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2 *Lyn E. Beggs, Esq.*  
3 *Law Offices of Lyn E. Beggs, PLLC*  
4 *Nevada State Bar No. 6248*  
5 *316 California Ave., #863*  
6 *Reno, NV 89509*  
7 *(775) 432-1918*  
8 *ATTORNEY FOR PETITIONER*

Electronically Filed  
Jun 08 2021 02:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 RAUL GARICA,

12 Petitioner/Defendant,

Case No: CR00-1849

13 vs.

Dept. 6

14 STATE OF NEVADA,

15 Respondent.

16 \_\_\_\_\_/  
17 NOTICE OF APPEAL

18 NOTICE IS HEREBY GIVEN that Petitioner/Defendant RAUL GARICA hereby  
19 appeals to the Supreme Court of the State of Nevada from the Order filed on April 30, 2021,  
20 dismissing Petitioner/Defendant's Motion to Correct an Illegal Sentence and Vacate  
21 Judgment and/or Modify Sentence filed in the above referenced cases with Notice of Entry of  
22 Order being filed on May 3, 2021.

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26 ///

27 ///

**Pursuant to NRS 239B.030**, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 1<sup>st</sup> day of June, 2021.

/s/ LYN E. BEGGS  
Lyn E. Beggs, Esq.  
Law Offices of Lyn E. Beggs, PLLC  
316 California Ave., #863  
Reno, NV 89509  
(775) 432-1918  
ATTORNEY FOR PETITIONER

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**CERTIFICATE OF SERVICE**

I hereby certify that that on this date I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Kevin Naughton, Deputy District Attorney  
Washoe County District Attorney’s Office  
Appellate Division

DATED this 1<sup>st</sup> day of June, 2021.

/s/ LYN E. BEGGS \_\_\_\_\_

1 1310

2 *Lyn E. Beggs, Esq.*  
3 *Law Offices of Lyn E. Beggs, PLLC*  
4 *Nevada State Bar No. 6248*  
5 *316 California Ave. #863*  
6 *Reno, NV 89509*  
7 *(775) 432-1918*  
8 *ATTORNEY FOR PETITIONER*

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF**

11 **NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOES**

13 RAUL GARICA,

14 Petitioner/Defendant,

Case No: CR00-1849

15 vs.

Dept. 6

16 STATE OF NEVADA,

17 Respondent.  
18 \_\_\_\_\_/

19 **CASE APPEAL STATEMENT**

20 1. Name of Appellant filing this case appeal statement: RAUL GARCIA,  
21 Petitioner named above.

22 2. Identify the judge issuing the decision, judgment or order appealed from: The  
23 Honorable Scott Freeman, Second Judicial District Court, Washoe County, Department 9.

24 3. Identify each appellant and the name and address of counsel for each appellant:  
25 RAUL GARCIA, represented by Lyn E. Beggs, Esq., 316 California Ave., #863 Reno, NV  
26 89509, (775) 432-1918.  
27  
28

1           4.       Identify each respondent and the name and address of appellant counsel, if  
2 known, for each respondent. Respondent is THE STATE OF NEVADA. Appellate counsel  
3 for Respondent is the Washoe County District Attorney, Appellate Division, P.O. Box 11130,  
4 Reno, NV 89520, (775) 328-3200.

5           5.       Indicate whether any attorney identified above in response to question 3 or 4  
6 is not licensed to practice law in Nevada and, if so, whether the district court granted that  
7 attorney permission to appear under SCR 42 (attach a copy of any district court order granting  
8 such permission): None.

9           6.       Indicate whether Petitioner/Appellant was represented by retained or  
10 appointed counsel in the district court: Petitioner/Appellant was represented by appointed  
11 counsel, Lyn E. Beggs, Esq.

12           7.       Indicate whether Petitioner/Appellant is represented by retained or appointed  
13 counsel on appeal: Petitioner/Appellant is represented by appointed counsel, Lyn E. Beggs,  
14 Esq.

15           8.       Indicate whether Petitioner/Appellant was granted leave to proceed in forma  
16 pauperis, and the date of entry of the district court order granting such leave:  
17 Petitioner/Appellant was found to be indigent and counsel was appointed by Order filed  
18 January 22, 2020.

19           9.       Indicate the date the proceedings commenced in the district court: An  
20 Information was originally filed commencing the underlying criminal action on October 16,  
21 2000 with a conviction entered after a jury trial on March 29, 2001. Petitioner filed the Motion  
22 at issue in this matter on December 20, 2019.

24           10.      Provide a brief description of the nature of the action and result in the district  
25 court, including the type of judgment or order being appealed and the relief granted by the  
26 district court: This is an appeal from an Order dismissing a Motion to Modify or Correct  
27 Sentence from a conviction entered on March 29, 2001. A direct appeal was timely filed and  
28

1 the Supreme Court upheld the conviction. A Petition for Writ of Habeas Corpus in July  
2 2012 which was dismissed by the Court as untimely. A First Amended Petition for Writ of  
3 Habeas Corpus was filed in September 2012 which was again denied as untimely. The instant

4 Subsequently Mr. Garcia filed his Motion to Correct Illegal Sentence and Vacate  
5 Judgement and/or Modify Sentence on December 30, 2019. A Notice of No Supplement was  
6 filed on March 11, 2021 and the State filed its Opposition/Motion to Dismiss on March 23,  
7 2021. The Order dismissing was filed April 30, 2021 with the Notice of Entry of Order filed  
8 May 3, 2021. This appeal is timely filed.

9  
10 11. Indicate whether the case has previously been the subject of an appeal to or  
11 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court  
12 docket number of the prior proceeding: A direct appeal was filed in the matter in the Nevada  
13 Supreme Court, case no. 37816 and an appeal from a petition for writ of habeas corpus was  
14 filed: case no 81507.

15  
16 12. Indicate whether this appeal involved child custody or visitation: N/A

17  
18 13. If this is a civil case, indicate whether this appeal involves the possibility of  
19 settlement: N/A.

20 **Affirmation Pursuant to NRS 239B.030,**

21 The undersigned does hereby affirm that the preceding document does not contain the  
22 social security number of any person.

23 DATED this 1<sup>st</sup> day of June, 2021.

24 /s/ Lyn E. Beggs  
25 Lyn E. Beggs, Esq.  
26 Nevada State Bar No. 6248  
27 318 California Ave. #863  
28 Reno, NV 89509  
(775) 432-1918  
Attorney For Petitioner/Appellant

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**CERTIFICATE OF SERVICE**

I hereby certify that I represent the Petitioner/Appellant in this matter, and that on this date I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Kevin Naughton, District Attorney  
Washoe County District Attorney's Office  
Appellate Division

DATED this 1<sup>st</sup> day of June, 2021.

/s/ Lyn E. Beggs

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE**

**Case History - CR00-1849**

**DEPT. D6**

**HON. LYNNE K. SIMONS**

Report Date & Time

6/2/2021

9:58:39AM

**Case Description: STATE VS. RAUL GARCIA (TN) (D6)**

<b>Case ID:</b>	<b>CR00-1849</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>10/5/2000</b>
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**Parties**

PNP	Div. of Parole & Probation - DPNP
RESL	STATE OF NEVADA - STATE
APPD	RAUL GARCIA (TN) - @63047
PLTF	STATE OF NEVADA - STATE
DA	Kevin P. Naughton, Esq. - 12834
DA	Jennifer P. Noble, Esq. - 9446
DEFT	RAUL GARCIA (TN) - @63047
PD	Jeremy T. Bosler, Esq. - 4925
CAA	Lyn E. Beggs, Esq. - 6248

**Charges**

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
1	F1000	10/16/2000	INF SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF FOURTEEN
2	F650	10/16/2000	INF LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS
3	F650	10/16/2000	INF LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS

**Plea Information**

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
1	F1000	10/17/2000	PLED NOT GUILTY
2	F650	10/17/2000	PLED NOT GUILTY
3	F650	10/17/2000	PLED NOT GUILTY

**Sentences**

<i>Date</i>	<i>Charge No.</i>	<i>Charge Desc</i>	<i>Time Served</i>	<i>Sentence Text</i>
3/29/2001	1 - Life With Poss of Parole			NSP LIFE W/POSSIBILTY OF PAROLE AFTER A MINIMUM OF 20 YEARS SERVED + REST + FEES
3/29/2001	2 - Life With Poss of Parole			NSP LIFE W/POSSIBILTY OF PAROLE AFTER A MINIMUM OF 10 YEARS SERVED CONSECUTIVE TO COUNT I.
3/29/2001	3 - Life With Poss of Parole			NSP LIFE W/POSSIBILTY OF PAROLE AFTER A MINIMUM OF 10 YEARS SERVED CONSECUTIVE TO COUNTS I AND II.

**Release Information**

*Custody Status*

**Hearings**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>
1 D3	ARRAIGNMENT	10/17/2000 08:30:00	10/17/2000

Event Extra Text:

**Disposition:**  
D725 10/17/2000  
INFORMATION.



## Case Description: STATE VS. RAUL GARCIA (TN) (D6)

Case ID:	CR00-1849	Case Type:	CRIMINAL	Initial Filing Date:	10/5/2000
2	D3	MOTION TO CONFIRM TRIAL		2/1/2001 08:30:00	2/1/2001
Event Extra Text:			Disposition: D425 2/1/2001 CONFIRMED FOR 3 DAYS TO START ON FEB. 13, 2001.		
3	D3	MOTION TO CONFIRM TRIAL		2/1/2001 08:30:00	2/1/2001
Event Extra Text:			Disposition: D760 2/1/2001 FEBRUARY 13, 2001 AT 10:30 FOR 3 DAYS.		
4	D3	TRIAL - JURY		2/12/2001 08:30:00	2/8/2001
Event Extra Text: SET FOR 4 DAYS.			Disposition: D844 2/8/2001 Reset for February 13, 2001, at 10:30		
5	D3	TRIAL - JURY		2/13/2001 10:30:00	2/13/2001
Event Extra Text: SET FOR 3 DAYS.			Disposition: D832 2/13/2001 Exhibits 1 through 3 ordered admitted.		
6	D3	TRIAL - JURY		2/14/2001 08:30:00	2/14/2001
Event Extra Text: 2ND DAY (CONT'D)			Disposition: D895 2/14/2001 INFORMATION (COUNTS I through III)		
7	D3	SENTENCING		3/29/2001 08:30:00	3/29/2001
Event Extra Text:			Disposition: D765 3/29/2001		
8	D6	Tickle Start Code		1/27/2020 07:00:00	1/21/2020
Event Extra Text: RESPONSE TO MTN TO CORRECT SENTENCE			Disposition: T200 1/21/2020		
9	D6	Request for Submission		2/4/2020 11:16:00	4/1/2020
Event Extra Text: MOTION TO CORRECT AN ILLEGAL SENTENCE AND VACATE JUDGMENT AND/OR MODIFY SENTENCE ( NO ORDER PROVIDED)			Disposition: S200 4/1/2020 ORDER		

## Case Description: STATE VS. RAUL GARCIA (TN) (D6)

Case ID:	CR00-1849	Case Type:	CRIMINAL	Initial Filing Date:	10/5/2000
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	Department	Event Description	Sched. Date & Time		Disposed Date
10	D6	Tickle Start Code	3/2/2020	07:00:00	3/2/2020
	Event Extra Text: DA RESPONDED TO MOTION?		Disposition: T200 3/2/2020		

	Department	Event Description	Sched. Date & Time		Disposed Date
11	D6	Tickle Start Code	5/18/2020	07:00:00	5/18/2020
	Event Extra Text: COUNSEL APPOINTED?		Disposition: T200 5/18/2020		

	Department	Event Description	Sched. Date & Time		Disposed Date
12	D6	Request for Submission	4/5/2021	11:31:00	4/30/2021
	Event Extra Text: MOTION TO CORRECT AN ILLEGAL SENTENCE AND VACATE JUDGMENT AND/OR MODIFY SENTENCE FILED DECEMBER 30, 2019 - BINDER BUILT		Disposition: S200 4/30/2021 ORDER		

	Department	Event Description	Sched. Date & Time		Disposed Date
13	D6	Tickle Start Code	4/26/2022	07:00:00	4/6/2021
	Event Extra Text: DA FILED RESPONSE?		Disposition: T200 4/6/2021		

## Agency Cross Reference

Code	Agency Description	Case Reference I.D.
DA	District Attorney's Office	DA196924
PC	PCN number	PCN81688983
RP	Reno Police Department	RPD19308300

Actions				
Action Entry Date	Code	Code Description	Text	
10/16/2000	1800	Information		
10/17/2000	MIN	***Minutes	CRIMINAL PROGRESS SHEET	
10/17/2000	1280	** 60 Day Rule - Waived		
10/17/2000	MIN	***Minutes	ARRAIGNMENT	
10/20/2000	3700	Proceedings	JUSTICE COURT PROCEEDINGS (NOT FILE STAMPED, ENTERED AS OF DATE ON RECEIPT)	
11/7/2000	4185	Transcript	OCTOBER 17, 2000 ARRAIGNMENT	
12/12/2000	3839	Request Agree Ord Recp Discv		
1/11/2001	2565	Notice Intent Use Expt Witness		
2/1/2001	MIN	***Minutes		
2/2/2001	2592	Notice of Witnesses	NOTICE OF AND REQUEST FOR WITNESSES AND DISCOVERY	
2/5/2001	2592	Notice of Witnesses		
2/8/2001	4185	Transcript	FEBRUARY 1, 2001 MOTION TO CONFIRM TRIAL DATE	
2/13/2001	MIN	***Minutes	JURY TRIAL MINUTES (02/13/01 THROUGH 02/14/01	
2/13/2001	1695	** Exhibit(s) ...	EXHIBITS 1 - 3 ADMITTED.	

Case Description: STATE VS. RAUL GARCIA (TN) (D6)			
Case ID:	CR00-1849	Case Type:	CRIMINAL
		Initial Filing Date:	10/5/2000
2/14/2001	4235	Unused Verdict Form(s)...	
2/14/2001	4245	Verdict(s)...	GUILDY - COUNT II
2/14/2001	4245	Verdict(s)...	GUILTY - COUNT III
2/14/2001	4235	Unused Verdict Form(s)...	
2/14/2001	4235	Unused Verdict Form(s)...	
2/14/2001	1885	Jury Instructions	Instructions 1 through 27
2/14/2001	4245	Verdict(s)...	GUILTY - COUNT I
3/22/2001	4500	PSI - Confidential	DOCUMENT NOT FILE STAMPED - ENTERED AS OF DATE ON PSI
3/29/2001	MIN	***Minutes	ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE
3/29/2001	1850	Judgment of Conviction	
4/30/2001	1310	Case Appeal Statement	
4/30/2001	3870	Request	
4/30/2001	2490	Motion ...	
4/30/2001	2515	Notice of Appeal Supreme Court	
5/2/2001	1365	Certificate of Transmittal	
5/2/2001	1350	Certificate of Clerk	
5/3/2001	3863	**Submit regarding Appeals	Submitted Motion for Transcripts at Public Expense
5/7/2001	3370	Order ...	FOR TRANSCRIPTS AT PUBLIC EXPENSE
5/7/2001	1187	**Supreme Court Case No. ...	Supreme Court no. is 37816
5/11/2001	4185	Transcript	TRANSCRIPT ON APPEAL TRIAL 2/13/01
5/15/2001	4185	Transcript	TRIAL, VOLUME II
5/15/2001	4185	Transcript	SENTENCING
4/11/2002	4110	Supreme Court Judgment	SUPREME COURT CLERK'S CERTIFICATE AND JUDGMENT
4/11/2002	4125	Supreme Court Order...	ORDER OF AFFIRMANCE
4/11/2002	4145	Supreme Court Remittitur	FOR ISSUE NO. 37816
11/23/2004	2260	Mtn to Relieve Counsel	
2/3/2005	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR TRIAL TRANSCRIPTS
5/4/2005	3025	Ord Granting/Denying in Part	ORDER DENYING DEFENDANT'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE; ORDER GRANTING
7/1/2005	2385	Mtn Proceed Forma Pauperis	
7/1/2005	1030	Affidavit in Support...	OF MOTION TO PROCEED IN FORMA PAUPERIS
7/12/2005	3862	**Criminal Submit	DOCUMENT TITLE: MOTION TO PROCEED IN FORMA PAUPERIS
7/18/2005	3035	Ord Grant in Forma Pauperis	
12/23/2005	2610	Notice ...	OF MOTION
12/23/2005	2490	Motion ...	FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT
6/22/2006	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE
6/22/2006	1325	** Case Reopened	
6/29/2006	3370	Order ...	MOTION FOR PRODUCTION OF DOCUMENTS, ETC., IS GRANTED; PUBLIC DEFENDER TO PRODUCE AL
6/29/2006	1315	** Case Closed	
7/21/2006	3870	Request	FOR TRANSCRIPTS AT STATE EXPENSE

Case Description: STATE VS. RAUL GARCIA (TN) (D6)				
Case ID:	CR00-1849	Case Type:	CRIMINAL	Initial Filing Date: 10/5/2000
7/9/2015	NEF	Proof of Electronic Service	Transaction 5037125 - Approved By: NOREVIEW : 07-09-2015:10:18:50	
7/9/2015	4075	Substitution of Counsel	DAVID R. HOUSTON ESQ OBO RAUL GARCIA IN PLACE OF CHERYL BOND ESQ - Transaction 5036975 - A	
12/30/2019	2383	Mtn to Modify/Correct Sentence	MOTION TO CORRECT AN ILLEGAL SENTENCE AND VACATE JUDGMENT AND/OR MODIFY SENTENCE	
12/31/2019	NEF	Proof of Electronic Service	Transaction 7661389 - Approved By: NOREVIEW : 12-31-2019:12:05:25	
12/31/2019	1312	Case Assignment Notification	RANDOMLY REASSIGNED TO D6 FROM D3 DUE TO ADMINISTRATIVE ORDER FILED 6/3/19 - Transaction ;	
1/15/2020	2385	Mtn Proceed Forma Pauperis		
1/16/2020	NEF	Proof of Electronic Service	Transaction 7690269 - Approved By: NOREVIEW : 01-16-2020:13:11:07	
1/16/2020	2260	Mtn to Relieve Counsel	MOTION FOR WITHDRAWAL - Transaction 7690266 - Approved By: NOREVIEW : 01-16-2020:13:10:08	
1/21/2020	NEF	Proof of Electronic Service	Transaction 7695264 - Approved By: NOREVIEW : 01-21-2020:12:15:07	
1/21/2020	3005	Ord Withdrawal of Counsel	DAVID HOUSTON, ESQ. - Transaction 7695261 - Approved By: NOREVIEW : 01-21-2020:12:14:08	
1/21/2020	T200	Tickle End Code		
1/22/2020	3035	Ord Grant in Forma Pauperis	Transaction 7698051 - Approved By: NOREVIEW : 01-22-2020:13:10:17	
1/22/2020	NEF	Proof of Electronic Service	Transaction 7698055 - Approved By: NOREVIEW : 01-22-2020:13:11:14	
2/4/2020	3860	Request for Submission	DOCUMENT TITLE: MOTION TO CORRECT AN ILLEGAL SENTENCE AND VACATE JUDGMENT AND/OR M	
2/5/2020	1215	Application Appoint Counsel	MOTION FOR APPOINTMENT OF COUNSEL, IN SUPPORT OF MOTION TO CORRECT AN ILLEGAL SENTE	
3/2/2020	T200	Tickle End Code		
4/1/2020	S200	Request for Submission Complet	ORDER	
4/1/2020	NEF	Proof of Electronic Service	Transaction 7818827 - Approved By: NOREVIEW : 04-01-2020:16:31:14	
4/1/2020	2975	Ord Response to Pet	REQUESTING RESPONSE FROM THE STATE - Transaction 7818797 - Approved By: NOREVIEW : 04-01-202	
4/3/2020	2715	Ord Appointing Counsel	Transaction 7820832 - Approved By: NOREVIEW : 04-03-2020:09:29:34	
4/3/2020	NEF	Proof of Electronic Service	Transaction 7820833 - Approved By: NOREVIEW : 04-03-2020:09:30:27	
5/18/2020	T200	Tickle End Code		
5/19/2020	2715	Ord Appointing Counsel	LYN BEGGS, ESQ. - Transaction 7884202 - Approved By: NOREVIEW : 05-19-2020:14:46:07	
5/19/2020	NEF	Proof of Electronic Service	Transaction 7884207 - Approved By: NOREVIEW : 05-19-2020:14:47:06	
7/10/2020	NEF	Proof of Electronic Service	Transaction 7965301 - Approved By: NOREVIEW : 07-10-2020:13:37:51	
7/10/2020	1670	Ex-Parte Mtn...	Transaction 7965287 - Approved By: CAGUILAR : 07-10-2020:13:36:59	
7/13/2020	2610	Notice ...	RECOMMENDATION FOR PAYMENT OF INTERIM ATTORNEY'S FEES – Post-Conviction (Filed Under Seal) -	
7/14/2020	NEF	Proof of Electronic Service	Transaction 7968699 - Approved By: NOREVIEW : 07-14-2020:08:11:42	
7/14/2020	2777	Ord Approving ...	RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES (POST CONVICTION) -	
7/14/2020	NEF	Proof of Electronic Service	Transaction 7968912 - Approved By: NOREVIEW : 07-14-2020:09:09:02	
11/4/2020	PAYRC	**Payment Receipted	A Payment of -\$9.00 was made on receipt DCDC665555.	
11/10/2020	CHECK	**Trust Disbursement	A Disbursement of \$9.00 on Check Number 11992	
3/11/2021	2610	Notice ...	NOTICE OF NO SUPPLEMENT - Transaction 8337887 - Approved By: YVILORIA : 03-11-2021:13:17:16	
3/11/2021	NEF	Proof of Electronic Service	Transaction 8337903 - Approved By: NOREVIEW : 03-11-2021:13:18:08	
3/23/2021	NEF	Proof of Electronic Service	Transaction 8356265 - Approved By: NOREVIEW : 03-23-2021:11:57:24	
3/23/2021	2645	Opposition to Mtn ...	OPPOSITION TO MOTION TO CORRECT AN ILLEGAL SENTENCE AND VACATE JUDGMENT AND/OR MOD	
3/23/2021	2520	Notice of Appearance	KEVIN NAUGHTON DA - Transaction 8356258 - Approved By: YVILORIA : 03-23-2021:11:56:26	
3/30/2021	2645	Opposition to Mtn ...	REPLY TO OPPOSITION TO MOTION TO CORRECT AN ILLEGAL SENTENCE AND VACATE JUDGEMENT A	
3/31/2021	NEF	Proof of Electronic Service	Transaction 8369542 - Approved By: NOREVIEW : 03-31-2021:08:44:00	

Case Description: STATE VS. RAUL GARCIA (TN) (D6)			
Case ID:	CR00-1849	Case Type:	CRIMINAL
			Initial Filing Date: 10/5/2000
4/5/2021	3860	Request for Submission	Transaction 8377299 - Approved By: NOREVIEW : 04-05-2021:11:35:10
4/5/2021	NEF	Proof of Electronic Service	Transaction 8377303 - Approved By: NOREVIEW : 04-05-2021:11:35:59
4/6/2021	T200	Tickle End Code	
4/30/2021	S200	Request for Submission Complet	ORDER
4/30/2021	F230	Other Manner of Disposition	
4/30/2021	2920	Ord for Dismissal...	OF MOTION TO CORRECT ILLEGAL SENTENCE AND VACATE JUDGMENT AND/OR MODIFY SENTENCE -
4/30/2021	NEF	Proof of Electronic Service	Transaction 8423251 - Approved By: NOREVIEW : 04-30-2021:17:32:53
5/3/2021	NEF	Proof of Electronic Service	Transaction 8423512 - Approved By: NOREVIEW : 05-03-2021:08:55:33
5/3/2021	2540	Notice of Entry of Ord	Transaction 8423510 - Approved By: NOREVIEW : 05-03-2021:08:54:32
6/1/2021	NEF	Proof of Electronic Service	Transaction 8473130 - Approved By: NOREVIEW : 06-01-2021:16:51:31
6/1/2021	1310	Case Appeal Statement	Transaction 8473103 - Approved By: YVILORIA : 06-01-2021:16:49:11
6/1/2021	2515	Notice of Appeal Supreme Court	Transaction 8473103 - Approved By: YVILORIA : 06-01-2021:16:49:11
6/2/2021	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8473874 - Approved By: N
6/2/2021	NEF	Proof of Electronic Service	Transaction 8473877 - Approved By: NOREVIEW : 06-02-2021:09:57:35

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE**

**Case History - CR00P1849**

**DEPT. D3**

**HON. TAMMY RIGGS**

Report Date & Time

6/2/2021

9:58:16AM

<b>Case ID:</b>	<b>CR00P1849</b>	<b>Case Type:</b>	<b>Case Description: POST: RAUL GARCIA (D3) POST CONVICTION</b>	<b>Initial Filing Date:</b>	<b>3/27/2007</b>
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**Parties**

RESP	STATE OF NEVADA - STATE
PETR	RAUL GARCIA (TN) - @63047
DA	Jennifer P. Noble, Esq. - 9446

**Charges**

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
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**Plea Information**

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
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**Release Information**

*Custody Status*

**Hearings**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>
1			
Event Extra Text:		<i>Disposition:</i>	

**Agency Cross Reference**

<i>Code</i>	<i>Agency Description</i>	<i>Case Reference I.D.</i>
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**Actions**

<i>Action Entry Date</i>	<i>Code</i>	<i>Code Description</i>	<i>Text</i>
3/27/2007	3870	Request	VERIFICATION
3/27/2007	1270	Application ...	TO PROCEED IN FORMA PAUPERIS
3/27/2007	2385	Mtn Proceed Forma Pauperis	
4/2/2007	3862	**Criminal Submit	DOCUMENT TITLE: IFP
4/19/2007	3035	Ord Grant in Forma Pauperis	
9/18/2007	3370	Order ...	THE PETITIONER'S REQUEST FOR VERIFICATION IS DENIED
9/18/2007	1315	** Case Closed	
9/9/2008	3870	Request	REQUEST FOR ENLARGEMENT OF TIME (FIRST REQUEST)

Case ID:		CR00P1849	Case Type:	Case Description: POST: RAUL GARCIA (D3) POST CONVICTION	Initial Filing Date:	3/27/2007
7/11/2012	3565	Pet Post-Conviction Relief	PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)			
7/11/2012	1325	** Case Reopened				
7/11/2012	3862	**Criminal Submit	DOCUMENT TITLE: NO S1 BUILT - APPLICATION TO PROCEED IN FORMA PAUPERIS (PAPER ORDER PF			
7/11/2012	2490	Motion ...	MOTION FOR APPOINTMENT OF COUNSEL			
7/11/2012	2385	Mtn Proceed Forma Pauperis				
7/11/2012	3862	**Criminal Submit	DOCUMENT TITLE: NO S1 BUILT - MOTION FOR APPOINTMENT OF COUNSEL (PAPER ORDER PROVIDE			
7/17/2012	2840	Ord Denying ...	ORDER DENYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL AND PETITION FOR WRIT C			
7/17/2012	NEF	Proof of Electronic Service	Transaction 3088582 - Approved By: NOREVIEW : 07-17-2012:10:47:59			
7/17/2012	NEF	Proof of Electronic Service	Transaction 3089824 - Approved By: NOREVIEW : 07-17-2012:14:00:57			
7/17/2012	2526	Notice of Change of Attorney	JENNIFER NOBLE DA SUBS OUT RICHARD GAMMICK DA FOR THE STATE OF NV. - Transaction 3089742 -			
7/25/2012	2540	Notice of Entry of Ord	Transaction 3106888 - Approved By: NOREVIEW : 07-25-2012:11:16:32			
7/25/2012	NEF	Proof of Electronic Service	Transaction 3106896 - Approved By: NOREVIEW : 07-25-2012:11:18:23			
9/25/2012	2490	Motion ...	MOTION FOR APPOINTMENT OF COUNSEL			
9/25/2012	1120	Amended ...	FIRST AMENDMENT PETITION FOR WRIT OF HABEAS CORPUS			
9/25/2012	3862	**Criminal Submit	DOCUMENT TITLE: NO S1 BUILT - MOTION FOR APPOINTMENT OF COUNSEL (PAPER ORDER PROVIDE			
10/12/2012	2840	Ord Denying ...	PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR APPOINTMENT OF COUNSEL - Transaction			
10/12/2012	F230	Other Manner of Disposition	ORDER DISMISSING PETITION			
10/12/2012	NEF	Proof of Electronic Service	Transaction 3279038 - Approved By: NOREVIEW : 10-12-2012:10:34:01			
10/17/2012	2540	Notice of Entry of Ord	Transaction 3287624 - Approved By: NOREVIEW : 10-17-2012:10:40:40			
10/17/2012	NEF	Proof of Electronic Service	Transaction 3287628 - Approved By: NOREVIEW : 10-17-2012:10:42:04			

1 CODE NO.  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 STATE OF NEVADA,

Case No. CR00-1849

10 Plaintiff,

Dept. No. 6

11  
12 vs.

13 RAUL GARCIA,

14 Defendant.  
15 \_\_\_\_\_/

16 **ORDER DISMISSING MOTION TO CORRECT AN ILLEGAL**  
17 **SENTENCE AND VACATE JUDGMENT AND/OR MODIFY SENTENCE**

18 Before this Court is the *Motion to Correct an Illegal Sentence and Vacate Judgment,*  
19 *and/or Modify Sentence* ("Motion") filed by Defendant RAUL GARCIA ("Mr. Garcia") on  
20 December 30, 2019.  
21

22 On January 21, 2020, this Court entered its *Order for Withdrawal* permitting David R.  
23 Houston, Esq. to withdraw from representing Mr. Garcia. On January 22, 2020, the Court  
24 issued its *Order Granting Motion to Proceed Informa Pauperis*, finding Mr. Garcia qualified  
25 for forma pauperis status. Mr. Garcia then filed his *Request for Submission* for the instant  
26 *Motion* on February 4, 2020.  
27

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1 On April 1, 2020, the Court entered the *Order Re: Response from the State* and on  
2 April 3, 2020, the Court entered the *Order Granting Motion for Appointment of Counsel in*  
3 *Support of Motion to Correct an Illegal Sentence and Vacate Judgment and/or Modify*  
4 *Sentence* (“*April Order*”) in which the Court indicated it would construe the *Motion* as a post-  
5 conviction petition for writ of habeas corpus. *April Order*, p. 1, n.1.  
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7 On March 11, 2021, counsel for Mr. Garcia, Lyn E. Beggs, Esq. filed the *Notice of No*  
8 *Supplement*.

9 Plaintiff THE STATE OF NEVADA (“the State”) filed the *Opposition to Motion to*  
10 *Correct an Illegal Sentence and Vacate Judgment and/or Modify Sentence* (“*Opposition*”).  
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12 Mr. Garcia filed his *Reply to Opposition to Motion to Correct an Illegal Sentence and*  
13 *Vacate Judgment and/or Modify Sentence or in the Alternative Opposition to Motion to*  
14 *Dismiss* (“*Reply*”) and the matter was again submitted for the Court’s consideration.  
15

16 **I. FACTUAL AND PROCEDURAL HISTORY.**

17 Pursuant to the *Judgment of Conviction* (“*JOC*”) entered March 29, 2001, Mr. Garcia  
18 was found guilty of the crimes as charged in the *Information* of: Count I - Sexual Assault on  
19 a Child Under the Age of Fourteen, a violation of NRS 200.336, a felony; Count II -  
20 Lewdness With a Child Under the Age of Fourteen Years, a violation of NRS 201.230, a  
21 felony; and, Count III - Lewdness With a Child Under the Age of Fourteen Years, a violation  
22 of NRS 201.336, a felony. See *JOC*. Mr. Garcia was sentenced to imprisonment in the  
23 Nevada State Prison (“NSP”) for terms of: Count I - Life With the Possibility of Parole after a  
24 minimum of twenty (20) years; Count II - Life With the Possibility of Parole after a minimum  
25 of ten (10) years; and Count III - Life With the Possibility of Parole after a minimum of ten  
26 (10) years has been served as to Count III. The sentence on Count II was imposed to run  
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1 consecutively to the sentence on Count I. The sentence on Count III was imposed to run  
2 consecutively to the sentences on Count I and Count II. Credit for two hundred thirty-four  
3 (234) days time served was granted. The JOC also imposed a special sentence of lifetime  
4 supervision to commence after any period of probation, term of imprisonment or after any  
5 release on parole. See JOC.

7 Mr. Garcia filed a direct appeal, and, on March 14, 2002, the Nevada Supreme Court  
8 entered its *Order of Affirmance*, finding the Court did not err when it rejected Mr. Garcia's  
9 argument the victim's mother was coaching her boyfriend and the victim while defense  
10 counsel was questioning them. The Nevada Supreme Court further found the Court did not  
11 err in providing the jury with certain instructions.

13 In July, 2012, Mr. Garcia filed his first *Petition for Writ of Habeas*, which the Court  
14 dismissed as untimely. Then, in September, 2012, Mr. Garcia then filed his *First Amended*  
15 *Petition for Writ of Habeas Corpus*, which the Court also dismissed as untimely.<sup>1</sup>

17 In his *Motion*, Mr. Garcia argues he is not challenging the jury verdict, but challenges  
18 his consecutive sentences for lewdness with a minor as the chain of events that form the  
19 basis for the charges immediately succeeded one another and were incidental to one  
20 another. *Motion*, p. 5. Mr. Garcia contends his conviction for Count II contradicts the  
21 legislative intent of NRS 201.230. *Motion*, p. 7. Therefore, Mr. Garcia posits his convictions  
22 should be limited to a single act of sexual assault for digitally penetrating his victim (Count  
23 I), and a single act of lewdness for returning to the victim after approximately 10 minutes to  
24 pull down her shorts (Count III). *Motion*, p. 7-8.

26 In the *Opposition*, the State argues the *Motion* is improper under the legal standards  
27 for illegal or erroneous sentences because the sentences are within the statutory  
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<sup>1</sup> These filings and orders are memorialized in CR00P1849.

1 parameters and, therefore, they are not at variance with the statutory maximums.  
2 *Opposition*, p. 3. The State asserts issues concerning the validity of a sentence must be  
3 raised in habeas proceedings pursuant to Edwards v. State, 112 Nev. 704, 708, 918 P.2d  
4 321, 324-25, (1996). Therefore, the State moves to dismiss the *Motion* pursuant to authority  
5 governing post-conviction habeas petitions. *Opposition*, p. 4. The State argues the *Motion*  
6 must be dismissed because Mr. Garcia did not show good cause for failing to raise this  
7 issue at the trial level or in his direct appeal. *Opposition*, pp. 4-5. The State notes Mr.  
8 Garcia's *Motion* is also untimely as it was filed more than a year after the Nevada Supreme  
9 Court issued its *Remittitur* on April 11, 2002. *Opposition*, p. 5. The State further asserts Mr.  
10 Garcia is guilty of laches. Id. Lastly, the State posits, even accepting Mr. Garcia's  
11 assertions as true, relief is not warranted because the lewdness was not incidental to the  
12 sexual assault. *Opposition*, p. 6.

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15 In the *Reply*, Mr. Garcia states his argument was not raised to the trial court but  
16 should have been and this Court may construe this argument as one of ineffective  
17 assistance of both trial and appellate counsel. *Reply*, p. 3. Mr. Garcia argues good cause  
18 exists to overcome the procedural bar in NRS 34.726(1) because he is a Spanish-only  
19 speaker and his language barrier prevented him from timely filing. *Reply*, p. 4. Mr. Garcia  
20 argues laches is inapplicable as he is not challenging the facts presented at trial and would  
21 only need trial and appellate counsel to testify. Id. In addition, Mr. Garcia contends he  
22 stated his claims in the *Motion* with enough specificity that it meets the standards of  
23 Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). *Reply*, p. 5.

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1 **II. APPLICABLE LAW AND ANALYSIS.**

2 The Court evaluates the *Motion* as a post-conviction petition for writ of habeas  
3 corpus, as indicated in its *April Order*.  
4

5 **A. PROCEDURAL BAR.**

6 Successive petitions, such as Mr. Garcia's, are subject to mandatory dismissal  
7 pursuant to Chapter 34 of the Nevada Revised Statutes. "Application of the statutory  
8 procedural default rules to post-conviction habeas petitions is mandatory." State v. Eighth  
9 Judicial Dist. Court ex rel. County of Clark, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).  
10  
11 Successive petitions must be dismissed pursuant to NRS 34.810 if the grounds for the  
12 petition were already raised on direct appeal or in a prior petition for writ of habeas corpus  
13 and considered on the merits or the grounds could have been raised in a prior petition.  
14 NRS 34.810; Brown v. McDaniel, 130 Nev. 565, 568-69, 331 P.3d 867, 870 (2014); State v.  
15 Eighth Judicial Dist. Court, 121 Nev. at 232.  
16

17 Similarly, "if it plainly appears on the face" of a second or successive petition and the  
18 documents or the records on file with the court, the petitioner is not entitled to relief, then the  
19 court shall enter an order for summary dismissal. NRS 34.745(4). In order to overcome the  
20 bar to successive petitions, "the petitioner has the burden of pleading and proving specific  
21 facts that demonstrate" good cause for failing to present the claim and "[a]ctual prejudice to  
22 the petitioner." NRS 34.810(3)(a)-(b).  
23

24 Good cause is defined as "a substantial reason that affords a legal excuse." Brown,  
25 130 Nev. at 569, 331 P.3d at 870 (internal quotations omitted). To show good cause, the  
26 petitioner must demonstrate "an impediment external to the defense prevented him from  
27 complying with procedural rules." Id. An "impediment external to the defense may be  
28

1 demonstrated by a showing that the factual or legal basis for the claim was not reasonably  
2 available to counsel or that some interference by officials made compliance impracticable.”  
3 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

4  
5 The Ninth Circuit Court of Appeals has found “equitable tolling may be justified if  
6 language barriers actually prevent timely filing” of post-conviction filings. Mendoza v. Carey,  
7 449 F.3d 1065, 1069 (9th Cir. 2006). However, the “existence of a translator who can read  
8 and write English and who assists a petitioner during appellate proceedings renders  
9 equitable tolling inapplicable for that petitioner.” Id., at 1070 (citing Cobas v. Burgess, 306  
10 F.3d 441, 444 (6th Cir. 2002).

11  
12 Here, good cause does not exist to overcome the untimeliness of Mr. Garcia’s  
13 *Motion*. Mr. Garcia alleges language was a barrier to timely filing petitions for post-  
14 conviction relief. *Reply*, p. 4. However, Mr. Garcia also states he was assisted with the  
15 filing of his petitions in 2012. Id. This is further evidenced by Mr. Garcia filing multiple  
16 motions for appointment of counsel and multiple motions to proceed *in forma pauperis*  
17 between July and October of 2012 according to the record in CR00P1849. Additionally, Mr.  
18 Garcia was aware he had to provide good cause to overcome the procedural bar of NRS  
19 34.726(1) as early as July 17, 2012, yet he failed to do so in his September petition and in  
20 the *Motion* despite clearly having assistance and notice to do so. See Order entered  
21 October 12, 2012. As such, Mr. Garcia does not have good cause to excuse the untimely  
22 filing of his petitions and the instant *Motion*. Nevertheless, the Court examines the merits of  
23 Mr. Garcia’s claims.

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1           **B.       INEFFECTIVE ASSISTANCE OF COUNSEL.**

2           Claims of ineffective assistance of counsel are evaluated under the test established  
3 in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). A court's evaluation  
4 "begins with the strong presumption that counsel's conduct falls within the wide range of  
5 reasonable professional assistance." Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25,  
6 32 (2004) (internal quotations omitted). A defendant must "overcome the presumption that,  
7 under the circumstances, the challenged action might be considered sound trial strategy."  
8 Id. (internal quotations omitted).

9           Within that context, the petitioner must demonstrate the following:  
10

11           [T]hat his counsel's performance was deficient, falling below an objective  
12 standard of reasonableness, and that counsel's deficient performance  
13 prejudiced the defense. To establish prejudice based on counsel's deficient  
14 performance, a petitioner must show that, but for counsel's errors, there is a  
15 reasonable probability that the outcome would have been different.

16           Id. (internal quotations omitted). "Deficient" representation is "representation that falls  
17 below an objective standard of reasonableness." Kirksey v. State, 112 Nev. 980, 988, 923  
18 P.2d 1102, 1107. "A fair assessment of attorney performance requires that every effort be  
19 made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of  
20 counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the  
21 time." 112 Nev. at 987-88.

22           A petitioner must demonstrate prejudice "by showing a reasonable probability that  
23 but for counsel's errors, the result of the trial would have been different." Nika v. State, 124  
24 Nev. 1272, 1279, 198 P.3d 839, 844 (2008). A "reasonable probability" is a probability  
25 sufficient to undermine confidence in the outcome of trial. Riley v. State, 110 Nev. 638, 646,  
26

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1 878 P.2d 272, 278 (1994). "The defendant carries the affirmative burden of establishing  
2 prejudice." Id., citing Strickland, 466 U.S. at 693-94.

3 A habeas corpus petitioner "must prove the disputed factual allegations underlying  
4 his ineffective-assistance claim by a preponderance of the evidence." Id. at 1012. A court  
5 may evaluate the issue of deficient performance and prejudice in either order and need not  
6 consider both issues if the petitioner fails to make a sufficient showing on one. Means, 120  
7 Nev. at 1011, 103 P.3d at 32.

9 Lastly, a petitioner has a right to a post-conviction evidentiary hearing when a  
10 petitioner asserts claims supported by specific factual allegations not belied by the record  
11 that, if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502-03,  
12 686 P.2d 222 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the  
13 record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46  
14 P.3d 1228, 1230 (2002).

16 Mr. Garcia does not have a colorable claim for relief. The Court has reviewed the  
17 record and based on the *Information* filed on October 16, 2000, Mr. Garcia was charged  
18 with the following counts which described his acts as follows:

20 Count I – Sexual Assault on A Child Under the Age of Fourteen, a violation of NRS  
21 200.366, a felony. "[T]o wit, the defendant put his finger inside the victim's vagina."

23 Count II – Lewdness with a Child Under the Age of Fourteen Years, a violation of  
24 NRS 201.230, a felony. "[T]he said defendant pulled down the victim's pants and/or  
25 underwear and/or touched the victim's vaginal area with his tongue with the intent of  
26 arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the  
27 child."  
28

1 Count III – Lewdness with a Child Under the Age of Fourteen Years, a violation of  
2 NRS 201.230, a felony,

3 [T]he said defendant unzipped his pants and pulled the hand of the said  
4 [victim] toward his exposed penis in an attempt to get her to touch the said  
5 penis with the intent of arousing, appealing to, or gratifying the lust, passions  
6 or sexual desires of himself or of the child.

7 *Information.* Mr. Garcia's counts cannot be consolidated because, as he readily  
8 admits, his counts were punctuated by "approximately ten (10) minutes" and because  
9 two separate instances of lewdness occurred. *Motion*, pp. 4-5. Mr. Garcia relies on  
10 Crowley for the proposition his convictions for Count I of sexual assault and Count II  
11 of lewdness are redundant as they arose out of the same incident and are therefore  
12 mutually exclusive. 120 Nev. 30, 34, 83 P.3d 282, 285 (2004). However, Crowley is  
13 factually different and therefore inapplicable here. Crowley involved one continuous  
14 assault on the victim wherein there was no break. 120 Nev. at 34, 83 P.3d at 285. In  
15 Mr. Garcia's case, the sexual assault was a separate assault from the lewdness.  
16 And, the lewd acts undertaken were different and, in fact, performed on the victim by  
17 Mr. Garcia and the other on Mr. Garcia at his instance, creating separate acts that  
18 were not incidental to one another.  
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21 Furthermore, separate instances of lewdness and sexual assault have been upheld  
22 when there is a temporal gap between the instances, despite a short time interval between  
23 the instances. Wright v. State, 106 Nev. 647, 799 P.2d 548 (1990) (finding separate  
24 convictions for sexual assault warranted when Wright paused to wait for a car to pass);  
25 Townsend v. State, 103 Nev. 113, 121, 734 P.2d 705, 710 (1987). As both Wright and  
26 Townsend were decided prior to Mr. Garcia's conviction on March 29, 2001, it was not  
27 objectively unreasonable for either trial or appellate counsel to refrain from make the  
28



1 argument the acts were incidental to one another based on the existing case law. Finally,  
2 Crowley was not decided until 2004, four (4) years after Mr. Garcia's conviction. Therefore,  
3 it was unavailable as a basis to argue the lewdness was incidental to the sexual assault.  
4

5 Thus, the Court concludes Mr. Garcia has not asserted specific factual allegations  
6 which, if true, would warrant relief. Nike, 124 Nev. at 1301, 198 P.3d at 858.

7 **III. CONCLUSION AND ORDER.**

8 Mr. Garcia's *Motion* is both untimely and fails to make a claim for deficient  
9 representation. As Mr. Garcia's *Motion* is procedurally barred, it must be summarily  
10 dismissed.  
11

12 Accordingly, and good cause appearing,

13 **IT IS HEREBY ORDERED** Mr. Garcia's *Motion to Correct an Illegal Sentence and*  
14 *Vacate Judgment and/or Modify Sentence* is SUMMARILY DISMISSED.

15 Dated this 30<sup>th</sup> day of April, 2021.  
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19 DISTRICT JUDGE  
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 30th day of April, 2021, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

JENNIFER NOBLE, ESQ.  
KEVIN NAUGHTON, ESQ.  
LYN BEGGS, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Heidi Boe

1 **CODE 2540**

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3  
4  
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF WASHOE**

7  
8 **STATE OF NEVADA,**

9 **Plaintiff,**

**Case No: CR00-1849**

10 **vs.**

**Dept. No: 6**

11  
12 **RAUL GARCIA,**

13 **Defendant.**

14 \_\_\_\_\_/

15 **NOTICE OF ENTRY OF ORDER**

16  
17 PLEASE TAKE NOTICE that on April 30, 2021, the Court entered a decision or  
18 order in this matter, a true and correct copy of which is attached hereto.

19 Dated May 3, 2021.

20  
21 \_\_\_\_\_  
22 **ALICIA LERUD**

**Clerk of the Court**

23 \_\_\_\_\_  
24 **/s/N. Mason**

**N. Mason-Deputy Clerk**

1 **CERTIFICATE OF SERVICE**

2 Case No. CR00-1849

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on May 3, 2021, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:

6  
7 DIV. OF PAROLE & PROBATION  
8 JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA  
9 LYN E. BEGGS, ESQ. for RAUL GARCIA (TN)  
10 KEVIN P. NAUGHTON, ESQ. for STATE OF NEVADA

11 I further certify that on May 3, 2021, I deposited in the Washoe  
12 County mailing system for postage and mailing with the U.S. Postal Service in Reno,  
13 Nevada, a true copy of the attached document, addressed to:

14 Attorney General's Office  
15 100 N. Carson Street  
16 Carson City, NV 89701-4717

17 Raul Garcia (#68625)  
18 Lovelock Correctional Center  
19 1200 Prison Rd.  
20 Lovelock, NV 89419

21 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the  
22 preceding document does not contain the personal information of any person.

23 Dated May 3, 2021.

24 /s/N. Mason  
25 N. Mason- Deputy Clerk  
26  
27  
28

1 CODE NO.  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
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9 STATE OF NEVADA,

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10 *Correct an Illegal Sentence and Vacate Judgment and/or Modify Sentence* (“*Opposition*”).  
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20 Lewdness With a Child Under the Age of Fourteen Years, a violation of NRS 201.230, a  
21 felony; and, Count III - Lewdness With a Child Under the Age of Fourteen Years, a violation  
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26 (10) years has been served as to Count III. The sentence on Count II was imposed to run  
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3 (234) days time served was granted. The JOC also imposed a special sentence of lifetime  
4 supervision to commence after any period of probation, term of imprisonment or after any  
5 release on parole. See JOC.

7 Mr. Garcia filed a direct appeal, and, on March 14, 2002, the Nevada Supreme Court  
8 entered its *Order of Affirmance*, finding the Court did not err when it rejected Mr. Garcia's  
9 argument the victim's mother was coaching her boyfriend and the victim while defense  
10 counsel was questioning them. The Nevada Supreme Court further found the Court did not  
11 err in providing the jury with certain instructions.

13 In July, 2012, Mr. Garcia filed his first *Petition for Writ of Habeas*, which the Court  
14 dismissed as untimely. Then, in September, 2012, Mr. Garcia then filed his *First Amended*  
15 *Petition for Writ of Habeas Corpus*, which the Court also dismissed as untimely.<sup>1</sup>

17 In his *Motion*, Mr. Garcia argues he is not challenging the jury verdict, but challenges  
18 his consecutive sentences for lewdness with a minor as the chain of events that form the  
19 basis for the charges immediately succeeded one another and were incidental to one  
20 another. *Motion*, p. 5. Mr. Garcia contends his conviction for Count II contradicts the  
21 legislative intent of NRS 201.230. *Motion*, p. 7. Therefore, Mr. Garcia posits his convictions  
22 should be limited to a single act of sexual assault for digitally penetrating his victim (Count  
23 I), and a single act of lewdness for returning to the victim after approximately 10 minutes to  
24 pull down her shorts (Count III). *Motion*, p. 7-8.

26 In the *Opposition*, the State argues the *Motion* is improper under the legal standards  
27 for illegal or erroneous sentences because the sentences are within the statutory  
28

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<sup>1</sup> These filings and orders are memorialized in CR00P1849.

1 parameters and, therefore, they are not at variance with the statutory maximums.  
2 *Opposition*, p. 3. The State asserts issues concerning the validity of a sentence must be  
3 raised in habeas proceedings pursuant to Edwards v. State, 112 Nev. 704, 708, 918 P.2d  
4 321, 324-25, (1996). Therefore, the State moves to dismiss the *Motion* pursuant to authority  
5 governing post-conviction habeas petitions. *Opposition*, p. 4. The State argues the *Motion*  
6 must be dismissed because Mr. Garcia did not show good cause for failing to raise this  
7 issue at the trial level or in his direct appeal. *Opposition*, pp. 4-5. The State notes Mr.  
8 Garcia's *Motion* is also untimely as it was filed more than a year after the Nevada Supreme  
9 Court issued its *Remittitur* on April 11, 2002. *Opposition*, p. 5. The State further asserts Mr.  
10 Garcia is guilty of laches. Id. Lastly, the State posits, even accepting Mr. Garcia's  
11 assertions as true, relief is not warranted because the lewdness was not incidental to the  
12 sexual assault. *Opposition*, p. 6.

13  
14  
15 In the *Reply*, Mr. Garcia states his argument was not raised to the trial court but  
16 should have been and this Court may construe this argument as one of ineffective  
17 assistance of both trial and appellate counsel. *Reply*, p. 3. Mr. Garcia argues good cause  
18 exists to overcome the procedural bar in NRS 34.726(1) because he is a Spanish-only  
19 speaker and his language barrier prevented him from timely filing. *Reply*, p. 4. Mr. Garcia  
20 argues laches is inapplicable as he is not challenging the facts presented at trial and would  
21 only need trial and appellate counsel to testify. Id. In addition, Mr. Garcia contends he  
22 stated his claims in the *Motion* with enough specificity that it meets the standards of  
23 Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). *Reply*, p. 5.

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1 **II. APPLICABLE LAW AND ANALYSIS.**

2 The Court evaluates the *Motion* as a post-conviction petition for writ of habeas  
3 corpus, as indicated in its *April Order*.  
4

5 **A. PROCEDURAL BAR.**

6 Successive petitions, such as Mr. Garcia's, are subject to mandatory dismissal  
7 pursuant to Chapter 34 of the Nevada Revised Statutes. "Application of the statutory  
8 procedural default rules to post-conviction habeas petitions is mandatory." State v. Eighth  
9 Judicial Dist. Court ex rel. County of Clark, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).  
10  
11 Successive petitions must be dismissed pursuant to NRS 34.810 if the grounds for the  
12 petition were already raised on direct appeal or in a prior petition for writ of habeas corpus  
13 and considered on the merits or the grounds could have been raised in a prior petition.  
14 NRS 34.810; Brown v. McDaniel, 130 Nev. 565, 568-69, 331 P.3d 867, 870 (2014); State v.  
15 Eighth Judicial Dist. Court, 121 Nev. at 232.  
16

17 Similarly, "if it plainly appears on the face" of a second or successive petition and the  
18 documents or the records on file with the court, the petitioner is not entitled to relief, then the  
19 court shall enter an order for summary dismissal. NRS 34.745(4). In order to overcome the  
20 bar to successive petitions, "the petitioner has the burden of pleading and proving specific  
21 facts that demonstrate" good cause for failing to present the claim and "[a]ctual prejudice to  
22 the petitioner." NRS 34.810(3)(a)-(b).  
23

24 Good cause is defined as "a substantial reason that affords a legal excuse." Brown,  
25 130 Nev. at 569, 331 P.3d at 870 (internal quotations omitted). To show good cause, the  
26 petitioner must demonstrate "an impediment external to the defense prevented him from  
27 complying with procedural rules." Id. An "impediment external to the defense may be  
28

1 demonstrated by a showing that the factual or legal basis for the claim was not reasonably  
2 available to counsel or that some interference by officials made compliance impracticable.”  
3 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

4  
5 The Ninth Circuit Court of Appeals has found “equitable tolling may be justified if  
6 language barriers actually prevent timely filing” of post-conviction filings. Mendoza v. Carey,  
7 449 F.3d 1065, 1069 (9th Cir. 2006). However, the “existence of a translator who can read  
8 and write English and who assists a petitioner during appellate proceedings renders  
9 equitable tolling inapplicable for that petitioner.” Id., at 1070 (citing Cobas v. Burgess, 306  
10 F.3d 441, 444 (6th Cir. 2002).

11  
12 Here, good cause does not exist to overcome the untimeliness of Mr. Garcia’s  
13 *Motion*. Mr. Garcia alleges language was a barrier to timely filing petitions for post-  
14 conviction relief. *Reply*, p. 4. However, Mr. Garcia also states he was assisted with the  
15 filing of his petitions in 2012. Id. This is further evidenced by Mr. Garcia filing multiple  
16 motions for appointment of counsel and multiple motions to proceed *in forma pauperis*  
17 between July and October of 2012 according to the record in CR00P1849. Additionally, Mr.  
18 Garcia was aware he had to provide good cause to overcome the procedural bar of NRS  
19 34.726(1) as early as July 17, 2012, yet he failed to do so in his September petition and in  
20 the *Motion* despite clearly having assistance and notice to do so. See Order entered  
21 October 12, 2012. As such, Mr. Garcia does not have good cause to excuse the untimely  
22 filing of his petitions and the instant *Motion*. Nevertheless, the Court examines the merits of  
23 Mr. Garcia’s claims.

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1           **B.       INEFFECTIVE ASSISTANCE OF COUNSEL.**

2           Claims of ineffective assistance of counsel are evaluated under the test established  
3 in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). A court's evaluation  
4 "begins with the strong presumption that counsel's conduct falls within the wide range of  
5 reasonable professional assistance." Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25,  
6 32 (2004) (internal quotations omitted). A defendant must "overcome the presumption that,  
7 under the circumstances, the challenged action might be considered sound trial strategy."  
8 Id. (internal quotations omitted).

9           Within that context, the petitioner must demonstrate the following:  
10

11           [T]hat his counsel's performance was deficient, falling below an objective  
12 standard of reasonableness, and that counsel's deficient performance  
13 prejudiced the defense. To establish prejudice based on counsel's deficient  
14 performance, a petitioner must show that, but for counsel's errors, there is a  
15 reasonable probability that the outcome would have been different.

16           Id. (internal quotations omitted). "Deficient" representation is "representation that falls  
17 below an objective standard of reasonableness." Kirksey v. State, 112 Nev. 980, 988, 923  
18 P.2d 1102, 1107. "A fair assessment of attorney performance requires that every effort be  
19 made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of  
20 counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the  
21 time." 112 Nev. at 987-88.

22           A petitioner must demonstrate prejudice "by showing a reasonable probability that  
23 but for counsel's errors, the result of the trial would have been different." Nika v. State, 124  
24 Nev. 1272, 1279, 198 P.3d 839, 844 (2008). A "reasonable probability" is a probability  
25 sufficient to undermine confidence in the outcome of trial. Riley v. State, 110 Nev. 638, 646,  
26

27           //  
28

1 878 P.2d 272, 278 (1994). "The defendant carries the affirmative burden of establishing  
2 prejudice." Id., citing Strickland, 466 U.S. at 693-94.

3 A habeas corpus petitioner "must prove the disputed factual allegations underlying  
4 his ineffective-assistance claim by a preponderance of the evidence." Id. at 1012. A court  
5 may evaluate the issue of deficient performance and prejudice in either order and need not  
6 consider both issues if the petitioner fails to make a sufficient showing on one. Means, 120  
7 Nev. at 1011, 103 P.3d at 32.

9 Lastly, a petitioner has a right to a post-conviction evidentiary hearing when a  
10 petitioner asserts claims supported by specific factual allegations not belied by the record  
11 that, if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502-03,  
12 686 P.2d 222 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the  
13 record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46  
14 P.3d 1228, 1230 (2002).

16 Mr. Garcia does not have a colorable claim for relief. The Court has reviewed the  
17 record and based on the *Information* filed on October 16, 2000, Mr. Garcia was charged  
18 with the following counts which described his acts as follows:

20 Count I – Sexual Assault on A Child Under the Age of Fourteen, a violation of NRS  
21 200.366, a felony. "[T]o wit, the defendant put his finger inside the victim's vagina."

23 Count II – Lewdness with a Child Under the Age of Fourteen Years, a violation of  
24 NRS 201.230, a felony. "[T]he said defendant pulled down the victim's pants and/or  
25 underwear and/or touched the victim's vaginal area with his tongue with the intent of  
26 arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the  
27 child."  
28

1 Count III – Lewdness with a Child Under the Age of Fourteen Years, a violation of  
2 NRS 201.230, a felony,

3 [T]he said defendant unzipped his pants and pulled the hand of the said  
4 [victim] toward his exposed penis in an attempt to get her to touch the said  
5 penis with the intent of arousing, appealing to, or gratifying the lust, passions  
6 or sexual desires of himself or of the child.

7 *Information.* Mr. Garcia's counts cannot be consolidated because, as he readily  
8 admits, his counts were punctuated by "approximately ten (10) minutes" and because  
9 two separate instances of lewdness occurred. *Motion*, pp. 4-5. Mr. Garcia relies on  
10 Crowley for the proposition his convictions for Count I of sexual assault and Count II  
11 of lewdness are redundant as they arose out of the same incident and are therefore  
12 mutually exclusive. 120 Nev. 30, 34, 83 P.3d 282, 285 (2004). However, Crowley is  
13 factually different and therefore inapplicable here. Crowley involved one continuous  
14 assault on the victim wherein there was no break. 120 Nev. at 34, 83 P.3d at 285. In  
15 Mr. Garcia's case, the sexual assault was a separate assault from the lewdness.  
16 And, the lewd acts undertaken were different and, in fact, performed on the victim by  
17 Mr. Garcia and the other on Mr. Garcia at his instance, creating separate acts that  
18 were not incidental to one another.  
19  
20

21 Furthermore, separate instances of lewdness and sexual assault have been upheld  
22 when there is a temporal gap between the instances, despite a short time interval between  
23 the instances. Wright v. State, 106 Nev. 647, 799 P.2d 548 (1990) (finding separate  
24 convictions for sexual assault warranted when Wright paused to wait for a car to pass);  
25 Townsend v. State, 103 Nev. 113, 121, 734 P.2d 705, 710 (1987). As both Wright and  
26 Townsend were decided prior to Mr. Garcia's conviction on March 29, 2001, it was not  
27 objectively unreasonable for either trial or appellate counsel to refrain from make the  
28

1 argument the acts were incidental to one another based on the existing case law. Finally,  
2 Crowley was not decided until 2004, four (4) years after Mr. Garcia's conviction. Therefore,  
3 it was unavailable as a basis to argue the lewdness was incidental to the sexual assault.  
4

5 Thus, the Court concludes Mr. Garcia has not asserted specific factual allegations  
6 which, if true, would warrant relief. Nike, 124 Nev. at 1301, 198 P.3d at 858.

7 **III. CONCLUSION AND ORDER.**

8 Mr. Garcia's *Motion* is both untimely and fails to make a claim for deficient  
9 representation. As Mr. Garcia's *Motion* is procedurally barred, it must be summarily  
10 dismissed.  
11

12 Accordingly, and good cause appearing,

13 **IT IS HEREBY ORDERED** Mr. Garcia's *Motion to Correct an Illegal Sentence and*  
14 *Vacate Judgment and/or Modify Sentence* is SUMMARILY DISMISSED.

15 Dated this 30<sup>th</sup> day of April, 2021.  
16

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19 DISTRICT JUDGE  
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 30th day of April, 2021, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

JENNIFER NOBLE, ESQ.  
KEVIN NAUGHTON, ESQ.  
LYN BEGGS, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Heidi Boe

# CRIMINAL PROGRESS SHEET

Case No. CR00-1849

STATUS: Custody ☒ NIC ☐  
Bail ☐ OR ☐

GARCIA, RAUL AKA

Bail Amount: \_\_\_\_\_

RODRIGUEZ-GUZMAN, CARLOS ANTONIO

Date Inf/Ind filed: Oct. 16, 2000

Amended Inf. filed: \_\_\_\_\_

Arrest Date: Oct. 17, 2000

Dept. No: 3 Reporter: J. Dotson

Arrested by: ☒ PAUL GARCIA

Handed Copy ☒

By: Info.

Waived Reading ☒

Requested Time to Plea ☐

Waived PSI ☐

Nolo ☐ To: \_\_\_\_\_

Waived 60 Day: Yes ☒

Date 10-17-00 No ☐

P & P Ref. \_\_\_\_\_

Continued To: Feb. 1, 2001 @ 830

For: Motion to Confirm

Confirmed for 2/13 3 days Feb. 12, 2001 @ 830

For: Jury Trial - 4 days

For: \_\_\_\_\_

For: \_\_\_\_\_

For: \_\_\_\_\_

Sentencing Date: March 29, 2001 Dept. No. 3

Reporter: J. Schonlau

Disposition: Count I: Life with pass. of parole after minimum of 20 years served. Count II: Life w/pass. of parole after minimum of 10 years consecutive to Count I. Count III: Life w/pass. of parole after 10 years consecutive to Counts I & II. \$25 ADF; \$DNA fee 250; \$500 AF; \$925 psycho/sex eval; \$870 notation.

Time Served: \_\_\_\_\_

Bail Exonerated ☐

234 days

Motions: \_\_\_\_\_



CASE NO. CR00-1849

STATE OF NEVADA VS. RAUL GARCIA

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

10/17/00

ARRAIGNMENT

HONORABLE

Deputy District Attorney Michael Mahaffey represented the State.

02/01/01

JEROME M.

Defendant was present with counsel, Deputy Public Defender,

08:30 a.m.

POLAHA

Jeremy Bosler. Probation Officer Steve Freed was also present.

Motion/Confirm

DEPT. NO. 3

Court interpreter Marcos Contrares was present and interpreted on behalf of Defendant.

02/12/01

C.Patterson

TRUE NAME: RAUL GARCIA. Defendant handed a copy of the Information; waived reading.

08:30 a.m

(Clerk)

Defendant entered a plea of Not Guilty; Defendant waived the 60-day rule.

Jury Trial

J. Dotson

4 Days

(Reporter)

COURT ORDERED: Matter continued for trial by jury.

Defendant remanded to the custody of the Sheriff.

CR00-1849  
STATE VS. RAUL GARCIA (TN) (D 1 Page  
District Court 10/17/2000 10:54 AM  
Washoe County MTN  
DC-09900069755-003  
MPURDY

CASE NO. CR00-1849

STATE OF NEVADA VS. RAUL GARCIA

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/01/01

MOTION TO CONFIRM TRIAL DATE

HONORABLE

Deputy District Attorney Christian Wilson represented the State.

JEROME M.

Defendant was present with counsel, Deputy Public Defender,

POLAHA

Jeremy Bosler. Probation Officer Tara Hubbard was also present.

DEPT. NO. 3

Court Interpreter Orlando Yaran interpreted on behalf of Defendant.

C.Patterson

Counsel for the Defendant addressed the Court confirming trial for

(Clerk)

3 days. The Court advised trial will commence on 2/13/01 instead of 2/12/01.

J. Dotson

Defendant remanded to the custody of the Sheriff.

(Reporter)

02/13/01

08:30 a.m.

Jury Trial

3 days

CR00-1849  
STATE VS. RAUL GARCIA (TN) (D 1 Page  
District Court 02/01/2001 10:55 AM  
Washoe County  
MTN  
DC-09900069755-004  
MPI/RDY

DATE, JUDGE

OFFICER OF

COURT PRESENT

APPEARANCES - HEARING

02/13/01

HONORABLE

JEROME M.

POLAHA

DEPT. NO. 3

S. Hopper

(Clerk)

J. Schonlau

**JURY TRIAL**

Deputy District Attorney Bruce Hahn was present for the State of Nevada. Defendant Raul Garcia was present with counsel, Deputy Public Defender Jeremy Bosler. Spanish interpreter Orlando Yaran was present for the Defendant.

At 10:35 a.m. Court convened with all parties and prospective jurors present.

Court addressed the prospective jurors and introduced the case and parties.

Clerk Hopper took role of the prospective jurors present and swore them in to answer questions touching upon their qualifications to serve as trial jurors.

Counsel addressed the prospective jurors and presented brief summation of the case.

Clerk Hopper called thirty-one (31) names to serve as the venire.

Court questioned the venire on voir dire.

**Eric Martin** was excused; **Martha Cooper** was called in his place.

Upon extensive questioning by Court and counsel, **Ardyna Kramp** was excused.

Clerk Hopper was ordered to take role of the five (5) new prospective jurors that had just entered the courtroom and swore them in to answer questions based upon their qualifications.

**Josefa Avalos** was called.

Court continued voir dire questioning.

At 11:55 a.m. Court ordered recess.

At 1:20 p.m. Court reconvened with all parties and prospective jurors present.

Spanish interpreter Marco Contreras was now present for the benefit of the Defendant.

Court continued voir dire questioning.

**Mark Kirchhefer** addressed the Court during voir dire and was excused; **Frederick North** was called.

Court continued voir dire questioning. State's counsel, Bruce Hahn, questioned the venire on voir dire and passed for cause. Defense counsel, Jeremy Bosler, questioned the venire on voir dire.

Counsel Bosler challenged **Josefa Avalos** for cause; SO ORDERED and prospective juror was excused without objections. **Peter Hunsader** was called in her place.

Counsel Bosler continued voir dire questioning and passed for cause.

At 2:40 p.m. Court and counsel met in chambers to complete preemptory challenges.

At 2:57 p.m. Court reconvened with all parties and prospective jurors present.

The following persons were sworn to try this case:

Michael Parmenter

Joan Gondry

Catherine Soule

Myra McDade

John Foley

Ted Rolfe

Charles LaFleur

Roy Baughman

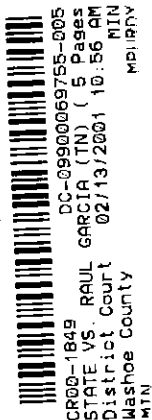
Emmagina Benedict

Thomas Short

Von Valdez

Michele Clark

Alternate - Susan Johnson



DATE, JUDGE  
OFFICER OF

COURT PRESENT

APPEARANCES - HEARING

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02/13/01

Cont'd.

**JURY TRIAL- continued**

Clerk Hopper read the Information to the jury.

Court canvassed the jury and explained the jury trial process.

Counsel Hahn presented opening statements.

Counsel Bosler presented opening statements.

**Jerry Lee Straits** was called by State counsel, Bruce Hahn, sworn and testified.

**State's Exhibit 1** was marked for identification; offered and ordered admitted.

Witness was further direct examined; cross examined; and, redirect examined.

**Anna-Karen G.** was called by State counsel, Bruce Hahn, sworn and testified.

**State's Exhibits 2 and 3** were marked for identification; offered and ordered admitted.

Witness was further direct examined; cross examined; redirect examined; and, recross examined.

At 5:00 p.m. Court ordered recess; jury was admonished and excused. Matter continued to

February 14, 2001 at 8:30 a.m.

Defendant remained in custody.

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02/14/02

HONORABLE

JEROME M.

POLAHA

DEPT. NO. 3

S. Hopper

(Clerk)

J. Dotson

(Reporter)

**JURY TRIAL - continued**

Deputy District Attorney Bruce Hahn was present for the State of Nevada. Defendant was present with counsel, Deputy Public Defender Jeremy Bosler. Spanish interpreter Marco Contreras was present for the benefit of the Defendant.

At 8:50 a.m. Court reconvened with all parties and jury present.

Spanish interpreter Marcelo De Guzman was sworn to interpret testimony from the witness.

**Jorge Palma** was called by State's counsel, Bruce Hahn, sworn and testified; cross examined; redirect examined; and, excused.

**Judy Holliday** was called by Counsel Bruce Hahn, sworn and testified.

State rested.

At 9:52 a.m. Court ordered recess; jury was admonished and excused.

At 10:15 a.m. Court reconvened with all parties present and outside the presence of the jury.

Court canvassed the Defendant pursuant to *Phillips vs. State* and the Defendant's right to testify.

Defendant informed the Court that he will not testify on his own behalf.

At 10:20 a.m. jury re-entered the courtroom.

**Patience Wenck** was called by defense counsel Jeremy Bosler, sworn and testified; cross examined; redirect examined; and, excused.

Spanish interpreter Orlando Yaran was sworn for the benefit of the witness.

**Juan Antonio Rios-Garcia** was called by defense counsel Jeremy Bosler, sworn and testified; cross examined; and, excused.

**Jorge Rios-Garcia** was called by defense counsel Jeremy Bosler, sworn and testified; cross examined; redirect examined; and, excused.

**Alfredo Garcia-Deleon** was called by defense counsel Jeremy Bosler, sworn and testified; cross

DATE, JUDGE  
OFFICER OF

COURT PRESENT

APPEARANCES - HEARING

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02/14/01

Cont'd.

**JURY TRIAL- continued**

examined; and, excused.

At 11:20 a.m. Court ordered recess; jury admonished and excused.

At 1:00 p.m. Court and counsel met in chambers regarding possible witness "coaching" allegations without the court reporter present.

Counsel Bosler requested to make a motion and a record.

At 1:10 p.m. Court and counsel met in the courtroom informally to settle Jury Instructions without the court reporter present.

At 1:50 p.m. Court and counsel met outside the presence of the jury to settle Jury Instructions 1 through 27 with Court Reporter Joan Dotson present.

At 2:06 p.m. Court reconvened with all parties present and outside the presence of the jury. Counsel Bosler addressed the Court regarding an offer of proof.

**Deputy Earl Walling** was called by Counsel Bosler, sworn and testified; cross examined.

Counsel Bosler further addressed the Court with offer of proof regarding the victim's mother coaching witnesses with arguments thereto.

Court requested Court Reporter Joan Dotson to prepare and copy witness Palma's testimony.

Court questioned witness Earl Walling and reviewed Palma's testimony through questions by State's counsel Bruce Hahn and defense counsel Jeremy Bosler.

Counsel Bosler continued arguments. Counsel Hahn presented objections to any further offer of proof or further testimony by witnesses.

**Roberto Garcia** was called by Counsel Bosler, sworn and testified; cross examined.

Counsel Bosler addressed the Court further with arguments in support of misconduct.

Counsel Hahn continued objections.

COURT ORDERED Motion for witness misconduct is DENIED.

At 2:55 p.m. the jury re-entered the courtroom.

Defense rested.

Court read Jury Instructions 1 through 27.

Counsel Hahn presented closing arguments.

Counsel Bosler presented closing arguments.

At 4:10 p.m. Court ordered recess; jury was admonished and excused.

At 4:30 p.m. Court reconvened with all parties and jury present.

Counsel Hahn presented rebuttal arguments.

At 4:40 p.m. Clerk Hopper swore in Bailiff Mike Allen and Law Clerk Justin Champagne to take charge of the jury during deliberations; Court ordered the jury to deliberations. Court ordered recess pending deliberations.

At 6:15 p.m. Court reconvened with all parties and jury present.

Clerk Hopper read the Verdicts as follows:

DATE, JUDGE  
OFFICER OF

**COURT PRESENT**      **APPEARANCES - HEARING**

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02/14/01  
Cont'd.

**JURY TRIAL- continued**

**VERDICT**

We, the jury in the above-entitled matter, find the Defendant, RAUL GARCIA, GUILTY of COUNT I: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF FOURTEEN.

DATED this 14th day of February, 2001.

Michael Parmenter  
Foreperson

**VERDICT**

We, the jury in the above-entitled matter, find the Defendant, RAUL GARCIA, GUILTY of COUNT II: LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS.

DATED this 14th day of February, 2001.

Michael Parmenter  
Foreperson

**VERDICT**

We, the jury in the above-entitled matter, find the Defendant, RAUL GARCIA, GUILTY of COUNT III: LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS.

DATED this 14th day of February, 2001.

Michael Parmenter  
Foreperson

Counsel Bosler requested the jury to be polled. Upon questioned by the Clerk as to Verdicts, the jurors were unanimous as to the Verdicts entered.

The jury was thanked and excused.

Sentencing was set for March 29, 2001 at 8:30 a.m. Defendant to comply with the Division of Parole and Probation during investigation and interview for a PSI. Defendant remained in custody.

Court stood in recess.

## Exhibits

## STATE OF NEVADA VS. RAUL GARCIA

**Case No. CR00-1849**

**Dept. No. 3**

**Date: Feb. 13, 2001**

**Clerk: Hopper**

[illegible]

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

03/29/01

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE

Deputy District Attorney Bruce Hahn represented the State.

JEROME M.

Defendant was present with counsel, Deputy Public Defender,

POLAHA

Jeremy Bosler. Probation Officer Shane Lees was also present.

DEPT. NO. 3

Court Interpreter Marco Contrares was present and interpreted on

C.Patterson

behalf of the Defendant. Counsel for the Defendant addressed the

(Clerk)

Court arguing for concurrent sentences. Counsel for the State

J. Schonlau

addressed the Court reading a victim impact statement into the

(Reporter)

record and argued in support of the PSI with consecutive sentences.

The Defendant addressed the Court on his own behalf.

**COURT ORDERED:** Defendant adjudged guilty and sentenced to imprisonment in the Nevada State Prison to the term of Life With the Possibility of Parole after a minimum of twenty (20) years has been served as to Count I. It is further ordered that he be punished by imprisonment in the Nevada State Prison for a term of Life With the Possibility of Parole after a minimum of ten (10) years has been served as to Count II, to be served consecutively to the sentence imposed in Count I. It is further ordered that he be punished by imprisonment in the Nevada State Prison for a term of Life With the Possibility of Parole after a minimum of ten (10) years has been served as to Count III, to be served consecutively to the sentence imposed in Counts I and II, with credit for two hundred thirty-four (234) days time served. It is further ordered that the Defendant serve a special sentence of lifetime supervision to commence after any period of probation, and term of imprisonment or after any release on parole. It is further ordered that the Defendant pay restitution in the amount of Eight Hundred Seventy Dollars (\$870.00), the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee, submit to a blood sample as provided for in NRS 176.0913 and pay a DNA testing fee of Two Hundred Fifty Dollars (\$250.00), pay a Nine Hundred Twenty-Five Dollar (\$925.00) psychosexual evaluation fee and reimburse the Washoe County Public Defender's Office in the amount of Five Hundred Dollars (\$500.00) for legal services rendered.

Defendant remanded to the custody of the Sheriff.

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District Court 03/29/2001 10:58 AM  
Washoe County MTN



Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Case No. CR00-1849

Plaintiff,

Dept. No. 6

vs.

RAUL GARCIA,

Defendnat.

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 2nd day of June, 2021, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 2nd day of June, 2021.

Alicia Lerud, Interim

Clerk of the Court

By /s/YViloria

YViloria

Deputy Clerk