitioner to plead
21 guilty Counsel for petitioner, also District Attorney promised
22 petitioner would receive a specific sentence (Twenty (20) to Fifty
23 (50)) This was used to induce petitioner's guilty plea. This constitutes
24 for ineffective assistance of Counsel, and requires for an evidentiary
25 hearing to resolve the claim (see; Espinoza v US 866 F.2d 1067 (9th Cir
26 1988)) Counsel allowed without objection for the judge to sentence
27 petitioner to what is a "Parole-Eligibility" Sentence Statute. The

ADDITIONAL FACTS OF THE CASE:

1 lack of reference of "Parole-Eligibility" in the Twenty(20) to
2 Fifty(50) is Not a "Parole-Eligibility" statute It classify as
3 A "Minimum-Maximum" statute.

4
5 (see; Walker v Johnston 312 US 275 85 L Ed 830 61 Sct 574)

6 Clearly held that a prisoner who pleaded guilty despite his ignorance
7 of and his being uninformed of his right to a lawyer was deprived
8 of the Sixth Amendment right or if he had been tricked by the
9 prosecutor through misrepresentations into pleading guilty then his
10 Due process rights were offended In Walker the petitioner was
11 granted an evidentiary hearing to prove his factual claims in antic
12 ipation of vacating the plea Accord:

13
14 Sentencing Statute are very important factor when it comes to
15 effect and range and punishment defendant should have been
16 made aware of the sentencing Statute Some where along the
17 lines of the plea agreement negotiation entry of plea of a
18 Sentencing at no point defendant was informed of sentencing
19 Statute (Federal Rule 11) prescribes the advice which the court
20 must give to the defendant as a prerequisite to the acceptance
21 of a plea of guilty the former rule required that the court
22 determine that the plea was made with "understanding of the
23 nature of the charge and the consequences of the plea" the
24 amendment identifies more specifically what must be explained
25 to the defendant and also codifies in the rule the requirement of
26 (Boykin v Alabama 395 US 238 89 Sct 1709 23 L Ed 2d 274)
27 (see; Exhibit "A" Plea Agreement) also (Exhibit "C" Entry of Plea)

1 Petitioner was Induce to believe that he would receive the
2 "Minimum-Maximum" sentence statute (Twenty(20) to Fifty(50)) simply because
3 the lack of reference to "Parole-Eligibility" in the initial offer of (20 to 50)
4 Sentencing Petitioner to a Maximum Fifty (50) years with parole -
5 eligibility beginning at Twenty (20) years. This cause Deliberate
6 Indifference. Prejudice This was done to get petitioner guilty plea
7 This shows Absolute Failure of Consideration and Bad Faith on the
8 Courts behalf. The district Attorney, Judge, and Attorney for petitioner
9 all are educated to law (NRS), unlike petitioner who (Ignorantia Facti
10 Excusat) they all where aware of Sentencing statute prisoner receive.
11 This violates petitioner Fifth, Sixth and Fourteenth also Art 1 sec 10
12 Due Process, Equal Protection, Right to Public Trial, and Impairing the
13 Obligation of Contracts.

CONCLUSION

14
15 Given the Veracity of the Above the Petitioner Is requesting the Following
16 Belief

17 1) A "Specific Performance" to move the trial Court to amend the Petitioner JCC
18 in the case of No C215295 to reflect the "Minimum-Maximum" Statute Twenty
19 (20) to Fifty (50) as agreed to in Guilty Plea Agreement or

20
21 2) Resentence to A "Parole-Eligibility" statute to a Maximum of Twenty
22 Five (25) years with parole-Eligibility at Ten (10) years Minimum and Monetary
23 Compensation for Punitive Damages open for negotiations

24
25 For these formentioned reason it is more than evident that petitioner is
26 entitled to "Specific Performance" or Resentencing or any relief deemed necessary.
27 Petitioner prays and hopes to have this court Grant his motion for "Specific
28 Performance"

1 CONCLUSION

2 WHEREFORE, all of the above stated reasons, Defendant respectfully requests this Honorable Court to
3 Modify his/her Sentence in accordance with this Court's fair and just consideration of the facts of the case.

4
5 Dated this 29th day of December, 2021.

6
7
8 By: Damirine Coleman

9 Damirine Coleman # 1007335

10 Southern Desert Correctional Center

11 P.O. BOX 208

12 INDIAN SPRINGS, NEVADA 89070-208
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I, Demarene Coleman, certify that the foregoing "Motion For
2 Modification of Sentence", was served upon the Respondent pursuant to NRCP 5 (b), by placing same in
3 the United States Postal Service, postage being fully pre-paid, and addressed as follows:
4
5

6 Clerk of Courts

District Attorney's Office

7 200 Lewis Ave 3rd Floor

200 Lewis Ave

8 Las Vegas NV 89155-1160

Las Vegas NV 89115-2212

9
10
11
12
13
14 Dated this 28th day of December, 2021.

15
16
17 By: Demarene Coleman

18 Demarene Coleman #1007335

19
20 P.O. Box
Indian Springs, NV. 89070

21
22 Defendant, In Proper Person
23
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion For Modifi

cation of Sentence In the First Instance For A Specific Performance
(Title of Document)

filed in District Court Case number C215295

Does not contain the social security number of any person.

-OR-

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

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

(State specific law) Federal Rule 11, Pleas

-or-

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

Demarene Coleman
Signature

12/28/21
Date

Demarene Coleman
Print Name

Title

Exhibit "A"

Guilty Plea Agreement

1 **GMEM**
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DEMARENE COLEMAN,
13 #1963947

14 Defendant.

CASE NO: C215295
DEPT NO: V

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: **COUNT 1 - FIRST DEGREE MURDER**
17 **(Category A Felony - NRS 200.010, 200.030)** and **COUNT 2 - BATTERY WITH USE**
18 **OF A DEADLY WEAPON (Category B Felony - NRS 200.481)**, as more fully alleged in
19 the charging document attached hereto as Exhibit "1".

20 My decision to plead guilty is based upon the plea agreement in this case which is as
21 follows:

22 ~~Both Parties agree to recommend twenty (20) to fifty (50) years in the Nevada~~
23 ~~Department of Corrections. The State will not oppose concurrent time between the counts.~~

24 CONSEQUENCES OF THE PLEA

25 I understand that by pleading guilty I admit the facts which support all the elements of
26 the offense(s) to which I now plead as set forth in Exhibit "1".

27 As to **Count 1**, I understand that as a consequence of my plea of guilty the Court
28 must sentence me to imprisonment in the Nevada Department of Corrections for life without

1 the possibility of parole OR a definite term of fifty (50) years with eligibility for parole
2 beginning at twenty ~~(2)~~²⁰ years plus an equal and consecutive term for use of a deadly weapon
3 enhancement. I understand that the law requires me to pay an Administrative Assessment
4 Fee.

5 As to Count 1, I understand that I am not eligible for probation for the offense to
6 which I am pleading guilty.

7 As to Count 2, I understand that as a consequence of my plea of guilty the Court
8 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
9 term of not less than TWO (2) years and a maximum term of not more than TEN (10) years.
10 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
11 term of imprisonment. I understand that I may also be fined up to \$10,000.00. I understand
12 that the law requires me to pay an Administrative Assessment Fee.

13 I understand that, if appropriate, I will be ordered to make restitution to the victim of
14 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
15 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
16 reimburse the State of Nevada for any expenses related to my extradition, if any.

17 I understand that I am eligible for probation for the offense(s) to which I am pleading
18 guilty. I understand that, except as otherwise provided by statute, the question of whether I
19 receive probation is in the discretion of the sentencing judge.

20 I understand that if more than one sentence of imprisonment is imposed and I am
21 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
22 the sentences served concurrently or consecutively.

23 I also understand that information regarding charges not filed, dismissed charges, or
24 charges to be dismissed pursuant to this agreement may be considered by the judge at
25 sentencing.

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

28 I understand that if my attorney or the State of Nevada or both recommend any

1 specific punishment to the Court, the Court is not obligated to accept the recommendation.

2 I understand that if the State of Nevada has agreed to recommend or stipulate a
3 particular sentence or has agreed not to present argument regarding the sentence, or agreed
4 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
5 when the offense could have been treated as a felony, such agreement is contingent upon my
6 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
7 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
8 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
9 right to argue for any lawful sentence.

10 I understand if the offense(s) to which I am pleading guilty to was committed while I
11 was incarcerated on another charge or while I was on probation or parole that I am not
12 eligible for credit for time served toward the instant offense(s).

13 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
14 United States, I may, in addition to other consequences provided for by federal law, be
15 removed, deported, excluded from entry into the United States or denied naturalization.

16 I understand that the Division of Parole and Probation will prepare a report for the
17 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
18 sentencing, including my criminal history. This report may contain hearsay information
19 regarding my background and criminal history. My attorney and I will each have the
20 opportunity to comment on the information contained in the report at the time of sentencing.
21 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
22 may also comment on this report.

23 WAIVER OF RIGHTS

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

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

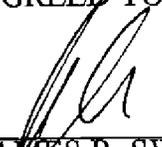
1 agreement or the proceedings surrounding my entry of this plea.

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

5 DATED this 29 day of May, 2007.

6 
7 DEMARENE COLEMAN
8 Defendant

8 AGREED TO BY:

9  
10
11 JAMES R. SWEETIN
12 Chief Deputy District Attorney
13 Nevada Bar #005144

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

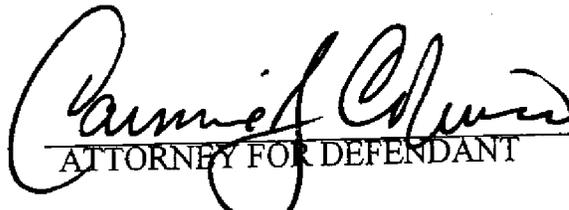
10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 29 day of May, 2007.

19 
20 ATTORNEY FOR DEFENDANT
21
22
23
24
25
26
27
28

sam

Exhibit "B"

PSI



Division of Parole and Probation

214

PRESENTENCE INVESTIGATION REPORT

**The Honorable Jackie Glass
Department V, Clark County
8th Judicial District Court**

Date Report Prepared: July 16, 2007

**Prosecutor: James R. Sweetin, Chief DDA
Defense Attorney: Carmine Colucci, Appointed**

PSI: 256744

I. CASE INFORMATION

**Defendant: Demarene Coleman
Date of Birth: 09-30-1985
Age: 21
SSN: 530-11-9882
Address: 401 Holland Ave
City/State/Zip: Las Vegas, Nevada 89106
Phone: (702) 642-7302
Driver's License: None reported
State: N/A
Status: N/A
POB: Las Vegas, Nevada
US Citizen: Yes
Notification Required Per NRS 630.307: No**

**Case: C215295
ID: 1963947
PCN: 24129955
P&P Bin: 1000842318
FBI: 867852HC5
SID: NV04147423
Alien Registration: N/A
Resident: Yes
Offense Date: 07-10-2005
Arrest Date: 07-19-2005
Plea Date: 05-29-2007
Sentencing Date: 07-24-2007**

THIS REPORT NOT TO BE REPRODUCED OR
RELEASED WITHOUT THE AUTHORIZATION OF
ST. OF NV. DEPT. OF PAROLE AND PROBATION
RELEASED TO: _____

II. CHARGE INFORMATION

**Offense: COUNT 1- First Degree Murder (F)
NRS: 200.010, 200.030
NOC: 00092**

Category: A

Penalty: By imprisonment for Life without the possibility of parole; Or for Life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; Or a definite term of fifty 50 years with eligibility for parole beginning when a minimum of twenty 20 years has been served.

**Offense: COUNT 2- Battery With Use Of A Deadly Weapon (F)
NRS: 200.481
NOC: 00148**

Category: B

Penalty: By a minimum term of 2 years and a maximum term of 10 years in the Nevada Department of Corrections and may be fined up to \$10,000.

III. PLEA NEGOTIATIONS

Both parties agree to recommend twenty (20) to fifty (50) years in the Nevada Department of Corrections. The State will not oppose concurrent time between the counts.

IV. DEFENDANT INFORMATION

Physical Identifiers:

Sex: Male **Race:** Black **Height:** 5'6" **Weight:** 160 (Scope reflects 115)
Hair: Black **Eyes:** Brown
Scars: Scar on right thigh, scar on left forearm
Tattoos (type and location): "Sin City" on right upper arm
Aliases: Demarine Andrew Coleman, Damarene Coleman, Demarien Andrew Coleman
Additional SSNs: None found
Additional DOBs: None found

Social History: The following social history is as related by the defendant and is unverified unless otherwise noted:

Childhood: The defendant's parents separated when he was young and he reported living with each of his parents intermittently. He had a good childhood and reported no incidents of abuse.

Immediate Family Members- Names and Addresses: Mother, Angela Stevenson, father Billy Coleman live locally.

Marital Status: Single

Prior Marriages/Long Term Relationships: None reported

Children (number, sex, age): None reported

Custody Status of Children: N/A

Monthly Child Support Obligation: N/A

Employment Status: Unemployed. The defendant was working with a friend for a period of four months in 2005, for cash and has never had verifiable employment.

Number of Months Employed In The 12 Months Prior To Instant Offense: 0

Income: None reported

Other Sources: None reported

Assets: None reported

Debts: \$245 (Telephone bill)

Education: The defendant completed 10 years of education.

PRESENTENCE INVESTIGATION REPORT
DEMARENE COLEMAN
CC#: C215295

PAGE 4

Arrest Date:	Offense:	Disposition:
04-29-2005 (LVMPD)	Citation: Non Medical PCS Less 1 Oz. (M)	05M10533X, on 08-01-2005, convicted of Possession Drugs Not To Be Introduced Into Interstate Commerce (M), with CTS.
07-19-2005 (LVMPD)	1. Murder With Deadly Weapon (F) 2. Attempt Murder With Deadly Weapon (F) RMD: 12-07-2006	CC#C215295, Instant Offense

INSTITUTIONAL/SUPERVISION ADJUSTMENT: N/A

SUPPLEMENTAL INFORMATION: N/A

VI. OFFENSE SYNOPSIS

On July 10, 2005, at approximately 3:14 a.m., the victim Andrea Cooper arrived at the Mobil Gas Station located at 400 N. Eastern Ave, in Ford Explorer, along with another female. A few minutes later four females, including Montelle Motley arrived, at the same gas station. The Mobil station's video surveillance camera showed Montelle Motley fighting in front of the store with Andrea Cooper.

According to one of the females that arrived with Montelle Motley, Ms. Motley used a cell phone to call Demarene Coleman prior to their arrival at the gas station. During that phone call Montelle Motley was heard telling Mr. Coleman to come to the Mobil station because she was fighting and she also told him to bring the "heat", indicating a gun. Minutes later Demarene Coleman arrived at the Mobil station as a passenger in a brown four door vehicle.

At 3:30 a.m., Andrea Cooper left the gas station with the another female and Demarene Coleman followed them in the brown four door vehicle. At the same time, the four females walked from the gas station to Mesquite Ave. When they arrived at Mesquite Ave, one of the females told the police that she saw the brown four door parked in the alley south of Mesquite Ave and she saw Demarene Coleman in the alley armed with a handgun.

Andrea Cooper and her friend noticed that they had been followed, so when they arrived at their apartment they informed their male roommates, which included the victim Tanzie Lee Austin. Andrea Cooper and Tanzie Austin went outside into the cul-de-sac and began talking to Demarene Coleman about what had happened at the gas station. While they were all outside talking Monica Ramsey rode up on her bicycle and she began arguing with Tanzie Austin.

Monica Ramsey grabbed Tanzie Austin by the neck and Tanzie Austin began swinging at her. Monica Ramsey then began punching, Tanzie Austin and he threw her on the ground. When this happened Monica Ramsey' daughter was trying to pull Tanzie Austin away. When Monica Ramsey looked up she saw Demarene Coleman standing behind Tanzie Austin and she then she heard two gunshots and she saw Tanzie Austin fall to his knees. Monica Ramsey reported that Tanzie Austin said, "please God don't shoot, Okay man please stop trippin" and then he fell to the ground. Demarene Coleman fired several more shots at Tanzie Austin while he was lying on the ground and Monica Ramsey said that a some point during the shooting she was struck with a bullet to her right thigh, with the

bullet exited her right buttock. While all this was going on Andrea Cooper ran toward a parked vehicle and realized later that she had somehow been shot in the right thigh.

Witnesses told the police that Montelle Motley and the driver of the brown four door left the scene as Demarene Coleman was shooting Tanzie Austin.

When the police and medical personnel arrived at the scene, they found the that Tanzie Austin who had been shot multiple times was pronounced dead at the scene and Andrea Cooper who received a bullet to her right leg and Monica Ramsey who received a bullet to her right thigh were transported to the University Medical Center for medical treatment. During the investigation that followed, the police recovered ten .40 caliber bullet casing from the scene.

The police learned that Montelle Motley and Demarene Coleman lived together at 424 Pioche. On July 14, 2005, a warrant was issued for the arrest of Demarene Coleman and Montelle Motley and they were both subsequently arrested on July 19, 2005, transported to the Clark County Detention Center, where they were both booked accordingly.

VII. CO-OFFENDER'S INFORMATION

Montelle Motley # 1581681- Pled guilty on June 7, 2007, to Conspiracy To Commit Battery With Use Of A Deadly Weapon. Rendition of sentence is scheduled for August 21, 2007, in Dept V.

VIII. DEFENDANT'S STATEMENT

Demarene Coleman was interviewed on July 17, 2007, while incarcerated at the Clark County Detention Center. When asked about the instant offense, he stated that he wishes to rescind his guilty plea but, he has been unable to make contact with his attorney.

IX. VICTIM INFORMATION/STATEMENT

Tanzie Lee Austin (VC2169053) was 41 year of age at the time Demarene Coleman shot him with a .40 caliber handgun on July 10, 2005. Per the Coroner's Report, Tanzie Lee Austin was shot eight times and he was pronounced dead at the scene. The Division did not receive a response from the victim impact questionnaire, sent to the next of kin, nor were we able to make contact with the next of kin by telephone.

The victim Monica Ramsey (VC2155172) did not respond to the victim impact questionnaire sent to her and the Division was unable to make telephone contact with this victim by the known telephone number. What is known is that this victim was shot in the right thigh at the time of the instant offense and as a result, she required medical intervention for her injury.

The victim Andrea Cooper (VC2169054) did not respond to the victim impact questionnaire sent to her and the Division was unable to make telephone contact with this victim by the known telephone number. Andrea Cooper was shot in the right leg at the time of the instant offense and as a result, she required medical intervention for her injury.

The Division was unable to obtain medical cost information from the treating medical facility of the victims, due to the privacy act. The Division was informed that a release of information form signed by the victim is required to legally obtain this information.

The Victim of Crime agency was contacted and they stated that they have no record of services for the victims.

X. CONCLUSION

The Division recommends incarceration for Demarene Coleman. The defendant's prior known criminal history consists of two prior misdemeanor convictions. While Demarene Coleman is only 21 years of age, his use of a handgun on July 10, 2005, caused the death of the victim Tazie Austin, who suffered eight gunshots and died at the scene. The two other victims Andrea Cooper and Monica Ramsey, were also shot by Demarene Coleman during the instant offense, requiring them to have emergency medical intervention. The defendant was unemployed at the time of the instant offense and living with the co-offender, Montelle Motley. Conviction of First Degree Murder requires mandatory incarceration and per the negotiations in this case, the State indicated that they will not oppose concurrent time between the counts.

XI. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: Clark County Detention Center

CTS: 736 Days: 07-2005 to 07-24-2007 (CCDC)

XII. RECOMMENDATIONS

190 Day Regimental Discipline Program: N/A **Deferred Sentence Per NRS 453.3363:** N/A

FEES

Administrative Assessment: \$25 **Chemical/Drug Analysis** N/A **DNA:** \$150 & DNA Testing

Domestic Violence: N/A **Extradition:** N/A

SENTENCE

COUNT 1

Minimum Term: 20 Years **Maximum Term:** 50 Years **Location:** NDOC

Consecutive to/Concurrent With: N/A **Probation Recommended:** No **Probation Term:** N/A

Fine: None **Restitution:** None

**PRESENTENCE INVESTIGATION REPORT
DEMARENE COLEMAN
CC#: C215295**

PAGE 7

COUNT 2

Minimum Term: 48 Months

Maximum Term: 120 Months

Location: NDOC

Concurrent With: Count 1

Probation Recommended: No

Probation Term: N/A

Fine: None

Restitution: None

____ Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

X Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

RESPECTFULLY SUBMITTED,

JOHN ALLAN GONSKA, CHIEF

PREPARED AND APPROVED BY:



Nancy R. Eason,
Parole and Probation Specialist IV
Unit 9
Southern Command, Las Vegas, Nevada

Exhibit "C"

Entry of Plea

ORIGINAL

1 TRAN

[Signature]
CLERK OF THE COURT

JUL 24 3 03 PM '07

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO. C215295

11 vs.

DEPT. V

12 DEMARENE COLEMAN,

13 Defendant.

BEFORE THE HONORABLE JACKIE GLASS, DISTRICT COURT JUDGE
MAY 29, 2007

**RECORDER'S TRANSCRIPT OF HEARING RE:
ENTRY OF PLEA**

19 APPEARANCES:

20 For the State:

JAMES R. SWEETIN, ESQ.
DANIELLE K. PIEPER, ESQ.
Deputy District Attorneys

23 For the Defendant:

CARMINE J. COLUCCI, ESQ.

25 RECORDED BY: RACHELLE HAMILTON, COURT RECORDER

CLERK OF THE COURT

RECEIVED
JUL 24 2007

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

TUESDAY, MAY 29, 2007

THE COURT: All right, we're on the record in State of Nevada against Demarene Coleman. Mr. Coleman who is present with Mr. Colucci, and we have Mr. Sweetin and Ms. Pieper for the State; and it's my understanding the matter is negotiated.

Mr. Coleman, is Demarene Coleman your true name?

THE DEFENDANT: Demarene Coleman, Your Honor.

THE COURT: Well, okay, sorry. Demarene Coleman, is that your true name?

THE DEFENDANT: Yes.

THE COURT: How old are you?

THE DEFENDANT: Twenty-one.

THE COURT: Okay, I need you to just speak up. Let's move the microphone over a little bit.

All right, Mr. Coleman, how old are you?

THE DEFENDANT: Twenty-one.

THE COURT: How far have you gone in school?

THE DEFENDANT: Eleventh grade.

THE COURT: Do you read, write, and understand the English language?

THE DEFENDANT: Yes.

THE COURT: I have a copy of an amended information -- thank you -- that contains the charges of first degree murder and battery with use of a deadly weapon. Did you receive this document?

THE DEFENDANT: Yes.

1 THE COURT: Have you read it over?

2 THE DEFENDANT: [Indiscernible]

3 THE COURT: I need you to just to speak up a little more.

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand both of those charges?

6 THE DEFENDANT: Yes.

7 THE COURT: All right, as to Count 1, first-degree murder, how do you
8 plead?

9 THE DEFENDANT: Guilty.

10 THE COURT: And as to Count 2, battery with use of a deadly weapon,
11 how do you plead?

12 THE DEFENDANT: Guilty.

13 THE COURT: The negotiation is as follows: both parties agree to
14 recommend 20 to 50 years in the Nevada Department of Corrections and the
15 State will not oppose -- and that would be on the murder count.

16 MR. COLUCCI: Right.

17 THE COURT: And the State will not oppose concurrent time between
18 the counts. Is that your complete understanding of what the negotiations are?

19 THE DEFENDANT: Yes.

20 THE COURT: Is anybody forcing you to plead guilty?

21 THE DEFENDANT: [Indiscernible]

22 THE COURT: I need you just to speak up a little --

23 THE DEFENDANT: No.

24 THE COURT: You're pleading guilty freely and voluntarily?

25 THE DEFENDANT: Yes.

1 THE COURT: All right, I have a guilty plea agreement here and on page
2 five there's a signature line with a signature above your name. Did you sign
3 this?

4 THE DEFENDANT: Yes.

5 THE COURT: Before you signed it did you read it over?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you understand everything in it?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that as a result of your plea you're
10 giving up certain valuable constitutional rights; those rights were listed for you
11 in your guilty plea agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you also understand as to Count 1 that you face a --
14 these are the following options that you face: life without the possibility of
15 parole, or a definite term of 50 years with eligibility for parole beginning at 20
16 years. There's no use of a deadly weapon?

17 MS. PIEPER: No.

18 MR. COLUCCI: No use.

19 THE COURT: Okay, so this is messed up. All right, so if you look on
20 page two of the guilty plea agreement it says on line two: plus and equal and
21 consecutive term for use of a deadly weapon. I'm going to take that out, right?

22 MR. COLUCCI: Yes.

23 MS. PIEPER: Yes.

24 THE COURT: So wouldn't there be, as to Count 1, life with, life
25 without, and a term of years, and that's not all in here.

1 MR. SWEETIN: That's true, Judge. There would be -- it would either
2 be life without the possibility of parole --

3 THE COURT: Which we have in here, or a definite term of 50 years
4 with parole eligibility beginning at 20 years, or life with the possibility of parole
5 with parole eligibility being at 20 years.

6 MR. SWEETIN: Twenty years.

7 MS. PIEPER: Twenty years.

8 THE COURT: So I'm going to write that in here and -- afterwards, but I
9 want to ask you if you understand. I know the deal is to recommend to me the
10 term of 50 years with parole eligibility beginning at 20, but I need for you to
11 understand that there are three possibilities here. One is life with parole
12 eligibility at 20 years, one with life with no parole, or the term of years which is
13 the 20 to 50; do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that all of those possible punishments
16 there is no option for any probation, that on a charge of murder you must be
17 sentenced to prison; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, and do you also understand that I am going to
20 write in the third option into this guilty plea agreement and I'm going to put my
21 initials by it so that you -- and this record will also indicate that you've been
22 advised of all the possible punishments that face you. Do you understand?

23 THE DEFENDANT: Yes. Yes.

24 THE COURT: I really need you to speak up.

25 On the other, Count 2, which is the battery with use of a deadly

1 weapon you face a minimum term of two years, not less than two years, and a
2 maximum term of not more than 10 years in the Nevada Department of
3 Corrections, and a possible fine of up to \$10,000; do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that sentencing is completely up to
6 the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay, so even if though they're recommending something
9 to me, sentencing is always completely up to the Court; do you understand
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. All right, before you signed this document, Mr.
13 Coleman, did you talk about your case with your attorney --

14 THE DEFENDANT: Yes.

15 THE COURT: -- Mr. Colucci?

16 THE DEFENDANT: Yes.

17 THE COURT: Did he answer all your questions?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, are you pleading guilty because on or about July
20 10th, 2005, in Clark County, state of Nevada, you did willfully, feloniously
21 without authority of law, and with premeditation and deliberation with malice
22 aforethought kill Tanzie Austin, a human being, by you shooting at or into the
23 body of Tanzie Austin; is that what you did?

24 THE DEFENDANT: Yes.

25 THE COURT: And in Count 2, also on that date in Clark County, state

1 of Nevada, did you also willfully, unlawfully, and feloniously use force or
2 violence upon the person of another, Monica Ramsey and/or Andrea Cooper,
3 with use of a deadly weapon, you shooting at or into the body of Monica
4 Ramsey and/or Andrea Cooper?

5 THE DEFENDANT: Yes.

6 THE COURT: The Court finds Defendant's pleas are freely and
7 voluntarily given. He understands the nature and consequence of his pleas and
8 therefore accepts his plea. We'll set this over for sentencing on --

9 THE CLERK: It'll be July 24th at 8:30.

10 THE COURT: Thank you very much, Mr. Coleman and Mr. Colucci, and

11 --

12 MR. COLUCCI: Your Honor, before we adjourn may I approach with the
13 State?

14 THE COURT: Yes.

15 MR. COLUCCI: Thank you.

16 THE COURT: Do you need Mister -- have a seat Mr. Coleman.

17 [Bench conference]

18 THE COURT: All right, and then so -- did we get a sentencing date?

19 THE CLERK: Yeah, July 24th.

20 THE COURT: All right.

21 THE COURT: And thank you all very much for your work.

22 MR. COLUCCI: Judge, just for the record, in talking to Mr. Coleman
23 because he's now not understanding the possibilities here, I just wanted to put
24 on the record, if that's okay with the Court, that generally the Court will follow
25 the recommendation of the State and the defense unless there is some --

1 something drastic --

2 THE COURT: Extraordinary reason, but I mean this is something that
3 the two of you have agreed to. I will ordinarily follow what you've agreed to. I
4 understand that this is what made this negotiation go forward. I can't say
5 100%, but in all likelihood it's what I'm going to do. So I just need you to
6 initial that so that you understand what all of the possible punishments are.
7 That doesn't mean I'm going to do it, it just means that I need for you to
8 understand it's possible.

9 All right, so let's file that and let's make sure that gets filed with
10 Sandra, and thank you all very much. Thank you Mr. Colucci.

11 MR. COLUCCI: Thank you, Your Honor, for your patience.

12 THE COURT: No problem; and there you go Sandra, and we're all set.

13 Thank you, we'll see you at sentencing.

14
15
16
17
18
19
20
21
22
23
24
25

[Proceeding concluded]

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

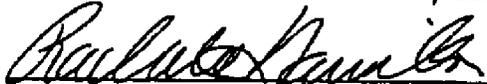

RACHELLE HAMILTON
Recorder/Transcriber

Exhibit "D"

J.O.C

1 JOCP
2
3
4

FILED

AUG 22 8 01 AM '07

Cheryl [Signature]
CLERK OF THE COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8

9 Plaintiff,

CASE NO. C215295

10 -vs-

DEPT. NO. V

11 DEMARENE COLEMAN
12 #1963947

13 Defendant.
14

15 JUDGMENT OF CONVICTION
16 (PLEA OF GUILTY)
17

18 The Defendant previously appeared before the Court with counsel and entered a
19 plea of guilty to the crimes of COUNT 1 – FIRST DEGREE MURDER
20

21 (Category A Felony) in violation of NRS 200.010, 200.030, and COUNT 2 – BATTERY
22 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.481;

23 thereafter, on the 14TH day of August, 2007, the Defendant was present in court for
24 sentencing with his counsel CARMINE COLUCCI, ESQ., and good cause appearing,
25

26 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
27 addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced to
28 the Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a

1 MAXIMUM of FIFTY (50) YEARS with a MINIMUM parole eligibility of TWENTY (20)
2 YEARS; as to COUNT 2 - to a MAXIMUM of ONE HUNDRED TWENTY (120)
3 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, to run
4 CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE (755) DAYS credit
5 for time served.
6

7
8 DATED this 20 day of August, 2007.

JACKIE GLASS

11 _____
12 JACKIE GLASS
13 DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit "E"

Court Minutes of Sentencing

05C215295-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES August 14, 2007

05C215295-1 The State of Nevada vs Demarene Coleman

August 14, 2007 8:30 AM All Pending Motions ALL PENDING
MOTIONS (8/14/07)
Court Clerk: Tia
Everett/te
Reporter/Recorder:
Rachelle Hamilton
Heard By: Jackie
Glass

HEARD BY: COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coleman, Demarene Defendant
 Colucci, Carmine J. Attorney
 Sweetin, James R. Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

As to Deft's Motion to Withdraw Guilty Plea:
Mr. Colucci argued Deft. stated he did not understand the consequences of the plea or the possibility of the charges running consecutive instead of concurrent. ~~Mr. Sweetin argued Deft. was fully canvassed and advised of all ramifications of the plea which he entered.~~ Court noted, the plea is valid as it was entered freely and voluntarily; therefore, COURT ORDERED, Motion DENIED and proceed with Sentencing.

As to Sentencing:
DEFT. COLEMAN ADJUDGED GUILTY of COUNT 1 - FIRST DEGREE MURDER (F) AND COUNT

1007335

05C215295-1

2 - BATTERY WITH USE OF A DEADLY WEAPON (F). Matter submitted. Statement by Deft. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, as to COUNT 1 - Deft. SENTENCED to a MINIMUM of TWENTY (20) YEARS and a MAXIMUM of FIFTY (50) YEARS in the Nevada Department of Corrections (NDC) as to COUNT 2 - Deft. SENTENCED to a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT with COUNT 1; SEVEN HUNDRED FIFTY-FIVE (755) DAYS credit for time served.

Mr. Colucci moved to withdraw as counsel. COURT SO ORDERED.

BOND, if any, EXONERATED.

CLERK'S NOTE: minutes corrected to reflect correct sentence for count 1. 8/16/07te

Exhibit "F"

Criminal Complaint

1 JUSTICE COURT, LAS VEGAS TOWNSHIP
2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,)

4 Plaintiff,)

5 -vs-)

6 DEMARENE COLEMAN #1963947,
7 MONTELLE RENNE MOTLEY, aka,
8 Montelle Renee Motley #1581681,)

9 Defendants.)

CASE NO: 05F15000A-B

DEPT NO: 4

CRIMINAL COMPLAINT

10 The Defendants above named having committed the crimes of MURDER WITH USE
11 OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165); ATTEMPT
12 MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,
13 193.330, 193.165); and ACCESSORY TO MURDER (Felony - NRS 200.010, 200.030,
14 195.030, 195.040), in the manner following, to-wit: That the said Defendants, on or about
15 the 10th day of July, 2005, at and within the County of Clark, State of Nevada,

16 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

17 Defendant DEMARENE COLEMAN did then and there wilfully, feloniously,
18 without authority of law, and with premeditation and deliberation, and with malice
19 aforethought, kill TANZIE AUSTIN, a human being, by shooting at and into the body of the
20 said TANZIE AUSTIN, with a deadly weapon, to-wit: a firearm.

21 COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

22 Defendant DEMARENE COLEMAN did then and there, without authority of law,
23 and malice aforethought, willfully and feloniously attempt to kill MONICA RAMSEY or the
24 defendant having the intent to kill TANZIE AUSTIN, the intent to kill being transferred to
25 MONICA RAMSEY, a human being, by shooting at and into the body of the said MONICA
26 RAMSEY, with a deadly weapon, to-wit: a firearm.

27 COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

28 Defendant DEMARENE COLEMAN did then and there, without authority of law,

1 and malice aforethought, willfully and feloniously attempt to kill ANDREA COOPER or the
2 defendant having the intent to kill TANZIE AUSTIN, the intent to kill being transferred to
3 ANDREA COOPER, a human being, by shooting at and into the body of the said ANDREA
4 COOPER, with a deadly weapon, to-wit: a firearm.

5 COUNT 4 - ACCESSORY TO MURDER

6 Defendant MONTELLE RENNE MOTLEY, aka Montelle Renee Motley did then
7 and there wilfully, unlawfully and feloniously harbor, conceal, or aid DEMARENE
8 COLEMAN, with the intent that the said DEMARENE COLEMAN might avoid or escape
9 from arrest, trial, conviction, or punishment, having knowledge that the said DEMARENE
10 COLEMAN had committed a felony, to-wit: murder, and was liable to arrest therefore by
11 the said Defendant aiding in obtaining a place for DEMARENE COLEMAN to reside and
12 by providing transportation for him.

13 All of which is contrary to the form, force and effect of Statutes in such cases made
14 and provided and against the peace and dignity of the State of Nevada. Said Complainant
15 makes this declaration subject to the penalty of perjury.

16
17 7/15/2005
18
19
20
21
22
23
24
25

26 05F15000A-B/jgw
27 LVMPD EV# 0507100530
28 MWDW; ATT MWDW;
ACC'Y MURDER - F
(TK4)

Exhibits "G"

Second Amended Information

1 AINF
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

Case No. C215295
Dept No. V

12 -vs-

13 DEMARENE COLEMAN,
14 #1963947
15 Defendant.

16 SECOND AMENDED
17 INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss:

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That DEMARENE COLEMAN, the Defendant(s) above named, having committed
21 the crimes of **FIRST DEGREE MURDER (Category A Felony - NRS 200.010, 200.030)**
22 and **BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS**
23 **200.481)**, on or about the 10th day of July, 2005, within the County of Clark, State of
24 Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
25 and against the peace and dignity of the State of Nevada,

26 COUNT 1 – FIRST DEGREE MURDER

27 did then and there wilfully, feloniously, without authority of law, and with
28 premeditation and deliberation, and with malice aforethought, kill TANZIE AUSTIN, a

1 human being, by defendant shooting at and into the body of the said TANZIE AUSTIN.

2 COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON

3 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
4 person of another, to-wit: MONICA RAMSEY and/or ANDREA COOPER, with use of a
5 deadly weapon, to-wit: defendant shooting at and into the body of the said MONICA
6 RAMSEY and/or ANDREA COOPER.

7
8 DAVID ROGER
DISTRICT ATTORNEY
9 Nevada Bar #002781

10
11
12 BY 

JAMES R. SWEETIN
Chief Deputy District Attorney
13 Nevada Bar #005144

14
15 *Jul 24*
16 *8:30 A*
17

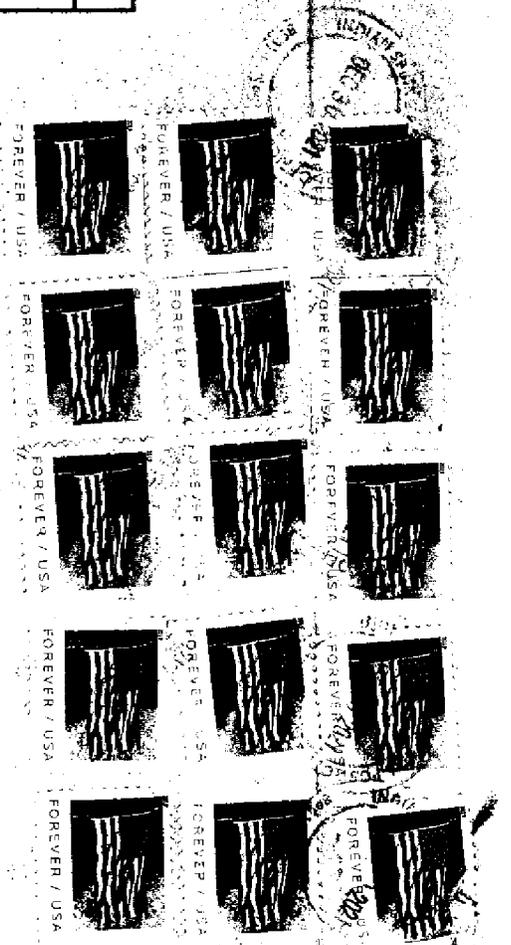
18
19
20
21
22
23
24
25
26 DA#05F15000A/sam
27 LVMPD EV#0507100530
28 MURD;BWDW - F
(TK4)

Exhibits Attached

- 1) Motion For Specific Performance Modification of Sentence
- 2) Exhibit "A" Plea Agreement
- 3) Exhibit "B" PSI
- 4) Exhibit "C" Entry of Plea
- 5) Exhibit "D" J.O.C
- 6) Exhibit "E" Court Minutes of Sentencing
- 7) Exhibit "F" Criminal Complaint
- 8) Exhibit "G" Second Amended Information

Demarene Coleman #1007335
P.O. Box 208
SDCC
Indian Springs, NV, 89018

 UNITED STATES POSTAL SERVICE	Retail
P	US POSTAGE PAID \$0.00 Origin: 89018 12/30/21 3142700280-05
PRIORITY MAIL 1-DAY®	
1 Lb 2.80 Oz 1006	
EXPECTED DELIVERY DAY: 12/31/21	
SHIP TO: LAS VEGAS NV 89155	
USPS TRACKING® #	
	
9505 5100 5127 1364 1341 56	



Clerk of Court Steven D. Grierson
200 Lewis Ave 3rd Floor
Las Vegas, NV, 89155 - 1160

1 Demarene Coleman
/In Propria Personam
2 Post Office Box 208 S.D.C.C.
Indian Springs, Nevada 89018

FILED
JAN 07 2022

Alvin L. Johnson
CLERK OF COURT

3
4
5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 THE STATE OF NEVADA
9
10 V
11 DEMARENE COLEMAN
12
13

Case No. 215295
Dept No. 5
Docket _____

14 **NOTICE OF MOTION**

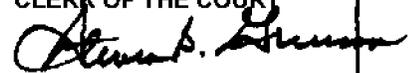
15 YOU WILL PLEASE TAKE NOTICE, that Motions For Modification of
16 Sentence
17 will come on for hearing before the above-entitled Court on the ___ day of _____, 20___
18 at the hour of ___ o'clock __. M. In Department __, of said Court.

19
20 CC:FILE

21
22 DATED: this 28 day of December, 2021.

23
24 BY: Demarene Coleman
D Coleman # 1007335
/In Propria Personam

RECEIVED
JAN 09 2022
CLERK OF THE COURT



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN AFSHAR
6 Deputy District Attorney
7 Nevada Bar #14408
8 8200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15
16 Plaintiff,

17 -vs-

18 DEMARENE COLEMAN,
19 #1007335

20 Defendant.

CASE NO: 05C215295-1

DEPT NO: VI

21 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR MODIFICATION OF
22 SENTENCE**

23 DATE OF HEARING: FEBRUARY 1, 2022
24 TIME OF HEARING: 11:00 AM

25 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
26 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the
27 attached Points and Authorities in Opposition to Defendant's Motion for Modification of
28 Sentence.

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

//

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 20, 2005, Defendant was charged by way of Information with MURDER
4 WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010, 200.030, 193.165);
5 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010,
6 200.030, 193.330, 193.165); and ACCESSORY TO MURDER (Felony – NRS 200.010,
7 200.030, 195.030, 195.040).

8 On August 22, 2006, the district court held a hearing to determine Defendant's
9 competency. The court found that the Defendant was not competent and remanded him to the
10 custody of the Division of Mental Health Development Services for detention and treatment.
11 An Order of Commitment was filed on August 28, 2006. On December 12, 2006, the district
12 court, after reviewing the doctors' reports, held that Defendant was competent. On December
13 29, 2006, the court filed its Findings of Competency.

14 On May 29, 2007, Defendant entered into a Guilty Plea Agreement and pled guilty to
15 FIRST DEGREE MURDER and BATTERY WITH USE OF A DEADLY WEAPON, the
16 charges set forth in the Amended Information filed that same day.

17 On July 24, 2007, the date set for sentencing, defense counsel Carmine Colucci,
18 requested a continuance for leave to file a Motion to Withdraw Guilty Plea. That same day,
19 the court granted Defendant's request for a continuance. On August 7, 2007, Defendant filed
20 a Motion to Withdraw Guilty Plea. On August 13, 2007, the State filed its Opposition. On
21 August 14, 2007, the district court denied Defendant's Motion to Withdraw Guilty Plea and
22 sentenced Defendant as follows: As to Count 1 – to a MAXIMUM of FIFTY YEARS with a
23 MINIMUM of parole eligibility of FORTY-EIGHT (48) MONTHS to run CONCURRENT
24 with Count 1; with SEVEN HUNDRED FIFTY-FIVE DAYS credit for time served. A
25 Judgment of Conviction was filed on August 22, 2007.

26 Defendant filed the instant petition on August 19, 2008. The State filed its Response
27 on October 28, 2008. On November 18, 2008, the Court heard the matter. On February 26,
28

1 2009, the Court filed its Findings of Fact, Conclusions of Law Order denying Defendant's
2 Petition.

3 On June 14, 2021, Defendant filed a Motion for Appointment of Attorney. The Motion
4 was denied on July 9, 2021.

5 On January 7, 2022, Defendant filed the instant Motion for Modification of Sentence.
6 The State's Response now follows.

7 ARGUMENT

8 **I. DEFENDANT IS NOT ENTITLED TO A MODIFICATION OF HIS** 9 **SENTENCE**

10 Defendant asks this Court to modify his sentence and amend his Judgment of
11 Conviction to "reflect the 'Minimum-Maximum' statute [of] twenty (20) to fifty (50)" years,
12 or resentencing such that he would be eligible for parole after ten (10) years, though he states no
13 valid grounds upon which the Court may act.

14 In general, a district court lacks jurisdiction to modify a sentence once the defendant
15 has started serving it. Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992).
16 However, a district court has inherent authority to correct, vacate, or modify a sentence that
17 violates due process where the defendant can demonstrate the sentence is based on a materially
18 untrue assumption or mistake of fact about the defendant's criminal record that has worked to
19 the *extreme* detriment of the defendant. Edwards v. State, 112 Nev. 704,707, 918 P.2d 321,
20 324 (1996); see also Passanisi, 108 Nev. at 322, 831 P.2d at 1373.

21 Not every mistake or error during sentencing gives rise to a due process violation. State
22 v. Eighth Judicial Dist. Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). A district court
23 has jurisdiction to modify a defendant's sentence "only if (1) the district court actually
24 sentenced appellant based on a materially false assumption of fact that worked to appellant's
25 extreme detriment, and (2) the particular mistake at issue was of the type that would rise to the
26 level of a violation of due process." Passanisi, 108 Nev. at 322-23, 831 P.2d at 1373-74.

27 Additionally, if substantial and material mistakes of fact were relied upon in rendering
28 judgment, a judge may reconsider a sentence. State v. District Court, 100 Nev. 90, 677 P.2d

1 1044 (1984); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967). When the sentencing court
2 “makes a mistake in rendering a judgment which works to the extreme detriment of the
3 defendant,” the district court has jurisdiction to vacate or modify the suspect sentence or
4 judgment. Id. at 95, citing Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

5 The United States Supreme Court has expressly held that where a defendant is
6 sentenced on the basis of materially untrue assumptions concerning his criminal record, “[the]
7 result, whether caused by carelessness or design, is inconsistent with due process of law.” Id.
8 at 96, citing Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 1255, 92 L.Ed. 1690
9 (1948). A sentencing judge's misapprehension of a defendant's criminal record may result in a
10 violation of the defendant's right to due process of law. Id. at 96. A due process violation arises
11 only when the errors result in “materially untrue” assumptions about a defendant's record. Id.
12 at 96, citing Townsend v. Burke, 334 U.S. at 741, 68 S.Ct. at 1255.

13 Defendant's Judgment of Conviction was filed on August 22, 2007. Accordingly,
14 Defendant began serving his sentence on that date. Miller v. Hayes, 95 Nev. 927, 604 P.2d 117
15 (1979) (“Only after a judgment of conviction is ‘signed by the judge and entered by the clerk,’
16 as provided by NRS 176.105, does it become final and does the defendant begin to serve a
17 sentence of imprisonment.”). Defendant claims he did not knowingly, intelligently, or
18 voluntarily enter his guilty plea and he was not sentenced based on an agreement between the
19 parties that he would be sentenced to “Twenty (20) to Fifty (50) years.” Motion at 10.
20 However, there is no evidence of any sort of agreement, and it is well established the Court
21 sentences under its own discretion. Further, unless Defendant's sentence was based on
22 materially untrue assumptions concerning his criminal record, which Defendant neither alleges
23 nor demonstrates, this Court lacks jurisdiction to consider Defendant's motion, and therefore
24 it should be summarily denied.

25 In this case, Defendant has not demonstrated that his sentence was based upon a
26 materially untrue assumption or mistake of fact about his criminal record that has worked to
27 his extreme detriment. Therefore, his request is outside the scope of a motion for modification
28 of sentence. Accordingly, Defendant's motion should be denied.

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that Defendant's Motion for
3 Modification of Sentence be DENIED.

4
5 DATED this 25th day of January, 2022.

6 Respectfully submitted,

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY /s/JOHN AFSHAR
11 JOHN AFSHAR
12 Deputy District Attorney
13 Nevada Bar #14408

14 CERTIFICATE OF ELECTRONIC FILING

15 I hereby certify that service of State's Opposition to Defendant's Motion For
16 Modification Of Sentence, was made this 25th day of January, 2022, by Electronic Filing to:

17 DEMARENE COLEMAN #1007335
18 SDCC
19 P.O. BOX 208,
20 INDIAN SPRINGS NV 89070

21
22 

23
24 Secretary for the District Attorney's Office

25
26
27
28 05F15000A/JA/jt/GCU

1 Demarene Coleman
2 In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

FEB 23 2022

Sharon A. Williams
CLERK OF COURT

5 IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF CLARK

8 THE STATE OF NEVADA

9
10 Plaintiff,

11 vs.

12 DEMARENE COLEMAN

13 Defendant.

Case No. 05C215295-1

Dept. No. _____

Docket _____

15 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,

18 DEMARENE COLEMAN, in and through his proper person, hereby
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or
20 dismissing the

21 Motion to Modify Sentence

22 _____
23 ruled on the 4 day of February, 20 22.

24 _____
25 Dated this 15 day of February, 20 22

26 Respectfully Submitted,

27 Demarene Coleman # 1007335

28 RECEIVED

FEB 23 2022

CLERK OF THE COURT

1 It is clear that the district court did not look over petitioners
2 Motion to Modify Sentence Exhibits that was accompany with Motion to
3 Modify Sentence. There is clear Evidence of the plea Agreement that both
4 parties agreed to. Exhibit (A) Plea Agreement. Exhibit (B) PSI. Exhibit (C)
5 Court Minutes of Sentencing. There also is evidence of the judge on record
6 saying she will go along with what both parties agreed to. Exhibit (C)
7 entry of plea page 7.8. I would like for the Nevada Supreme Court to
8 look over this Motion to Modify Sentence, and the Exhibits attached, so
9 the record will reflect there is more than sufficient Evidence to have
10 his Motion to Modify Sentence Granted.

CERTIFICATE OF SERVICE BY MAILING

1
2 I, Demarene Coleman, hereby certify, pursuant to NRCP 5(b), that on this 15
3 day of February, 2022, I mailed a true and correct copy of the foregoing, "Notice of
4 Appraisal"

5 by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
6 United State Mail addressed to the following:

7
8 Steven D. Grierson
9 Clerk of Court
10 200 Lewis Ave 3rd Floor
11 Las Vegas, NV
12 89155-1120

13 Steve Wolffson
14 District Attorney
15 200 Lewis Ave
16 Las Vegas, NV
17 89155-2212

17 CC:FILE

18
19 DATED: this 15 day of February, 2022.

20
21 Demarene Coleman
22 Demarene Coleman # 120233
23 /In Propria Personam
24 Post Office Box 208, S.D.C.C.
25 Indian Springs, Nevada 89018
26 IN FORMA PAUPERIS:
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of

Appeal

(Title of Document)

filed in District Court Case number OS.C.215295-1

Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-or-

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

D. Coleman

Signature

2/15/11

Date

Demarene Coleman

Print Name

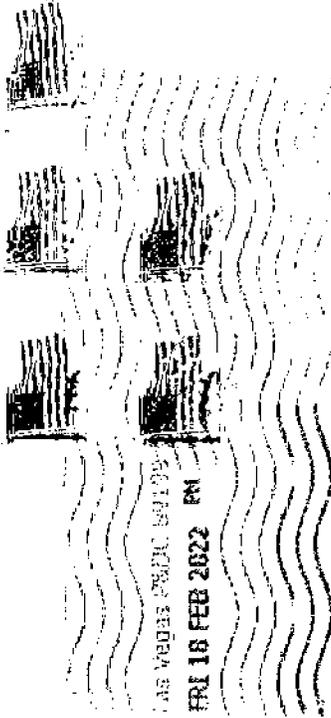
Defendant / Appellant

Title

Southern Basin
Caterpillar Center
FEB 18 2014
OUTGOING MAIL

Demarene Coleman #1007335
P.O. Box 200
SDCC

Indian Springs, NV, 89070-0208



Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue, 3rd floor
Las Vegas NV 89155-1160

RECEIVED
FEB 23 2022
CLERK OF THE COURT

Demarene Coleman, # 1007335
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

FILED

FEB 23 2022

IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA *Sharon A. Williams*
CLERK OF COURT

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff,

vs.

DEMARENE COLEMAN,
Defendant.

CASE No. 05C215295-1
DEPT. No. _____

DESIGNATION OF RECORD ON APPEAL

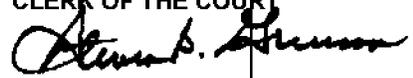
TO: Steven D. Grierson
Clerk of Court
200 Lewis Ave 3rd Floor
Las Vegas, NV
89155-1160

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 15 day of February, 2022.

RESPECTFULLY SUBMITTED BY:

Demarene Coleman
Demarene Coleman # 1007335
Plaintiff/In Propria Persona



1 ASTA

2

3

4

5

6

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

10

STATE OF NEVADA,

Case No: 05C215295-1

11

Plaintiff(s),

Dept No: VI

12

vs.

13

DEMARENE COLEMAN,

14

Defendant(s),

15

16

17

CASE APPEAL STATEMENT

18

1. Appellant(s): Demarene Coleman

19

2. Judge: Jacqueline M. Bluth

20

3. Appellant(s): Demarene Coleman

21

Counsel:

22

Demarene Coleman #1007335
P.O. Box 208
Indian Springs, NV 89070

23

24

25

4. Respondent: The State of Nevada

26

Counsel:

27

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

28

(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: Yes
- 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: September 20, 2005
- 10. Brief Description of the Nature of the Action: Criminal
Type of Judgment or Order Being Appealed: Misc. Order
- 11. Previous Appeal: No
Supreme Court Docket Number(s): N/A
- 12. Child Custody or Visitation: N/A

Dated This 24 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: Demarene Coleman

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN AFSHAR
6 Deputy District Attorney
7 Nevada Bar #14408
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 DEMARENE COLEMAN,
14 #1963947
15 Defendant.

CASE NO: 05C215295
DEPT NO: VI

16 **ORDER DENYING DEFENDANT'S MOTION FOR MODIFICATION OF**
17 **SENTENCE**

18 DATE OF HEARING: February 1, 2022
19 TIME OF HEARING: 11:00 A.M.

20 THIS MATTER having come on for hearing before the above-entitled Court on the
21 29th day of July, 2022, the Defendant not being present, IN PROPER PERSON, the Plaintiff
22 being represented by STEVEN B. WOLFSON, District Attorney, through JOHN AFSHAR,
23 Deputy District Attorney, without argument, based on the pleadings and good cause appearing
24 therefor,

25 COURT ORDERED, Defendant's Motion for Modification of Sentence is DENIED.
26 Defendant asks the Court to modify his sentence and amend his Judgment of Conviction to
27 "reflect the Minimum-Maximum statute [of] twenty (20) to fifty (50)" years, or resentence
28 such that he would be eligible for parole after ten (10) years. Defendant claims that he did not
knowingly, intelligently, or voluntarily enter his guilty plea and he was sentenced based on

1 an agreement between the parties that he would be sentenced to "Twenty (20) to Fifty (50)
2 years." However, there is no evidence of any sort of agreement, and it is well established the
3 Court sentences under its own discretion. Defendant does not allege that his sentence was
4 based on a materially untrue assumption, *Townsend v. Burke*, 334 U.S. 736, 741, 68 S.Ct.
5 1252, 1255, 92 L.Ed. 1690 (1948), or that the Court has jurisdiction to modify his sentence.
6 *Passanisi v. State*, 108 Nev. 319, 321, 831 P.2d 1371, 1373 (1992).

7 IT IS HEREBY ORDERED that the Defendant's Motion for Modification of Sentence,
8 shall be, and it is DENIED.

9 ~~DATED this _____ day of March, 2022.~~ Dated this 8th day of March, 2022

10 
11 _____
DISTRICT JUDGE

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Nevada Bar #001565

kj

D48 D84 C5D9 3C23
Jacqueline M. Bluth
District Court Judge

15 BY /s/ John Afshar
16 JOHN AFSHAR
17 Deputy District Attorney
18 Nevada Bar #14408

19 CERTIFICATE OF SERVICE

20 I certify that on the 7th day of March, 2022, I mailed a copy of the foregoing Order to:

21 DEMARENE COLEMAN, BAC #1007335
22 SO. DESERT CORRECTIONAL CENTER
23 PO BOX 208
24 INDIAN SPRINGS, NV 89070

25 BY /s/ Corelle Bellamy
26 Corelle Bellamy
27 Secretary for the District Attorney's Office

28 cnb/L5

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs
Demarene Coleman

CASE NO: 05C215295-1

7 DEPT. NO. Department 6

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 04, 2005

05C215295-1

The State of Nevada vs Demarene Coleman

October 04, 2005

8:30 AM

Initial Arraignment

**INITIAL
ARRAIGNMENT**
 Court Clerk: Sandra
 Jeter Relief Clerk:
 Cynthia Georgilas/cg
 Reporter/Recorder:
 Carlaya Lewis Heard
 By: Joseph
 Pavlikowski

HEARD BY:**COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coleman, Demarene	Defendant
DiGiacomo, Sandra	Attorney
Gibson, Thomas J.	Attorney
Special Public Defender	Attorney

JOURNAL ENTRIES

- AS TO DEFENDANT COLEMAN: DEFT. COLEMAN ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial within 60 days. Defendant REMANDED to CUSTODY.

AS TO DEFENDANT MOTLEY: DEFT. MOTLEY ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. Mr. Bloomfield stated he prefers to WAIVE the 60-DAY RULE but will INVOKE. State INVOKED. COURT ORDERED, 60-DAY RULE INVOKED, matter set for trial within 60 days. Mr. Bloomfield advised he was not sure why Deft. was in jail as she was placed on house arrest in Justice Court. COURT FURTHER ORDERED, defendant MOTLEY to REMAIN on HOUSE ARREST. As to BOTH DEFENDANTS: Upon inquiry, Clerk noted Blackstone indicates the Preliminary

05C215295-1

Hearing transcript has not been filed. COURT ORDERED, counsel are given the normal time after the transcript has been filed for Writ purposes.

CUSTODY (COLEMAN)...H.A. (MOTLEY)

11-18-05 8:30 AM CALENDAR CALL (BOTH)

11-14-05 10:00 AM JURY TRIAL (BOTH)

**PLEADING
CONTINUES
IN NEXT
VOLUME**