

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. NEWSOME, JR.,)

#1194269,)

Appellant,)

v.)

STATE OF NEVADA,)

Respondent.)

Electronically Filed
Jan 20 2022 12:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.: **83475**

E-FILE

D.C. Case No.: C-17-321043-1

Dept.: **IX**

APPELLANT'S APPENDIX VOLUME 1

Appeal from the denial of a Post Conviction Petition for Writ of Habeas Corpus

Eighth Judicial District Court, Clark County

TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 000854
Law Office of Terrence M. Jackson
624 South 9th Street
Las Vegas, Nevada 89101
(702) 386-0001
Terry.jackson.esq@gmail.com

STEVEN B. WOLFSON
Nevada Bar No. 001565
Clark County District Attorney
200 E. Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Steven.Wolfson@clarkcountyda.com

AARON D. FORD
Nevada Bar No. 007704
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

...
Counsel for Appellant

Counsel for Respondent

MASTER INDEX

Case No.: 83475

Document	(file stamp date in parenthesis)	Volume	Page No.
	[report and/or hearing date in brackets]		
Court Minutes-All Pending Motions	[2-09-17]	1	09
Court Minutes-All Pending Motions	[3-31-21]	1	157
Confirmation of Counsel			
Court Minutes-Grand Jury Indictment	[2-2-17]	1	004
Court Minutes-Grand Jury Indictment	[2-09-17]	1	010
Court Minutes-Initial Arraignment	[2-16-17]	1	14
Defendant's Sentencing Memorandum with Exhibits	(<u>2/07/2018</u>)	1	57-99
Findings of Fact, Conclusions of Law and Order			
	[8-4-21] (<u>8/20/2021</u>)	1	211-224
Guilty Plea Agreement	(<u>12/14/2017</u>)	1	25 - 32
Indictment	(<u>02/02/2017</u>)	1	<u>01</u> - 03
Judgment of Conviction (Plea of Guilty)	(<u>3/05/2018</u>)	1	100-101
Judgment of Conviction (Plea of Guilty) <i>Co-Defendant</i>	(<u>5/22/2018</u>)	1	102
Judgment from NSC: 79044	(<u>8/11/2020</u>)	1	148
Motion to Correct Illegal Sentence <i>Pro Per</i>	(<u>3/09/2021</u>)	1	150-156
Notice of Appeal <i>Pro Per</i>	(<u>6/17/2019</u>)	1	141-144
Notice of Appeal	(<u>9/02/2021</u>)	1	226-227

Notice of Entry of Findings of Fact, Conclusions of Law (<u>8/24/2021</u>)	1	225
Order of Affirmance: 79044-COA (<u>07/13/2020</u>)	1	145-147
Remittitur from NSC: 79044 (<u>8/11/2020</u>)	1	149
Reply to State's Response (<u>7/23/2021</u>)	1	206-210
Sentencing Memorandum with Exhibits [2-8-18] (<u>2/05/2018</u>)	1	33-56
State's Opposition to Defendant's Motion to Correct Illegal Sentence [4-26-21] (<u>4/20/2021</u>)	1	158-163
State's Response to Defendant's Supplemental Points & Authorities in Support of WHC for Post Conviction Relief [8-4-21] (<u>7/07/2021</u>)	1	182-205
Second Amended Superseding Indictment (<u>12/14/2017</u>)	1	23-24
Superseding Indictment (<u>02/09/2017</u>)	1	05-08
Supplemental Points & Authorities in Support of Writ of Habeas Corpus for Post Conviction Relief (<u>6/02/2021</u>)	1	164-181
Waiver of Potential and/or Actual Conflict (<u>02/16/2017</u>)	1	11-13
► Transcripts to Follow: (<u>file stamp date underlined & in parenthesis</u>) [report and/or hearing date in brackets]		
Initial Arraignment: Indictment Warrant Ret. [6-12-13] (<u>1/15/2015</u>)	1	123-125
Motion to Correct Illegal Sentence [8-4-21] (<u>9/10/2021</u>)	1	228- 238
Sentencing [2-8-18] (<u>4/05/2019</u>)	1	103-128
Status Check: Trial Readiness [12-14-17] (<u>5/16/2019</u>)	1	129-140
Superseding Indictment [2-8-17] (<u>2/28/2017</u>)	1	15 - 22
End Transcripts		

CERTIFICATE OF SERVICE

I certify I am an assistant to Terrence M. Jackson, Esquire; a person competent to serve papers, not a party to the above-entitled action and on the 20th day of January 2022, I served a copy of the foregoing: Appellant Richard Allan Newsome Jr.'s Opening Brief and the Appendix and Index, Volumes 1, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and by U. S. mail with first class postage affixed to the Nevada Attorney General and the Petitioner/Appellant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

ALEXANDER G. CHEN
Chief Deputy D. A. - Criminal
alexander.chen@clarkcountyda.com

RICHARD A. NEWSOME, JR.
ID# 1194269
High Desert State Prison - P.O. Box 650
Indian Springs, NV 89070-0650

By: /s/ Ila C. Wills
Assistant to Terrence M. Jackson, Esq.

ORIGINAL

1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 02 2017

BY

DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-321043-1

11 -vs-

DEPT NO: XXI

12 RICHARD ALLAN NEWSOME, JR., aka,
13 Richard Newsome, #5437116

14 Defendant.

INDICTMENT

15 STATE OF NEVADA }

16 COUNTY OF CLARK }

ss.

17 The Defendant above named, RICHARD ALLAN NEWSOME, JR., aka, Richard
18 Newsome, accused by the Clark County Grand Jury of the crime(s) of MURDER WITH USE
19 OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC
20 50001) and ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 -
21 NOC 50201), committed at and within the County of Clark, State of Nevada, on or about the
22 14th day of January, 2017, as follows:

23 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

24 did willfully, unlawfully, feloniously and with malice aforethought, kill RICHARD
25 NELSON, a human being, with use of a deadly weapon, to wit: a firearm, by shooting into the
26 body of the said RICHARD NELSON, the said killing having been willful, deliberate and
27 premeditated.

28 C-17-321043-1

IND
Indictment
4620058



W:\2017\2017F00941\17F00941-IND-001.docx

AA 001

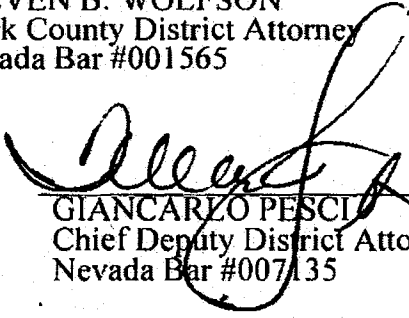
1 COUNT 2 - ASSAULT WITH A DEADLY WEAPON

2 did willfully, unlawfully, feloniously and intentionally place another person in
3 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully
4 attempt to use physical force against another person, to wit: CARLOS HERNANDEZ, with
5 use of a deadly weapon, to wit: a firearm, by pointing said firearm at CARLOS HERNANDEZ,
6 the Defendants being criminally liable under one or more of the following principles of
7 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting
8 in the commission of this crime, with the intent that this crime be committed, by counseling,
9 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
10 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
11 crime be committed, Defendants aiding or abetting and/or conspiring in the following manner,
12 to-wit: by entering into a course of conduct whereby, Defendants acting in concert throughout.

13 DATED this 1st day of February, 2017.

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

17 BY

18 
19 GIANCARLO PESCI
20 Chief Deputy District Attorney
21 Nevada Bar #007135

22 ENDORSEMENT: A True Bill

23 
24 Foreperson, Clark County Grand Jury
25
26
27
28

1 Names of Witnesses and testifying before the Grand Jury:

2 AGUDO, ALICIA, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

3 BRUCE, ROXANNE, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

4 BRUCE, WADE, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

5 COLEMAN, ONEISHA, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

6 CORNEAL, JENNIFER, ME

7 GRIMMETT, JARROD, LVMPD# 7056

8 HERNANDEZ, CARLOS, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

10 Additional Witnesses known to the District Attorney at time of filing the Indictment:

11 COLEMAN, DEBORAH, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

12 CUSTODIAN OF RECORDS, CCDC

13 CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

14 CUSTODIAN OF RECORDS, LVMPD RECORDS

15 OLSON, ALANE DR, ME# 0068

16 RAETZ, DEAN, LVMPD# 4234

17 REINER, JENNIFER, LVMPD# 8167

26 16BGJ059X/17F00941X/ed-GJ

27 LVMPD EV# 1701143022

28 (TK12)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 02, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 02, 2017 11:45 AM Grand Jury Indictment

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 10B

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Cooper, Jonathan	Deputy District Attorney
	Jones, Tierra D.	Deputy District Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ059X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321043-1, Department XXI.

Ms. Jones requested a warrant, no bail, and advised Deft is in custody on a no bail hold. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. COURT FURTHER ORDERED, Exhibits 1 - 16 to be lodged with the Clerk of the Court.

At request of the State, Las Vegas Justice Court Case No. 17F00941X DISMISSED.

I.W. (CUSTODY)

2-9-17 9:30 AM INITIAL ARRAIGNMENT (DEPT XXI)

PRINT DATE: 02/02/2017

Page 1 of 1

Minutes Date: February 02, 2017

ORIGINAL

C-17-321043-1

IND

Indictment

4822343



FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 09 2017

BY 
DULCE MARIE ROMEO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-321043-1

-vs-

DEPT NO: XXI

RICHARD ALLAN NEWSOME, JR.,
aka, Richard Newsome, #5437116
TIANNA M. DOUGLAS, aka,
Tianna Michele Thomas, #1775693

Defendant.

SUPERSEDING
INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, RICHARD ALLAN NEWSOME, JR., aka, Richard Newsome and TIANNA M. DOUGLAS, aka, Tianna Michele Thomas, accused by the Clark County Grand Jury of the crime(s) of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON (Category C Felony - NRS 195.030, 195.040, 200.010 - NOC 53090) and BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony - NRS 200.481 - NOC 50214), committed at and within the County of Clark, State of Nevada, on or about the 14th day of January, 2017, as follows:

///

///

1 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

2 Defendant RICHARD ALLAN NEWSOME, JR., did willfully, unlawfully, feloniously
3 and with malice aforethought, kill RICHARD NELSON, a human being, with use of a deadly
4 weapon, to wit: a firearm, by shooting into the body of the said RICHARD NELSON, the said
5 killing having been willful, deliberate and premeditated.

6 COUNT 2 - ASSAULT WITH A DEADLY WEAPON

7 Defendant RICHARD ALLAN NEWSOME, JR., did willfully, unlawfully, feloniously
8 and intentionally place another person in reasonable apprehension of immediate bodily harm
9 and/or did willfully and unlawfully attempt to use physical force against another person, to
10 wit: CARLOS HERNANDEZ, with use of a deadly weapon, to wit: a firearm, by pointing said
11 firearm at CARLOS HERNANDEZ, the Defendants being criminally liable under one or more
12 of the following principles of criminal liability, to-wit: (1) by directly committing this crime;
13 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime
14 be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
15 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
16 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or
17 conspiring in the following manner, to-wit: by entering into a course of conduct whereby,
18 Defendants acting in concert throughout.

19 COUNT 3 - ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON

20 Defendant TIANNA M. DOUGLAS, did willfully, unlawfully, and feloniously, after
21 the commission of a murder, a felony, harbor and/or conceal RICHARD NEWSOME, with
22 the intent that RICHARD NEWSOME might avoid or escape arrest, trial, conviction, and/or
23 punishment, having knowledge that RICHARD NEWSOME had committed the murder and/or
24 was liable to arrest therefore.

25 ///

26 ///

27 ///

28 ///

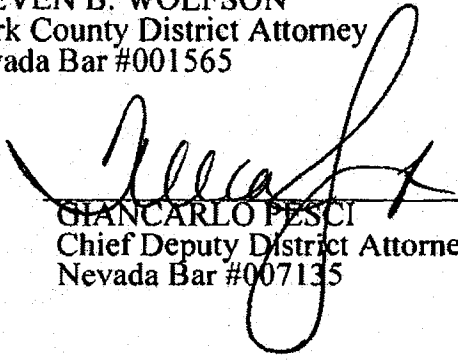
1 COUNT 4 - BATTERY WITH SUBSTANTIAL BODILY HARM

2 Defendant TIANNA M. DOUGLAS did willfully, unlawfully, and feloniously use
3 force or violence upon the person of another, to wit: ONEISHA COLEMAN, by striking
4 and/or pushing said ONEISHA COLEMAN, resulting in substantial bodily harm to ONEISHA
5 COLEMAN.

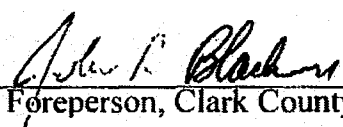
6 DATED this 8 day of February, 2017.

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

10 BY


11 GIANCARLO PESCI
12 Chief Deputy District Attorney
13 Nevada Bar #007135

14 ENDORSEMENT: A True Bill

15 
16 Foreperson, Clark County Grand Jury
17
18
19
20
21
22
23
24
25
26
27
28

Names of Witnesses and testifying before the Grand Jury:

AGUDO, ALICIA, c/o CCDA, 200 Lewis Avenue, LV, NV 89101
BRUCE, ROXANNE, c/o CCDA, 200 Lewis Avenue, LV, NV 89101
BRUCE, WADE, c/o CCDA, 200 Lewis Avenue, LV, NV 89101
COLEMAN, ONEISHA, c/o CCDA, 200 Lewis Avenue, LV, NV 89101
CORNEAL, JENNIFER, ME
GRIMMETT, JARROD, LVMPD# 7056
HERNANDEZ, CARLOS, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

Additional Witnesses known to the District Attorney at time of filing the Indictment:

COLEMAN, DEBORAH, c/o CCDA, 200 Lewis Avenue, LV, NV 89101
CUSTODIAN OF RECORDS, CCDC
CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS, LVMPD RECORDS
OLSON, ALANE DR, ME# 0068
RAETZ, DEAN, LVMPD# 4234
REINER, JENNIFER, LVMPD# 8167

16BGJ059A-B/17F00941X/17F00876X/ed-GJ
LVMPD EV# 1701143022
(TK12)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2017

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

February 09, 2017 9:30 AM All Pending Motions

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Momot, John Joseph	Attorney for the Defendant
	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney for the State
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney for the Defendant

JOURNAL ENTRIES

- INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN

Mr. Momot requested the Court pass the matter for confirmation of counsel and the initial arraignment. Mr. Pesci made no objection and noted that a file-stamped copy of the Indictment and the Grand Jury transcripts were provided to the defense. Court CONTINUED MATTER.

CUSTODY

CONTINUED TO: 2/16/17 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 09, 2017 11:45 AM Grand Jury Indictment

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 10B

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Cooper, Jonathan	Deputy District Attorney
	Jones, Tierra D.	Deputy District Attorney
	Pesci, Giancarlo	Deputy District Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ059A to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321043-1, Department XXI.

Ms. Jones requested a warrant, argued no bail be set for Mr. Newsome, and advised he is in custody. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. State advised Exhibits 1 - 16 were previously lodged with the Clerk of the Court. COURT FURTHER ORDERED, Exhibits 1a and 2a to be lodged with the Clerk of the Court.

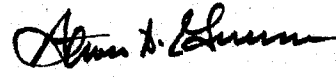
I.W. (CUSTODY)

2-16-17 9:30 AM INITIAL ARRAIGNMENT (DEPT XXI - Adair)

PRINT DATE: 02/09/2017

Page 1 of 1

Minutes Date: February 09, 2017



CLERK OF THE COURT

1 WAIV
2 YI LIN ZHENG, ESQ.
3 Nevada Bar No. 10811
4 520 So. Fourth St., Ste. 300
5 Las Vegas, Nevada 89101
6 (702) 385-7170
7 Attorneys for Defendants
8 RICHARD NEWSOME
9 TIANNA DOUGLAS

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,)
13)
14 vs.)
15 RICHARD NEWSOME,)
16 TIANNA DOUGLAS,)
17)
18 Defendants.)

Case No. C-17-321043-1
Dept. No. XXI

17 WAIVER OF POTENTIAL AND/OR ACTUAL CONFLICT

18 We, RICHARD NEWSOME and TIANNA DOUGLAS, by our signatures below, hereby
19 acknowledge that we have each been personally advised of the dangers inherent in joint and
20 simultaneous representation by THE LAW OFFICES OF MOMOT & ZHENG.

21 We, RICHARD NEWSOME and TIANNA DOUGLAS, by our signatures below, hereby
22 voluntarily, knowingly and understandingly waive, any potential and/or actual conflict, which
23 may arise out of our joint and simultaneous representation by THE LAW OFFICES OF
24 MOMOT & ZHENG.

26 ///

27 ///

28 ///

LAW OFFICES OF
JOHN J. MOMOT, ESQ.
SUITE 300
520 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 385-7170

LAW OFFICES OF
JOHN J. MOMOT, ESQ.
SUITE 300
580 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 388-7170

1 in the above-captioned Case No. C-17-321043-1 pursuant to our constitutional right to counsel of
2 choice as set forth in Harvey v. State, 96 Nev. 850, 853 (1980).
3
4

5 *R Newsome* 2-16-17
6 RICHARD NEWSOME DATE
7

8
9 *TD* 2/16/17
10 TIANNA DOUGLAS DATE
11

LAW OFFICES OF
JOHN J. MOMOT, ESQ.
SUITE 300
380 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 385-7170

1 ROC
2 YI LIN ZHENG, ESQ.
Nevada Bar No. 10811
3 520 So. Fourth St., Ste. 300
4 Las Vegas, Nevada 89101
(702) 385-7170
5 Attorneys for Defendants
6 RICHARD NEWSOME
7 TIANNA DOUGLAS

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,)
13 vs.) Case No. C-17-321043-1
14) Dept. No. XXI
15 RICHARD NEWSOME,)
16 TIANNA DOUGLAS,)
17 Defendants.)

18 RECEIPT OF COPY

19 RECEIPT OF COPY of Defendants' WAIVER OF POTENTIAL AND/OR ACTUAL
20 CONFLICT is hereby acknowledged this 16 day of February, 2017.

21 CLARK COUNTY DISTRICT ATTORNEY

22 By: 
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 16, 2017

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

February 16, 2017 9:30 AM Initial Arraignment

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Jones, Tierra D.	Attorney for the State
	Momot, John Joseph	Attorney for the Defendant
	Newsome, Richard Allan, Jr.	Defendant
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney for the Defendant

JOURNAL ENTRIES

- Mr. Momot CONFIRMED as counsel. DEFT. NEWSOME ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial.

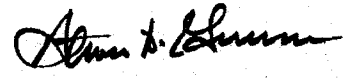
CUSTODY

6/1/17 9:30 AM CALENDAR CALL

6/5/17 9:30 AM JURY TRIAL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
RICHARD ALLAN NEWSOME, JR., aka)
Richard Newsome, TIANNA M.)
DOUGLAS, aka Tianna Michele)
Thomas,)
)
Defendants.)

GJ No. 16BGJ059AB
DC No. C321043

Taken at Las Vegas, Nevada

Wednesday, February 8, 2017

8:33 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SUPERSEDING INDICTMENT

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON FEBRUARY 8, 2017

2

3 JOHN BLACKWELL, Foreperson

4 STACEY EARL, Secretary

12:00 5 MARGARET FREE, Assistant Secretary

6 MAYRA ALMONTE

7 ISABEL DARENSBOURG

8 BLANCA FISSELLA

9 PHILLIP HOLGUIN

12:00 10 GREGORY KRAMER

11 CHARLOTTE MILLER

12 ADOLPH PEBELSKE, JR.

13 JANE REYLING

14 ELIZABETH ROMOFF

12:00 15 DERRICK SIMMONS

16

17 Also present at the request of the Grand Jury:

18 Giancarlo Pesci, Chief Deputy District Attorney

19 Tierra Jones, Deputy District Attorney

12:00 20

21

22

23

24

25

12:00 1 LAS VEGAS, NEVADA, FEBRUARY 8, 2017

2 * * * * *

3
4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 THE FOREPERSON: Let the record reflect
08:10 10 that I have canvassed the waiting area and no one has
11 appeared in response to Notice of Intent to Seek
12 Indictment.

13 MS. JONES: Good morning ladies and
14 gentlemen of the Grand Jury. My name is Tierra Jones
08:33 15 and this is chief deputy district attorney Giancarlo
16 Pesci. We're here today to present to you Grand Jury
17 case number 16BGJ059AB on a superseding Indictment for
18 the State of Nevada versus Tianna M. Douglas, aka Tianna
19 Michele Thomas. The record will reflect we have marked
08:33 20 a copy of the superseding Indictment as Exhibit 1A. May
21 the record also reflect that we have marked a copy of
22 Grand Jury instructions, additional instructions as
23 Grand Jury Exhibit 2A. Do all the ladies and gentlemen
24 of the Grand Jury have a copy of the proposed
08:33 25 Indictment, superseding Indictment?

08:33 1 A JUROR: Yes.

2 MS. JONES: The defendant in this case is
3 charged with accessory with murder with use of a deadly
4 weapon and battery with substantial bodily harm. We're
08:33 5 required by law to advise you of the elements of these
6 charges.

7 MR. PESCI: Every person who is not the
8 spouse or domestic partner of the offender and who,
9 after the commission of a felony, destroys or conceals
08:34 10 or aids in the destruction or concealment of material
11 evidence, or harbors or conceals such offender with
12 intent that the offender may avoid or escape from
13 arrest, trial, conviction or punishment, having
14 knowledge that such offender has committed a felony or
08:34 15 is liable to arrest, is an accessory to that felony.

16 Battery means any willful and unlawful use
17 of force or violence upon the person of another.

18 Substantial bodily harm is any bodily
19 injury which creates a substantial risk of death or,
08:34 20 which causes serious, permanent disfigurement or
21 protracted loss or impairment of the function of any
22 bodily member or organ, or prolonged physical pain.

23 MS. JONES: Are there any questions with
24 regards to the elements of these charged offenses?

08:35 25 A JUROR: Ma'am, if the accessory, if, are

08:35 1 they equally guilty with an offender on the second
2 charge?

3 MR. PESCI: She is charged with the
4 accessory. She is not charged with the murder.

08:35 5 A JUROR: Thank you.

6 MS. JONES: Are there any other questions?

7 And ladies and gentlemen, we would submit
8 this case to you with the evidence that was presented
9 here last week on the superseding Indictment. And that

08:35 10 concludes the presentation of the evidence in this
11 matter. Are there any questions regarding the evidence
12 or the elements of the offenses?

13 This matter is submitted to you for
14 deliberation.

08:35 15 (At this time, all persons, other than
16 members of the Grand Jury, exit the room at 8:35 a.m.
17 and return at 8:38 a.m.)

18 THE FOREPERSON: Mr. and Madame District
19 Attorney, by a vote of 12 or more grand jurors a true
08:38 20 bill has been returned against defendants Richard Allen
21 Newsome, Jr. and Tianna M. Douglas charging the crimes
22 of murder with use of a deadly weapon, assault with a
23 deadly weapon, accessory to murder with use of a deadly
24 weapon, battery with substantial bodily harm, in the
08:38 25 Grand Jury case number 16BGJ059AB. We instruct you to

08:38 1 prepare an Indictment in conformance with the proposed
2 Indictment previously submitted to us.

3 MS. JONES: Thank you.

4 MR. PESCI: Thank you very much.

08:38 5 (Proceedings concluded.)

6 --oo0oo--
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

08:38

1

REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

08:38

5

6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

08:38

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

08:38

15

February 8, 2017.

16

17

/s/ Danette L. Antonacci

18

19

Danette L. Antonacci, C.C.R. 222

08:38

20

21

22

23

24

25

08:38

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
16BGJ059AB:

08:38

5

6

7

8

X Does not contain the social security number of any
person,

9

08:38

10

-OR-

11

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

12

13

A. A specific state or federal law, to-
wit: NRS 656.250.

14

-OR-

08:38

15

16

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

17

18

/s/ Danette L. Antonacci

19

Signature

2-8-17

Date

08:38

20

21

Danette L. Antonacci

22

Print Name

23

Official Court Reporter

24

Title

25

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 14 2017

BY *Jill M Chambers*
JILL M CHAMBERS, DEPUTY

1 AIND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671 2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-17-321043-1
SIND
Superseding Indictment
4705281



THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-321043-1

vs

DEPT NO: XXI

RICHARD ALLAN NEWSOME, JR., aka,
Richard Newsome, #5437116

Defendant.

SECOND AMENDED
SUPERSEDING
INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, RICHARD ALLAN NEWSOME, JR., aka, Richard Newsome, accused by the Clark County Grand Jury of the crime of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010. 200.030.2, 193.165 - NOC 50011), committed at and within the County of Clark, State of Nevada, on or about the 14th day of January, 2017, did willfully, unlawfully, feloniously, and

///

///

///

///

///

///

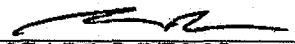
///

1 with malice aforethought, kill RICHARD NELSON, a human being, with use of a deadly
2 weapon, to wit: a firearm, by shooting into the body of the said RICHARD NELSON.

3 DATED this 29 day of November, 2017.

4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY


8 GIANCARLO PESCI
9 Chief Deputy District Attorney
10 Nevada Bar #007135
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 16BGJ059A-B/17F00941X/17F00876X/ed-GJ
28 LVMPD EV# 1701143022
(TK12)

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 14 2017

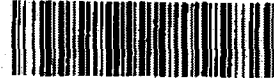
BY

JILL M CHAMBERS, DEPUTY

1 GPA
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

C-17-321043-1
GPA
Guilty Plea Agreement
4706280

DISTRICT COURT
CLARK COUNTY, NEVADA



THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-17-321043-1

12 RICHARD ALLAN NEWSOME, JR., aka
13 Richard Newsome, #5437116

DEPT NO: XXI

Defendant.

GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: MURDER (SECOND DEGREE) WITH USE OF A
17 DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030.2, 193.165 - NOC 50011),
18 as more fully alleged in the charging document attached hereto as Exhibit "I".

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

21 The State retains the right to argue at rendition of sentencing.

22 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
23 and/or impounded in connection with the instant case and/or any other case negotiated in
24 whole or in part in conjunction with this plea agreement.

25 I understand and agree that, if I fail to interview with the Department of Parole and
26 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
27 by affidavit review, confirms probable cause against me for new criminal charges including
28 reckless driving or DUI, but excluding minor traffic violations, the State will have the

1 unqualified right to argue for any legal sentence and term of confinement allowable for the
2 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
3 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
4 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
5 twenty-five (25) year term with the possibility of parole after ten (10) years.

6 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
7 plea agreement.

8 CONSEQUENCES OF THE PLEA

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

11 I understand that as a consequence of my plea of guilty the Court must sentence me to
12 Life in the Nevada Department of Corrections with the possibility of parole eligibility
13 beginning at ten (10) years or a definite term of twenty-five (25) years with parole eligibility
14 beginning at ten (10) years, plus a consecutive one (1) to twenty (20) years for the use of a
15 deadly weapon.

16 I understand that the law requires me to pay an Administrative Assessment Fee.

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

21 I understand that I am not eligible for probation for the offense to which I am pleading
22 guilty.

23 I understand that I must submit to blood and/or saliva tests under the Direction of the
24 Division of Parole and Probation to determine genetic markers and/or secretor status.

25 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
26 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
27 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
28 and may receive a higher sentencing range.

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

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

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

8 I understand that if my attorney or the State of Nevada or both recommend any specific
9 punishment to the Court, the Court is not obligated to accept the recommendation.

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

13 I understand that if I am not a United States citizen, any criminal conviction will likely
14 result in serious negative immigration consequences including but not limited to:

- 15 1. The removal from the United States through deportation;
- 16 2. An inability to reenter the United States;
- 17 3. The inability to gain United States citizenship or legal residency;
- 18 4. An inability to renew and/or retain any legal residency status; and/or
- 19 5. An indeterminate term of confinement, with the United States Federal
20 Government based on my conviction and immigration status.

21 Regardless of what I have been told by any attorney, no one can promise me that this
22 conviction will not result in negative immigration consequences and/or impact my ability to
23 become a United States citizen and/or a legal resident.

24 I understand that the Division of Parole and Probation will prepare a report for the
25 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
26 sentencing, including my criminal history. This report may contain hearsay information
27 regarding my background and criminal history. My attorney and I will each have the
28 opportunity to comment on the information contained in the report at the time of sentencing.

Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

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

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

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

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


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

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


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

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

11 DATED this 4th day of December, 2017.

12
13 
14 RICHARD ALLAN NEWSOME, JR., aka
15 Richard Newsome
16 Defendant

17 AGREED TO BY:

18 
19 GIANCARLO PESCI
20 Chief Deputy District Attorney
21 Nevada Bar #007135
22
23
24
25
26
27
28

1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 14 day of December, 2017.

ATTORNEY FOR DEFENDANT

dd/MVU

1 AIND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-321043-1

11 -vs-

DEPT NO: XXI

12 RICHARD ALLAN NEWSOME, JR., aka,
13 Richard Newsome, #5437116

14 Defendant.

SECOND AMENDED
SUPERSEDING
INDICTMENT

15 STATE OF NEVADA. }
16 COUNTY OF CLARK } ss.

17 The Defendant above named, RICHARD ALLAN NEWSOME, JR., aka, Richard
18 Newsome, accused by the Clark County Grand Jury of the crime of MURDER (SECOND
19 DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010.
20 200.030.2, 193.165 - NOC 50011), committed at and within the County of Clark, State of
21 Nevada, on or about the 14th day of January, 2017, did willfully, unlawfully, feloniously, and

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

EXHIBIT


W:\2017\0217P00294\117P0041-040 (2nd Amended Superseding Newsome) 001.docx

1 with malice aforethought, kill RICHARD NELSON, a human being, with use of a deadly
2 weapon, to wit: a firearm, by shooting into the body of the said RICHARD NELSON.

3 DATED this 29 day of November, 2017.

4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY

8 
9 GIANCARLO PESCI
10 Chief Deputy District Attorney
11 Nevada Bar #007135
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 16BGJ059A-B/17F00941X/17F00876X/ed-GJ
28 LVMPD EV# 1701143022
(TK12)



1 MEMO
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #07135
8 JOHN JONES
9 Nevada Bar #09598
10 200 Lewis Avenue
11 Las Vegas, Nevada 89155-2212
12 (702) 671-2500
13 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 RICHARD ALLAN NEWSOME, aka,
14 Richard Newsome, #5437116

15 Defendant.

CASE NO: C-17-321043-1

DEPT NO: XXI

16 SENTENCING MEMORANDUM

17 DATE OF HEARING: February 8, 2018

18 TIME OF HEARING: 9:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and through
21 JOHN T. JONES, Jr., Chief Deputy District Attorney and hereby submits this Memorandum
22 for the Court's consideration at Rendition of Sentence.

23 This Memorandum is made and based upon all the papers and pleadings on file herein,
24 the attached in support hereof, and oral argument at the time of Rendition of Sentence.

25 ///

26 ///

27 ///

28 ///

1 **REQUESTED DISPOSITION**

2 On December 14, 2017, Richard Newsome, Jr. (hereafter "Defendant") pled guilty to
3 one count of Murder (Second Degree) with Use of a Deadly Weapon as alleged in the Second
4 Amended Superseding Indictment. The State of Nevada recommends that this Honorable
5 Court impose the following sentence:

6 **Murder (Second Degree)**

7 Life with the possibility of parole, with eligibility for parole beginning when a
8 minimum of ten (10) years has been served pursuant to NRS 200.010.

9 **Use of a Deadly Weapon enhancement**

10 Eight (8) to twenty (20) years in the Nevada Department of Corrections pursuant to
11 NRS 193.165.

12 Thus, the State is requesting this Honorable Court sentence Defendant to a total aggregate
13 sentence of Eighteen (18) years to Life with the Possibility of Parole. This is the maximum
14 possible sentence for this crime. The facts of the instant case warrant that Defendant receive
15 this sentence.

16 **STATEMENT OF THE FACTS**

17 On January 14, 2017, while fleeing the scene, Defendant pointed his handgun at victim
18 Richard Nelson (hereafter, "Richard") and shot him four times in the upper chest, back, and
19 forearm. Richard died of these multiple gunshot wounds while protecting his sister, Oniesha
20 Coleman (Hereafter "Oniesha"), from Defendant's physical attack.

21 Alicia Agudo (hereafter "Alicia") and Oniesha had been in a dating relationship for
22 approximately 8 months. On January 14, 2017, Alicia and her friends Imunique Newsome
23 (hereafter "Imunique") and Carlos Hernandez (hereafter "Carlos") were on a bus en route to
24 Oniesha's residence, at 4804 Sacks Drive, Las Vegas, Nevada 89108. During this trip,
25 Imunique showed Alicia several social media post between Oniesha and another individual
26 named of Brooke Roybal (hereafter "Brooke"). Those posts implied that Oniesha had a
27 romantic interest in Brooke.

28 ///

1 After viewing the posts, Alicia contacted Oniesha via cellular telephone and questioned
2 Oniesha about her posts to Brooke. Alicia explained that Imunique had shown her recent
3 social media posts and conversations between Oniesha and Brooke. A verbal argument ensued
4 between Alicia and Oniesha. During the conversation Oniesha denied any romantic interest
5 in Brooke. Oniesha became upset over the allegations and stated Alicia and Imunique were
6 no longer welcome at Oniesha's residence. Oniesha referred to Imunique Newsome as a
7 "stupid bitch." Imunique, overheard the conversation between Alicia and Oniesha, was
8 angered and exited the bus near the intersection of Eastern Avenue and Tropicana Avenue;
9 Alicia and Carlos continued on the bus to Oniesha's residence.

10 After exiting the bus, Imunique called her mother, Tianna Douglas (hereafter "Co-
11 Defendant"), and explained to Co-Defendant that her plans had changed and she was no longer
12 going to Oniesha's residence and asked Co-Defendant to pick her up near the intersection of
13 Eastern Avenue and Tropicana Avenue. Imunique explained a verbal argument had ensued
14 and Oniesha had called her a bitch.

15 Imunique, Co-Defendant, Defendant (Imunique's brother) and a few other of
16 Imunique's family drove to Oniesha's residence on Sack Drive in an attempt to locate and
17 confront Oniesha. Defendant wanted to confront Oniesha for calling Imunique a name.
18 Roxanne Bruce (hereafter, "Roxanne"), Oniesha's mother, and Wade Bruce, Oniesha's step-
19 father, answered the door and were greeted by Defendant and other members of his family.
20 Imunique and Co-Defendant remained near their vehicle. Roxanne and Wade Bruce both
21 advised that Oniesha was not at the residence and directed Defendant, Co-Defendant,
22 Imunique and the rest of their family to leave. Defendant, Co-Defendant and their family left
23 the residence but remained in the area just south of Oniesha's residence in the parking lot of a
24 nearby apartment complex.

25 ///

26 ///

27 ///

28 ///

1 Alicia and Carlos arrived at Oniesha's residence. Once there, Alicia contacted Oniesha
2 via cellular phone. Oniesha advised Alicia that she was not home and that Alicia was not
3 welcome at her residence. Carlos and Alicia then split up. Alicia remained in the area and
4 met up with Defendant, Co-Defendant and their family in the parking lot south of the
5 residence.

6 Later, Alicia saw Carlos near the intersection of Tropicana Avenue and Sacks Drive,
7 and motioned for Carlos to join Defendant, Co-Defendant and their family in the parking lot.
8 Upon arrival, Defendant confronted Carlos by pointing a firearm at Carlos' chest. Defendant
9 was upset that Carlos let Imunique get off the bus by herself. While pointing the firearm at
10 Carlos, Defendant stated "Nigga give me two reason why I shouldn't put two holes in you."

11 Minutes later, Alicia observed Oniesha and Brooke in a vehicle parked in front of the
12 Oniesha's residence. Alicia approached the vehicle, grabbed Oniesha by the hair in an attempt
13 to remove Coleman from the vehicle. As Oniesha was being pulled out of the car, Alicia and
14 Oniesha tripped over a curb causing Oniesha to fall on the ground on top of Alicia. Defendant,
15 Co-Defendant, Imunique and their family responded. Co-Defendant yelled at Oniesha to get
16 off of Alicia and punched Oniesha in the face with a closed fist. Defendant began to kick and
17 strike Oniesha while yelling that Oniesha was not going to get away with calling Imunique a
18 bitch.

19 During the altercation, several family members of Oniesha, including the victim,
20 Richard, exited the residence to render aid and assistance to Oniesha. Roxanne struck Alicia
21 and Douglas retreated. Richard approached Defendant and began pushing him off his sister
22 Oniesha. As Defendant retreated, Defendant produced a firearm and fired several shots,
23 striking Richard. After the shooting, Defendant, Co-Defendant, and the rest of their family
24 fled in a Silver Nissan Altima driven by Co-Defendant. During the getaway, Defendant
25 admitted he had shot Richard. Near the intersection of Tropicana Avenue and Mountain Vista
26 Street, Defendant opened the car door and fled on foot. In an effort to hide his crime,
27 Defendant took a series of RTC busses throughout the greater Las Vegas area. Defendant
28 disassembled the gun and disposed of the pieces in separate locations throughout the city.

VICTIM RICHARD NELSON

At eighteen years of age, Richard's promising life was tragically brought to an end by Defendant's callous and vindictive actions. Described as a "walking giant," Richard was known as an all-around good guy with a warm and loving personality. According to Paul Nihipali, Richard's high school football coach, "Everyone wanted to rally around Richard because he had that personality and everyone kind of migrated towards him because of that leadership not just on the field but in the classroom." (See Exhibit 1, photo of Richard with friends). At Chaparral High School, Richard had success in both academics and athletics. In academics, Richard was an "A" student. (See Exhibits 2 and 3, photos of Richard at Graduation). In athletics, Richard was a standout football player, basketball player, and track athlete. (See Exhibits 4 and 5, photos of Richard). Richard was a second-team all-state player in Football, and also won two state titles in track.

None of this success was guaranteed as Richard faced many obstacles in his life, including being sent from Missouri to Las Vegas as a seventh-grader to live with his grandmother. While Richard himself battled depression after the move, he was determined to meet his goal - obtaining an athletic scholarship. Richard's determination was noticed by those around him. In 2016, at the Best of Nevada Preps awards banquet which honors the top athletes in Nevada, Richard won the Las Vegas Review Journal's Courage Award. (See Exhibit 6, photo of Richard accepting the Courage Award). Richard was given an ovation by more than 1,000 people when he accepted the award.

After graduating from Chaparral, Richard joined the Missouri State University football team - on scholarship. (See Exhibits 7 and 8, photos of Richard on signing day). Missouri State University football coach Dave Steckel expressed his feelings for Richard in a release sent out by Missouri State, "Our Missouri State football family is in shock and mourning at the loss of one of our family members," Steckel said in the statement. "Richard is like a son and a brother. It is a tragedy that he lost his life defending what is right."

///

///

ARGUMENT

What is right in the instant case is Defendant receiving the maximum possible sentence for taking the life of such a promising young man. Defendant shot at Richard while Richard was assisting his sister and Defendant was fleeing the scene. Defendant was kicking and striking Oniesha when Richard came to her aid.

Defendant received a benefit in pleading to a Second Degree Murder. Defendant should be shown no more mercy as the facts of this case show Defendant to be a brazen individual with no concern of those around him. Defendant's actions show that despite numerous attempts at intervention by the juvenile justice system, Defendant has not changed his behavior. In 2013, Defendant was charged with Burglary, Grand Larceny, and Conspiracy. Ultimately, Defendant plead to Conspiracy to Commit Grand Larceny and received juvenile probation. In 2015, Defendant was charged with three counts of Robbery. Defendant pled guilty to Conspiracy to Commit Larceny from a Person, and again received juvenile probation. Per the Presentence Investigation Report, at the time of Richard's murder, Defendant was on juvenile probation.

Immediately after the crime, Defendant took RTC busses throughout town in an effort to disassemble and dispose of the firearm in separate locations throughout the city. The effort Defendant engaged in to hide his crime is remarkable.

Defendant's actions have not only caused the death of Richard, a promising young man, but have affected the lives of Richard's entire family. Richard's mother, Roxanne wrote a victim impact statement and will address the Court at sentencing. Roxanne talks about her depression and marital issues after Richard's murder. No sentence Defendant receives will give Richard back to them, but Defendant receiving the maximum punishment can assist in closing this painful chapter in their lives.

Finally, while the PSI outlines challenges in Defendant's life, it is impossible not to compare and contrast Richard's all-to-short life with that of Defendant. Both of these individuals faced challenges. The person who worked tirelessly, despite adversity, to meet his goals and better himself lay dead, while Defendant stands before this Honorable Court pending

1 sentencing for his murder. Defendant is the individual that arrived at Richard and Oniesha's
2 house, with a firearm, to confront Oniesha for an act of teenage name-calling. Defendant is
3 the one who waited for Oneisha to arrive at the house. Defendant is the one that points a
4 firearm at Carlos, threatening to kill Carlos for letting Imunique get off the bus by herself.
5 Defendant is the one who began kicking and striking Oniesha. Defendant is the one who shot
6 Richard four times. Defendant is the one who should serve Eighteen (18) years to Life with
7 the Possibility of Parole for his crimes.

8 **CONCLUSION**


9 Based on the foregoing, the State of Nevada respectfully requests that this Honorable
10 Court sentence Defendant to a total aggregate sentence of Eighteen (18) years to Life with
11 the Possibility of Parole.

12 DATED this 5th day of February, 2018.

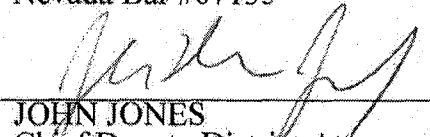
13 Respectfully submitted,

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

17 BY


18 GIANCARLO PESCI
19 Chief Deputy District Attorney
20 Nevada Bar #07135

21 BY


22 JOHN JONES
23 Chief Deputy District Attorney
24 Nevada Bar #09598

25 ///

26 ///

27 ///

28 ///

///

///

///

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

JOHN JOSEPH MOMOT, ESQ.
Email: momotlawfirm@gmail.com

Ch. Bush

Secretary for the District Attorney's Office

17F00941X/16BGJ059X: JTJ/ckb/L4

EXHIBIT # 1



EXHIBIT # 2

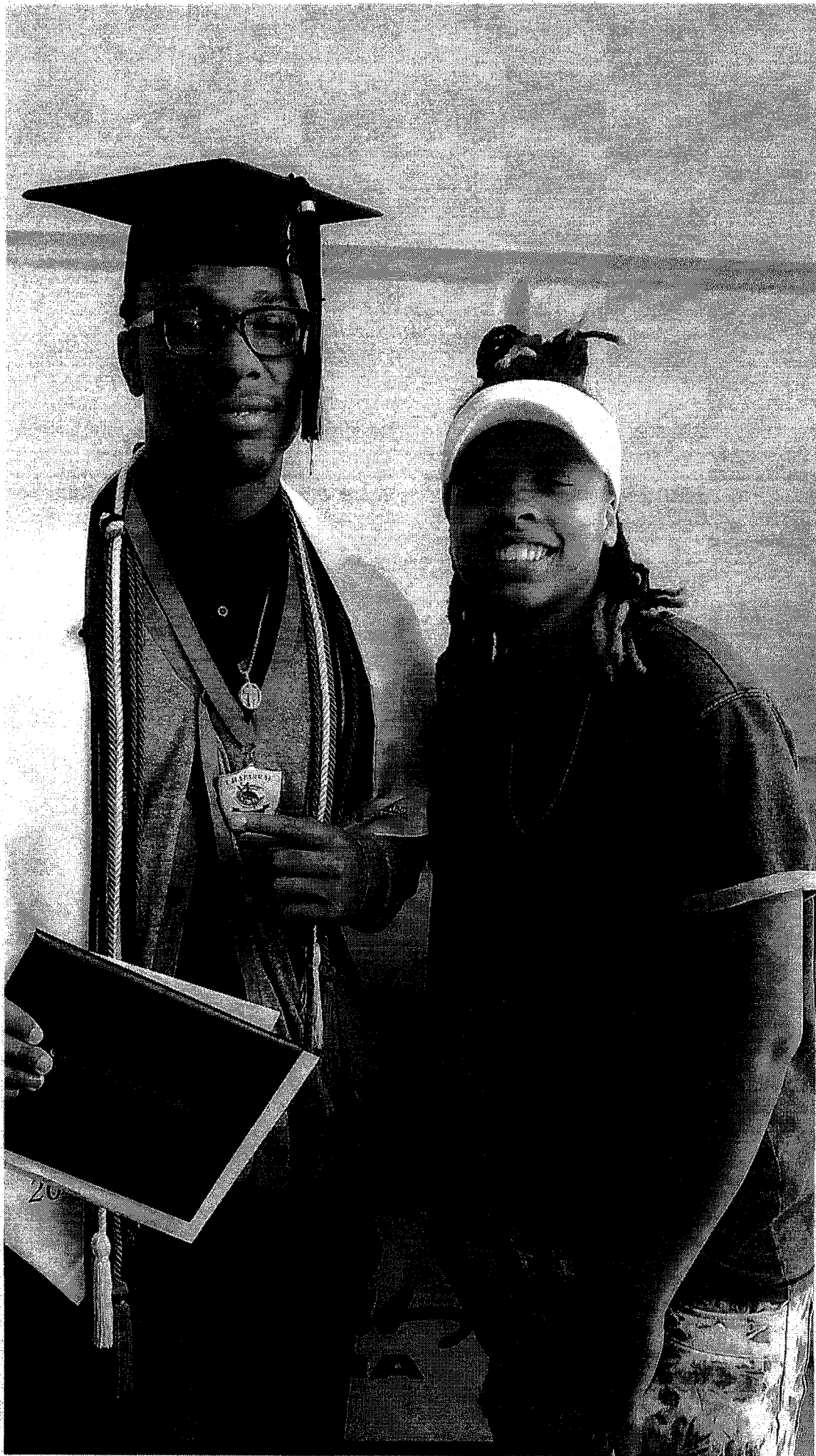


EXHIBIT # 3

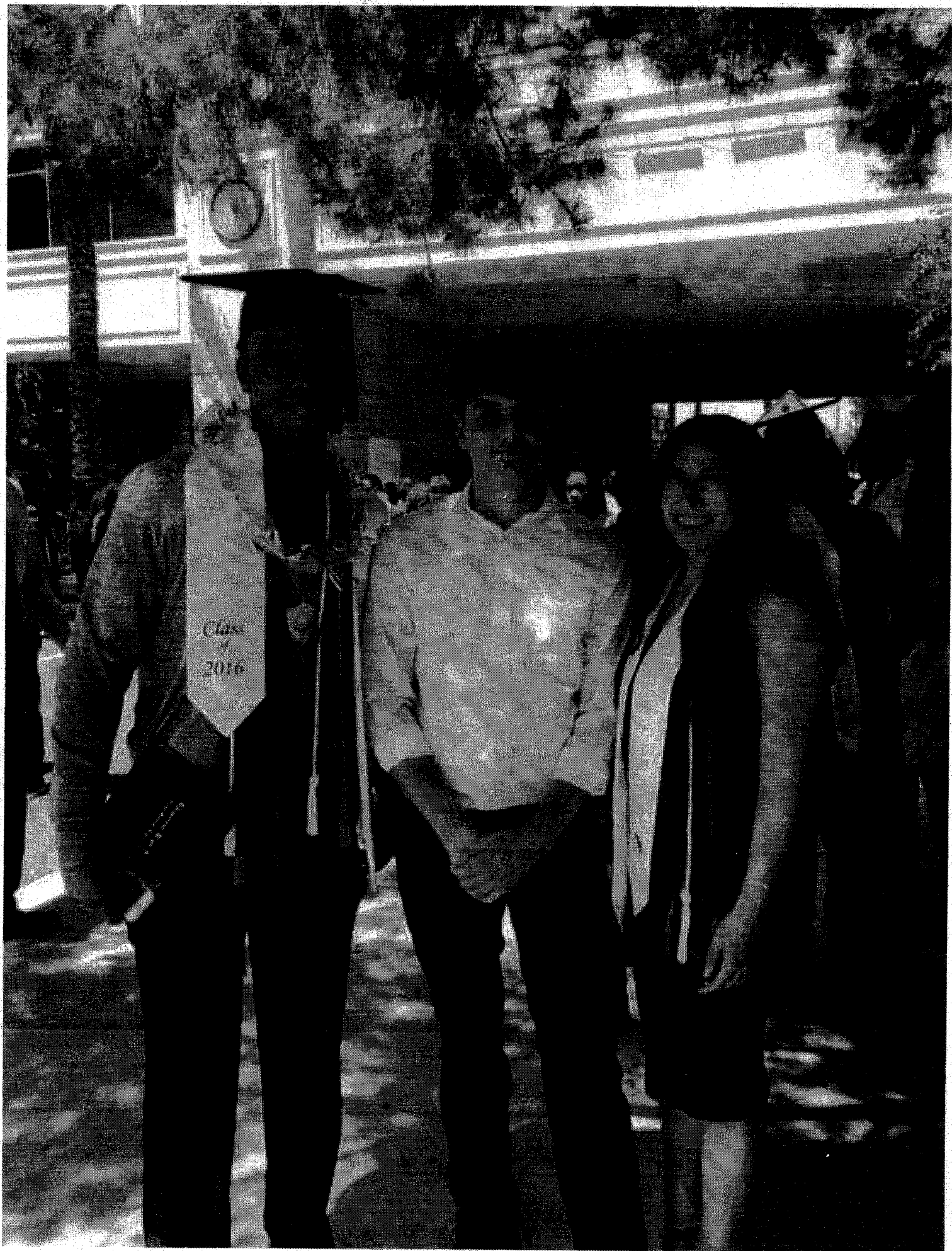


EXHIBIT # 4

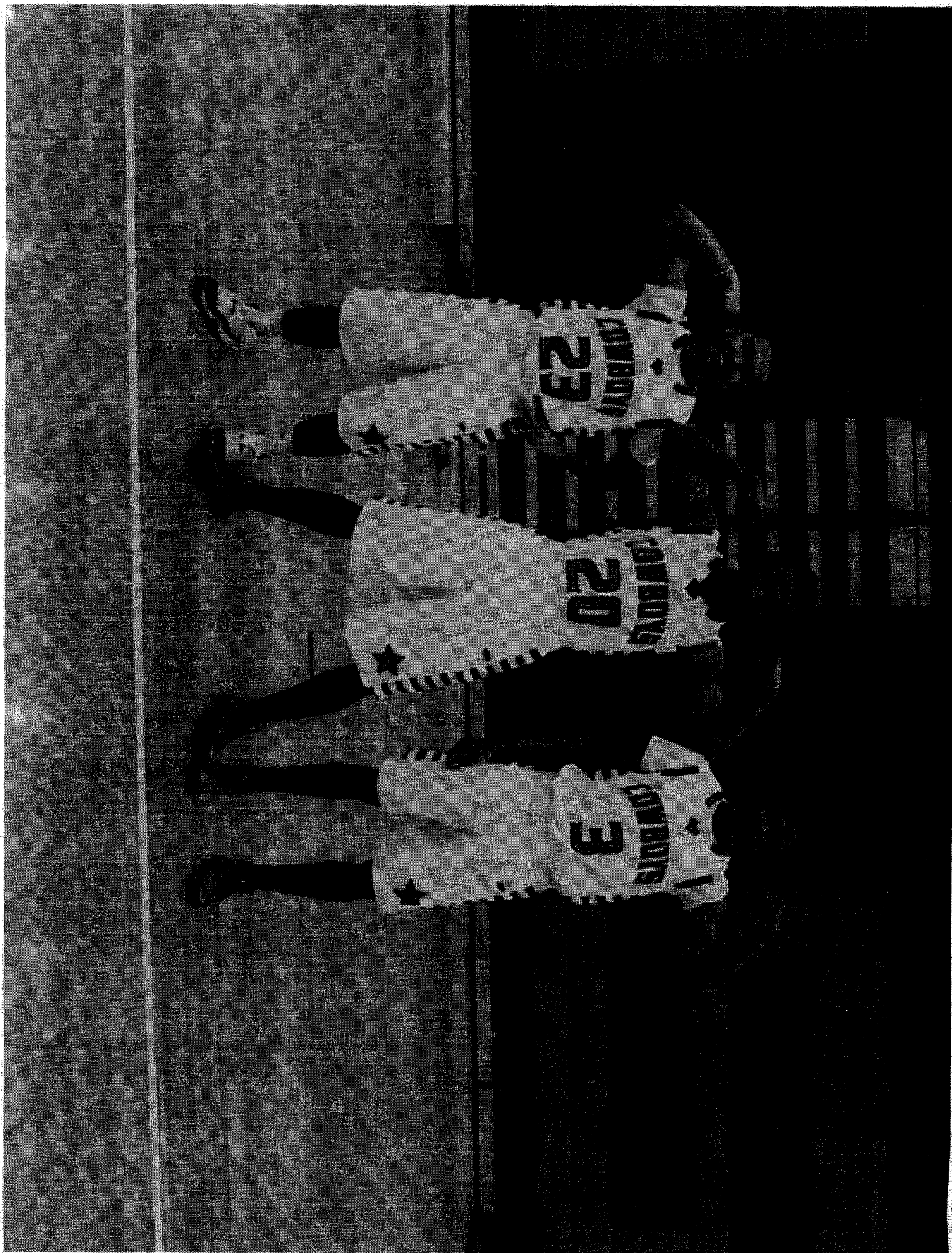


EXHIBIT # 5

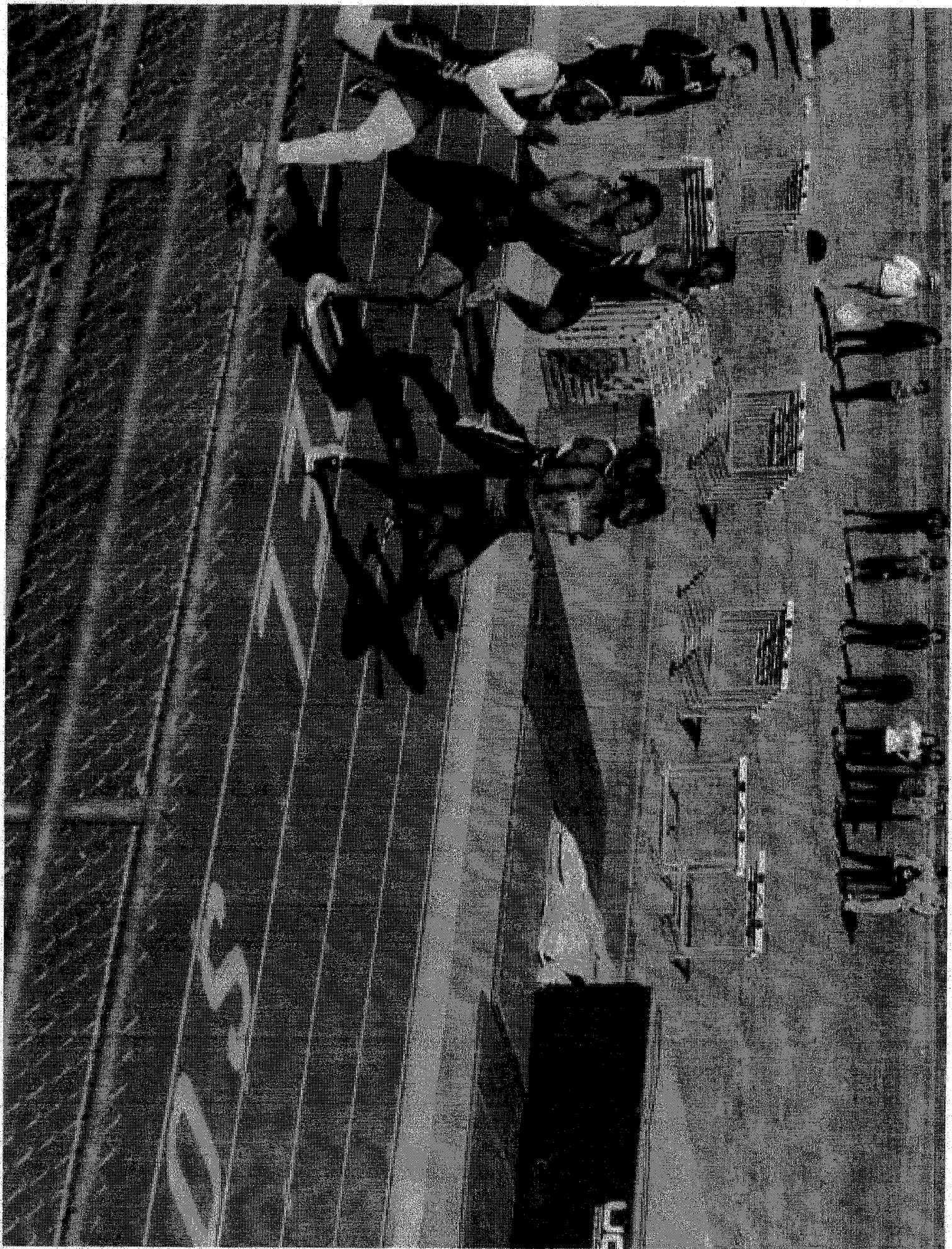


EXHIBIT # 6

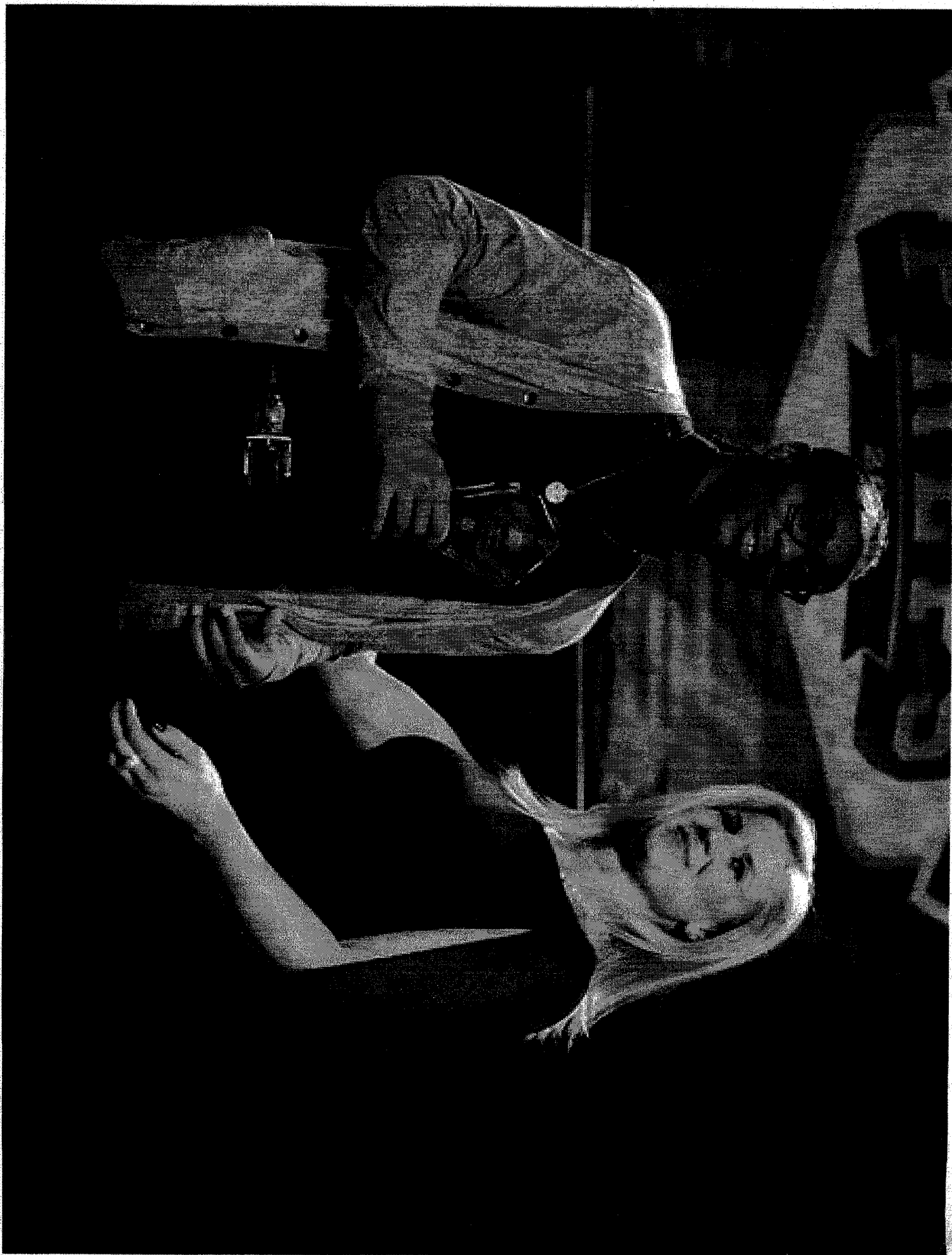
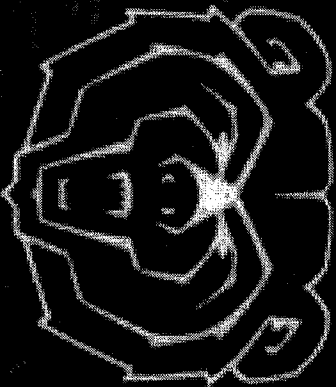


EXHIBIT # 7

RICHARD

NELSON



**NATIONAL SIGNING
DAY 2016**

6'1"

205 Lbs

**Chaparral HS
Las Vegas
Nevada**

MISSOURI STATE

20

BEAR

UP

**#MSUBears
@MStateFootball**

EXHIBIT # 8

congrats Richard on signing to Missouri State



THIS IS
BEAR
COUNTRY
MISSOURI STATE BEARS



Steven D. Grierson

EXH
JOHN J. MOMOT ESQ.
Nevada Bar No. 1700
YI LIN ZHENG
Nevada Bar No. 10811
MOMOT & ZHENG
520 So. Fourth Street, Ste. 300
Las Vegas, Nevada 89101
(702) 385-7170
MOMOTLAWFIRM@GMAIL.COM
Attorney for Defendant
RICHARD NEWSOME

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RICHARD NEWSOME,

Defendant.

Case No. C-17-321043-1
Dept. No. XXI

Date and Time of Sentencing:
February 8, 2018 @ 9:30 a.m.

DEFENDANT'S SENTENCING MEMORANDUM AND
EXHIBITS IN AID OF SENTENCING

COMES NOW the Defendant, RICHARD NEWSOME, by and through his attorneys,
JOHN J. MOMOT, ESQ. and YI LIN ZHENG, ESQ., of the Law Office of Momot & Zheng,
and presents the following Sentencing Memorandum and Exhibits in Aid of Sentencing for this
Honorable Court's consideration at his sentencing, currently scheduled for February 8, 2018 at
9:30 a.m.

Respectfully submitted this 7th day of February, 2018.

[Signature]
JOHN J. MOMOT, ESQ.

REQUESTED DISPOSITION

Counsel, the Defendant, RICHARD ALLEN NEWSOME, his family and friends would respectfully beg for mercy and request this Honorable Court to sentence him in accordance with the recommendations of the Pre-Sentence Investigation Report (PSI), as follows:

MURDER (SECOND DEGREE) – Life with the possibility of parole after ten (10) years has been served;

USE OF DEADLY WEAPON ENHANCEMENT – a consecutive term of 24-120 months/2-10 years;

RESTITUTION - \$21,477.08 jointly and severally with co-defendant Tianna M. Douglas.

The Division of Parole and Probation's recommendation is an appropriate and reasonable sentence, balancing the need to punish Mr. Newsome for his illegal conduct and providing a future chance at redemption. The author of the PSI arrived at that recommendation by reviewing Mr. Newsome's PSI packet, interviewing Mr. Newsome, and calculating the Probation Success Probability (PSP) Score, which takes into account defendant's prior criminal history, facts of the present offense, defendant's social history, and pre-sentence adjustments. That PSP Score is then applied to the sentence recommendation selection scale to arrive at the recommended total aggregate sentence of Twelve (12) years to Life with the Possibility of Parole.

While the State's Sentencing Memorandum requests the maximum sentence against Mr. Newsome, which is understandably the reflection of an emotional plea for retribution from the decedent's family, the maximum sentence in this case will not achieve the purpose of a fair and balanced sentence. Sentences imposed should be sufficient, but not greater than necessary to achieve the purposes of sentencing, to-wit: punishment, deterrence, and rehabilitation.

CLARIFICATION OF THE STATE'S RECITATION OF FACTS

In general, the State's recitation of the Statement of the Facts in its Sentencing Memorandum is accurate. On January 14, 2017, a group of young people, who were all

1 connected either as friends, by their music, or through dating relationships, were supposed to get
2 together. In the midst of miscommunications, social media messages, and slighted feelings,
3 conflicts began to arise between different members within the group. Those disputes turned into
4 physical altercations between the different factions that grew into a melee as more and more
5 people got involved. The growing brawl, at one point involved at least nine (9) people, including
6 Oniesha Coleman (decedent's sister), Alicia Agudo (Oniesha's ex-girlfriend), Imunique
7 Newsome (Mr. Newsome's sister), Tianna Douglas (Mr. Newsome's mother), Mr. Newsome
8 himself, two other males, Roxanne Bruce (decedent's mother) and Richard Nelson (victim).
9 Amongst the commotion and confusion of the affray, Mr. Newsome discharged a gun that he had
10 on him, which resulted in Richard Nelson sustaining several gunshot wounds that he ultimately
11 and tragically succumbed to.

12
13 However, the defense offers a clarification to the State's recitation of facts because it is
14 inaccurate to assert that "Imunique, Co-Defendant (Imunique's brother) and a few other of
15 Imunique's family drove to Oniesha's residence on Sack Drive in an attempt to locate and
16 confront Oniesha. Defendant wanted to confront Oniesha for calling Imunique a name." *See*
17 State's Sentencing Memorandum, p. 3, ln. 15-17 (hereinafter NV Memo, 3/15-17). Based on the
18 voluntary statement and grand jury testimony of Roxanne Bruce (Oniesha and decedent's
19 mother), that assertion is not supported.

20
21 During Mrs. Bruce's voluntary statement on January 14, 2017, the night of the incident,
22 she said:

23
24 And my son and his girlfriend and my husband was with me as we walked
25 outside. As we's walkin' outside, you know, they were backin' up or whatever.
26 And, um, they were just tellin' me, ..., that their beef wasn't with Smiley a.k.a.
27 Oniesha.

28 Voluntary Statement of Roxanne Bruce, p. 2.

1 She is the sister of the three males that came over to the home. And her mother
2 came to my home as well. Me and her mother had a good conversation.

3 Voluntary Statement of Roxanne Bruce, p. 6.

4 And they were real respectful. They didn't disrespect me at all when they came
5 to my house. At first when they knocked on the door I'm like, "Hey, what's
6 goin' on?" and then they explained to me what was goin' on. So it wasn't
7 about my daughter.

8 Voluntary Statement of Roxanne Bruce, p. 24.

9 At the grand jury proceedings, Mrs. Bruce's testimony was similar, stating: "Yeah. And
10 when I walked down my driveway there was a lady and then Imunique was in the car cause I
11 wanted to know what was going on. So Imunique got out and explained to me, she wasn't rude,
12 she wasn't nasty, neither was the mom, they were very polite. It was just the young men were
13 like oh, you know the F she is and da da da da, they were very rude so. (GJT, 49/21-50/2).

14 When the Newsome family went to over to Oniesha's residence, it was not to confront
15 her, it was not to start any trouble, it was not to look for an argument or a fight. The events
16 leading up to the tragic loss of Richard Nelson were never anticipated or intended. Mr. Newsome
17 disputes the State's argument that he came to the residence with a firearm to confront Oniesha
18 for an act of teenage name-calling or that he waited for Oneisha to arrive home. (NV Memo, p.
19 7). The Newsome family had already left the residence when the initial fight, that escalated
20 everything, between Oniesha and her ex-girlfriend Alicia Agudo started at almost the same time
21 within the immediate vicinity of the residence. As more and more people became involved in the
22 ongoing fight, the events quickly escalated to an end that Mr. Newsome never imagined.

23 Despite the remainder of the charges being dismissed, pursuant to the negotiations, Mr.
24 Newsome disputes the State argument that he pointed a firearm at Carlos Hernandez, threatening
25 to kill Carlos for letting Imunique get off the bus by herself. (NV Memo, p. 7). Mr. Newsome
26 was unhappy that Carlos neglected to see that Imunique was not stranded alone and placed in
27
28

1 risk of danger, and he concedes that they did exchange words about Carlos' treatment of
2 Imunique. But Mr. Newsome vehemently denies that he used a gun to threaten to kill him. Other
3 than his use of the gun that resulted in the shooting death of Richard Nelson, Mr. Newsome did
4 not take his gun out at any other time on that day/evening.

5 Additionally, Mr. Newsome wants to clarify that while it is true that, after the shooting,
6 he eventually exited the vehicle and fled on foot, it was not his intent to do so to hide his crime.
7 While in the car, he acknowledged and admitted that he shot Mr. Nelson, he knew he was in
8 trouble with the law, and was scared for what he had done, and the consequence of his actions.
9 But more so, he was afraid that he had implicated his family and wanted to distance himself from
10 them. He disassembled the gun and disposed the pieces in separate locations because he wanted
11 to be certain that the same gun could never be used again to do anymore harm. He agrees now
12 that none of those decisions were sensible or wise, but it is also important to note that Mr.
13 Newsome was but 17 years old at the time. While it is no excuse for what he did, this Court
14 should consider the differences between a juvenile and an adult offender, including the generally
15 diminished culpability of juveniles as compared to that of adults, and the typical characteristics
16 of youth. The entirety of what occurred on January 14, 2017, on Mr. Newsome's part, was a
17 lapse in judgment. If there was any way to take it all back, there is no question that he would.
18

19 There is also no denying that despite his youth, Mr. Newsome made a very grown up
20 mistake. Perhaps Mr. Newsome should not be judged solely by the mistakes that he made on that
21 day. Rather the way that he acknowledged his mistakes, accepted responsibility, and faced those
22 consequences must also be considered. To that end, on January 17, 2017, counsel's office
23 received a call from Mr. Newsome's family stating that he and his mother wanted to turn
24 themselves in. Both Mr. Newsome and his mother came to counsel's office, who then contacted
25 Homicide detectives and made arrangements to effectuate a self-surrender for both of them.
26
27
28

1 Knowing that he would face a lengthy term of incarceration, Mr. Newsome was cooperative with
2 law enforcement, peaceably taken into custody, and transported for booking.

3 While en route to Clark County Juvenile Hall, Mr. Newsome stated that he just reacted,
4 albeit terribly, in an effort to protect his family. He believed that the victim, Richard Nelson, who
5 is described as a "walking giant," was charging at them. (NV Memo, p. 5). He also told the
6 officers that when he engaged in the physical altercation with Oneisha Coleman, based on her
7 appearance, he thought she was a male.

8
9 On January 18, 2018, Mr. Newsome was certified as an adult and transported to Clark
10 County Detention Center, where he has remained in continuous custody and will continue to do
11 so until he has served the sentence that this Court will render.

12 **DISCUSSION**

13 There is no dispute that the victim Richard Nelson was an exceptional young man whose
14 promising life was tragically cut short. For causing the death of Mr. Nelson and the pain and
15 suffering that has been inflicted and continues to afflict his family, Mr. Newsome and his entire
16 family could not be any more sorry than they already are. Mr. Newsome has on numerous
17 occasions confessed and cried over the fact that he will forever be tortured by the knowledge that
18 he was responsible for taking Mr. Nelson's life. Mr. Newsome knows that tears and apologies
19 from him and his family are insufficient to conciliate the victim's family; he knows he must be
20 punished; and he will face a lengthy prison sentence. However, he and his family would beg the
21 Court for leniency by sentencing him in accordance with the PSI recommendation to a total
22 aggregate sentence of Twelve (12) years to Life with the Possibility of Parole.

23
24
25 Admittedly, it is difficult not to compare and contrast the life of Mr. Newsome to that of
26 Mr. Nelson. While Mr. Newsome did not rise to the same level of accolades as Mr. Nelson did, it
27 does not mean that his life is any less significant or that his life is any less promising in the
28

1 future. Imposing the maximum sentence of 18 years to take away as much life as possible from
2 Mr. Newsome does little, if anything at all, to honor the life of Mr. Nelson.

3 Mr. Newsome has overcome significant challenges in his life. Despite his mistakes, his
4 actions demonstrate his character and his desire to be better. He offers the following facts for the
5 Court's consideration:

6 Mr. Newsome is the second eldest of the four children born to Tianna Douglas, who had
7 to raise her four children as a single mother. She did so with little to no support from the
8 children's father, after they separated when Mr. Newsome was six years old. His father was
9 absentee in his life, as he was in and out of prison and is currently serving time in prison.
10

11 When Mr. Newsome was just four (4) years old, he was the victim of a violent crime. In
12 2003, he was visiting his grandfather in Fresno, California, when during a home invasion he was
13 shot twice in his leg/feet by stray bullets when two robbers entered the home and open fired on
14 the family dog. Because of his injuries, Mr. Newsome endured painful rehabilitation to regain
15 mobility and had to relearn how to walk.
16

17 Then in the next year, at five (5) years old, Mr. Newsome began experiencing symptoms
18 that often caused him to be hospitalized for months at a time. He would experience prolonged
19 high fevers, fluid would fill his lungs, he would experience bouts of pneumonia. He was resistant
20 to antibiotics and required prolonged intravenous medication through a PICC line to treat his
21 symptoms. His condition would not be diagnosed for another few years. In the meantime, Mr.
22 Newsome experienced multiple hospital stays, rounds of injections, and rounds of medications
23 with side effects that would make him even sicker, causing body aches, headache, sweats,
24 amongst other things. At nine (9) years old, they believed that his condition was terminal and the
25 Make-a-Wish Foundation got involved to grant him his last wish.
26
27
28

1 It was around that time that the doctors finally diagnosed Mr. Newsome with Chronic
2 Granulomatous Disease (CGD), a rare genetic disorder that afflicts about 1/250,000 births.
3 CGD causes the immune system to malfunction, resulting in a form of immunodeficiency. His
4 immune system is not able to protect his body from foreign invaders such as bacteria and fungi.
5 As such, Mr. Newsome has and will experience a lifetime of severe and recurrent bacterial and
6 fungal infections. There is only treatment to manage the condition, there is no cure without a
7 bone marrow or stem-cell transplant.
8

9 Because of his illness and frequent hospitalizations, he was forced to be absent from
10 school far too frequently. As a result, he was held back in the second grade. He was bullied by
11 the other kids for being slow, sick, and absent. He suffered from learning disabilities and
12 required special education classes. He completed 11th grade but eventually dropped out of
13 school. With his father in prison and his single-mother working to support four kids, Mr.
14 Newsome got a job to help support his family. Prior to his arrest, he worked as a part-time tile
15 setter at Mr. Kitchen's Tile from June 2016-January 2017.
16

17 Following the unfortunate events that resulted in the demise of Mr. Nelson, upon learning
18 that he caused the death of Mr. Nelson, he acknowledged his fault by seeking the assistance of
19 counsel to effectuate a self-surrender. On January 17, 2017, he presented to counsel's office,
20 scared and remorseful, knowing that he would not see freedom for a very long time, accepting
21 that prison was a certainty, and a consequence of what he had done, and the pain he had caused
22 Mr. Nelson's family. Mr. Newsome left counsel's office in tears, shed not just for his own fate
23 but for the life of Mr. Nelson and the loss that his family has and will continue to suffer.
24

25 Mr. Newsome was 17 years old when this crime occurred, and he will be punished to
26 grow up, reach adulthood, and become a man in prison. While that is very little consolation to a
27 family that lost such a promising son, all that Mr. Newsome can do now is to act to become a
28

1 better person to fulfill some of the promise that was lost in this world with the demise of Mr.
2 Nelson. Because of his learning and health limitations, Mr. Newsome did not have the same
3 academic ability and athletic prowess as Mr. Nelson. However, Mr. Newsome can and is
4 working to move beyond his mistakes to become a better individual that can one day soon
5 reintegrate back into society to become a lawful abiding citizen. To that end, Mr. Newsome is
6 currently enrolled in high school to complete his education while in custody to earn both his
7 GED and high school diploma. He is programming, attending religious services, and doing what
8 he can to proactively work on improving himself. He plans to utilize his time in custody to
9 further his education and to possibly learn a trade that he can utilize when he is eventually
10 released from prison.
11

12 Throughout this case and upon his release, Mr. Newsome has had and will have the
13 unwavering support of his family, friends, fellow parishioners, and the leaders of his church to
14 help guide him. Their collective pleas of mercy for a sooner chance at redemption, knowing that
15 punishment is a certainty, are presented in the enclosed letters submitted for the Court's
16 consideration.
17

18 **EXHIBITS IN AID OF SENTENCING**

- 19 A. Letter from Tianna Douglas, Mr. Newsome's mother.
20 B. Letters from Arlene Bayreder, APRN at Children's Specialty Center of Nevada, Mr.
21 Newsome's treating healthcare center regarding his chronic granulomatosis (GCD)
22 diagnosis, complications, and treatment.
23 C. Letter from Eric R. Kitchen, Director of Help Parents Save Their Kids, a nonprofit
24 organization, regarding Mr. Newsome's work and participation in the organization, dated
25 May 26, 2017.
26 D. Letter from Joseph E. Terry, Ms. Newsome's family friend, dated January 29, 2018.
27 E. Letter from Rev. Raymond L. Giddens Sr., Unity Baptist Church, dated January 16, 2018.
28 F. Letter from Ariel Douglas, Mr. Newsome's little sister.
G. Letter from Ascension Newsome, Mr. Newsome's little brother.

- 1 H. Letter from Imunique Newsome, Mr. Newsome's older sister.
2 I. Letter from Deacon Charles Williams, Unity Baptist Church, dated January 19, 2018.
3 J. Letter from Marie Edmond, Mr. Newsome's grandmother.
4 K. Letter from Monique Armstrong, Ms. Newsome's family friend.

5 **CONCLUSION**

6 For the reasons stated herein, because of Mr. Newsome's youth, his acknowledgment of
7 his wrongdoing, his self-surrender, his acceptance of responsibility through his timely guilty
8 plea, and his desire to improve himself, we request this Honorable Court to punish him in
9 accordance with the recommendations of the PSI for a total aggregate sentence of Twelve (12)
10 years to Life with the Possibility of Parole. This sentence is sufficient but not greater than
11 necessary to punish Mr. Newsome and deter further criminal conduct, and it is balanced with a
12 sooner chance of redemption in the foreseeable future.

13 DATED this 7th day of February, 2018.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOHN J. MOMOT, ESQ.

EXHIBIT “A”

(1)

Judge Your Honor Valerie Adair,

I Tranna Douglas-Thomas is writing you this letter in regards to my son Richard A. Newsome Jr. I am a single mother of 4 children, I did the best I could by myself with no support at all from my first 3 childrens father Richard A. Newsome Sr. My children are my wor ld, my heart, my everything. Richard has had a very rough, trying childhood with fighting for his life several times. Richard was shot in both his feet in a home invasion at his grandparents home in Fresno, CA. That was a tragedy for us and always made Richard feel unsafe at home and especially at other people's home so he always stayed home with me. When he was 5yrs old he started getting hospitalized for 3 months at a time with very high fevers over 100°, fluid in his lungs, and Pneumonia. They would give Richard strong antibiotics to cure pneumonia would nothing help him it would get worse they would run test on him give him procedures to put him to sleep to suck out fluids to give him relief. Doctors did studies they finally found ^{two} ~~one~~ strong I.V only medications that would help clear up his lungs and after 3 months in hospital they would send him on with a I.V pick line so I can give him medication through it. This happened 3 times for 3yrs he was hospitalized for 3 months each time and home with pick line for 6-8 weeks. Richard

(2)

missed lots of school were it ~~caused~~ caused him to get put back in 2nd grade which caused other kids to bully him in school. Richard finally got diagnosed with his chronic disorder called Chronic Granulomatous disease after 3yrs of research from doctors to study his symptoms and send his blood out to a specialty lab. This disorder requires Richard to take lots of medications including a injection 3 times weekly for the rest of his life he takes 5 different medications two times a day. Richard never wanted to share his disorder with anyone he hated it in fact the medication would make him sick his body ache, headache, sweats and all. Doctors at times didn't think Richard would make it the Doctor referred Richard for Make-A-Wish foundation and Richard was granted a wish at age 9yrs old. When Richard got well enough he decided on his own to give his life to God be baptised and participate in activities at church he was a junior Usher, Sunday school member, attended Vacation ~~etc~~ bible study etc. Richard loved working for the Lord. Even when he was sick he would push himself to do all activities. Richard is my hero he is a strong young man. Your Honor this is truly a tragedy for both sides we are dealing with my heart and prayers goes out to victims family not one day goes by I don't think about what happened and the hurt she is feeling the whole family is feeling. We feel it too my baby is going away too but I ask your mercy to please bring him home

(3)

to be able to save someone else's life. I want Richard to prove himself as a good man and have a family of his own he deserves that. Your Honor with all he has gone through. I was trying to get my kids into the car that night to leave and we were leaving and someone ran up to our car towards kids side of car and I never knew Richard had a gun I would never ride around with a gun I hate guns terrified of them. This is something that should of never happened and my heart hurts every single day that it did. I am truly sorry. I have not been the same since Your Honor spending 30 days in jail was hell for me being away from my children wondering if they are ok because there is nobody to look after them keep a roof and food for them. My disabled mother moved in with us recently last October due to not being able to live alone no more from her senior dependent apartment. My mother can't cook, wash her clothes nor clean anymore someone has to do for her. I been working at Walmart Deli and taking care of my kids and mother that's all I do. I been on house arrest for almost a year I can't do anything with my kids and mother anymore. I never been in trouble I truly learned my lesson Your Honor please give me a chance as well to prove that to you we are not bad people Our Pastor and ~~deacons~~ deacons been attending our court hearings with us our Church has been a blessing. We attend church we love the Lord. I pray you take all this into consideration for both Richard and I at sentencing we beg for your Mercy and are truly deeply sorry Judge Valerie Alder.

(4)

Thank You for your time. God bless!

Tionna Douglas-Thomas

EXHIBIT “B”

3121 S. Maryland Pkwy., Suite 300
Las Vegas, NV 89109
Tel: (702) 732-1493
Fax: (702) 732-1080

ALLIANCE FOR CHILDHOOD DISEASES

Re: Newsome, Richard

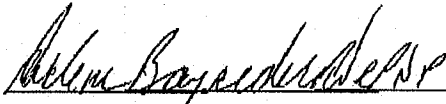
DOB: 6/23/1999

Booking # 54371116

To Whom It May Concern,

Richard Newsome is a patient under my care at Children's Specialty Center of Nevada since March of 2013 for a diagnosis of chronic granulomatosis disease. This is a chronic genetic disorder and requires multiple medications. He requires routine clinic visits every three months for maintenance of his illness and management of any potential side effects of medications. He has not been seen since 11/7/2016. Despite his incarceration he deserves quality healthcare with a provider knowledgeable of his diagnosis and treatment plan. Please contact our office at (702) 732-1493 to schedule him for follow up and labs and to discuss the long term care he needs during his incarceration.

Thank you,


Arlene Bayreder, APRN

12-21-17
Date

Jan. 31, 2018 1:54PM

3121 S. Maryland Pkwy., Suite 300
Las Vegas, NV 89109
Tel: (702) 732-1493
Fax: (702) 732-1080

No. 8652 P. 3
ALLIANCE FOR CHILDHOOD DISEASES

26 October 2017

Re: Richard Newsome Jr.

DOB: 6/23/1999

Booking # 54371116

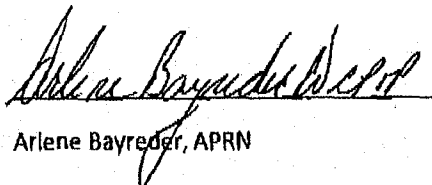
Richard is a now 17 year 6 month old male well known to our clinic for the diagnosis of chronic granulomatosis Disease (GCD), that was diagnosed at the age of 8 years old. GCD is a genetic disorder in which the white blood cells called phagocytes are unable to kill certain bacteria and fungi. Affected individuals have an increased risk for infections. The current treatment for GCD includes preventative (prophylactic) antibiotics and antifungals on a long-term basis, as they are the mainstay of treatment; aggressive and timely infections management with antibacterial or antifungal medications; gamma-interferon therapy to help boost the immune system to help fight infections. Surgery may be used to relieve obstruction from granulomas, drain abscesses or remove established infections. The goal of therapy is to prevent infections and complications.

Richard is currently on Actimmune 2000000/0.5 mL, he injects 0.395 mL three times per week on Monday, Wednesday, and Friday. At this time, Actimmune is the only FDA approved medication for treatment of GCD. Although he injects less than full dose for his size, it has prevented recurrence of Sino-pulmonary or skin infections. When without medications he will usually present with sinusitis or skin infections, abscessed or granulomas. He is to be taking Bactrim two times daily to prevent infections with pneumocystis as well as Voriconazole daily to help prevent fungal infections. Please allow the parents to provide his medication from home so that doses are not missed.

A copy of Richard's current medication list is attached to this communication. At his last visit, he was found to have some iron deficiency as well and he was started on iron supplements. During a hospitalization over a year ago (1/2016), he was found to be blood culture positive with methicillin resistant staphylococcus aureus for which he was treated with antibiotics. A subsequent blood culture obtained on 8/2016 was found to be negative although a nasal passage-screening test was found to be positive. He and his immediate contacts were to shower with Hibiclens and apply bactroban to intranasal passages. Since his treatment, he has had one subsequent negative MRSA nasal screening test on 11/7/16. He was last seen in clinic on 11/7/16.

If you have any further questions regarding Richard's diagnosis or treatment, please do not hesitate to contact me at the office.

Sincerely,

 10.26.17
Arlene Bayreder, APRN

*Please call to
schedule an appointment
for him
702 732-1493*

CHILDREN'S
SPECIALTY
CENTER
OF NEVADA



ACCREDITED BY THE
JOINT COMMISSION

CURE 4
THE KIDS
FOUNDATION

HEMOPHILIA
TREATMENT
CENTER
OF NEVADA



Children's Specialty Center of Nevada

3121 S Maryland Pkwy Ste 300
Las Vegas, NV 89109-2302
Phone: (702) 732-1493
Fax: (702) 732-1080

Richard Newsome, Jr

Patient #: 2268

DOB: 06/23/1999 (18 years)

Date Printed: 10/26/2017

Regular Medications

he has been refusing due to severe reaction making him very weak

Actimmune 2000000UNIT/0.5ML Solution
Note: Please provide appropriate syringe and needles for administration.
Walgreen specialty Pharmacy 888-347-3416 spoke with missy delivery will be thursday @ clark county detention center. spoke with grandma inform delivery will be thursday 330 casino center las vegas, nv 89016 #5437116

Dosage: 1 (one) Solution (Subcutaneous) 0.395cc daily x 3 x per week
Start Date: 03/06/2017;

Bactrim DS 800-160MG Tablet

Dosage: 1 (one) Tablet (Oral) two times daily
Start Date: 03/06/2017;

Voriconazole 200MG Tablet

Dosage: 2 Tablet (Oral) daily
Start Date: 03/06/2017;

Iron 325 (65 Fe)MG Tablet

Dosage: 1 (one) Tablet (Oral) two times daily
Start Date: 11/07/2016;

Hibiclens 4% Liquid

Dosage: 1 (one) external application external application (External) per regiment
Start Date: 08/26/2016;

Bactroban Nasal 2% Ointment

Dosage: 1 (one) Ointment Ointment (Nasal) two times daily
Start Date: 08/26/2016;

As Needed Medications (PRN)

Ibuprofen 600MG Tablet
Note: PRN pain

Dosage: 600 Milligram (Oral) every eight hours, as needed
Start Date: 04/07/2017;

Ondansetron HCl 8MG Tablet

Dosage: 1 (one) Tablet (Oral) every six hours as needed for nausea
Start Date: 03/06/2017;

Bacitracin 500UNIT/GM Ointment
Note: Apply to affected area two times/day

Dosage: 1 (one) Application (External) two times daily, as needed
Start Date: 02/07/2017;

Zyrtec Allergy 10MG Tablet
Note: as needed
Note (Mail Order): as needed

Dosage: 1 tab (Oral) daily PRN

Nexium 40MG Capsule DR

Dosage: 1 cap (Oral) as needed

Cetirizine HCl 10MG Tablet
Note: as needed
Note (Mail Order): as needed

Dosage: 1 tab (Oral) at bedtime PRN

Richard Newsome, Jr

Patient #: 2268

DOB: 06/23/1999 (18 years)

Thursday, October 26, 2017

Page 1 / 2

075

Aleve 220MG Tablet

Dosage: 1 tab (Oral) as needed

Phenergan

Dosage: specific dose unknown (Oral) as needed

Albuterol Sulfate (2.5 MG/3ML)0.083% Nebulized Soln **Dosage:** 1 (Inhalation) as needed

Note: Reported

Note (Mail Order): Reported

Patient/Parent/Guardian Signature: _____

Date: _____

Verification: _____

Robert Newsome, Jr.

EXHIBIT “C”

HPSTK ~ ~ ~ Help Parents Save Their Kids A nonprofit organization since 1998.

705 Alejandro Daniel Avenue, North Las Vegas, NV 89031

May 26, 2017

To Whom It May Concern:

Richard Allen Newsome Jr. worked with us for about six months. During that short period of time I observed Richard to possess excellent leadership skills. He was also considerate of others, used good organizational and good communication skills. I noticed he could be quiet or out spoken when necessary.

At the job site, Richard learned to install hardwood floors.

I believe he will grow to become a productive member of society, if give the opportunity. If you need further assistance regarding Mr. Newsome, please contact me at (123) 228-9009.

Sincerely,



Eric K. Kitchen
Director

EXHIBIT “D”

January 29, 2018

Joseph E. Terry
412 Parrot Hill
North Las Vegas, NV 89032
702-592-6540

Concerning Defendant
Richard A. Newsome
Case #5437116

Honorable Judge Valerie Adair
Courtroom 11C
Las Vegas Justice Court
200 Lewis Ave.
Las Vegas, NV 89101

Greetings Judge Adair,

I'm compelled to write and share my experience with you concerning Richard A. Newsome. I pray all is well with you, and I would like to express my heartfelt sympathy, compassion and care for the family of the young man who lost his life. Well your honor, I recall observing Richard Newsome just about 10 years ago participating in a general worship service as he served along with other young people as junior ushers. It's very clear to me and others who really understand the principles of self preservation, and your honor I believe you are one of the main figures when it comes to understanding how fear can lead to tremendous lapses of judgment. I'm convinced that the young man in question didn't wake up on that dreadful day and decide to take another person's life. Instead, some turn of events led to the unbearable and unacceptable loss of life that occurred, but it was clearly out of fear that Richard Newsome responded the way he did on that day.

Taking into consideration the possibilities of what may have happened on that dreadful day if Richard had not responded the way he ultimately did, although Richard regrets what happened. Maybe the victim would have been on trial, and some family member of Richard or himself may have been the victim. Is this an attempt to justify the actions that Richard took on that day? Absolutely not! Richard says he realizes that he didn't quite handle the situation the way he should have, but he maintains the position of only doing what anyone would do if they believed their life was being threatened or their family's lives were being threatened.

What a tragedy that a young man with such a promising future lost his life on that dreadful day. My son actually coached the victim in the 707 Football League here in Las Vegas at Chaparral High School. I know that Richard is going to be sentenced to do prison time, but what I'm struggling with is shouldn't a young person with character and morals be given a chance to redeem himself? Richard does not display anti-social behavior, and I'm suggesting only that the circumstances of what occurred be taken into consideration so that Richard will be in a position to possibly help some unsuspecting young person to avoid making the mistake he made. If Richard receives the harshest penalty that won't bring the young man back that lost his life. If on the other hand Richard has an opportunity to be a catalyst for avoiding violence then society has gained an advocate. Thank you so much your honor for taking time to read this letter, and I pray you'll take into consideration what I've shared with you concerning Richard A. Newsome. God bless and keep you is my prayer!

Sincerely,

Rev. Joseph E. Terry, MACCM

EXHIBIT “E”



Unity Baptist Church
Rev. Raymond L. Giddens Sr., Pastor

Anders Denson
Chairman,
Deacon Board

January 16, 2018

SUBJECT: Letter of Reference

Gilbert Moore
Chairman,
Trustee Board

TO: Judge Valerie Adair

Helen Rivers
Church Secretary

FROM: Rev. Raymond L. Giddens Sr.
Unity Baptist Church
543 Marion Drive
Las Vegas, NV 89110
(702) 459-2263/2350

Affretta Nunley
Church Clerk

Richard A. Newsome Jr. was a member of Unity Baptist Church, in good standing. While at Unity he served on the Junior Usher Board along with his brother and sister. I have known his family for the past ten years. It was through his grandmother that I came to know this family. Life has not been easy for Richard and I do know that he struggled in his inter-actions with adults and other children his age. He was sometimes bullied by kids at school and in his neighborhood. His mother was always trying to hold a job to provide for her family. It was his grandmother that kept all the children in church. Praise God for Grandmothers! I have had the opportunity to visit with Richard when he was first arrested and along with our Deacon Family Ministry Team, make most of his court appearances.

We know that justice must be served and all we can do is petition the court for mercy. I Believe Richard understands and is Godly sorry for the mistake he made. I also believe that Richard has the ability to get his life together and will set the proper example in conduct as a model prisoner. As the pastor of Unity Baptist Church, I request that every consideration should be given to Richard at this difficult time in his life.

Respectfully,

Raymond L. Giddens Sr.

Rev. Raymond L. Giddens Sr.

EXHIBIT “F”

Dear your Honor,

My name is Ariel Douglass. I am Richard Newsomes little sister. When I was a baby Richard always made me bottles and change my diapers and when my mom will wake up my brother would be holding me and giving me my bottles. He is the best brother I could ever have. And my brother is not a criminal. And he is a strong man, when he was little he got shot when he was four ~~years~~ old that is very sad and he also had health issues ^{years} he had to go to hospitals and he does not deserve to be in jail. I know he shot someone but he is truly sorry but I want my brother home soon. I miss him so much. He is my hero and when I was scared he would make me feel better. He would always be my hero. And please do not have him in jail for a long time please. He is a good boy and he is very very very strong to suffer ~~from~~ asthma and other stuff. And he will always protect his family. Thanks for your time

love Ariel Douglass

EXHIBIT “G”

Dear your Honor,

My name is Alexander Williams, I'm trying to find the right words to describe my time growing up with my brother Richard. From sharing a room to all the brotherly lessons he has taught me along the way, as I am his little brother and his best friend. I can remember growing up my brother and I always shared a room so I was with him 80% of the time. We never had a problem sharing a room for the fact we were so close having separate rooms would be hard. We would always talk, laugh, show each other funny things on social media. My brother and I been sharing a room since I was 4 or 5. We had arguments and fights but we would be talking 20 minutes later. We never took arguments and fights to a serious level like, hitting in the face or not talking to each other. We always went to sleep on a good note. At night I would more than often get woke up to him for 2 reasons, one reason is because he has a bad illness, and he has side effects from his medicine, but he really doesn't like to talk about it. I hear my brother moaning in pain and crying at night and sometimes throw the day. The second reason my brother wakes me up at night in a cold sweat asking if "I heard that" referring to noises in the house. Most the time it's the TV, but I really knew something was wrong when I was up late on my phone, and everyone was sleep the house was quiet and he jumped and

Sat up and said "You heard that. Someones trying to get in" then I'd have to go with him to make sure and lock all doors. My brother got shot in a home invasion at 4 years old and he remembers what happened where he was sitting at when he got shot. Even with everything he goes threw he stays strong and worries about his family more then himself.

Thank You for your time
Ascension Newsome

EXHIBIT “H”

Dear your Honor;

My name is Imuniqué Newsome
and I'm writing this letter on
behalf of my little brother.

Richard Newsome Jr. Growing up he
was always my protector, even if
I am the oldest. He always said
"I'm your daddy!"

When I was 3, and my brother
Rich was 4 we were involved in
a home invasion in our grandparents
home in Fresno, California. Leaving
Rich and our childhood dog shot. That
was our safe place. After the invasion
it was a constant battle to make
him feel even the slightest bit
safe. He never left home much
stayed close to his family. To
this day I have anxiety. No where
is really safe to us.

Later down the road Rich becomes
ill, in and out of hospitals (he learned
how to lie - his stool was a hospital
bed) for long periods of time. Caused
him to be held back a year in
school. Our father never was around
so my mom did the best she could
to see we were okay while being
there for Rich.

Due to our absent father being
absent during the most critical parts
of my brother's life, my brother's

to figure out what it was and
what it is to be a man. No
positive male role models in their
life. All I'm asking is you take
it not all but some of these
things into consideration during
the time of sentencing. We need our
brother in our lives. We have and
will forever pay for Mr. Nelson's death,
and I know that will never be
enough. But life shouldn't equal
life.

Thank you

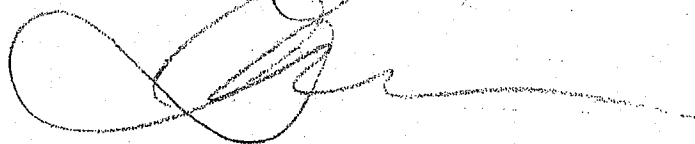


EXHIBIT “I”



Unity Baptist Church
Rev. Raymond L. Giddens Sr., Pastor

Anders Denson
Chairman,
Deacon Board

Gilbert Moore
Chairman,
Trustee Board

Helen Rivers
Church Secretary

Alfretta Nunley
Church Clerk

January 19, 2018

SUBJECT: Richard A Newsome Jr.

TO: Judge Valerie Adair

FROM: Deacon Charles Williams
1415 Stonehouse Street
Las Vegas, NV 89110

I'm writing this on behalf of Richard A. Newsome Jr. Richard has served on the Youth Usher Board at Unity Baptist Church. Richard attended Sunday School and participated in Many activities at our church. As a young person, Richard attended church regularly and was willing to work for the Lord. Though his works, you could see that he was a child of God and believed in Him.

I'm asking for the mercy of the court. Richard has made a mistake that I feel he is truly sorry for and has dedicated his life to God and supporting others.

I believe that Richard is ready to spread the good word of our Lord and Savior Jesus Christ.

Richard has been a model person while serving time at the Clark County Detention Center, with his illnesses he still found time to talk to others about the bible and God.

I thank you for this consideration.

Sincerely,

Charles Williams, Deacon
Unity Baptist Church

EXHIBIT “J”

Honorable Judge Valarie Adair
District Court in Nevada
Sept 21

Judge Adair,

Today as a Grandmother of 21 grandchildren and 2 Great Grandchildren, I address this court in an appeal for the consideration of leniency in regards to my Grand son Richard Newsome!

Richard was born with the granulomatous disorder, that causes the immune system to malfunction, resulting in a form of immunodeficiency.

We as Parents face the many challenges raising our children in this hostile environment where social media has become the norm and many situations get misinterpreted then misunderstandings and violence find its way literally over nothing; to get attention.

Personally I don't condone any act of violence, but when it hits your home, the first thing you do is pray that everyone is alright.

But the horror of knowing one
your children might be involved
in the taking of another child's
life is heartbreaking and unsettling!

To the Parents who lose a child
in the violence of today my heart-
felt sincerity goes out to them.
The healing will take time of
course but we stay strong to continue
to find the answers that will no
doubt save other children lives
in the future.

Could Social Media subconsciously
be breeding acts of violence in
our children subliminally as we
as Parents have no idea how to
combat the situation?

At this time I want to thank
the Court for allowing me ~~task~~ for
my grandson consideration for
leniency.

Sincerely,
Marie Edmond

EXHIBIT “K”

Monique Armstrong.

To whom it may concern my name is Monique Armstrong and I have known Richard Newsom from the day he was born. I know that Richard has done something that he can't take back but Remorseful He is. I know that he regrets what happen from his soul he really is a good kid that just made a bad decision he knows he has to do some time for. I've watched Richard and his siblings grow up personally along with my children that are the same age. I also have a son Richards age and they are cousins not by blood but by 25 years of friendship with tianna Thomas. I truly believe that a child Richards age can change with alot of help from the people in his community. Children his age minds are not fully aware of the bad choices that can be made in a quick second. Richard has always been a quiet

Church going child. And at some point in these young men's life they will grow to be great Community Leaders to share His and all other testimonies. I write to you to please consider that He is now a child in the jail system that will not grow to be a productive citizen unless given a slight chance to grow into a man that is not locked down or locked up for the rest of his life or half of his life.

Thank you

Monique Armstrong

LOW OFFICES OF
JOHN J. MOMOT, ESQ.
SUITE 300
520 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 385-7170

1 **ROC**
2 JOHN J. MOMOT ESQ.
3 Nevada Bar No. 1700
4 YI LIN ZHENG
5 Nevada Bar No. 10811
6 **MOMOT & ZHENG**
7 520 So. Fourth Street, Ste. 300
8 Las Vegas, Nevada 89101
9 (702) 385-7170
10 MOMOTLAWFIRM@GMAIL.COM
11 Attorney for Defendant
12 RICHARD NEWSOME

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,)

11)
12 Plaintiff,)

13 vs.)

14 RICHARD NEWSOME,)

15 Defendant.)
16 _____)

Case No. C-17-321043-1
Dept. No. XXI

Date and Time of Sentencing:
February 8, 2018 @ 9:30 a.m.

17 **RECEIPT OF COPY**

18 RECEIPT OF COPY of the foregoing DEFENDANT'S SENTENCING

19 MEMORANDUM AND EXHIBITS IN AID OF SENTENCING is hereby acknowledged this

20 7
21 day of February, 2018.

22 CLARK COUNTY DISTRICT ATTORNEY

23
24
25 By: _____
26
27
28



JOCP

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD ALLAN NEWSOME JR.
aka RICHARD NEWSOME
#5437116

Defendant.

CASE NO. C-17-321043-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

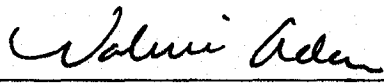

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030.2, 193.165; thereafter, on the 8th day of February, 2018, the Defendant was present in court for sentencing with counsel YI ZHENG, ESQ., and good cause appearing,


THE DEFENDANT WAS ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee, \$20,612.47 Restitution payable to the victim's family, \$864.61 payable to Victims of Crime, (all Restitution to be paid Jointly

1 and Severally with Co-Defendant) and \$150.00 DNA Analysis Fee including testing to
2 determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is sentenced
3 as follows: a MAXIMUM of LIFE with a MINIMUM parole eligibility of TEN (10)
4 YEARS in the Nevada Department of Corrections (NDC) with a CONSECUTIVE term
5 of a MAXIMUM of TWO HUNDRED AND FORTY (240) MONTHS with a
6 MINIMUM parole eligibility of NINETY-SIX (96) MONTHS for the Use of a Deadly
7 Weapon.
8

9
10 THEREAFTER, on the 15th day of February, 2018, the Defendant was present in
11 court with counsel YI ZHENG, ESQ., and pursuant to a Further Proceedings – Add
12 Credit Time Served to Sentence hearing; COURT ORDERED, Motion GRANTED.
13 Defendant to receive a TOTAL of THREE HUNDRED NINETY-FOUR (394) DAYS
14 credit for time served.
15

16 DATED this 20th day of February, 2018
17

18
19 
20 VALERIE P. ADAIR
21 DISTRICT COURT JUDGE 
22
23
24
25
26
27
28



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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TIANNA M. DOUGLAS, aka
Tianna Michele Thomas, #1775693

Defendant.

CASE NO: C-17-321043-2

DEPT NO: XXI

**JUDGMENT OF CONVICTION
(PLEA OF GUILTY)**

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of ACCESSORY TO MURDER (Gross Misdemeanor), in violation of NRS 195.030, 195.040, 200.010; thereafter, on the 8th day of February, 2018, the Defendant was present in court for sentencing with her counsel, YI LIN ZHENG, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00 Drug Analysis Fee, \$3.00 DNA Collection Fee, \$20,612.47 in Restitution, payable jointly and severally with Co-Defendant RICHARD ALLEN NEWSOME to the victim's family and \$864.61 to Victim's of Crime, the Defendant is SENTENCED to THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC), with THIRTY-ONE (31) DAYS credit for time served.

DATED this 11th day of May, 2018.


DISTRICT JUDGE 

dd/MVU



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 RICHARD NEWSOME, JR,

12 Defendant.

CASE#: C-17-321043-1

DEPT. XXI

13
14 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
15 THURSDAY, FEBRUARY 8, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **SENTENCING**

18 APPEARANCES:

19 For the State:

GIANCARLO PESCI, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

YI LIN ZHANG, ESQ.

22
23
24 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER
25

1 Las Vegas, Nevada, Thursday, February 8, 2018

2 [Hearing began at 10:17 A.M.]

3 THE COURT: State versus Richard Newsome and Tianna
4 Douglas.

5 All right. Mr. Newsome is present in custody; Ms. Douglas is
6 present out of custody. We have Mr. Pesci representing the State. This
7 is the time set for the rendition of sentence. Are both sides ready to go
8 forward?

9 MR. PESCI: Yes, Your Honor.

10 THE COURT: And we did receive the State's sentencing
11 memorandum. Did you get that?

12 MS. ZHENG: I did receive that, Your Honor. I also filed a
13 sentencing memorandum.

14 THE COURT: When was that filed?

15 MS. ZHENG: I filed it yesterday at about Noon. I did drop off
16 a courtesy copy at the department at 1:00.

17 THE COURT: Did you put it in the box or did you –

18 MS. ZHENG: I did. I contacted your –

19 THE COURT: -- let my JEA – did you bring it back into
20 chambers?

21 MS. ZHENG: I called to see if they wanted me to walk back.
22 They asked me to put it in –

23 THE COURT: Who did you talk to? Was it a woman or a
24 man?

25 MS. ZHENG: It was a woman.

1 THE COURT: Was it a runner or was it you?

2 MS. ZHENG: It was me. I personally --

3 THE COURT: I apologize. My JEA just says she cleaned
4 everything out of the box and there was nothing in the box.

5 MR. PESCI: We can wait if you need to review it.

6 THE COURT: No, I want to review it, obviously, before -- I did,
7 of course, review Mr. Pesci's sentencing memorandum which I don't
8 have a file-stamped copy so I'm assuming this is a courtesy copy.

9 MR. PESCI: Yeah.

10 And I believe that you called and my JEA verifies it, of course.
11 I don't know what happened, why I don't have that.

12 All right. She's getting that. Why don't you folks have a seat
13 and there may be some other matters that are ready.

14 [Proceeding trailed and recalled at 10:23 A.M.]

15 THE COURT: All right. The Court is going to recall the
16 Newsome/Douglas matter.

17 And just to clarify, the Court had received your sentencing
18 memorandum in support of Ms. Douglas. It was the sentencing
19 memorandum in support of Mr. Newsome that for some reason was not
20 provided to me. I just have, as you saw it sitting up here, and I've
21 reviewed it, and, essentially, the dispute was about the six years on the
22 bottom so.

23 Mr. Pesci, you have retained the right to argue. We did
24 receive notification that there would be five victim speakers, and I'm
25 assuming, pursuant to statute, you would like all five to address the

1 Court last; is that correct?

2 MR. PESCI: There will only be two but, yes, we're asking that
3 they be last, Your Honor.

4 THE COURT: All right. Very well.

5 And, Mr. Pesci, have you – have both sides had an
6 opportunity to review each other's sentencing memorandum?

7 MS. ZHENG: We have, Your Honor, but in light of the fact
8 that you did not receive Mr. Newsome's sentencing memorandum, it is –
9 it's lengthier in nature –

10 THE COURT: Well, it's ten pages which I read, and then
11 there are numerous letters here attached to it which I'm, you know,
12 going over, including one from his mother.

13 MS. ZHENG: Should I trail this to the end of the calendar so
14 that you can do this? I mean, outside of that – I mean, I'd ask for a
15 continuance but –

16 THE COURT: I mean, I read the whole sentencing
17 memorandum and the letters.

18 **[Bench Conference – Not Recorded]**

19 THE COURT: The Court feels comfortable that it's reviewed
20 everything, and as I said at the outset, Mr. Pesci is arguing for a
21 sentence of 18 to life based – and according to, as to Mr. Newsome, the
22 defense is urging the Court to follow the recommendation of a 12-to-life.

23 MS. ZHENG: Yes.

24 THE COURT: And so it's really the six years between 12 and
25 18 that, I think, is what is being disputed between the State and the

1 defense.

2 And so because there are speakers who will be going last,
3 we'll begin with Mr. Newsome and, Mr. Pesci, your argument as to Mr.
4 Newsome, unless you'd like to argue as to both defendants at once.

5 MR. PESCI: I could.

6 THE COURT: All right. And then Mr. Newsome will address
7 the Court. And then – if you're comfortable with that, Ms. Douglas, or
8 would you rather Mr. Newsome address the Court, you can argue on
9 behalf of Mr. Newsome, and then Ms. Douglas can address the Court.
10 You can argue on behalf of Ms. Douglas, and then we'll hear from the
11 speakers. Is that satisfactory to the defense?

12 MS. ZHENG: Yes, Your Honor.

13 THE COURT: All right. Very well.

14 Mr. Pesci.

15 MR. PESCI: Thank you very much, Your Honor.

16 I'd like to start with Ms. Douglas, Your Honor. This is the adult
17 in this situation. This is the individual who should be mature. This is the
18 individual who should use more discretion, have a better thought
19 process, because there's arguments made about the co-defendant being
20 young, and taking that into consideration.

21 Ms. Douglas went to this location. Ms. Douglas, after the
22 shooting occurs, took her son and fled from this area. Now, I
23 understand in looking at the defense's memorandum about how they
24 turned themselves in, that's all well and good. But at the time this all
25 happened, the adult here took her son who just shot a young man in

1 cold blood and fled the scene. And as I see it, she's done one day; one
2 day's time for that crime.

3 She has to do time, Judge. There has to be a consequence
4 for this kind of an action. I understand she doesn't have a criminal
5 history, but this is a really serious situation, and I think that she should
6 do the maximum under the law in this particular case.

7 Now, switching over to Richard Newsome. When you look at
8 the reports, when you look at what was –

9 THE COURT: So, in other words, you're asking for the 364
10 days.

11 MR. PESCI: Yes, Your Honor.

12 Looking at Mr. Richard Newsome, this is an individual, per the
13 reports and the witness statements, who was mad about how his sister
14 was treated. And so decides to take a gun and go to the location where
15 this dispute is continuing at this point.

16 And this individual starts to beat on a girl, on a woman, and
17 our victim in this case did what every brother should do for his sister. He
18 came to defend and protect his sister. That's the most innate feeling
19 within a family. And he paid with his life.

20 This defendant, I don't agree with the Department of Parole &
21 Probation, should get the low end on the weapon's enhancement. This
22 is not a newbie to the criminal justice system, Your Honor.

23 If you look at the PSI, this is an individual who, as a juvenile, is
24 charged with disorderly conduct in 2015, and then charged with three
25 counts of robbery in 2015.

1 Now, he gets formal probation and it's amended to a
2 conspiracy to commit larceny from the person. Does he learn from that?
3 No. He continues on. There's a curfew violation in 2016. Then there's
4 a petit larceny and trespass in 2016, and then we get to our crime.

5 So this is someone where the system has tried to work with.
6 This is someone who has been given opportunities that the juvenile
7 justice system provides for serious charges. And he takes out a gun and
8 shoots a young man who had the brightest future going for him and took
9 him from this planet with no good reason.

10 For that, Judge, he should do the maximum under the
11 sentence so we'd ask that the speakers be able to speak last.

12 THE COURT: All right. Thank you, Mr. Pesci.

13 Mr. Newsome, your lawyer will have an opportunity to speak
14 on your behalf, but what if anything would you like to state to the Court
15 before the Court pronounces sentence against you.

16 THE DEFENDANT NEWSOME: Yeah, I have a letter that I
17 want to read to 'em and to everybody.

18 THE COURT: Okay.

19 THE DEFENDANT NEWSOME: First, I'd like to apologize to
20 the victim, Richard Nelson. My actions were wrong and I'm sorry, I
21 made a mistake.

22 I also want to apologize to the family of Richard Nelson. I
23 caused you guys a lot of pain, mentally and physically, and I'm sorry; I
24 truly am.

25 And I know it will be hard for any one of you guys to forgive

1 me, and I understand that. I hope one day you do find it in your hearts
2 to forgive me for what I did. I never had the intentions of doin' what I did.
3 It was a split-second, stupid mistake that caused our world to change in
4 seconds.

5 Richard Nelson had a future ahead of him. My mistakes
6 caused that to end early. I'm sorry for what I did. If I could turn back, I
7 would do it over. I deserve to be punished for what my actions.

8 I want to apologize to my mom, too, for the pain I caused you
9 growing up. But out of everything, this is the worst. I'm sorry I put you in
10 this situation and caused you to be standin' there and not sittin' over
11 there. You raised me the best way you could and I know it hurts seeing
12 me go down this road.

13 MS. ZHENG: And I think it goes without saying that in this
14 case, early on as we've been coming to court that there are no winners,
15 and it is undoubtedly tragic, and I know that from the defense side, there
16 are no apologies that are sufficient for the life that was lost and the life
17 that was taken.

18 I don't agree, as stated in the memorandum, with the reasons
19 why it was portrayed by the State that that was the reason why they
20 went over.

21 As it is with these cases because attorneys' offices were
22 involved very early on, the fact is that both of these individuals contacted
23 our office to say that there was an active investigation. They knew that
24 they would be looked for and they knew that they needed to answer to
25 the charges.

1 They called our office, they came into our office, we called the
2 homicide detectives that were on the case, had them come down to the
3 office and effectuate a self-surrender. But as it is with attorneys who
4 generally tell them no statements, please don't ask them any questions.
5 And as a result of that, none of their statements have ever been taken in
6 this case, and neither their side of the story.

7 That night what happened was undoubtedly a tragedy for
8 everybody, particularly for the Nelson family. But that was not the way
9 any of this was to have started or was supposed to have ended.

10 And I think the facts as we all know is that there was a large
11 group of people, the victim's sister was in a music group, there was
12 supposed to be a meeting, all of these people were supposed to come
13 over. In the midst of all of this, I guess the simplest way to between
14 social media messages that were being said, things that were said to
15 each other, feelings that were hurt, some people split off and then
16 ultimately all congregated.

17 Mr. Newsome's sister, Ms. Douglas' daughter, was one of the
18 people that was supposed to go over. She had at one point gotten off
19 the bus that they were on; they went to pick her up.

20 What was not so was that they did go over to the house. They
21 were actually over at the house, they had a conversation with Mr.
22 Nelson's mother. That was amicable, actually. They had discussed the
23 reasons why they were there. There was a sweatshirt, a hoodie, that
24 was left at Oneisha Coleman's home, the victim's family's home, that
25 they were asking to retrieve; they were there. As a result, as they were

1 leaving, there was a fight that broke up – broke out between Oneisha
2 Coleman and her ex-girlfriend. As a result of that, this fight was just
3 something that happened very near to the vicinity of the home, and it
4 continued to grow as people got involved in it.

5 Understandably, Mr. Nelson exited the house and also got
6 involved and tried to help his sister. Because there were so many
7 people, at one point we were up to nine people that was involved in this
8 altercation, everyone including Oneisha Coleman, the ex-girlfriend, Ms.
9 Douglas, Mr. Newsome, two other males, Mr. Nelson's mother.

10 As all of this was happening, they were getting to break up
11 and leave, and Mr. Nelson had – Mr. Newsome had told the officers that
12 he misunderstood. Based on appearance and gait, he believed that Ms.
13 Coleman was a male and believes that as his sister was involved in this
14 altercation, he also tried to come to the aid of his sister. As they were
15 leaving, Mr. Nelson was there. Mr. Nelson is much larger in stature than
16 compared to Mr. Newsome. He thought that they were being charged.

17 That being said, he reacted, and there is no question at the
18 end of the day that the reactions were bad. The decisions were bad. It
19 is – there's no doubt that these are mistakes and that there is no doubt
20 that it was tragic.

21 But underlying all of this, at least from our side what we want
22 to present, is in the event that one day the Nelson family can find it in
23 their hearts to give forgiveness to these people and peace to move on, is
24 that despite the fact that there is no apology that is enough in this world,
25 is that all of this was unintended. There was no thought that day to go

1 over there with a gun to cause an argument, to cause a fight, to cause
2 trouble, or to cause this end.

3 And in regards to that, know that he is undoubtedly in the adult
4 system for the severity of this crime, at some point when rendering
5 punishment, punishment is going to be had. He was 17 at the time that
6 this event happened, and there is no sentence that this court is going to
7 render today that does not anticipate that he will not be in prison for
8 more than what has been half of his current life.

9 There's no sentence today that we're going to give, and that in
10 itself is a form of punishment, the fact that he lives with the knowledge to
11 know that he ended the life of someone that had such a promising
12 future.

13 But that doesn't mean that he should never have a future in
14 regards to that. And that difference of six years is a big spread for
15 someone who is currently just 17.

16 He didn't have the background and he didn't have the physical
17 ability or the mental ability to rise to the accolades that Mr. Nelson did.
18 And for that, Mr. Nelson should be commended.

19 But to the extent that we look to punish someone, we also
20 have to look in the system as to how it is that they're going to handle
21 themselves and what it's going to indicate in the future. In this case, he
22 was 17.

23 This happened, he knew that he did something wrong, he
24 knew that he needed to turn himself in, and that's what he did. He
25 accepted responsibility for this. He has been remorseful about this

1 crime from the day that he walked into my office to his statement in court
2 today. That remains unwavering.

3 He knows that he's going to be punished. He knows that he's
4 going to have to live with this for the rest of his life. And to that end, we
5 have to look at also the struggles that he's had. He's faced certain
6 troubles in his life. The question is how are we going to correct those
7 mistakes?

8 He cooperated with the authorities, he surrendered. The entry
9 of plea in this case is timely. We've had so many murder cases come
10 before this Court today, and we're talking about cases that have been
11 trailing in the system from 2012, '13, and onwards.

12 This happened as soon as the negotiations were extended to
13 us, and having considered the circumstances of the case, he entered a
14 timely plea knowing that he's going to go to prison. And for those
15 reasons, he's doing everything that he can while he is in custody to
16 better himself.

17 He didn't have the ability to do so. His mom was a single
18 mother that was raising four children. He had difficulties in school; he
19 has a series of learning disabilities. Because of his disability and
20 because of his health condition, he ended up completing the 11th grade
21 and he didn't finish. He's currently enrolled in CCDC to complete both
22 his GED and his high school diploma.

23 He continues to do programming. He knows that he's going to
24 go away for a long time. He's going to use that as an opportunity to
25 program, to advance his education, and possibly to learn a trade. And I

1 know that that's not a consolation for the family that lost a son that had
2 such a promising future, but to the extent that we have someone who is
3 still surviving, who is also equally young, who potentially one day could
4 have a future. I'd ask to take that into consideration.

5 He's going to be punished. I'm asking for the 12-to-life. I
6 understand that the family wants retribution, but beyond what was being
7 recommended and the PSI, it really becomes retribution. Taking as
8 much life away from him will not bring Mr. Nelson back.

9 But to allow him to have a chance at redemption one day, I
10 think that serves a balance for what we seek in the justice system in
11 terms of sentencing, that a person be punished and that one day, at the
12 end of it, that there is a silver lining and that there is some chance at
13 rehabilitation and some chance at redemption. And this is a young man
14 that shows all the earmarks of being able to do that.

15 So I'm asking for the Court to follow the recommendation in
16 the PSI. And as often as it is – it's often rare that the defense is asking
17 for that. So often we come in here and we hear the State say, well, the
18 PSI got it, follow the recommendations in the PSI, Your Honor, because
19 generally it comes back with the PSI as much harsher for the defense
20 than it is for the State. But in this case, the State is asking the Court to
21 go far and beyond what the PSI does.

22 And as the PSIs now do, they take the probation success
23 probability scale into account, they take into account his background, his
24 criminal history, his social history, the facts of the case, and any other
25 adjusting factors. And in light of all of that, they're asking you to render

1 a sentence of 2 to 10 years on the gun enhancement, and the 10-to-life
2 on the second degree murder. I'd ask the Court to follow that.

3 THE COURT: All right. Thank you.

4 Ms. Douglas, obviously, your lawyer will have an opportunity
5 to speak on your behalf, but what if anything would you like to state to
6 the Court before the Court pronounces sentence against you?

7 THE DEFENDANT DOUGLAS: I would like to apologize to
8 the family. I mean, it wasn't supposed to be like that that night. You
9 know, I was trying to break up everything, I was trying to diffuse the
10 situation, get everybody into the car, and just other prides escalated in
11 the middle of that. And then Richard Nelson ran out as we were
12 approaching the car and it just happened so fast.

13 I never knew my son ever purchased a gun because I don't
14 like guns, I never have. I'm not a violent person. I raised my kids in the
15 church along with my mother, my disabled mother I take care of, and this
16 has been, like, really hard on me since day one. If I bothered – I hurt for
17 both sides, you know what I'm saying, because they lost their child.

18 And I could never understand that but I'm losing mine too,
19 you know. Richard is not a bad person. He's been in a home invasion
20 when he was four years old, he's been chronically ill all his life. He's
21 been in and out of hospitals with three months at a time, and he has a
22 chronic disorder that he's going to face for the rest of his life as well.

23 And I just ask for another chance for him to be able to one
24 day have a family and change because he's worked for the congregation
25 of the church. He's just got into that, you know, as we being a single

1 mother, I don't understand raising young boys. You know what I'm
2 saying? It's just, I guess they have their own little thing they gotta go
3 through and what they get involved in, you know. But it's not easy, you
4 know.

5 And that night, I was never intending to go over there to hurt
6 anybody. That wasn't the intention. And I just ask that mercy and
7 forgiveness that the family one day can forgive and just let them know
8 that it's not like we're not hurting, we have to live with this for the rest of
9 our lives as well, because we do.

10 THE COURT: All right. Thank you.

11 MS. ZHENG: And I have to – she is the adult in this
12 situation. But I think in regards to her statement is that, again, I can only
13 underscore the fact that none of this was intended to happen and as
14 tragic as it is, these are the outcomes and the consequences that we
15 deal with. But they did not go over there that day looking for a fight,
16 looking for an argument.

17 And as the adult, maybe the fault is that maybe she should
18 have known, but she didn't know that Richard had a gun on him. She
19 reacted to the fact that there was gunfire, they were trying to leave, she
20 ushered everyone in the car; they left. That's what happened. And as
21 the adult, she should have made the decision to stay there.

22 But to the extent that that mistake was made and that it was
23 not supposed to have happened that way, she's accepting responsibility
24 for that.

25 I know that the State is asking for you to impose a 364-day

1 sentence. I would ask the Court to suspend that sentence. I think one
2 of the things – and actually, she has more than one day in custody. She
3 was arrested – well, we had her self-surrender; that's the one day in
4 custody. She posted bail originally at \$5,000 when it was set in Justice
5 Court.

6 Subsequent to that, the State received a grand jury indictment.
7 She was rearrested on the grand jury indictment, and she remained in
8 custody until we were able to have several returns on a bail hearing.
9 So she actually has, I think, 31 days in custody, but as that goes, I'm
10 sure later on we can subpoena the jail.

11 But in regards to that, she was let out on additional bail with
12 the condition of house arrest, and she has been on house arrest since
13 the start of this case. And as we have come back to court previously for
14 an opportunity to have that amended and that condition modified, house
15 arrest has sent a letter saying that for the entire duration that she has
16 been on, she is in perfect compliance.

17 And that's relatively rare in regards to that. This is someone
18 who was facing this care, she is taking care of her disabled mother, she
19 is taking care of her three other children. She went back into the
20 community, she got a job, she's currently working at Wal-Mart, she
21 works in the Deli section, she continues to work that. Before that, she
22 had other opportunities where she was driving for Uber and Lyft. That
23 wasn't allowed for the duration that she's on house arrest.

24 But she is absolutely supervisable. And to the extent that she
25 is very much needed by her family, she is very much willing to comply,

1 she's complied with every order of this Court and been at every
2 appearance. There is no reason to think that she will change that.

3 She is punished and she will punish herself for the entirety of
4 her life that she was involved in this situation and that they even went
5 over there that day and that any of this happened.

6 And in light of that, I would ask the Court to consider
7 suspending that sentence.

8 THE COURT: All right. Thank you. We'll hear from the
9 speakers.

10 MR. PESCI: State calls Roxanne Bruce.

11 We'll go Margaret Martin first. Judge, do you want them here?

12 THE COURT: If they're more comfortable. Normally I have
13 them come up by me up to the witness stand.

14 **MARGARET MARTIN**

15 Having been called as a speaker and first duly sworn, testified as
16 follows:

17 THE CLERK: Thank you. Please have a seat. State and
18 spell both your first and last name for the record.

19 THE SPEAKER: My name is Margaret, it's spelled
20 M-a-r-g-a-r-e-t, Martin M-a-r-t-i-n.

21 THE COURT: Thank you. What did you want to say today?

22 THE SPEAKER: I've been in the church all my life, too. I
23 have raised five children and this still seems so unreal to me.

24 Do I forgive? Yes. But am I not going to ask for the maximum
25 for the mother and the son? Yes, I am. Because my grandson had

1 came from the same background and he overcome it. Even with the
2 sentencing, when we walk out here today, we still don't win. We are still
3 losing. But my God has made me stand. I just put the mercy of the
4 court would honor my grandson today.

5 He had a bright future. What we did, prayed to him because
6 for 72 hours before he had no signing, and he kept telling everybody
7 Missouri State that was prayed in.

8 I have raised five kids on my own. Not one of them has took a
9 gun in their hand and killed, took a life. By myself, five kids. My last one
10 graduates this year, and I hate leaving him at home. I'm not one. When
11 they get older, that's when they need you more. That's when they need
12 you more.

13 I'm sorry I'm here today. I'm sorry I had to ask for this, but I'm
14 not going to ask for anything less because really when we walk out, we
15 are the ones that got the life sentence.

16 You know, I don't know what you all can do with him, but I feel
17 like there was some, if she was in the church, I just feel like the message
18 didn't get through, because there's no way I would have ever took one of
19 my children to anybody at his home and killed somebody. No way, and I
20 have raised five by myself and ain't had a bit of help. It's come from the
21 Lord.

22 And the last statement I have to say is John 10:10. Only
23 Satan comes to kill, steal, and destroy. And on January 14th, 2017,
24 that's just exactly what he did.

25 I do forgive them. I do. And there is no doubt in my mind

1 where my grandson is. He's up there waitin' on me. And that's all I
2 have to say.

3 THE COURT: Thank you for coming in. I'm sorry you had to
4 be here. My bailiff will just help you back, okay? Kenny.

5 THE MARSHAL: Yes, Judge.

6 THE COURT: And, Mr. Pesci, the next speaker, please?

7 MR. PESCI: State calls Roxanne Bruce.

8 **ROXANNE BRUCE**

9 Having been called as a speaker and first duly sworn, testified as
10 follows:

11 THE CLERK: Thank you. Please have a seat. State and
12 spell your first and last names for the record.

13 THE SPEAKER: Roxanne Bruce, R-o-x-a-n-n-e B-r-u-c-e.

14 THE COURT: All right. Thank you, ma'am. What would you
15 like to say today?

16 THE SPEAKER: Well, my daughter couldn't make it today, so
17 I have something that she sent me. I'd like to read that first; then, what I
18 need to say, is that okay?

19 THE COURT: All right. That's fine.

20 THE SPEAKER: This is actually from Oneisha. She wanted
21 me to let the courts know that she feels sorry for Newsome because his
22 parents failed him.

23 Even though we came from the same background, and my
24 brother and Newsome became two completely different people,
25 someone was murdered who just so happens to be her brother.

1 This is something that I never expected being that all we ever
2 wanted was to have more than what our parents could ever offer. Yes,
3 our lives have been drastically affected by this loss of someone so great.
4 I just hope Newsome understands he affected his family a lot more, and
5 despite me having no forgiveness in my heart, I hope he can forgive
6 himself.

7 I hope his mom and older sister are okay with looking at
8 themselves in the mirror knowing that they have failed their family and
9 brought shame to their name.

10 I would like to end this with a long live King Richard, and 20
11 reasons I will never stop. I won't sleep and I will grind until I bleed so I'm
12 saying the future my brother and I often discussed.

13 Newsome deserves nothing less than the maximum. He may
14 have been 17 at the time, but his actions proved he was a man and a
15 menace.

16 I'm sorry I wasn't able to make it today. I just can't stomach
17 being in the same room with individuals who live their lives believing
18 violence is the answer.

19 Thank you all for listening.

20 THE COURT: And then would you like to say something for
21 yourself?

22 THE SPEAKER: I wrote it down but I might end up saying
23 whatever I feel.

24 THE COURT: Okay, it's up to you. If you feel more
25 comfortable reading or reading and then adding to that part, however

1 you feel comfortable.

2 THE SPEAKER: Um hmm. Okay.

3 To be honest, I wish I wasn't here now making a statement of
4 what a huge loss my family and I have experienced, as well as my son's
5 friends in the community. And I loved Richard Nelson.

6 This has been the most traumatizing event I've ever dealt with
7 in my life. I can't sleep at night. I jump at loud noises, and I have not
8 been able to work since January of 2017, due to the tragic event that
9 took place on the 14th of January, that clearly could have and should
10 have been avoided.

11 I didn't do anything to any of the defendants to cause all this
12 pain. I don't even know them. I only knew of Miss Ominique (phonetic),
13 who I treated very well and as if she was my own, to have her stir up
14 drama and bring to my home to inflict pain on my family, for, what, a
15 word that I'm sure she's heard before. Ridiculous, and for a so-called
16 responsible adult that they call a mother, to bring their children to my
17 home, knowingly they're armed, knowingly they're armed, I'm really
18 outraged at the fact she's not incarcerated as well. Your Honor, she
19 don't deserve to walk freely around and hold her children and comfort
20 them while they need her, especially knowing what her child's intentions
21 were, and that was to harm someone, let alone murdered my baby boy
22 in cold blood.

23 I can't visit my son but in a grave in cold. She can see her
24 child again. And, yes, he does have a future to look forward to when my
25 son's future was crushed.

1 It is not okay for her to hear her kids. It's not okay for her to
2 hold her kids, and it's not okay to be around her kids when I can't. Your
3 Honor, she has not been punished for her actions at all. She's been on
4 house arrest; she still gets to be around her kids. She shouldn't be
5 allowed around any children at that matter.

6 She had the control to leave, she brought her kids to my
7 house twice; not once, but twice. Before that, she drove her son,
8 Richard Newsome, at the end of my block to pull out a firearm and scare
9 another kid. So you're saying you didn't know he had a gun? You did.

10 Before they came back to my home the second time to shoot
11 my son up, who had a bright future ahead of him, my son, as he was
12 here, Your Honor, took Chaparral football team to the championship
13 game. He was the first kid to get a full-ride scholarship at a A-1 school.
14 He was a role model, he has been awarded the Courage Award through
15 the State of Nevada. Since this incident, it's been renamed after my son
16 as the Richard Nelson Courage Award in his honor.

17 Speaking of honor, Chaparral also retired his football jersey
18 and number 20, and has a scholarship fund in Richard Nelson's name.
19 My son has several awards, medals, and honors.

20 He was an A-1 student and a young man. He was the
21 greatest athlete in all. He pushed through obstacles and achieved a lot
22 that some people couldn't do in a day. He was a scholar, ambitious,
23 bright, intelligent, encouraging, charming; beautiful inside and out. He
24 was a great young man who deserves justice.

25 The mother in this case deserves the maximum punishment

1 the law allows. That way others don't think it's okay to be your child's
2 friends instead of their parents. She needs to know that it's not okay to
3 get away with helping a murder take place.

4 I really don't want to waste any more energy, to be honest with
5 you. The young man in this case, Mr. Newsome, I really feel sorry for
6 him; I do. And I do forgive him. I'm more angry at his mother than him,
7 you know, because if he would have had a better home setting, I don't
8 think this would have ended this way. He would have thought better,
9 you know.

10 As for her, I don't forgive her; I don't. And I will find it in my
11 heart maybe one day to do that, but as of right now, I don't. I feel like
12 her apology was not real. I do believe his was, and he's, you know, it's
13 what it is.

14 He did take my son's life at the age of 18, and I do believe he
15 does need to serve 18 years. Justice truly won't be served at all either
16 way, you know, because I can't – no one can bring my son back at all.

17 And my son can't come back, like I said before. At least these
18 people will be behind bars and have a chance of redemption because I
19 do pray that they do and they do find God, truly. And they can also ask
20 God to forgive them as well. I wish I could have gave them both a bible
21 but I wasn't allowed to do that, because I was going to bring that.

22 And as far as having grudges, I don't hold grudges, and I'm
23 not a violent person until I get forced to that way, and I didn't fight with
24 them, you know. But when my daughter was on the ground being kicked
25 repeatedly, you know, by everyone that was there, including the mother,

1 you know, I didn't find this out until later on. It probably would have been
2 a different outcome I believe, but I didn't know. Your know, I came in at
3 the ends of it. I guess I did fight the ex-girlfriend, but, Your Honor, it's
4 fighting and all that, it still didn't resolve anything because my son is
5 dead, and nothing in this world can bring him back. And vengeance is
6 not on me, it's on the Lord. And I do pray that everyone that was
7 involved that's not even here, that Karma hits them where it needs to hit
8 'em, you know.

9 I do pray that they do find themselves and rehabilitate their
10 mind and their soles. My prayers do go out for God to have mercy and
11 for Your Honor to give my son the justice he truly deserves. Please.

12 THE COURT: Thank you for coming in.

13 THE SPEAKER: Thank you.

14 THE COURT: All right. Mr. Newsome, by virtue of your plea
15 of guilty, you are hereby adjudged guilty of murder in the second degree
16 with use of a deadly weapon.

17 In addition to the \$25 administrative assessment, the \$150
18 DNA analysis fee and the fact that you must submit to a test for genetic
19 markers, and the \$3 DNA administrative assessment, on murder in the
20 second degree, you're sentenced to life with the possibility of parole
21 after ten years has been served.

22 On the deadly weapon enhancement, you're sentenced to a
23 consecutive 96 to 100 -- I'm sorry -- 96 to 240 months. That is imposed
24 consecutively. You're also ordered to pay restitution in the amount of
25 \$21,477.08 which you owe jointly and severally with your mother and co-

1 defendant, Tianna Douglas.

2 I think what really pushed me to the maximums in this matter,
3 two things. Number one, Mr. Newsome's bringing a gun and introducing
4 a firearm. And number two, the fact that he did have the benefit of
5 supervision as a juvenile for a prior violent felony and, yet, goes on to
6 commit this offense.

7 Turning to Ms. Douglas, Ms. Douglas is really the one who set
8 all of this in motion and the only thing I can say is it's just such a
9 senseless and completely avoidable incident, which I think Ms. Douglas
10 really sort of set in motion.

11 So, Ms. Douglas, by virtue of your plea of guilty, you are
12 hereby adjudged guilty of the gross misdemeanor crime of accessory to
13 murder.

14 In addition to the \$25 administrative assessment, the \$150
15 DNA analysis fee, the fact that you must submit to a test for genetic
16 markers, and the \$3 DNA administrative assessment, you're sentenced
17 to 364 days in the Clark County Detention Center, less whatever credit
18 for time served you're entitled to. It is definitely more than the one day
19 Mr. Pesci mentioned.

20 Mr. Pesci, counsel has calculated 31 days. Does that sound
21 right to you?

22 MR. PESCI: I accept the representations.

23 THE COURT: Mr. Pesci accepts the representations and she
24 is entitled to 31 days of credit for time served.

25 And the restitution, also, in the amount of the \$21,477.08

1 which she owes jointly and severally. And, Mr. Pesci, the restitution
2 should reflect the payee in the JOC and that would be?

3 MR. PESCI: So the \$20,612.47 per the PSI is to the victim's
4 family. And then there was \$864.61 to Victims of Crime because they
5 paid that

6 THE COURT: All right. That will be reflected in the Judgment
7 of Conviction.

8 Thank you.

9 [Hearing concluded at 11:08 A.M.]

10 * * * * *

11

12

13

14

15

16

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

19

20

21

22

23

24

25


SUSAN SCHOFIELD
Court Recorder/Transcriber



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE NO: C-19-321043-1
C-19-321043-2

DEPT. XXI

10 vs.

11 RICHARD NEWSOME, JR.,
12 TIANNA M. DOUGLAS,
13 Defendants.

14 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
15 THURSDAY, DECEMBER 14, 2017

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **STATUS CHECK: TRIAL READINESS**

18 APPEARANCES:

19 For the State:

GIANCARLO PESCI, ESQ.
Chief Deputy District Attorney

21 For the Defendants:

YI LIN ZHENG, ESQ.

22
23
24
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada; Thursday, December 14, 2017

2
3 [Proceeding commenced at 10:17 a.m.]

4 THE COURT: State versus Richard Newsome, Jr., and
5 Tianna Douglas. And the Court has been provided with two written
6 pleas of guilty.

7 MS. ZHENG: Correct.

8 THE COURT: And both defendants are entering pleas of
9 guilty here today.

10 So we'll start with Mr. Newsome.

11 MS. ZHENG: Thank you, Your Honor. With --

12 THE COURT: Mr. --

13 MS. ZHENG: Oh.

14 THE COURT: I'm sorry, go ahead.

15 MS. ZHENG: With respect to Mr. Newsome, we'd ask --

16 MR. PESCI: Can I approach with the amended?

17 THE COURT: All right. You can file amended indictments
18 here in court. And as to Mr. Newsome, a second amended superseding
19 indictment was just filed in open court charging the felony crime of
20 murder in the second degree with use of a deadly weapon.

21 Ms. Zheng?

22 MS. ZHENG: That's correct, Your Honor. And with respect to
23 that we'd ask that you allow him to enter a plea to that. At the rendition
24 of sentence, the State has retained the right to argue.

25 THE COURT: All right.

1 Mr. Newsome, the Court is in possession of a written plea of
2 guilty which was signed by you. Is this your signature on page 5 of the
3 written plea of guilty?

4 DEFENDANT NEWSOME: Yes.

5 THE COURT: Okay. Before I may accept your written plea of
6 guilty, I must be satisfied that your plea is freely and voluntarily given.
7 Are you making this plea freely and voluntarily?

8 DEFENDANT NEWSOME: Yes.

9 THE COURT: Okay. Other than what's contained in the
10 written plea of guilty, have any promises or threats been made to induce
11 you or to get you to enter your plea?

12 DEFENDANT NEWSOME: Just a little bit of time.

13 THE COURT: I'm sorry.

14 DEFENDANT NEWSOME: Just some time.

15 THE COURT: What do you mean some time?

16 DEFENDANT NEWSOME: Like my sentence, if I'm just
17 gonna get from 12 to 35.

18 THE COURT: Okay, but what I'm saying -- well you can't get
19 that.

20 MS. ZHENG: It's 45.

21 DEFENDANT NEWSOME: For 45.

22 THE COURT: What I'm saying is did anyone other than
23 what's in the guilty plea, did anyone promise you anything else?

24 DEFENDANT NEWSOME: No.

25 THE COURT: Okay. And did anyone make any threats to

1 you or to your family to try to get you to plead guilty in this case?

2 DEFENDANT NEWSOME: No.

3 THE COURT: Okay. And are you pleading guilty to second
4 degree murder with use of a deadly weapon because in truth and in fact
5 you are guilty?

6 DEFENDANT NEWSOME: Yes.

7 THE COURT: Okay. Before you signed the written plea of
8 guilty, did you read it?

9 DEFENDANT NEWSOME: Yeah.

10 THE COURT: Okay. And did you understand everything
11 contained in the written plea of guilty?

12 DEFENDANT NEWSOME: Yeah.

13 THE COURT: Okay. Did you also read the second amended
14 superseding indictment charging you with the felony crime of second
15 degree murder with use of a deadly weapon?

16 DEFENDANT NEWSOME: Yes.

17 THE COURT: It's the exhibit here. And did you understand
18 everything contained in that --

19 DEFENDANT NEWSOME: Yes.

20 THE COURT: -- what you'll be pleading to?

21 DEFENDANT NEWSOME: Yes.

22 THE COURT: Okay. And did you have a full and sufficient
23 opportunity to discuss your plea of guilty as well as the charge to which
24 you're pleading guilty with your lawyer, Ms. Zheng?

25 DEFENDANT NEWSOME: Yes.

1 THE COURT: Okay. And did Ms. Zheng answer all your
2 questions and concerns to your satisfaction?

3 DEFENDANT NEWSOME: Yes.

4 THE COURT: Do you feel like your lawyer has spent enough
5 time with you explaining everything to you?

6 DEFENDANT NEWSOME: Yes.

7 THE COURT: Okay. And do you feel like she spent enough
8 time with you going over all of the discovery and the evidence and
9 everything in this case?

10 DEFENDANT NEWSOME: Yes.

11 THE COURT: Okay. Before you proceed with your plea of
12 guilty, do you have any questions you would like to ask me?

13 DEFENDANT NEWSOME: No.

14 THE COURT: Okay. Let's turn to the charging document. All
15 right. And you understand that the range of punishment on the murder
16 is life without the possibility of parole -- I'm sorry -- the possibility of -- a
17 definite terms, in term of years, of 10 to 25 years with your possibility of
18 parole, beginning after 10 years has been served.

19 DEFENDANT NEWSOME: Yes.

20 THE COURT: Or with the weapons enhancement of a
21 minimum of 12 to 30 months, but it can run all the way to 20 years with a
22 minimum of 96 months or 8 years.

23 DEFENDANT NEWSOME: Yes.

24 THE COURT: Consecutively. Do you understand all that?

25 DEFENDANT NEWSOME: Yes.

1 THE COURT: Okay. Let's -- any questions about that?
2 DEFENDANT NEWSOME: No.
3 THE COURT: Did I cover that correctly, Mr. Pesci?
4 MR. PESCI: I think just so it's clear, it's either a 10 to life or a
5 10 to 25.
6 THE COURT: Right.
7 THE COURT: Do you understand that?
8 DEFENDANT NEWSOME: Yeah.
9 THE COURT: Either way, your minimum parole eligibility
10 under either scenario is 11 years; correct, Mr. Pesci?
11 MR. PESCI: Yes, Your Honor.
12 THE COURT: And that's under either scenario.
13 DEFENDANT NEWSOME: Okay.
14 THE COURT: All right. Let's turn to the charging document.
15 Tell me in your own words what you did, on or about January 14th, 2017,
16 here in Clark County Nevada, that causes you to plead guilty to second
17 degree murder with use of a deadly weapon.
18 DEFENDANT NEWSOME: Yeah, I had a gun and I shot
19 Richard Nelson.
20 THE COURT: All right. And you shot into his body; is that
21 correct?
22 DEFENDANT NEWSOME: Yes.
23 THE COURT: And you acknowledge that as a result of you
24 shooting Mr. Nelson, he died as a result of those -- that gunshot injury; is
25 that true?

1 DEFENDANT NEWSOME: Yes.

2 THE COURT: All right. And you acknowledge that you did
3 this willfully, unlawfully, feloniously, and with malice aforethought?

4 DEFENDANT NEWSOME: Yes.

5 THE COURT: All right. Is that acceptable, Mr. Pesci?

6 MR. PESCI: Yes, Your Honor.

7 THE COURT: All right. Mr. Newsome, the Court finds that
8 your plea of guilty has been freely and voluntarily given. Your plea is
9 hereby accepted. And the matter is referred to the department of Parole
10 & Probation for the Presentence Investigation Report.

11 [Colloquy between the Court and staff]

12 THE CLERK: That's February 8th at 9:30.

13 THE COURT: I don't know if they'll be any speakers, but I'm
14 going to hold the hearing at the same time for both, in case there are
15 speakers, so they don't have to keep coming back.

16 MR. PESCI: Thank you very much.

17 THE COURT: All right. Turning to Tianna Douglas.

18 And, Ms. Douglas, the Court is in possession of a written plea
19 of guilty which was signed by you. Is that your signature on page 5 of
20 the written plea of guilty?

21 DEFENDANT DOUGLAS: Yes, Your Honor.

22 THE COURT: And in this you agree to plead guilty to a gross
23 misdemeanor, crime of accessory to murder; is that correct?

24 DEFENDANT DOUGLAS: Yes, Your Honor.

25 THE COURT: Before I may accept your written plea of guilty,

1 I must be satisfied that your plea is freely and voluntarily given. Are you
2 making this plea freely and voluntarily?

3 DEFENDANT DOUGLAS: Yes, I am.

4 THE COURT: Other than what's contained in the written plea
5 of guilty, have any promises or threats been made to induce you or to
6 get you to enter your plea today?

7 DEFENDANT DOUGLAS: No.

8 THE COURT: All right. And are you pleading guilty to the
9 gross misdemeanor, crime of accessory to murder because in truth and
10 in fact you are guilty?

11 DEFENDANT DOUGLAS: Yes.

12 THE COURT: Before you signed the written plea of guilty, did
13 you read it?

14 DEFENDANT DOUGLAS: Yes, I did.

15 THE COURT: Did you understand everything contained in the
16 written plea of guilty?

17 DEFENDANT DOUGLAS: Yes, I did.

18 THE COURT: And did you read the second amended
19 superseding indictment charging with a gross misdemeanor, crime of
20 accessory to murder?

21 DEFENDANT DOUGLAS: Yes, I did.

22 THE COURT: And did you understand everything contained
23 in that second amended superseding indictment?

24 DEFENDANT DOUGLAS: Yes.

25 THE COURT: All right. Did you have a full and ample

1 opportunity to discuss your plea of guilty, as well as the charge to which
2 you're pleading guilty with your lawyer?

3 DEFENDANT DOUGLAS: Yes, I did.

4 THE COURT: And did Ms. Zheng, your lawyer, address all of
5 your questions and concerns to your satisfaction?

6 DEFENDANT DOUGLAS: Yes.

7 THE COURT: And do you feel like your attorney has spent
8 enough time with you explaining everything in your case?

9 DEFENDANT DOUGLAS: Yes.

10 THE COURT: Before I proceed with your pleas, do you have
11 any questions you would like to ask me, the Court?

12 DEFENDANT DOUGLAS: No.

13 THE COURT: All right. Let's turn to the charging document.
14 Tell me in your own words what you did, on or about January 14th, 2017,
15 here in Clark County Nevada, that causes you to plead guilty to
16 accessory to murder.

17 DEFENDANT DOUGLAS: That night I was getting into the car
18 and --

19 [Defendant and counsel confer]

20 MS. ZHENG: There was a shooting.

21 DEFENDANT DOUGLAS: Well, there -- I heard gunshots. I
22 had my other children -- everybody with me, so I was getting into the car
23 anyways. So I proceeded to get into the car and I drove away.

24 THE COURT: Okay. And did you take your son, Richard
25 Newsome, with you?

1 DEFENDANT DOUGLAS: Yes.

2 THE COURT: And at the time you did that you knew, or had
3 reason to know, that your son may have shot someone; is that true?

4 DEFENDANT DOUGLAS: No, I didn't know at that point -- at
5 that particular point, but once I realized it, I knew.

6 THE COURT: Okay. So at some point when you're driving
7 your son, you realize that he had shot someone; is that true?

8 DEFENDANT DOUGLAS: Yes.

9 THE COURT: And you realize that person may die as a result
10 of that shooting; is that right?

11 DEFENDANT DOUGLAS: Yes.

12 THE COURT: And you realized that if that person did in fact
13 die or was injured that your son, Mr. Richard Newsome, could be liable
14 for arrest?

15 DEFENDANT DOUGLAS: Yes.

16 THE COURT: Okay. And you in fact then, you know, drove
17 him away or continued to drive him or had him in your home in order that
18 he avoid being arrested?

19 DEFENDANT DOUGLAS: Yes.

20 THE COURT: Is that correct?

21 DEFENDANT DOUGLAS: Yes.

22 THE COURT: Is that acceptable, State?

23 MR. PESCI: Yes, Your Honor, thank you.

24 THE COURT: All right. Ms. Newsome -- Ms. Douglas, I'm
25 sorry. The Court finds that your plea of guilty has been freely and

1 voluntarily given. This being a gross misdemeanor, are we going to do a
2 worksheet?

3 MR. PESCI: I can do that.

4 THE COURT: All right. And we'll give you the same
5 sentencing date as the co-defendant, your son.

6 THE CLERK: February 8th at 9:30.

7 MR. PESCI: For the record, are our trial dates vacated?

8 THE COURT: Trial date vacated.

9 MR. PESCI: Thank you, Your Honor.

10 THE COURT: One second.

11 [Colloquy between the Court and Clerk]

12 THE COURT: All right. And I may have neglected on
13 Mr. Newsome's plea to ask him where the crime occurred.

14 So, Mr. Newsome, do you acknowledge that the shooting that
15 resulted in the death in this case occurred here in Clark County Nevada?

16 DEFENDANT NEWSOME: Yes.

17 THE COURT: All right. Thank you.

18 MR. PESCI: Thank you.

19 MS. ZHENG: Thank you, Your Honor.

20 THE COURT: Thank you, Ms. Zheng.

21 [Matter trailed at 10:28 a.m.]

22 [Matter recalled at 10:30 a.m.]

23 MS. ZHENG: Your Honor, briefly on the Newsome matter,
24 please.

25 THE COURT: Recalling the Newsome matter.

1 MS. ZHENG: Mr. Newsome had asked me to make a special
2 request from the Court that his mother was hearing from house arrest
3 and he was hearing from the officers that the Court would need to order
4 that it would be okay for her to visit him at CCDC. Since the start of this
5 case, I guess, either because they're co-defendants and they didn't want
6 contact, they haven't allowed that.

7 I texted Mr. Pesci in regards to that and he said that he would
8 simply submit the matter to the Court.

9 THE COURT: I'm fine with it.

10 MS. ZHENG: Thank you.

11 THE COURT: Is that true, that because she's on house
12 arrest, she can't visit him at the jail?

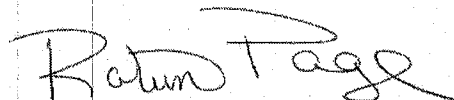
13 THE CORRECTIONS OFFICER: I believe that order would
14 come from you, Your Honor, but I can double check.

15 THE COURT: All right. The officer doesn't know of any
16 reason why she couldn't visit him, based on her being on house arrest,
17 so I'm going to grant your motion that his mother be allowed to visit with
18 him at the jail.

19 MS. ZHENG: Thank you.

20 [Proceeding concluded at 10:32 a.m.]

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

23 
24

25 Robin Page
Court Recorder/Transcriber

Steven D. Grierson

1 Richard Allan Newsome #194269

2 In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

5 3th DISTRICT COURT
6 CLARK COUNTY NEVADA

8 Richard Allan Newsome,

9 Petitioner,

10 -v-

11 THE STATE OF NEVADA,

12 Respondent.

Case No. C-17-321043-1
Dept.No. 21
Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the Petitioner, Richard Allan
16 Newsome, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
19 (POSTCONVICTION).

21 Dated this date, June 13, 2019.

23 Respectfully Submitted,

24 *[Signature]*

25 In Proper Person

RECEIVED
JUN 17 2019

CLERK OF THE COURT

141 4

CERTIFICATE OF SERVICE BY MAILING

I, Richard Allan Newsome, hereby certify, pursuant to NRCP 5(b), that on this 13
day of June, 2019, I mailed a true and correct copy of the foregoing, "DE"

NOTICE OF APPEAL.

by depositing it in the High Desert State Prison, ^{Mail Box} ~~Legal Library~~, First-Class Postage, fully prepaid,
addressed as follows:

Steven Grierson, Clerk of Court
208 Lewis Avenue, 3RD Floor
Las Vegas, NV 89155-1160

DATED: this 13 day of June, 2019.

Richard Allan Newsome #1194269
1194269
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Petition For WRIT OF HABEAS CORPUS (Postconviction)
(Title of Document)

filed in District Court Case number C-17-321043-1

☒ Does not contain the social security number of any person.

-OR-

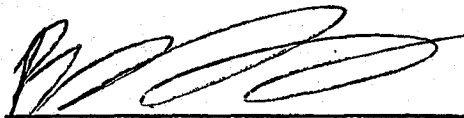
☐ Contains the social security number of a person as required by:

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

(State specific law)

-or-

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



Signature

6-13-19

Date

Richard Allan Newsome

Print Name

Notice of Appeal

Title

Richard Allan Newsome #1144269
P.O. Box 650
Indian Springs, NV 894070

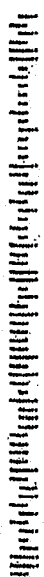
HIGH DESERT STATE PRISON

JUN 13 2019

UNIT 8 A/B

(Legal Mail)

89101-630000



STEVEN D. GRIERSON, Clerk of Court
806 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

LAS VEGAS NV 89101
14 JUN 2019 PM 3:1



144

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79044-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard Allan Newsome, Jr., appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 1, 2019. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Newsome claimed his guilty plea was invalid because his counsel tricked him into pleading guilty. He claimed counsel promised him a sentence of 12 to 35 years in prison and that this was borne out by the sentencing transcript. The district court found that Newsome's written plea agreement did not indicate he was promised a particular sentence and Newsome did not tell the court at sentencing that he was promised a particular sentence. These findings are supported by the record. Further, while Newsome commented on a possible sentence during his plea colloquy, the district court sought clarification and Newsome indicated he had not been promised a particular sentence. We therefore conclude the district court did not err by denying this claim.

Newsome also claimed his guilty plea was invalid because counsel coerced him into pleading guilty. He claimed counsel told him he would be sentenced to 25 years to life in prison and his codefendant would

receive a prison sentence if he did not accept the guilty plea. Candid advice about the sentencing possibilities Newsome and his codefendant faced if they were to be convicted at trial do not amount to coercion. *Cf. Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his or her client). We therefore conclude the district court did not err by denying this claim.


Next, Newsome claimed counsel was ineffective for failing to advise him regarding filing a direct appeal and not filing the appeal. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Where counsel has deprived a defendant of an appeal, prejudice is presumed. *Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795, 799 (2011).

Newsome claimed counsel should have known he was dissatisfied because he did not receive the promised sentence of 12 to 35 years. Newsome did not claim that he asked counsel to file an appeal or that he expressed dissatisfaction with his conviction. He thus failed to allege specific facts that demonstrated counsel had a duty to file a direct appeal. *See id.* at 978, 267 P.3d at 800. Further, Newsome unconditionally waived his right to a direct appeal. We therefore conclude the district court did not err by denying this claim.

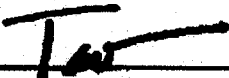
Finally, Newsome claims on appeal that counsel suffered from a conflict of interest because she represented both Newsome and his

codefendant. As this claim was not raised below, we need not consider it on appeal in the first instance. *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Nevertheless, we note Newsome and his codefendant executed a waiver of conflict for counsel to represent them both, and Newsome does not challenge the validity of that waiver. We therefore conclude he is not entitled to relief on this claim. Accordingly, we


ORDER the judgment of the district court AFFIRMED.



Gibbons C.J.



Tao J.



Bulla J.

cc: Hon. Valerie Adair, District Judge
Richard Allan Newsome, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 79044
District Court Case No. A788646;C321043

FILED

AUG 11 2020

Elizabeth A. Brown
CLERK OF COURT

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 13th day of July, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
August 10, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant

C-17-321043-1
CCJA
NV Supreme Court Clerks Certificate/Judgm
4926259



IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 79044
District Court Case No. ~~A788648~~ C321043

REMITTITUR

TO: Steven D. Grierson, Eighth 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: August 10, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Valerie Adair, District Judge
Richard Allan Newsome, Jr.

Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

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 AUG 11 2020

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

AUG 11 2020

CLERK OF THE COURT

1 RICHARD A. NEWSOME #1194269

2 H.D.S.P., P.O. Box 650

3 INDIAN SPRINGS, NV 89070

4 DEFENDANT IN PROSE

March 31, 2021
11:00 AM

FILED
MAR 09 2021
Clerk of Court

5

6

7

8

9 THE STATE OF NEVADA

10 PLAINTIFF,

11 vs.

12 RICHARD A. NEWSOME,

13 DEFENDANT.

14

15

16

17 COME NOW, THE DEFENDANT, RICHARD A. NEWSOME, APPEARING IN PROSE,
18 AND HEREBY MOVES THIS HONORABLE COURT TO CORRECT A SENTENCE THAT
19 WAS NOT IMPOSED IN ACCORDANCE WITH THE LAWS OF THE STATE OF
20 NEVADA; SPECIFICALLY, THAT THE SENTENCE WAS IMPOSED WITHOUT
21 BENEFIT OF THE CONSIDERATIONS MANDATED BY NRS 176.017. ~~ALTERNATIVE~~
22 ALTERNATIVELY, MR. NEWSOME MOVES TO VACATE THE JUDGMENT AND
23 WITHDRAW HIS PLEA.

24 THIS MOTION IS MADE AND BASED ON ALL THE PAPER AND
25 PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES
26 IN SUPPORT HEREOF, AND ANY ORAL ARGUMENTS AT THE HEARING; IF
27 DEEMED NECESSARY BY THIS COURT

28

POINT AND AUTHORITIES

(1)

1 I. STATEMENT OF THE CASE

2 THIS ACTION IS BROUGHT PURSUANT TO NRS 176.555 TO CORRECT
3 A SENTENCE WHICH WAS IMPOSED WITHOUT BENEFIT OF THE CONSIDERATIONS
4 MANDATED BY NRS 176.017, AND WORKED TO THE EXTREME DETRIMENT
5 OF MR. NEWSOME

6 II. STATEMENT OF FACTS

7 1.) MR. NEWSOME WAS ARRESTED ON JANUARY 18, 2017 FOR THE
8 OFFENSE IN THIS CASE, WHICH TOOK PLACE ON JANUARY 14, 2017. AT
9 THE TIME OF THE OFFENSE MR. NEWSOME WAS 17 YEARS OLD.

10 2.) ON JANUARY 14, 2017 MR. NEWSOME WAS CERTIFIED TO BE AN
11 ADULT FOR THE CHARGES STEMMING FROM THE OFFENSE

12 3.) ON JUNE 23, 2017 MR. NEWSOME TURNED 18 YEARS OLD.

13 4.) ON DECEMBER 14, 2017 MR. NEWSOME ENTERED A PLEA OF GUILTY
14 TO SECOND-DEGREE MURDER WITH USE OF A DEADLY WEAPON PURSUANT
15 TO GUILTY PLEA AGREEMENT WHICH TOTALING 18 TO LIFE YEARS

16 5.) ON ~~FEBRUARY 8, 2018~~ FEBRUARY 8, 2018 MR. NEWSOME WAS
17 SENTENCED BY THIS COURT IN ACCORDANCE WITH THE TERMS OF THE
18 GUILTY PLEA AGREEMENT, OMITTING ANY DISCLOSURE OF THE
19 CONSIDERATION MANDATED BY NRS 176.017

20 III. ARGUMENT

21 A. NRS 176.017

22 NRS 176.017 REQUIRES THE COURT TO ① CONSIDER A MYRIAD OF FACTORS
23 WHEN SENTENCING AN ADULT FOR AN OFFENSE THAT WAS COMMITTED
24 WHEN THAT PERSON WAS STILL UNDER THE AGE OF 18; AND ② TO
25 MAKE A DETERMINATION BASED UPON THOSE CONSIDERATIONS OF
26 WHETHER TO REDUCE THE /ANY/ MANDATORY MINIMUM PERIOD OF
27 INCARCERATION REQUIRED TO BE SERVED BY THE PERSON. THE
28 STATUTE ALLOWS A REDUCTION OF UP TO 35% IF THE COURT

1 DETERMINES THAT IT IS WARRANTED.

2 1. DISCLOSURE AND DETERMINATION AFTER CONSIDERING FACTORS
3 NRS 176.017(2) REQUIRES THE COURT TO MAKE A DETERMINATION OF
4 WHETHER A REDUCTION IS WARRANTED, AND OTHER SENTENCING
5 STATUTES THAT REQUIRE A JUDICIAL DETERMINATION OF
6 CONSIDERED FACTORS HAVE BEEN HELD BY THE NEVADA SUPREME
7 COURT TO REQUIRE THE SENTENCING COURT TO CLEARLY DISCLOSE
8 THAT IT WEIGHED THE APPROPRIATE FACTORS. CLARK V. STATE,
9 109 NEV. 426, 851 P.2D. 426 (1993). THE SENTENCING COURT IN THIS
10 CASE DID NOT DISCLOSE THAT IT WEIGHED THE FACTORS THAT IT
11 WAS REQUIRED TO CONSIDER PURSUANT TO NRS 176.017.

12 THIS IS PRESUMABLY A CASE OF FIRST IMPRESSION, BUT IT
13 CAN BE COMPARED WITH THE NEVADA SUPREME COURT'S RULING IN
14 CLARK V. STATE, ID., INsofar AS NRS 176.017 CREATES THE SAME
15 REQUIREMENTS OF INDIVIDUALIZED DETERMINATION THAT NRS 207.010
16 DOSE. WHILE MR. NEWSOME'S JUVENILE STATUS AT THE TIME OF
17 THE OFFENSE DOSE NOT AUTOMATICALLY GRANT HIM A 35% REDUCTION
18 THE SENTENCING COURT IS STILL REQUIRED TO MAKE AN ACTUAL
19 JUDGMENT ON THE QUESTION OF WHETHER IT IS JUST AND PROPER
20 FOR MR. NEWSOME TO RECEIVE A REDUCTION, AND TO DISCLOSE THAT
21 IT WEIGHED THE FACTORS FOR AND AGAINST ANY POTENTIAL
22 REDUCTION. THE SENTENCING COURT DID NOT DO THESE THINGS,
23 RENDERING MR. NEWSOME'S SENTENCE ILLEGAL FOR NOT BEING
24 IMPOSED IN ACCORDANCE WITH NRS 176.017

25 2. THE SENTENCE IS CONSTITUTIONALLY DEFECTIVE

26 THE SENTENCING COURT'S ^{DEVIATION} ~~DEVIATION~~ FROM THE MANDATES OF NRS 176.017
27 VIOLATED MR. NEWSOME'S CONSTITUTIONAL RIGHTS TO DUE PROCESS
28 AND EQUAL PROTECTION AS GUARANTEED BY THE UNITED STATES CONSTITUTION

INSTITUTION

A. DUE PROCESS

NRS 176.017 CREATES A LIBERTY INTEREST FOR MR. NEWSOME WHICH IS PROTECTED BY THE DUE PROCESS CLAUSE, INsofar as IT MANDATES A PROCEDURE THAT MUST BE FOLLOWED WHEN IMPOSING A SENTENCE UPON ADULTS BEING SENTENCED FOR A CRIME OFFENSE COMMITTED WHEN HE WAS A JUVENILE IN ICKS V. OKLAHOMA, 447 US 343, AT 346 (1980) THE UNITED STATES SUPREME COURT HELD THAT STATE LAWS GUARANTEE DEFENDANT PROCEDURAL RIGHTS AT SENTENCING MAY CREATE A LIBERTY INTERESTS PROTECTED AGAINST ARBITRARY DEPRIVATION. NRS 176.017'S MANDATE THAT THE SENTENCING COURT CONSIDER CERTAIN FACTORS AND MAKE A DETERMINATION THEREUPON CREATES A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST. SEE AMPBELL V. BLODGETT, 997 F.2D. 512, AT 522 (9TH CIR. 1992). MR. NEWSOME WAS DEPRIVED OF THIS INTEREST WITHOUT DUE PROCESS.

B. EQUAL PROTECTION

WHEN THE LEGISLATURE CREATED NRS 176.017...

1 THEM TO MR. NEWSOME, WHO IS A PART OF THE PROTECTED CLASS

2 B. THE GUILTY PLEA AGREEMENT

3 BY ENTERING INTO A GUILTY PLEA AGREEMENT MR. NEWSOME

4 DID NOT NECESSARILY WAIVE ANY RIGHTS CONFERRED BY NRS 176.017.

5 IN FACT, THE RIGHTS WHICH WERE WAIVED BY MR. NEWSOME'S PLEA ARE

6 CLEARLY ENUMERATED IN THE GUILTY PLEA AGREEMENT; HE DID NOT

7 WAIVE HIS RIGHT TO THE POTENTIAL REDUCTION AND/OR PROCEDURE

8 PROVIDED BY NRS 176.017. THE SENTENCING COURT'S INCORRECT

9 PERCEPTION OF WHETHER OR NOT MR. NEWSOME RETAINED HIS NRS 176.017

10 RIGHTS WORKED TO HIS EXTREME DETRIMENT AND VIOLATED HIS RIGHT

11 TO DUE PROCESS OF LAW. SEE STATE V. ^{EIGHTH} ~~SEVEN~~ JUDICIAL DISTRICT COURT,

12 677 P.2D. 1044, AT 1048 (NEV. 1984) MR. NEWSOME'S SENTENCE SHOULD

13 BE CORRECTED. ALTERNATIVELY, IF THIS COURT SOMEHOW FINDS

14 THAT MR. NEWSOME, BY ENTERING INTO A PLEA AGREEMENT,

15 UNKNOWINGLY WAIVED HIS NRS 176.017 RIGHTS SUB SILENTIO, MR.

16 NEWSOME HEREBY MOVES TO VACATE THE JUDGMENT AND WITHDRAW

17 HIS PLEA. NEITHER THE SENTENCING COURT OR MR. NEWSOME'S COUNSEL

18 INFORMED HIM THAT BY ENTERING INTO A PLEA AGREEMENT

19 HE WOULD BE WAIVING HIS RIGHTS CONFERRED BY NRS 176.017.

20 MR. NEWSOME CONTENDS THAT THE NEVADA SUPREME COURT'S RULING

21 IN WARDEN V. PETERS 83 NEV. 298, AT 301 (1967) WOULD REQUIRE

22 THIS COURT TO EITHER CORRECT THE ILLEGAL SENTENCE IMPOSED

23 OR TO VACATE THE JUDGMENT OF CONVICTION AND ALLOW MR.

24 NEWSOME TO WITHDRAW HIS PLEA

25 C. THE PRE-SENTENCE INVESTIGATION (PSI) REPORT

26 THE PSI REPORT SUBMITTED IN RELATION TO THIS CASE DOES

27 NOT CONTAIN ANY INFORMATION OR RECOMMENDATIONS WHICH

28 PERTAINED TO THE FACTORS TO BE CONSIDERED PURSUANT TO

1 NRS 176.017: THIS OMISSION, COUPLED WITH THE SENTENCING
2 COURT'S SILENCE ON NRS 176.017 DURING MR. NEWSOME'S
3 SENTENCING, SHOWS CONCLUSIVELY THAT MR. NEWSOME WAS
4 NOT AFFORDED THE PROTECTION AND BENEFITS OF NRS 176.017.
5 BEING AWARE OF NRS 176.017, THE DIVISION OF PAROLE AND
6 PROBATION SHOULD HAVE GIVEN AN ASSESSMENT OF ANY FACTORS
7 THAT SHOULD BE CONSIDERED FOR OR AGAINST MR. NEWSOME
8 RECEIVING A REDUCTION, ALONG WITH A RECOMMENDATION,
9 EITHER WAY, FOR THE SENTENCING COURT TO CONSIDER. THE
10 SENTENCING COURT'S RELIANCE UPON A PSI REPORT THAT DOES NOT
11 CONTAIN NRS 176.017 FACTORS OR RECOMMENDATIONS VIOLATED
12 MR. NEWSOME'S RIGHT TO DUE PROCESS. SEE UNITED STATES V. WESTON,
13 448 F.2D 626 (9TH CIR. 1971)

14 D. CUMULATIVE ERROR

15 EACH OF THE VIOLATIONS AND OMISSIONS STATED HEREIN
16 INDIVIDUALLY RENDER MR. NEWSOME'S SENTENCE ILLEGAL, BUT
17 COLLECTIVELY MORESO. UNQUESTIONABLY, A GUILTY PLEA AGREEMENT
18 THAT, ON ITS FACE, DOES NOT SEEM TO ALLOW FOR THE PROVISIONS
19 OF NRS 176.017 TO BE APPLIED, WORKED TO THE EXTREME DETRIMENT
20 OF MR. NEWSOME WHO WOULD HAVE POTENTIALLY RECEIVED A
21 REDUCTION. SIMILARLY THE SENTENCING COURT'S MISAPPREHENSION
22 OF MR. NEWSOME'S ELIGIBILITY FOR A REDUCTION WHICH WAS
23 PRESUMABLY ATTRIBUTED TO THE OMISSION OF ANY NRS 176.017
24 FACTORS OR RECOMMENDATIONS IN THE PSI REPORT, WORKED
25 TO HIS EXTREME DETRIMENT AND VIOLATED HIS RIGHT TO DUE
26 PROCESS. AT THE VERY LEAST, MR. NEWSOME'S SENTENCE WAS NOT
27 IMPOSED IN ACCORDANCE WITH NRS 176.017

28 IV. CONCLUSION

(6)

1 FOR THE FOREGOING REASONS, THIS COURT SHOULD GRANT MR.
2 NEWSOME'S MOTION

3 DATED: 2-22-21

4

RESPECTFULLY SUBMITTED,

5 MOTION PREPARED BY:

6 JULIUS BRADFORD #81604^{AB}



7

RICHARD A. NEWSOME

8

9

CERTIFICATE OF SERVICE

10 I HEREBY CERTIFY THAT ON OR ABOUT FEBRUARY 22ND, 2021,
11 I CAUSED TO HAVE MAILED A TRUE AND CORRECT COPY OF THE
12 FOREGOING MOTION TO CORRECT ILLEGAL SENTENCE TO THE
13 FOLLOWING

14

15 STEVEN B. WOLFSON

AARON D. FORD

16 CLARK CO. DIST. ATTY.

NV ATTORNEY GENERAL

17 200 LEWIS AVENUE

100 N. CARSON ST.

18 LAS VEGAS, NV 89155

CARSON CITY, NV 89701

19

20

21

22

23

24

25

26

27

28

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 31, 2021

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

March 31, 2021 11:00 AM All Pending Motions

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11B

COURT CLERK: Schlitz, Kory

RECORDER: Villani, Gina

REPORTER:

PARTIES PRESENT:

Terrence Michael Jackson Attorney for Defendant

JOURNAL ENTRIES

MOTION FOR APPOINTMENT / CONFIRMATION OF COUNSEL... MOTION TO CORRECT
ILLEGAL SENTENCE...

Defendant not present and in custody in the Nevada Department of Corrections; Deputy
District Attorney Jory Scarborough present on behalf of the State.

Upon Court's inquiry, Mr. Jackson stated he can confirm as counsel of record, and requested a
status check in thirty days before setting a briefing schedule. COURT ORDERED, status
check SET on the out of custody calendar and the Defendant's presence will be WAIVED. Mr.
Scarborough informed the Court the State was never served with the Motion to Correct Illegal
Sentence and the State was going to request more time to respond. COURT STATED
additional time will be provided to the State as the Motion can be construed as Motion for New
Trial as well.

NIC (COC-NDC)

4/28/2021 12:30 P.M. STATUS CHECK: MOTION TO CORRECT ILLEGAL SENTENCE



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 KAREN MISHLER
6 Chief Deputy District Attorney
7 Nevada Bar #13730
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 RICHARD NEWSOME,
13 #5437116

14 Defendant.

CASE NO: C-17-321043-1

DEPT NO: IX

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CORRECT
16 ILLEGAL SENTENCE

17 DATE OF HEARING: APRIL 26, 2021
18 TIME OF HEARING: 12:30 PM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion To Correct
22 Illegal Sentence.

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

26 ///

27 ///

28 ///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 2, 2017, Richard Newsome, Jr. ("Defendant") was charged with Count 1
4 – Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030,
5 193.165); and Count 2 – Assault With Use of a Deadly Weapon (Category B Felony – NRS
6 200.471).

7 On December 14, 2017, Defendant Petitioner pled guilty to one count of Second-
8 Degree Murder With Use of a Deadly Weapon. Pursuant to the negotiations as contained in
9 the Guilty Plea Agreement ("GPA"), the State would retain the right to argue at sentencing.

10 On February 8, 2018, Defendant was sentenced to 10 years to life in the Nevada
11 Department of Prisons. Defendant's Judgment of Conviction was filed on March 5, 2018.
12 Petitioner did not file a direct appeal.

13 On February 1, 2019, Defendant filed a Petition for Writ of Habeas Corpus ("First
14 Petition"), Supplemental Petition for Writ of Habeas Corpus ("Supplement"), Motion for
15 Appointment of Counsel ("Motion"), and Request for an Evidentiary Hearing ("Request"). On
16 May 1, 2019, the State filed a response to Defendant's First Petition, Supplement, Motion, and
17 Request. On May 28, 2019, the district court denied Defendant's First Petition, Supplement,
18 Motion, and Request. Findings of Fact, Conclusions of Law were filed on June 26, 2019. On
19 July 13, 2020, the Nevada Court of Appeals affirmed the district court's denial of Defendant's
20 First Petition. Remittitur issued on August 10, 2020.

21 On October 9, 2020, Defendant filed a second Petition for Writ of Habeas Corpus
22 ("Second Petition"). On November 23, 2020, the State filed a response to Defendant's Second
23 Petition. On December 17, 2020, this Court denied Defendant's Second Petition. Findings of
24 Fact, Conclusions of Law and Order reflecting that decision were filed on April 7, 2021.

25 On March 9, 2021, Defendant filed a Motion for Appointment of Counsel and Motion
26 to Correct Illegal Sentence. On March 31, 2021, the district court appointed counsel to
27 defendant.

28 ///

ARGUMENT

Petitioner claims that because he committed the instant offense when he was 17 years old, he was entitled to be sentenced only after the district court considered factors laid out in NRS 176.017. Motion to Correct Illegal Sentence at 2. Because the district court did not do so when imposing sentencing Defendant, Defendant believes he is entitled to a new sentencing hearing. Id. at 3. To the extent Petitioner waived this right when he pled guilty, Petitioner then contends that his guilty plea is invalid and should be withdrawn. Id. at 5. Petitioner's arguments fail.

In general, a district court lacks jurisdiction to modify or vacate a sentence once the defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other grounds, Harris v. State, 130 Nev. 435, 446, 329 P.3d 619, 627 (2014). A motion to correct or modify an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

However, a district court does have inherent authority to correct, vacate, or modify a sentence where the defendant can demonstrate the sentence violates due process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996). But not every mistake or error during sentencing gives rise to a due process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).

"Motions to correct illegal sentences address only the facial legality of a sentence." Edwards, 112 Nev. At 704, 918 P.2d at 324. Motions to correct illegal sentences evaluate whether the sentence imposed is "at variance with the controlling statute, or illegal in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided." Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

///

1 Here, Defendant does not argue that the Court sentenced him under a materially untrue
2 assumption or mistake of fact and all other claims raised are inappropriate for a motion to
3 modify or correct a sentence. Defendant argues that the district court sentenced him without
4 making clear on the record that it had afforded him the benefits conferred by NRS 176.017.
5 Motion to Correct Illegal Sentence at 2. Specifically, Defendant believes NRS 176.017
6 required the district court to state on the record why it was imposing the sentence before
7 actually imposing the sentence. Id.

8 This is not a challenge to the facial legality of Defendant's sentence. Indeed, this claim
9 is not even directly related to whether the sentence imposed was proper. Instead, Defendant
10 takes issue with the court's findings when imposing his sentence. However, without even
11 addressing the merits of Defendant's claim, his argument is legally flawed.

12 Pursuant to NRS 176.017:

13 1. If a person is convicted as an adult for an offense that the person
14 committed when he or she was less than 18 years of age, in addition to any
15 other factor that the court is required to consider before imposing a sentence
16 upon such a person, the court shall consider the differences between
17 juvenile and adult offenders, including, without limitation, the diminished
culpability of juveniles as compared to that of adults and the typical
characteristics of youth.

18 2. Notwithstanding any other provision of law, after considering the
19 factors set forth in subsection 1, the court may, in its discretion, reduce any
20 mandatory minimum period of incarceration that the person is required to
21 serve by not more than 35 percent if the court determines that such a
22 reduction is warranted given the age of the person and his or her prospects
for rehabilitation.

23 The plain language of the statute makes clear that while sentencing courts must consider
24 the difference between juvenile and adult offenders when sentencing an adult for a crime they
25 committed as a juvenile, it does not also require the sentencing court to state that it has taken
26 those factors into consideration at the time of sentencing, and it does not automatically entitle
a defendant to a reduced sentence.

27 Moreover, Defendant's claim that the district court did not first consider the fact that
28 Defendant was a juvenile when he committed the instant offense is belied by the record. Prior

1 to sentencing, both the State and counsel for Defendant filed sentencing memorandums. In the
2 State's sentencing memorandum, the State focused on the brazen and violent facts of
3 Defendant's crime as well as his prior involvement with the juvenile delinquency system.
4 Sentencing Memorandum at 2-7 (filed February 5, 2018). In contrast, counsel for defendant
5 included in his sentencing memorandum context surrounding Defendant's crimes, an
6 explanation of how eft took responsibility for his crimes, and an overview of the challenges
7 Defendant had while growing up. See generally, Defendant's Sentencing Memorandum and
8 Exhibits in Aid of Sentencing (filed February 7, 2018). At sentencing, the district court made
9 sure to review both memorandums before hearing any argument from either party. Recorder's
10 Transcript of Hearing: Sentencing, February 8, 2018, at 2-5. Counsel for defendant further
11 noted that his youth should work in favor of a diminished sentence. Id. at 11-14. After hearing
12 argument from both the State and defense counsel, and hearing both Defendant's and the
13 victim's statement, the district court sentenced and stated:

14 I think what really pushed me to the maximums in this matter, two things.
15 Number one, Mr. Newsome's bringing a gun and introducing a firearm.
16 And number two, the fact that he did have the benefit of supervision as a
juvenile for a prior violent felony and, yet, goes on to commit this offense.

17 Id. at 25.

18 Accordingly, as the district court made clear that it had considered the difference
19 between juvenile and adult offenders, including a juvenile's diminished culpability,
20 Defendant's claim that he was sentenced without the benefits of NRS 176.017 being first
21 considered is belied by the record. For these reasons, Defendant is further not entitled to a new
22 sentencing hearing or a withdrawal of his plea. Defendant has not established that his sentence
23 was illegal, based on a materially untrue assumption of fact, or that his guilty plea was not
24 knowingly or voluntarily made.

25 ///

26 ///

27 ///

28 ///

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests this Court DENY Defendant's
3 Motion to Correct Illegal Sentence.

4 DATED this 20th day of April, 2021.

5 Respectfully submitted,

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

9 By /s/ KAREN MISHLER

10 CERTIFICATE OF MAILING

11 I hereby certify that service of the above and foregoing was made this 20th day of April,
12 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

13 RICHARD NEWSOME, BAC #1194269
14 HIGH DESERT STATE PRISON
15 P. O. BOX 650
16 INDIAN SPRINGS, NEVADA 89070-0650

17
18 BY /s/ J.HAYES
19 Secretary for the District Attorney's Office

20
21
22
23
24
25
26
27
28 17F00941X/KM/jb/jh/MVU



1 **SUPP**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No. 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 Terry.jackson.esq@gmail.com
9 Counsel for Defendant, *Richard Allan Newsome, Jr.*

6 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 **RICHARD A. NEWSOME, JR.,**
9 ID# 1194269,
10 Petitioner,

11 v.

12 **STATE OF NEVADA,**

13 Respondent.

Case No.: **C-17-321043-1**

Dept. **IX**

14 **SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF**
15 **WRIT OF HABEAS CORPUS FOR POST CONVICTION RELIEF**

16 COMES NOW the Petitioner/Defendant, RICHARD A. NEWSOME, by and through his
17 attorney, TERRENCE M. JACKSON, ESQ., and moves this court to enter an Order granting her
18 Petition and Supplemental Points and Authorities in support of Defendant's Petition for Post
19 Conviction Relief on the grounds that his trial counsel was ineffective and the Defendant was
20 prejudiced thereby.

21 Defendant alleges as grounds for this petition that his conviction is unlawful in the following
22 respects:

23 **I. DESPITE AN OBVIOUS CONFLICT OF INTEREST, DEFENSE COUNSEL FOR THE**
24 **DEFENDANT IMPROPERLY SIMULTANEOUSLY REPRESENTED THE DEFENDANT'S**
25 **MOTHER;**

26 **A. This Dual Representation was Prejudicial, Ineffective Assistance of Counsel Which**
27 **Requires Reversal of the Conviction of Second Degree Murder with Use of a Deadly Weapon;**
28

1 **B.** The Burden of Demonstrating a Waiver of the Right to Conflict Free Representation, a
2 Fundamental Right, Rests Upon the Prosecution;

3 **II.** DEFENSE COUNSEL WAS INEFFECTIVE UNDER *STRICKLAND* FOR FAILING TO
4 DO ALL THE NECESSARY INVESTIGATION AND PREPARATION PREPLEA;

5 **A.** Defense Counsel was Ineffective under *Strickland* for Failing to Do the Necessary
6 Investigation Preplea;

7 **B.** Defense Counsel Did Not Hire Necessary Experts to Support His Defense Claim that the
8 State Could Not Prove the Defendant Acted with Intent;

9 **C.** Defense Counsel Did Not Spend Adequate Time with the Defendant to Develop a Full
10 Understanding of the Facts to Adequately Determine Any Possible Defenses Prior to the Defendant's
11 Guilty Plea;

12 **III.** THE MERE CONCLUSIONARY ALLEGATIONS BY THE DEFENDANT AT THE PLEA
13 HEARING DO NOT ESTABLISH THE PLEA WAS VOLUNTARY;

14 **IV.** DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS
15 SHOULD NOT BE PROCEDURALLY BARRED;

16 **A.** Defendant can Demonstrate Good Cause and Prejudice for any Delay;

17 **B.** Applying Procedural Bars to Prohibit the Habeas Petition in This Case Would Result in
18 a Fundamental Miscarriage of Justice;

19 **V.** DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING TO SHOW
20 INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STRICKLAND AND TO PROVE HIS
21 PETITION IS NOT PROCEDURALLY BARRED.

22 Based on the allegations in the Petition, Defendant is entitled to an evidentiary hearing to
23
24
25
26
27
28

1 show the grounds of ineffective assistance of counsel and also to show his Petition is not
2 procedurally barred.

3 **DATED** this 2nd day of June, 2021.

4 Respectfully submitted,
5 /s/ Terrence M. Jackson
6 **TERRENCE M. JACKSON, ESQUIRE**
7 Nevada State Bar 000854
8 Terry.jackson.esq@gmail.com
 Counsel for Petitioner/Defendant, *Richard A. Newsome, Jr.*

8 **FACTUAL STATEMENT**

9 The Defendant, Richard A. Newsome, was arrested and charged with second degree murder
10 with use of a deadly weapon and assault with a deadly weapon with substantial bodily harm. He pled
11 guilty to the charge of second degree murder on December 14, 2017.

12 A competent defense investigation could have established that there existed a viable defense
13 to both charges in the Grand Jury Indictment as the Defendant's lack of the necessary intent to
14 commit second degree murder and the other crimes in the original Information.

15 Defendant believes he can establish more than sufficient facts at an evidentiary hearing to
16 show that any reasonable juror, who heard all the available evidence, would have found him not
17 guilty of both of the charges. However, despite the facts which may have shown a reasonable doubt
18 as to Defendant's guilt, counsel for Defendant, John J. Momot and Yi Lin Zheng, persuaded him to
19 plead guilty to a negotiated plea of accessory to murder. Defendant entered this plea of guilty, when
20 he was not fully aware of his rights including his right to a jury trial. He did not know how he could
21 assert his Sixth Amendment rights.

22 Defendant was sentenced on February 8, 2018, to a term of life with a minimum of ten (10)
23 years plus a consecutive term of two hundred forty (240) months with minimum parole in ten years.
24 The co-defendant, Tianna Michelle Douglas, aka Tianna Michelle Thomas, was the Defendant's
25 mother. She also pled guilty in this case to a negotiated plea. She was also represented by the
26 Defendant's same counsel, John J. Momot and Yi Lin Zheng.

27 An evidentiary hearing will show that the representation of the Defendant and the co-
28 defendant on these charges under these circumstances was an actual and substantial conflict of

1 interest for attorneys John J. Momot and Yi Lin Zheng, which caused them to render ineffective
2 assistance of counsel for Defendant Richard A. Newsome, Jr. The purported waiver of Actual or
3 Potential Conflict of Interest, filed on February 16, 2017, was not a valid, knowing and intelligent
4 waiver.

5 An evidentiary hearing will not show that Defendant Newsome fully understood how unfair
6 the purported waiver of rights was to him. The 'Waiver' of rights was therefore not valid.

7 ARGUMENT

8 **I. DESPITE AN OBVIOUS CONFLICT OF INTEREST, DEFENSE COUNSELS FOR**
9 **THE DEFENDANT, RICHARD A. NEWSOME, JR., JOHN J. MOMOT AND YI LIN**
10 **ZHENG, ALSO SIMULTANEOUSLY REPRESENTED THE DEFENDANT'S**
11 **MOTHER, TIANNA M. DOUGLAS, aka TIANNA M. THOMAS.**

12
13 **A. THIS DUAL REPRESENTATION OF AN ANTAGONISTIC CO-DEFENDANT WAS**
14 **PREJUDICIAL, INEFFECTIVE ASSISTANCE OF COUNSEL WHICH REQUIRES**
15 **REVERSAL OF THIS CONVICTION.**

16 Defendant submits he is entitled to a full and fair hearing which will establish conclusively
17 he was denied due process of law because his attorney's dual representation of both him and his
18 mother in the same case created an irreparable, actual conflict of interest which materially prejudiced
19 him. *Townsend v. Sain*, 372 U.S. 293 (1963). The law is clear that if a defense counsel has a conflict
20 of interest, a defendant may be deprived of effective assistance of counsel. *Cuyler v. Sullivan*, 446
21 U.S. 335 (1980), *Glasser v. U.S.*, 315 U.S. 60 (1942).

22 Consider the case of *United States v. Thomas*, 977 F. Supp. 771 (N. D. W. Va. 1977), where
23 the court affirmed an order disqualifying the defendant's court appointed counsel because of both
24 an actual and a potential conflict of interest. In that case defense counsel sought to represent two (2)
25 brothers, Donald Thomas and Gregory Thomas, in the same criminal case. In deciding the Motion
26 to Disqualify Counsel, the court ruled that although the defense attorney had actually stated in an
27 affidavit he believed no conflict existed, and both clients wanted him to represent them, the court
28 nevertheless found there was a sufficient conflict that the defense attorney should be discharged,

1 even though the defendant(s) may have understood the issue of potential conflict, . . . *Id.* 775.

2 In deciding the issue of whether there was an actual conflict, the court stated: . . .

3 " . . . The issue is whether or not there will be evidence
4 involving both Defendant and Gregory which will force Mr. Floyd to
5 choose between his clients when cross-examining. For example, if
6 government witness testifies that Defendant and Gregory divided a
7 cocaine shipment 80-20, does Mr. Floyd attempt to reverse the ratio
8 to help Defendant or confirm the ratio to help Gregory? Now that Mr.
9 Floyd is still representing Gregory, can he use information from
10 Gregory to help Donald and hurt Gregory and isn't Mr. Floyd still in
11 a position of divided loyalty? Also troubling is Mr. Floyd's statement
12 that he has represented Gerard in matters not of record which are
13 privileged. Doesn't that present a serious potential conflict that could
14 arise at the trial since Defendant and Gerard are co-defendants in this
15 case?

16 This is a dilemma. Defendant wants Mr. Floyd. To me, Mr.
17 Floyd clearly has an actual conflict with Gregory and a potential
18 conflict with Gerard. Should Defendant's right to choose his counsel
19 supersede his right to effective assistance of counsel?

20 If I allow Mr. Floyd to continue to represent Defendant, and
21 Defendant is convicted and gets a life sentence, Defendant will file a
22 claim of ineffective assistance of counsel because of the actual and
23 potential conflicts. It appears to me that the best choice to preserve
24 the integrity of the system is to disqualify Mr. Floyd so that no
25 question of divided loyalty can later be raised in a subsequent
26 ineffective assistance of counsel claim by Defendant. It also appears
27 to me that Defendant cannot possibly get representation which is
28 concerned only with his best interest so long as Mr. Floyd represents
both Defendant and Gregory. *Id.* 776 (Emphasis added)

29 . . . As in the *Thomas* case, *supra*, it is respectfully submitted that in this case the best way to
30 have preserved the integrity of the system was to have insisted that defense counsel could not
31 represent mother and son in the same criminal case. The conflict arising from such dual
32 representation is so great that it requires reversal.

33 Furthermore, plea bargaining in multi-defendant cases involves complex negotiations in
34 which the relative culpability of each defendant is always an issue. There is always the possibility,
35 if not the likelihood, that one defendant will be asked to testify against the other defendant. An
36 attorney has a legal duty to try to minimize his client's role in every multi-defendant case. That
37 however is impossible with dual representation such as occurred in this case. If an attorney
38 represents both of the charged defendants in a case, he cannot effectively represent each defendant.
39 The conflict in this case was particularly exacerbated because of the nature of the mother/son
40 relationship.

1 How can a defense counsel adequately defend a case when one client is the mother and the
2 other is the son? How can defense counsel cross-examine the mother and then, soon thereafter, cross-
3 examine the son during a trial? How can an attorney plea bargain effectively for both defendants?
4 Did the attorney need to retain a Freudian psychologist or a philosopher to help prepare for the case?

5 It is respectfully submitted the only way to resolve potential, highly damaging consequences
6 from the actual conflict of interest which existed in this case would have been to take any plea deal
7 offered by the State. That is what counsel apparently recommended to each of his clients. Defendant
8 submits that the Waiver of Actual/ Potential Conflict which he signed on February 16, 2017, along
9 with his mother, was not valid because it was not the product of a knowing and intelligent choice.
10 *Armstrong v. Warden*, 90 Nev. 5, 518 P.2d 147 (1974).

11 Even though he signed the waiver, that however was not the best solution for Defendant.
12 Defendant Richard Newsome clearly felt extraordinary pressure to plead guilty because he had the
13 same attorney as the co-defendant. The co-defendant was also his mother, and at the time of the
14 waiver, she wanted him to plead guilty. The Defendant had an impossible dilemma that had been
15 directly created by his attorney's conflict of interest. This conflict which violated Defendant's due
16 process rights, requires reversal of his conviction.

17 **B. THE BURDEN OF DEMONSTRATING A WAIVER OF THE RIGHT TO CONFLICT**
18 **FREE REPRESENTATION, A FUNDAMENTAL RIGHT, RESTS UPON THE**
19 **PROSECUTION.**

20 The State cannot meet its burden of showing Defendant waived his constitutional right to
21 conflict free representation in this case. In the case of *People v. Castro*, 657 P.2d 932 (1983), the
22 court noted:

23 "... As in the case of other constitutional rights, an accused may
24 waive his rights to conflict-free representation. The burden of
25 affirmatively demonstrating a waiver of such a fundamental rights
26 rests upon the prosecution and will not be presumed from a silent
27 record." See, e.g., *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880,
28 68 L.Ed.2d 378 (1981); *Brewer v. Williams*, 430 U.S. 387, 97 S.Ct.
1232, 51 L.Ed.2d 424 (1977); *Carnley v. Cochran*, 369 U.S. 506, 82
S.Ct. 884, 8 L.Ed.2d 70 (1962); *Von Moltke v. Gillies*, 332 U.S. 708,
68 S.Ct. 316, 92 L.Ed. 309 (1948); *Johnson v. Zerbst*, 304 U.S. 458,
58 S.Ct. 1019, 82 L.Ed. 1461 (1938). *Id.* 944 (Emphasis added)

1 There is nothing in the record whatever suggesting that Defendant willingly and knowingly
2 waived his right to conflict-free counsel. Defendant did not understand that counsel's desire to get
3 both clients to plead guilty adversely affected him.

4 Defendant had an overwhelming desire to assist his mother and her interests were greater to
5 him than his own interests. Unfortunately, Defendant's own interests were not adequately protected
6 by his attorney who was seeking to get the best result for his mother.

7 **II. DEFENSE COUNSEL WAS INEFFECTIVE UNDER *STRICKLAND* FOR FAILING**
8 **TO DO THE NECESSARY INVESTIGATION AND PREPARATION PREPLEA.**

9
10 **A. DEFENSE COUNSEL WAS INEFFECTIVE UNDER *STRICKLAND* FOR FAILING TO**
11 **DO THE NECESSARY INVESTIGATION PREPLEA.**

12 A fundamental command of *Strickland v. Washington*, 466 U.S. 668 (1984), is that counsel
13 do an adequate investigation as pretrial preparation before any plea. It is respectfully submitted that
14 defense counsel's investigation was inadequate in this case. An adequate investigation would have
15 required counsel to do a full investigation of any viable defenses and a full investigation of available
16 mitigation.

17 Defense counsel also did not make a comprehensive effort to locate all necessary witnesses
18 who could have established possible defenses or mitigating evidence. An evidentiary hearing will
19 establish there were defense witness(es) that could have credibly established Defendant was not an
20 accessory to murder because he could not form the necessary intent to commit the crime. It is
21 apparent counsel did not do the necessary factual or legal research to fully develop Defendant's lack
22 of intent as a viable theory of the case. This defense could have been established and provided a basis
23 for reasonable doubt.

24 The American Bar Association (ABA) Standards on the Prosecution and Defense function
25 emphasize the crucial importance of investigation by criminal defense attorneys for their clients
26 pretrial. *See*, ABA Standards 4.1:

27 ...

28 **4.1 Duty to Investigate.**

1 It is the duty of the lawyer to conduct a prompt investigation of the
2 circumstances of the case and explore all avenues leading to facts
3 relevant to guilt and degree of guilt or penalty. The investigation
4 should always include effort to secure information in the possession
5 of the prosecution and law enforcement authorities. The duty to
investigate exists regardless of the accused's admissions or
statements to the lawyer of facts constituting guilt or his stated desire
to plead guilty. (Emphasis added)

6 ...
7 The importance of this Standard has been recognized and cited by the Nevada Supreme Court
8 for over 40 years. *Jackson v. Warden*, 91 Nev. 430, 537 P.2d 473 (1975). Counsel, however, did not
9 fulfill this elementary command to investigate and develop possible information that might assist
his client. This failure requires reversal of the conviction.

10 In *Strickland v Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the United
11 States Supreme Court established a two pronged test for reversal based upon ineffective assistance
12 of counsel. First, the defendant must show counsel's *performance was deficient*. This requires a
13 showing that counsel made errors so serious that counsel was not functioning as the
14 "counsel" guaranteed by the Sixth Amendment. Second, counsel must show that the deficient
15 performance *prejudiced* the defense. This requires showing that counsel errors are so serious as to
16 have deprived defendant of a fair trial, that is a trial where the result is reliable. Unless a defendant
17 makes both showings, it cannot be said that the conviction or death sentence resulted in a breakdown
18 of the adversary process that renders the result unreliable. *Strickland* at 687.

19 *Strickland* noted that:

20 ...[i]udicial scrutiny of counsel performance must be highly
21 deferential however, counsel must at a minimum conduct a
22 reasonable investigation enabling him to make informed decisions
about how best to represent his client. *Strickland, Id.* 691, 104 S.Ct.
at 2066. (Emphasis added).

23 ...
24 Reversing a conviction for ineffective assistance of counsel, the Nevada Supreme Court in
Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991) stated:

25 To state a claim of ineffective assistance of counsel that is
26 sufficient to invalidate a judgment of conviction, Sanborn must
27 demonstrate that trial counsel's performance fell below an objective
28 standard or reasonableness and that counsel's deficiencies were so
severe that they rendered the jury's verdict unreliable. *See Strickland*
v Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984);
Warden v. Lyons, 100 Nev. 430, 683 F.2d 504 (1984) *cert. denied*,

1 471 U.S. 1004, 105 S.Ct. 1865, 85 L.Ed.2d 159 (1985). Focusing on
2 counsel's performance as a whole, and with due regard for the strong
3 presumption of effective assistance accorded counsel by this court
4 and *Strickland*, we hold that Sanborn's representation indeed fell
5 below an objective standard of reasonableness. Trial counsel did not
6 adequately perform pretrial investigation and failed to pursue
7 evidence supportive of innocence or evidence which would establish
a reasonable doubt. He failed to establish a claim of self-defense, and
failed to explore allegations of the victim's propensity towards
violence. Thus, he "was not functioning as the 'counsel' guaranteed
the defendant by the Sixth Amendment. *Strickland*, 466 U.S. at 687,
104 S.Ct. at 2064. (Emphasis added)

8 **B. DEFENSE COUNSEL DID NOT HIRE NECESSARY EXPERTS TO SUPPORT HIS**
9 **DEFENSE CLAIM THAT THE STATE COULD NOT PROVE THE DEFENDANT**
10 **ACTED WITH INTENT.**

11 It is respectfully submitted that in this case competent counsel under *Strickland*, should have
12 retained an expert psychologist to testify concerning the Defendant's state of mind or on his ability
13 to form criminal intent to commit accessory to murder. It is respectfully submitted this lack of action
14 by counsel is the type of "complete failure to investigate" condemned by many courts since
15 *Strickland*.

16 In *United States v. Gray*, 878 F.2d 702 (3rd Cir.1989), the Court found counsel ineffective
17 for failure to adequately investigate, stating:

18 "Ineffective assistance is generally clear in the context of
19 complete failure to investigate because counsel can hardly be said to
20 have made a strategic choice against pursuing a certain line of
21 investigation when he had not yet obtained the facts on which such a
22 decision could be made." (Emphasis added) *See, Strickland*, 466 U.S.
at 690-91, 104 S.Ct. at 2065-67; *see also Debang*, 780 F.2d at 85
("the failure to investigate potentially corroborating witnesses ... can
hardly be considered a tactical decision"); *Sullivan*, 819 F.2d at 1389;
Nealy, 764 F.2d at 1178; *Crisp*, 743 F.2d at 584.

23 "Such is the situation presented in this case. Counsel offered
24 no strategic justification for his failure to make any effort to
25 investigate the case, and indeed he could have offered no such
26 rationale. As he admitted, he did not go to the scene of the incident
27 to interview potential witnesses, even though, as the police officers
28 testified, there were as many as 25 witnesses including many persons
who would have been easily located, such as the bartender and people
who came out of their houses to observe the disturbance." *Id.* 711
(Emphasis added)

1 See also, *United States v. Burrows*, 872 F.2d 915, 918 (9th Cir.1989) and *Deutscher v.*
2 *Whitney*, 884 F.2d 1152, 1160 (9th Cir. 1989). And consider the case of *People v. Frierson*, 599 P.2d
3 587 (Cal.1979), where the court reversed for ineffective assistance of counsel, finding that counsel's
4 failure to develop expert testimony to support a diminished capacity or lack of specific intent defense
5 was prejudicial error. The Court stated:

6 "In the present case, despite his admitted awareness of the
7 possibility of developing a successful diminished capacity defense,
8 trial counsel neglected either to seek or obtain an expert appraisal of
9 defendant's mental condition or of the effect of the drug PCP upon
10 his physical or mental condition. Although, unlike *Saunders*, counsel
11 here did attempt to assert a diminished capacity defense, nevertheless,
12 it was doomed to failure in the absence of evidence supporting it." *Id.*
13 598, 599. (Emphasis added)

14 ...
15 An expert review of all police forensic evidence needed to be completed with Defendant's
16 information about the crime. Investigation into the alleged victim's background was also mandated.
17 Defendant in this case urges this Honorable Court to reverse his conviction as the Court has done
18 before when counsel failed in his duty to protect his client's right to a fair trial. The plea of guilty
19 in this case was premature.

20 Reversing a conviction for ineffective assistance of counsel, the Nevada Supreme Court in
21 *Sanborn v. State*, 107 Nev. 399, 812 P.2d 1279 (1991) stated:

22 "To state a claim of ineffective assistance of counsel that is
23 sufficient to invalidate a judgment of conviction, *Sanborn* must
24 demonstrate that trial counsel's performance fell below an objective
25 standard or reasonableness and that counsel's deficiencies were so
26 severe that they rendered the jury's verdict unreliable. *See Strickland*
27 *v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984);
28 *Warden v. Lyons*, 100 Nev. 430, 683 F.2d 504 (1984) *cert. denied*,
29 471 U.S. 1004, 105 S.Ct. 1865, 85 L.Ed.2d 159 (1985). Focusing on
30 counsel's performance as a whole, and with due regard for the strong
31 presumption of effective assistance accorded counsel by this court
32 and *Strickland*, we hold that *Sanborn's* representation indeed fell
33 below an objective standard of reasonableness. Trial counsel did not
34 adequately perform pretrial investigation, failed to pursue evidence
35 supportive of a claim of self-defense, and failed to explore allegations
36 of the victim's propensity towards violence. Thus, he "was not
37 functioning as the 'counsel' guaranteed the defendant by the Sixth
38 Amendment." *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064.
39 (Emphasis added)

40 Counsel's failure to pursue and adequately develop a viable defense raising the defense that
41 he lacked the specific intent necessary to commit accessory to murder was objectively unreasonable

1 representation under *Strickland* and requires reversal. The United States Supreme Court in *Strickland*
2 noted that:

3 ... [j]udicial scrutiny of counsel performance must be highly
4 deferential, however, counsel must at a minimum conduct a
5 reasonable investigation enabling him to make informed decisions
6 about how best to represent his client. *Strickland, Id.* 691, 104 S.Ct.
7 at 2066. (Emphasis added)

8 It is respectfully submitted a comprehensive investigation would have developed witnesses
9 who could have supported the defense theory of the case that he acted without criminal intent.

10 C. DEFENSE COUNSEL DID NOT SPEND ADEQUATE TIME WITH THE DEFENDANT
11 TO DEVELOP A FULL UNDERSTANDING OF THE FACTS SO HE COULD
12 DETERMINE ANY POSSIBLE DEFENSES PRIOR TO THE DEFENDANT'S GUILTY
13 PLEA.

14 The evidentiary hearing will show counsel spent only a very short time with the Defendant
15 before the guilty plea on December 14, 2017. The Defendant without consultation then waived
16 important rights. Counsel had convinced Defendant to plead guilty and to waive all his
17 constitutional rights before discussing the case fully. Courts have often reversed a conviction and
18 allowed withdrawal of the guilty plea because of ineffective assistance of counsel based upon
19 incorrectly advising a defendant concerning all the circumstances of his case. Defendant asks this
20 Honorable Court to review carefully the totality of circumstances of the plea in this case and
21 determine whether the Defendant received adequate advice before he pled guilty. *See, State v.*
22 *Freese*, 116 Nev. 1097 (2000), *McConnell v. State*, 125 Nev. 243 (2009).

23 In *State v. Plotner*, 235 P.3d 413 (Kan.2000), the court recognized that in evaluating whether
24 a defendant can demonstrate the "good cause" sufficient to withdraw a guilty plea, the trial court
25 should consider several factors including: (1) whether the defendant was represented by competent
26 counsel; (2) whether the defendant was misled, coerced, mistreated or unfairly taken advantage of;
27 (3) whether or not the plea was understandingly made.

28 In this case, as in others where pleas have been withdrawn because of incompetent or
ineffective counsel, the Defendant was prejudiced by his counsel's lack of effectiveness preplea.
Counsel's incompetence in this case is evident because counsel did not spend sufficient time with

1 the Defendant. The lack of time Defendant spent with his counsel clearly suggests that his plea was
2 not valid because it was not intelligently entered. *State v. Arnold*, 914 P.2d 762 (Wash.1996)

3 In *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, L.Ed.2d 196 (1963), the Supreme Court
4 implicitly established the right to counsel at the time of entering a guilty plea. The plea negotiation
5 process also has been recognized as a critical stage of the criminal process at which a Defendant is
6 entitled to counsel.

7 The competent advice of counsel is a 'significant' fact in determining the voluntariness of
8 a plea. *Patton v. Warden*, 91 Nev. 1, 2, 30 P.2d 107, 108 (1975). The plea that the Defendant entered
9 in this case was not the product of competent or effective advice based upon the necessary pretrial
10 preparation and adequate investigation which is mandated by *Strickland v. Washington*, 466 U.S. 668
11 (1984). Merely having an attorney, who stands beside you, totally mute at the plea hearing, wearing
12 a good suit and tie, while the judge goes through a routine canvas, telling you the constitutional
13 rights you are giving away forever, does not satisfy effective assistance of counsel under *Strickland*.

14 In *Strickland*, the United States Supreme Court expressly stated that: counsel must do . . .
15 at least . . . 'a minimal investigation preplea.' *Id.* 691. It is respectfully submitted the preplea
16 investigation in this case was totally inadequate under all the facts and circumstances of this case.
17 There are therefore adequate grounds to reverse the conviction and set aside the guilty plea based
18 upon *Strickland*.

19 **III. THE MERE CONCLUSIONARY ALLEGATIONS BY THE DEFENDANT AT THE**
20 **PLEA HEARING DO NOT ESTABLISH THE DEFENDANT'S PLEA WAS**
21 **VOLUNTARY.**

22 At the plea hearing on December 14, 2017, Defendant Richard Allan Newsome, Jr., made
23 the standard perfunctory, conclusory affirmations of guilt as well as the conclusive affirmations he
24 understood his rights. (See Plea Memo, p. 4) It is respectfully submitted a review of the transcript
25 of the plea hearing will not establish that Defendant fully understood all of his rights and the
26 Defendant's conclusory responses to leading questions at the plea canvas did not establish his plea
27 was valid.

28 In *Wilkins v. Bowersox*, 145 F.3d 1006 (8th Cir.1998) the court held that the Defendant's

1 mere guilty plea, including his waiver of presenting mitigating evidence, was not itself evidence of
2 a knowing, voluntary and intelligent waiver, despite the conclusory affirmation in the plea canvas
3 that the Defendant understood his rights. In this case, as in *Wilkins, supra*, it is respectfully submitted
4 Defendant Richard Newsome did not fully understand the rights he was waiving.

5 The Court should consider that in this case, as well as the *Wilkins* case, that an
6 unsophisticated Defendant can easily correctly answer the simple leading questions in a guilty plea
7 canvas without a full understanding of the rights he is giving up or what duties his attorney may have
8 failed to perform. Even when a valid defense exists, a defendant often blindly affirms they are
9 knowingly pleading guilty.

10 The court must look at the totality of circumstances to determine whether in this case the
11 Defendant's plea was actually a knowing, voluntary and intelligent waiver of all his rights. *See State*
12 *v. Freese, supra, McConnell v. State, supra*. It should be noted that the recitation of facts stated at
13 the end of the plea were conclusory and did not discuss any relevant details of the actual event. (See
14 Plea Hearing, p. 5, December 14, 2017)

15 There was no mention in the plea canvas of whether counsel had specifically discussed
16 whether Defendant was under any duress or felt any familial pressure, nor was there any discussion
17 of whether defense counsel had discussed specific intent as a possible defense. Defendant was never
18 on the record questioned directly about any influence his mother may have had upon his plea. This
19 was the central factor that was deliberately omitted by defense counsel and also overlooked by the
20 court. Ignoring this critical dynamic during the plea canvas, when the co-defendants were so
21 intimately related, was a fundamental error in the plea canvas that requires reversal of the conviction,
22 or at the very minimum, a full evidentiary hearing of the voluntariness of the plea.

23 **IV. DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF HABEAS**
24 **CORPUS SHOULD NOT BE PROCEDURALLY BARRED.**

25
26 **A. DEFENDANT CAN DEMONSTRATE GOOD CAUSE AND PREJUDICE FOR ANY**
27 **DELAY.**

28 Defendant submits his claim, although beyond statutory time bar of NRS 34.726, has been

1 filed within a “reasonable time” after the basis for the claim became evident. In *Rippo v. State*, 122
2 Nev. 1086, 368 P.3d 729 (2016), the Nevada Supreme Court discussed procedural bars and the need
3 for finality in criminal cases. In *Rippo v. State*, the Nevada Supreme Court explained the
4 circumstances of when procedural default would be excused, stating:

5 *Rippo’s* petition was not filed within that time period. To
6 excuse the delay in filing the petition, *Rippo* had to demonstrate good
7 cause for the delay. NRS 34.726(1). A showing of good cause for the
8 delay has two components: (1) that the delay was not the petitioner’s
9 fault and (2) that “dismissal of the petition as untimely will unduly
prejudice the petitioner.” *Id.*

10 The first component of the cause standard under NRS
11 34.726(1) requires a showing that “an impediment external to the
12 defense” prevented the petitioner from filing the petition within the
13 time constraints provided by the statute. *Clem*, 119 Nev. at 621, 81
14 P.3d at 525; *Hathaway*, 119 Nev. at 252, 71 P.3d at 506. “A
15 qualifying impediment might be shown where the factual or legal
16 basis for a claim was not reasonably available at the time of any
17 default.” *Clem*, 119 Nev. at 621, 81 P.3d at 525; *see also Hathaway*,
119 Nev. at 252, 71 P.3d at 506. (Emphasis added)

16 ...

17 Defendant respectfully submits that in this case, as opposed to *Rippo*, he can demonstrate
18 good cause for any delay. His delay in this case was not intentional. It resulted principally from his
19 lack of legal sophistication and his inability to obtain counsel immediately after conviction.

20 Other equitable factors in this case clearly outweigh the State’s interests in finality and
21 protection against “stale” claims. In this case the Defendant’s conviction is fundamentally unfair and
22 ‘manifestly unjust’ and therefore must be set aside. An evidentiary hearing will establish numerous
23 impediments which existed that prevented Defendant Richard Newsome from completing a timely
24 habeas petition, his initial lack of post-conviction counsel and his lack of legal sophistication.

25 Most importantly, it has been held that factual innocence is an exception to the procedural
26 bar of NRS 34.726.1. *See, Boyd v. Thompson*, 147 F.3d 1124 (9th Cir.1998). This narrow exception
27 to the procedural bar is reserved for extraordinary cases. *Sawyer v. Whitley*, 505 U.S. 333, 340
28 (1992); *Murray v. Carrier*, 477 U.S. 478 (1986).

1 Defendant respectfully claims this was one of the extraordinary cases where a narrow
2 exception to procedural bars is necessary to ensure that justice is done. Defendant submits he can
3 establish many equitable factors which existed which should preclude his Petition in this case from
4 being time barred such as the conflict of interest with his attorneys and his co-defendant.

5 An evidentiary hearing will show the prison's Law Library is less than adequate for extensive
6 legal research and provides minimal training for prisoners. *See, Easterwood v. Champion*, 213 F.3d
7 1321 (10th Cir.2000), *Ray v. Lamport*, 465 F.3d 964 (9th Cir.2006), *Williamson v. Word*, 110 F.3d
8 1508 (10th Cir.1997). All of the factors must be considered by this Honorable Court as equitable
9 grounds to not bar his Petition in this case.

10 **B. APPLYING PROCEDURAL BARS TO PROHIBIT THE HABEAS PETITION IN THIS**
11 **CASE WOULD RESULT IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.**

12 Although the statutory provisions of the Nevada Revised Statutes appear at first glance to
13 restrict the application of habeas corpus relief in this case because it may be untimely, there have
14 always been important exceptions to this procedural bar.

15 NRS 34.726(1) provides that a post-conviction habeas petition
16 challenging the validity of a judgment of conviction must be filed
17 within one year after this court issues the remittitur from a timely
18 direct appeal. NRS 34.810(1)(b) provides that a post-conviction
19 habeas petition must be dismissed where the defendant's conviction
20 was the result of a trial and his claims could have been raised either
21 before the trial court, on direct appeal in a previous petition, or in any
22 other proceeding. And NRS 34.810(2) provides that a second or
23 successive petition must be dismissed if the defendant fails to allege
24 new or different grounds and the prior petition was decided on its
25 merits or if the defendant's failure to assert those grounds in the prior
26 petition constituted an "abuse of the writ."

27 However, procedure default will be excused if the petitioner
28 established both good cause for the default and prejudice. NRS
34.726(1), NRS 38.810(3). Good cause for failing to file a timely
petition or raise a claim in a previous proceeding may be established
where the factual or legal basis for the claim was not necessarily
available. *Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787.

Even absent a showing of good cause, this court will consider
a claim if the petitioner can demonstrate that applying procedural bars
would result in a fundamental miscarriage of justice. *Bejarano v.*
State, 131 Nev. ___, 146 P.3d 265, 270 (Nev. 2006). *See, State v.*
Bennett, 119 Nev. 589, 597-98, 81 P.2d 1, 7 (2003), *Leslie v. Warden*,
118 Nev. 773, 780, 59 P.3d 440, 445 (2002). (Emphasis added)

1 Defendant respectfully submits considering all the facts and law, any procedural default should be
2 excused in this case.

3 **V. DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING TO SHOW**
4 **INEFFECTIVE ASSISTANCE OF COUNSEL UNDER *STRICKLAND* AND TO**
5 **PROVE HIS PETITION IS NOT PROCEDURALLY BARRED.**

6 An evidentiary hearing will establish that counsel was ineffective under *Strickland* in
7 numerous ways. An evidentiary hearing will establish the Defendant was prejudiced and had viable
8 defenses to the crime of second degree murder and other crimes on/in the Indictment including
9 substantial bodily harm. Also the Defendant's plea was invalid because counsel's representation was
10 clearly tainted by his joint representation of the co-defendant.

11 An evidentiary hearing will show that counsel did not adequately investigate and prepare for
12 a defense of this case. He did not even do the minimal investigation *Strickland* requires. (*Strickland*,
13 *Id.* 391) Nevada case law also requires an evidentiary hearing in this case as to the validity of any
14 purported "waivers" of conflict.

15 In *Marshall v. State*, 110 Nev. 1328, 885 P.2d 603 (1994), the Nevada Supreme Court
16 reversed *Marshall's* conviction because he was denied an evidentiary hearing on post-conviction.
17 The Court there stated:

18 "When a petition for post-conviction relief raises claims
19 supported by specific factual allegations which, if true, would entitle
20 the petitioner to relief, the petitioner is entitled to an evidentiary
21 hearing unless those claims are repelled by the record." *Hargrove v.*
22 *State*, 100 Nev. 498, 686 P.2d 222 (1984). *Id.* 1331

23 Although the court rejected many of *Marshall's* claims as meritless, it found the issue of
24 insufficiency of the evidence presented to the grand jury supporting the possession or controlled
25 substance charge to have merit and reversed those counts stating:

26 "At most, the state presented evidence that appellant
27 frequented an apartment that was rented to his brother and that
28 appellant stored some of his personal belongings in the apartment.
This evidence is not sufficient to establish that appellant, rather than
one of the numerous other persons who frequented the apartment,
possessed the cocaine and the marijuana the police found. Appellate
counsel was ineffective for failing to raise this issue on appeal and
counsel's failure prejudiced appellant. *Warden v. Lyons*, 100 Nev.

1 430, 683 P.2d 504 (1984), *cert. den.*, 471 U.S. 1004 (1985). The
2 district court erred in refusing to provide appellant an evidentiary
3 hearing on this issue and in denying appellant relief."

4 "Because the record on appeal establishes that appellant was
5 improperly convicted of the possession charges, we reverse
6 appellant's judgment of conviction on these charges and we vacate
7 the sentences imposed with respect to those convictions." *Id.* 1333
(Emphasis added)s

8 ... Similarly, in *Hatley v. State*, 100 Nev. 214, 678 P.2d 1160 (1984), the Supreme Court
9 reversed and remanded for an evidentiary hearing because the defendant had alleged facts in his
10 petition, which, if true, would entitle him to relief. *Id.* 216 (Emphasis added) The evidentiary hearing
11 will also show conclusively there are sufficient facts to show the cause and prejudice to prevent this
12 Petition from being procedurally barred.

13 CONCLUSION

14 Defendant was not guilty of the crimes charged. He nevertheless pled guilty to the felony
15 charge of second degree murder while under extraordinary psychological duress. He was represented
16 by the same attorney who represented his mother, Tianna Michelle Douglas, aka Tianna Michelle
17 Thomas, who was facing serious consequences if she was convicted. Defendant was more concerned
18 about his mother's fate when he pled guilty, than his own case. His plea of guilty, when represented
19 by a lawyer who had an actual conflict was therefore not a knowing, voluntary or intelligent guilty
20 plea. He did not fully understand his rights. He did not fully understand the purported 'waiver' he
21 had signed. Defendant needed a conflict free attorney, who was well prepared, and who had fully
22 investigated the facts, and who also was willing to engage in a difficult trial.

23 Instead, Defendant received ineffective assistance from his counsel, who persuaded him to
24 plead guilty, while also persuading his mother to plead guilty. It is respectfully submitted that
25 because of his counsel's ineffectiveness preplea, his conviction should be reversed and this Court
26 remand the case with such further action as this Honorable Court deems necessary. It has been held
27 that: . . . "if counsel entirely fails to subject the prosecution to meaningful adversarial testing, then
28 there has been a denial of Sixth Amendment rights that made the adversary process itself
presumptively unreliable." *United States v. Cronin*, 466 U.S. 648, 656-59, 104 S.Ct. 2039, 2045-47,
80 L.Ed.2d 657 (1984). (Emphasis added)

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

/s/ Terrence M. Jackson

terry.jackson.esq@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I am an assistant to Terrence M. Jackson, Esq., I am a person competent to serve papers and not a party to the above-entitled action and on the 2nd day of June, 2021, I served a copy of the foregoing: Petitioner/Defendant's, Richard Allan Newsome Jr.'s, SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS FOR POST CONVICTION RELIEF as follows:

☒ Via Electronic Service (CM/ECF) to the Eighth Judicial District Court and by United States first class mail to the Nevada Attorney General and Petitioner/Appellant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyny.com

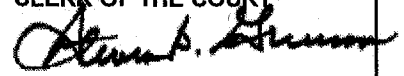
Ann M. Dunn
Deputy D.A. - Criminal
ann.dunn@clarkcountyda.com

Richard A. Newsome, ID# 1194269
H. D. S. P. - Box 650
Indian Springs, NV 89070-0650

Aaron D. Ford, Esquire
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

By: /s/ Ila C. Wills
Assistant to T. M. Jackson, Esq.

...



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD NEWSOME, JR., aka
Richard Newsome #5437116

Defendant.

CASE NO: C-17-321043-1

DEPT NO: IX

**STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL POINTS AND
AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS FOR POST
CONVICTION RELIEF**

DATE OF HEARING: AUGUST 4, 2021

TIME OF HEARING: 12:30 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and moves this Honorable Court for an order denying the Defendant's Supplemental Points and Authorities in Support of Writ of Habeas Corpus for Post Conviction Relief.

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

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On February 2, 2017, Defendant Richard Newsome, Jr. ("Defendant") was charged with the following: Count 1 – Murder With Use of a Deadly Weapon (Category A Felony –

1 NRS 200.010, 200.030, 193.165); Count 2 – Assault With Use of a Deadly Weapon (Category
2 B Felony – NRS 200.471).

3 On December 14, 2017, Defendant pled guilty to one count of Second-Degree Murder
4 With Use of a Deadly Weapon. Pursuant to the negotiations as contained in the Guilty Plea
5 Agreement (“GPA”), the State would retain the right to argue at sentencing.

6 On February 8, 2018, Defendant received a sentence of 10 years to life in the Nevada
7 Department of Corrections. The Judgment of Conviction was filed on March 5, 2018.
8 Defendant did not file a direct appeal.

9 On February 1, 2019, Defendant filed a Petition for Writ of Habeas Corpus (“First
10 Petition”), Supplemental Petition for Writ of Habeas Corpus (“Supplement”), Motion for
11 Appointment of Counsel (“Motion”), and Request for an Evidentiary Hearing (“Request”). On
12 May 1, 2019, the State filed a response to Defendant’s First Petition, Supplement, Motion, and
13 Request. On May 28, 2019, this Court denied Defendant’s First Petition, Supplement, Motion,
14 and Request. The Findings of Fact, Conclusions of Law were filed on June 26, 2019. On July
15 13, 2020, the Nevada Court of Appeals affirmed the district court’s denial of Defendant’s First
16 Petition. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). Remittitur
17 issued on August 10, 2020.

18 On October 9, 2020, Defendant filed another Petition for Writ of Habeas Corpus
19 (“Second Petition”). On November 23, 2020, the State filed its Response. On December 17,
20 2020, this Court denied Defendant’s Second Petition. The Findings of Fact, Conclusions of
21 Law and Order were filed on April 5, 2021.

22 On March 9, 2021, Defendant filed a Motion to Correct Illegal Sentence. On March 31,
23 2021, Terrence Jackson, Esq. confirmed as counsel. On April 20, 2021, the State filed its
24 Opposition to Defendant’s Motion to Correct Illegal Sentence.

25 On June 2, 2021, Defendant filed the instant Supplemental Points and Authorities in
26 Support of Writ of Habeas Corpus for Post Conviction Relief (“Third Petition”). The State
27 responds as follows.

28 ///

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

I. THE THIRD PETITION IS PROCEDURALLY BARRED

a. The Third Petition is Untimely

This one-year time limit is strictly applied and begins to run from the date the judgment of conviction is filed or remittitur issues from a timely filed direct appeal. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). “Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored [by the district court] when properly raised by the State.” State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231

3

1 & 233, 112 P.3d 1070, 1074-75 (2005). For example, in Gonzales v. State, the Nevada
2 Supreme Court rejected a habeas petition filed two days late despite evidence presented by the
3 defendant that he purchased postage through the prison and mailed the Notice within the one-
4 year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002). Absent a showing of good cause
5 and prejudice, courts have no discretion regarding whether to apply the statutory procedural
6 bars.

7 Here, Defendant's Judgment of Conviction was filed on March 5, 2018, and Defendant
8 did not file a direct appeal. Defendant then had until March 5, 2019 to timely file a petition
9 for writ of habeas corpus. The Third Petition was filed on June 2, 2021, two years after the
10 one-year deadline of NRS 34.726. Accordingly, absent a showing of good cause and prejudice,
11 the Third Petition must be dismissed as untimely.

12 **b. The Third Petition is Successive**

13 Defendant has twice previously sought post-conviction relief, and therefore the Third
14 Petition is successive. NRS 34.810(1)(b)(2); 34.810(2). "Successive petitions may be
15 dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901
16 P.2d 123, 129 (1995). Courts are required to dismiss successive post-conviction petitions if a
17 prior petition was decided on the merits and a petitioner fails to raise new grounds for relief,
18 or if a petitioner does raise new grounds for relief but failure to assert those grounds in any
19 prior petition was an abuse of the writ. NRS 34.810(2); See Riker, 121 Nev. at 231, 112 P.3d
20 at 1074. Successive petitions will only be decided on the merits if the petitioner can show good
21 cause and prejudice for failing to raise the new grounds in their first petition. NRS 34.810(3);
22 Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). If a claim or allegation was
23 previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in
24 a later petition. McClesky v. Zant, 499 U.S. 467, 497-98, 111 S.Ct. 1454, 1472 (1991).

25 The Third Petition must be denied as successive. Defendant raises three substantive
26 claims: that his plea counsel was conflicted, that his plea counsel rendered ineffective
27 assistance through insufficient investigation and preparation, and that his guilty plea was not
28 entered voluntarily. The first two claims were obviously previously available to Defendant to

1 be raised in his previous petitions, and therefore his failure to assert these claims previously is
2 an abuse of the writ. NRS 34.810(2). Because these claims could have been raised in either of
3 his previous petitions, these claims must be summarily dismissed in the absence of good cause
4 and prejudice. NRS 34.810(b)(1)(2). Further, Defendant's claim that his guilty plea was not
5 voluntarily entered was also raised in his First Petition, and this claim was denied on its merits.
6 Accordingly, this claim must be summarily dismissed. NRS 34.810(2).

7 **c. Consideration of the Procedural Bars is Mandatory**

8 The Nevada Supreme Court has specifically found that the district court has a duty to
9 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
10 disregard them. In Riker, the Court held that "[a]pplication of the statutory procedural default
11 rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly
12 raised by the State." 121 Nev. at 231-33, 112 P.3d at 1074-75. Ignoring these procedural bars
13 is considered an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076.
14 Riker justified this holding by noting that "[t]he necessity for a workable system dictates that
15 there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation
16 omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003)
17 (holding that parties cannot stipulate to waive, ignore or disregard the mandatory procedural
18 default rules nor can they empower a court to disregard them). In State v. Greene, the Nevada
19 Supreme Court reaffirmed its prior holdings that the procedural default rules are mandatory
20 when it reversed the district court's grant of a postconviction petition for writ of habeas corpus.
21 129 Nev. 559, 566, 307 P.3d 322, 326 (2013). There, the Court ruled that the defendant's
22 petition was untimely and successive, and that the defendant failed to show good cause and
23 actual prejudice. Id. Accordingly, the Court reversed the district court and ordered the
24 defendant's petition dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

25 **d. Defendant Has Not Demonstrated Good Cause and Prejudice to Overcome**
26 **the Procedural Bars**

27 Defendant has failed to demonstrate the requisite good cause and prejudice to overcome
28 the procedural bars to his Petition. This Court may only consider the merits of the Third

1 Petition if Defendant establishes both good cause and prejudice for the delay in filing and the
2 successive nature of his claims. NRS 34.726(1)(a)-(b); NRS 34.810(3). Accordingly, the Third
3 Petition must be summarily denied.

4 Simply put, good cause is a "substantial reason; one that affords a legal excuse."
5 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
6 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Defendant has the burden of pleading and
7 proving specific facts that demonstrate good cause for his failure to comply with the statutory
8 requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS
9 34.726(1)(a); *see* Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993);
10 Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court
11 *must* dismiss a habeas petition if it presents claims that either were or could have been
12 presented in an earlier proceeding, unless the court finds both cause for failing to present the
13 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,
14 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

15 To show good cause, a petitioner must demonstrate the following: (1) "[t]hat the delay
16 is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the
17 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, "a petitioner
18 *must* show that an impediment external to the defense prevented him or her from complying
19 with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
20 506 (2003) (emphasis added). "A qualifying impediment might be shown where the factual or
21 legal basis for a claim was not reasonably available *at the time of default*." Clem v. State, 119
22 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). To find good cause there must be
23 a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 252, 71 P.3d at
24 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in
25 the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

26 As the Third Petition is both untimely and successive, Defendant must overcome the
27 procedural bars under both NRS 34.726 and NRS 34.810. "In terms of a procedural time-bar,
28 an adequate allegation of good cause would sufficiently explain why a petition was filed

1 beyond the statutory time period.” Harris v. State, 133 Nev. 683, 687, 407 P.3d 348, 352 (Nev.
2 App. 2017) (quoting Hathaway v. State, 119 Nev. 248, 252-5371 P.3d 503, 506 (2003). To
3 overcome the procedural bars against successive petitions, “NRS 34.810(3) requires the
4 petitioner to plead and prove specific facts demonstrating good cause for a “failure to present
5 the claim or for presenting the claim again” and actual prejudice.” Nika v. State, 120 Nev. 600,
6 607, 97 P.3d 1140, 1145 (2004).

7 Further, a petitioner raising good cause to excuse procedural bars must do so within a
8 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
9 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
10 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
11 available to the petitioner during the statutory time period did not constitute good cause to
12 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
13 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
14 453 120 S. Ct. 1587, 1592 (2000).

15 In order to establish prejudice, the defendant must show “not merely that the errors of
16 [the proceedings] created possibility of prejudice, but that they worked to his actual and
17 substantial disadvantage, in affecting the state proceedings with error of constitutional
18 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
19 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). As discussed more fully
20 *infra* in Section II, Defendant’s claims are without merit. Accordingly, he has failed entirely
21 to establish prejudice.

22 A petitioner “cannot rely on conclusory claims for relief but must plead and prove
23 specific facts demonstrating good cause and actual prejudice.” State v. Haberstroh, 119 Nev.
24 173, 184, 69 P.3d 676, 684 (2003), as modified (June 9, 2003). See also NRS 34.810(3); Evans
25 v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001); Bejarano v. Warden, 112 Nev. 1466,
26 1471, 929 P.2d 922, 925 (1996). Defendant has failed to meet his burden to plead and prove
27 specific facts that would establish good cause. In his Third Petition, Defendant attempts to
28 establish good cause by referencing factors that have been repeatedly rejected by Nevada

1 courts as good cause claims. Defendant claims his delay in filing resulted from "his lack of
2 legal sophistication and his inability to obtain counsel immediately after conviction." Third
3 Petition, at 14. A lack of legal training does not constitute good cause for filing a procedurally
4 defaulted petition. Such a claim does not demonstrate an impediment external to the defense
5 that prevented Defendant from complying with the procedural bars. See Phelps v. Dir., Nev.
6 Dep't of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's
7 claim of organic brain damage, borderline mental retardation and poor legal assistance from
8 inmate law clerks did not constitute good cause for the filing of a successive post-conviction
9 petition). See also State v. Williams, 120 Nev. 473, 478, 93 P.3d 1258, 1261 (2004) (finding
10 no good cause where petitioner claimed she could not have raised a post-conviction claim
11 previously due to "its highly complex, esoteric, and scientific nature"). Further, Defendant's
12 lack of legal sophistication did not prevent him from filing a timely First Petition, and thus
13 Defendant's claim that his ignorance of the law caused the delay in filing is highly suspect.

14 Similarly, Defendant's lack of post-conviction counsel does not constitute good cause
15 for filing an untimely and successive petition, because he had no statutory right to post-
16 conviction counsel. NRS 34.750(1). As such, the absence of post-conviction counsel cannot
17 provide good cause for filing an untimely and successive petition. See Brown v. McDaniel,
18 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (concluding that claims of ineffective assistance
19 of postconviction counsel in noncapital cases do not constitute good cause for a successive
20 petition because there is no statutory entitlement to postconviction counsel).

21 Defendant's complaints about the prison library also do not establish good cause. Third
22 Petition, at 15. See Navarrette v. Williams, 461 P.3d 898, No. 79147, 2020 WL 2042695, at
23 *2 (Nev. App. 2020) (unpublished disposition). See also Monroe v. State, 422 P.3d 711, No.
24 72944, 2018 WL 3545167, at *1 (Nev. 2018) (unpublished disposition) (finding petitioner's
25 arguments that he was not provided discovery, had a limited education, did not have access to
26 the law library, and was kept in isolation did not constitute good cause). The alleged
27 inadequacy of the prison law library did not prevent Defendant from filing two previous
28 petitions, and one of the claims he raises in the instant Third Petition (the voluntariness of his

1 guilty plea) was previously raised in his timely First Petition. Defendant also fails to explain
2 how the alleged limitations of the prison law library prevented him from raising his claims in
3 his First Petition, or why it necessitates re-raising already litigated claims. He merely makes a
4 general claim that the prison's law library is inadequate. "[A]n inmate cannot establish
5 relevant actual injury simply by establishing that his prison's law library or legal assistance
6 program is subpar in some theoretical sense." Lewis v. Casey, 518 U.S. 343, 351, 116 S. Ct.
7 2174, 2180 (1996).

8 Defendant ignores the fact that it is his burden to plead specific factual allegations that
9 would amount to good cause if they were established as true. His assurances that if an
10 evidentiary hearing is held, he will be able to establish "numerous impediments" that
11 prevented him from filing a timely petition is not sufficient. Third Petition, at 14. "[A
12 petitioner] must plead and prove specific facts that demonstrate good cause for his failure to
13 present claims before or for presenting claims again and actual prejudice." State v. Eighth Jud.
14 Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232, 112 P.3d 1070, 1075 (2005). See
15 also Berry v. State, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015). Additionally, "a party
16 cannot force the district court to hold an evidentiary hearing by withholding information about
17 a claim." Moore v. State, 134 Nev. 262, 264, 417 P.3d 356, 359 (2018). See also Means v.
18 State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) ("A post-conviction
19 habeas petitioner is entitled to an evidentiary hearing "only if he supports his claims with
20 specific factual allegations that if true would entitle him to relief."); Hargrove v. State, 100
21 Nev. 498, 502, 686 P.2d 222, 225 (1984) (recognizing that a petitioner is entitled to
22 an evidentiary hearing regarding his claim if it is not belied by the record and, if true, would
23 warrant relief). In a feeble attempt to demonstrate good cause, Defendant claims only that he
24 lacks legal sophistication, did not have post-conviction counsel initially, and that the prison
25 law library is generally inadequate. These claims are not impediments external to the defense,
26 and the courts have repeatedly rejected them as good cause claims. Defendant has presented
27 no specific factual allegations that, if true, would excuse his untimely and successive filings.
28 He has failed entirely to establish good cause.

1 **e. Defendant Has Not Established a Fundamental Miscarriage of Justice**

2 Defendant attempts to circumvent the procedural bars to his Petition by referencing
3 “factual innocence” and alleging that the procedural defects should be excused to prevent a
4 fundamental miscarriage of justice. Third Petition, at 14-16. This is a bare and naked claim
5 entirely devoid of factual specificity, and thus must be summarily denied. Hargrove, 100 Nev.
6 at 502, 686 P.2d at 225. Defendant fails to explain precisely what fundamental miscarriage of
7 justice would result—he simply cites some of the law pertaining to fundamental miscarriage
8 of justice claims, then concludes with the entirely unsupported assertion that “any procedural
9 default should be excused in this case.” Third Petition, at 16.

10 It is true that even when a petitioner cannot demonstrate good cause, the court may
11 nonetheless excuse a procedural bar if the petitioner demonstrates that failure to consider the
12 petition would result in a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860,
13 887, 34 P.3d 519, 537 (2001). “The conviction of a petitioner who was actually innocent
14 would be a fundamental miscarriage of justice sufficient to overcome the procedural bars to
15 an untimely or successive petition.” Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33, 36
16 (2006). A fundamental miscarriage of justice requires “a colorable showing” that the petitioner
17 is “actually innocent of the crime.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

18 To be entitled to a hearing on a fundamental miscarriage of justice claim, a petitioner
19 must plead “specific factual allegations that, if true, and not belied by the record, would show
20 that it is more likely than not that no reasonable juror would have convicted him beyond a
21 reasonable doubt given the new evidence.” Berry, 131 Nev. at 968, 363 P.3d at 1155.
22 Defendant has not remotely met this burden. It is not entirely clear if he is even raising an
23 actual innocence claim, as he merely states that “factual innocence is an exception to the
24 procedural bar of NRS 34.726.1.” Third Petition, at 14. He makes no factual allegations of any
25 kind. Accordingly, he has not made specific factual allegations that, if true, would establish a
26 fundamental miscarriage of justice to overcome the procedural bars to his Petition. He has not
27 plead a fundamental miscarriage of justice claim that would warrant relief, and therefore he is
28 not entitled to an evidentiary hearing on this issue.

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

II. EVEN IF THE PETITION WERE NOT PROCEDURALLY BARRED, DEFENDANT WOULD NOT BE ENTITLED TO RELIEF BECAUSE HE FAILS TO SUPPORT HIS CLAIMS

a. Defendant Is Not Entitled to Relief Because He Waived All Actual and Potential Conflict from the Dual Representation

Defendant alleges he received ineffective assistance of counsel because his counsel represented both him and his codefendant. Third Petition, at 4. A conflict-of-interest claim is derived from a claim of ineffective assistance—it is counsel's breach of the duty of loyalty that gives rise to a claim that counsel was ineffective due to a conflict of interest. Glasser v. United States, 315 U.S. 60, 70, 75–76, 62 S.Ct. 457 (1942) (framing a conflict-of-interest claim as a claim that the defendant was denied the effective assistance of counsel). An actual conflict of interest exists “when an attorney is placed in a situation conducive to divided loyalties. Id. (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)). “An actual conflict of interest which adversely affects a lawyer's performance will result in a presumption of prejudice to the defendant.” Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). See also Mickens v. Taylor, 535 U.S. 162, 173, 122 S. Ct. 1237, 1244 (2002) (“prejudice will be presumed only if the conflict has significantly affected counsel's performance”).

Defendant wrongly assumes that the mere fact that his counsel represented both defendants establishes an actual conflict of interest. To the contrary, as the Nevada Supreme Court has stated, “[b]ecause there can be a benefit in a joint defense against common criminal charges, there is no per se rule against dual representation.” Ryan v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 123 Nev. 419, 426, 168 P.3d 703, 708 (2007) (citing Holloway v. Arkansas, 435 U.S. 475, 482–83, 98 S.Ct. 1173 (1978)). While the dual representation of codefendants may create the potential for divided loyalties, such a conflict is not automatically presumed. This is largely because non-indigent criminal defendants have Sixth Amendment rights to counsel of their choosing, and there is a presumption against the government interfering with

1 that choice. Wheat v. United States, 486 U.S. 153, 159, 108 S. Ct. 1692, 1697 (1988) (“the
2 right to select and be represented by one's preferred attorney is comprehended by the Sixth
3 Amendment...”); Ryan, 123 Nev. at 428, 168 P.3d at 709 (“...there is a strong presumption in
4 favor of a non-indigent criminal defendant's right to counsel of her own choosing. This
5 presumption should rarely yield to the imposition of involuntary conflict-free
6 representation.”).

7 Due to this presumption in favor of allowing a non-indigent defendant to select his own
8 attorney, the Nevada Courts have long-recognized that “when a non-indigent criminal
9 defendant's choice of counsel results in dual or multiple representation of clients with
10 potentially conflicting interests, the defendant may waive the right to conflict-free counsel.”
11 Ryan v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 123 Nev. 419, 430–31, 168 P.3d 703, 711
12 (2007). See also Harvey v. State, 96 Nev. 850, 853, 619 P.2d 1214, 1216 (1980) (“a defendant
13 may waive the right to conflict-free representation”). Importantly, once a defendant
14 knowingly, intelligently, and voluntarily waives this right, “the conflict of interest is forever
15 waived.” Ryan, 123 Nev. at 428, 168 P.3d at 709. This means a defendant who waives the
16 right to conflict-free counsel may not subsequently raise claims of ineffective assistance of
17 counsel based on the conflict. Id. See also Gomez v. Ahitow, 29 F.3d 1128, 1135–36 (1994)
18 (finding the defendant was barred from “complain[ing] that the conflict he waived resulted in
19 ineffective assistance of counsel.”).

20 Here, Defendant signed just such a waiver. On February 16, 2017, a Waiver of Potential
21 And/Or Actual Conflict, signed by Defendant and his codefendant, was filed in the district
22 court. The Waiver states that both Defendant and his codefendant “voluntarily, knowingly and
23 understandingly waive, any potential and/or actual conflict, which may arise out of our joint
24 and simultaneous representation by THE LAW OFFICES OF MOMOT & ZHENG.” Thus,
25 Defendant cannot now complain that the conflict he waived resulted in ineffective assistance
26 of counsel. Defendant attempts to circumvent this hurdle by claiming this waiver was “not the
27 product of a knowing and intelligent choice.” Third Petition, at 6. He offers little factual detail
28 to support this bare and naked claim. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. Instead,

1 he presents rhetorical argument questioning how an attorney can effectively represent both a
2 mother and a son in the same criminal case, and fails to provide any details as to how, in this
3 specific case, the situation resulted in an actual conflict, and how this situation invalidated the
4 waiver signed by Defendant. He alleges that he felt "extraordinary pressure" to plea guilty,
5 but neglects to explain how the joint representation exerted such pressure. Third Petition, at 6.
6 He points out that the codefendant was his mother, and claims she wanted him to plead guilty.
7 Id. Obviously, the codefendant would still be his mother whether or not they shared the same
8 attorney. Nor does Defendant explain how his mother's desire for him to plead guilty would
9 not have been a factor had they not shared an attorney. His claim that at the time of the waiver
10 he was under extreme pressure to plead guilty is suspect, as the waiver was filed on February
11 16, 2017, yet Defendant did not enter his guilty plea until December 14, 2017—nearly ten
12 months later.

13 Additionally, Defendant's claim that the State bears the burden to demonstrate the
14 validity of the defendant's waiver is patently untrue. In Nevada, the petitioner bears the burden
15 of proving the facts underlying his postconviction claims by a preponderance of the evidence.
16 Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Therefore, it is Defendant's
17 burden to demonstrate that his waiver of conflict was invalid. Defendant attempts to overcome
18 this requirement through a blatant misrepresentation. In an attempt to support this claim,
19 Defendant cites People v. Castro, which does in fact state that the burden of demonstrating a
20 waiver rests upon the prosecution. Third Petition, at 6. However, Defendant omits the fact that
21 this is not a Nevada case—it is from the Supreme Court of Colorado. Not only is this case
22 from outside the jurisdiction, it is not even good law in Colorado, because it was overruled in
23 2015. West v. People, 2015 CO 5, 29, 341 P.3d 520, 528.² The burden of showing the
24 invalidity of the conflict waiver Defendant signed rests with Defendant alone.

25
26
27 ²The Court overruled Castro because it conflicted with the United States Supreme Court's holding in Mickens. See
28 Mickens v. Taylor, 535 U.S. 162, 171, 122 S.Ct. 1237, 1243 (2002) (finding that a defendant alleging a Sixth Amendment
violation must demonstrate that the conflict of interest adversely affected his counsel's performance).

1 Defendant has failed to present any factual support for his conflict of interest claim, as
2 he fails to present any cogent explanation as to how the joint representation adversely affected
3 his counsel's performance. He has also failed to demonstrate the invalidity of the conflict of
4 interest waiver he signed. Instead, in an attempt to relieve himself of his burden of proof, he
5 attempts to deceive this Court as to the applicable law. This unsupported claim must be denied.

6 **b. Defendant Is Not Entitled to Relief Because He Provides No Specific Factual**
7 **Allegations as to How Counsel's Alleged Ineffectiveness Invalidated His**
8 **Guilty Plea**

9 Defendant claims he received ineffective assistance of counsel because counsel
10 performed insufficient investigation, did not hire experts, and spent insufficient time with him.
11 Third Petition, at 7-12. Because Defendant's convictions are the result of a guilty plea, he is
12 only permitted to raise allegations of ineffective assistance of counsel that challenge the
13 validity of his guilty plea. NRS 34.810(1)(a); Gonzales v. State, 136 Nev. ___, ___, 476 P.3d 84,
14 86 (Nev. App. 2020) ("the plain language of the statute permits only ineffective-assistance
15 claims that challenge the validity of the guilty plea."). "When a criminal defendant has
16 solemnly admitted in open court that he is in fact guilty of the offense with which he is charged,
17 he may not thereafter raise independent claims relating to the deprivation of constitutional
18 rights that occurred prior to the entry of the guilty plea. . . ." Webb v. State, 91 Nev. 469, 470,
19 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602,
20 1608 (1973)). Defendant has failed to cogently argue that the alleged errors of his counsel
21 invalidated his guilty plea.

22 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
23 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
24 Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). Under the
25 Strickland test, a defendant must show first that his counsel's representation fell below an
26 objective standard of reasonableness, and second, that but for counsel's errors, there is a
27 reasonable probability that the result of the proceedings would have been different. 466 U.S.
28 at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.

1 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). Both components
2 of the inquiry must be shown. 466 U.S. at 697, 104 S.Ct. at 2069. The defendant must raise
3 claims supported by specific factual allegations that are not belied by the record and, if true,
4 would entitle him to relief. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

5 To prove ineffective assistance of counsel sufficient to invalidate a judgment of
6 conviction based on a plea of guilty, a defendant must demonstrate his counsel's performance
7 was deficient in that it fell below an objective standard of reasonableness, and that such
8 deficiency prejudiced him such that there is a reasonable probability, but for counsel's errors,
9 petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v.
10 Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985); Kirksey v. State, 112 Nev. 980, 988,
11 923 P.2d 1102, 1107 (1996). "[A] petitioner must allege specific facts demonstrating both that
12 counsel's advice (or failure to give advice) regarding the guilty plea was objectively
13 unreasonable and that the deficiency affected the outcome of the plea negotiation process. Any
14 claim that does not satisfy this standard is outside the scope of permitted claims and must be
15 dismissed." Gonzales, 136 Nev. at ___, 476 P.3d at 90.

16 Defendant has failed to present cogent argument that the errors he alleges counsel
17 committed affected the result of plea negotiation. As to his allegation of inadequate
18 investigation, Defendant fails to specify how further investigation would have prevented him
19 from entering a guilty plea. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004)
20 (finding that a defendant must show how a more thorough investigation would have rendered
21 a more favorable outcome probable). Though Defendant cites Strickland and Sanborn,
22 Defendant provides no analysis or argument comparing those cases to this one. Most
23 concerningly, Defendant purports to be citing Strickland when he claims the Court stated that
24 counsel must do "a minimal investigation preplea." Third Petition, at 12. This phrase appears
25 nowhere in Strickland. The Court in Strickland did discuss counsel's duty to investigate,
26 stating "counsel has a duty to make reasonable investigations or to make a reasonable decision
27 that makes particular investigations unnecessary." 466 U.S. at 691, 104 S. Ct. at 2066. The
28

1 Strickland Court never set forth a specific amount of investigation that was necessary prior to
2 a defendant entering a plea.

3 Defendant fails to provide much detail as to what matters should have been
4 investigated. He claims an expert psychologist should have been retained to testify regarding
5 Defendant's ability to form criminal intent. Third Petition, at 9. It is unlikely such testimony
6 would have been allowed, given that witnesses are prohibited from testifying regarding
7 ultimate issues. NRS 50.295. There is also nothing in the record to indicate Defendant lacked
8 the ability to form such intent. Similarly, Defendant fails to explain why further investigation
9 into the victim's background or an expert review of the forensic evidence was needed. Third
10 Petition, at 10.

11 Importantly, Defendant fails to explain how the alleged lack of investigation into these
12 matters, or the little time counsel spent with him, invalidated his guilty plea. He claims his
13 plea was "premature" but the record reveals he entered his plea ten months after his
14 arraignment, when his counsel confirmed. It is Defendant's burden to present specific factual
15 allegations as to how his counsel's alleged errors invalidated his plea. He has failed to meet
16 this burden.

17 **c. Defendant's Claim that His Guilty Plea Was Involuntarily Entered is**
18 **Barred Under the Law of the Case Doctrine, and the Record Reveals His**
19 **Plea Was Voluntarily Entered**

20 The doctrine of the law of the case bars relitigation of this issue. "[T]he law of a prior
21 appeal is the law of the case in later proceedings in which the facts are substantially the same;
22 this doctrine cannot be avoided by more detailed and precisely focused argument." State v.
23 Eighth Jud. Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232-33, 112 P.3d 1070, 1075
24 (2005) (citing Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975)). Furthermore,
25 this Court cannot overrule either of Nevada's appellate courts. NEV. CONST. Art. VI § 6. "The
26 law of the case doctrine holds that the law of a first appeal is the law of the case on all
27 subsequent appeals in which the facts are substantially the same." Clem v. State, 119 Nev.
28 615, 620, 81 P.3d 521, 525 (2003) (citing Hall, 91 Nev. at 315, 535 P.2d at 798).

1 In his First Petition, Defendant claimed that his guilty plea was not entered knowingly
2 and voluntarily. The district court considered this claim, reviewed the record, and found that
3 Defendant's guilty plea was entered freely and voluntarily. This conclusion was affirmed on
4 appeal. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). This
5 conclusion is now law of the case. The facts considered by the district court and the Nevada
6 Court of Appeals in considering this claim consisted of the Guilty Plea Agreement signed by
7 Defendant and the plea canvass. Thus, the relevant facts remain the same. Accordingly,
8 Defendant's attempt to resuscitate his claim that his guilty plea was not voluntary is barred
9 from consideration under the law of the case doctrine.

10 Even if Defendant's claim were not barred under the law of the case doctrine, he would
11 still not be entitled to habeas relief because his claim is belied by the record, and he has failed
12 to present a legal basis for invalidation of his guilty plea. See Hargrove, 100 Nev. at 502, 686
13 P.2d at 225. Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
14 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d
15 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,
16 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.
17 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,
18 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered
19 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

20 A court shall look to the totality of the circumstances to determine whether the plea
21 was made freely, knowingly and voluntarily, and whether the defendant understood the nature
22 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d
23 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea
24 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,
25 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this
26 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,
27 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has
28 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea

1 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and
2 intelligently.” Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537-38 (2004).

3 Defendant attests that his plea canvass was insufficient because details of the “actual
4 event” were not discussed, and the court did not inquire as to whether Defendant was under
5 pressure by his mother to enter a guilty plea. Third Petition, at 13. Defendant provides no legal
6 support for his conclusion that the omission of such topics renders his plea involuntary.
7 Defendant completely ignores the above-stated law specific to the validity of guilty pleas in
8 Nevada. His plea is presumed valid, and it is his responsibility to demonstrate otherwise. His
9 attempt to dismiss Defendant’s responses during the plea canvass as “conclusory” is
10 essentially an attempt to redefine the standards for evaluating the validity of a guilty plea.

11 The record reveals that Defendant attested that his plea was voluntarily entered:

12 VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

///

///

1 GPA, at 4 (emphasis added). Additionally, when Defendant entered his guilty plea, the Court
2 engaged in the following colloquy with Defendant:

3
4 THE COURT: Mr. Newsome, the Court is in possession of a written plea
5 of guilty which was signed by you. Is this your signature
6 on page 5 of the written plea of guilty?

7 DEFENDANT: Yes.

8 THE COURT: Okay. Before I accept your written plea of guilty, I must be
9 satisfied that your plea is freely and voluntarily given. Are
10 you making this plea freely and voluntarily?

11 DEFENDANT: Yes.

12 THE COURT: Okay. Other than what's contained in the written plea of
13 guilty, have any promises or threats been made to induce
14 you or get you to enter your plea?

15 DEFENDANT: Just a little bit of time.

16 THE COURT: I'm sorry.

17 DEFENDANT: Just some time.

18 THE COURT: What do you mean some time?

19 DEFENDANT: Like my sentence, if I'm just gonna get from 12 to 35.

20 THE COURT: Okay, but what I'm saying—well you can't get that.

21 COUNSEL: It's 45.

22 DEFENDANT: For 45.

23 THE COURT: What I'm saying is did anyone other than what's in the
24 guilty plea, did anyone promise you anything else?

25 DEFENDANT: No.

26 THE COURT: Okay. And did anyone make any threats to you or to your
27 family to try to get you to plead guilty in this case?

28 DEFENDANT: No.

THE COURT: Okay. And are you pleading guilty to second degree murder
with use of a deadly weapon because in truth and in fact
you are guilty?

DEFENDANT: Yes.

THE COURT: Okay. Before you signed to written plea of guilty, did you
read it?

DEFENDANT: Yeah.

THE COURT: Okay. And did you understand everything contained in the
written plea of guilty?

DEFENDANT: Yeah.

THE COURT: Okay. Did you also read the second amended superseding
indictment charging you with the felony crime of second
degree murder with use of a deadly weapon?

DEFENDANT: Yes.

1 THE COURT: It's the exhibit here. And did you understand everything
2 contained in that-
3 DEFENDANT: Yes.
4 THE COURT: -what you'll be pleading to?
5 DEFENDANT: Yes.
6 THE COURT: Okay. And did you have a full and sufficient opportunity to
7 discuss your plea of guilty as well as the charge to which
8 you're pleading guilty with your lawyer, Ms. Zheng?
9 DEFENDANT: Yes.
10 THE COURT: Okay. And did Ms. Zheng answer all your questions and
11 concerns to your satisfaction?
12 DEFENDANT: Yes.
13 THE COURT: Do you feel like your lawyer has spent enough time with
14 you explaining everything to you?
15 DEFENDANT: Yes.
16 THE COURT: Okay. And do you feel like she spent enough time with you
17 going over all of the discovery and the evidence and
18 everything in this case?
19 DEFENDANT: Yes.
20 THE COURT: Okay. Before you proceed with your plea of guilty, do you
21 have any questions you would like to ask me?
22 DEFENDANT: No.
23 THE COURT: Okay. Let's turn to the charging document. All right. And
24 you understand that the range of punishment on the murder
25 is life without the possibility of parole—I'm sorry—the
26 possibility of—a definite terms, in term of years, of 10 to
27 25 years with your possibility of parole, beginning after 10
28 years has been served.
DEFENDANT: Yes.
THE COURT: Or with the weapons enhancement of a minimum of 12 to
30 months, but it can run all the way to 20 years with a
minimum of 96 months or 8 years.
DEFENDANT: Yes.
THE COURT: Consecutively. Do you understand all that?
DEFENDANT: Yes.
THE COURT: Okay. Let's—any questions about that?
DEFENDANT: No.
THE COURT: Did I cover that correctly, Mr. Pesci?
THE STATE: I think just so it's clear, it's either a 10 to life or a 10 to 25.
THE COURT: Right.
THE COURT: Do you understand that?
DEFENDANT: Yeah.
THE COURT: Either way, your minimum parole eligibility under either
scenario is 11 years; correct, Mr. Pesci?

1 THE STATE: Yes, Your Honor.
2 THE COURT: And that's under either scenario.
3 DEFENDANT: Okay.
4 THE COURT: All right. Let's turn to the charging document. Tell me in
5 your own words what you did, on or about January 14th,
6 2017, here in Clark County Nevada, that causes you to
7 plead guilty to second degree murder with use of a deadly
8 weapon.
9 DEFENDANT: Yeah, I had a gun and I shot Richard Nelson.
10 THE COURT: All right. And you shot into his body; is that correct?
11 DEFENDANT: Yes.
12 THE COURT: And you acknowledge that as a result of you shooting Mr.
13 Nelson, he died as a result of those—that gunshot injury; is
14 that true?
15 DEFENDANT: Yes.
16 THE COURT: All right. And you acknowledge that you did this willfully,
17 unlawfully, feloniously, and without malice aforethought?
18 DEFENDANT: Yes.
19 THE COURT: All right. Is that acceptable, Mr. Pesci?
20 THE STATE: Yes, Your Honor.
21 THE COURT: All right. Mr. Newsome, the Court finds that your plea of
22 guilty has been freely and voluntarily given.

23 Recorder's Transcript of Hearing Re: Status Check: Trial Readiness, Dec. 14, 2017, at 3-7.

24 In light of the information contained in the Guilty Plea Agreement, and the extensive
25 plea canvass conducted by the Court, Defendant has failed to demonstrate that his guilty plea
26 was not voluntarily entered. The Court extensively canvassed Defendant on his understanding
27 of the guilty plea, the nature of the charges, and the possible penalties. Notably, when the
28 Court asked Defendant if any additional promises had been made to induce him to plead guilty,
29 Defendant indicated the reason he was pleading guilty was to receive a reduced sentence. Id.
30 at 3. Though given the opportunity, Defendant did not indicate to the Court that he was
31 pleading guilty due to familial pressure. Thus, the record contradicts Defendant's claim that
32 his plea was involuntary due to pressure from his mother/codefendant. Furthermore,
33 Defendant affirmatively admitted his guilt in connection with the charge.

34 Defendant would have this Court dismiss the plea canvass because Defendant simply
35 offered yes or no responses in answer to leading questions by the Court. It is unsurprising that
36 Defendant gave yes or no responses, as these were yes or no questions. Defendant offers no

1 legal support for his proposition that yes or no responses are indicative of an involuntary plea.
2 To the contrary, regardless of the simplicity of a defendant's responses during a canvass, a
3 thorough plea canvass combined with a detailed plea agreement signed by the defendant
4 supports a finding that the plea was voluntarily entered. Molina, 120 Nev. at 191, 87 P.3d at
5 537-38. It is Defendant's burden to overcome this presumption and demonstrate that his plea
6 was not voluntarily entered. He has not done so. He does not even directly allege that his guilty
7 plea was not voluntary; instead, he simply claims that the plea canvass was inadequate to
8 determine if the plea was voluntarily entered. He presents a speculative claim that his mother
9 "may" have had influence on his plea. Third Petition, at 13. This is legally insufficient, as
10 Defendant is required to present specific factual allegations that, if true, would entitle him to
11 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, Defendant is not entitled to
12 relief.

13 III. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING

14 Defendant is not entitled to an evidentiary hearing on his claims because no expansion
15 of the record is necessary to resolve his claims. He had failed to plead specific facts that, if
16 true, would establish good cause and prejudice to overcome the procedural bars to the Petition.
17 His substantive claims are similarly plead in a vague and conclusive manner insufficient to
18 warrant post-conviction relief.

19 NRS 34.770 provides the manner in which the district court decides whether an
20 evidentiary hearing is required. It reads:

- 21 1. The judge or justice, upon review of the return, answer and
22 all supporting documents which are filed, shall determine
23 whether an evidentiary hearing is required. A petitioner must not
24 be discharged or committed to the custody of a person other than
25 the respondent unless an evidentiary hearing is held.
- 26 2. If the judge or justice determines that the petitioner is not
27 entitled to relief and an evidentiary hearing is not required, he
28 shall dismiss the petition without a hearing.
- 29 3. If the judge or justice determines that an evidentiary hearing
30 is required, he shall grant the writ and shall set a date for the
31 hearing.

32 (Emphasis added).

33 The Nevada Supreme Court has held that if a petition can be resolved without

1 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
2 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
3 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
4 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
5 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at
6 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an
7 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
8 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
9 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

10 In this instance, Defendant is not entitled to an evidentiary hearing because there is no
11 need to expand the record. All of the law and facts necessary to dispose of Defendant's claims
12 are already available. It is clear from the record that the Third Petition is untimely and
13 successive. Defendant has not demonstrated the requisite good cause and prejudice to
14 overcome these defects. His mere promise that he could demonstrate such good cause if
15 granted an evidentiary hearing is insufficient. He is required to plead specific facts as to good
16 cause; he is not entitled to an evidentiary hearing simply because he maintains he can
17 demonstrate good cause at such a hearing. See, e.g., Riker, 121 Nev. at 232, 112 P.3d at 1075.
18 Additionally, his claim that his guilty plea was involuntarily entered is barred under the law
19 of the case doctrine. Finally, even if the Third Petition were not procedurally barred,
20 Defendant's vague and speculative claims are not specific factual allegations that, if true,
21 would entitle him to relief. Accordingly, his request for an evidentiary hearing must be denied.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that the Third Petition be
3 denied.

4 DATED this 7th day of July, 2021.

5 Respectfully submitted,

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

9 BY /s/ KAREN MISHLER
10 KAREN MISHLER
11 Chief Deputy District Attorney
12 Nevada Bar #013730

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 7th day of July,
15 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 RICHARD NEWSOME, BAC #1194269
17 HIGH DESERT STATE PRISON
18 P. O. BOX 650
19 INDIAN SPRINGS, NEVADA 89070-0650

20 BY /s/ J.HAYES
21 Secretary for the District Attorney's Office

22
23
24
25
26
27 17F00941X/KM/jh /APPELLATE
28



1 **RPL**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No.: 00854
4 Law Office of Terrence M. Jackson
5 624 S. Ninth Street
6 Las Vegas, NV 89101
7 T: 702.386.0001 / F: 702.386.0085
8 terry.jackson.esq@gmail.com

9 Counsel for Defendant, *Richard A. Newsome, Jr.*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **RICHARD A. NEWSOME, JR.,**
13 **ID# 1194269**

14 **Petitioner,**

15 **v.**

16 **STATE OF NEVADA,**

17 **Respondent.**

18 **DC CASE NO.: C-17-321043-1**

19 **DEPT. NO.: IX**

20 **REPLY TO STATE'S RESPONSE**

21 Comes now the Defendant, Richard Allan Newsome, Jr., by and through Terrence M.
22 Jackson, counsel for the Defendant, and respectfully submits the attached Points and Authorities in
23 Reply to the State's Response in Opposition to his Petition and request for an Evidentiary Hearing.
24 This Reply is based upon all prior pleadings on file, the attached Points and Authorities and all
25 further Authorities at Oral Argument at the request of the Court.

26 **DATED** this 23d day of July, 2021. Respectfully Submitted,

27 /s/ Terrence M. Jackson

28 **TERRENCE M. JACKSON, ESQ.**
Law Office of Terrence M. Jackson
624 S. Ninth Street
Las Vegas, NV 89101
T: 702.386.0001 / F: 702.386.0085
terry.jackson.esq@gmail.com

Counsel for Defendant, *Richard A. Newsome, Jr.*

1 **I. DEFENDANT'S PLEA OF GUILTY WAS INVALID BECAUSE IT WAS**
2 **UNKNOWNING AND INVOLUNTARY.**

3 The State argued counsel arguing ineffectiveness of counsel based on a guilty plea must show
4 that but for counsel's deficiencies, Petitioner would not have pled guilty but would have insisted on
5 going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58, 59, *Kirksey v. State*, 112 Nev. 980, 988 (1996). *See*
6 *also, Gonzalez v. State*, 136 Nev. ___, 496 P.3d 84 (2020).

7 The State claims the Defendant does not have a good argument that his counsel committed
8 errors that affected the result of the plea negotiation. (S. R. p. 15) Defendant respectfully submits the
9 State ignores the thrust of Defendant's argument in his Habeas Corpus Petition which argues that
10 counsel was totally ineffective by not adequately counseling Defendant before his guilty plea. (*See*,
11 Petition, p. 11)

12 The defense argument that defense counsel had a major conflict of interest and did not
13 directly protect the Defendant's rights clearly shows Defendant's plea of guilty was involuntary,
14 unknowing and invalid under the law.

15 **II. DEFENDANT'S PETITION SHOULD NOT BE PROCEDURALLY**
16 **BARRED.**

17 The State made several arguments that Defendant's Petition should be procedurally barred
18 because it was a successive Petition and it was untimely. *See*, NRS 34.726(1) (SR3), *Pellegrini v.*
19 *State*, 117 Nev. 860 (2001), citing *State v. Greene*, 129 Nev. 559, 566, 307 P.3d 322, 326 (2013).
20 The State also argued absent a showing of good cause and actual prejudice, the procedural default
21 rules are mandatory. (S. R. p. 5)

22 Defendant however can establish good cause and actual prejudice to overcome procedural
23 default in this case because his conviction has been so tainted by the conflict of interest of his
24 attorney that it resulted in a fundamental miscarriage of justice. *Murray v. Carrier*, 477 U.S. 478
25 (1986); *Mazzan v. Warden*, 112 Nev. 838 (1996). It is respectfully submitted the due process
26 violations which occurred, in this case, require habeas corpus relief no matter how untimely the
27 petition may be. Any prejudice to the state by late filing of the petition is minor compared to the
28 injustice done to the defendant in this case.

1 **III. DEFENDANT'S CLAIM HIS PLEA OF GUILTY WAS INVOLUNTARY**
2 **SHOULD NOT BE BARRED BY THE 'LAW OF THE CASE' DOCTRINE.**

3 The State in their Response Brief cites *State v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*
4 (*Riker*), 121 Nev. 314 (2005) which cites *Hall v. State*, 91 Nev. 314 (1975), argues that the "law of
5 the case bars relitigation of this issue." (S. R. p. 16-18) The State also argued that even if
6 Defendant's claim(s) were not barred under the 'law of the case' doctrine, they would still be barred
7 because they were "belied by the record." (S. R. p. 17)

8 Defendant respectfully submits the totality of the record in this case however supports his
9 claim that his plea was invalid. His counsel and his mother, who was his co-defendant, both used
10 improper influence on the Defendant, to persuade him to accept a plea negotiation in this case. The
11 negotiations arguably benefitted his mother more than it benefitted the defendant.

12 The Defendant's interests during the plea negotiation process were not adequately protected
13 by his counsel and his plea of guilty was therefore invalid. The mere fact he was given a non-specific
14 and general plea canvas by the Court did not adequately protect him from his attorneys conflict and
15 ensure that his plea was voluntary. (S. R. p. 18-21)

16 The State in their Response Brief suggested however that because the Defendant "did not
17 indicate to the Court he was pleading guilty due to 'family pressure,'" it must not therefore have
18 occurred. (S. R. p. 21) Defendant respectfully submits that this conclusion by the State is not
19 necessarily true. Defendant has argued he could have clearly established grounds for his Petition with
20 an evidentiary hearing. (*See*, Issue II) Even without a full evidentiary hearing, the existing record
21 establishes that the Defendant was under substantial family pressure when he pled guilty.

22 **IV. AN EVIDENTIARY HEARING WAS NECESSARY TO DEVELOP FULLY**
23 **ALL VIABLE CLAIMS IN DEFENDANT'S PETITION.**

24 Unfortunately, the State of Nevada chose to argue that an evidentiary hearing in this case was
25 not necessary, even though an evidentiary hearing would have made more plain the claims in
26 Defendant's Petition. (*See*, R. B p. 22-23)

27 In *Hatley v. State*, 100 Nev. 214, 678 P.2d 1160 (1984), the Nevada Supreme Court reversed
28 the denial of a post-conviction Petition because the district court refused an evidentiary hearing on

1 matters that could not be resolved on the basis of the available record. Defendant submits that in this
2 case, as in *Hatley, supra*, the available record was inadequate to resolve indisputably the questions
3 the Defendant has raised in his Petition. Therefore it was error not to grant him an evidentiary
4 hearing. Particularly important were the issues of good cause for any delay, as well as the
5 fundamental due process issues involved in the defense counsel's improper representation of two
6 clients and the resulting conflict of interest.

7 The State's argument that this case could have been resolved fairly without expanding the
8 record, *Mann v. State*, 118 Nev. 351, 356 (2002); *Marshall v. State*, 110 Nev. 1328, 1331 (1994) was
9 incorrect. Because Defendant raised substantive claims in his Petition that required a detailed
10 hearing, it was error to deny such a necessary evidentiary hearing.

11 CONCLUSION

12 For all the reasons stated in the Defendant's Petition for Habeas Corpus Relief and
13 Supplemental Points and Authorities previously filed and for all the reasons cited in this Reply
14 Brief, Defendant/Petitioner respectfully submits his Petition should be granted because he was
15 denied effective assistance of counsel under *Strickland*.

16 This Honorable Court should hold that counsel's ineffectiveness was so prejudicial that the
17 case should be reversed and remanded for an evidentiary hearing on the issues surrounding counsel's
18 ineffectiveness and how counsel's conflict prejudiced the Defendant. The Court should order such
19 further action as the Court finds necessary.

20 **DATED** this 23d day of July, 2021.

21 Respectfully Submitted,

22 /s/ Terrence M. Jackson

23 TERRENCE M. JACKSON, ESQ.

24 Law Office of Terrence M. Jackson

25 624 S. Ninth Street

26 Las Vegas, NV 89101

27 T: 702.386.0001 / F: 702.386.0085

28 terry.jackson.esq@gmail.com

Counsel for Defendant, *Richard A. Newsome, Jr.*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an assistant to Terrence M. Jackson, Esquire, I am a person
3 competent to serve papers and not a party to the above-entitled action and on the 23d day of July,
4 2021, I served a copy of the foregoing: Defendant *Richard A. Newsome, Jr.* 's Reply to State's
5 Response to Defendant's Supplemental Points and Authorities in Support of Writ of Habeas Corpus
6 for Post Conviction Relief as follows:

7 [X] Via electronic service via Odyssey eFile NV to the Eighth Judicial District Court and by
8 United States first class mail to the Nevada Attorney General and Petitioner as follows:

9 STEVEN B. WOLFSON
10 Clark County District Attorney
11 steven.wolfson@clarkcountyda.com

KAREN MISHLER
Chief Deputy D. A. - Criminal
karen.mishler@clarkcountyda.com

12 Richard A. Newsome, ID# 1194269
13 H.D.S.P. - P.O. Box 650
14 Indian Springs, NV 89070-0650

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

15
16
17
18
19
20 By: /s/ Ila C. Wills
21 Assistant to Terrence M. Jackson, Esq.
22
23
24
25
26
27
28

Heather H. Hines
CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD NEWSOME, JR.,
#5437116

Defendant.

CASE NO: C-17-321043-1

DEPT NO: IX

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

DATE OF HEARING: AUGUST 4, 2021
TIME OF HEARING: 12:30 PM

THIS CAUSE having come on for hearing before the Honorable CRISTINA D. SILVA, District Judge, on the 4th day of August, 2021, the Petitioner not being present, represented by TERRENCE JACKSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through KAREN MISHLER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On February 2, 2017, Defendant Richard Newsome, Jr. ("Defendant") was charged with the following: Count 1 – Murder With Use of a Deadly Weapon (Category A Felony –

1 NRS 200.010, 200.030, 193.165); Count 2 – Assault With Use of a Deadly Weapon (Category
2 B Felony – NRS 200.471).

3 On December 14, 2017, Defendant pled guilty to one count of Second-Degree Murder
4 With Use of a Deadly Weapon. Pursuant to the negotiations as contained in the Guilty Plea
5 Agreement (“GPA”), the State would retain the right to argue at sentencing.

6 On February 8, 2018, Defendant received a sentence of 10 years to life in the Nevada
7 Department of Corrections. The Judgment of Conviction was filed on March 5, 2018.
8 Defendant did not file a direct appeal.

9 On February 1, 2019, Defendant filed a Petition for Writ of Habeas Corpus (“First
10 Petition”), Supplemental Petition for Writ of Habeas Corpus (“Supplement”), Motion for
11 Appointment of Counsel (“Motion”), and Request for an Evidentiary Hearing (“Request”). On
12 May 1, 2019, the State filed a response to Defendant’s First Petition, Supplement, Motion, and
13 Request. On May 28, 2019, this Court denied Defendant’s First Petition, Supplement, Motion,
14 and Request. The Findings of Fact, Conclusions of Law were filed on June 26, 2019. On July
15 13, 2020, the Nevada Court of Appeals affirmed the district court’s denial of Defendant’s First
16 Petition. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). Remittitur
17 issued on August 10, 2020.

18 On October 9, 2020, Defendant filed another Petition for Writ of Habeas Corpus
19 (“Second Petition”). On November 23, 2020, the State filed its Response. On December 17,
20 2020, this Court denied Defendant’s Second Petition. The Findings of Fact, Conclusions of
21 Law and Order were filed on April 5, 2021.

22 On March 9, 2021, Defendant filed a Motion to Correct Illegal Sentence. On March 31,
23 2021, Terrence Jackson, Esq. confirmed as counsel. On April 20, 2021, the State filed its
24 Opposition to Defendant’s Motion to Correct Illegal Sentence.

25 On June 2, 2021, Defendant, through counsel, filed a Supplemental Points and
26 Authorities in Support of Writ of Habeas Corpus for Post-Conviction Relief (“Third Petition”).
27 On July 7, 2021, the State filed its Response. On July 23, 2021, Defendant filed a Reply. On
28 August 4, 2021, this Court denied the Third Petition, finding as follows:

ANALYSIS

I. THE THIRD PETITION IS PROCEDURALLY BARRED

The Third Petition is untimely and successive, and Defendant fails to present claims of good cause and prejudice. Defendant also fails to substantiate his allegation that a fundamental miscarriage of justice would result if his claims are not heard. Accordingly, his claims are barred from consideration.

a. The Third Petition is Untimely

The Third Petition is untimely under NRS 34.726, and therefore its claims cannot be considered in the absence of a showing of good cause and prejudice. NRS 34.726(1) requires a petitioner to challenge the validity of his judgment or sentence within one year from the entry of judgment of conviction or the issuance of remittitur from his direct appeal.

This one-year time limit is strictly applied and begins to run from the date the judgment of conviction is filed or remittitur issues from a timely filed direct appeal. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). “Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored [by the district court] when properly raised by the State.” State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231 & 233, 112 P.3d 1070, 1074–75 (2005). For example, in Gonzales v. State, the Nevada Supreme Court rejected a habeas petition filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002). Absent a showing of good cause and prejudice, courts have no discretion regarding whether to apply the statutory procedural bars.

Here, Defendant’s Judgment of Conviction was filed on March 5, 2018, and Defendant did not file a direct appeal. Defendant then had until March 5, 2019 to timely file a petition for writ of habeas corpus. The Third Petition was filed on June 2, 2021, two years after the one-year deadline of NRS 34.726. Accordingly, absent a showing of good cause and prejudice, the Third Petition must be dismissed as untimely.

1 **b. The Third Petition is Successive**

2 Defendant has twice previously sought post-conviction relief, and therefore the Third
3 Petition is successive. NRS 34.810(1)(b)(2); 34.810(2). "Successive petitions may be
4 dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901
5 P.2d 123, 129 (1995). Courts are required to dismiss successive post-conviction petitions if a
6 prior petition was decided on the merits and a petitioner fails to raise new grounds for relief,
7 or if a petitioner does raise new grounds for relief but failure to assert those grounds in any
8 prior petition was an abuse of the writ. NRS 34.810(2); See Riker, 121 Nev. at 231, 112 P.3d
9 at 1074. Successive petitions will only be decided on the merits if the petitioner can show good
10 cause and prejudice for failing to raise the new grounds in their first petition. NRS 34.810(3);
11 Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). If a claim or allegation was
12 previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in
13 a later petition. McClesky v. Zant, 499 U.S. 467, 497-98, 111 S.Ct. 1454, 1472 (1991).

14 The Third Petition must be denied as successive. Defendant raises three substantive
15 claims: that his plea counsel was conflicted, that his plea counsel rendered ineffective
16 assistance through insufficient investigation and preparation, and that his guilty plea was not
17 entered voluntarily. The first two claims were previously available to Defendant to be raised
18 in his previous petitions, and therefore his failure to assert these claims previously is an abuse
19 of the writ. NRS 34.810(2). Because these claims could have been raised in either of his
20 previous petitions, these claims must be summarily dismissed in the absence of good cause
21 and prejudice. NRS 34.810(b)(1)(2). Further, Defendant's claim that his guilty plea was not
22 voluntarily entered was also raised in his First Petition, and this claim was denied on its merits.
23 Accordingly, this claim must be summarily dismissed. NRS 34.810(2).

24 **c. Defendant Has Not Demonstrated Good Cause and Prejudice to Overcome**
25 **the Procedural Bars**

26 Defendant has failed to demonstrate the requisite good cause and prejudice to overcome
27 the procedural bars to his Petition. This Court may only consider the merits of the Third
28 Petition if Defendant establishes both good cause and prejudice for the delay in filing and the

1 successive nature of his claims. NRS 34.726(1)(a)-(b); NRS 34.810(3). Accordingly, the Third
2 Petition must be summarily denied.

3 Simply put, good cause is a “substantial reason; one that affords a legal excuse.”
4 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
5 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Defendant has the burden of pleading and proving
6 specific facts that demonstrate good cause for his failure to comply with the statutory
7 requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS
8 34.726(1)(a); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993);
9 Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court
10 *must* dismiss a habeas petition if it presents claims that either were or could have been
11 presented in an earlier proceeding, unless the court finds both cause for failing to present the
12 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
13 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001) (emphasis added).

14 To show good cause, a petitioner must demonstrate the following: (1) “[t]hat the delay
15 is not the fault of the petitioner” and (2) that the petitioner will be “unduly prejudice[d]” if the
16 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner
17 *must* show that an impediment external to the defense prevented him or her from complying
18 with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
19 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or
20 legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119
21 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). To find good cause there must be
22 a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at
23 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in
24 the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

25 As the Third Petition is both untimely and successive, Defendant must overcome the
26 procedural bars under both NRS 34.726 and NRS 34.810. “In terms of a procedural time-bar,
27 an adequate allegation of good cause would sufficiently explain why a petition was filed
28 beyond the statutory time period.” Harris v. State, 133 Nev. 683, 687, 407 P.3d 348, 352 (Nev.

1 App. 2017) (quoting Hathaway v. State, 119 Nev. 248, 252-5371 P.3d 503, 506 (2003). To
2 overcome the procedural bars against successive petitions, “NRS 34.810(3) requires the
3 petitioner to plead and prove specific facts demonstrating good cause for a “failure to present
4 the claim or for presenting the claim again” and actual prejudice.” Nika v. State, 120 Nev. 600,
5 607, 97 P.3d 1140, 1145 (2004).

6 Further, a petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 In order to establish prejudice, the defendant must show “not merely that the errors of
15 [the proceedings] created possibility of prejudice, but that they worked to his actual and
16 substantial disadvantage, in affecting the state proceedings with error of constitutional
17 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
18 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). As discussed more fully
19 *infra* in Section II, Defendant’s claims are without merit. Accordingly, he has failed entirely
20 to establish prejudice.

21 A petitioner “cannot rely on conclusory claims for relief but must plead and prove
22 specific facts demonstrating good cause and actual prejudice.” State v. Haberstroh, 119 Nev.
23 173, 184, 69 P.3d 676, 684 (2003), as modified (June 9, 2003). See also NRS 34.810(3); Evans
24 v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001); Bejarano v. Warden, 112 Nev. 1466,
25 1471, 929 P.2d 922, 925 (1996). Defendant has failed to meet his burden to plead and prove
26 specific facts that would establish good cause. In his Third Petition, Defendant attempts to
27 establish good cause by referencing factors that have been repeatedly rejected by Nevada
28 courts as good cause claims. Defendant claims his delay in filing resulted from “his lack of

1 legal sophistication and his inability to obtain counsel immediately after conviction.” Third
2 Petition, at 14. A lack of legal training does not constitute good cause for filing a procedurally
3 defaulted petition. Such a claim does not demonstrate an impediment external to the defense
4 that prevented Defendant from complying with the procedural bars. See Phelps v. Dir., Nev.
5 Dep't of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's
6 claim of organic brain damage, borderline mental retardation and poor legal assistance from
7 inmate law clerks did not constitute good cause for the filing of a successive post-conviction
8 petition). See also State v. Williams, 120 Nev. 473, 478, 93 P.3d 1258, 1261 (2004) (finding
9 no good cause where petitioner claimed she could not have raised a post-conviction claim
10 previously due to “its highly complex, esoteric, and scientific nature”). Further, Defendant’s
11 lack of legal sophistication did not prevent him from filing a timely First Petition, and thus
12 Defendant’s claim that his ignorance of the law caused the delay in filing is highly suspect.

13 Similarly, Defendant’s lack of post-conviction counsel does not constitute good cause
14 for filing an untimely and successive petition, because he had no statutory right to post-
15 conviction counsel. NRS 34.750(1). As such, the absence of post-conviction counsel cannot
16 provide good cause for filing an untimely and successive petition. See Brown v. McDaniel,
17 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (concluding that claims of ineffective assistance
18 of postconviction counsel in noncapital cases do not constitute good cause for a successive
19 petition because there is no statutory entitlement to postconviction counsel).

20 Defendant’s complaints about the prison library also do not establish good cause. Third
21 Petition, at 15. See Navarrette v. Williams, 461 P.3d 898, No. 79147, 2020 WL 2042695, at
22 *2 (Nev. App. 2020) (unpublished disposition). See also Monroe v. State, 422 P.3d 711, No.
23 72944, 2018 WL 3545167, at *1 (Nev. 2018) (unpublished disposition) (finding petitioner’s
24 arguments that he was not provided discovery, had a limited education, did not have access to
25 the law library, and was kept in isolation did not constitute good cause). The alleged
26 inadequacy of the prison law library did not prevent Defendant from filing two previous
27 petitions, and one of the claims he raises in the instant Third Petition (the voluntariness of his
28 guilty plea) was previously raised in his timely First Petition. Defendant also fails to explain

1 how the alleged limitations of the prison law library prevented him from raising his claims in
2 his First Petition, or why it necessitates re-raising already litigated claims. He merely makes a
3 general claim that the prison's law library is inadequate. "[A]n inmate cannot establish relevant
4 actual injury simply by establishing that his prison's law library or legal assistance program is
5 subpar in some theoretical sense." Lewis v. Casey, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180
6 (1996).

7 Defendant ignores the fact that it is his burden to plead specific factual allegations that
8 would amount to good cause if they were established as true. His assurances that if an
9 evidentiary hearing is held, he will be able to establish "numerous impediments" that
10 prevented him from filing a timely petition is not sufficient. Third Petition, at 14. "[A
11 petitioner] must plead and prove specific facts that demonstrate good cause for his failure to
12 present claims before or for presenting claims again and actual prejudice." State v. Eighth Jud.
13 Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232, 112 P.3d 1070, 1075 (2005). See
14 also Berry v. State, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015). Additionally, "a party
15 cannot force the district court to hold an evidentiary hearing by withholding information about
16 a claim." Moore v. State, 134 Nev. 262, 264, 417 P.3d 356, 359 (2018). See also Means v.
17 State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) ("A post-conviction
18 habeas petitioner is entitled to an evidentiary hearing "only if he supports his claims with
19 specific factual allegations that if true would entitle him to relief."); Hargrove v. State, 100
20 Nev. 498, 502, 686 P.2d 222, 225 (1984) (recognizing that a petitioner is entitled to
21 an evidentiary hearing regarding his claim if it is not belied by the record and, if true, would
22 warrant relief). In a feeble attempt to demonstrate good cause, Defendant claims only that he
23 lacks legal sophistication, did not have post-conviction counsel initially, and that the prison
24 law library is generally inadequate. These claims are not impediments external to the defense,
25 and the courts have repeatedly rejected them as good cause claims. Defendant has presented
26 no specific factual allegations that, if true, would excuse his untimely and successive filings.
27 He has failed entirely to establish good cause.

28 ///

1 **d. Defendant Has Not Established a Fundamental Miscarriage of Justice**

2 Defendant's fundamental miscarriage of justice claim is a bare and naked claim entirely
3 devoid of factual specificity, and thus must be summarily denied. Hargrove, 100 Nev. at 502,
4 686 P.2d at 225. Defendant fails to explain precisely what fundamental miscarriage of justice
5 would result—he simply cites some of the law pertaining to fundamental miscarriage of justice
6 claims, then concludes with the entirely unsupported assertion that “any procedural default
7 should be excused in this case.” Third Petition, at 16.

8 It is true that even when a petitioner cannot demonstrate good cause, the court may
9 nonetheless excuse a procedural bar if the petitioner demonstrates that failure to consider the
10 petition would result in a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860,
11 887, 34 P.3d 519, 537 (2001). “The conviction of a petitioner who was actually innocent
12 would be a fundamental miscarriage of justice sufficient to overcome the procedural bars to
13 an untimely or successive petition.” Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33, 36
14 (2006). A fundamental miscarriage of justice requires “a colorable showing” that the petitioner
15 is “actually innocent of the crime.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

16 To be entitled to a hearing on a fundamental miscarriage of justice claim, a petitioner
17 must plead “specific factual allegations that, if true, and not belied by the record, would show
18 that it is more likely than not that no reasonable juror would have convicted him beyond a
19 reasonable doubt given the new evidence.” Berry, 131 Nev. at 968, 363 P.3d at 1155.
20 Defendant has not met this burden. It is not entirely clear if he is even raising an actual
21 innocence claim, as he merely states that “factual innocence is an exception to the procedural
22 bar of NRS 34.726.1.” Third Petition, at 14. He makes no factual allegations of any kind.
23 Accordingly, he has not made specific factual allegations that, if true, would establish a
24 fundamental miscarriage of justice to overcome the procedural bars to his Petition. He has not
25 plead a fundamental miscarriage of justice claim that would warrant relief, and therefore he is
26 not entitled to an evidentiary hearing on this issue. Defendant has failed to overcome the
27 procedural bars to his Third Petition. Accordingly, the Third Petition is denied.

1 **II. DEFENDANT’S CLAIM THAT HIS GUILTY PLEA WAS**
2 **INVOLUNTARILY ENTERED IS BARRED UNDER THE LAW OF THE**
3 **CASE DOCTRINE**

4 The doctrine of the law of the case bars relitigation of this issue. “[T]he law of a prior
5 appeal is the law of the case in later proceedings in which the facts are substantially the same;
6 this doctrine cannot be avoided by more detailed and precisely focused argument.” State v.
7 Eighth Jud. Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232–33, 112 P.3d 1070, 1075
8 (2005) (citing Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975)). Furthermore,
9 this Court cannot overrule either of Nevada’s appellate courts. NEV. CONST. Art. VI § 6. “The
10 law of the case doctrine holds that the law of a first appeal is the law of the case on all
11 subsequent appeals in which the facts are substantially the same.” Clem v. State, 119 Nev.
12 615, 620, 81 P.3d 521, 525 (2003) (citing Hall, 91 Nev. at 315, 535 P.2d at 798).

13 In his First Petition, Defendant claimed that his guilty plea was not entered knowingly
14 and voluntarily. The district court considered this claim, reviewed the record, and found that
15 Defendant’s guilty plea was entered freely and voluntarily. This conclusion was affirmed on
16 appeal. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). This
17 conclusion is now law of the case. The facts considered by the district court and the Nevada
18 Court of Appeals in considering this claim consisted of the Guilty Plea Agreement signed by
19 Defendant and the plea canvass. Thus, the relevant facts remain the same. Accordingly,
20 Defendant’s attempt to resuscitate his claim that his guilty plea was not voluntary cannot be
21 considered by this Court.

22 **III. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

23 Defendant is not entitled to an evidentiary hearing on his claims because no expansion
24 of the record is necessary to resolve his claims. He had failed to plead specific facts that, if
25 true, would establish good cause and prejudice to overcome the procedural bars to the Petition.
26 His substantive claims are similarly plead in a vague and conclusive manner insufficient to
27 warrant post-conviction relief.

28 ///

1 NRS 34.770 provides the manner in which the district court decides whether an
2 evidentiary hearing is required. It reads:

- 3 1. The judge or justice, upon review of the return, answer and all
4 supporting documents which are filed, shall determine whether
5 an evidentiary hearing is required. A petitioner must not be
6 discharged or committed to the custody of a person other than the
7 respondent unless an evidentiary hearing is held.
- 8 2. If the judge or justice determines that the petitioner is not
9 entitled to relief and an evidentiary hearing is not required, he
10 shall dismiss the petition without a hearing.
- 11 3. If the judge or justice determines that an evidentiary hearing
12 is required, he shall grant the writ and shall set a date for the
13 hearing.

14 (Emphasis added).

15 The Nevada Supreme Court has held that if a petition can be resolved without
16 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
17 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
18 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
19 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
20 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at
21 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an
22 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
23 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
24 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

25 In this instance, Defendant is not entitled to an evidentiary hearing because there is no
26 need to expand the record. All of the law and facts necessary to dispose of Defendant's claims
27 are already available. It is clear from the record that the Third Petition is untimely and
28 successive. Defendant has not demonstrated the requisite good cause and prejudice to
overcome these defects. His mere promise that he could demonstrate such good cause if
granted an evidentiary hearing is insufficient. He is required to plead specific facts as to good
cause; he is not entitled to an evidentiary hearing simply because he maintains he can
demonstrate good cause at such a hearing. See, e.g., Riker, 121 Nev. at 232, 112 P.3d at 1075.
Additionally, his claim that his guilty plea was involuntarily entered is barred under the law

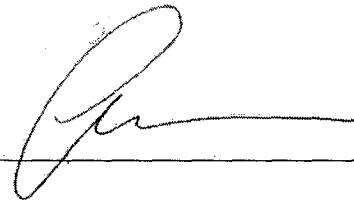
1 of the case doctrine. Finally, even if the Third Petition were not procedurally barred,
2 Defendant's vague and speculative claims are not specific factual allegations that, if true,
3 would entitle him to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, his
4 request for an evidentiary hearing is denied.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
7 shall be, and it is, hereby denied.

8 ~~DATED this 17th day of August, 2021.~~

Dated this 20th day of August, 2021

9
10
11 

EC

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Nevada Bar #001565

38A 7AF 110F F3AA
Cristina D. Silva
District Court Judge

15 BY /s/ KAREN MISHLER
16 KAREN MISHLER
17 Chief Deputy District Attorney
Nevada Bar #013730

18 **CERTIFICATE OF ELECTRONIC FILING**

19 I hereby certify that service of the foregoing, was made this 17th day of August, 2021,
20 by Electronic Filing to:

21 TERRENCE JACKSON, ESQ.

22 E-mail Address: Terry.jackson.esq@gmail.com

23
24 /s/ Janet Hayes
25 Secretary for the District Attorney's Office
26
27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-17-321043-1

7 vs

DEPT. NO. Department 9

8 Richard Newsome, Jr.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

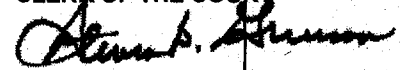
14 Service Date: 8/20/2021

15 Eileen Davis

eileen.davis@clarkcountyda.com

16 Dept 09 Law Clerk

dept09lc@clarkcoutycourts.us
17
18
19
20
21
22
23
24
25
26
27
28



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 RICHARD NEWSOME, JR.,

6 Petitioner,

Case No: C-17-321043-1

Dept No: IX

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on August 20, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
15 to you. This notice was mailed on August 24, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 24 day of August 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

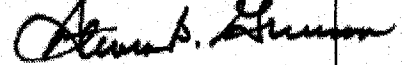
23
24 ☒ The United States mail addressed as follows:

Richard Newsome, Jr. # 1194269
P.O. Box 1989
Ely, NV 89301

Terrence M. Jackson, Esq.
624 S. Ninth St.
Las Vegas, NV 89101

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



1 **NOASC**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No. 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 Terry.jackson.esq@gmail.com

9 Counsel for Defendant, *Richard A. Newsome*

10
11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**
14

15 **THE STATE OF NEVADA,**

16 Plaintiff,

17 v.

18 **RICHARD A. NEWSOME, JR.,**
19 ID#1194269,

20 Defendant.

District Case No.: C-17-321043-1

Dept.: IX

NOTICE OF APPEAL

21 NOTICE is hereby given that the Defendant, RICHARD A. NEWSOME, JR., by and
22 through his attorney, TERRENCE M. JACKSON, ESQ., hereby appeals to the Nevada Supreme
23 Court, from the Notice of Entry of Findings of Fact, Conclusions of Law and Order, file-stamped
24 and dated August 24, 2021, denying his Petition for Post-Conviction Relief.

25 Defendant, RICHARD A. NEWSOME, JR., further states he is indigent and requests that
26 the filing fees be waived.

27 Respectfully submitted this 2nd day of September, 2021.

28 /s/ Terrence M. Jackson
Terrence M. Jackson, Esquire
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com

Counsel for Richard A. Newsome, Jr.

1 CERTIFICATE OF SERVICE

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action,
3 and on the 2nd day of September, 2021, I served a true, correct and e-filed stamped copy of the
4 foregoing: Defendant, Richard A. Newsome Jr.'s, NOTICE OF APPEAL as follows:
5

6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;

7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408
8 E. Clark Avenue in Las Vegas, Nevada;

9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant
10 as follows:
11

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 steven.wolfson@clarkcountyda.com

KAREN MISHLER
Chief Deputy District Attorney
karen.mishler@clarkcountyda.com

15
16 RICHARD A. NEWSOME, JR.
17 ID# 1194269
18 H. D. S. P.
19 P. O. Box 650
Indian Springs, NV 89070-0650

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

20
21
22
23 By: /s/ Ila C. Wills
24 Assistant to T. M. Jackson, Esq.
25
26
27
28



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-321043-1
DEPT. IX

10 vs.

11 RICHARD ALLAN NEWSOME, JR.,
12 Defendant.

13
14 BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE
15 WEDNESDAY, AUGUST 4, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **HEARING RE: MOTION TO CORRECT ILLEGAL SENTENCE**

18
19 APPEARANCES:

20 For the State:

DENA RINETTI, ESQ.
Chief Deputy District Attorney
KAYLA FARZANEH
Certified Legal Intern

21
22
23 For the Defendant:

TERRENCE M. JACKSON, ESQ.

24
25 RECORDED BY: GINA VILLANI, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, August 4, 2021

2
3 [Hearing commenced at 12:41 p.m.]

4 THE COURT: Page 2, C-321043, State of Nevada versus
5 Richard Newsome.

6 Good afternoon, Mr. Jackson, how are you?

7 And is Mr. Newsome in NDOC?

8 MR. JACKSON: I believe so.

9 THE COURT: All right. Well, I'll waive his presence for
10 purposes of this hearing.

11 We're here on a post-conviction writ of habeas corpus, or, as
12 alternatively titled, a motion to correct illegal sentence and there was a
13 supplemental motion filed by Mr. Jackson, the State filed a response in
14 opposition, and there was a reply that was filed. I have reviewed all the
15 written pleadings.

16 Mr. Jackson, anything you would like to add outside the written
17 pleadings?

18 MR. JACKSON: Just very briefly, if the Court would, please.

19 THE COURT: Sure.

20 MR. JACKSON: The thing that stuck out in this case to me
21 was that -- a very, good attorney handled his case, who's no longer with
22 us, Mr. Momot, but I think he made a mistake in representing both of the
23 defendants. I think it was an obvious conflict of interest in representing
24 both, not just both, two defendants, but he represented a mother and the
25 son, charged with the most serious offense you can get, murder. And I

1 think that the defendant, Mr. Newsome, was prejudiced. The case was
2 plea bargained. But I think it's very difficult to plea bargain for two
3 defendants because the normal thing in plea bargaining is to say my
4 client is less guilty than the other defendant in order to get the best plea
5 bargain for one client. You can't do that if you're representing both.

6 In this particular case --

7 THE COURT: So let me ask you this question, because I
8 understand your argument you're making in regards to that, shouldn't that
9 issue have been raised on direct appeal, and if -- and, secondarily, in the
10 first post-conviction motion, this is a successive third petition. So
11 address that issue for me.

12 MR. JACKSON: All right. Well, I don't know why it was or
13 wasn't. I didn't represent him on those. But I still think it's a due process
14 issue and I think it's a matter of fundamental fairness.

15 The State argues, of course, that it's not timely and it's barred
16 by all the statutes that bar it because it's not timely and they also say that
17 it's waived and I'll get to that. But first I want to say that I think it's a real
18 issue involving due process and I think the defendant was prejudiced and
19 I think -- to argue why this should be heard is I think it's a matter of
20 fundamental fairness.

21 I'll just give an example, the defendant got 10 years to life in
22 this case. He may not get out of prison for life.

23 What did the co-defendant, his mother, get? She got 364
24 days. So the difference is less than a year in custody. She got basically
25 credit for time served by taking the deal, which was negotiated by the

1 same attorney. And the defendant got 10 years to life. He may never get
2 out of prison. But they had the same attorney. He negotiated --

3 MS. FARZANEH: Your Honor, I'm sorry to interrupt, but I
4 believe the Court's audio has gone out. We're not receiving any
5 feedback.

6 THE COURT: Oh, thank you for letting me know that. Give us
7 one moment here; we're going to figure out what's happening.

8 MS. FARZANEH: I can hear you now.

9 THE COURT: Can you hear me?

10 MS. FARZANEH: Yeah, I can hear you now.

11 THE COURT: All right. So perhaps it's a matter --

12 MS. FARZANEH: So I don't know if maybe it's the microphone
13 on counsel table again, yeah.

14 THE COURT: Yeah.

15 Mr. Jackson, do me a favor, why don't you step over to this
16 table and maybe that's the -- we'll try this microphone and give that one a
17 go.

18 MR. JACKSON: So now I get to be a DA.

19 THE COURT: There you go, changing things around, keeping
20 you on your toes, Mr. Jackson. There you go.

21 Can you hear, Mr. Jackson? Go ahead and --

22 MR. JACKSON: If I take my mask off will that be improper?

23 THE COURT: It's -- yeah, with the current administrative order
24 we have to keep our masks on.

25 MR. JACKSON: All right. I will --

1 THE COURT: But it's fine. I can hear you just fine.

2 MR. JACKSON: All right.

3 THE COURT: State, can you hear Mr. Jackson now?

4 MS. FARZANEH: Yes, Your Honor.

5 THE COURT: Okay. Go ahead, Mr. Jackson.

6 MR. JACKSON: All right. Let me -- do I need to repeat
7 anything? Basically my argument was the Court asked me why this
8 shouldn't be barred because it wasn't raised earlier, the waiver issue, and
9 I think that it's a matter of fundamental fairness.

10 And my main argument is the defendant got a serious
11 sentence. He got 10 to life and the co-defendant only got less than a
12 year. I think that -- whether previous counsel raised it or not I still think
13 it's a matter that should be considered by this Court and that's because
14 of its importance. And I think the Court has the authority to consider this.
15 Otherwise he has no remedy.

16 I'd urge the Court strongly to consider this argument on its
17 merits. I think the merits are strong. The defendant can only be
18 prejudiced by having one counsel representing two defendants who had
19 clearly different interests.

20 THE COURT: But they signed a waiver; correct?

21 MR. JACKSON: Yes, they did.

22 THE COURT: All right.

23 MR. JACKSON: But I don't think either of the defendants had
24 a full understanding of what the waiver meant. They agreed to joint
25 representation. But you've got a young man and you've got his mother

1 and signing a waiver when -- attorney sticks a piece of paper in front of
2 you and says this is the waiver to sign so we can each -- you can be
3 represented -- I can represent you and your mother. I don't think they
4 fully understand the consequences of that. I don't think the attorney fully
5 explains to them that it might seriously affect my ability to represent you
6 fully when I'm also representing your mother. I don't think that's
7 explained to them.

8 THE COURT: Well, they were canvassed about it during the
9 change of plea as well.

10 MR. JACKSON: I don't think there was any -- I read the
11 canvass very carefully and I don't think there was anything in the canvass
12 that said, Do you understand that, you know, your mother may be treated
13 differently than you. Do you understand this --

14 THE COURT: Well, that's not necessarily --

15 MR. JACKSON: -- family dynamic --

16 THE COURT: -- required for a waiver of a conflict of interest;
17 right, it's a waiver of the conflict of interest.

18 So let me ask you this question, what about the fact that this --
19 let's put the failure to raise it on -- as an issue with the lower court level,
20 what about the issue that this wasn't raised in the first post-conviction?

21 MR. JACKSON: Number one, they didn't see it or they didn't
22 see it was a strong enough issue. I don't know why it wasn't raised.

23 THE COURT: Okay.

24 MR. JACKSON: Whether that should bar it forever, I think it is
25 another question. I think that it wasn't -- I think it wasn't a wise waiver. I

1 think that it's such a fundamental right to have conflict-free counsel and
2 to not be prejudiced by that kind of conflict that you shouldn't be able to
3 raise it.

4 Let's say -- let me give another example, let's say that you've
5 waived an issue of -- of -- the defense didn't bring up DNA evidence and
6 you later found that DNA evidence proved somebody was not guilty or
7 you didn't raise it.

8 THE COURT: Well, there's a specific statute that addresses
9 that concern and so I think that puts that in a separate category; right?
10 Like, for example, someone wanted to get tested, there's a specific way
11 to go about doing that.

12 I think the challenge here, Mr. Jackson, is that they had -- a
13 valid waiver was executed and this wasn't raised on direct appeal and
14 then it wasn't raised in the first post-conviction. So, you know, the fact
15 that this is the third petition really puts you between a rock and a hard
16 place and I recognize that.

17 MR. JACKSON: Well, I disagree with the presumption that it
18 was a valid waiver. I think it was an invalid waiver because I don't think it
19 was knowing and voluntary. I think that --

20 THE COURT: Well, you didn't provide me anything that
21 supports that allegation; right, it's just argument.

22 MR. JACKSON: I think that the facts and circumstances
23 surrounding the waiver, particularly the family dynamic, particularly the
24 fact that you had a situation where you had a conflict of interest between
25 the attorney representing two people in the same family.

1 Let's say you had two different defendants, Defendant A and
2 Defendant B and they weren't related and the attorney says, you know,
3 I'll agree to represent both of you. I think that would be a different
4 situation then when you have a mother and a son, where you have that
5 really close relationship.

6 This is the most fundamental relationship we have in our lives.
7 I mean, the mother is the person that gives you life. And when you're in
8 a criminal case with your mother, you're going to have very, very strong
9 emotions. For the same attorney to represent both of the individuals in a
10 situation like that, in the most serious charge you can have, murder. And
11 what happened in this case, the defendant ended up getting a life
12 sentence --

13 THE COURT: Okay.

14 MR. JACKSON: -- the mother got off with less than a year.
15 And the same --

16 THE COURT: All right. So we -- I understand that.

17 MR. JACKSON: -- the same attorney --

18 THE COURT: And I apologize but --

19 MR. JACKSON: -- negotiated --

20 THE COURT: -- we've got -- we've kind of gone full circle.

21 MR. JACKSON: Yeah, but --

22 THE COURT: So we've addressed that argument. So tell me
23 is there anything else you want to add outside of the written pleadings?

24 MR. JACKSON: No, I just submit that -- that there was a due
25 process violation with the attorney representing both. I don't think -- I

1 think -- I cited a case that the State has the burden of showing that any
2 waiver like this is valid. I don't think they can show that under the facts
3 and circumstances of this case.

4 I ask for an evidentiary hearing. I think if my client had a
5 chance to testify he'd say that he really didn't understand this. You know,
6 maybe I'm grasping at straws. This is an old case. It's been around. It
7 was done -- and one of the problems is the attorney that handled this
8 he's no longer with us. God rest his soul. But he was a good attorney. I
9 don't have anything but respect for Mr. Momot. But I don't think he
10 should have represented both of these individuals.

11 I'll submit it with that.

12 THE COURT: Okay. I appreciate that. And thank you,
13 Mr. Jackson.

14 State, anything you would like to respond to or add outside the
15 written pleadings?

16 MS. RINETTI: Thank you, Your Honor. Dena Rinetti for the
17 State.

18 We would submit on the opposition. I understand
19 Mr. Jackson's plea here today, but I just -- there's no legal basis or
20 factual basis to support his plea for relief. The facts and circumstances
21 they're bare bones allegations. There's nothing in the record or nothing
22 that counsel has brought up today or in his written pleadings that would
23 suggest that the remedy that is being sought is appropriate.

24 And with that I'll submit it.

25 THE COURT: All right. Well, here's where I'm going to land

1 on this, I am going to deny the petition. I understand why Mr. Jackson
2 filed and made the arguments that he made. But for the reasons set forth
3 in the State's opposition I am denying the petition, this petition is
4 successive, and I do not find good cause to overcome the prejudice -- the
5 procedural bars that are in place when there's a successive petition filed.

6 I'll also note that the -- whether or not the plea was knowingly
7 and voluntarily entered, which would include essentially that waiver,
8 was -- the way that I'm interpreting the decision from July of 2020 it was
9 already addressed and the Court of Appeals affirmed the conviction and
10 addressed specifically that change of plea. And because of that I think
11 that there's an inability on my part to take that up and to reconsider that
12 in light of the record that is in front of me.

13 I also -- I don't believe that the defendant is entitled to an
14 evidentiary hearing. I understand the argument, again, that Mr. Jackson
15 is making but is insufficient to allow for me to order an evidentiary
16 hearing. And I don't need to expand the record in light of, as I already
17 noted, the information in front of me.

18 So for those reasons, the petition is denied.

19 And, State, if you could draft findings of fact and conclusion of
20 law and send it over to me for my review in 30 days, I'd appreciate it.

21 MS. FARZANEH: Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 Thank you, Mr. Jackson.

24 MR. JACKSON: Thank you, Your Honor.

25

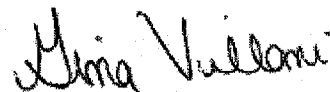
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Good seeing you, as always.

[Hearing concluded at 12:54 p.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX