

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

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Elizabeth A. Brown
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CHARLES JOSEPH MAKI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Sup. Ct. Case No. 84485

Case No. CR94-0345

Dept. 8

RECORD ON APPEAL

VOLUME 7 OF 10

DOCUMENTS

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Case No. CR-94-0345Dept. No. 8

FILED

2019 JAN -2 PM 3: 54

JACQUELINE BRYANT
CLERK OF THE COURT
BY Smwof
DEPUTY

IN THE 2nd JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Washoe

In re Matter
Charles Maki #42820

"Memorandum of Points and
Authorities; Exhibits attached"

Petitioner,

v.
Warden Gitterre of ESP
State of Nevada, et al.

Respondent.

1st Amendment Petition: Brady
Violation
PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION): NRS 34.726,
NRS 47.230 - 47.235
"Destruction of Exculpatory
Actual Innocence Evidence"

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: NDOC, Ely State Prison - White Pine County Nevada

2. Name and location of court which entered the judgment of conviction under attack: 2nd Judicial District Court of Nevada Department 8 Washoe County, Nevada City of Reno.

3. Date of judgment of conviction: _____

4. Case number: CR-94-0345

5. (a) Length of sentence: 2 x 10 to life 5 x 1 to 10 sexual assault and lewdness with a minor under 14

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

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

If "yes", list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: sexual assault and lewdness with a minor under 14

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

(a) Not guilty X (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:

N/A

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

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

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction? Yes X No _____

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: 26049

(c) Result: Affirmance

(d) Date of result: 10-4-1995
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A

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 X No

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

(a)(1) Name of court: 2nd Jud. Dist. Ct.

(2) Nature of proceeding: Motion to modify sentence.

(3) Grounds raised: Modification of sentence due to failing health

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

Yes No X

(5) Result: Pending

(6) Date of result: Pending

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

N/A

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

(1) Name of court: 2nd Judicial Dist. Ct.

(2) Nature of proceeding: Post-conviction writ of Habeas corpus

(3) Grounds raised: Violations of U.S.C.A. 5, 6, 14, and 8th Amendments

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

Yes X No

(5) Result: Denied

(6) Date of result:

(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 X No

Citation or date of decision: Denied

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

Citation or date of decision: Denied

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

Citation or date of decision: Denied

(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.) N/A

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: ¹⁸

(a) Which of the grounds is the same: Ineffective Assistance of Counsel, Actual Innocence, due process violation.

(b) The proceedings in which these grounds were raised: Post-conviction writ of Habeas corpus

(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.) see

attached brief - Police destroyed evidence in violation of ARS 47-230--235

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.)

Evidence was not available at the time and of counsel refused to get it affecting outcome of trial

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.) see Attached brief for explanation plus

I had to go through 3 states to obtain relevant medical records.

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

If yes, state what court and case number:

Motion to Modify Sentence
CR-94-0395 pending.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Janet Schmuck Esq. Public Defender for sentencing and trial. Robin Wright Esq. Appeal counsel

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

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

N/A

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.

Question 12(C)

The reason why I am raising my ineffective assistance of counsel claims again is because I have finally received medical records related to my disability injury that counsel at the time did not think was relevant. I did not have the resources to go through three states tracking down these records. Upon review of the preliminary hearing, the victim alleged opened the door to have these records considered. For example, in the preliminary hearing the victim alleged had stated she thought that I could not hear her. My medical records show I have lost hearing in both ears and need hearing aids. In fact, if I could not hear her I would be beyond ten feet from her. If I cannot hear her under these circumstances that means I did not touch her. It is therefore a lie.

There is a difference between impotence and sexual dysfunction. My medical rating supports sexual dysfunction. The medical records when used with the alleged victims testimony about my penis being flat would suggest I could not penetrate her with my penis due to injury and the enormous amount of opioids I had to take affecting normal sexual performance. It's a lie.

I am also raising this issue again due to new changes in law. Martinez vs. Ryan supra allows post-conviction counsel to be liable for ineffective assistance "if" that counsel does not

Question 17 (c). Continued

address merituous I.A.C. claims based on trial and direct appeal counsel error. The error in question is my counsel's failure to seek out a rape shield defense based on my alleged victim's ability to fabricate a charge under NRS 50.090 and counsel's failure to investigate possible testimony contamination of hearsay of a child named "John" who told his mother of the alleged victim's sexual abuse who then called the police. The alleged victim had the ability to fabricate a charge based on two things belied by the record in the preliminary: 1). she admits she heard and used the word "penis" in school, 2). she admits she showers naked with her biological father and has seen his penis. In addition to counsel's failure to file a jury instruction under NRS 50.090 and impeach both the alleged victim and her sister, counsel should have objected to the alleged victim's description of my sexual genitalia as hairy and pink because her father and I are the same race and complexion. It does not prove she actually saw mine for淫lover. Finally, as I am covered in tattoos, the alleged victim described color and hair but not my tattoos in my lower extremities. Again, it's a lie.

We have an issue of the destruction of exculpatory evidence that counsel has failed to use and secure during the procedural default on the record in the preliminary hearing, the D.A. and

Question 17 (c) continued

my counsel both admit that there is portions of the police interview of my alleged victim and her sister missing from the tape. Plus the detective admits on the record that he does repeat questions to make sure the alleged victims in the cases he investigates are telling the truth.

"Now", it is a well known fact, and the practice is illegal, for police and CPS to use coercive and repetitive interrogation techniques (see NRS 200.366 NRS 201.230 Greico vs. State, Babayan vs. State, and Sarkissian vs. State.) Plus we got tampered with video with footage (A lot of it) missing. It was not relevant at the time but I actually saw transcripts where my alleged victim and her sister actually said, "No. Nothing happened." and I was denied access to copy as such by counsel who was operating under conflict. Time has destroyed the video and pursuant to NRS 47.230-47.235 the court must resolve the ambiguity in my favor even if the video is destroyed as a matter of policy. Counsel did not do competent and reasonable investigation and research to even see if the video was tampered with to deny access to exculpatory testimony that could have thrown out the case at preliminary stages. The hearsay testimony of the alleged victims sister and "John" could have been suppressed and stricken from the record under NRS 48.015 to .035 in a Petrochelli hearing. I was denied

Question 12(c) continued

a highly probable different outcome on trial and sentencing based on my counsel's conduct due to conflict of interest unaddressed and unresolved on the record. My counsel was so deficient, she legally could not be considered counsel who also accused me of being guilty on the record!

The wrong questions were asked, I am re-litigating the issue of ineffective assistance of counsel based on some of the same facts but in a different light. For example I will briefly discuss the testimony of the alleged victim's sister Summer.

In the preliminary hearing, Summer said I allegedly told her to go and get a glass of warm milk. Counsel never thought to ask me if I had milk in the house and why did I not make my own? Secondly, Summer is not old enough to pour milk in a pot and heat it up and bring it back to me being much younger than her sister Desiree. The truth was, I drink a gallon of milk a week "cold" not warm, I had milk in the house. It is therefore a lie. Her sister says I got up off of her when I heard the screen door slam in the preliminary hearing. If I did the crime, why not simply lock the door and make Summer knock to give me time to get dressed and threaten Desiree into silence? That did not happen. NRS 171.085-095 In secret does not apply. It is a lie. No one asked Summer

* sexually active girls can do their not virgins!

Question 17 (c) continued

reasonable questions like, "Where did you get the milk from?", "How did you warm it up? stove or microwave?" (They had no microwave stove only), and "How long did it take?" I use milk to settle my stomach from the opiods.

To close, here's another issue. *Is it or is it not unusual for a scared 8 year old girl to know exactly how much penetration she took? This is on characteristic of a young child sex abuse victim. Another thing that is unusual about this case is her clothing. What parent would send their child to be baby sat by a neighbor in nothing but a long T-shirt and underwear at eight years old? she did not describe being ordered to come out her appropriate clothes and this occurred "all of a sudden" after months of visitation.

Witness coaching and vouching by the D.A. is illegal and reversible error. No one picked up on that and due to destroyed video and Detective Staogmeier's background for being a corrupt cop (Being fired at least twice, once I heard in California and in Reno). What is there to say the finger depth thing as she was found medically a "virgin" was not a by product of witness tampering by the detective and then ADA Greco? Per NRS 34.740, I am entitled to a new evidentiary hearing because everything in this part of the writ is true.

Question 19: Post-Conviction Writ of Habeas Corpus.

I have attacked my sentence and J.O.C. timely within the procedural default without all the evidence needed to support the innocence I have always maintained. I have met due diligence. This attack is more than (1) one year since my sentence and J.O.C. because I did not and could not get all my medical records in a timely manner relying on counsel who thought my medical issues were not relevant and I have now shown it is. I assert "cause" under NRS 34.726 citing U.S. vs. Coleman supra. Pursuant to Meyers vs. State 95 Nev. 888, ineffective assistance of counsel is manifest injustice. Counsel's strategy, not even believing in my innocence and ignoring my advice and instructions to help me, help them, was not reasonable at the time and everyone under a conflict of interest wanted me to take a "deal". I have had absolutely no real legal help guaranteed by U.S.C.A. 6 guaranteed by constitutional law.

If this court misconstrues the application of a U.S. Supreme Court mandate in an unreasonable application of fact and or law it will trip review under the Anti-terrorism Effective Death Penalty Act (AEDPA 28 U.S.C. § 2254). I am relying on my actual innocence and the destruction of the video tape with missing footage and inept conflict ridden counsel to get the relief I seek.

Question 19 continued

I have relied on counsel provided for by the court in good faith and no one has bothered to investigate my medical issues, preserved and analyze the police video tape, or even reasonably cross-examine and impeach two little girls who under medical definitions are still virgins at the time. Furthermore, there are no discovery and police reports and files in my case where they should be. This also has hurt my ability to research my claims and get them to court in a timely fashion. The court and D.A. is well aware that sensitive cases like mine take decades to get justice and for defendants to find out the truth. I had to patiently wait and pay for my medical files which have been moved from state to state over the years to put this action together. Had counsel listened to me in the first place in 1994 it would have been easier to get this new evidence while it was easily available in Reno, Nevada during the procedural default. Furthermore, based on a medical treatise concerning things mistaken for sexual abuse in children recently available to me, there is now good cause to review the court's decision not to allow me a medical expert at the time of the procedural default: "Hymens on sexually abused girls do not grow back." But the state expert told the jury this lie.

(a) **Ground One:** Denial of equal protection and due process of law pursuant to U.S.C.A.S and NRS 125 in violation of U.S. v. Brady and Mazzan vs. State, connected to ineffective assistance of counsel citing Strickland vs. Washington 104 S.Ct. 2052.

Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel was told during the procedural default to investigate and analyze the police video tape since it was missing footage, I discovered exculpatory statements of excusal by the alleged victims on a transcripts post-conviction counsel would not give me which may be why the video tape is missing footage. I was denied dismissal/acquittal citing Babayan vs. State and Greco vs. State.

(b) **Ground Two:** Denial of Effective assistance of counsel in violation of Strickland vs. Washington 104 S.Ct. 2052 and Nev. Const. Art. 188 citing Buffalo vs. State - Failure to investigate and issue jury instructions for NRS 50.090.

Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel rendered ineffective assistance by not getting my medical records recently obtained to corroborate and impeach my alleged victims based on their testimony in the preliminary hearing opening the door for it. They hurt the ability to fabricate a charge and I was entitled to a jury instruction based on it which could have resulted in an acquittal or dismissal.

(c) **Ground Three:** Denial of Effective assistance of counsel in violation of Strickland vs. Washington 104 S.Ct. 2052 and Kimmelman vs. Morrison 106 S.Ct. 2576 and Nev. Const. Art. 188 citing Buffalo vs. State - Failure to object to witness vouching.

Supporting FACTS (Tell your story briefly without citing cases or law.): Trial counsel rendered ineffective assistance by failing to object to witness vouching by the D.A. in connection to the alleged victim showing the jury depth of penetration. Appeal counsel should have brought this up too. The video missing footage may have contained coaching and coercive questioning technique in relation to this issue and NRS 50.090 issues.

(d) **Ground Four:** Denial of Effective assistance of counsel pursuant to Strickland vs. Washington 104 S.Ct. 2052 and Martinez vs. Ryan 1 U.S. 566 2011 in Post-Conviction proceedings during procedural default.

Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel rendered ineffective assistance denying me the probability of a different result ~~from~~ relief for I.A.C. issues on Appeal and trial counsel. He had the ability to get my medical disability records and use them in context to the alleged victims testimony to get a new trial forcing me to find and get those records under my own resources falling outside the 1 year procedural default.

(e) Ground five: Denial of effective assistance of counsel pursuant to Strickland vs. Washington 104 S.Ct. 2052 and Nev. Const. Art. 188 citing Meyers vs. State 98 Nev. 880 and Buffalo vs. State - Denial of conflict free counsel.

Supporting facts

The district court committed structural error and denied me a right to a fair trial when they refused to at least investigate possible conflict of interest between counsel and myself which involved an bias opinion of guilt and trial strategy. There was no statutory conflict of interest hearing on the record.

The recently obtain. Disability records when combined with the victim's preliminary and trial testimony shows and proves impeachment was possible pursuant to Silva vs. Brown 9th Cir. This conduct denied me a high probability of a different result which could have been prevented had I been given counsel during this crucial stage of the proceedings in "replacement" not choice. It is manifest injustice.

(f) Ground six: Denial of effective assistance of counsel pursuant to Strickland vs. Washington 104 S.Ct. 2052 and Nevada Const. Art. 188 citing Buffalo vs. State - refusal to call witnesses.

Supporting facts

Trial counsel abused discretion in strategy and refused to put witnesses on the stand to support my character one witness would have testified that I had looked after an

Ground six continued

underaged girl and protected her from potential rape and sexual abuse from a teenage boy.

I have an affidavit from Paul Grubbs that counsel during post-conviction that counsel failed to consider with the medical records, this claim looked at in an different light shows that this conduct is not harmless.

Trial counsel also rendered ineffective assistance by not interviewing "John" who is a minor who told his mother who called the police in the first place

1). Hear say or rumors need to be checked and verified. John could have misconstrued some events out of context. The girls were virgins.

2). This testimony which is usually contaminated is grounds for exclusion and dismissal under Greco vs. State and Babayan vs. State.

Competant counsel would have investigated how it all came about which they did not at all. It could have exposed lies and misconceptions and weakened the D.A.'s case (see Idaho vs. Wright 9th Cir. & U.S. Sup. Ct. on Hear say testimony).

6) Ground seven: Denial of right to a fair trial pursuant to U.S.C.A. 14 equal protection and due process of law citing NRS 47 "Right to Expert witnesses"

Supporting facts

The court denied my counsel a request for a sex abuse expert on the physical condition of the alleged victim. This affected tier of fact and the

Ground 7 Continued

outcome of the trial because a neutral expert would have impeached the state's witness based on these facts.

- 1). If the alleged victim shows how much penetration to a jury or Judge, defense expert could have impeached the state's expert by informing the jury that hymens, once penetrated does "not" grow back. Scarring heals on unpenetrated hymens depending on the type. There are seven types of hymen.
- 2). Absence of scarring or penetration or other types of sexual contact/abuse is a sign of consensual sexual conduct.
- 3). The state may "not" allege full penetration then instruct on digital penetration. This instruction confused the jury and resulted in conviction.
- 4). Counsel "period" has refused over the years to give me access to the alleged victim's medical exams. None of the D.A.'s discovery is in the file I been requesting.

(H) Grand eight: Denial of equal protection and due process of law citing U.S.C.A. 14 and Nev. Const. Art. 1§8 citing cumulative error.

Supporting facts

Failure to investigate, Failure to call witnesses, failure to issue proper jury instructions, failure to get

Ground 8 continued

preserve evidence is cumulative error. The standard is that one or two errors may be harmless but a collection of errors may violate one's constitutional rights. Grounds 1-7 are not harmless.

NRS 42.230-235: Demand for an Evidentiary Hearing.

NRS 42.230-235 states that evidence destroyed as a matter of policy that the police and D.A. know is exculpatory to a defendant must be construed as detrimental to the state's case. The disability records and reasonable questions counsel failed to ask that could have impeached the main witnesses along with suspicious missing video with post-conviction counsel refusal to hand over transcripts of the interview that exposes what portions of the video "is" missing warrants an evidentiary hearing. It's an actual innocence issue and it's outrageous government misconduct. Pursuant to U.S. vs. Cuellar cert. denied the remedy for this conduct is dismissal of indictment / information. The nature of the crimes are irrelevant. There may also be evidence of corruption in the detective's history and also under D.A. Greco's history subject to NRS 34.290. The claims are brightly colored with facts and it's not a fishing expedition. (See Question 17(c) on writ of habeas corpus.)

(I) Ground 9- Violation of U.S.C.A. 5 citing NRS 34.224
(b)(2) denial of equal protection and due process in
sentencing citing Townsend vs. Burke citing NRS 48.045

Supporting Facts

NRS 48.045 deals with prior bad act evidence in context to trial not sentencing. This is why the last habeas court rejected the argument about admitting the testimony of Joslyn Coombs. Townsend vs. Burke Supra has mandated that None is to be sentenced based on evidence of a "constitutional magnitude". The state has denied equal protection and due process of its law in violation of U.S.C.A. 14 and U.S.C.A. 5 by allowing Joslyn Coombs to testify at sentencing in favor of the state. Consider NRS 202.010 "habitual criminal" the state of Nevada has barred the consideration of crimes that are irrelevant or stale over 10 years old. This incestuous allegation the court considered is inflammatory. No police report was even filed, and it was over 20 years old. The issue is not even relevant, and if it was, why not offer Mrs. Coombs to testify at trial and bring her in under Petrochelli? That would have been the proper thing to do. Why? A smart D.A. would have presented the issue under the hearsay rule and screened for trust worthiness. Being that this is sentencing the D.A. was relieved of that obligation of procedural due process denied.

The allegation of Incest is inflammatory and without proof or conviction amounts to libel and slander prohibited under Nev Const. Art. 1 § 9 and was the prohibited

Ground 9 Continued

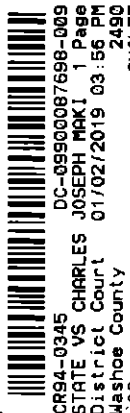
duty and obligation to decide the facts of the matter. Consider also this: "The D.A. brought the girls into court with pure white dresses and teddy bears in hand. They were dressed up like pure virginal upscale little girls in a magazine." This was done for effect to get the jury emotionally involved. Is it right? No. But it is perfectly "legal". But based on review of a medical treatise these girls are not the image D.A. Greco painted them to be.

There was not even a threat on Coombs not to even tell over the past 20 years under NRS 126.085-095. Then we have a jurisdictional issue. The allegations are under the Jurisdiction of the State of Colorado. Why did not Coombs report it there and involve the state's "In secret" or "coercion" clause? The state of Nevada had absolutely "zero" (0) jurisdiction to even consider the matter. Finally, why did not D.A. Greco send a referral back to Colorado where the petitioner could have challenged the incestuous charges? Coombs, like Desiree and Summer, is a liar or has some other motive to lie. And at the very least under NRS 200.366 (1-3) under Nevadan standards she did not resist within the means of a girl her age could do when you consider Desiree's and Summer's effort! (Note! John reported the incident to an adult not Desiree or Summer. So, we still have a problem under NRS 200.366 (1-3).)

We do not know for a fact that the Coombs testimony is in fact harmless. The Coombs testimony qualifies

Ground 9 continued

under NRS 34.224(b) 2 as "constitutionally" invalid.
This is pursuant to two U.S. Supreme Court Mandates.
The case and sentencing is affected by two non-
victims: Summer and Joryln Coombes, and there is
nothing wrong with the "coached" Desiree at all. This
also includes Summer as well.

COURT'S
COPY

TO:

COURT CLERK

2nd JUDICIAL DIST. CT.

RENO, NV. 89501

FILED

2019 JAN -2 PM 3:56

JACQUELINE BRYANT
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

FROM:

DATE: 12-24-2018

CHARLES MAKI - #42820

DIST. CT. NO. 8

E.S.P. PO Box 1989

CASE NO. CR94-0345

ELY NV. 89301

RE: INCORPORATE TRANSCRIPTS

INTO RECORD OF HE'BEUS CORPUS, (ACTUAL-INNOCEENCE) CLAIM

(AND SEND BACK FILLED-STAMP COPY), OF MEDICAL REC., EXHIBITS AND
OF FILED HE'BEUS CORPUS TO DEFENDANT.

MOTION: TO INCORPORATE ALL

(THE) TRIAL - PRELIM - SENTENCING - POST.
CONVICTION INTO HE'BEUS CORPUS RECORD.

DEAR CLERK,

I WOULD ASK THE HONORABLE COURT(S) TO INCORPORATE ALL
THE PRELIMINARY, TRIAL, SENTENCING AND POST-CONVICTION
TRANSCRIPTS INTO THE RECORD ~~AND RETURN TO ME~~ SO AS TO
PROVE ALL MY CLAIMS, SUBMITTED IN THIS HE'BEUS CORPUS
POST CONVICTION, ACTUAL INNOCENCE EVID. CLAIM. (DATED ABOVE.)

ALSO I'D LIKE A (FILED STAMP COPY RETURN) OF SAID HE'BEUS
CORPUS, ^{AND} MEDICAL RECORDS, AND ALL EXHIBITS TOGETHER - COMBINED!
TOTAL PAGES, (42) HE'BEUS, (45) MEDICAL FILES (8) EXHIBITS. **V7.1197**

THANX

CR94-0345
DC-09900087698-011
STATE VS CHARLES JOSEPH MARK 10 Pages
District Court 01/02/2019 06:16 PM

Charles Mark #42480

FILED

P.O. Box 1489-4AB-ESP

2019 JAN -2 PM 5:16

Ely, Nevada 89301

Date

JACQUELINE BRYANT
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

Affirmation under NRS 239B.030

The undersigned affirms that there is no personal information
of anyone used in this action/Document.

In the 2nd Judicial
District Court of Nevada
In and for the County of
Washoe

In re matter of

Case No. CR-94-0345

Charles Mark #42480

Dept. No. 8

vs.

Warden Gitterre of ESP
State of Nevada, et al

Memorandum of Points and Authorities in Support of Post-
Conviction writ of Habeas Corpus in support
of actual innocence and/or resentencing & exhibits

To the honorable Judge of said Court

I.

Memorandum of Points and Authorities and Exhibits.

I. Continued.

"Cause and Prejudice: NRS 34.726 and U.S. vs. Coleman Spru
and the Strickland v. Washington 104 S.Ct. 2052
Standard"

The petitioner has cause for this second state habeas corpus attack. First he is actually innocent of his child sex charges that no juror of reason would convict him of based on a medical opinion the 1994 court denied him of. The medical treatise concerning hymens and pubescent girls inability to gauge penetration as Desiree Menees did is almost as old as the case itself. Its from a real medical doctor, not a glorified untrained nurse from Canada (see Exhibit: A) Secondly, due to the prong of prejudice and the destruction of an exculpatory video tape, time has destroyed the original police interview video where footage is missing in context to Desiree and Summer Menees. The petitioner attest that he did see the original police transcripts of the alleged victim excusing him and it is a matter of record that there was missing video footage. This issue is over 24 years old and the tape is destroyed. Post-conviction counsel who rendered ineffective assistance had refused to allow his access to his own discovery. The state court under NRS 42.730-.735 must construe the tape as detrimental to the states case. Also, counsel poorly investigated that case by asking the wrong common sense questions that when backed by the petitioner's medical records (see Exhibit: B) would have impeached Desiree and Summer Menees and exposed ability to fabricate a charge under NRS 50.090.

Strickland vs. Washington two prong test

Pursuant to Nev. Const. Art. 1 § 8 citing NRS 126 Meyers vs. State 98 Nev. 880 and Buffalo vs. State Ineffective assistance of counsel is "Manifest injustice" (see Mann vs. Richardson supra). Strickland vs. Washington obligates the petitioner to meet two prongs to establish Post-Conviction relief:

- 1). Counsel assistance must fall below reasonable and established competent and professional standards, or counsel has a conflict of interest so great that they cannot be considered counsel for the defense. (e.g. failure to investigate, failure to object, failure to secure evidence, failure to secure or request expert or investigator)
- 2). The defendant was denied the highly likely possibility of a different result due to counsel's inept performance. This usually translates into conviction that could have been avoided.

The defense to an I.A.C. post-conviction attack is usually counsel strategy. Counsel strategy is based on what counsel deemed reasonable at the time. Due to the preliminary hearing where the alleged victim Desiree showed the Judge "fingers" to gauge penetration depth, and due to D.A. Greco telling the jury that Desiree will show how much she was penetrated, combined with the denial of the court to allow the defense an medical expert and the attached medical treatise from a Medical doctor. The petitioner will make his case for relief under Strickland Court due to counsel's inept performance.

A). What counsel failed to simply do to Impeach and discredit the Testimony of Summer Meneers.

Out of the (24) twenty-four years since conviction. No one thought to simply ask the petitioner on the record if he had milk in his own home, You see the pain of disability and opioids caused the petitioner to have chronic upset stomach and he needed milk to take with the pain killers. (See attached Medical examine (file)). The record belies the fact that summer told the court she was told by the petitioner to go get a glass of warm milk. (See Prelim. hearing)

- 1). If the petitioner already had milk in his home why would he tell summer to go get a glass of warm milk from a neighbor? Had counsel inquired of this this could have been proven a lie. It was a lie.
- 2). The petitioner kept a gallon of milk in his home drunken cold for this purpose.
- 3). Counsel could have simply asked summer, "Where did you get the milk from?", "How did you heat the milk?" In a microwave or on the stove?", "Did you need help warming the milk?" "Did you give Mr. Malik what he requested?"

Based on her answers a seven year^{old} does not know how to warm milk unless she was taught. And it's usually for a baby sibling. There were no baby siblings she being the youngest. The only way she could heat milk is on a stove. (Hence why their father sent them next door so they would not have to cook because they cannot watch themselves.
If they could cook why use a baby sitter?)

Now a nine or ten year old could do it. The Petitioner could have sent Desiree, assuming he had no milk on the day in question. That leaves motive to be alone with Desiree. But since Desiree is completely normal and she described depth of penetration, we will analyze this lie based on an doctors opinion. Furthermore, Desiree had stated that she and her sister went next door in a long T-shirt with nothing but panties underneath. * Query: "What parent would send their child to a baby sitter inappropriately dressed as such?"

The crime would have been more sinister if they came over properly dressed and was forcefully robbed. This was not the case and that's why this case "stinks" * (see Prelim. hearing).

B). What counsel failed to do to simply Impeach Desiree and discredit her on the stand.

Even if the Judge said No expert. Counsel should have gone online and opened a book or made an independent inquiry about Desiree and summer hymenal conditions.

Exhibit: A was available to trial counsel and post conviction counsel. It is a fact that D.A. Greco had Desiree showed the Judge in the Preliminary hearing how much she was penetrated (with finger and the petitioner's penis). However, Dr. Shapiro of the world renowned Children's Medical center had stated that such girls cannot determine or gauge penetration being virginal. This conduct occurred also in trial. The Judges and Jury did not know any better. This is not only "coaching"

but "witness vouching" which is constitutionally prohibited and is "prosecutorial misconduct", Trial counsel and direct appeal counsel and post-conviction counsel rendered ineffective assistance for not picking it up. Had they properly attacked and addressed this the petitioner would not be in prison "today".

D.A. Greco during the trial on redirect (See Trial transcripts pg. 147 Lns 1-21) tried to rehabilitate their expert Mrs. Peele by inquiring if it could have penetrated an "inch". You cannot have a child victim based on Dr. Shapiro's online treatise describe inches of penetration then rehabilitate the star witness by down playing what she described knowing that even digital penetration (simple contact) is enough to convict. It's abuse of the rule on penetration. You see trial counsel tried to inquire about this matter during questioning. (See trial transcripts pg. ^{140-141 Lns 12-15} 144 Lns 3-12). While it may be true that some contact or penetration does heal, there should have been some reliable penetration evidence left if Desiree was telling the truth about the penetration she could not even describe based on Dr. Shapiro's opinion. They went to the doctor or Mrs. Peele within a month of the incident. The question that trial counsel should have asked Peele is what kind of penetration perpetrated on a child sex abuse victim vaginally does "not" allow the hymen to heal and repair itself? (which, by the way, is the deep finger and penile penetration that Desiree scandalously and illegally described!)

Trial Counsel and direct appeal counsel and Post-Conviction counsel rendered ineffective assistance for not properly using, researching, and investigating a defense under NRS 50.090

"Ability to fabricate a charge." Desiree's testimony under NRS.

47 and 48 could have been stricken as unreliable and untrustworthy. 1). In the preliminary hearing she described the color of the alleged perpetrators penis. Okay, she did admit she showers naked with her father. Her father and the petitioner are of the same identical race. That means nothing. (Why is a child that old showering naked with her father anyway? Why not a bath? She cannot drown if supervised in low water!) Then we got possible unreliable hearsay from the child "John." These counsels failed to pull that child up and interview him and ~~his~~ mother to see if the allegation made by Desiree to him was simply taken out of context. "That" is why hearsay has to be checked for reliability. Had counsel done this, the case probably would not have survived the preliminary hearing. 2). The alleged victim Desiree admitted she heard and used the word "penis" (And worse probably) in school. All the above is completely relevant to a child's ability to fabricate and make up a charge. Add the coaching by D.A. Greco and Detective Staigmier (?) and you have an un reliable child witness. Greco vs. State and Babayan vs. State at the 2nd Judicial District is the control for such dismissals. Counsel simply dropped the ball on the petitioner.

Finally, Desiree had not even described an erected penis and no phallometric test was done. We also have the tattoo issue. Desiree and Summer did not describe any of the tattoos found on the petitioner's lower regions if he did get naked, nor did they describe the possibility he only undid his pants partially where they could not see the tattoos. A jurist of reason based on all the above would logically conclude that Desiree was not sexually assaulted or even penetrated. Her exam was normal.

(C).

The district court abused discretion in not allowing an expert for Defense based on Exhibit: A which could have discredited Peele and explained Summer's Hymenal condition more reliably as she was not a victim.

Dr. Shapiro in the Medical treatise had stated that all examiners are not equal and some have different skill levels. The most important part of the treatise are things that "mimick" sexual abuse. Peele's trial testimony had revealed the fact that she did not study hymens too much (see trial transcript pg. 139 lns 3-7) Hymens are "everything" in diagnosing sex abuse in young girls like Desiree and Summer. An expert might have given the defense an edge. She did a history on Summer and noted poor hygiene well. According to Dr. Shapiro, poor hygiene can mimick sexual abuse particularly on the vagina and anus of children.

For example, the medical treatise provided states that a hymen may have very little (thin) or thick skin covering all or very little of it. It can be redundant (folded) or estrogenized (thickened). Peele stated that Sommers alleged penetration had healed while the main victim alleged (Desiree) had no evidence it had healed at all! (see trial transcripts pg. 150 lns 1-24 all). Sommers hymen based on that treatise could have very well been normal as she was going through puberty changes and she was actually bigger than Desiree even though Desiree was in fact older! *Peele had also stated on the record she did not do an internal exam of either girl. Dr. Shapiro stated that penetrating injury from hymenal injury often occurs in the introitus (The vaginal opening itself). Indeed, a septate hymen naturally has two openings in it and the jury believed it's penetrating injury. The petitioner states this to show the court the ^{NECESSITY} ~~NECESSITY~~ of an expert. Based on the treatise offered, Peele's findings should have been declared non-conclusive. Why? on the trial transcripts page 115 lns 1-21 Peele had actually described what Dr. Shapiro defined as clefts, interruptions of the normally smoother hymenal edge. These are found at the mid-horizontal plane of the hymen at 3 and 9 o'clock positions. Shapiro states when found below the horizontal line it may indicate injury. Peele did not determine this on the record and the original exam needs a second look. (Note! : Sommers did not have an enlarged vaginal opening or introitus, so, the finding is non-conclusive. There is no proof she was penetrated by a penis at all!)

Conclusion

The Petitioner will not address other issues of testimony until the D.A. answers the writ. The warm milk issue and Desiree's description of finger penetration while she did not even have healed penetration shows the girls have been coached/coerced by D.A. Greco and Det. Staegmire (?) and have lied on record. The treatise by Dr. Shapiro alone supports the court's error in the denial of ~~an~~^a medical expert. Redundant, folded hymens in physically mature girls like Summer are and can be normal. It can be also mistaken for healed sexual abuse as well. This also proves, after 24 years, that Charles Maki did not get a fair trial, he did not have competent effective counsel in trial, direct appeal, and post-conviction pursuant to Martinez vs. Ryan 2011 because that counsel did not append the record, the girls were coached and coerced into testifying, the police molested and now destroyed the video tape of the girls interview, and due to cumulative error and police and prosecutorial misconduct should be free.

Affirmation

"I, Charles Maki #42480, hereby affirm under the penalties that the foregoing is true and correct and not for any improper purpose."

CHARLES MAKI
NRS 208.165 & 121.121 Affiant

Hereby sworn this 24th day of December, 2018 under the penalties of perjury.

Charles Maki

NRC #42480

P.O. Box 1984-4A13-ESP

Ely, Nevada 89301

Pro per Petitioner

Robert Shapiro, MD
Children's Hospital Medical Center

Exhibit A

GENERAL PRINCIPLES

- **Normal examinations are common after sexual abuse.** Most children who have been sexually abused will have normal physical examinations, including children who report vaginal or anal penetration. The finding of a normal examination does not eliminate the likelihood or potential that the child was abused.
- **Facts about the hymen:**
 - ✓ Every girl is born with a hymen.
 - ✓ Hymens vary in shape and size among individual females.
 - ✓ The hymen changes significantly during puberty.
 - ✓ After puberty, bleeding from hymenal injury may or may not occur during first time intercourse.
- **The examiner is looking for physical changes that may be the result of sexual abuse.** Injuries to the genitalia and anus may occur during sexual abuse. Chronic (old) sexual abuse may cause changes different from acute (recent) abuse. Sexual abuse may transmit STDs (see Chapter 41).
- **Puberty changes the appearance and size of the genitalia as well as the examiner's ability to diagnose injury.** Enlargement of the vaginal opening and redundancy (folds) of the hymen can prevent injuries from vaginal penetration or make them more difficult to recognize. **Superficial genital and anal injuries often heal quickly.** If there is a delay between the time of the abuse and the examination, minor trauma that may have resulted from the abuse will no longer be present. The amount of time needed for an injury to heal varies. Deeper injuries require more time to heal, as do injuries that are not able to heal because of re-injury.
- **Tanner staging:** The stages of puberty can be described with the Tanner Scale. Tanner Stage I describes the genitalia prior to the onset of puberty. Tanner Stage V describes the genitalia after puberty is complete. Stages II, III and IV are intermediate stages.
- **Clock references in the sexual abuse reports.** Many examiners refer to locations about the genitalia and anus using a "clock face" analogy. Therefore, the top-center location is referred to as "12 o'clock", and "3 o'clock" refers to the area 90 degrees to the right of 12 o'clock, etc.

ANATOMY: Familiarity with certain anatomical structures and terms is helpful when interpreting reports of medical examinations. The section below provides a brief overview of the more commonly encountered terminology.

Female genitalia

- **Labia:** the lips surrounding the vaginal opening. There are two sets of labia, one is the labia major (outer set) and the other is the labia minor (inner set). After puberty, the labia enlarge and more completely cover the opening of the vagina.
- **Urethral meatus:** the opening of the urethra from the bladder to the exterior through which urine passes.
- **Hymen:** a membrane that partially covers the opening of the vagina. The hymen may be thin or thick, may cover most of the vaginal opening or very little of it, and varies in shape. Terms used to describe the appearance of a normal hymen include crescentic (crescent shaped), annular (round), redundant (folded), estrogenized (thickened) and septate (two openings). **Introitus (hymenal opening):** the opening in the middle of the hymen. Objects entering the vagina first pass through the introitus. Hymenal injury from vaginal penetration often occurs at the introitus.
- **Vagina:** a tubular structure inside the body, bordered by the hymen at the outer end and by the cervix internally.

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- *Posterior fourchette*: the area of mucosal skin where the labia minora meet (opposite end to the clitoris).
- *Fossa navicularis*: the area of mucosal skin between the posterior fourchette and the hymen.

Male genitalia

- *Glans*: the tip of the penis surrounding the urethral opening
- *Prepuce* (foreskin): tissue that covers the glans in uncircumcised males. The prepuce is removed during circumcision.
- *Phimosis*: adhesion of the prepuce to the glans.

The anus

- *Anus*: the opening of the rectum between the buttocks
- *Sphincter*: the muscles that surround the anus
- *Anal verge*: the area between the external and internal anal skins
- *Rugae*: folds of skin which radiate outward from the anus

INTERPRETATION OF NORMAL AND NON-SPECIFIC EXAMINATIONS: Most children who have been sexually abused will have normal or non-specific physical examinations. Some of these normal and non-specific findings are described below. These findings on their own are clearly not proof of sexual abuse, but may be present in children who have been abused.

Normal or non-specific pre-pubertal female genital findings

- *Bumps/tags/mounds*: small protrusions on the hymenal edge
- *Clefts*: interruptions of the normally smooth hymenal edge. They are most commonly found along the mid-horizontal plane of the hymen, at the 3 o'clock and 9 o'clock positions. When present below this horizontal line, they may indicate healed injury.
- *Redness/vaginitis/discharge*: can be due to poor hygiene, infection, bubble bath, and other causes.
- *Intra-vaginal ridges/columns*: normal folds of the vaginal wall
- *Peri-urethral bands*: support-like bands of tissue radiating from the urethral meatus
- *Increased vascularity of vestibule or hymen*: more than the usual number of blood vessels within these tissues
- *Posterior fourchette friability*: the tendency of the posterior fourchette mucosa to bleed easily. This finding seems to occur more often in children who have been abused but can also be seen in non-abused children.
- *Labial adhesions*: joining of the labia minora. In some children, chronic labial irritation from sexual abuse may be the cause of the adhesions, but this finding is very non-specific.
- *Large hymenal opening*: A large introital opening is suggestive of vaginal penetration, but one cannot conclude that vaginal penetration has occurred unless specific signs of hymenal trauma are also present. No conclusion regarding sexual abuse should be made based upon the size of the vaginal opening alone.

Normal or non-specific pubertal female genital findings

- *Redundant, fimbriated hymen*: During puberty, the hymenal tissue becomes thicker and redundant (folded), the opening into the vagina becomes larger, and the hymenal tissue becomes more elastic and less sensitive to touch. The mucous covering the vaginal walls becomes less prone to injury from abrasion. Folds in the hymen make examination difficult and distinguishing folds from injury can be challenging
- *Vaginal discharge*: although discharge can be normal, it may also indicate infection

Normal or non-specific anal findings

- *Fissures, excoriation, redness*: may be seen after sexual abuse but there are other causes
- *Anal tags*: protrusion of tissue at the 6 o'clock or 12 o'clock midline positions
- *Diastasis ani*: smooth anal skin at the 6 o'clock or 12 o'clock midline positions
- *Increased skin pigmentation and thickened anal skin folds*
- *Varicose congestion*: pooling of blood in the veins around the anus
- *Gaping (wide open) anus*: only normal if stool is present in the distal (end) anus

Interpret results of a child sexual abuse examination and conditions may be mistaken for sexual abuse.

Robert Shapiro

INTERPRETATION OF ABNORMAL EXAMINATIONS THAT REVEAL TRAUMA: Trauma may or may not indicate sexual abuse. Some types of trauma are non-specific while others indicate that sexual abuse has most likely occurred.

Pre-pubertal female genital trauma

- Acute injuries to the genitalia cause bruising, lacerations (tears), abrasions (scrapes) and swelling. Most of these injuries heal quickly without leaving any lasting signs to be found on later examination. Acute genital injuries are always suspicious for sexual abuse, particularly when the trauma includes the hymen. Accidental trauma usually involves the labia and/or the mons pubis.
- Findings that indicate healed vaginal penetration
(Note: the legal definition of "penetration" may include contact with the external genital structures, such as the labia, posterior fourchette and fossa navicularis. "Vaginal penetration" in this Chapter refers to internal, vaginal penetration.)
 - ✓ Absent or significant defect of the posterior hymen (should be confirmed by examining the child in knee-chest position)
 - ✓ Hymenal laceration or scar
- Findings that may indicate vaginal penetration
 - ✓ Enlarged hymenal opening: "enlarged" can be difficult to define
 - ✓ Decreased amount of hymenal tissue
 - ✓ Irregularities, notches, and clefts of the posterior hymen

* Female pubertal genital trauma

Signs of vaginal penetration can be more difficult to recognize, or may be absent, in the adolescent. New hymenal tears and signs of acute injury are indications of recent vaginal penetration. Transections (complete interruptions/breaks) in the hymen are present in some virginal adolescents, but are more commonly seen in sexually active and sexually abused girls.

* Consensual sexual activity does not typically cause genital bruising, abrasions or swelling.

Male genital trauma

Findings that indicate recent injury: swelling, abrasions, bruises, lacerations, bites. Acute injury is always suspicious for sexual abuse.

Anal trauma

- Findings of acute anal injury include bruising, lacerations, abrasions and swelling. Most of these injuries heal without leaving any lasting signs. Acute injury is always suspicious for sexual abuse. Scars may result from deep lacerations after sexual abuse and will be visible long after the abuse occurred. Skin tags away from the midline of the anus may indicate healed injuries.
- Chronic sexual abuse may result in funneling (loss of subcutaneous fat around the anus), changes in the anal skin, and decreased sphincter muscle tone. Decreased tone is defined as > 15 mm of anal dilation with no stool in the distal anus.

Trauma outside the genital and anal areas

Injuries to a child's breasts, throat, mouth, or other areas, may occur following sexual abuse. Specific injuries from oral gags or binding of the extremities may be found.

COMMON QUESTIONS WITH ANSWERS

- What types of sexual abuse are consistent with normal examinations?
Oral contact, digital fondling, genital rubbing, vaginal penetration after puberty, rectal penetration, partial or attempted vaginal penetration, and penetration that has had time to heal.
- The child describes penetration but the exam is normal. How can this occur?
1. The pre-pubertal child who describes vaginal penetration may have experienced the pain of partial or attempted penetration, but may not have been penetrated past the hymen. Although the child describes penetration, since she could not "see" the extent of penetration, and has no experience to be able to differentiate between full vaginal penetration and attempted or partial penetration, her impression may be that she was penetrated. If pressure is exerted against the hymen, most girls will experience pain. Keep in mind that, in many states, the legal definition of penetration does not require vaginal penetration.

* This proves Desiree was coached!

Interpret results of a child sexual abuse examination and conditions may be mistaken for sexual abuse.

Robert Shapiro

2. The prepubertal adolescent may show no physical indications of vaginal penetration after sexual intercourse. In many adolescents, the hymenal opening is large enough, and has sufficient elasticity, to accommodate an erect male penis without tearing.
 3. Rectal penetration often results in no signs of injury. The rectum of many children can accommodate an erect male penis without injury, particularly if lubricated.
 4. In general, trauma after penetration is more likely if the victim was young, physical force was used, the penetration was deep, the victim was uncooperative, and/or the perpetrator used no lubrication. Penetration with larger objects is more likely to result in injury than penetration with smaller objects. Repeated penetration is more likely to result in injury than single penetration.
- Can the number of abuse episodes be determined by exam?
Not usually. If evidence of chronic anal abuse is present, multiple episodes of abuse occurred. Vaginal injuries do not reliably differentiate between single episodes of abuse and multiple episodes.
 - When did the injury occur?
If the injuries are acute (redness, swelling, tenderness, fresh abrasions or tears), the examiner may reliably identify the injury as relatively recent, most likely having occurred within a few days of the examination. Dating injuries within hours or to specific days is usually not possible.
 - Why does one examiner's report differ from another's?
Examination findings may differ when:
 - acute injuries heal between examinations
 - one of the examinations was not optimal because the child was uncooperative
 - the skill levels of the examiners differ. Examiners with expert training will provide a more accurate and informative examination.

CONDITIONS THAT MIMIC SEXUAL ABUSE

- Non-specific vaginitis: many causes, including poor hygiene, bubble bath, antibiotics, nylon underwear, and bed wetting.
- Vaginitis: many causes, including pinworms, streptococcal infection, and fungus infection.
- Vaginal foreign bodies: may cause bloody, foul smelling discharge. This is often caused by residual toilet paper in the vagina.
- Peri-anal strep infection: presents with anal bleeding and redness
- Lichen sclerosus: hourglass shaped area of hypo-pigmented skin surrounding the anus and genitalia, often with blood blister and other skin changes. Bleeding is common.
- Straddle injuries (accidental trauma): abrasions, bruising, swelling of the labia. Occasionally may involve the introitus.
- Urethral prolapse: the urethra protrudes past the urethral opening and presents with a bloody, or blood-tinged, swollen lesion around the top of the introitus. Often, the urethral origin of this mass cannot be easily recognized and it may be mistaken for trauma.

References:

- Hymel, Kent P, Jenny, Carole. Child Sexual Abuse. *Pediatrics in Review* Vol. 17: no 7; p 236 - 249. 1996
- Botash, Ann S. Examination for Sexual Abuse in Prepubertal Children: An Update. *Pediatric Annals* 26:5 May 1997 pp312-320/

CODE No. 2645
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
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Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR94-0345

CHARLES JOSEPH MAKI,

Dept. No. 8

Defendant.

_____/

OPPOSITION TO MOTION TO MODIFY SENTENCE

COMES NOW, the State of Nevada, by and through Jennifer P. Noble, Chief Appellate Deputy, and opposes this "Motion to Modify Sentence." This Opposition is based on the pleadings and papers on file with this Court, and the following points and authorities.

POINTS AND AUTHORITIES

In 1994, Maki sexually assaulted two little girls, aged seven and ten. He licked the ten-year-old's breasts, digitally penetrated her, and penetrated her with his penis at least three separate times. *See* PSI. He also tried to get that child to fellate him, but she refused. Maki also fondled the seven-year-old, and penetrated her with his penis and his fingers. *Id.* He also took a shower with the seven-year-old, and had her wash his

genitals. *Id.* As this Court noted in its order, a jury of his peers convicted him of three counts of Sexual Assault on a Child Under the Age of Fourteen Years, and five counts of Lewdness With a Child Under the Age of Fourteen Years. *Id.*

Maki now seeks modification of his sentence based upon health problems. A motion to modify a sentence must be based on very narrow grounds. It is limited to sentences based on a mistaken assumption about the defendant's criminal record which worked to the defendant's such extreme detriment as to rise to the level of a due process violation. *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). The State notes that on October 7, 2015, Judge Lidia Stiglich declined to modify Maki's sentence, citing the limitations in *Edwards, supra*. It appears that in his latest motion, Maki appears to reference *Chavez-Meza v. United States*, ___ U.S. ___, 138 S. Ct. 1959 (2018). Maki's reliance is misplaced. In *Chavez-Meza*, the United States Supreme Court reviewed a federal court's reduction of a sentence based upon amendments to the federal sentencing guidelines. A federal statute, 18 U.S.C.A. §3582 (c), provided for the type of reduction ordered by the federal judge. Nevada has no such statute, and there is no procedural vehicle Maki may properly use to obtain a sentence reduction or "early release" from this Court.

The State notes that over the last two decades, Maki has sought post-conviction relief in various forms. This Court has declined to grant relief, and the Nevada Supreme Court has affirmed those decisions. It is no longer within the purview of this Court to decide whether or not Maki should be afforded "early release." Should Maki wish to pursue some sort of compassionate release, he can seek relief with the Pardons Board.

///

///

///

///

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: January 16, 2019.

CHRISTOPHER J. HICKS
District Attorney

By /s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 16, 2019, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Charles Joseph Maki #42820
Ely State Prison
P.O. Box 1989
Ely, NV 89301

/s/ Margaret Ford
MARGARET FORD

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-01-16 09:05:44.354.

ROBERT BELL, ESQ. - Notification received on 2019-01-16 09:05:44.4.

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-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

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Clerk Accepted:

01-16-2019:09:05:15

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Jennifer Patricia Noble

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

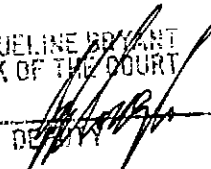
ROBERT STORY, ESQ. for CHARLES MAKI

CR94-0345 DC-0990087784-026
STATE VS CHARLES JOSEPH MAKI 4 Pages
District Court 01/24/2019 02:13 PM
Washoe County 3790

Code 3790

FILED

2019 JAN 24 PM 2:13

JACQUELINE BRYANT
CLERK OF THE COURTBY 
DEPUTY

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

STATE OF NEVADA,

Plaintiff(s),

Case No. ^{CR94}~~CR94~~-0345

vs.

Dept. No. 8

CHARLES MAKI,

Defendant(s).

PETITIONER'S RESPONSE TO OPPOSITION TO MOTION TO MODIFY SENTENCE:

"MOTION TO STRIKE PURSUANT TO NRCP RULE 12 WITH DEMAND FOR
EVIDENTIARY HEARING IN SUPPORT OF POST CONVICTION WRIT OF HABEAS
CORPUS AND ACTUAL INNOCENCE PER NRS 34.790"

CR 94-0345

Dept. No. 8

Charles Maki #42820

P.O. Box 1489-4413-ESP

Ely, Nevada 89301

Date: 1-21-2019

Affirmation pursuant to NRS 239B030

The undersigned affirms that there
is no personal data of anyone
used in this action

In the 2nd Judicial District
Court of Nevada In and for
Washoe County

Charles Maki #42820

vs.

Warden of ESP

State of Nevada

Case No. CR-94-0345

Dept. No. 8

Petitioner's response to Opp. to Motion to Modify Sentence:
"Motion to Strike pursuant to NRCP Rule 12 w/ Demand for
Evidentiary Hearing in Support of Post-Conviction Writ of
Habeas Corpus $\hat{=}$ Actual Innocence per NRS 39.290."

To the honorable Judge of said court,

I. Memorandum of Points & Authorities.

NRCP Rule 12 allows the court to strike anything from the
record that is scandalous and impertinent. The D.A.'s
allegation that the petitioner requested oral sex and demanded
the alleged victims to "wash his nuts in the shower" was
not a part of the original allegations petitioner plead not

guilty to in the trial. In fact, and it's belied by the record Desiree Menees and Summer Menees admitted to, as old as they were, to their father showering with them. "That" is where they got the sexual knowledge to fabricate that charge if the petitioner even said it. (Which, he did not) And there lies the problem.

II. Demand for Evidentiary

Hearing under NRS 34-790.

The petitioner has "all" his original discovery from 1994 except the SAINT and Police interview which Post-conviction counsel failed to surrender to him. The allegation was never brought up in trial at all. Therefore, an evidentiary hearing under NRS 34-790 is required to investigate the merits of the allegations and why trial, direct appeal, and at least two-three post-conviction counsels never surrendered this valued discovery contrary to their duties. Based on the writ before the court, the petitioner has already exposed two critical lies the girls told or were forced to tell: A). The issue of the warm milk and B). Desiree's inability to engage and determine depth of penetration based on Dr. Shapiro's medical treatise. The D.A. has "opened the door" or "pandora's box" and now he must deal with it in an evidentiary hearing.

Prayer for Relief

There is a Post-Conviction writ of Habeas corpus based on destroyed video evidence before the court. If there is no grounds for a sentence modification, there is now definitely one for the Habeas pending.

why?: The missing video footage belied by the record and the conflicting police and SAINT interview with this "ghost" allegation is a conflict of evidence showing the video destruction and the withholding of the ~~inter~~ views is deliberate. It is presumptive prejudice, prosecutorial misconduct, and outrageous government misconduct with civil rights "conspiracy" to boot. (It's an ugly lawsuit)

Affirmation

"I, Charles Maki #42820, author of 'Petitioner's Response...' hereby attest under the penalties of perjury that the foregoing is true and correct and not for any improper purpose."

NRS 208.165 & 121.121 Charles Maki #42820

Affiant

Hereby sworn this 21st day of January under the penalties of perjury as true and correct.

Quick Cert. of Service

A true and correct copy of "Petitioner's Response..." was served on counsel of respondent of record at address below via logged outgoing legal mail pursuant to NACV rules 4 & 5 by petitioner. Charles Maki #42820

Petitioner

Hereby served this 21st day of January, 2019 by petitioner.

Charles Maki #42820

P.O. Box 1489-4A26-ESP

Ely, NV. 89301

Charles Maki #42820

Pro per litigant V7. 1221

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITERRE, Acting Warden,

Dept. No. 8

Respondent.

ORDER DENYING MOTION TO MODIFY SENTENCE

The Court is in receipt of a *Motion for Modification of Sentence* filed December 7, 2018 by Petitioner, CHARLES JOSEPH MAKI. On December 17, 2018, this Court directed the STATE OF NEVADA, on behalf of Warden WILLIAM GITERRE, to respond to the request. The State complied with the Court's order on January 16, 2019, filing an opposition to the *Motion*. Mr. Maki then replied on January 24, 2019.¹

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. Mr. Maki now asks this Court to modify his sentence based on his ailing health.

A motion to correct a sentence is limited to a challenge of the facial legality of the sentence, meaning, "... to sentences based on mistaken assumptions about a defendant's criminal

¹ Mr. Maki originally submitted this matter to the Court on December 7, 2018, the same day he filed the instant motion. The Court appreciates Mr. Maki's position as a *pro per* litigant and, with briefing now complete, construes the matter as submitted based on the previous request for submission (filed December 7, 2018).

1 record which work to the defendant's extreme detriment." *Edwards v. State*, 112 Nev. 704, 708,
2 918 P.2d 321, 324 (1996); *Conners v. State*, 413 P.3d 837 (Nev. 2018).² The Court must actually
3 rely on the false assumption and the mistake at issue must be of the type that would rise to a
4 violation of due process. *Passanisi v. State*, 108 Nev. 318, 322-323, 831 P.2d 1371, 1373-74. A
5 motion to correct a sentence cannot challenge errors occurring before or at trial or other errors
6 occurring at sentencing because it presupposes a valid judgment exists. *Edwards*, 112 Nev. at
7 708, 918 P.2d at 324. When a motion to correct a sentence raises claims that fall outside the
8 proper scope, the district court should summarily deny it. *Edwards*, 112 Nev. at 708-09 n. 2, 918
9 P.2d at 325 n. 2.³

10 Mr. Maki's deteriorating health is not an appropriate ground for modification by this
11 Court because it is simply unrelated to a mistaken assumption about his criminal history.
12 Compassion releases, as Mr. Maki requests here, are outside the scope of *Edwards*.
13 Accordingly, the request warrants summary denial.

14 Based on the foregoing, and good cause appearing, Mr. Maki's *Motion to Modify*
15 *Sentence* is **DENIED**.

16 **IT IS SO ORDERED.**

17 **DATED** this 2 day of February, 2019.

18
19
20 

21 BARRY L. BRESLOW
22 District Judge
23
24
25
26

27 ² Pursuant to NRAP 36(c), *Conners* is not strictly cited as legal authority, but to demonstrate the current relevance of
28 the principles outlined in *Edwards*.

³ Issues outside the scope of a motion to modify a sentence must be raised through *habeas* proceedings. *Id.* at 708
(citing NRS 34.724(2)(b); *State v. Meier*, 440 N.W.2d 700m 703 (N.D. 1989)).

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 4 day of February, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.

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

Charles J. Maki, #42820
Ely State Prison
P.O. Box 1989
Ely, NV 89301



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-04 10:26:30.714.

ROBERT BELL, ESQ. - Notification received on 2019-02-04 10:26:31.041.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

02-04-2019:10:25:16

Clerk Accepted:

02-04-2019:10:26:01

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

CODE 2540

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

STATE OF NEVADA,

Plaintiff,

Case No: CR94-0345

vs.

Dept. No: 8

CHARLES JOSEPH MAKI,

Defendant.

_____ /

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on February 4, 2019 the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

You may appeal to the Supreme Court from the decision or Order of the Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within thirty-three (33) days after the date this notice is mailed to you.

Dated February 11, 2019.

JACQUELINE BRYANT

Clerk of the Court

/s/N. Mason

N. Mason-Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR94-0345

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on February 11, 2019, I electronically filed the Notice of Entry of Order with the Court System which will send a notice of electronic filing to the following:

DIV. OF PAROLE & PROBATION

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

ROBERT C. BELL, ESQ.

I further certify that on February 11, 2019, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

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

Charles J. Maki #42820
Ely State Prison
P. O. Box 1989
Ely, NV 89301

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

Dated February 11, 2019.

/s/N. Mason
N. Mason- Deputy Clerk

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITERRE, Acting Warden,

Dept. No. 8

Respondent.

ORDER DENYING MOTION TO MODIFY SENTENCE

The Court is in receipt of a *Motion for Modification of Sentence* filed December 7, 2018 by Petitioner, CHARLES JOSEPH MAKI. On December 17, 2018, this Court directed the STATE OF NEVADA, on behalf of Warden WILLIAM GITERRE, to respond to the request. The State complied with the Court's order on January 16, 2019, filing an opposition to the *Motion*. Mr. Maki then replied on January 24, 2019.¹

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. Mr. Maki now asks this Court to modify his sentence based on his ailing health.

A motion to correct a sentence is limited to a challenge of the facial legality of the sentence, meaning, "... to sentences based on mistaken assumptions about a defendant's criminal

¹ Mr. Maki originally submitted this matter to the Court on December 7, 2018, the same day he filed the instant motion. The Court appreciates Mr. Maki's position as a *pro per* litigant and, with briefing now complete, construes the matter as submitted based on the previous request for submission (filed December 7, 2018).

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11 Court because it is simply unrelated to a mistaken assumption about his criminal history.
12 Compassion releases, as Mr. Maki requests here, are outside the scope of *Edwards*.
13 Accordingly, the request warrants summary denial.

14 Based on the foregoing, and good cause appearing, Mr. Maki's *Motion to Modify*
15 *Sentence* is **DENIED**.

16 **IT IS SO ORDERED.**

17 **DATED** this 2 day of February, 2019.

18
19
20 

21 BARRY L. BRESLOW
22 District Judge
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25
26

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(citing NRS 34.724(2)(b); *State v. Meier*, 440 N.W.2d 700m 703 (N.D. 1989)).

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



Judicial Assistant

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-11 11:44:29.372.

ROBERT BELL, ESQ. - Notification received on 2019-02-11 11:44:29.419.

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A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

02-11-2019:11:43:23

Clerk Accepted:

02-11-2019:11:43:57

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk NMason

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NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITTERE, Warden,

Dept. No. 8

Defendant.

ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS

Before the Court is a successive *Petition for* Writ of Habeas Corpus filed January 2, 2019 by CHARLES JOSEPH MAKI. Previously, on July 19, 2018, Mr. Maki filed a *Motion for Leave to Present Second Request for Petition for* Writ of Habeas Corpus whereby Mr. Maki asked for leave to present a second petition for *writ of habeas corpus*. This Court denied that request on December 20, 2018. Nonetheless, Mr. Maki brings the instant *Petition*, which this Court now **DISMISSES**.

BRIEF BACKGROUND

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. On July 18, 1997, the Court heard Mr. Maki's initial petition for post-conviction relief and denied it. On July 7, 2014, the Court denied Mr. Maki's second, successive petition for post-conviction relief.

//

STANDARD OF REVIEW

All petitions for writ of habeas corpus must be timely filed, including those that are second or successive. *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519, 529 (2001). NRS 34.726 governs the limitations on time to file, stating in pertinent part:

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed **within 1 year after entry of the judgment of conviction** or, if an appeal has been taken from the judgment, **within 1 year after** [...] **remittitur**.

(emphasis added). The district court *must* dismiss an untimely petition under NRS 34.726 unless the petitioner sufficiently demonstrates good cause for delay. *See State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Good cause exists when: (1) the delay was not the petitioner's fault and dismissal of the otherwise untimely petition would unduly prejudice the petition, NRS 34.726(1)(a)-(b); or (2) failure to consider the claims would result in a fundamental miscarriage of justice. *Pellegrini*, 112 Nev. at 860, 34 P.3d at 537. However, all claims reasonably available must be made within the one (1) year period. *Hathaway v. State*, 119 Nev. 248 252-53, 71 P.3d 503, 506 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Maki's *Petition* presents nine (9) grounds for relief:

1. "Denial of Equal Protection and Due Process of Law Pursuant to USCAS and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002."
2. "Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to Investigate and Issue Jury Instructions for NRS 50.090."
3. "Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. 2002 and Kimmelman vs. Morrison 106 S.Ct. 2526 and Nev. Const. Art. 188 Citing Buffalo vs. State – Failure to Object & Witness Vouching."

- 1 4. "Denial of Effective Assistance of Counsel Pursuant to Strickland vs.
- 2 Washington 104 S.Ct. 2002 and Martinez v. Ryan 1 U.S. 566. 2011 in Post-
- 3 Conviction Proceedings During Procedural Default."
- 4 5. "Denial of Effective Assistance of Counsel Pursuant to Strickland vs.
- 5 Washington 104 S.Ct. 2002 and Nev. Const. Art. 1 § 8 Citing Meyers v. State
- 6 95 Nev. 885 and Buffalo v. State – Denial of Conflict Free Counsel."
- 7 6. "Denial of Effective Assistance of Counsel Pursuant to Strickland v.
- 8 Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs.
- 9 State – Refusal to Call Witnesses."
- 10 7. "Denial of Right to a Fair Trial Pursuant to USCA 14 Equal Protection and Due
- 11 Process of Law Citing NRS 47 'Right to Expert Witnesses'"
- 12 8. "Denial of Equal Protection and Due Process of Law Citing USCA 14 and Nev.
- 13 Const. Art. 1 § 8 Citing Cumulative Error."
- 14 9. "Violation of USCA 5 Citing NRS 34.224(b)(2) Denial of Equal Protection and
- 15 Due Process in Sentencing Citing Townsend vs. Burke Citing NRS 48.045."

16 Mr. Maki also demands an evidentiary hearing pursuant to NRS 42.230-235.

17 Having filed the instant *Petition* over twenty-four years after the Judgment of Conviction
18 was entered and over twenty-three years after the Supreme Court issued its first remittitur
19 following appeal, Mr. Maki's *Petition* is untimely. In considering Mr. Maki's subsequent
20 appeals from his conviction, the most recent remittitur was issued in 2016. The *Petition* is,
21 again, untimely.

22 Mr. Maki's claims can be categorized as addressing violations of due process, equal
23 protection, and/or ineffective assistance of counsel. The Court finds that each and every one of
24 these claims were reasonably available during the one (1) year period following judgment and/or
25 remittitur and that Mr. Maki has inadequately explained his good cause for delay. Therefore, the
26 *Petition* is summarily **DISMISSED** as procedurally barred.

27 Although the Court **DISMISSES** the *Petition* in its entirety, the Court is compelled to
28 individually address some of the claims presented by Mr. Maki for the purposes of clarification.

1 ***Claim One & Claim Two:***

2 In Claim One: "Denial of Equal Protection and Due Process of Law Pursuant to USCAS
3 and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective
4 Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002.," Mr. Maki raises an
5 ineffective assistance of counsel claim against his post-conviction counsel for failure to provide
6 him with transcripts relating to a police interview video-tape.

7 Mr. Maki was represented by post-conviction counsel, Mr. Robert Story, Esq., in 2013,
8 when Mr. Maki filed his second *Petition for Writ of Habeas Corpus (Post-Conviction)*. Mr.
9 Maki then appealed the decision of the Honorable Lidia S. Stiglich, then presiding Judge of this
10 Department, to deny said *Petition*. The Supreme Court of Nevada affirmed Judge Stiglich and
11 issued remittitur on January 12, 2015.

12 Mr. Maki files the instant *Petition*, now challenging Mr. Story's representation, nearly
13 four (4) years after remittitur, making the claim plainly untimely. Mr. Maki does not explain
14 good cause for delay. Moreover, the Nevada Supreme Court has previously held that counsel's
15 failure to send a petitioner his or her file is not good cause for delay. *Hood v. State*, 111 Nev.
16 335, 890 P.2d 797 (1995). Mr. Maki could have timely brought the claims with the information
17 that he had. The transcripts were not necessary to *assert* the claims. It is common practice for
18 the Court to first receive a petition and then make determinations whether counsel or transcripts
19 should be furnished to a petitioner upon his or her motion.

20 Claim Two: "Denial of Effective Assistance of Counsel in Violation of Strickland vs.
21 Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to
22 Investigate and Issue Jury Instructions for NRS 50.090." is **DISMISSED** for the same reasons.
23 Mr. Maki's claims could have been raised even without his medical records. For clarification,
24 the Court acknowledges Mr. Maki's reference to NRS 50.090, which reads:

25 Factors for determining whether to permit alternative
26 method. If the presiding officer determines that a standard
27 pursuant to NRS 50.580 has been met, the presiding officer shall
28 determine whether to allow a child witness to testify by an
alternative method. In making this determination, the presiding
officer shall consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

Mr. Maki's use of this statute appears misplaced. NRS 50.090 applies to a presiding officer's decision to allow a child witness to testify by means alternative to at trial (or hearing) and in person. The Court does not see how Mr. Maki's argument regarding a jury instruction on this statute fits into his claim.

Accordingly, Claim One and Claim Two are **DISMISSED** as untimely with the above clarification provided.

Claim Six:

In his Claim Six: "Denial of Effective Assistance of Counsel Pursuant to Strickland v. Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs. State – Refusal to Call Witnesses,," Mr. Maki argues that his counsel should have called character to witness to testify that he would have looked after an underage girl and protected her. The Court **DISMISSES** this Claim as it does with all other claims – on the basis of untimeliness. However, the Court takes this opportunity to clarify the misunderstanding of the law and trial advocacy in Mr. Maki's argument.

Evidence of a person's character or a trait of his or her character is generally not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion. NRS 48.045(1). A narrow exception applies to allow an accused to present character evidence on his or her own behalf. NRS 48.045(1)(a). However, if an accused does present such evidence, the prosecution may rebut. This is more colloquially known as "opening the door."

//

1 Had Mr. Maki's attorney presented evidence of his "good character," the State would
2 have had the opportunity to present evidence in rebuttal, i.e., that of Mr. Maki's "bad character."
3 For this reason, evidence of character is generally disfavored and avoided by trial counsel.

4 In any event, Claim Six is ultimately **DISMISSED** as untimely.

5 **CONCLUSION**

6 Based on the foregoing, and good cause appearing, Mr. Maki's successive *Petition for*
7 Writ of Habeas Corpus is **DISMISSED**. Accordingly, the request for a hearing is **DENIED**.

8 **IT IS SO ORDERED.**

9 **DATED** this 15 day of February, 2019.

10
11 
12 BARRY L. BRESLOW
13 District Judge
14
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 15 day of February, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.

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

Charles J. Maki, #42820
Ely State Prison
P.O. Box 1989
Ely, NV 89301



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-15 10:59:35.99.

ROBERT BELL, ESQ. - Notification received on 2019-02-15 10:59:36.037.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

02-15-2019:10:58:32

Clerk Accepted:

02-15-2019:10:59:08

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Dismiss Post Conviction

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

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-

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ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

CODE 2540

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

STATE OF NEVADA,

Plaintiff,

Case No: CR94-0345

vs.

Dept. No: 8

CHARLES JOSEPH MAKI,

Defendant.

_____ /

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on February 15, 2019 the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

You may appeal to the Supreme Court from the decision or Order of the Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within thirty-three (33) days after the date this notice is mailed to you.

Dated February 15, 2019.

JACQUELINE BRYANT

Clerk of the Court

/s/N. Mason

N. Mason-Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR94-0345

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on February 15, 2019, I electronically filed the Notice of Entry of Order with the Court System which will send a notice of electronic filing to the following:

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

ROBERT C. BELL, ESQ.

I further certify that on February 15, 2019, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

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

Charles J. Maki (#42820)
Ely State Prison
P.O. Box 1989
Ely, NV 89301

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

Dated February 15, 2019.

/s/N. Mason
N. Mason- Deputy Clerk

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITTERE, Warden,

Dept. No. 8

Defendant.

ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS

Before the Court is a successive *Petition for* Writ of Habeas Corpus filed January 2, 2019 by CHARLES JOSEPH MAKI. Previously, on July 19, 2018, Mr. Maki filed a *Motion for Leave to Present Second Request for Petition for* Writ of Habeas Corpus whereby Mr. Maki asked for leave to present a second petition for *writ of habeas corpus*. This Court denied that request on December 20, 2018. Nonetheless, Mr. Maki brings the instant *Petition*, which this Court now **DISMISSES**.

BRIEF BACKGROUND

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. On July 18, 1997, the Court heard Mr. Maki's initial petition for post-conviction relief and denied it. On July 7, 2014, the Court denied Mr. Maki's second, successive petition for post-conviction relief.

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STANDARD OF REVIEW

All petitions for *writ of habeas corpus* must be timely filed, including those that are second or successive. *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519, 529 (2001). NRS 34.726 governs the limitations on time to file, stating in pertinent part:

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed **within 1 year after entry of the judgment of conviction** or, if an appeal has been taken from the judgment, **within 1 year after** [...] **remittitur**.

(emphasis added). The district court *must* dismiss an untimely petition under NRS 34.726 unless the petitioner sufficiently demonstrates good cause for delay. *See State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Good cause exists when: (1) the delay was not the petitioner's fault and dismissal of the otherwise untimely petition would unduly prejudice the petition, NRS 34.726(1)(a)-(b); or (2) failure to consider the claims would result in a fundamental miscarriage of justice. *Pellegrini*, 112 Nev. at 860, 34 P.3d at 537. However, all claims reasonably available must be made within the one (1) year period. *Hathaway v. State*, 119 Nev. 248 252-53, 71 P.3d 503, 506 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Maki's *Petition* presents nine (9) grounds for relief:

1. "Denial of Equal Protection and Due Process of Law Pursuant to USCAS and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002."
2. "Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to Investigate and Issue Jury Instructions for NRS 50.090."
3. "Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. 2002 and Kimmelman vs. Morrison 106 S.Ct. 2526 and Nev. Const. Art. 188 Citing Buffalo vs. State – Failure to Object & Witness Vouching."

- 1 4. "Denial of Effective Assistance of Counsel Pursuant to Strickland vs.
- 2 Washington 104 S.Ct. 2002 and Martinez v. Ryan 1 U.S. 566. 2011 in Post-
- 3 Conviction Proceedings During Procedural Default."
- 4 5. "Denial of Effective Assistance of Counsel Pursuant to Strickland vs.
- 5 Washington 104 S.Ct. 2002 and Nev. Const. Art. 1 § 8 Citing Meyers v. State
- 6 95 Nev. 885 and Buffalo v. State – Denial of Conflict Free Counsel."
- 7 6. "Denial of Effective Assistance of Counsel Pursuant to Strickland v.
- 8 Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs.
- 9 State – Refusal to Call Witnesses."
- 10 7. "Denial of Right to a Fair Trial Pursuant to USCA 14 Equal Protection and Due
- 11 Process of Law Citing NRS 47 'Right to Expert Witnesses'"
- 12 8. "Denial of Equal Protection and Due Process of Law Citing USCA 14 and Nev.
- 13 Const. Art. 1 § 8 Citing Cumulative Error."
- 14 9. "Violation of USCA 5 Citing NRS 34.224(b)(2) Denial of Equal Protection and
- 15 Due Process in Sentencing Citing Townsend vs. Burke Citing NRS 48.045."

16 Mr. Maki also demands an evidentiary hearing pursuant to NRS 42.230-235.

17 Having filed the instant *Petition* over twenty-four years after the Judgment of Conviction
18 was entered and over twenty-three years after the Supreme Court issued its first remittitur
19 following appeal, Mr. Maki's *Petition* is untimely. In considering Mr. Maki's subsequent
20 appeals from his conviction, the most recent remittitur was issued in 2016. The *Petition* is,
21 again, untimely.

22 Mr. Maki's claims can be categorized as addressing violations of due process, equal
23 protection, and/or ineffective assistance of counsel. The Court finds that each and every one of
24 these claims were reasonably available during the one (1) year period following judgment and/or
25 remittitur and that Mr. Maki has inadequately explained his good cause for delay. Therefore, the
26 *Petition* is summarily **DISMISSED** as procedurally barred.

27 Although the Court **DISMISSES** the *Petition* in its entirety, the Court is compelled to
28 individually address some of the claims presented by Mr. Maki for the purposes of clarification.

1 ***Claim One & Claim Two:***

2 In Claim One: "Denial of Equal Protection and Due Process of Law Pursuant to USCAS
3 and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective
4 Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002.," Mr. Maki raises an
5 ineffective assistance of counsel claim against his post-conviction counsel for failure to provide
6 him with transcripts relating to a police interview video-tape.

7 Mr. Maki was represented by post-conviction counsel, Mr. Robert Story, Esq., in 2013,
8 when Mr. Maki filed his second *Petition for Writ of Habeas Corpus (Post-Conviction)*. Mr.
9 Maki then appealed the decision of the Honorable Lidia S. Stiglich, then presiding Judge of this
10 Department, to deny said *Petition*. The Supreme Court of Nevada affirmed Judge Stiglich and
11 issued remittitur on January 12, 2015.

12 Mr. Maki files the instant *Petition*, now challenging Mr. Story's representation, nearly
13 four (4) years after remittitur, making the claim plainly untimely. Mr. Maki does not explain
14 good cause for delay. Moreover, the Nevada Supreme Court has previously held that counsel's
15 failure to send a petitioner his or her file is not good cause for delay. *Hood v. State*, 111 Nev.
16 335, 890 P.2d 797 (1995). Mr. Maki could have timely brought the claims with the information
17 that he had. The transcripts were not necessary to *assert* the claims. It is common practice for
18 the Court to first receive a petition and then make determinations whether counsel or transcripts
19 should be furnished to a petitioner upon his or her motion.

20 Claim Two: "Denial of Effective Assistance of Counsel in Violation of Strickland vs.
21 Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to
22 Investigate and Issue Jury Instructions for NRS 50.090." is **DISMISSED** for the same reasons.
23 Mr. Maki's claims could have been raised even without his medical records. For clarification,
24 the Court acknowledges Mr. Maki's reference to NRS 50.090, which reads:

25 Factors for determining whether to permit alternative
26 method. If the presiding officer determines that a standard
27 pursuant to NRS 50.580 has been met, the presiding officer shall
28 determine whether to allow a child witness to testify by an
alternative method. In making this determination, the presiding
officer shall consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

Mr. Maki's use of this statute appears misplaced. NRS 50.090 applies to a presiding officer's decision to allow a child witness to testify by means alternative to at trial (or hearing) and in person. The Court does not see how Mr. Maki's argument regarding a jury instruction on this statute fits into his claim.

Accordingly, Claim One and Claim Two are **DISMISSED** as untimely with the above clarification provided.

Claim Six:

In his Claim Six: "Denial of Effective Assistance of Counsel Pursuant to Strickland v. Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs. State – Refusal to Call Witnesses.," Mr. Maki argues that his counsel should have called character to witness to testify that he would have looked after an underage girl and protected her. The Court **DISMISSES** this Claim as it does with all other claims – on the basis of untimeliness. However, the Court takes this opportunity to clarify the misunderstanding of the law and trial advocacy in Mr. Maki's argument.

Evidence of a person's character or a trait of his or her character is generally not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion. NRS 48.045(1). A narrow exception applies to allow an accused to present character evidence on his or her own behalf. NRS 48.045(1)(a). However, if an accused does present such evidence, the prosecution may rebut. This is more colloquially known as "opening the door."

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1 Had Mr. Maki's attorney presented evidence of his "good character," the State would
2 have had the opportunity to present evidence in rebuttal, i.e., that of Mr. Maki's "bad character."
3 For this reason, evidence of character is generally disfavored and avoided by trial counsel.

4 In any event, Claim Six is ultimately **DISMISSED** as untimely.

5 **CONCLUSION**

6 Based on the foregoing, and good cause appearing, Mr. Maki's successive *Petition for*
7 Writ of Habeas Corpus is **DISMISSED**. Accordingly, the request for a hearing is **DENIED**.

8 **IT IS SO ORDERED.**

9 **DATED** this 15 day of February, 2019.

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12 BARRY L. BRESLOW
13 District Judge
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 15 day of February, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.

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

Charles J. Maki, #42820
Ely State Prison
P.O. Box 1989
Ely, NV 89301



Judicial Assistant

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-15 14:15:32.819.

ROBERT BELL, ESQ. - Notification received on 2019-02-15 14:15:32.881.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

02-15-2019:14:14:33

Clerk Accepted:

02-15-2019:14:15:03

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk NMason

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

Charles Maki # 42820
P.O. Box 1489-4A13-ESP
Ely, Nevada 89301

Dated: FEB-28-2019

FILED

2019 FEB 28 PM 1:21

SECOND JUDGE
CLERK OF DISTRICT COURT

[Signature]
DEPUTY

Information Pursuant to NRS 239B.030

undersigned affirms that there is no personal information
anyone used in this action.

In the 2nd Judicial
District Court of Nevada
In and for the County
of Washoe

Charles Maki # 42820
vs
Warden of ESP
State of Nevada, et al

Case No. CR 94-0345
Dept. No. 8

Notice of Appeal

To the clerk and honorable Judge of said court,

The petitioner, Charles Maki # 42820, hereby appeals the
denial of Post-Conviction relief entered by the Court on

FEBRUARY 07 2019 and 2-15-2019, on
this 24 day of FEBRUARY, 2019 to the Nevada
Supreme Court.

Routing Statement

This action involves the destruction of exculpatory
evidence by police under NRS 47.230 - 47.235 and
Pg 1 of 2

V7. 1254

CR94-0345
STATE VS CHARLES
DISTRICT COURT
WASHOE COUNTY
NOC
DC-0990008022-065
JOSEPH MAKI 2 Pages
02/28/2019 01:21 PM
2515
WILORIA

Routing Statement Cont

Medical evidence concerning myself and concerning my alleged victim's available during and before trial and after trial that various counsel could have easily used to prove my actual innocence under 28 U.S.C. § 2254(d)(1). had they simply asked the right questions that no reasonable Jurist would find me guilty Based on. The lower court made an unreasonable determination of facts and erroneously misapplied and misconstrued U.S. Supreme Court law pursuant to the Anti-terrorism Effective Death Penalty Act (AEDPA) in denying relief. Therefore, the Nevada Supreme Court has exclusive jurisdiction to review, not the Nevada Supreme Court of Appeals.

Affirmation

"I, Charles Malki # 42820, hereby attest under the penalties of perjury that the foregoing is true and correct and not for any improper purpose.

Charles Malki
NRS 208.165 § 171-121 Affiant

hereby sworn this 24 day of FEBRUARY, 2019
under the penalties of perjury as true and correct

Quick Cert. of Service

A true and correct copy of "N.O.A..." was served on counsel of respondent below, at address below via logged out going legal mail pursuant to NRCP rules 4 and 5 by Appellant

Washoe County D.A.
75 Court Street
Reno, Nevada 89501

Charles Malki
Appellant

served this 24 day of FEBRUARY,
2019 by Appellant.

Charles Malki
NDOC # 42820
P.O. Box 1989-4A13
Ely, Nevada 89301
Charles Malki
Pro per Appellant.

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

WILLIAM GITERRE, Acting Warden,

Respondent.

_____ /

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Charles Joseph Maki.
2. This appeal is from an order entered by the Honorable Judge Barry Breslow.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Charles J. Maki #42820
Ely State Prison
P.O. Box 1989 - 4A13
Ely, Nevada 89301

4. Respondent is the State of Nevada. Respondent is represented by the Washoe County

District Attorney's Office:

Jennifer P. Noble, Esq., SBN: 9446
P.O. Box 11130
Reno, Nevada 89520

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant is represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on February 10th, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion to Modify Sentence filed February 4th, 2019 and the Order Dismissing Successive Petition for Writ of Habeas Corpus filed February 15th, 2019.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845, 66144, 67717, 67800 and 69049
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 1st day of March, 2019.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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

CHARLES JOSEPH MAKI,

Case No. CR94-0345

Petitioner,

Dept. No. 8

vs.

WILLIAM GITERRE, Acting Warden,

Respondent.

_____ /

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 1st day of March, 2019, 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 1st day of March, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-03-01 08:54:14.664.

ROBERT BELL, ESQ. - Notification received on 2019-03-01 08:54:14.711.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-01-2019:08:53:09

Clerk Accepted:

03-01-2019:08:53:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

P.0V7B1261989-4A13-ESP

Ely, Nevada 89301

Date: FEB-28-2019

FILED

2019 MAR -1 AM 11:07

JACQUELINE BRYANT
CLERK OF THE COURT

[Signature]
DEPUTY

Information Pursuant to NRS 239B.030

undersigned affirms that there is no personal information
anyone used in this action.

In the 2nd Judicial
District Court of Nevada
In and for the County
of Washoe

Charles Maki #42820

vs

Warden of ESP

State of Nevada, et al

Case No. CR94-0345

Dept. No. 8

Notice of Appeal

To the clerk and honorable Judge of said court,

The petitioner, Charles Maki #42820, hereby appeals the
denial of Post-Conviction relief entered by the Court on

FEBRUARY 07 2019 and 2-05-2019, on

this 24 day of FEBRUARY, 2019 to the Nevada
Supreme Court.

Routing Statement

This action involves the destruction of exculpatory
evidence by police under NRS 47.230 - 47.235 and

Pg 1 of 2

V7.1261

CR94-0345
DC-090008022-066
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court 03/01/2019 11:07 AM
Washoe County 2515
YVILORIA

Routing Statement Cont

Medical evidence concerning myself and concerning my alleged victim's available during and before trial and after trial that "various counsel" could have easily used to prove my actual innocence under 28 U.S.C. § 2254(d)(1). had they simply asked the right questions that no reasonable Jurist would find me guilty Based on. The lower court made an unreasonable determination of facts and erroneously misapplied and misconstrued U.S. Supreme Court law pursuant to the Anti-terrorism Effective Death Penalty Act (AEDPA) in denying relief. Therefore, the Nevada Supreme Court has exclusive jurisdiction to review, not the Nevada Supreme Court of Appeals.

Affirmation

"I, Charles Maki # 42820, hereby attest under the penalties of perjury that the foregoing is true and correct and not for any improper purpose.

char maki
NRS 208.165 & 171.121 Affiant

Hereby sworn this 24 day of FEBRUARY, 2019
under the penalties of perjury as true and correct

Quick Cert. of Service

A true and correct copy of "N.O.A..." was served on counsel of respondent below, at address below via logged out going legal Mail pursuant to NRCP rules 4 and 5 by Appellant

char maki
Appellant
Washoe County D.A.
25 Court Street
Reno, Nevada 89501

served this 24 day of FEBRUARY, 2019 by Appellant.

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

WILLIAM GITERRE, Acting Warden,

Respondent.

_____ /

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Charles Joseph Maki.
2. This appeal is from an order entered by the Honorable Judge Barry Breslow.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Charles J. Maki #42820
Ely State Prison
P.O. Box 1989 - 4A13
Ely, Nevada 89301

4. Respondent is the State of Nevada. Respondent is represented by the Washoe County

District Attorney's Office:

Jennifer P. Noble, Esq., SBN: 9446
P.O. Box 11130
Reno, Nevada 89520

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant is represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on February 10th, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion to Modify Sentence filed February 4th, 2019 and the Order Dismissing Successive Petition for Writ of Habeas Corpus filed February 15th, 2019.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845, 66144, 67717, 67800 and 69049
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 4th day of March, 2019.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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

CHARLES JOSEPH MAKI,

Case No. CR94-0345

Petitioner,

Dept. No. 8

vs.

WILLIAM GITERRE, Acting Warden,

Respondent.

_____ /

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 4th day of March, 2019, 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 4th day of March, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-03-04 10:39:23.76.

ROBERT BELL, ESQ. - Notification received on 2019-03-04 10:39:23.807.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-04-2019:10:38:19

Clerk Accepted:

03-04-2019:10:38:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

Supreme Court No. 78260
District Court Case No. CR940345

D8

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/06/2019 Appeal Filing Fee waived. Criminal. (SC)
03/06/2019 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day. (SC)
03/06/2019 Filed Notice of Appeal/Proper Person. (Second NOA). (SC)

DATE: March 06, 2019

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-03-07 14:11:39.681.

ROBERT BELL, ESQ. - Notification received on 2019-03-07 14:11:40.648.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-07-2019:14:09:07

Clerk Accepted:

03-07-2019:14:10:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

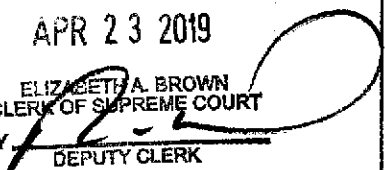
CR94-0345

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

08 No. 78260

FILED

APR 23 2019

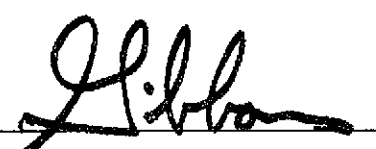
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

 C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-04-24 14:01:53.067.

ROBERT BELL, ESQ. - Notification received on 2019-04-24 14:01:53.113.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

04-24-2019:14:00:30

Clerk Accepted:

04-24-2019:14:01:18

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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-

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

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ROBERT STORY, ESQ. for CHARLES MAKI

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

WILLIAM GITERRE, acting Warden,

SCN. No. 78260

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON 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 25th day of April, 2019, I electronically filed Volumes 1 through 9 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 10 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

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 in accordance NRAP 11(2)(b).

Dated this 25th day of April, 2019.

Jacqueline Bryant
Clerk of the Court

By /s/Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-04-25 11:21:06.074.

ROBERT BELL, ESQ. - Notification received on 2019-04-25 11:21:06.136.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

04-25-2019:11:19:21

Clerk Accepted:

04-25-2019:11:20:20

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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NEVADA

ROBERT C. BELL, ESQ.

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ROBERT STORY, ESQ. for CHARLES MAKI

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

Supreme Court No. 78260
District Court Case No. CR940345

D8

NOTICE OF TRANSFER TO COURT OF APPEALS

TO: Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble
Attorney General/Carson City \ Aaron D. Ford, Attorney General
Jacqueline Bryant, Washoe District Court Clerk

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: October 16, 2019

Elizabeth A. Brown, Clerk of Court

By: Lindsey Lupenui
Chief Deputy Clerk

Notification List

Electronic
Washoe County District Attorney \ Jennifer P. Noble
Attorney General/Carson City \ Aaron D. Ford, Attorney General

Paper
Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Jacqueline Bryant, Washoe District Court Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-10-17 11:23:23.3.

ROBERT BELL, ESQ. - Notification received on 2019-10-17 11:23:23.363.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

10-17-2019:11:20:31

Clerk Accepted:

10-17-2019:11:22:30

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Notice

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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ROBERT STORY, ESQ. for CHARLES MAKI

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

CR94-0345

No. 78260-COA

D8

FILED

DEC 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Joseph Maki appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on January 2, 2019, and a motion to modify sentence filed on December 7, 2018. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Postconviction Petition

Maki filed his petition more than 23 years after issuance of the remittitur on direct appeal on October 24, 1995. *Maki v. State*, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995). Thus, Maki's petition was untimely filed. See NRS 34.726(1). Moreover, Maki's petition was successive because he had previously filed a several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Maki's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

¹*Maki v. State*, Docket No. 66144 (Order of Affirmance, December 11, 2014); *Maki v. State*, Docket No. 30904 (Order of Affirmance, October 10, 2000)

First, Maki claims the district court erred by denying his petition because he could overcome the procedural bars based on a *Brady*² violation by the State. Maki claimed the State improperly withheld pictures of the victims' physical examinations until three days before trial. This claim does not provide good cause for this untimely, successive, and abusive petition because this claim was previously litigated at trial, and Maki previously raised a similar claim in a prior postconviction petition for a writ of habeas corpus. The Nevada Supreme Court affirmed the district court's denial of that claim. *See Maki v. State*, Docket No. 30904 (Order of Affirmance, October 10, 2000). Therefore, it was barred by the doctrine of law of the case. *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

On appeal, Maki argues the district court erred by denying his actual innocence claim. A district court may excuse a procedural bar if the petitioner demonstrates that failure to consider the petition would result in a fundamental miscarriage of justice. *Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015). A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001). To demonstrate actual innocence a "petitioner must show that it is more likely than not that no reasonable juror would have convicted him of the new evidence." *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). [A]n evidentiary hearing regarding actual innocence is required where the new evidence, if credited, would show that

²*Brady v. Maryland*, 373 U.S. 83 (1963).

it is more likely than not no reasonable jury would find the petitioner guilty beyond a reasonable doubt.” *Id.* at 966, 363 P.3d at 1155 (internal quotation marks omitted).

Maki claims he was actually innocent because the victim stated Maki did not insert his penis into her vagina and she only changed her story after being threatened by the prosecutor at the trial. Further, Maki claims he was actually innocent because the district court erred by denying him a sexual abuse expert. As to the victim’s testimony, this claim was not based on new evidence not presented at trial, and Maki failed to demonstrate he was actually innocent. As to being denied an expert witness, Maki failed to demonstrate that testimony by an expert would have caused the jury not to find him guilty beyond a reasonable doubt. Maki, in his interview with police, admitted to at least some of the allegations made by the victims. Therefore, Maki failed to demonstrate a colorable claim of actual innocence. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Finally, Maki claims the district court erred by denying his claim that he was actually innocent because it was physically impossible for him to have committed the crimes because he was in a full body cast at the time of the crimes. This claim was not raised in Maki’s petition below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


Motion for Modification of Sentence

In his motion, Maki claimed his sentence should be modified because of his age, his lengthy sentence, and his health issues. Maki’s claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704,

708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion.

Having concluded Maki is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-30 13:31:20.093.
ROBERT BELL, ESQ. - Notification received on 2019-12-30 13:31:20.763.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

12-30-2019:13:30:07

Clerk Accepted:

12-30-2019:13:30:44

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Order Affirming

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

Supreme Court No. 78260
District Court Case No. CR940345

08

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 21, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

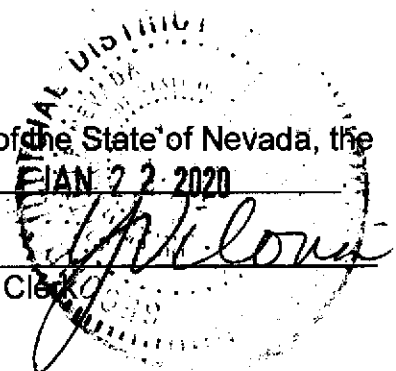
cc (without enclosures):

Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____

District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

Supreme Court No. 78260
District Court Case No. CR940345

JB

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

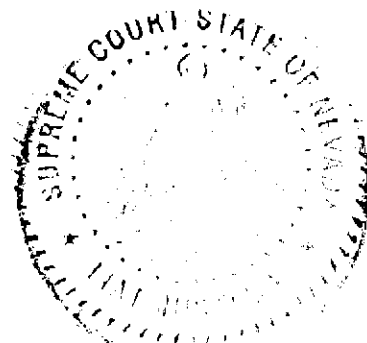
"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 27th day of December, 2019.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 21, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

CR94-0345

08 No. 78260-COA

FILED

DEC 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Joseph Maki appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on January 2, 2019, and a motion to modify sentence filed on December 7, 2018. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Postconviction Petition

Maki filed his petition more than 23 years after issuance of the remittitur on direct appeal on October 24, 1995. *Maki v. State*, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995). Thus, Maki's petition was untimely filed. See NRS 34.726(1). Moreover, Maki's petition was successive because he had previously filed a several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Maki's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

¹*Maki v. State*, Docket No. 66144 (Order of Affirmance, December 11, 2014); *Maki v. State*, Docket No. 30904 (Order of Affirmance, October 10, 2000)

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²*Brady v. Maryland*, 373 U.S. 83 (1963).

it is more likely than not no reasonable jury would find the petitioner guilty beyond a reasonable doubt." *Id.* at 966, 363 P.3d at 1155 (internal quotation marks omitted).

Maki claims he was actually innocent because the victim stated Maki did not insert his penis into her vagina and she only changed her story after being threatened by the prosecutor at the trial. Further, Maki claims he was actually innocent because the district court erred by denying him a sexual abuse expert. As to the victim's testimony, this claim was not based on new evidence not presented at trial, and Maki failed to demonstrate he was actually innocent. As to being denied an expert witness, Maki failed to demonstrate that testimony by an expert would have caused the jury not to find him guilty beyond a reasonable doubt. Maki, in his interview with police, admitted to at least some of the allegations made by the victims. Therefore, Maki failed to demonstrate a colorable claim of actual innocence. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

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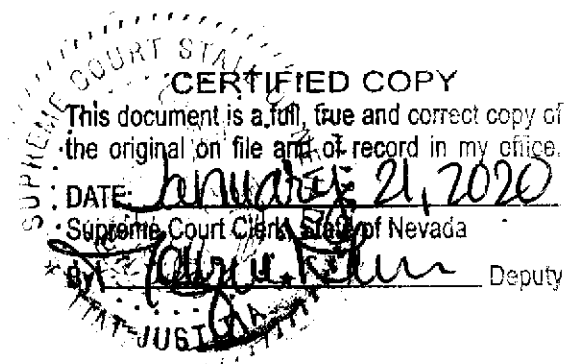
Having concluded Maki is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk



Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-22 14:20:23.247.

ROBERT BELL, ESQ. - Notification received on 2020-01-22 14:20:27.974.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

01-22-2020:14:16:17

Clerk Accepted:

01-22-2020:14:18:03

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Court Order Affirming

Filed By:

Deputy Clerk YViloria

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ROBERT C. BELL, ESQ.

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ROBERT STORY, ESQ. for CHARLES MAKI

COURT'S
COPY

1 Charles Maki # 42820

2 L.C.C. 1200 Prison Rd.

3 Lovelock, NV 89419

4

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE7 OF NEVADA IN AND FOR THE COUNTY OF WASHOE

8

9 Charles Maki,

10 Petitioner,

11 vs.

Case No. CR94-0345

12 The State of Nevada,

Dept. No. 8

13 Warden Garrett,

14 Respondent

15

PETITION FOR

16

ACTUAL FACTUAL INNOCENCE

17

Pursuant to NRS 34.900 To NRS 34.990

18

19 "Comes now", Petitioner in Pro Se and file

20 this Motion Pursuant to NRS 34.900 To NRS 34.

21 -990. This Motion is further based on Martinez-22 Vs. Ryan-566 U.S. 1132 S.Ct. 1309, 182 LEd 2d 27223 (2012). Rodney V. Filson United States Court of24 Appeals For the 9th Cir. 916 F.3d 1254; 2019 and —25 Strickland V. Washington 466 U.S. 668, 104 S.Ct. 2052, 80

26 L-Ed 2d 674 (1984). NRS 34.940 Provides A determination

27 of When evidence is Material for the Purpose of NRS-

28 34.900 to 34.990 inclusive, evidence is Material if

1 the evidence establishes a reasonable Probability
2 of a different outcome. Had Maki's Counsel
3 exercised due diligence to make sure that the
4 vital Medical Records were Presented in trial as
5 evidence that would have bolstered Petitioner's Actual
6 Innocence, The outcome would have been different.
7 NRS 34.960 Filing of Petition; notice and copy of Petition
8 to be served on district attorney and attorney General;
9 contents are to be reviewed by Court; explanation of
10 decision by Court is required. Preservation of evidence;
11 Proceedings governed by Nevada Rules of Civil Procedure.
12 Any claim of Factual Innocence that is made Pursuant
13 to NRS 34.900 to 34.990, inclusive, is separate from any
14 state habeas claim that alleges a fundamental mis-
15 carriage of Justice to excuse Procedural or time limitations
16 Pursuant to NRS 34.126 or 34.810. A Petition Filed Pursuant
17 to subsection [1] must contain an assertion of Factual
18 Innocence under oath by the Petitioner and must aver, with
19 supporting affidavits or other credible documents,
20 Petitioner's claims of actual/Factual Innocence are
21 based on Petitioner's Medical records that were never
22 Presented to the Jury, Petitioner's trial Counsel fail
23 to locate and Present these Medical Files that would
24 have vindicated Petitioner. There is a strong belief
25 that the District Attorney had access to these
26 Medical files and withheld them from the defense in
27 violation of the Brady laws. After A long stretch of
28 denials, and years after Petitioner's Conviction, the

1 medical Records were finally tracked down, and
2 located in Florida. IF Prosecutors suppressed evidence
3 favorable to the defendant that might have led to
4 a not guilty Verdict violates the Brady laws
5 in violation of the Fourteenth Amendment, Petitioner's
6 right to due Process of law, equal, fair treatment
7 and Protection - Petitioner's own (Public defender C
8 lawyer and the Prosecutor conspired together to
9 make sure Petitioner's Medical Files would
10 not be available to Present as exculpatory
11 evidence and to bolster as defense throughout
12 trial, had the Medical Files been made available
13 a Jurist of Reason would have found it debatable.
14 and most certainly would have come to a different
15 conclusion. See Brady v. Maryland, 373 U.S. 83
16 (1963). California v. Trombetta, 467 U.S. 479 (1984):
17 The due Process Clause does not require that law
18 enforcement agencies preserve evidence, and no
19 due Process Violation exist if the government acted
20 in good faith, and in accordance with its regular
21 Practices. The Trial, The State's Prosecutor and
22 Petitioner's Trial Counsel, are in Violation of
23 the Brady Clause and has violated the Canon Codes
24 of Judicial ethics if upon discovery all named
25 Parties are found to have had knowledge of the
26 vital Medical Records that Proves Petitioner was
27 encumbered with a full body cast, and suffering
28 with impotency issues during the time frame.

1 that the alleged victim was coerced into
2 testifying to. The alleged victim in the first
3 instant testified that [I] did not sexually
4 assault her, only changing the story after
5 being coached and coerced further. Petitioner
6 can and has shown that it is more likely
7 than not that no reasonable juror would have
8 convicted in light of the new evidence, evidence
9 that petitioner's counsel should have used the
10 necessary resources provided, and should have
11 investigated and located the medical records.
12 See: Berry v. State, 131 Nev. 957, 967, 363 P.3d
13 1148, 1154 (2015). A district court can excuse
14 a procedural bar if the petitioner demonstrates
15 that failure to consider the petition of actual/
16 factual innocence would result in a fundamental
17 miscarriage of justice. A colorable showing of
18 actual innocence may overcome a procedural bar
19 under the fundamental miscarriage of justice
20 standard. Pellegrini v. State 117 Nev. 860, 34 P.3d 519
21 (2001). Petitioner's case is similar to the case in
22 Proffitt vs. Waldron, 831 F.2d 1245 (CA 5 1987). Proffitt's
23 counsel failed to secure records or to pursue
24 inquiries at the [Idaho Mental Institute, as counsel
25 fail to secure his medical records. Counsel have
26 verified the fact that petitioner was encased in a
27 full body cast due to work related injuries that
28 were sustained in [1992].

1 ALPINE ROOFING CO. RENO-NEVADA

2 Petitioner's accident occurred on AUG-17-1992

3 Petitioner was hospitalized at WASHO MEDICAL

4 " IN RENO-NEVADA when he suffered the unfortunate

5 and severe life threatening injuries due to the

6 Fall, Approximately (45) Feet through the Skylight

7 while exercising his Job duties. Petitioner Under-

8 went a variety of Medical Procedures including the-

9 major Surgeries Performed by Joseph B. Walker (MD.)

10 VIA A [Surgeon] Assistant Surgeon Richard Blakes,

11 and Brad Manny, whom was the Anesthesiologist.

12 An extensive review into Petitioner's Medical

13 Files along with the beginning statement by

14 the alleged victim Summer Menes, whom stated

15 that Petitioner did not insert his penis into her

16 Vagina, finally the State's Prosecutor without the

17 Proper and legal Justification illegally coerced

18 the alleged victim to say what the State wanted

19 her to say, Simply to save face and attempt to

20 make a case, being that the State could not,

21 and did not meet their burden of Proof "Further,"

22 Petitioner was Fitted in A Full Body Cast due

23 to his Medical injuries. Petitioner's Medical

24 records reflects that, "not only was Petitioner

25 Sexually disfunctional, Petitioner was suffering

26 from several other Medical dysfunctions, such

27 as Weakness of voluntary contraction of the

28 anal Sphincter on Command, also the anal wink-

1 reflex was bilateral and obviously weak.
 2 see Exhibit B Page 15 and Exhibit - C Page
 3 (10) of Petitioner's Medical Files, Counsel's Actions
 4 and Inactions were ineffective and Counsel's
 5 incompetent levels fell below reasonableness.
 6 Petitioner was extremely prejudiced due to
 7 Counsel's failures and the state's illegal
 8 actions against Petitioner's (Trial) and case
 9 at hand. But for Counsel's ineffective and
 10 incompetent actions and inactions, the out-
 11 come of Petitioner's trial would have proven to
 12 be righteously and rightfully in Petitioner's
 13 favor, the case would certainly have to
 14 be legally and justifiably dismissed, had
 15 Counsel made sure that the vital medical records
 16 become part of Petitioner's defense in the very
 17 first instance, "especially at Preliminary Phase,"
 18 it is more likely than not, that the case would
 19 have been dismissed, especially after providing
 20 the Court(s) with the medical documents and
 21 calling the specialists, (Medical Surgeons) that
 22 provided the medical treatments and medical
 23 therapies upon Petitioner, as witnesses.
 24 The assistance of Counsel, to be fully effective,
 25 must be continuous from the time when the
 26 Prosecution begins, which we have said occurred
 27 when the initial hearing was held that resulted
 28 in [Young being bound over to the Grand Jury] -

1 in this instant case, will be [Petitioner being bound [I
 2 over from Preliminary to district Court]]
 3 In this Case Counsel should have been
 4 Provided before Police interrogation began,
 5 because Police officers and other trained
 6 officials of the State and or Federal Judiciary
 7 systems are trained, and under oath of office
 8 under Color of State and or Federal Law,
 9 have a way of Manipulating the legal Procedures
 10 and violating A Citizens Constitutional rights,
 11 and illegally Subjecting them to incriminating
 12 acceptance by playing upon the Citizens
 13 Mental Mind: Counsel should have been Provided
 14 in the First instant, and Counsel was not
 15 effective in establishing A defense "Failing" to
 16 use the necessary Resources to investigate
 17 and Obtain Petitioner's Medical Records,
 18 which would have subjected The Police
 19 Interrogation(s) of Petitioner (Impermissible) in
 20 Court Period.

21 GROUND THREE

22 PETITIONER IS ENTITLED TO RELIEF
 23 PURSUANT TO HIS FACTUAL INNOCENCE AND
 24 PURSUANT TO THE ARGUMENTS IN GROUND
 25 TWO - In regards to NRS: Chapter 34 WHt -
 26 Petition to establish Factual innocence NRS 34-
 27 -900 to 34.990 Petitioner Incorporates all the
 28 records in their entirety to support each other -
 and effectively Petitioner's (5th) (6th) and (14th) Amendments -

1 and Actual-Factual Innocence-Relief is
2 Constitutionally Warranted, Petitioner is
3 entitled to an Evidentiary hearing to establish
4 merits on the claims and unconditional relief.
5 GROUND FOUR: Petitioner contends that his (6th)
6 Amendment rights to Discovery, was violated.
7 U.S. V. Stever, 603 F.3d 747 (CA9 2010).

8 Petitioner contends that his (6th) amendment
9 rights to Discovery was violated pursuant
10 to the United States Constitution. Petitioner's
11 counsel (trial counsel) was ineffective for failing
12 to provide Petitioner his Discovery, which includes
13 Police records, Preliminary, transcripts, Trial -
14 Transcripts and all other documents that's
15 relevant to Petitioner's entire case. The (2nd)
16 Second Judicial District Court Judge (Barry Breslow)
17 abused his Powers and discretion in denying
18 Petitioner's Petition for Writ of Habeas Corpus
19 on (February 15/2019). After reviewing the Habeas-
20 Petition and displaying reasons to deny why -
21 Petitioner should not be granted [REDACTED] relief, the
22 Judge stated that Mr. Maki (Petitioner) does not explain
23 good cause for delay and further stated, "Moreover,
24 the Nevada Supreme Court has previously held that
25 Counsel's failure to send a Petitioner his file is not
26 good cause for delay, and caused Petitioner to be
27 subjected to a miscarriage of Justice, and quoted
28 Hood V. State, 111 Nev. 335, 890 P.2d 777 (1995). The Court-

1 went on to say, "Petitioner could have timely
 2 brought the claims with the information that he had.
 3 This theory considered by a jurist of reason
 4 could be construed as absurd, being that Petitioner
 5 did not have any appropriate information minus
 6 and or absent his full discovery. This is all ~~contrary~~
 7 contrary to U.S. v. Stewart, 603 F.3d 747 (CA9 2010)-
 8 The right to prepare a defense includes the right
 9 to adequate discovery. The District Court and
 10 the state's Supreme Court was also wrong for
 11 not allowing Petitioner's Petition for writ of Habeas
 12 Corpus to be Perfected by allowing him the chance
 13 to review Petitioner's entire discovery records. Due
 14 Process includes a right to prepare a defense,"
 15 which includes the right to adequate discovery.
 16 here the district court denied discovery and the
 17 conviction was reversed. This further violates
 18 Petitioner's rights under Brady v. Maryland, 373
 19 U.S. 83, 83 S.Ct. 1194, A violation of the right to
 20 present a defense requires reversal of a guilty
 21 verdict unless the government convinces that the
 22 error was harmless beyond a reasonable ~~and~~ doubt.
 23 Ritchie, 480 U.S. at 58, 107 S.Ct. 989. That Court
 24 held that the prisoner was denied his [Sixth Amend]
 25 right ^{to} ~~make~~ ^{can} a defense, as with Petitioner. The
 26 error ^{beyond} ~~was not~~ ^(can) ~~harmless~~ ^{doubt} and
 27 Petitioner's conviction must be reversed,
 28 Relief is warranted.

1 GROUND: Five Ineffective Assistance of Counsel,
 2 For failing to raise A Drug, Intoxication, and
 3 Impairment, To Include Diminished Capacity
 4 Defense, in Violation of Petitioner's (6th) and
 5 (14th) Amendment, as well as A (1st) Amendment
 6 right to adequately access the Court with
 7 A Meaningful Defense, in Violation of the
 8 United States Constitution of America

9 Pursuant to Harich v. Wainwright, 813 F.2d 1082
 10 (CA 11 1987), "Petitioner maintained his innocence
 11 throughout the Guilt/innocence Phase of the
 12 trial. Petitioner "vehemently", has made it known
 13 at the very beginning, "starting with the Police
 14 Interrogation that he had been drinking and
 15 in Severe Pain due to his severe intumes and
 16 the major surgeries he had to suffer. Counsel
 17 fail to ask for an Instruction on the Voluntary
 18 intoxication defense and Counsel's Failure to -
 19 adequately Prepare and Present this defense, -
 20 constituted ineffective assistance of Counsel.

21 Petitioner's intoxication levels caused temporary
 22 Diminished Capacity. U.S. v. Veatch, 455 F.3d 628
 23 (CA6 2006). It is well established that intoxication,
 24 whether Voluntary or involuntary, may preclude
 25 ^{formation} of specific intent, and thus serve
 26 to negate an essential element of certain
 27 crimes. United States v. Newman, 889 F.2d 88, 92-
 28 (6th Cir. 1989). Relief is warranted.

1 GROUND SIX Petitioner is actually Innocent
2 Per Medical Records and Counsel was
3 ineffective for failing to put on Petitioner's
4 dysfunctional and or Impotency Defense. In
5 violation of Petitioner's (6th) and (14th) Amendment
6 to the U.S. Constitution.

7 Petitioner contends that Counsel was indeed
8 ineffective and Incompetent for failing to
9 subject the State to vital and extremely solid
10 defense, such as displayed above. Please See
11 Exhibit B - dated December/02/1992, Petitioner's
12 Medical Files, which reflects in clear form
13 that Petitioner suffered possible Sexual dysfunction
14 along with other Issues. Counsel's decision
15 not to investigate an impotency defense
16 further was unreasonable because Attorneys
17 Smuck nor any of the other Previous Attorneys
18 had a reasonable basis for failing to subject
19 the State to an Impotency defense. This
20 failure extremely Prejudice Plaintiff/Petitioner
21 and Counsel's failures fell below an objective
22 standard of reasonableness. Had Counsel put
23 a defense before the Court reflecting an
24 Impotency defense the Jury would have
25 realized that the alleged Crimes Petitioner was
26 on trial for could not have happened, and due
27 to Petitioner's Medical Condition Relief is
28 warranted based on Actual factual Innocence.
This Conviction ~~should~~ be vacated entirely.

1 GROUND-SEVEN Petitioner's/Plaintiff's sixth
 2 and fourteenth Amendment rights were
 3 violated by the government through detectives
 4 Bohach John and Jes Mair

5 Whom taped Petitioner's Coerced discussions
 6 which also violated Petitioner's (Six) Amendment
 7 right to Counsel. See: United States V. Henry
 8 447 U.S. 264, 100 S.Ct. 2183; also Massiah V. United
 9 States, 377 U.S. 201, 84 S.Ct. 1199 (1964).

10 The sixth amendment's guarantee of Counsel
 11 during Criminal Prosecutions includes the rights
 12 to Counsel during Post Indictment Police
 13 interrogations. The Supreme Court has made
 14 clear that once their right to Counsel has
 15 attached, the defendant's own incriminating
 16 statements elicited surreptitiously by the
 17 Police without Counsel present may not --
 18 constitutionally be used by the Prosecution
 19 as evidence against him at trial see: Massiah
 20 V. United States, 377 U.S. at 20, 84 S.Ct. at 1203[.]

21 P1428. The Conversations which were Taped
 22 subsequent to Geittmann's indictment were
 23 conducted in violation of Geittmann's sixth 6th
 24 amendment right to Counsel and the taped --
 25 conversation should have been excluded. This
 26 case was Remanded to the trial Court in order to
 27 strike the evidence. This is the same issue
 28 in Plaintiff's Case, especially with all the

1 inconsistencies with the alleged Victim's
2 testimony. The record reflects that Petitioner
3 was in pain due to his extreme injuries and
4 intoxication. Petitioner was babbling and not
5 in a competent mind set. The Police detectives
6 continued to manipulate and coerce Petitioner
7 into saying what they wanted to hear, even
8 after telling the detectives that he didn't
9 want to talk anymore. See: Exhibit F Petitioner's
10 transcript of the statements made during
11 interrogation by the two detectives. The
12 detectives kept telling Petitioner that he
13 was not under arrest just to manipulate
14 Petitioner into speaking without an attorney
15 under duress, in pain, and in a body cast.
16 after illegal behaviors by the detectives
17 i.e. Illegal Taping of Petitioner without his
18 knowledge. None the less the record continues -
19 to reflect the two detectives continued on with
20 their manipulative questioning while Petitioner
21 continued to suffer the undeniable pains and
22 and or extreme agonies. Petitioner's Medical
23 records reflects that Petitioner/Plaintiff suffered -
24 major compound fractures, such as (16) bones -
25 in his body (7) compound fractures in his spine.
26 From October/1992 to January/17/1994, Both legs -
27 from knees down, Both Ankles were all metal,
28 left arm and wrist. Plaintiff/Petitioner had severe

1 through two major Surgeries, [Open Back Surgeries]
2 at that - Petitioner also had Metal racks Connected
3 to his Spine, and was Confined to a Wheel Chair
4 for A Certain Period of time. [Please Review The [I-
5 COMPLETE Medical Records] which also reflects
6 that Petitioner Suffered Erectile dysfunctions, Due
7 to the Opioids Consumed and the Major Injuries
8 Sustained. Petitioner Plaintiff was subjected
9 to the above situations during the time frame
10 that the allegations were alleged. Please See:
11 Exhibit G Line B and A, not only ^(not) the detectives
12 already violated Petitioner's Constitution, they
13 continued to deny Petitioner (both) and (14th) ~~Amendment~~
14 Amendment even after the fact that Petitioner
15 stated that he "didn't wanna talk anymore" See Exhibit
16 G Lines 26 through 40 on Page 16 of detectives
17 transcript Case # 16248-94. Please see Exhibit-
18 H - Detectives Still Violating Petitioner's Rights-
19 and Continuing to illegally manipulate the
20 taping and talking of Petitioner after
21 reading Petitioner a bogus and improper Miranda
22 reading and Flawed admonishments. The entire
23 Police interrogation is illegal, unconstitutional,
24 and extremely Prejudicial and by all means
25 inadmissible. Petitioner was denied Counsel
26 and was not Mirandized appropriately even
27 after making it known that he didn't want
28 to talk anymore, and was Manipulated
in the First Instance

1 Ground Eighth Plaintiff/Petitioner was
 2 not legally Mirandized in violation of my
 3 (6th) and (14th) Amendment rights to the
 4 United States Constitution. Petitioner was
 5 never given the Procedural and Full legal
 6 rendition of his Miranda rights. See T.T.P. 312.
 7 and there is no authenticated documents that
 8 contains my Signature Proof of Signing
 9 a Mirandized Card which would reflect that
 10 Procedural due Process was properly executed.
 11 In United States V. Feitman - 733 F.2d 1419
 12 (CA9 1984) P 1425, as been stated before, and
 13 many times in many cases that has been
 14 the subject of reversals and Remandings.
 15 The Sixth Amendment Right to Counsel
 16 attaches at the initiation of adversary -
 17 Judicial Criminal Proceedings, whether by
 18 way of formal charge, Preliminary hearing,
 19 indictment, information, or arraignment. "
 20 Kirby v. Illinois, 406 U.S. 682, 92 S.Ct -
 21 1877 (1972). The Sixth (6th) Amendment's
 22 guarantee of Counsel during Criminal -
 23 Prosecutions includes the right to Counsel
 24 during [Post-indictment Police interrogations].
 25 The Supreme Court has made clear,
 26 [P 1426] that once the right to Counsel has
 27 attached, ~~the~~ defendant's own incriminating
 28 statements [elicited surreptitiously by the - 15

1 Police without Counsel Present Must Not -
2 Constitutionally be used by the Prosecution
3 as evidence against a defendant at trial.
4 Massiah v. United States, 377 U.S. at
5 20, 84 S.Ct at 1203 [7] as reflected through -
6 out the records and especially the Police
7 interrogation, which must be inadmissible
8 as a matter of Constitutional Law, and to
9 correct A Miscarriage of Justice, Reverse
10 and Remand is the beginning of an appropriate
11 remedy. The Miranda ... declares that an
12 accused has a Fifth and Fourteenth Amendment
13 right to have Counsel Present during Custodial
14 interrogation. In the Police interrogation of
15 Petitioner, it is reflected that the detectives
16 already had the intentions of arresting
17 me, because they stated we already have
18 A lot of information, But we wanted to hear
19 what you had to say. Basically As the record
20 and outcome of the case reflects that the
21 detectives intentions were to Manipulate,
22 "entrapment Procedures, violate my rights,"
23 intentionally and knowingly without the
24 presence of any Counsel See Exhibit F
25 Line (26). The detectives stated (SM) and (DM)
26 made some allegations As officials of the
27 State of Nevada Under Oath of office, The
28 detectives already know in sex cases, that

1. A child under the legal age that Allegedly
2. testifies with enough Particularity of the
3. alleged crime with the Public defender, and
4. it's ineffectiveness, the State's Prosecutor
5. and or (D.D.A.) Deputy District Attorney's
6. leading questions, while/and Thwarting
7. the Jury in an undercover fashion that
8. the defendant will be Convicted regardless,
9. Because it's easy to see that it's designed
10. to do just that. [Rail Road The Alleged Defendant]
11. With These type Case, The Public/People
12. really need to wake up and the legislation
13. needs to conduct, Repeal and A Complete
14. overhaul of these type cases, ~~its~~ being
15. seen over and over and over and in plain
16. sight that so many Prisoners has in the
17. Past and still to this date/day are being
18. rail roaded in ~~box~~ Cases even if there
19. is [O] evidence. The so call Justice
20. System really need to Change for A
21. better way look around US. I'm not
22. saying that every Case is wrong, But it
23. is undeniable that the system is broken, weak
24. or Just blatantly Corrupted, especially when
25. the system allows innocent people be subject
26. to Prison, in violation of their Constitutional
27. liberty, and it's sad when the Authorities know
28. that they have ~~done~~ this, and can live with

1 their actions, until the tides are turned in some
2 form or another. Law should be fairly executed -
3 Not Subverted to fit Personal Political Needs
4 and or desires.

5
6 Ground Nine The Preliminary Judge, Trial-
7 Judge abused their discretion for allowing an
8 illegal video taping by Police detectives without
9 Petitioners knowledge to be used against the
10 Petitioner in violation of Petitioner's (5th) (4th) and
11 (first) Amendment rights to the United States
12 Constitution. The Prosecution was vindictive
13 and in violation of the Canon Codes of ethics,
14 for allowing the illegal incriminating video
15 and or tape recordings to be used in the
16 States Case, knowing that it was illegal
17 and knowing that it violated Petitioner's
18 Constitutional right. Petitioner was not put
19 on notice that he would or was being taped
20 and recorded. Stevens v. Nev. 1997 Hughs-VAK
21 1997 - it states, "under NAS 134.6 if a person
22 doesn't know he or she's being taped, nor does
23 that person gives consent to being videoed-
24 and or taped or signed any waiver, No Court
25 of Competent Jurisdiction should allow the
26 Tape and or video to enter into evidence -
27 especially any interviews or interrogations
28 conducted by Police detectives. The detectives

1 Illegal and unconstitutional actions and inactions
 2 violated Petitioner's Fifth Amendment rights which
 3 is Petitioner's Fifth Amendment Privilege against Self
 4 Incrimination. See: Doyle, 426 U.S. at 618, 96 S.Ct.
 5 2240. The state trial court violated these Constitutional
 6 Privileges by admitting into evidence a tape recording
 7 and or video of the interrogation by Police officers.
 8 see: also Arnald V. Runners, 421 F.3d 859 [CA9 2005].

9

10 CONCLUSION

11 Petitioner/Plaintiff Prays that this Court
 12 will see through the unjust fabrics of corrupted
 13 laws and take notice of the U.S. Constitutional
 14 violations throughout the review of this case.
 15 Petitioner further ask that true and meaningful
 16 Justice be executed and not a product of prejudicial
 17 miscarriage of Justice. Petitioner's Police report
 18 case no. 16248-94 pages [19 through 26] are additional
 19 documents that supports the case as a whole. —
 20 Petitioner further incorporates his complete
 21 direct and relevant records along with the
 22 ~~██████████~~ Petitioner's Actual Innocence/Factual
 23 Innocence Pursuant to DRS 34 900 to 996 and
 24 all other relevant substantial evidence in support
 25 of Petitioner's Claims. Dated This 10th Day of -
 26 AUGUST 2021 sig: charck maki

27 NAME CHARLES MAKI Borno. 42820

28

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing Petition for Actual Factual Innocence by Presenting same to the L.C.'s Law Library Free Staff Clerk for mailing by U.S. Mail Postage Prepaid and addressed as follows.

Dated This 10th Day of AUGUST 2021

<u>Second Judicial District Ct-</u>	<u>Washoe Dist Attorney</u>
<u>Washoe County, 75 Court St.</u>	<u>1 - South Sierra 4th Floor</u>
<u>Reno, NV 89501</u>	<u>Reno, NV 89501</u>

Aaron Ford Nevada A.G.

100 N. Carson St.

Carson City, NV 89701

AFFIRMATION-PURSUANT TO NRS 239B.030

I hereby certify that the Petition for Actual Factual Innocence does not contain the Social Security number of any Person
Dated This 10th Day of AUGUST 2021

Sig: charl mak

Name CHARLES MAKI Bar No. 42820

Exhibit Cover Page 1

EXHIBIT NUMBER 1

OPERATIVE REPORT

ROOM: 19 190 06

cc: None Requested

DATE OF OPERATION: 08/24/92

PREOPERATIVE DIAGNOSIS: L2 burst fracture with bone in the spinal canal

POSTOPERATIVE DIAGNOSIS: L2 burst fracture with bone in the spinal canal

NAME OF OPERATION: Open reduction of L2 burst fracture, Herrington rod instrumentation and posterior lateral lumbar fusion.

SURGEON: JOSEPH R. WALKER, M.D.

ASSISTANT: RICHARD BLAKEY, M.D. (will dictate a separate operative report)

ANESTHESIOLOGIST: BRAD MANNY, M.D.

ANESTHESIA: GENERAL ENDOTRACHEAL

ESTIMATED BLOOD LOSS: Approximately 400 to 500 ccs.

DRAINS: Two Hemovac in the back, two in the hip graft site

COMPLICATIONS: None.

PATHOLOGICAL FINDINGS: Upon exposing the dura at the L1-2 interlaminar space the ultrasound was used to demonstrate the burst fracture, we then dissected out further laterally and were able to drill out the burst fracture and then push the remainder of it down into the body under loop microscopic vision and while the distractor was being used. Following this the ultrasound showed an excellent decompression of the intradural contents and the spinal canal.

NARRATIVE: The patient was placed under general endotracheal anesthesia, turned prone on Wilson frame, prepped and draped in the usual fashion, head was held in head holder. Incision was made in the back, carried down through superficial fascia, deep fascia was incised, Cobb periosteal elevators were used to separate the muscles from the spinous processes and the lamina and self retaining retractors were used. The clamp was placed over the area of the fracture site, this was at L2-2 interlaminar space, the spinous processes were partially removed and laminectomy was done partially at L2 and L1, exposing the dura. High speed drill was then used under loop microscopic vision to drill out further into the pedicle so we could get around the fracture fragment which was felt through the dura and was tight. This was done on both sides until we were able to get around the dura and to visualize the fracture.

It was then drilled out on both sides to allow more room and the remainder

WASHOE MEDICAL CENTER
77 Pringle Way
Reno, NV 89520

702-328-5660

PATIENT NAME: MAKI, CHARLES J
PHYSICIAN: JOSEPH R. WALKER, M.D.
ADMIT DATE: 08/17/92
MEDREC #: 63-96-73
PAGE: 1

OPERATIVE REPORT

EXHIBIT-A

SEP 17 1992
EFT 33

V7.1317

HISTORY AND PHYSICAL

ROOM:

NEUROLOGIC: Examination finds him awake, alert, and oriented times four. He follows general commands well. No gross cognitive deficit is noted on screening.

Neuromusculoskeletal examination reveals normal tone and bulk per habitus. There is excellent strength in the right upper extremity. There is good strength of the left shoulder, but distally it is not stressed due to the healing fracture. Right lower extremity strength testing reveals some mild weakness of his hamstring and ankle and toe dorsiflexors and moderate weakness of the ankle plantar flexors, hip abductors, and extensors. Left lower extremity strength testing reveals mild weakness of the hamstrings and moderate weakness of the quadriceps, mild weakness of the left ankle and toe dorsiflexors, moderate weakness of the ankle plantar flexors, as well as moderate weakness of the hip abductors and extensors. On sensory testing, there are hyperpathic changes over the dorsum of the left foot and plantar surface of the right foot. There is also decreased pinprick perception over the right gluteal area compared to the left.

Rectal examination reveals decreased sphincter tone. He has some preserved volitional control, though strength is not as good as it should be. Perirectal pinprick perception is decreased as above. Bulbocavernosus reflex is weak, though not absent.

IMPRESSION:

1. Mild paraparesis secondary to cauda equina injury from L2 burst fracture, status post successful surgical decompression and posterior fusion.
2. Mild neurogenic bowel and bladder secondary to #1.
- * (3) Possible sexual dysfunction secondary to #1.
4. Left forearm fracture, status post closed reduction and pinning.
5. Right tibial fracture, status post open reduction and internal fixation.
6. Left calcaneal fracture, status post open reduction and internal fixation.
7. Psychosocial stressors secondary to above.
8. Possible illicit drug exposure in the past.

PLAN: The patient is being admitted to the inpatient rehab service. He will be thoroughly evaluated by the rehab team and entered into a comprehensive medical rehabilitation program. I will coordinate with Dr. Blakey RE his orthopedic status and ortho precautions RE advancing the rehab program. Goal is independence in self care and returning to live independently in the community. * Initially, we will push for wheelchair mobility, though ultimately it is felt he will be a community ambulator.

DEC 02 1992
DPT 2

WASHOE MEDICAL CENTER
77 Pringle Way
Reno, NV 89520
702-328-5660

PATIENT NAME: MAKI, CHARLES
PHYSICIAN: H. HAYDON HILL, M.D.
ADMIT DATE:
MEDREC #: 63-96-73
PAGE: 3

HISTORY & PHYSICAL

EXHIBIT - B

CONSULTATION

ROOM:

There is a note also that his drug screen was positive when he was admitted here to Washoe Medical Center, and that this case is presently under investigation by SIIS.

PHYSICAL EXAMINATION

The patient is alert and oriented, speaks normally, answers questions normally. Breathing comfortably. Pulse regular.

EXTREMITIES - there is a cast on the left arm. There is a healed surgical incision over the right distal leg with some swelling of the feet. The patient was wearing a body jacket and I did not remove that.

NEUROLOGICALLY - motor in right upper extremity normal. Left upper extremity is grossly normal, although the cast limits testing. In the lower extremities, it's difficult to be accurate, but he can raise both legs off the bed. He does not have full active range of motion at the ankles, but there is swelling there. With respect to sensation, there is a little decreased sensation on the fingertips of the left hand and on the right lower extremity from mid thigh distally. The joint position sense in the right toes appeared deficient. The toes were neutral. Patient did have voluntary contraction of the anal sphincter on command, but it was weak. Anal wink reflex appeared present bilaterally. Bulbocavernosis reflex I could not elicit.

IMPRESSION

1. Functional deficits secondary to multitrauma from a fall including burst fracture of L2, status post open reduction and internal fixation, and probable equidistal involvement mostly affecting right lower extremity.
2. Fractures of the left calcaneus, left distal radius and right distal tibia.
3. Repair of incarcerated umbilical hernia.
4. For further diagnosis, please see preceding history.

RECOMMENDATIONS:

1. Physical therapy to work on some general strengthening and work on transfers and wheelchair skills. We'll coordinate with orthopedics regarding weight-bearing status.

DEC 02 1992

DPT 2

WASHOE MEDICAL CENTER
77 Pringle Way
Reno, NV 89520
702-328-5660

PATIENT NAME: MAKI, CHARLES
PHYSICIAN: MARTIN K. KIEL, M.D.
ADMIT DATE:
MEDREC #: 63-96-73
PAGE: 2

CONSULTATION

EXHIBIT C

1 **Claim One & Claim Two:**

2 In Claim One: "Denial of Equal Protection and Due Process of Law Pursuant to USCAS
3 and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective
4 Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002.," Mr. Maki raises an
5 ineffective assistance of counsel claim against his post-conviction counsel for failure to provide
6 him with transcripts relating to a police interview video-tape.

7 Mr. Maki was represented by post-conviction counsel, Mr. Robert Story, Esq., in 2013,
8 when Mr. Maki filed his second *Petition for Writ of Habeas Corpus (Post-Conviction)*. Mr.
9 Maki then appealed the decision of the Honorable Lidia S. Stiglich, then presiding Judge of this
10 Department, to deny said *Petition*. The Supreme Court of Nevada affirmed Judge Stiglich and
11 issued remittitur on January 12, 2015.

12 Mr. Maki files the instant *Petition*, now challenging Mr. Story's representation, nearly
13 four (4) years after remittitur, making the claim plainly untimely. Mr. Maki does not explain
14 good cause for delay. Moreover, the Nevada Supreme Court has previously held that counsel's
15 failure to send a petitioner his or her file is not good cause for delay. *Hood v. State*, 111 Nev.
16 335, 890 P.2d 797 (1995). Mr. Maki could have timely brought the claims with the information
17 that he had. The transcripts were not necessary to *assert* the claims. It is common practice for
18 the Court to first receive a petition and then make determinations whether counsel or transcripts
19 should be furnished to a petitioner upon his or her motion.

20 Claim Two: "Denial of Effective Assistance of Counsel in Violation of Strickland vs.
21 Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to
22 Investigate and Issue Jury Instructions for NRS 50.090." is **DISMISSED** for the same reasons.
23 Mr. Maki's claims could have been raised even without his medical records. For clarification,
24 the Court acknowledges Mr. Maki's reference to NRS 50.090, which reads:

25 Factors for determining whether to permit alternative
26 method. If the presiding officer determines that a standard
27 pursuant to NRS 50.580 has been met, the presiding officer shall
28 determine whether to allow a child witness to testify by an
alternative method. In making this determination, the presiding
officer shall consider:

PAUL GRUBBS

PAGE #1

AFFIDAVIT

First being duly sworn and under the penalty do hereby despose and state as follows:

1. That I am over the age of (21) twenty one years of age and am fully compentent to testify to the matters set forth herein, and that all statements are made of my own personal knowledge and belief.
2. That on January 19, 1994. and prior to that date I lived at 1015 Nevada street #5 Reno NV. 89504.
3. That I personally knew Charles Maki as he lived in the same appartment complex that I live in, and he lived in apartment Number 8.
4. That Mr. Maki and I worked on his truck on january 18 & 19 1994 that on January 19 1994 mr. Maki and I were drinking beer and two (2) plain clothes police men came up and arrested Mr. Maki, At least I believed that Mr. Maki was under arrest as the officers took him away Mr. Maki in my opinion was intoxicated as he and my self had been drinking beer all that day.
5. My step son John knows both of the girls that Mr. Maki is alleged to have sexually assaulted, as they were his playmates.
6. Mr. Maki contacted me after he had been arrested and asked me if I would be willing to come to court for him and testify in his behalf; I told Mr. Maki that I would be willing to testify in his behalf.
7. I could have offered testimony of Mr. Maki's caricture and how he acted around the alleged victims, as well as testamony concerning the girls, as well as there father and how he treated them.
8. I could of also offered testimony concerning the fact that the (2) two alleged victims were always left alone by there father.
9. That a Ms. Smuck left a card on my door and I attempted to contact her at the phonr number that she left but she never did return my calls, until right before Mr. Maki's trial.
10. I left messages for Ms. Smuck on several occasions that I was willing to testify for Mr. Maki and that I had vital information that would assist Mr. Maki and his defence.
11. I could of also testified that the alleged victims were baby sitted by a single male friend of there fathers and that it is my believe that he is the person that may have assulted the two victims the friend of the fathers was named francis, at least that is what I believe his name to be.
12. I finally contacted Ms. Smuck and she told me that Mr. Maki did not want nor need me to testify for him, as the state did

not have a case and that Mr. Maki would be found innocent..

13. To my personal knowledge Mr. Meneese has been investigated by the child welfare dept. and the Reno police dept. in 1992 for allegations of child abuse, Lewdness with a minor and possible sexual assault of his own children; This was due to Mr. Meneeses habbit of getting drunk and telling others of his habbit of taking showers with the girls and running around the house nude in front of the children.

14. Mr. Maki did watch Mr. Meneeses girls on occasion, as Mr. Meneeses would leave his girls with anybody that would watch them for him when he wanted to go out drinking and gambling.

15. on many occassions when I would go up-stairs to Chucks (Mr. Maki's) Apartment and I would notice that Mr. Meneeses girls were at home alone and this would be until late at night.

16. It was not uncommon for Mr Meneese to leave his girls at home alone and the girls would have boys over while there father was gone, either at work or drinking and gambling at the Gold dust west casino in Reno.

17. Mr. Meneese told me he would get back at Mr. Maki Because Mr. Meneeses ex-girl friend left him and moved in with chuck (Mr. Maki) next door, she stayed there from Nov. 1993 to Dec. 1993 until Mr. Meneese made to much trouble for her.

18. Mr. Meneese bragged a few times when he was drinking how he had beat the system and would never have to go to jail for the acts he did with his girls; I understand there was testimony by the girls of lewd acts by the father during Chucks (Mr. Maki's) preliminary hearing.

19. In December of 1993 Chuch and the down stairs tenant that lived in theApts. caught the younger of the alleged victims with a boy in the girls bed room doing a sexual act.

20. Mr. Maki and the tenant both told Mr. Meneese about the above stated incident and Mr. Meneese stated that is was no big deal that it has happend in the past.

21. I told Ms. Smuck of this too, and she stated that this information was not needed. I also gave her the names of the people next door that had personal knowledge of the incident stated in paragraph #19.

22. Mr. Maki told me to go out and find the people that had lived in the apartment complex because Ms. Smuck had told him (Mr. Maki) that nobody wanted to come and testify for him; I told chuck that this was not true, as I had given Ms. Smuck the names as well as information but Ms. Smuck stated that this information was not needed because the state did not have a case.

23. I don't understand Ms. Smucks Judgment, when she could have called many witnesses that lived in the same apartment complex

and know the people and fact of this case.

DATED THIS 29th DAY OF September, 1995

STATE OF NEVADA
County of White Pine

Paul Grubbs
Signature

SUBSCRIBED and SWORN to before me
this 29th day of September, 1995

John Huth
NOTARY PUBLIC



JOHN HUTH
NOTARY PUBLIC - STATE OF NEVADA
White Pine County - Nevada
APPT. EXP. Dec. 3, 1995
STAMP

- 1 A. No. By all means, no.
- 2
- 3 Q. Okay.
- 4
- 5 A. Not at all, no, no.
- 6
- 7 Q. I believe you. - O.A. TOLD JURY IT HAPPEN'D
- 8
- 9 A. No.
- 10
- 11 Q. I believe you. I'll tell you what, I believe you cuz I know what happened. And, that's
- 12 and that's not one of the things that happened. I'm just telling you so you have no idea,
- 13 so you can realize what about what I'm telling you, sitting here saying that I know what
- 14 happened.
- 15
- 16 A. Yeah.
- 17
- 18 Q. That's not one of the things that happened.
- 19
- 20 A. No. No. No.
- 21
- 22 Q. Okay. Uh, here's the deal, is uh, I need for you to be totally honest about everything.
- 23
- 24 A. Well I've been as honest as I can fucking be now. Jesus Christ.
- 25
- 26 Q. Well, let me tell you this though. Because uh, Summer and uh, Desiree made some
- 27 allegations, uh, concerning you, we wanted to come to you to get your side of the story,
- 28 okay? And, we asked you to come here and you came here. And, you're sitting in front
- 29 of me Chuck, and I appreciate you're being honest. But, now you're being honest,.....
- 30
- 31 A. Now, I'm under arrest?
- 32
- 33 Q. No, not at all. Now that you're being honest, we appreciate you're being honest, I have
- 34 to advise you of your rights. I LIED TO EM SO I CAN GO - I'm DRUNK AND IN PAIN &
- 35 DON'T HAVE MY HEARING AIDS.
- 36 A. Yeah, I know. I'm under arrest, I know.
- 37
- 38 Q. Just,...no.....that's not true at all.
- 39
- 40 JB You're not under arrest man.

- 1 Q. If you're under arrest, we could end this here.
- 2
- 3 A. Okay.
- 4
- 5 Q. You're not under arrest at all. The only reason I have to do that Chuck, is for...the
- 6 laws of the land say that when it comes to a point where you have told me that in fact,
- 7 there is some validity to these things, I have to make sure that you understand your
- 8 rights.
- 9
- 10 A. Okay.
- 11
- 12 Q. It doesn't change. It doesn't mean that I've changed. It just means that I have to advise
- 13 you of your rights. I think it's a good thing. But, it goes like this,...you have the right
- 14 to remain silent. Anything you say, can and will be used against you in a court of law.
- 15
- 16 A. Yeah.
- 17 *STHODUE MARAMIZED ME AT START MIRADA V. ARIZONA*
- 18 Q. You have the right to consult an attorney. If you cannot afford an attorney, one will be
- 19 appointed free of charge to represent you before any further questioning if you so desire.
- 20 Do you understand these rights?
- 21
- 22 A. Uh huh.
- 23
- 24 Q. Having those rights in mind, do you want to talk to John and I about what happened?
- 25
- 26 A. No. I don't wanna talk anymore.
- 27
- 28 Q. Okay. That's your right bud. That's your right. You know, if you don't wanna talk,
- 29 that's fine. Uh, what are you doing that for? I haven't even talked to my partner here.
- 30 I haven't even talked to my partner here yet.
- 31
- 32 JB I think you're thinking about the worse man.
- 33
- 34 A. Well what I wanna do is not really humanly supposed to be done. I'm guilty. I'm
- 35 ashamed. I don't know why. I, I, I.....inaudible.....you know what I mean?
- 36
- 37 JB Well, if the worse was gonna happen, don't you think we would have just
- 38 snatched you right off your porch?
- 39
- 40 A. I don't know. I've never been through something like this, you now.

1 Q. Wait, Chuck? As far as I'm concerned, you gave us, you gave your decision. You just
2 told us you didn't wanna talk to us no more. I respect the hell out of that. No problem.
3 So, we're done. Okay, I'm gonna go talk to my partner, and I'll let you know what's
4 going on. Is that fair?

5
6 A. That's fair enough.

7
8 Q. Okay. Do you have any questions for me? *STILL QUESTIONING ME*
9 *AFTER MURDER*

10 A. No. No.

11
12 Q. How come you haven't registered with us? You're an ex felon. How come you haven't
13 registered your new address?

14
15 A. Um, why?

16
17 Q. You have to register with us when you live in our city and you're an ex felon. You're
18 required.

19
20 A. Well, this is why I became an ex felon.

21
22 JB You still have to register with us.

23
24 A. Oh? I didn't know that. No. No.

25
26 Q. I'll get you a thing that tells you what you have to do.

27
28 A. Well oh yeah, I didn't know that.

29
30 Q. Yeah. It's an arrestable offense. Okay? I'll be back in a minute. If you have any
31 questions, let me know. I'll be back in a minute. You can ask them.

32
33 (Sitting alone in interview room, talking to himself).....

34
35 A. Alright. Shit. I don't know why I got even in the first place. Why did I do that? I can't
36 believe this whole fucking thing. Stupid fuck. Boy.....oh damn. I don't believe that I
37 did that. Why? Why? Why? Why? Why? *I JUST LOST MY 5-1/2 SETTLMENT OVER*
38 *1 MILLION \$*

39 Q. You know, we were just talking. We're not gonna ask you anymore questions about what
40 occurred. But, I did wanna ask you,....if we were to check your apartment over there,

1 are we gonna find anything inside there? And, I'm not talking about narcotics. I could
2 care less about narcotics. That's not what I'm involved in. But, anything as far as uh,
3 child pornography?

4
5 A. No way. No way. No. No. No. You'll find Four Wheel Drive. You'll find Hunting
6 magazines. You will find uh, uh, a car magazine. No way. I know It ain't,.....my God
7 man. I mean, no.

8
9 JB Well, we're not gonna ask you anymore questions. Is there anything else you
10 wanna tell us?

11
12 A. Do me a favor.

STILL QUESTIONING ME - Said He didn't want
AFTER MIRANDA - To Talk anymore

13
14 JB What's that?

15
16 A. Um,...look man, this ain't, this is no joke. The tears I'm holding back are for real man.
17 Do I have a fucking problem with this? I mean, this is the first time. I'm almost 40
18 years old. I've never done nothing like this in my life. You look at my fucking record
19 man.....

20
21 Q. I know, I did.

22
23 A. I've never done this in my life. I'd beat a mother fucker to death. I have no problem
24 with that. You know, I'm a violent person. I have a problem with violence. I've lived
25 with it for a month ro whatever it's been. I've never in my entire life done,.....dude,
26 you're a man. You've taken pussy. You know if a woman wants to fuck, you wanna
27 fuck, she says oh hey,....you know you roll over and you wanna get a piece of ass at
28 3:00 o'clock in the morning or something from your old lady. You know what I'm
29 saying? She might have a headache or something like that. But, nothing like this.
30 Nothing. Do I have a problem starting?

31
32 Q. I don't know. That's a good question. An excellent question. I'm serious Chuck, that's
33 a good question.

34
35 A. Inaudible.....

36
37 Q. I don't know. I don't know man, that's a good question.

38
39 A. You know what? The girls are sweet. They, they did nothing to me. I love them girls.
40 I protect them girls. You know, I have 2 daughters of my own. Inaudible.....you know.

Transcript (Con't)

Case # 16248-94

- 1 Q. Chuck, I'm gonna go talk to several other little girls that are in the,....
- 2
- 3 A. You talk to all the girls you want. You talk to all the kids. All the boys. All the girls.
- 4 All her, all her neighbors. All her girlfriends. All of them. You do. All of them.
- 5
- 6 Q. No other problems. No other problems. *STILL QUESTIONING ME*
- 7
- 8 A. There's never been one. You go back as many years as you want and you talk to any kid
- 9 in the neighborhood that you want. Anything,.....woooo,...you talk to anybody you want.
- 10 Anybody. Please do. Just, you,...it never happened. It will never happen again. And,
- 11 there was nothing they did. It was, you know, I can't explain it.
- 12
- 13 Q. Okay, here's, here's the deal then Chuck. John, do you have anything else that you want
- 14 to tell him?
- 15
- 16 JB Not unless you have anything else you wanna tell me.
- 17
- 18 Q. Our concern, Chuck, is the girls, obviously. You know, I mean they're only.....
- 19
- 20 A. I am not gonna confront them on this. I'm gonna confront Gary. But, I'm not gonna
- 21 confront the girls. As far as they know, you never talked to me.
- 22
- 23 Q. Why do you want to confront Gary? *HE MADE UP THE STORY*
- 24
- 25 A. Because I wanna, well,....no, I wanna confront Gary. He seen me last night. He didn't
- 26 say nothing to me.
- 27
- 28 Q. The little girls told their friends. That's how we found out.
- 29
- 30 A. Did they? *B.S.*
- 31
- 32 Q. Yeah. They said that you told them not to tell Gary, so they didn't tell Gary. But, they
- 33 told their friends.
- 34
- 35 A. Yeah.
- 36
- 37 JB Would you mind if I just looked into your apartment? Would you have a problem
- 38 with that?
- 39
- 40 A. As long,.... *STILL QUESTIONING ME AFTER BEING*
MIRANDIZED

- 1 JB Hey look, I ain't worried about if you had some weed in there, I could care less.
2
3 A. Are you ion the up front about that?
4
5 JB Oh yes.
6
7 A. Cuz, well shit,...you know, yeah, I have weed in my apartment. You're more than
8 welcome.
9
10 JB I mean, is it like pounds of it? Or what?
11
12 A. Oh fuck, just a joint or two is all there is.
13
14 JB We're not worried about that.
15
16 Q. Our concern? Is anything to do with child pornography.....any pornography at all?
17
18 A. I have a Hustler in there.
19
20 Q. Yeah, but I mean no photographs? Old inaudible.....
21
22 A. No. You could tear that place apart. You could tear it apart.
23
24 JB What apartment do you live in?
25
26 A. Number 8. You can come in there day or night. You wanna come right this minute,
27 you're welcome to it. My house is immaculent. I keep a nice home.
28
29 JB Okay. What this is here, is a permission to search. It says the undersigned
30 residing at 1015 Nevada Street, #8, Reno, Nevada, does hereby voluntarily
31 authorize the Reno Police Department and other officers it may designate to assist
32 her in a search of my residence, the real property located at 1015 Nevada Street.
33 Uh, do you wanna look in his car?
34
35 A. You can look in the truck too if you want. (STILL QUESTIONING ME)
36
37 JB What year us that?
38
39 A. A 77 Ford pick up.
40

- 1 Q. Let me clarify something to you though. In case this uh,...the reason I want to clarify
2 this with you on the permission to search, is we're not out looking for weed, okay?
3
4 A. Uh huh.
5
6 Q. We're out looking for anything to do with child pornography. If we found the weed,
7 there,...that will be a problem because we can't ignore it. We can't ignore it.
8
9 A. Well then,....
10
11 Q. So, then what I'm telling you, and this is your right,....
12
13 A. Then I don't want you to search then.
14
15 Q. Okay, that's your right.
16
17 A. I can have you do that.
18
19 Q. No, that's fine. (STILL QUESTIONING ME)
20
21 A. No. I mean I've been up front with you.
22
23 Q. I agree. That's why I'm telling you up front. What Det. Bohach is saying, is not a lie.
24 The last thing we, we could care less about a joint, okay?
25
26 A. Right.
27
28 Q. Cuz, that's not what this case is about. If that's what the case was about, and we were
29 drug guys, then yeah, we'd care. But, we're not about that.
30
31 A. Yeah.
32
33 Q. But unfortunately we're still cops, and we can't ignore it.
34
35 JB I didn't mean to make it sound like I was gonna overlook it.
36
37 Q. It would have been taken care of. But, we would've made sure that you weren't charged
38 with it. You know, we weren't gonna charge you with it. But, I agree with you one
39 hundred percent. Let's,...if that's a concern of yours? We're Police Officers. Uh, we
40 wouldn't be able to ignore it. We would have to do something.

Transcript (Con'r)

Case # 16248-94

1 A. Yeah. Right.

2
3 Q. And, so.....

4
5 A. Yeah, if that's the case, I'm glad you're not. I have nothing to hide as far as that goes.
6 I have absolutely nothing to hide as far as that goes.

7
8 Q. Okay, I, I, believe you.

9
10 A. Uh,....

11
12 Q. Okay, this is where we stand now. Is uh, we're concerned about the girls' welfare.
13 We're concerned about dad. We're concerned about a couple of the other neighbor girls
14 that live in that area that we have not spoken to.

15
16 A. There is nothing to worry about. Absolutely nothing.

17
18 Q. Okay, you've been truthful with us. We appreciate that tremendously. But, what we
19 have to do,....see, you are under arrest.

20
21 A. I knew I would be.

22
23 Q. But, again, it wouldn't have been any, any worse if you had just told us that you didn't
24 wanna talk to us from the very beginning. Because, I'll tell you, our case? I didn't even
25 lay out everything that we've got. It's pretty extensive Chuck. And, again when we
26 talked to you out in the field, it was because we wanted to give you the opportunity to
27 seriously talk.

28
29 A. I don't need no arrest warrant.

30
31 Q. You know, cuz we didn't just wanna book you on it. Just saying he's good for it. Let's
32 just believe the girls. We wanted to talk to you. There is some validity to it. We'll have
33 to see what happens.

34
35 A. Yeah, so, how do I bail out of this thing if ever,.....

36
37 Q. That's what the county,....the deputies up there will explain that stuff.

38
39 A. Does that mean that I,....

40

(STILL QUESTIONING ME)

1 Q. What are you gonna do with your dog?
2
3 A. Huh?
4
5 Q. What are you gonna do with your dog?
6
7 A. My sister.
8
9 Q. Okay, good.
10
11 JB Does she have a key to the house?
12
13 A. Huh?
14
15 JB Does she have a key to your house?
16
17 A. No, I'll have to give her the key.....
18
19 JB She'll be able to get it up there.
20
21 A. Yeah.
22
23 JB Do you have any other animals in the house?
24
25 A. Just my dog.
26
27 JB Okay. The dog will be okay for a couple of hours?
28
29 A. Yeah. Yeah, if I can call her right now.
30
31 Q. We'll get you a phone call shortly. Will give all you want.
32
33 A. So what exactly am I under arrest for then?
34
35 Q. Sexual Assault and Lewdness with a Child Under the Age of Fourteen Years Old.
36
37 A. What does that do?
38
39 Q. What do you mean?
40

STILL QUESTIONING
ME
I thought I WAS
MIRANDIZED AND
SAID I DON'T WANT TO
TALK - THEIR TAKING
ADVANTAGE OF ME
BEING DRUNK + in
PAIN

- 1 A. If I'm found guilty of this stuff?
2
3 Q. That's not up to us bud. That's up to the judge. You uh, like you said, you've never had
4 anything like this on your record before.
5
6 A. Yeah, I've never even had something like this happen. You now, this is,.....uh, it's
7 terrible.
8
9 Q. This is the thing we're gonna do though. We're gonna get it handled. I'm serious Chuck.
10 We're gonna get it handled. We'll get it taken care of. Det. Bohach will tell you how
11 to get us.
12
13 A. Cuz I'm not a goddamn molester and all that bull crap. You know, I mean this is
14 ridiculous. You know, it is. It's something that did happen. I have to admit to it. I'll
15 never do it again.
16
17 Q. John, do you have any other questions you need answered on that form?
18
19 JB Just uh,
20
21 A. You guys aren't gonna go check my place now are ya?
22
23 Q. No. You told us no. You told us no, so we're not going.
24
25 JB How long have you lived in Nevada?
26
27 A. Um, oh since May of 1992.
28
29 JB What's your birthdate?
30
31 A. 2-11-55.
32
33 JB And how old does that make you?
34
35 A. 39.
36
37 JB And where were you born?
38
39 A. Um, Inaudible.....California.
40
- STILL TALKING
TO ME!

1 JB What's your social security number?
2
3 A. 349-48-5317.
4
5 JB How tall are you?
6
7 A. 6 foot.
8
9 JB How much do you weigh?
10
11 A. 200.
12
13 JB What color are your eyes?
14
15 A. Brown.
16
17 JB Do you have a home phone number?
18
19 A. 324-4558. I knew I had done this. I had to get it off my chest. I did something terribly
20 wrong, and I'm inaudible...for it all. I have no answer for what I did. I've never done
21 such, and I hope to God I never done it again. I don't believe this. Inaudible.....
22
23 JB ~~Okay, if I can get you to stand up. Are you okay?~~
24
25 A. ~~See, I've got a broken leg. And I've got a broken back.~~
26
27 JB Can I get you to turn around and put your hand behind your back for me, as soon
28 as you get your feet back.
29
30 A. I had a feeling when I seen them Police cars.
31
32 JB Okay. Can I get you to face that wall there for me? Thank you. Okay, just go
33 ahead and have a seat. ~~Can you sit down alright?~~
34
35 A. ~~Not really.~~
36
37 JB ~~Okay, you can stand up, of that's more comfortable.~~
38
39 A. ~~Yeah, it's just hard for me to sit down and get up. It's very difficult.~~ Boy if could just
40 take it all back. You can talk to all the people you want. This ain't never happened

1 before. Horse shit. Inaudible.....like a nightmare almost. No, I inaudible... ~~where goes~~
2 ~~a million dollars. SITS~~ I inaudible.....all because of one fucking thing I did wrong.
3 Why I don't know. Why? Why? Man. Man. Fuck.

4
5 JB Okay.

COULD BE TALKING ABOUT
Anything!

6
7
8 END OF STATEMENT-----
9
10

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

No. 78260-COA

FILED

DEC 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Joseph Maki appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on January 2, 2019, and a motion to modify sentence filed on December 7, 2018. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Postconviction Petition

Maki filed his petition more than 23 years after issuance of the remittitur on direct appeal on October 24, 1995. *Maki v. State*, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995). Thus, Maki's petition was untimely filed. See NRS 34.726(1). Moreover, Maki's petition was successive because he had previously filed a several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Maki's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

¹*Maki v. State*, Docket No. 66144 (Order of Affirmance, December 11, 2014); *Maki v. State*, Docket No. 30904 (Order of Affirmance, October 10, 2000)

First, Maki claims the district court erred by denying his petition because he could overcome the procedural bars based on a *Brady*² violation by the State. Maki claimed the State improperly withheld pictures of the victims' physical examinations until three days before trial. This claim does not provide good cause for this untimely, successive, and abusive petition because this claim was previously litigated at trial, and Maki previously raised a similar claim in a prior postconviction petition for a writ of habeas corpus. The Nevada Supreme Court affirmed the district court's denial of that claim. *See Maki v. State*, Docket No. 30904 (Order of Affirmance, October 10, 2000). Therefore, it was barred by the doctrine of law of the case. *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

On appeal, Maki argues the district court erred by denying his actual innocence claim. A district court may excuse a procedural bar if the petitioner demonstrates that failure to consider the petition would result in a fundamental miscarriage of justice. *Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015). A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001). To demonstrate actual innocence a "petitioner must show that it is more likely than not that no reasonable juror would have convicted him of the new evidence." *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). [A]n evidentiary hearing regarding actual innocence is required where the new evidence, if credited, would show that

²*Brady v. Maryland*, 373 U.S. 83 (1963).

it is more likely than not no reasonable jury would find the petitioner guilty beyond a reasonable doubt." *Id.* at 966, 363 P.3d at 1155 (internal quotation marks omitted).

Maki claims he was actually innocent because the victim stated Maki did not insert his penis into her vagina and she only changed her story after being threatened by the prosecutor at the trial. Further, Maki claims he was actually innocent because the district court erred by denying him a sexual abuse expert. As to the victim's testimony, this claim was not based on new evidence not presented at trial, and Maki failed to demonstrate he was actually innocent. As to being denied an expert witness, Maki failed to demonstrate that testimony by an expert would have caused the jury not to find him guilty beyond a reasonable doubt. Maki, in his interview with police, admitted to at least some of the allegations made by the victims. Therefore, Maki failed to demonstrate a colorable claim of actual innocence. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.


Finally, Maki claims the district court erred by denying his claim that he was actually innocent because it was physically impossible for him to have committed the crimes because he was in a full body cast at the time of the crimes. This claim was not raised in Maki's petition below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

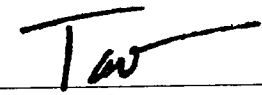
Motion for Modification of Sentence

In his motion, Maki claimed his sentence should be modified because of his age, his lengthy sentence, and his health issues. Maki's claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704,

708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion.

Having concluded Maki is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

Supreme Court No. 78260
District Court Case No. CR940345

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 21, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____.

District Court Clerk

Exhibit J

STANDARD OF REVIEW

All petitions for *writ of habeas corpus* must be timely filed, including those that are second or successive. *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519, 529 (2001). NRS 34.726 governs the limitations on time to file, stating in pertinent part:

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed **within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after [...] remittitur.**

(emphasis added). The district court *must* dismiss an untimely petition under NRS 34.726 unless the petitioner sufficiently demonstrates good cause for delay. *See State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Good cause exists when: (1) the delay was not the petitioner's fault and dismissal of the otherwise untimely petition would unduly prejudice the petition, NRS 34.726(1)(a)-(b); or (2) failure to consider the claims would result in a fundamental miscarriage of justice. *Pellegrini*, 112 Nev. at 860, 34 P.3d at 537. However, all claims reasonably available must be made within the one (1) year period. *Hathaway v. State*, 119 Nev. 248 252-53, 71 P.3d 503, 506 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Maki's *Petition* presents nine (9) grounds for relief:

1. "Denial of Equal Protection and Due Process of Law Pursuant to USCAS and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002."
2. "Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to Investigate and Issue Jury Instructions for NRS 50.090."
3. "Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. 2002 and Kimmelman vs. Morrison 106 S.Ct. 2526 and Nev. Const. Art. 188 Citing Buffalo vs. State – Failure to Object & Witness Vouching."

Exhibit-2 ² p 2

- 1 4. "Denial of Effective Assistance of Counsel Pursuant to Strickland vs.
- 2 Washington 104 S.Ct. 2002 and Martinez v. Ryan 1 U.S. 566. 2011 in Post-
- 3 Conviction Proceedings During Procedural Default."
- 4 5. "Denial of Effective Assistance of Counsel Pursuant to Strickland vs.
- 5 Washington 104 S.Ct. 2002 and Nev. Const. Art. 1 § 8 Citing Meyers v. State
- 6 95 Nev. 885 and Buffalo v. State – Denial of Conflict Free Counsel."
- 7 6. "Denial of Effective Assistance of Counsel Pursuant to Strickland v.
- 8 Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs.
- 9 State – Refusal to Call Witnesses."
- 10 7. "Denial of Right to a Fair Trial Pursuant to USCA 14 Equal Protection and Due
- 11 Process of Law Citing NRS 47 'Right to Expert Witnesses'"
- 12 8. "Denial of Equal Protection and Due Process of Law Citing USCA 14 and Nev.
- 13 Const. Art. 1 § 8 Citing Cumulative Error."
- 14 9. "Violation of USCA 5 Citing NRS 34.224(b)(2) Denial of Equal Protection and
- 15 Due Process in Sentencing Citing Townsend vs. Burke Citing NRS 48.045."

16 Mr. Maki also demands an evidentiary hearing pursuant to NRS 42.230-235.

17 Having filed the instant *Petition* over twenty-four years after the Judgment of Conviction
18 was entered and over twenty-three years after the Supreme Court issued its first remittitur
19 following appeal, Mr. Maki's *Petition* is untimely. In considering Mr. Maki's subsequent
20 appeals from his conviction, the most recent remittitur was issued in 2016. The *Petition* is,
21 again, untimely.

22 Mr. Maki's claims can be categorized as addressing violations of due process, equal
23 protection, and/or ineffective assistance of counsel. The Court finds that each and every one of
24 these claims were reasonably available during the one (1) year period following judgment and/or
25 remittitur and that Mr. Maki has inadequately explained his good cause for delay. Therefore, the
26 *Petition* is summarily **DISMISSED** as procedurally barred.

27 Although the Court **DISMISSES** the *Petition* in its entirety, the Court is compelled to
28 individually address some of the claims presented by Mr. Maki for the purposes of clarification.

Exhibit Cover Page 2

EXHIBIT NUMBER ²

COURT'S
COPY

COVER - SHEET

DATE 8/10/2021

CASE # CR94-0345

CHARLES MAKI

CHUCK MADD

#42820

FINDING OF TRUE FACTS
PERTAINING TO FACTUAL
INNOCENCE.

1
2
3
4
5
6 I, CHARLES MAKI #42820 DECLARE [THE FOLLOWING PAGES] THAT UNDER
7 PENALTY OF PERJURY AND THE LAWS OF THE U.S. THAT THE FOREGOING IS
8 100% TRUE AND CORRECT. SEE 28 U.S.C. § 1746 AND 18 U.S.C. § 1621.

9 THAT, ALL STATED HERIN WILL BE TAKEN "DIRECTLY" FROM ALL OF THE
10 DEFENDENTS RECORDS, TRANSCRIPTS ECT. THE FOLLOWING PAGES WILL
11 SHOW AND PROVE "MANY VIOLATIONS OF DEFENDENT CONSTITUTIONAL RIGHTS."
12 INCLUDING BUT NOT LIMITED TO [1ST 4TH 5TH 6TH 8TH 14TH] U.S.C.A. RIGHTS,
13 ALSO INCLUDING PROSECUTORIAL MISCONDUCT STRUCTURAL/CLEAR ERROR BY
14 THE COURT, BRANDY VIOLATIONS BY THE STATE, PERJURY BY STATES WITNESS,
15 ~~AND~~ (I.A.C.) ECT, AL. THAT AFTER 27 YRS OF INCARCERATION, I)
16 CHARLES MAKI [STILL MAINTAIN MY FACTUAL INNOCENCE] OF SAID CRIME
17 OF MY CONVICTION CASE # CR94-0345. TO PROVE MY FACTUAL INNOCENCE OF
18 SEXUAL ASSAULT/LEWDNESS. CITING MITCHELL V. STATE (2006). ~~_____~~

19
20 DURING DEFENDENTS INTEROGATION, HE WAS BEING VIDEO TAPED ~~ILLEGALLY~~ ^{ILLEGALLY - CM}
21 WITHOUT HIS PERMISSION OR HIS KNOWLEDGE (9TH CIR. CT) STATES THIS IS
22 A VIOLATION OF CONST. RIGHTS. IT BECAME A CUSTODIAL INTERROGATION
23 THE MINUTE DETECTIVE SAID DEFENDENT COMMITTED A CRIME.
24 IT WAS ALSO (I.A.C.) ~~AND~~ WHEN DEFENSE COUNSEL ALLOWED TAPING OF DEFEN
25 DENT TO BE PLAYED IN COURT/ AND TO JURY. [NU.S.C.T., IF A PERSON DOESN'T
26 KNOW HE'S BEING VIDEO TAPED (NOR) SIGNS A WAIVER, THE COURT CAN NOT
27 USE HIS TAPE AGAINST HIM IN A COURT OF LAW (COURT MUST EXCLUDE IT).
28 SEE NRS 1341.6 STEVENS V. NEV. AND HUGHES V. NV. 1997.]

(AFFIDAVIT - CONTINUES)

1 THE FOLLOWING PAGES WILL SHOW A 48^{HR} VIOLATION SET BY
 2 THE U.S.C.T., A MIRANDA VIOLATION, ALONG WITH UNLAW FULL AND
 3 ILLEGAL RECORDING OF DEFENDANT WITHOUT HIS KNOWLEDGE OR
 4 HIS CONSENT, AND DETECTIVES STILL CONTINUED TO MANIPULATE AND
 5 COERCE DEFENDANT INTO MAKING FALSE STATEMENTS AFTER HE
 6 TOLD E'M HE DIDNT WANT TO TALK TO THEM ANY MORE. DEFENDANT
 7 "WILL SHOW" PROSECUTORIAL MIS CONDUCT, INCLUDING BUT NOT LIMITED
 8 TO PERJURY BY ALLEGED VICTIMS, COACHING ALLEGED VICTIMS THRU STATE,
 9 (I-A-C), BRADY VIOLATION AS STATE REFUSED TO TURN OVER ALL THE
 10 DISCOVERY TO DEFENSE; PER N.R.S 174.235(1) AND N.R.S. 174.285.
 11 THERE WAS "NO-MEDICAL EVID." NO D.N.A. NO WITNESSES.
 12 * WILL SHOW THAT IN PRELIM. HEARING BOTH ALLEGED VICTIMS (INCLUDING)
 13 DETECTIVE STEIGHMEIER "DID NOT KNOW ABOUT DEFENDENTS VERY
 14 LARGE/COLOR FULL TATTOE" IN PENIS AREA (SEE VIDEO TAPES), ^{OF} (ALLEG. VICTIMS)
 15 DEFENDANT HAD PICTURES TAKEN TO PROVE HE HAD IT, YET DURING TRIAL
 16 SUMMER MENNES SAID DEFENDANT NOW HAS A TATTOE.
 17
 18 THE COURT DENIED THE DEFENSE AN [EXPERT IN PHYSICAL ANATOMY
 19 OF SEXUAL ASSAULT VICTIMS], YET FULLY ALLOWED THE STATE TO HAVE
 20 THEIR EXPERT (██████████ - A-D-A DAN GRELO) "QUOTE, THEIR ARE EXPERTS." A
 21 VIOLATION OF DEFENDENTS 5TH CONSTITUTIONAL RIGHT.
 22 THE COURT DENIED, DENIED THE DEFENDANT HIS FUNDAMENTAL
 23 RIGHT TO TESTIFY IN HIS TRIAL, (AS TRIAL RECORD WILL SHOW
 24 DEFENDANT WAS NEVER CANVESSED EVEN THOUGH HE WANTED
 25 TO TESTIFY, (THIS IS A VIOLATION OF DEFENDENTS 6TH) (I-A-C).
 26 AND HIS 5TH CONST. RIGHT, (DUE PROCESS), (^{14TH} ~~14TH~~ CONST. RIGHT OF
 27 DUE PROCESS - EQUAL PROTECTION)
 28

SWORN

(AFFIDAVIT - CONTINUES)

1 MR. MAKI/ DEFENDENT ONLY HAD A (3 1/2) THREE AND ONE HALF
 2 Hour TRIAL. WHICH INCLUDED BUT NOT LIMITED TO, JURISDICTIONAL
 3 ERRORS, PROSECUTIONAL MISCONDUCT, (I. A. C.), VIOLATIONS OF HIS
 4 DUE PROCESS, BRADY VIOLATION, DUE PROCESS/EQUAL PROTECTION
 5 UNDER THE CONSTITUTIONAL LAW, ETC. THE COURT ALSO ALLOWED
 6 A NONE, ALLEGED VICTIM TO TESTIFY AT DEFENDENT'S SENTENCING.
 7 SEE N.R.S. 176.015(3) NRS. 213.005 NV. SUPREME COURT MADE
 8 IT CLEAR A-NONE ALLEGED VICTIM "CAN-NOT," TESTIFY, SEE NRS. 176.145
 9 AND [BUSHHAUER V. STATE (1990) NV.S. CT.]

10

11

12

13

ALL FACTS HERIN ARE TAKEN "DIRECTLY"

14

FROM ALL RECORDS, TRANSCRIPTS OF DEFENDENT.

15

16 ON JAN. 19th 1994 (I) WAS BEING INTERROGATED AND TAPED (DEFENDENT)
 17 "WITHOUT" MY KNOWLEDGE OR PERMISSION, TAKING ADVANTAGE OF ME WHILE
 18 KNOWING I HAD MEDICAL PROBLEMS [JUST GOT OUT OF A CAST] FOR
 19 MY BROKEN BACK/LEGS AND HAD BEEN DRINKING JUST PRIOR (SEE MR.
 20 PAUL GRUBBS SWORN AFFIDAVIT. I) WAS NEVER MIRANDIZED, YET ONCE
 21 I WAS AND REFUSED TO TALK, DETECTIVE STILL QUESTIONED ME. COUNSEL
 22 WAS DENIED. THIS IS A CLEAR VIOLATION OF MIRANDA RIGHTS, SET
 23 BY THE UNITED-STATES- SUPREME COURT, SEE: POWELL VS STATE (1992)
 24 COOPER VS DUPNIK 963 F.2d 1220, STATE VS. MITCHELL 122 NV. 1269
 25 149 P3d. 33 (2006) AND CARTER V. STATE 299 p3d, 367 (2013).

26

[ARRESTED AT 11:45 PM]

27

[JAN 20th 1994] PROBABLE CAUSE AFFIDAVIT REVIEWED BY MAGISTRATE.

28

(AFFIDAVIT - CONTINUES)

1 JAN 21ST 1994] COMPLAINT AND DECLARATION OF PROBABLE CAUSE
2 ARREST AND DETENTION FILED, WITH DEFENDENT IN CUSTODY.
* 3 JAN 24TH 1994] DEFENDENT FINALLY GOES TO HIS ARRAINGMENT,
4 ITS BEEN (6)-(SIX) DAYS SINCE BEING ARRESTED. THIS IS
5 A CLEAR (4TH)-(FOURTH) AMEND. VIOLATION. A VIOLATION SET BY
6 THE U.S. S. COURT IN REGARDS TO 48 HRS TO BE BEFORE A MAGISTRATE.
7 SEE: POWELL V. STATE (1992). CONSTITUTIONAL LAW SET BY THE U.S. S. CT.
8 BASED ON MCLAUGHLIN; THE HIGH COURT STATES QUOTE: "WE HOLD
9 THAT A SUSPECT MUST COME BEFORE A MAGISTRATE (WITHIN 48)
10 HOURS", INCLUDING NON-JUDICIAL HOLIDAYS, FOR A PROBABLE CAUSE
11 DETERMINATION, CITING NRS 171.178, 171.178(3), 171.186. SEE POWELL V.
12 STATE 114 S. CT (1994). [THIS CLEARLY MEANS DEFENDENT WAS TO
13 BE IN FRONT OF A MAGISTRATE WITHIN (48) HOURS OF HIS ARREST NOT
14 FIVE (5) OR SIX (6) DAYS LATER.
15 [JUSTICE O'CONNOR] 1991 OF THE UNITED STATES SUPREME COURT
16 HELD THAT A DEFENDENT MUST BE IN FRONT OF A MAGISTRATE NO-
17 LATER" THAN (48 HRS) AFTER BEING ARRESTED, COUNTY OF RIVERSIDE
18 V. MCLAUGHLIN III S. CT. 1661 (1991), THAT A DELAY EXCEEDING 48 HOURS
19 VIOLATES THE (4TH)-FOURTH AMENDMENT OF THE U.S. CONSTITUTION.
20 JAN 24TH 1994] DEFENDENT WAS FINALLY ALLOWED TO FILL OUT A
21 FORM TO GET A PUBLIC DEFENDER, HE'S BEEN ASKING FOR SINCE
22 DAY ONE OF HIS ARREST. SEE: CARTER V. STATE (2013).
23
24 FEB. 03-1994] DEFENDENT IS NOW GOING TO HIS PRELIM. HEARING. (I)
25 JUST MET PUBLIC DEFENDER (JANET COBB SMUCK) 15 MINUTE PRIOR
26 FOR THE 1ST (FIRST) TIME. FIRST THING SHE DOES IS TELL ME, SHE
27 WILL DO THINGS HER WAY ONLY PERIOD! SO STARTS CONFLICT OF
28 INTEREST BETWEEN DEFENDENT AND HIS PUBLIC DEFENDER.

SWORN

(AFFIDAVIT - CONTINUES)

1 DURING DEFENDENTS PRELIM. HEARING ITS STATED CLEARLY ON RECORD
 2 THAT PARTS OF ALLEGED VICTIMS TAPED STATEMENTS ARE MISSING
 3 THIS CONSTITUTES (I-A-C) FOR ALLOWING TAPES THAT ARE MISSING
 4 WHO KNOWS WHAT TESTIMONY, OR LEADING QUESTIONS BY DETECTIVE OR
 5 EVEN POSSIBLY EXONORATING DEFENDENT, (WILL NEVER KNOW.) ALSO
 6 P.D. SMUCK ALLOWED THE COURT TO PLAY HIS INTERROGATION, WHICH WAS
 7 ILLEGALLY TAPED WITHOUT DEFENDENTS KNOWLEDGE OR PERMISSION, (I-A-L),
 8 ALSO CONSTITUTES JUDICIAL ERROR BY COURT FOR ALLOWING THIS TO HAPPEN.
 9 DURING THE DEFENDENTS PRELIM HEARING, THE STATE PRODUCED
 10 Ø NO MEDICAL EVIDENCE, NO D.N.A AT ALL. IN FACT THE STATE
 11 DID-NOT EVEN HAVE A PROPER TIME LINE WHEN THE ALLEGED (S.A.)
 12 TOOK PLACE, THEY JUST MADE ONE UP!

13 * [THE FOLLOWING WILL PROVE DEFENDENTS FACTUAL INNOCENCE.]
 14 THE FOLLOWING FACTS ARE DIRECT QUESTIONS AND ANSWERS ALL
 15 "TAKEN DIRECTLY FROM TRANSCRIPTS" (P.L. TRANS., TRIAL ECT.)
 16

17 ON PAGE 42 LINE 12-17] IN PRELIM. TRANS.] ALLEGED VICTIM SUMMER
 18 MENNESS IS TELLING A-D-A. DAN GRECO, THAT THE DEFENDENT
 19 NEVER SEXUALLY ASSAULTED HER! ON LINE 15, IT STATES, QUOTE;
 20 (Q). SUMMER DID HIS PRIVATE EVER GO INSIDE YOUR PRIVATE (A.) NO!
 21 GO TO PAGE 30 LINES 14-15] PRELIM. TRANS. DEFENDENTS COUNSEL
 22 ASKED DESIREE MENNESS (Q.) DID CHUCK (DEFENDENT) EVER
 23 MAKE YOU TOUCH HIS PENIS? (A.) NO! [YET WHEN ASKED THE
 24 SAME QUESTION IN DEFENDENTS TRIAL BY A.D.A. DAN GRECO, SHE SAID
 25 "YES, THIS IS BLATANT PROSECUTORIAL MISCONDUCT," ^{SHE-CA} AS WAS COACHED
 26 BY THE STATE TO COMMIT PERJURY, FOR A STATES CONVICTION.
 27 ON PAGE 33 LINES 22-24] PRELIM. TRANS., DESIREE MENNESS WAS ASKED
 28 HAVE YOU EVER SEEN A-MAN WITHOUT HIS CLOTHES ON? (A.) YES. "MY DAD!"

(AFFIDAVIT - CONTINUES)

- 1 DESIREE GOES ON A BOAT HOW SHE TOOK SHOWERS WITH HER STEP DAD.
- * 2 INTERESTING ENOUGH SHE "DID-NOT" SAY THE DEFENDENT! * [IF YOU GO TO
3 THE TRIAL TRANS. ON PAGE 71 - LINES 9-15] DESIREE WAS ASKED
4 (Q.) DESIREE HAVE YOU EVER SEEN A-MAN'S PENIS BEFORE?
5 (A.) YES, MY DADS! [JUST HER DAD'S - NOTHING ABOUT DEFENDENT.]
6 (GARY MAWESS) WAS INVESTIGATED IN 1992 FOR ALLEGED LEWD ACTS
7 WITH BOTH OF HIS STEP DAUGHTERS SEE TRIAL TRANSCRIPTS..
8 DEFENDENTS COUNSEL [NEVER INVESTIGATED GIRLS STATEMENTS,
9 NEVER INVESTIGATED DEFENDENTS MEDICAL RECORDS] WHICH
10 AMOUNTS TO 6TH 8TH 14TH VIOLATIONS OF DEFENDENTS CONST. RIGHTS.
11 [IN REGARDS TO LARGE-COLORFUL TATTOOS ON
12 DEFENDENTS BODY SPECIFICALLY IN PENIS AREA.]
- * 13 IN [PRELIM. HEARING] THE QUESTION WAS ASKED ABOUT TATTOOS, SCARS
14 GET. IN PENIS AREA, ON ALLEGED VICTIMS VIDEO TAPE INTERVIEW BY DETECTIVE
15 JAMES STEIGHMIER. THESE QUESTIONS WERE ALSO PUT TO DETECTIVE ON
16 THE WITNESS STAND, PAGE 73 LINES 23-25 (A). I DID ASK THE GIRLS
17 DURING MY INTERVIEW WITH E.M. PAGE 74 (Q). DETECTIVE YOU ASKED
18 A QUESTION ABOUT TATTOOS? (A.) WHEN I ASKED ("SUMMER") I ASKED
19 THAT QUESTION BECAUSE ONE OF THE MOST DISTINGUISHING THING A GIRL
20 WOULD REMEMBER WAS SOMETHING UNUSUAL IN THE PENIS AREA, AND SOME
21 TIMES IT A TATTOO IN HIS PELVIC AREA... [SUMMER SAID THERE WAS NO
22 TATTOO!] "AFTER IT WAS ESTABLISHED BY THE STATE, THE DEFENDENT
23 DID-NOT HAVE ANY TATTOOS GET. IN HIS PELVIC AREA," AND THE
24 HEARING ENDED DEFENDENT TOLD HIS (P.D.) TO GET A CAMERA AS A P.
25 TO TAKE PHOTOS OF HIS [9 INCH LONG - 6 INCH WIDE] BRITE COLORFULL
26 TATTOO IN PELVIC/PENIS AREA! COUNSEL SAID SHE WOULD GET CAMERA
27 BUT ARGUED WITH DEFENDENT, AS KNOW BODY KNEW OF THIS TATTOO, (P.D.)
28 I MUST'VE GOTTEN IT IN JAIL (WHICH IS REDICULOUS) CONFLICT OF INTEREST.

SWORN

(AFFIDAVIT - CONTINUES)

1 FEB 16TH 1994] WENT TO my SECOND ARRAINGMENT AND PLED NOT-GUILTY.
 2 MARCH 03-1994] MOTIONS HEARING, COURT SAID IT GOT my LETTER TO
 * 3 FIRE (COUNSEL) DENIED. * (P.D.) SMUCK IS ASKING THE COURT ~~THRU~~ THRU
 4 ORAL-MOTIONS, FOR ALL DISCOVERY EVIDENCE, INCLUDING A MOTION TO
 5 COMPEL DISCOVERY, TO THE STATE.

6 [THE STATE HAS AN EXPERT]

7 MARCH 11-1994] EVIDENTIARY HEARING, (P.D. JANET C. SMUCK) FOR
 8 THE DEFENSE, (A.D.A. DAN GRECO) FOR THE STATE.
 9 ON PAGE 25, LINES 16-21 MR GRECO ADDRESS'ES THE COURT, QUOTE, YES,
 10 YOUR HONOR (I) HAVE AN ANSWER FOR YOU SHE DID SEE A SAINTS
 11 EXAMINER (BOTH ALLEGED VICTIMS DID) THAT EXAMINES CHILD SEXUAL
 12 ASSAULT VICTIMS AND [THEY ARE EXPERTS]! THE STATE CLEARLY
 13 ADMITTS ON RECORD, THAT THE ALLEGED VICTIMS DID SEE AN EXPERT
 14 EMPLOYED BY THE STATE, AND IF THE CASE GOES TO TRIAL, THE STATE
 15 WILL HAVE ITS EXPERT TO TESTIFY. [STATES EXPERT IS MS. KATHY M.
 16 PEELE,] THE DIRECTOR OF SAINTS PROGRAM, AN EXPERT IN PHYSICAL
 17 EVIDENCE.

18 DEFENDENTS CONFLICT OF INTEREST AND LACK

19 OF INVESTIGATION BY COUNSEL FOR DEFENSE.

20 AN 6TH - 14TH VIOLATION OF DEFENDENTS RIGHTS.

21 SINCE THE FIRST TIME I MET (P.D. SMUCK) 15 MINUTES BEFORE MY
 22 PRELIM. HEARING, AND EVERY TIME I SEEN HER ALL SHE WOULD SAY
 23 IS I GOT TO BE GUILTY. I ASKED HER MANY TIMES TO TALK TO PEOPLE
 24 FOR ME, TO INVESTIGATE PEOPLE-PLACES - [GET my MEDICAL RECORDS
 25 TALK TO my CIVIL LAWYER MR. CARL HE'BERT, FIND THE DRS WHO HAS
 26 BEEN TAKING CARE OF ME AS I WAS IN A BODY CAST TILL 2 DAYS
 27 BEFORE my ARREST!!] ALL SHE TOLD ME WAS SHE WAS TO BUSY.
 28 SHE SEEMED TO WANT TO HELP STATE GET A CONVICTION INSTEAD OF

SWORN

(AFFIDAVIT - CONTINUES)

1 TRYING TO HELP ME PROVE my INNOCENCE. ALL my COUNSEL DID
 2 WAS LIE TO ME AND TELL ME I HAD TO BE GUILTY, TELLING ME A
 3 JURY WILL NEVER BELIEF ME AT ALL, AND TOTALLY REFUSE TO INVESTIGATE
 4 any thing I TELL HER. (I) [TOLD HER I WANT TO TESTIFY AT TRIAL.]
 5 SEE: post-conviction TRANSCRIPTS PAGE 95 LINES 23-24 A.D.A.
 6 M.CARTHY ASKING DEFENSE COUNSEL SMUCK (Q.) DID YOU TELL DEFENDENT
 7 THAT HE'D BE FOUND GUILTY (A.) YES. IT GOT SO BAD BETWEEN COUNSEL
 8 AND my SELF, AND THE COURT REFUSING TO GIVE ME NEW COUNSEL, I
 9 DIDNT KNOW WHAT TO DO, [SO I WROTE A LETTER TO HER BOSS "MR. MIKE
 10 ~~SMUCK~~ SPECIO" EVEN SPOKE TO him ON THE phone, HE REFUSED TO REMOVE
 11 HER. (2) I WROTE A LETTER TO WASHOE COUNTY LEGAL SERVICES ASKING
 12 FOR HELP, THEY SAID they COULDN'T HELP ME. (3) I WROTE A LETTER TO
 13 NEV. BARR, THEY SAID ALL THEY COULD DO IS REGISTER A COMPLAINT
 14 ABOUT HER AND COULDN'T GET HER REMOVED FROM my CASE. SEE P.R.T.
 15 PAGE 16 - LINES 6-14. [THE LETTER THAT DEFENDENT SENT TO JUDGE GOT DENIED
 #16 APRIL 1ST 1994] [SUPPRESSION HEARING.]
 17
 18 THE DAY BEFORE THE SUPPRESSION HEARING (COUNSEL SMUCK) CAME
 19 TO THE JAIL AND TOLD DEFENDENT, IT WAS NOT NECESSARY FOR
 20 HIM TO GO TO THIS HEARING, SHE SAID SHE WOULD TAKE CARE
 21 OF EVERY THING, AND THEN STARTED TO LEAVE WITHOUT EXPLAINING
 22 ANYTHING AT ALL, DEFENDENT TOLD COUNSEL THAT HE WANTS TO
 23 BE THERE ANY WAY [AS COUNSEL IS VERY UNTRUSTWORTHY].
 24 I TOLD HER AGAIN I WANT TO TESTIFY AT my TRIAL ONCE IT
 25 COMES UP.. ONCE WE GET TO THE HEARING, COUNSEL SMUCK
 26 THRU A TOTAL SURPRISE AT ME, SEE: PAGE 3 - LINES 1-4 COUNSEL
 27 ADDRESSING THE COURT, [MR. MAKI WILL BE CHANGE'ING HIS
 28 PLEA, TO PLEADING GUILTY TO (2) COUNTS OF S.A. AND (2) COUNTS

SWORN

(AFFIDAVIT - CONTINUES)

1 OF LEWONESS YOUR HONOR. [IT NOW BECOMES APPARENT WHY
 2 COUNSEL SMUCK DID NOT WANT ME TO COME TO THE HEARING]...
 3 THIS IS (I-A-C) AND A VIOLATION OF MY 14TH AMEND.
 4 GO TO PAGE 16 - LINES 21-22 THE COURT ADDRESSING DEFENDENT, (Q.)
 5 DO YOU WANT TO CHANGE YOUR PLEA TODAY? (A.) "NO, YOUR HONOR!"
 6 "AFTER MUCH BANTERING WITH THE JUDGE TRYING TO MAKE
 7 ME TAKE A DEAL I DID NOT WANT, IT'S FINALLY ESTABLISHED (I)
 8 CAN HAVE MY TRIAL," EVEN THOUGH THE COURT TRIED TO CONVINCE
 9 THE DEFENDENT OTHERWISE, AND THE COURT SHOW'D CLEAR BIAS
 10 TOWARDS THE DEFENDENT, STATING: ON PAGE 15 LINES 17-18
 11 QUOTE: "IF YOU THINK YOUR NOT GUILTY - YOUR IN NEVER-NEVER LAND.
 12 (THIS STATEMENT IS PREJUDICIAL) AND AMOUNTS TO JUDICIAL MISCONDUCT
 13 BY THE COURT, ALL BECAUSE DEFENDENT WANTED TO EXERCISE HIS
 14 LEGAL RIGHT TO A (FAIR) TRIAL, AND REFUSED TO TAKE A DEAL.
 15 [APRIL 03-1994] ANOTHER HEARING, AGAIN COURT DENIES DEFENDENT'S
 16 LETTER TO COURT TO FIRE HIS COUNSEL P.D. JANET C. SMUCK..
 17 ALSO IN LETTER TO COURT I'M GOING TO TESTIFY - I'D LIKE TO TESTIFY.
 18 [DAY OF THE DEFENDENT TRIAL]
 19 [APRIL 11-12 1994] TOTAL TIME OF DEFENDENT'S TRIAL IS 3 1/2 HOURS..
 20 MONDAY, APRIL 11-94 JURY SELECTION TILL LUNCH TIME. 2 PEOPLE ON JURY
 21 KNEW GARY MENESS THE STEP FATHER - DEFENDENT'S COUNSEL SAID NO - BIG DEAL.
 22 DEFENDENT HAD NO SAY AT ALL IN JURY SELECTION. [TRIAL STARTS AT 2:20 P.M.
 23 GOES TILL 2:45 P.M.] AND ENDS FOR THE DAY.
 24 TUESDAY APRIL 12-1994 DEFENDENT'S TRIAL RE-STARTS AT 10:00 AM. TILL 11:30 AM
 25 (NOW LUNCH TIME) TRIAL RE-STARTS AT [1:30 P.M. TILL 2: P.M.] BREAK - THE
 26 REASON IS DEFENDENT IS ARGUING ABOUT THE PHOTO'S DEFENDENT HAD
 27 TAKEN OF HIS TATTOO AFTER PRELIM. HEARING, COUNSEL REFUSED TO
 28 USE IT, JUDGE TOLD BALIFF TO DUCT TAPE MY MOUTH; AFTER JURY WAS

(AFFIDAVIT - CONTINUES)

1 BROUGHT BACK IN, I HAD TO SIT IN COURT ROOM IN FRONT OF E'M FOR 20
 2 MINUTES OR SO WITH TAPE ON MY MOUTH, JUDGE FINALLY TOLD JURY
 3 I WAS NOT GOING TO INTERRUPT COURT AND TOOK TAPE OFF, THEN TOLD ME
 4 IF I HAD TO SAY ANYTHING TO MY COUNSEL TO WRITE IT ON PAPER. I
 5 DID THAT AND COUNSEL JUST IGNORED ME. EVEN THOUGH IT WAS REMOVED
 6 FROM RECORD "IN SENTENCE'ING PHASE THE COURT MAKES REFERENCE
 7 TO IT." [BEFORE DEFENDENTS TRIAL STARTS:]

8
 9 (DEFENSE COUNSEL IS ASKING FOR ALL OF DISCOVERY.)
 10 ON TRIAL TRANS. PAGE 5- LINE 24 AND PAGE 6 LINE 1-5; BEFORE DEFENDENTS
 11 TRIAL STARTS, P.D. SMUCK, ADDRESS'ES THE COURT IN REGARDS TO "HOW THE
 12 STATE STILL HAS NOT TURNED OVER ALL DISCOVERY EVIDENCE YET." REFER,
 13 BACK TO MARCH 03-1994, MOTIONS HEARING.
 14 BY THE STATES REFUSAL OR JUST MAKING UP EXCUSES TO TURN OVER ALL
 15 DISCOVERY EVIDENCE, JUST (2) DAYS BEFORE TRIAL, OR ON DAY OF DEFENDENT
 16 TRIAL IS A "BRADY-VIOLATION", SEE: BRADY V. MARYLAND, 373, U.S. 83
 17 87, 83 S.Ct. 1194, 1196-97 10 L.Ed 2d 215, 218 (1963). EVIDENCE IN QUESTION
 18 IS PHOTOGRAPHS OF ALLEGED VICTIMS VAGINA, TAKEN BY THE STATES EXPERT
 19 KATHY PEELE. THE STATE HAS A LEGAL OBLIGATION TO TURN OVER ALL
 20 DISCOVERY EVIDENCE TO DEFENSE; BY NOT DOING SO IT BECOMES A CLEAR
 21 VIOLATION OF THE DEFENDENTS RIGHT TO A FAIR TRIAL. 5th-14th USCA VIOLATED
 22 THE DEFENDENTS CONSTITUTIONAL RIGHTS OF DUE PROCESS AND DUE
 23 PROCESS OF EQUAL PROTECTION UNDER THE LAW WERE VIOLATED.
 24 THIS ALSO INCLUDES (I-A-C.) FOR NOT OBTAINING IT FROM THE STATE.
 25 (ON MARCH 03 1994) COUNSEL FOR DEFENSE MADE ORAL MOTIONS TO
 26 THE COURT AND SENT WRITTEN MOTIONS TO STATE ^{TO-CM} ~~FROM~~ COMPEL ALL
 27 DISCOVERY EVIDENCE. PER NRS 174.235(1) AND NRS. 174.285, DISCOVERY
 28 AND TIME LIMIT ATTACHED. THE CAUSE AND DELAY OF DISCOVERY

SWORN
(AFFIDAVIT - CONTINUES)

1 FROM THE STATE STOPPED THE DEFENSE FROM BEING ABLE TO OBTAIN
 2 ITS LEGAL OPPORTUNITY TO HAVE ITS OWN "MEDICAL EXPERT IN CHILD
 3 DEVELOPMENT," SO AS TO DISPUTE THE STATES EXPERT, KATHY PEELE.
 4 ON TRIAL TRANSCRIPT (TTT) PAGE 6, LINES 6-9, DEFENSE IS ASKING
 5 THE COURT FOR A TIME CONTINUANCE, [SO IT CAN OBTAIN ITS EXPERT] TO
 6 DISPUTE THE NEWLY OBTAINED EVIDENCE FROM THE STATE THAT
 7 WAS JUST HANDED OVER TO DEFENSE. ON TRIAL TRANS. PAGE 8 LINES
 8 18-19 [THE COURT DENIES THE DEFENSE ITS OWN EXPERT]. BUT ON
 9 [TRIAL TRANS. p. 8 LINES 24 AND PAGE 9 LINE 1] THE COURT "CLEARLY"
 10 STATES ON RECORD THAT STATE CAN HAVE ITS EXPERT TO TESTIFY.
 11 ON PAGE 6 LINE 12] D.A. GREGG REMINDS THE COURT STATING (THEY ARE
 12 EXPERTS); AGAIN (REFER TO MARCH 11-1974 EVIDENTIARY HEARING.)
 13 THIS IS HIGHLY PREJUDICIAL TO THE DEFENDENT IN REGARDS TO
 14 GETTING A FAIR TRIAL. THIS IS CLEAR ERROR/JUDICIAL BIAS BY THE
 15 COURT IN ITS SELF. ITS ALSO A CLEAR VIOLATION OF DEFENDENTS
 16 CONSTITUTIONAL RIGHT TO DUE PROCESS, VIOLATION OF THE 14TH AMEND.
 17 RIGHT TO DUE PROCESS/EQUAL PROTECTION UNDER THE LAWS OF THE U.S.
 18 CONSTITUTION, 6TH AMEND. VIOLATION - (I-A-C) UNDER STRICKLAND V.
 19 WASHINGTON 466 U.S. 668 (1984). THRU ARGUEMENTS TO THE COURT
 20 DEFENSE COUNSEL'S FAILURE TO OBTAIN ANY OR "ALL DISCOVERY"
 21 INCLUDING BUT NOT LIMITED TO MEDICAL REPORTS - PHYSICAL PHOTOGRAPHS
 22 PHYSICAL EXAMINATIONS ECT. OF ALLEGED VICTIMS, FROM THE PROSECUTION,
 23 DOCUMENTED OR NOT AND NOT DISCLOSED TO DEFENSE FOR DISCOVERY
 24 PURPOSES CONSTITUTES (IAC) - INEFFECTED - ASSISTANCE OF COUNSEL.
 25 THE BURDEN(S) OF SHOWING OR NOT SHOWING SUCH MATERIALITY AND/OR
 26 EXCULPATORY NATURE OF ANY EVIDENCE IN WHICH IS NOT PROPERLY (I.D.) OR
 27 PRESENTED BY THE STATE OR PROSECUTION (RESTS ON THE DEFENSE) AS
 28 STATED IN STATE V. HAVAS SUPRA, 601 P2d 1197 (1979) AND IN SPARKS

(AFFIDAVIT - CONTINUES)

1 V. STATE, 759 P.2d 180 (1988). (I-A-C), STRICKLAND V. WASHINGTON
 2 466 U.S. 668 (1984). BY THE STATES (FAILURE) TO ASSIST THE
 3 DEFENSE "AND NOT DISCLOSE" ANY OR ALL INFORMATION PERTAINING TO THE
 4 DEFENSE(S) CASE AT HAND (AMOUNTS TO PROSECUTORIAL MISCONDUCT)
 5 A CONSTITUTIONAL VIOLATION: IF IT DEPRIVES THE DEFENDENT OF A
 6 FAIR TRIAL. IT WAS ALSO A CLEAR CASE OF JUDICIAL ^{BIAS - CM} ~~BIAS~~ AND
 7 "CLEAR ERROR" BY THE COURT TO EVEN ALLOW IT, BY DOING SO THE JURY
 8 HAD ONLY ONE SIDE TO MAKE A DECISION FROM, (THE STATE GOT ITS
 9 CONVICTION WITH THE HELP OF THE COURT AND DEFENSE COUNSEL, BOTH!
 10 WHEN THE COURT OUT RIGHT DENIES THE DEFENSE THE SAME LEGAL
 11 RIGHT TO AN EXPERT IN PHYSICAL ANATOMY AS THE STATE DID, IT
 12 IS "CLEARLY PREJUDICIAL" BY COURT TO DEFENDENT, WHEN THE STATE
 13 HOLDS EXCULPATORY EVIDENCE, EVIDENCE FAVORABLE TO DEFENSE,
 14 ITS A BRADY VIOLATION; HAD THE EVIDENCE BEEN DISCLOSED AS
 15 THE LAW STATES, ALONG WITH A DEFENSE EXPERT TO TESTIFY IN
 16 REGARDS TO THE PHYSICAL EVIDENCE THE STATE WITH HELD, THE
 17 TRIAL WOULD HAVE BEEN MORE TO THE DEFENDENTS SIDE.
 18 SITE'ING: UNITED STATES V. BALLEW, 473 U.S. 667-678-105 SCT. (1985)
 19 [THE DEFENDENT COULD NOT RECIEVE A FAIR TRIAL]
 20
 21 BY THE COURTS REFUSAL OF ALLOWING THE DEFENSE TO HAVE, ITS
 22 EXPERT IN THE FIELD OF CHILDO-DEVELOPMENT, SAME AS THE STATE
 23 DID, THE DEFENSE'S EXPERT COULD'VE REVIEWED THE NEWLY PRESENTED
 24 PHYSICAL EVIDENCE, THE STATE JUST PRODUCED ON DAY OF DEFENDENT
 25 TRIAL, AND WOULD HAVE PRESENTED THE JURY WITH ITS OWN UNBIASED
 26 OPINION, WHERE AS THE OUTCOME OF DEFENDENTS TRIAL WOULD'VE
 27 BEEN TOTALLY DIFFERENT, AND WOULD HAVE SHOWN HOW MS. PEELE
 28 THE STATES EXPERT WAS BIAS TO DEFENSE, AND JUST HELPING TO CONVICT

(AFFIDAVIT - CONTINUES)

1 SOME ONE FOR THE STATES BENEFIT. AN EXPERT FOR THE DEFENSE
2 WOULD HAVE EXAMINED THE STATES UN-DISCLOSED DISCOVERY AND GIVEN
3 THE JURY A BROAD RANGE OF REASONS WHY THE STATES EXPERT MRS.
4 KATHY M. PEELE (THE SAINTS DIRECTOR) WAS MISLEADING THE JURY
5 WITH UN-SUBSTANTIATED OPINIONS, AND WOULD'VE GIVEN AN ALTER-
6 NATIVE REASONING AND LITTURE TO SHOW HOW THE SAINTS DIRECTOR'S
7 FINDING WERE "NOT ONLY INACCURATE, BUT MISLEADING" AND COULD'VE
8 BEEN EXPLAINED BY A MORE CONVENTIONAL THINKING BACK BY SOME
9 HONEST RESEARCH AND UNDERSTANDING.
10 NOW THE STATE WILL TRY AND SAY (MRS PEELE) IS NOT AN
11 EXPERT AS D.A. MCCARTHY STATED ON RECORD IN DEFENDENTS
12 (POST-CONVICTION HEARING) IN REGARDS TO PHYSICAL EVIDENCE,
13 PLEASE REFER BACK TO: MARCH 11-1994; DEFENDENTS EVIDENTIARY
14 HEARING; SEE PAGE 25 LINES 16-21, IN SHORT AGAIN A.D.A.
15 DAN GRECO IS TELLING THE COURT [THEY ARE EXPERTS] IN TRIAL
16 MR. GRECO IS TELLING THE JURY THAT MRS. PEELE IS AN EXPERT,
17 [THE COURT EXCEPTS ON RECORD THAT MRS. PEELE, SAINTS DIRECTOR IS
18 AN EXPERT IN HER FIELD, [THE JURY EXCEPTS IT ALSO], AS MRS PEELE
19 (SEE: TRIAL TRANS. PAGE 108 LINE 15 TO PAGE 112 LINE 24) TELLS THE JURY
20 SHE IS HEAD OF SAINTS PROGRAM AND AN ADVOCATE FOR THE STATE
21 OF NEVADA, RENO'S DISTRICT ATTORNEY'S OFFICE, (TO IMPRESS THE JURY)
22 SHE (MRS. PEELE) GOES ON TO TELL HER QUALIFICATIONS TO THE JURY
23 FOR (3) PAGES AND TELLS JURY SHE HAS CONVICTED HUNDREDS
24 OF PEOPLE FOR STATE OF NEVADA. (JURY IS TOTALLY CONVINCED
25 MRS. KATHY M. PEELE IS AN EXPERT, AS ANY LAYMEN WOULD
26 ALSO BELIEVE.) THE D.A.'S OFFICE CAN NOT SAY THERE EXPERTS
27 FOR A CONVICTION, THEN SAY THERE NOT ON APPEAL, THATS
28 ~~ILLEGAL~~ ILLEGAL, PREJUDICIAL, MISCONDUCT BY D.A., AND

SWORN
(AFFIDAVIT - CONTINUES)

1 BY THE COURT, ALONG WITH MISLEADING THE JURY AS A WHOLE...
2 VIOLATING THE DEFENDENTS ~~CONSTITUTIONAL~~ CONSTITUTIONAL RIGHTS.

3

4 [EVIDENCE MATERIAL TO GUILT.]

5 D.A. DW GREGO IN HIS OPENING STATEMENT TO THE JURY, IN REGARDS TO
6 DESIREE, ON TRIAL TRANS. PAGE 21 LINES 14-16 QUOTE: SHE'LL TELL YOU
7 THAT HE THEN [INSERTED HIS PENIS] ABOUT AN INCH OR SO [INTO HER
8 VAGINA]. ON TRIAL TRANS. PAGE 50 LINES 21-24 (Q.) MR. GREGO TO DESIREE
9 (DID HE PUT HIS PENIS INSIDE YOU) (A.) YES, COULD YOU FEEL IT INSIDE YOUR
10 VAGINA (A.) YES. [2 THINGS WRONG HERE, FIRST NOT EVEN A GROWN
11 WOMAN KNOWS HOW FAR A MANS PENIS IS INSIDE HER 1" 2" ECT. [SECOND
12 STATE IS PLANTING SUPERFICIAL IDEAS INTO THE JURYS MIND, [THIRO
13 ITS SOUNDS LIKE THE D.A. IS COACHING THE WITNESS INTO COMMITTING
14 PURJURY AS YOU SEE FURTHER INTO THE RECORD!]

15 SEE TRIAL TRANS. PAGE 145 LINES 7-13-14-23. IN SHORT FORM,
16 Q). BY DEFENSE COUNSEL (TO MS. PEELE) DOES THE HYMEN HEAL UP?
17 IS THAT WHAT YOUR TALKING ABOUT? I'M TRYING TO FOLLOW YOUR
18 ANSWERS TO (D.A. GREGO) IN TERMS OF, IF THERE WAS SOME KIND
19 OF BREAKAGE THERE [DOES IT HEAL UP?] (A.) YES, CORRECT..

20 Q). BY DEFENSE COUNSEL, WELL THEN AS FAR A DESIREE IS CONCERNED
21 ARE YOU SAYING YOU THINK [HER HYMEN] IS HEAL'D? (A.) I DIDNT
22 SEE ANY EVIDENCE THAT THERE HAD BEEN ANY HEALING GOING ON
23 "IT WAS NORMAL"! I DIDNT SEE ANY EVIDENCE AT THE TIME
24 (I) EXAMINED HER.. / NOW GO TO POST-CONVICTION TRANSCRIPTS
25 GO TO PAGE 111 LINES 19-24. WHERE DEFENSE COUNSEL JOSEPH PLATTER
26 IN CLOSING ARGUMENTS STATE: DESIREE SAID SHE WAS TOUCHED
27 ONLY (3) TIMES IN FIRST INTERVIEW (TAPE) WITH DETECTIVE
28 STEIGHMIER'S PARTNER DETECTIVE BELLUE, YET IN JURY TRIAL

(AFFIDAVIT - CONTINUES)

1 D.A. GRECO ASKED THE SAME QUESTION HER ANSWER WAS (7) TIMES!
 2 [GO BACK TO TRIAL TRANSCRIPTS PAGE 143 LINES 16-19].
 3 STATEMENT MADE BY STATES EXPERT MS. PEELE, TO DEFENSE
 4 COUNSEL SMUCK, QUOTE: DESIREE'S TESTIMONY IS CONTRADICTION"
 5 TO WHAT SHE IS CLAIMING OF WHAT THE DEFENDENT DID TO HER!
 6 DESIREE SHOWS NO SIGNS OF SEXUAL ABUSE, AT ALL! AGAIN
 7 DESIREE WAS PLAINLY COACHED IN WHAT TO SAY, FOR A CONVICTION.
 8 [IN SUMMER MENESS CASE], MS. PEELE, STATES EXPERT STATES:
 9 SUMMER'S PHYSICAL EVIDENCE IS IN-CONSISTANT WITH HER ORAL TESTIMONY.
 10 [GO TO POST-CONVICTION TRANS. PAGE 110 LINE 1-24] DEFENSE COUNSEL PLATTER
 11 IN CLOSING ARGUMENTS STATE: (SUMMER HAD MAJOR INCONSISTANCIES
 12 IN HER TESTIMONIES], PLATTER EXPLAINING WHY BOTH GIRLS SHOULD'VE BEEN SEEN
 13 AND A PSYCHOLOGICAL EXAM SHOULD'VE BEEN ORDER'D THX COUNSEL (SMUCK) ^{P.D.}
 14 MS. PEELE THE SANIT'S DIRECTOR DID PRESENT OPINION, STATEMENTS AND
 15 MISLEADING STATEMENTS TO THE JURY THAT A FEMALE HYMAN
 16 WILL GROW BACK". MS. PEELE DID PRESENT OPINION TESTIMONY FOR
 17 THE STATES BEHALF, WITH HER ONLY INTENTION OF HELPING TO SECURE
 18 A SOLID CONVICTION FOR THE STATES PROSECUTOR D.A. GRECO! - - - - -
 19 IT WAS HIGHLY PREJUDICIAL TO THE DEFENDENT TO SHOW THE INTERVIEW
 20 TAPES OF ALLEGED VICTIMS [BACK TO BACK] ALONG WITH THEIR IN PERSON
 21 TESTIMONY TO THE JURY. --- [PROSECUTIONAL - MISCONDUCT] ----
 22 THERE'S BEEN ALOT OF COACHING BY D.A. GRECO TO ALLEGED VICTIMS,
 23 WHICH AMOUNTS [TO PROSECUTIONAL MISCONDUCT.] FROM PRELIM TO TRIAL.
 24 AS STATED PREVIOUSLY DURING THE DEFENDENT'S PRELIM. HEARING
 25 SUMMER WAS TELLING D.A. GRECO UNDER HIS OWN QUESTIONING, HOW
 26 THE DEFENDENT DID-NOT COMMIT ANY SEXUAL ACT OR LEWDNESS
 27 WITH HER! SEE PRELIM. TRANS. PAGE 42 LINES 12-17 AND PAGE 46 LINES
 28 1-6 (ON PAGE 46 LINE 4) AFTER SUMMER STATED THE TRUTH WITH

(AFFIDAVIT - CONTINUES)

1 NO HESITATION AT ALL, D.A. GRECO GOT FRUSTRATED AND MANIPULATED HER
 2 INTO CHANGING HER STORY, (JUST LIKE IN TRIAL) AS RECORD WILL SHOW IN THE
 3 FOLLOWING PAGES.

4 DEFENDENTS VERY LARGE/COLORFUL TATTOO

5 NOBODY (ESPECIALLY SUMMER DIDN'T KNOW OF.

6 DURING THE DEFENDENTS PRELIM. HEARING IT WAS CLEARLY ESTABLISHED

7 NOBODY (MAINLY SUMMER MENNESS) - TRIAL TRANS. PAGE 173 LINES 7-14

8 DEFENSE COUNSEL SMUCK, ASKS DET. STEIGHMIER (Q). I BELIEVE YOU

9 PARTICULARLY "ASKED SUMMER" IF MR. MAKI HAD ANY TATTOOS AROUND

10 HIS PRIVATE AREA? (A.) YES, MA'AM. (Q.) AND SHE INDICATED HE DID NOT?

11 (A.) WELL I BELIEVE THAT SHE INDICATED HE HAD MANY TATTOOS FRONT/BACK,

12 AND (A.) SAID ANYTHING IN THAT PARTICULAR AREA? (SHE SAID NO!)..

13 RE-DIRECT BY STATE TO DETECTIVE STEIGHMIER. TRIAL TRANS. PAGE 174

14 LINES 11-22 (Q) WHEN YOU ASKED SUMMER ABOUT HIS TATTOOS, SHE RESPONDED

15 HE HAD MANY ON HIS FRONT/BACK CORRECT? (A.) CORRECT! (Q) YOU HAD

16 BEEN TALKING ABOUT HIS GENITAL'S AND PENIS AREA? (A.) CORRECT!

17 (Q). YOU SAID, "DID YOU NOTICE ANYTHING DOWN IN THAT AREA", CORRECT?

18 (A.) CORRECT! (Q) SHE SAID NO? (A.) EXACTLY!, I WAS SPECIFICALLY

19 REFERRING TO THE PENIS AND PUBLIC AREA. / END OF QUESTIONS - - - - -

20 NOW THE DEFENDENT ARGUES WITH HIS COUNSEL TO BRING OUT THE

21 PHOTO'S HE'D TAKEN OF HIS TATTOO FROM PRELIM. HEARING. ONCE THE PHOTO'S

22 ARE OUT AND BROUGHT TO COURT ATTENTION, (D.A. GRECO) COMES OVER TO

23 THE DEFENSE TABLE, LOOKS AT PHOTOGRAPHS AND PICKS OUT THE ONE OF

24 DEFENDENTS TATTOO IN PENIS/PUBLIC AREA, TAKES IT OVER TO DET. STEIGH-

25 MIER, WHO IN TURN TAKES IT INTO HALL WAY TO SHOW SUMMER, AND

26 COUNSEL SMUCK ALLOWS IT TO HAPPEN. (NOW 5 MINUTES LATER ON

27 REBUTAL): BY D.A. GRECO, SUMMER NOW REMEMBERS THE UNKNOWN

28 TATTOO IN DEFENDENTS PELVIC/PENIS AREA. ~~_____~~

SWORN
(AFFIDAVIT - CONTINUES)

1 THIS IS PROSECUTORIAL MISCONDUCT TO THE EXTREME^{with em}, JUDICIAL CLEAR
 2 ERROR FOR ALLOWING THE PROSECUTION TO MISLEAD THE JURY AND HAVE ITS
 3 OWN WITNESS COMMIT PERJURY, AND (I-A-C) FOR DEFENSE COUNSEL JUST
 4 SAT THERE AND LET IT ALL HAPPEN ON RECORD. ITS ALL TOGETHER
 5 HIGHLY PREJUDICIAL TO THE DEFENDENT IN REGARDS TO A FAIR TRIAL, HIS
 6 6-8-14 CONSTITUTIONAL RIGHTS ARE VIOLATED AND MADE A ~~MOCKERY~~ OF.
 7 DESIREE STATED SHE SEEN DEFENDENT MANY TIMES WITHOUT HIS
 8 CLOTHES ON (YET) NEVER MENTIONS THE DEFENDENTS TATTOO AT ALL; ITS
 9 BECAUSE SHE NEVER SEEN DEFENDENT NAKED AS STATE CLAIMED!
 10 [REMEMBER IN PRELIM. TRIAL HEARING PAGE 33 LINES 22-24] DESIREE
 11 WAS ASKED BY DEFENSE COUNSEL (Q.) HAVE YOU EVER SEEN A MAN WITHOUT
 12 HIS CLOTHES ON (A.) YES! MY DAD! SHE GOES ON ABOUT HOW SHE ALSO
 13 TOOK SHOWER WITH HER DAD. -- [IN REGARDS TO DESIREE MEANNESS.]
 14 (IN DEFENDENTS TRIAL ON TRIAL TRANS. PAGE 46 LINES 20-22) D.A. GRECO IS
 15 ASKING DESIREE (Q.) HOW LONG DID HE HAVE HIS PENIS INSIDE YOU THE 1ST
 16 TIME? (A.) 10 MINUTES. (ON TRIAL TRANS. PAGE 48 LINES 5-8) GRECO ASK'S
 17 DESIREE (Q.) DID HE PUT HIS PENIS INSIDE YOUR VAGINA? (A.) YES. (Q.)
 18 DID HE MOVE IT IN AND OUT (A.) YES. NOW REFER BACK TO WHEN
 19 DEFENSE COUNSEL QUESTION'D STATES EXPERT SAINTS DIRECTOR KATHY PEELE
 20 (Q.) MS PEELE DOES THE HYMEN HEAL UP?, IS THAT WHAT YOU TALKING
 21 ABOUT? I'M TRYING TO FOLLOW YOUR ANSWERS TO MR. GRECO IN TERMS OF
 22 "IF THERE WAS SOME KINDA BREAKAGE THERE (DOES IT HEAL UP) (A.) YES
 23 CORRECT." (Q.) WELL THEN AS FAR AS DESIREE IS CONCERNED, ARE YOU SAYING
 24 YOU THINK HER HYMEN IS HEAL'D? (A.) I DIDN'T SEE ANY EVIDENCE THAT
 25 THERE HAD BEEN ANY HEALING GOING ON, IT WAS NORMAL! CLEARLY.
 26 MORE COACHING BY STATE; IN DEFENDENTS [PRELIM. HEARING, PAGE 30
 27 LINES 14-15] COUNSEL SMUCK ASKED DESIREE (Q.) DID CHUCK (DEFENDENT)
 28 "EVER MAKE YOU TOUCH HIS PENIS? (A.) NO! NOW IN TRIAL D.A. GRECO

(AFFIDAVIT CONTINUES)

1 ASKED THIS QUESTION SEE TRIAL TRANS. PAGE 49 LINE 23-24 (Q), WHAT DID
 2 HE MAKE YOU TOUCH? (A.) HIS PENIS. NOW THIS AGAIN IS COACHING BY THE
 3 STATE TO GET ITS CONVICTION.. (ON TRIAL TRANS. PAGE ⁵³ ~~49~~ LINES 10-14)
 4 D.A. GRECO ASKING DESIREE (Q), DID THE DEFENDENT EVER ASK YOU TO
 5 PUT HIS PENIS IN YOUR MOUTH (A.) YES (Q), DID YOU DO THAT (A.) NO.
 6 NOW THIS QUESTION IS [HIGHLY PREJUDICIAL TO DEFENDENT] AND MEANT
 7 TO DO NOTHING MORE THAN TO INFLAME THE JURY AGAINST DEFENDENT,
 8 [BECAUSE] IF YOU LOOK AT THE DEFENDENT'S INTERROGATION TRANS. ON
 9 PAGE 14 LINES 31-33 YOU'LL SEE DET. STEIGHNIER ASKING THE DEFENDENT
 10 THE FOLLOWING IN REGARDS TO DESIREE (Q), DID YOU PUT YOUR PENIS IN HER
 11 MOUTH (A.) NO! ON PAGE 15 LINE 11 DETECTIVE STATES: (I BELIEVE YOU) - I
 12 KNOW WHAT HAPPENED AND THAT'S NOT ONE OF EM! [THE DET. OWN WORDS
 13 CLEAR THE DEFENDENT OF THIS ACCUSATION BY THE STATE] ALSO THIS
 14 ACCUSATION BY STATE HAS NEVER BEEN ADDRESSED TIL TRIAL. DURING
 15 DEFENDENT'S TRIAL THERE "MANY MAJOR" INCONSIDISTANCES IN BOTH
 16 DESIREE/SUMMER TESTIMONY'S FROM THE INTERVIEW ON TAPE WITH THE
 17 DETECTIVES THAT HAS PORTIONS MISSING OUT OF THEM TO PRELIM. HEARING
 18 TO DEFENDENT'S TRIAL. [THE RECORD SHOWS POSITIVE PROOF OF ALLEGED
 19 VICTIMS BEING COACHED BY STATE.] D.A. GRECO HAS PUT BOTH ALLEGED
 20 VICTIMS DESIREE/SUMMER IN AWKWARD LIES, AND HAD THEM COMMIT
 21 FULL PERJURY SO AS TO GAIN FAVORITISM WITH THE JURY FOR A CONVICTION.
 22 COUNSEL SMUCK DID NO INVESTIGATING AND ALLOWED THE STATE TO
 23 DO BASICALLY WHAT EVER IT WANTED TO - SO AS TO GET ITS CONVICTION,
 24 [COUNSEL SMUCK IF SHE WOULD'VE INVESTIGATED DEFENDENT'S MEDICAL
 25 RECORDS IN BEGINS AS TOLD TO] AND ASK MORE QUESTIONS, [GOT AN EXPERT
 26 TO TESTIFY AND BASICALLY JUST DO HER JOB, THEN THE RESULTS
 27 WOULD'VE BEEN TOTALLY DIFFERENT (I-A-C).] THE COURT IS AT FAULT
 28 FOR ALLOWING THE STATE TO DO WHAT EVER IT WISHED TO DO INCLUDING

SWORN

~~DEFENDENT~~ (AFFIDAVIT - CONTINUES)

1 ALLOWING THE D.A. TO GIVE DET. STEIGHMEIER THE PHOTOS OF DEFENDANT.

2 [DEFENDENT DID WISH TO TESTIFY AT HIS TRIAL.]

3 THE RIGHT TO TESTIFY ON ONE'S OWN BEHALF IS OF THE BASIC CONSTITUTIONAL

4 RIGHTS, OF THE SIXTH (6) U.S.C.A. RIGHTS OF THE ACCUSED IN CRIMINAL PROSECUTION

5 (THE FIFTH (5) U.S.C.A. RIGHT) ^{OF DUE PROCESS} ~~WAS VIOLATED, (THE DUE PROCESS 14TH DUE PROCESS~~

6 ~~PROVIDED PROTECTION OF LIVES~~ ^{OF LIVES} THE DEFENDENT IN THIS CASE [CR 94-

7 0345] ^{CM} HAD DEMONSTRATED HIS TRUE DESIRE TO TESTIFY (MAY 1994)

8 BEFORE HIS TRIAL BY WRITING A LETTER TO THE COURT (MARCH 03-94) ~~ALONG~~

9 WITH LETTER TO FIRE P.O. (ON APRIL 1ST 1994) AT SUPPRESSION HEARING ONCE

10 IT WAS FINALLY ESTABLISHED DEFENDENT IS GOING TO TRIAL AGAIN HE

11 TOLD HIS P.D. JANET C. SMUCK HE WANTS TO TESTIFY ^{CM} ~~TO TAKE THE STAND~~

12 ~~BEFORE~~! IN U.S. V. TEAGUE, 908 F.2d 761 (1990) THE COURT HELD: WE HOLD

13 ONLY THAT WHEN, DESPITE ANY EFFORTS BY DEFENSE COUNSEL TO CONVINCE

14 THE DEFENDENT THAT THE BEST STRATEGY IS TO REMAIN SILENT, THE

15 DEFENDENT DOES NOT PERSONALLY WAVE THE RIGHT TO

16 TESTIFY, AND IF THE DEFENSE COUNSEL FAILS TO ALLOW THE DEFEND-

17 ENT TO TAKE THE STAND [THE DEFENDENT'S RIGHT TO TESTIFY HAS

18 BEEN VIOLATED]. THE DEFENDENT'S COUNSEL NEVER ADDRESSED THE

19 COURT, TO STATE DEFENDENT'S DESIRE TO TESTIFY, IN HIS OWN BEHALF, ALL

20 SHE EVER TOLD THE DEFENDENT WAS [THE JURY WOULD FIND HIM GUILTY]

21 PERIOD! SEE: POST-CONVICTION TRANS. PAGE 95 LINES 23-24 [Q.] ^{DEF. COUNSEL} PLATTNER

22 ASKING P.D. SMUCK, (DID YOU TELL HIM HE WOULD BE FOUND GUILTY) A. YES.

23 THIS IS A VIOLATION OF DEFENDENT'S (6TH) U.S.C.A. RIGHTS. SEE POST CONVI

24 CTION TRANS. PAGE 7 LINES 7-13 (Q.) PLATTNER ASKING DEFENDENT, DID SHE

25 DISCUSS WITH YOU THE DANGERS OF TESTIFYING IF YOU TOOK THE STAND

26 (A.) YES. SAME PAGE LINES 11-13 (A.) SHE TOLD ME IF I TOOK THE STAND

27 THE JURY WOULD NOT BELIEVE ME, THEY WOULDN'T BE INTERESTED IN

28 WHAT I HAD TO SAY, AND SHE DOESN'T WANT ME TO TESTIFY

COUNSEL PLATTER QUESTION DEFENDENT.

- 1 SEE P.C.T) PAGE 8 LINES (6-9) (11-13) (17-19) AND PAGE 9 LINES 15-19,
 2 (LINE 6) (Q). DID YOU CONTINUE TO TELL MS. SMUCK DURING TRIAL ~~THAT~~ THAT YOU
 3 WANTED TO TESTIFY (A.) YES. I TOLD MS. SMUCK NUMEROUS TIMES IN TRIAL
 4 I WANTED TO TESTIFY, I) EVEN WROTE IT ON PAPER BECAUSE THE COURT TOLD
 5 ME TOO. (LINE 11 - I WAS WRITING NOTES TO HER "EXPLAINING, I WOULD LIKE
 6 TO GET UP THERE AND TESTIFY, ALL SHE DID IS KEPT PUSHING MY NOTES AWAY
 7 (LINES 17-19) Q. DID YOU EVER AGREE WITH HER THAT YOU SHOULD NOT TESTIFY?
 8 (A.) "ABSOLUTELY NOT." (LINE 15-19) (Q.) HOW COME YOU DIDN'T STAND UP AND
 9 TELL THE JUDGE, I WANT TO TESTIFY. (A.) SHE TOLD ME I COULDN'T DO THAT.
 10 (Q). AND YOU FOLLOWED HER ADVICE? (A.) THAT'S WHAT I WAS TOLD TO DO...
 11 [AFTER THE JUDGE HAD MY MOUTH TAPED IN FRONT OF JURY - HE ~~FINALLY~~ ^{FINALLY}
 12 HAD BAUER REMOVE IT AND THEN TOLD ME TO WRITE ON PAPER TO COUNSEL
 13 SHE WOULD ADDRESS IT TO COURT - WHICH NEVER HAPPENED]. THE
 14 DEFENDENT'S TRIAL COUNSEL NEVER ADDRESSED THE COURT TO STATE THE
 15 DEFENDENT'S DESIRE TO TESTIFY, IN HIS OWN BEHALF. [THE RIGHT TO
 16 TESTIFY IS A RIGHT THAT CAN NOT BE FORFEITED BY THE DEFENDENT'S
 17 ATTORNEY OR BY THE COURT] THE JUDGE NEVER ASKED IF DEFENDENT
 18 WISHED TO TESTIFY IN HIS OWN BEHALF. [A CRIMINAL DEFENDENT HAS THE
 19 RIGHT TO TAKE THE STAND IN HIS OWN DEFENSE] SITE: SAYRE V. ANDERSON
 20 P.C.T.
 21 238 F.3d 631 (5th 2001) POST. CONVICTION TRANS. PAGE 106 LINES 18-21,
 22 DEFENSE COUNSEL (PLATTER) ASKING TRIAL COUNSEL (SMUCK), THE FOLLOWING
 23 Q), OKAY, SO YOU REMEMBER AFTER THE STATE'S CASE IN CHIEF THAT HAD YOU
 24 SAT DOWN WITH MR. MAKI AND YOU HAD A DISCUSSION? (A.) NO. [SEE
 25 APRIL 1ST 1994] ⁴ SUPPRESSION HEARING, 10 DAYS BEFORE TRIAL, PAGE 17 -
 26 LINES 12-13) THE COURT: DO YOU FEEL YOU'VE HAD ENOUGH TIME TO DISCUSS
 27 THIS WHOLE THING WITH YOUR ATTORNEY? (LINES 14-17) DEFENDENT: SHE DISCUSSED
 28 IT ALL WITH ME YESTERDAY AND LAST NIGHT ON PHONE, AND AGAIN BEFORE
 COURT STARTED, AND ALL SHE SAID WAS (I HAVE NO WAY TO DEFEND MYSELF)!

(AFFIDAVIT- CONTINUES)

1 PAGE 17 LINES 20) DEFENDANT TO COURT (AND LIKE SHE SAYS, "HEY NO-ONE" IS
 2 GOING TO BELIEVE ME). ONCE ITS BEEN ESTABLISHED DEFENDANT IS GOING
 3 TO TRIAL (EVEN THOUGH JUDGE SHOWING CLEAR BIAS TO DEFENDANT, TELLING
 4 HIM (ON PAGE 15 LINE 17-18 QUOTE: "IF YOU THINK YOU'RE NOT GUILTY YOU'RE IN
 5 'NEVER-NEVER LAND'-UNQUOTE!") I TOLD COUNSEL AGAIN I WANT TO
 6 TESTIFY AT MY TRIAL.. (SO COUNSEL SMUCK IS COMMITTING PERJURY
 7 IN A COURT OF LAW!) (BY STATING SHE NEVER HAD A DISCUSSION WITH ME).
 8 (POST CONVICTION TRANS: PAGE 107 LINE 2-5) PLATTER TO SMUCK, (Q.) SO YOU DON'T
 9 REMEMBER HIM EVER TELLING YOU, I'M NOT GOING TO TESTIFY (A.) I DON'T
 10 REMEMBER HIM SAYING I'M NOT GOING TO TESTIFY.) THE RIGHT TO
 11 TESTIFY IS A RIGHT THAT CAN-NOT BE FORFEITED BY THE DEFENDANTS
 12 COUNSEL. [OFF RECORD] COUNSEL ~~WAS~~ ALWAYS TOLD DEFENDANT, HE HAD TO
 13 BE GUILTY, AND SHE WOULD ~~WAS~~ PREVENT HIM FROM TESTIFYING IN TRIAL,
 14 TO TELL HIS STORY. STILL DEFENDANT THOUGHT COUNSEL WOULD AT LEAST ADDRESS
 15 THE COURT. [THE RECORD IS VOID OF ANY CANVESS.]

16 THE STATE OF NEVADA, UPON THE MAKING OF A PLEA
 17 BARGAIN, REQUIRES THAT A PERSONAL CANVESS OF THE DEFENDANT [BY THE
 18 COURT] IS MANDATORILY REQUIRED ON THE RECORD, TO ENSURE THAT THE
 19 PLEA HAD BEEN, MADE KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY, AND
 20 THAT THE DEFENDANT MUST SHOW TO UNDERSTAND THE NATURE AND THE
 21 CHARGES ALONG WITH THE CONSEQUENCES OF THE PLEA.. JUST AS IN PLEA
 22 BARGAINS, HOW CAN THE TRIAL COURT DEMONSTRATE THAT THE DEFENDANT
 23 UNDERSTAND THE CONSEQUENCES OF WAIVING HIS RIGHT TO TESTIFY, IF
 24 [THE CANVESS OF DEFENDANT IS NOT ON RECORD] AND KNOWINGLY AND
 25 VOLUNTARILY INFORMED OF HIS RIGHTS AND CONSEQUENCES.
 26 THE RECORD IS VOID OF ANY TYPE OF CANVESS BY THE COURT
 27 VIOLATING DEFENDANTS ~~CONSTITUTIONAL~~ CONSTITUTIONAL RIGHTS.

28 [THE STATE CAN-NOT PRODUCE A WRITTEN WAIVER]

SWORN

(AFFIRMATION - CONTINUES)

1 TO PROVE AND SHOW HOW NO CANVASS OF THE DEFENDENT WAS DONE BY
 2 THE HONORABLE COURT [LOOK AT TRIAL TRANS. PAGE 192-196] FROM THE LAST WITNESS
 3 DESIREE (ROHRBACK) MENESS, TO THE START OF THE JURY INSTRUCTIONS.
 4 THE COURT NEVER ON RECORD INFORMED DEFENDENT OF HIS RIGHT TO TESTIFY!
 5 THE RIGHT TO TESTIFY IS A RIGHT THAT (CAN-NOT) BE FORFITED BY THE
 6 DEFENDENTS COUNSEL OR BY THE COURT. BUT ONLY BY A KNOWINGLY, VOLUNTARY
 7 AND INTELLIGENT WAIVER BY THE DEFENDENT HIMSELF.
 8 THE RESULTS IN DEFENDENTS CASE IS DICTATED BY TEAQUE AND UNITED
 9 STATES V. SCOTT, 909 F2d 488 (1990). THE DEFENDENTS CASE PRESENTS
 10 A MUCH CLEARER EXAMPLE OF A VIOLATION OF THE DEFENDENTS RIGHT
 11 TO TESTIFY THAT'S PRESENTED IN TEAQUE. [THE DEFENDENTS P.D. HAD
 12 RESTED WITHOUT CALLING THE DEFENDENT OR EVEN ADDRESSING THE COURT]
 13 BY DOING SO DEFENDENTS COUNSEL "ACTIVELY AND FORCEFULLY" PREVENTED THE
 14 DEFENDENT FROM TESTIFYING, DESPITE HIS CLEARLY AND EXPRESSED DESIRE
 15 TO DO SO! THE DEFENDENTS RIGHT TO TESTIFY WAS VIOLATED NOT ONLY BY
 16 HIS ATTORNEY WHICH BECOMES (I-A-C), BUT ARGUABLY BY THE COURT, "THIS
 17 VIOLATION IS NOT HARMLESS", THE LACK OF A WAIVER TO TESTIFY VIOLATED
 18 THE DEFENDENTS U.S.C.A RIGHTS TO DUE PROCESS/ DUE PROCESS UNDER EQUAL
 19 PROTECTION OF THE LAW. THE LOSS OF JURISDICTION AT THE POINT OF THE LAST
 20 WITNESS AND NO CANVASS OF THE DEFENDENT, TO DETERMINE THE KNOWING
 21 INTELLIGENT-WAIVER, VOLUNTARY BEFORE PROCEEDING, (IS STRUCTURAL ERROR)
 22 STRUCTURAL ERROR REQUIRES "AUTOMATIC - REVERSAL" AND HARMLESS ERROR
 23 CAN-NOT BE APPLIED! DEFENDENTS 5-6-14TH CONSTITUTIONAL RIGHTS WERE
 24 VIOLATED!

(SENTENCING - PHASE)

25
 26 TUE. MAY 17-1994) THE COURT ERRORED BY ALLOWING A NON-VICTIM
 27 TO TESTIFY AGAINST THE DEFENDENT AT HIS SENTENCING, PER NRS 176.015 (3)
 28 IT STATES A VICTIM CAN TESTIFY (NOT A NON VICTIM) NRS 173.402

(CONCLUSION OF ~~SWORN~~
SWORN AFFIDAVIT)

1. DEFINES A VICTIM AS A PERSON WHOM A CRIME HAS BEEN COMMITTED
2. A PERSON WHO HAS BEEN INJURED OR KILLED AS A DIRECT RESULT OF THE
3. COMMISSION OF THE CRIME. MS. COOMBS DON'T FIT INTO ANY OF THESE
4. CATEGORIES! THE CRIMES WHICH DEFENDENT WAS CONVICTED OF
5. WERE-NOT COMMITTED AGAINST HER (SHE'S NOT A SPOUSE AND IS NO
6. RELATION TO ALLEGED VICTIMS AT ALL.) (IN FACT MS. SMUCK - COUNSEL
7. HAD DEFENDENT'S SCHOOL RECORDS - JOB CORPS - BOY'S RAUCH - D-D-214-FBI
8. MILITARY RECORDS, ALL TO PROVE DEFENDENT LEFT HOME AT 12 YRS OLD.
9. BUT LIKE ALWAYS (REFUSED TO INVESTIGATE) AND USE EM AS PROOF, DEFENDENT
10. NEVER SEEN MS. COOMBS, AND REALLY DID NOTHING SHE CLAIMS) PERIOD!
11. DEFENDENT HAS NEVER EVEN BEEN ACCUSED OF ANY TYPE OF ANY
12. SEXUAL/LEWD ACT AT ALL IN HIS LIFE. SEE "FBI RECORDS". THE
13. NU.S. CT IN BUSCHAUER IS DIRECTLY ON POINT IN REGARDS TO VICTIM
14. IMPACT STATEMENT. IT DOES NOT ADDRESS BRINGING PEOPLE INTO COURT, ~~IT~~
15. WHO ARE NON-VICTIMS, IT PARTICULARLY ADDRESSES THE SUBJECT OF
16. "UN-CHARGED" PRIOR MISCONDUCT. NU.S. CT STATES SPECIFICALLY A NON
17. VICTIM'S CAN-NOT TESTIFY IT BECOMES PREJUDICIAL TO DEFENDENT.
18. NRS 176.015 (3) NRS. 213.005 NRS 176.145 BUSCHAUER V. STATE, 1990 N.S. CT.
19. IN GOODSON V. STATE AT 98 NV. 493, THE NV.S. CT. SAID, REFERRING TO ITS
20. DECISION IN THE SILKS DECISION, THAT AN ABUSE OF DISCRETION WILL BE
21. FOUND WHEN THE DEFENDENT'S SENTENCING IS PREJUDICED, FROM CONSIDERATION
22. OF INFORMATION OR ACCUSATIONS FOUNDED ON IMPALPABLE OR HIGHLY
23. SUSPECT EVIDENCE. IN RESPECT TO MS. COOMBS, NOT ONLY IS SHE A
24. NON VICTIM, THERE'S ABSOLUTLY NO CORROBORATION AT ALL TO ^{HER CM} ~~THE~~ ALLEGED
25. CLAIMS, THERE TOTALLY UN-FOUNDED, AND HIGHLY PREJUDICIAL
26. TO THE DEFENDENT. IAC AND COURT BEING BIAS AGAINST DEFENDENT
27. COMMITTING ABUSE OF DISCRETION WARRANTS REVERSAL OF CASE.
28. JUDGE SHOWS CLEAR BIAS STATING I HOPE YOU NEVER GET OUT OF PRISON!!

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2021-08-17 16:09:43.736.
ROBERT BELL, ESQ. - Notification received on 2021-08-17 16:09:43.791.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

08-17-2021:16:06:29

Clerk Accepted:

08-17-2021:16:09:17

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Petition

- **Continuation

- **Continuation

Filed By:

Deputy Clerk BBlough

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

FILED

OCT 21 2021

ALICIA L. LERUD, CLERK
By: *[Signature]*
DEPUTY CLERK

1 CHARLES MAKI # 42820

2 L.C.C. 1200 Prison Rd.

3 Lovelock, NV 89419

4

5

6 IN THE 2nd JUDICIAL DISTRICT COURT OF THE
7 STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

8

9 CHARLES MAKI,
10 Petitioner,

11 VS.

12 THE STATE OF NEVADA,

13 WARDEN GARRETT,

14 RESPONDENT

CASE NO. CR94-0345

DEPT. NO. 8.

15

16

17

18 MOTION FOR SUBMISSION OF THE RECORD

19

20 "Comes now," Petitioner, Charles Maki "in Pro se"
21 and move this honorable Court to Submit the Record
22 for review and an order for Respondent's Reply.

23 Petitioner Presented the Petition for Actual, Factual
24 Innocence Pursuant to NRS 34.900 To NRS 34.990
25 by Providing A Copy To the L.C.C.'s Free Staff
26 Law Library Clerk For the Attorney General of Nevada.
27 The original and one copy was sent to this Court,
28 and Petitioner has received a Filed Stamped Copy Book.

1 all documents were Presented to the Law Library
2 on August/10/2021, and was Filed by this Court on
3 August/12/2021.

4
5 CONCLUSION

6 Petitioner Prays that this Court submits
7 the Petition for appropriate Procedures
8 Pursuant to this Court's Rulings and Fed
9 Rules of Civ. Procedures. Dated This 13th day of Oct 2021

10
11 SG: Charles Maki #42820

12 Charles Maki #42820

13
14
15 CERTIFICATE OF SERVICE

16
17 Petitioner hereby Certify that I mailed true
18 and correct Copies of the foregoing Motion For
19 submission of the Records by Presenting Same
20 to the L. CC's Law Library Clerk for mailing by
21 U.S. Mail Postage Prepaid and addressed as follows

22
23 Second Judicial District Court Washoe Dist Attorney
24 Washoe County, 75 Court St. 1 South Sierra 4th Floor
25 Reno, NV 89501 Reno, NV 89501

26
27 SG: Charles Maki #42820
28 Name Charles Maki #42820

V7.1370

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Motion For Submission of the Record

(Title of Document)

filed in case number: CR 94-0345

☒

Document does not contain the social security number of any person

-OR-

☐

Document contains the social security number of a person as required by:

☐

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐

For the administration of a public program

-or-

☐

For an application for a federal or state grant

-or-

☐

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: Oct/13/2021

Charles Maki
(Signature)

Charles Maki
(Print Name)

Prose
(Attorney for)

CODE 3860

FILED

2021 NOV -2 AM 10:16

ALICIA L. LEROY

CLERK OF THE COURT
BY *[Signature]*

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

CHARLES MAKI,

Plaintiff,

vs.

Case No. CR94-0345THE STATE OF NEVADA et al.,Dept. No. 8Defendant.
/

REQUEST FOR SUBMISSION OF MOTION

It is requested that the motion for Petition For Actual /Factual Innocence

_____, which was filed on the 17th day of
AUGUST, 2021, in the above-entitled matter be submitted to the Court
for decision.

(The undersigned certifies that a copy of this request has been mailed to all
counsel of record.)

DATED this 27th day of October, 2021.Charles Maki #42820

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADAAFFIRMATION
Pursuant to NRS 239B.030 and 603A.040The undersigned does hereby affirm that the preceding document, RequestFor submission of Motion
(Title of Document)filed in case number: CR 94-0345☒

Document does not contain the personal information of any person

- OR -

☐

Document contains the social security number of a person as required by:

☐

A specific state or federal law, to wit:

(State specific state or federal law)

- or -

☐

For the administration of a public program

- or -

☐

For an application for a federal or state grant

- or -

☐Confidential Family Court Information Sheet
(NRS 123.130, NRS 125.230, and NRS 125B.055)Date: October 12/2021Charles Maki #42820
(Signature)Charles Maki #42820
(Print Name)n/a Pro se
(Attorney for)

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

CHARLES MAKI,

Plaintiff,

vs.

Case No. CR94-0345

Dept. No. 8

THE STATE OF NEVADA

Defendant.
_____ /**ORDER FOR STATE TO RESPOND**

Before the Court is a *Petition for Actual Factual Innocence* (hereinafter, "*Petition*") filed on August 17, 2021, and submitted on November 2, 2021.

Having considered the *Petition*, and the record in its entirety, the Court finds a response from the State would be beneficial.

Accordingly, the State of Nevada shall file a responsive document to the *Petition for Actual Factual Innocence* within thirty (30) days of the date of this Order. Thereafter, Mr. Maki may have twenty (20) days to file a reply and any renewed request for submission.

IT IS SO ORDERED.**DATED** this 16 day of December, 2021.
BARRY L. BRESLOW
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 16 day of December, 2021, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JENNIFER NOBLE, ESQ.

ROBERT BELL, ESQ.

ROBERT STORY, ESQ.

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

Charles J. Maki, #42820
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419



Judicial Assistant

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2021-12-16 14:41:40.555.

ROBERT BELL, ESQ. - Notification received on 2021-12-16 14:41:40.613.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

12-16-2021:14:40:31

Clerk Accepted:

12-16-2021:14:41:08

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord to File

Filed By:

Judicial Asst. CKuhl

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

CODE No. 2300
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200
Attorney for Respondent

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

v.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

MOTION TO DISMISS PETITION

COMES NOW, the State of Nevada, by and through Jennifer P. Noble, Chief Appellate Deputy, and files this Motion to Dismiss Petitioner Charles Joseph Maki's (hereinafter, "Maki") "Petition for Actual Factual Innocence," filed on August 17, 2021. This Motion is based on the pleadings and papers on file with this Court, and the following points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

In 1994, Maki sexually assaulted two little girls, aged seven and ten. He licked the ten-year-old's breasts, digitally penetrated her, and penetrated her with his penis at least three separate times. See PSI. He also tried to get that child to fellate him, but she refused. Maki also fondled the seven-year-old and penetrated her with his penis and his

fingers. *Id.* He also took a shower with the seven-year-old and had her wash his genitals. *Id.* As this Court noted in its order, a jury of his peers convicted him of three counts of Sexual Assault on a Child Under the Age of Fourteen Years, and five counts of Lewdness With a Child Under the Age of Fourteen Years. *Id.*

Over the last two decades, Maki has sought post-conviction relief in various forms. This Court has declined to grant relief, and the Nevada Supreme Court has affirmed those decisions. He styles his latest pleading as a petition to establish factual innocence. Such petitions require the petitioner to comply with the provisions of NRS 34.960:

2. A petition filed pursuant to subsection 1 must contain an assertion of factual innocence under oath by the petitioner and must aver, with supporting affidavits or other credible documents, that:

- (a) Newly discovered evidence exists that is specifically identified and, if credible, establishes a bona fide issue of factual innocence;
- (b) The newly discovered evidence identified by the petitioner:
 - (1) Establishes innocence and is material to the case and the determination of factual innocence;
 - (2) Is not merely cumulative of evidence that was known, is not reliant solely upon recantation of testimony by a witness against the petitioner and is not merely impeachment evidence; and
 - (3) Is distinguishable from any claims made in any previous petitions;
- (c) If some or all of the newly discovered evidence alleged in the petition is a biological specimen, that a genetic marker analysis was performed pursuant to NRS 176.0918, 176.09183 and 176.09187 and the results were favorable to the petitioner; and
- (d) When viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial, the newly discovered evidence demonstrates the factual innocence of the petitioner.

///

///

3. In addition to the requirements set forth in subsection 2, a petition filed pursuant to subsection 1 must also assert that:

(a) Neither the petitioner nor the petitioner's counsel knew of the newly discovered evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction petition, and the evidence could not have been discovered by the petitioner or the petitioner's counsel through the exercise of reasonable diligence; or

(b) A court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the newly discovered evidence.

Here, Petitioner has not complied with the bare requirements of NRS 34.960. He merely asserts that his attorney was ineffective for not introducing his medical records during trial. This is not newly discovered evidence. It is also a repeated claim from previous petitions for writ of habeas corpus, as are the additional claims of ineffective assistance and bare allegations of *Brady* violations peppered throughout the petition. The Nevada Supreme Court and Nevada Court of Appeals have affirmed the dismissal of Petitioner's prior petitions as procedurally barred. *See* Order of Affirmance, Docket No. 66144, December 11, 2014; Order of Affirmance, Docket No. 78260-COA, December 27, 2019.

Because the petition does not meet the statutory requirements, this Court should dismiss it. NRS 34.960 (4).

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: January 18, 2022.

CHRISTOPHER J. HICKS
District Attorney

By /s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 18, 2022, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Charles Maki #42820
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-01-18 09:35:37.916.
ROBERT BELL, ESQ. - Notification received on 2022-01-18 09:35:37.971.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

01-18-2022:09:06:05

Clerk Accepted:

01-18-2022:09:35:08

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Mtn to Dismiss Pet

Filed By:

Jennifer Patricia Noble

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

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JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

FILED

2022 FEB -4 PM 2:13

ALICIA L. LERUD
CLERK OF THE COURT
BY Sladabianchi
DEPUTY

1 CHARLES JOSEPH MAKI # 42820

2 LCC-1200 Prison Rd-

3 Lovelock, NV 89419

4

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF WASHOE

8

9 CHARLES JOSEPH MAKI,

10 Petitioner,

Case No. CR94-0345

11 V-

DEPT. No. 8

12 THE STATE OF NEVADA,

13 Respondent-

14

15

16 PETITIONER'S MOTION IN OPPOSITION TO RESPONDENT'S

17 MOTION TO DISMISS PETITION

18

19 "COMES NOW, "Petitioner," CHARLES JOSEPH MAKI, "IN PRO SE;

20 and Files Petitioner's Motion in opposition to Respondent's

21 MOTION TO DISMISS THE PETITION. This Motion is based on the

22 Pleadings and Papers on File with this Court, and the following

23 POINTS and Authorities.

24

25 MEMORANDUM OF POINTS AND AUTHORITIES

26 IN (1994), The STATE FALSELY accused Petitioner by way

27 OF INFORMATION, The STATE alleged that I sexually assaulted

28 the two alleged victims. And other heinous crimes, and

1 reiterates languages simply to color me up all over again.
 2 The state's Personal intentional method is to Ignore the
 3 deeply embedded facts that goes to the heart of my Actual
 4 Factual Innocence. The state fails to acknowledge the facts,
 5 that summer, "one of the alleged victims were asked; and I
 6 quote: [summer, did his Private ever go inside your Private in
 7 December]? and the Answer/and or response was No. See: the
 8 Transcript document Marked-Exhibit-D#2 Line(12)and(13).
 9 An investigation into the history of the District Attorney's
 10 office and the office of the Attorney General's always tends
 11 to subvert the laws, Manipulate Key Points in a case, and
 12 ignore Key Points that should actually and does actually
 13 raise doubt in a state's or Federal Case, i.e., Summer's
 14 First answer after being asked that question, "there should
 15 be no further Manipulations by the state nor the defense,
 16 the situation then becomes an issue of leading that witness,"
 17 the issue is then tainted, and no longer the witness's own
 18 genuine statement. The state further, "in this case make
 19 attempts to ignore the true facts that there are Medical
 20 evidence that proves the state's case has flaws and
 21 unreliable presentations in it. The facts that the defendant
 22 was in a medical condition that any Jurist or reason
 23 could find it debatable that the defendant could not
 24 have committed the crimes charged in the state's case.
 25 Again see: Exhibit Cover Page 2 Affidavit Filed Aug/17/2021
 26 and the Petition for Actual Factual Innocence Filed also
 27 August/17/2021. Respondents further, "attempts to turn a
 28 blind eye to the laws of NRS 34.900 to 34.910 which

1 into affect in the year of (2019) which allows a Petitioner
 2 to Present claims of his/her actual factual innocence
 3 that's not subject to time bars. Respondent's makes
 4 an attempt to down Play [NRS 34.900 To NRS 34.990] by
 5 Focusing and trying to undermine the Court into focusing only
 6 on NRS 34.960. Petitioner has complied with the Provisions of
 7 NRS 34.900 To NRS 34.990 distinctly and formally, Petitioner
 8 has Presented his Pleadings which are required to be simple,
 9 Concise, and direct also Pursuant to Fed.R. Civil P. 8(e).
 10 This action requires an Evidentiary hearing to the
 11 least, failure to do so or Grant Petition will subject
 12 Petitioner to a miscarriage of Justice and extremely
 13 Prejudicial actions by the state and other officials
 14 under color of state and federal laws, "under oath of
 15 office- Should this Court or any other Superior Court
 16 find that Petitioner's Counsel knew of this newly dis-
 17 covered evidence at the time of trial or sentencing or
 18 in time to include the evidence in any previously filed
 19 Post-trial Motion or Postconviction Petition will
 20 reflect that the trial Court Violated Petitioner's
 21 6th and 14th Amendment rights to the United States
 22 Constitution by previously denying any claims or
 23 ineffective-assistance or Counsel. See: Marvie Hill Vs.
 24 State of Nevada (Michael Vallari) Trial Judge, whom made
 25 the statements to the supreme Court that he did not abuse
 26 his discretions by denying defendant Hill his right to
 27 have exculpatory evidence Presented in Court, "that
 28 would have vindicated Hill. The Judge went on to help

1. and stated that the defendant's Counsel Failed to exercise
 2. due diligence and file Pretrial Motions For the Material
 3. Witness and OR to allow the exculpatory evidence
 4. in for the defense, Therefore the Judge's statements to
 5. the record implied that Counsel was ineffective. The
 6. Supreme Court Reversed and Remanded this case.
 7. The Trial Judge had previously denied Hill's Claims
 8. of Ineffective Assistance of Counsel. The State and
 9. OR the Judge should not be allowed to have it both
 10. ways. The Supreme Court Reversed and Remanded this
 11. Hill's Case back to the trial Court for further and
 12. appropriate Procedures in that Matter. The State is
 13. responsible when they provide a Counsel to represent a
 14. defendant that's proven to be ineffective. The state has a
 15. duty to protect a defendant's (6th) and (14th) Amendment
 16. due Process rights. There are sections in Petitioner's
 17. Case that goes towards the evidence of Petitioner's
 18. Actual Factual Innocence. See: Trial Page (105) lines
 19. (15-16) questions about the Petitioner by his Public-
 20. Defender. (Line Q was He working? (Line A No-He was
 21. Disabled! (Line 22-24) Q when you say He was disabled,
 22. Could you describe what you meant By that. A well
 23. he had an accident, He Fell through A skylight. Page 106
 24. Line (1) He was pretty Broken up. Line (2) Had metal Pins
 25. in his back and legs. The Transcripts went on to reflect
 26. that questions were asked By Janet Cobbs Smuck (P.D.)
 27. TT-Pg. 106 lines 6-7 que. do you ever remember Him Being in-
 28. A wheel chair A. No, He was never in A wheel chair. See TT-

(CUM)
GARY MENNESS
~~the Public Defender~~

1 P. 106 was lying on P. 106
2 He knew my Wheelchair was in the back of my truck,
3 because I was still in Recovery status. Janet Smuck knew
4 of this. Respondents are trying to Undermine the
5 Court into ruling this Petition as a Collateral Petition
6 for review to subject it to the rules of A.E.D.P.A.
7

CONCLUSION

9 Petitioner has Complied with the bare requirements
10 of NRS 34.900 to NRS 34.990. The State attempted
11 to hide the Medical Records, Discovery is needed to
12 also determine the possibility of my own Trial Counsel
13 Conspiring with the State to hide this Medical evidence,
14 which took me a wide range of years to track down
15 these Medical Files See: Petition for Actual Vastual
16 Innocence Filed 08/17/2021 and the following Exhibits.
17 Petitioner Press that this Court Grants Petition and
18 orders an evidentiary hearing and or dismiss
19 or lay aside Petitioner's sentence in the interest of
20 Justice and to avoid a miscarriage of Justice that
21 leads to extreme prejudicial actions against the Petitioner,
22 or other relief deemed necessary by this Court.

23 Dated: This 2ND DAY OF FEBRUARY 2022

24 Signature: Charles Maki #42820

25 NAME: Charles Maki #42820

26 Petitioner in Pro Se

CERTIFICATE OF SERVICE

Petitioner CERTIFY that I Mailed a True and
 Correct Copy of the Forgoing Petitioner's Motion in
 To Respondent's Motion TO Dismiss Petition - BY Sending
 documents to the Law Library Free Staff for mailing by
 U.S. Mail Postage Prepaid and addressed as follows
 Dated: This 2nd Day of FEBRUARY 2022

2nd Jud. Dist. Court Christopher J. Hicks
 Washoe County, 75 Court Street #7747-1 So. Sierra Street
 Reno, NV 89501 Reno, NV 89501

SIG: ~~chara mat~~ #42820
 Name: Charles Maki #42820

Affirmation Pursuant to NPS2396030

The undersigned does hereby Affirm that the preceding
 document does not contain the social security number
 of any person. DATED This 2nd Day of FEBRUARY 2022.

SIG: ~~chara mat~~ #42820
 NAME Charles MAKI

Petitioner in Pro Se

1 Mr. Maki, because obviously at this point, a doctor can't go
2 examine them physically and psychologically. We couldn't have
3 gotten an order from the Court allowing it at this point in
4 time.

5 But the reason I think this should have been done are
6 inconsistencies that the children made and these aren't minor
7 inconsistencies. These are fairly major. The most major one
8 is that under oath at the preliminary hearing, it was Summer
9 who said, and I'll quote on page 42 of the preliminary hearing
10 transcript: Question, and then later on, did he ever put his
11 private inside your private? Answer: I'm not sure. Question:
12 Summer, did his private ever go inside your private in
13 December? Answer: No. That's pretty clear. Is that a minor
14 inconsistency regarding Count Five where Summer alleges Mr.
15 Maki sexually assaulted her with his penis? That's a glaring
16 inconsistency.

17 Now, later on, in examination, right after that, Mr. Greco
18 said: Wait a minute, Summer, didn't you tell an officer when
19 he interviewed you that Mr. Maki assaulted you? Yeah. Did you
20 tell him the truth? Yes. But the point is, whether you want
21 to believe it, your Honor, this was really good ammunition.
22 This was real good information that a defense lawyer could have
23 used to present the Court such as yourself after a preliminary
24 hearing to say: Judge, this is the basis of a motion to have

EXHIBIT D #2

CODE No. 3790
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200
Attorney for Respondent

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

* * *

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

v.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____/

REPLY IN SUPPORT OF MOTION TO DISMISS PETITION

COMES NOW, the State of Nevada, by and through Jennifer P. Noble, Chief Appellate Deputy, and replies in support of its Motion to Dismiss Petitioner Charles Joseph Maki's (hereby "Petitioner") "Petition for Actual Factual Innocence." This Reply is based on the pleadings and papers on file with this Court, and the following points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

In 1994, Maki sexually assaulted two little girls, aged seven and ten. He was convicted of three counts of Sexual Assault on a Child Under the Age of Fourteen Years, and five counts of Lewdness With a Child Under the Age of Fourteen Years. *Id.* He styles his latest pleading as a petition to establish factual innocence. Such petitions must comply with NRS 34.960. In its Motion to Dismiss, the State observed that the

petition fails to comply with the provisions of that section and does not even identify newly discovered evidence. Maki's opposition highlights that the "facts" he wishes this Court to consider are neither new nor exculpatory. He claims that the State "fails to acknowledge the facts" but then simply cites to part of the trial transcript containing his trial attorney's closing argument regarding purported inconsistencies in the child victim's disclosures. Opposition, 2:4-8. This is not new, it is not evidence, and it certainly does not establish Maki's actual innocence. Further, he offers bare allegations of medical records that he claims would establish he suffered from an unspecified medical condition that rendered him incapable of committing the charged crime, which included digital penetration and forced oral copulation. *Id.*, 2:18-25.

Maki goes on to claim that a hearing is mandatory pursuant to the Federal Rules of Civil Procedure, which do not apply to these state proceedings. For several pages, he contends that this Court and the Nevada Supreme Court erred by denying his prior petitions, again citing to the trial transcript. *Id.*, 3-6.

Because Maki has not even facially complied with the statutory requirements outlined by NRS 34.900 et sequitur and contains no allegations regarding newly discovered evidence that might establish his innocence, this Court should summarily dismiss the petition.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: February 7, 2022.

CHRISTOPHER J. HICKS
District Attorney

By /s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on February 7, 2022, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Charles Maki #42820
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA

CODE No. 3860
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200
Attorney for Respondent

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

* * *

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

v.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

REQUEST FOR SUBMISSION

It is requested that the Motion to Dismiss Petition filed on January 18, 2022, be submitted to the Court for decision.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: February 7, 2022.

CHRISTOPHER J. HICKS
District Attorney

By /s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on February 7, 2022, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Charles Maki #42820
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-02-07 13:58:27.265.

ROBERT BELL, ESQ. - Notification received on 2022-02-07 13:58:27.363.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

02-07-2022:13:42:47

Clerk Accepted:

02-07-2022:13:57:58

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Reply to/in Opposition
Request for Submission

Filed By:

Jennifer Patricia Noble

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

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

CHARLES MAKI,

Petitioner,

vs.

Case No. CR94-0345

Dept. No. 8

THE STATE OF NEVADA

Respondent.
_____/**ORDER GRANTING MOTION TO DISMISS PETITION**

Before the Court is a *Petition for Actual Factual Innocence* (hereinafter, "*Petition*") filed by Petitioner, CHARLES MAKI, on August 17, 2021. Respondent, THE STATE OF NEVADA, did not file a responsive pleading, and Petitioner submitted the *Petition* on November 2, 2021.

The Court considered the *Petition*, and found a response from the State would be beneficial; Accordingly, the Court issued an *Order for State to Respond* on December 16, 2021. A *Motion to Dismiss Petition* was filed by Respondent on January 18, 2021, to which the Petitioner filed an *Opposition* on February 4, 2022. The Respondent filed a *Reply* on February 7, 2022, and thereafter submitted this matter for decision.

Having reviewed the pleadings and relevant authorities, the Court finds, and orders as follows:

///

///

///

ANALYSIS

Petitions of factual innocence are required to comply with the provisions enumerated in NRS 34.960; An assertion of factual innocence under oath by Petitioner must aver, with supporting affidavits or other credible documents, that:

- (a) Newly discovered evidence exists that is specifically identified, and if credible, establishes a bona fide issue of factual innocence;
- (b) The newly discovered evidence identified by the Petitioner:
 - (1) Establishes innocence and is material to the case and the determination of factual innocence;
 - (2) Is not merely cumulative of evidence that was known, is not reliant solely upon recantation of testimony by a witness against the Petitioner and is not merely impeachment evidence; and
 - (3) Is distinguishable from any claims made in any previous petitions;
- (d) When viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial, the newly discovered evidence demonstrates the factual innocence of the petitioner.

Here, Petitioner asserts counsel was ineffective for failing to introduce his medical records during trial. Petitioner argues medical records would have demonstrated he suffered from a medical condition that rendered him incapable of committing the charged crime.

Opposition, 2: 18-25. The medical records are not newly discovered evidence. Petitioner has raised this claim as well as additional ineffective assistance claims in his previous petitions for writ of habeas corpus. The Nevada Court of Appeals and the Nevada Supreme Court have affirmed the dismissal of Petitioner's prior petitions as procedurally barred. *See* Order of Affirmance, Docket No. 66144, December 11, 2014; Order of Affirmance, Docket No. 78260-COA, December 27, 2019. The Court is not inclined to deviate from the Nevada Court of Appeals, and the Nevada Supreme Court's findings.

Furthermore, Petitioner argues the State “fails to acknowledge the facts” and highlights facts he wishes the Court would consider. However, he cites to his trial transcript, specifically the trial attorney’s closing argument. *Opposition*, 2:4-8. These facts are not novel information, nor are they exculpatory evidence.

Defendant Maki’s Petition does not meet the statutory requirements specified in NRS 34.900 and does not present allegations of newly discovered evidence. Therefore, the Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

DATED this 15 day of March, 2022.



BARRY L. BRESLOW
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 15 day of March, 2022, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JENNIFER NOBLE, ESQ.

ROBERT BELL, ESQ.

ROBERT STORY, ESQ.

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

Charles J. Maki, #42820
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419



Judicial Assistant

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-03-15 13:08:59.455.

ROBERT BELL, ESQ. - Notification received on 2022-03-15 13:08:59.861.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-15-2022:13:08:24

Clerk Accepted:

03-15-2022:13:08:40

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Granting Mtn

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

Address:

ROBERT STORY,
ESQ.

2450 Vassar Street

Suite 3B

Reno, NV 89502

FILED

2022 MAR 31 AM 11:44

ALICIA LERDD
CLERK OF THE COURT
BY [Signature]
DEPUTY

1 Charles Maki # 42820
2 L.C.C. 1200 Prison Rd.
3 Lovelock, NV 89419-510
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 CHARLES MAKI,
10 Petitioner,

11 VS. Case No. CR94-0345

12 THE STATE OF NEVADA
13

14 Respondent /
15

16 NOTICE OF APPEAL
17

18 "Comes Now," Petitioner, Charles MAKI, In Pro Se;
19 And Filed this NOTICE OF APPEAL From an order of
20 the Court Granting Respondent's Motion to dismiss-
21 Petitioner's Petition. The ORDER was (Filed on March/15/2022).
22 Petitioner Filed his Petition on (August/17/2021)
23 Dated This 28th DAY OF MARCH 2022
24

25 SIGNATURE Charles Maki

26 Charles Maki Doc No. 42820
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that I Filed A True and Correct copy-
3 of the Notice of Appeal, by Presenting same to
4 the Lovelock Correctional Center's Free Staff Law
5 Library Clerk For mailing by U.S. Postal Services -
6 Postage Prepaid and addressed as follows.

7 DATED THIS 28th DAY OF MARCH 2022

8

9

second Judicial District Court

10

Washoe County 75 Court St.

11

Reno, Nevada 89501

12

13

SIGNATURE ~~charles maki~~

14

Charles Maki # 42820

15

16

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27

28

Code 1310

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

CHARLES MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Charles Maki.
2. This appeal is from an order entered by the Honorable Judge Barry L. Breslow.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Charles Maki #42820
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, Nevada 89419-5110

4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Jennifer P. Noble, Esq., SBN: 9446
P.O. Box 11130
Reno, Nevada 89520

5. Respondent's attorney is not licensed to practice law in Nevada: NA

6. Appellant is represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on February 10th, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Granting Motion to Dismiss Petition filed March 15th, 2022.
11. The case has been the subject of a previous appeal to the Supreme Court.
Supreme Court No.: 63845, 66144, 67717, 67800, 69049 and 78260
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 31st day of March, 2022.

Alicia L. Lerud
Clerk of the Court
By: /s/ Y.Viloria
Y.Viloria
Deputy Clerk

Code 1350

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

CHARLES MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

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 31st day of March, 2022, 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 31st day of March, 2022.

Alicia L. Lerud
Clerk of the Court
By /s/Y.Viloria
Y.Viloria
Deputy Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-03-31 15:39:14.825.

ROBERT BELL, ESQ. - Notification received on 2022-03-31 15:39:15.309.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-31-2022:15:38:44

Clerk Accepted:

03-31-2022:15:38:58

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

Address:

ROBERT STORY,
ESQ.

2450 Vassar Street

Suite 3B

Reno, NV 89502

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84485
District Court Case No. CR940345

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble
Alicia L. Lerud, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/04/2022	Appeal Filing Fee waived. Criminal. (SC)
04/04/2022	Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day. (SC)

DATE: April 04, 2022

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-04-06 15:35:10.1.

ROBERT BELL, ESQ. - Notification received on 2022-04-06 15:35:10.725.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

04-06-2022:15:34:23

Clerk Accepted:

04-06-2022:15:34:47

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

Address:

ROBERT STORY,
ESQ.

2450 Vassar Street

Suite 3B

Reno, NV 89502

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84485
District Court Case No. CR940345

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble
Alicia L. Lerud, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/04/2022 Appeal Filing Fee waived. Criminal. (SC)
04/04/2022 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day. (SC)

DATE: April 04, 2022

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-04-07 16:09:53.373.

ROBERT BELL, ESQ. - Notification received on 2022-04-07 16:09:54.763.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

04-07-2022:16:08:07

Clerk Accepted:

04-07-2022:16:09:19

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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NEVADA

ROBERT C. BELL, ESQ.

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ROBERT STORY, ESQ. for CHARLES MAKI

Address:

ROBERT STORY,
ESQ.

2450 Vassar Street

Suite 3B

Reno, NV 89502


IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84485

FILED

APR 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER DIRECTING TRANSMISSION OF RECORD
AND REGARDING BRIEFING*

Having reviewed the documents on file in this pro se appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g). Respondent need not file a response to any brief filed by appellant, unless ordered to do so by this court. NRAP

46A(c). This court generally will not grant relief without providing an opportunity to file a response. *Id.*

It is so ORDERED.

 C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2022-04-11 15:01:15.074.

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Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

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Address:

ROBERT STORY,
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