

IN THE COURT OF APPEAL OF THE STATE OF NEVADA

JOSHUA GIPSON,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

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Case No. 83935

RESPONDENT'S ANSWERING BRIEF

**Appeal From Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

The Nevada Supreme Court has transferred this matter to the Court of Appeals under NRAP 17(b).

STATEMENT OF THE ISSUES

1. Whether the district court correctly denied Gipson's Petition for Writ of Habeas Corpus by finding he entered his plea freely, knowingly, and voluntarily.
2. Whether a sufficient factual basis existed for Gipson's guilty plea.

STATEMENT OF THE CASE

The Grand Jury indicted Joshua Jeremiah Gipson and a co-defendant on March 1, 2019, with Count One: Conspiracy to Commit Robbery (Category B

Felony – NRS 200.380, 199.480); Count Two: Attempt Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Count Three: Burglary While in Possession of a Firearm (Category B Felony – NRS 205.060); Count Four: Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count Five: Attempt Murder With Use of a Deadly Weapon; Count Six: Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); Count Seven: Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Count Eight: Assault With a Deadly Weapon (Category B Felony – NRS 200.471); Count Nine: Discharging Firearm At or Into Occupied Structure, Vehicle, Aircraft, or Watercraft (Category B Felony – NRS 202.285); and Count Ten: Discharging Firearm At or Into Occupied Structure, Vehicle, Aircraft, or Watercraft. 1 Record on Appeal C-19-338507-1, filed January 31, 2022 (hereinafter “ROA”) 1-8. On March 22, 2019, the Grand Jury charged Gibson by way of Superseding Indictment with the same charges. 1 ROA 100-07.

On April 16, 2019, defense counsel filed a Motion to Refer Defendant for Competency Evaluation. 1 ROA 139-45. On April 30, 2019, the Court referred Gipson to Competency Court. 2 ROA 456. On May 17, 2019, Gipson was found not competent and he was referred to Lakes Crossing until competency could be established. 2 ROA 457. That same day, an Order of Commitment Pursuant to NRS

178.425 was filed. 1 ROA 204-06. On July 19, 2019, Gipson was found competent pursuant to the Dusky Standard. 1 ROA 209-10.

Gipson pled guilty but mentally ill on January 9, 2020, to Count One: Conspiracy to Commit Robbery; Count Two: Robbery With Use of a Deadly Weapon; and Count Three: Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm. 2 ROA 340-56. An Amended Indictment and Guilty Plea Agreement ‘Mentally Ill’ was filed in open court the same day. 1 ROA 226-36.

Gipson filed a Motion to Withdraw Counsel and Motion to Withdraw Plea Agreement on February 14, 2020, in which he asserted his attorney had coerced him and promised him a sentence of 3 to 8 years. Respondent’s Appendix (“RA”) at 1-9. On March 3, 2020, Gipson said he wanted to keep his attorney but withdraw his plea. 2 ROA 471. On April 21, 2020, the court appointed counsel for the limited purpose of determining whether there was a valid reason for Gipson to withdraw his guilty plea; however, counsel found no basis to withdraw the plea. ROA A-21-840211-W 51.

On June 1, 2020, Gipson filed a second Motion to Withdraw Counsel/Motion to Withdraw Plea Agreement, again asserting he had been promised a sentence of 3 to 15 years and his attorney had not explained the agreement. 2 ROA 270-73. Gipson moved to withdraw his motion on June 23, 2020. 2 ROA 476.

On December 22, 2020, Gipson was sentenced as follows: Count 1 – twenty-eight (28) months to seventy-two (72) months in the Nevada Department of Corrections (NDC); Count 2 – seventy-two (72) months to one hundred eighty (180) months in the NDC, with a consecutive seventy-two (72) months to one hundred eighty (180) months for use of a deadly weapon; to run concurrent with Count 1; and Count 3 – thirty-six (36) months to one hundred twenty (120) months in the NDC; to run consecutive to Count 2. 2 ROA 290-91. He received an aggregate sentence of fifteen (15) to forty (40) years, with six hundred seventy-six (676) days credit for time served. 2 ROA 290-91. The Judgment of Conviction was filed December 28, 2020. 2 ROA 290-91. Defendant did not appeal his conviction.

Gipson filed a Motion for Modification of Sentence on March 2, 2021. 2 ROA 317-26. The State responded on March 9, 2021. 2 ROA 328-33. The motion was denied March 18, 2021. 2 ROA 335-36.

On August 27, 2021, Gipson filed a Post-Conviction Petition for Writ of Habeas Corpus. ROA A-21-840211-W 1-13. The State responded on October 4, 2021. ROA A-21-840211-W 16-24. The court denied the petition and issued its Findings of Fact, Conclusions of Law, and Order on November 20, 2021. ROA A-21-840211-W 25-34.

Gipson filed the instant Appeal on December 10, 2021. ROA A-21-840211-W 46-50. He states he is appealing his Evidentiary Hearing on September 3, 2019,

the denial of his Motion to Modify Sentence filed on March 2, 2021, and the denial of his Petition for Writ of Habeas Corpus, filed August 16, 2021. AOB at 3.

STATEMENT OF THE FACTS

The Court relied on the following synopsis of the offense at sentencing:

On September 15, 2017 officers responded to a call regarding a shooting at a residence. According to the caller, victim #1 and his son, victim #2, were the victims of a shooting which took place in the garage of their residence.

Victim #1 was having a garage sale which he advertised on various social media outlets. According to victim #1, he had exchanged phone calls prior to the shooting with Demarius Cunningham, the co-defendant. Mr. Cunningham arrived at victim #1's residence in a vehicle and inquired about an item that victim #1 was selling. While victim #1 and Mr. Cunningham were having a conversation, victim #2 arrived at the residence. Moments later, Joshua Gipson, the defendant, walked up to victim #1 and pointed a handgun at his face. Victim #1 attempted to grab the gun and Mr. Gipson began shooting. Victim #1 and victim #2 were shot several times before Mr. Gipson's gun malfunctioned or ran out of ammunition. Victim #1 and victim #2 did not see when Mr. Gipson arrived at the residence. However, it was later determined that Mr. Cunningham and Mr. Gipson arrived at the same time and Mr. Gipson purposely concealed his presence. According to victim #1, he felt like Mr. Gipson was trying to murder him and victim #2 as he was shooting until the gun malfunctioned or ran out of ammunition.

A witness heard the shots from inside the residence and began shooting with her own handgun. Mr. Cunningham and Mr. Gipson both fled the scene in the vehicle Mr. Cunningham was driving. The vehicle was hit several times by bullets from the witness's handgun. Both victims were taken to the hospital to treat their injuries.

During the investigation, it was found, the vehicle that Mr. Cunningham was driving was taken for repairs by Mr. Cunningham's girlfriend to an auto shop and had multiple bullet holes in it. Mr. Cunningham's girlfriend was given a loaner vehicle to drive while her vehicle was in the shop for repairs. Mr. Cunningham was documented several times driving the loaner vehicle. A forensic examination later

determined that the bullets in the vehicle were of the same caliber and general rifling characteristics as the witness's handgun. An investigation was already under way regarding the vehicle which was tied to a previous unrelated charge.

Investigators issued a warrant for Mr. Cunningham on those charges and on November 28, 2017, he was arrested during a traffic stop. Mr. Cunningham was subsequently incarcerated at High Desert State Prison. Investigators interviewed Mr. Cunningham in prison. He denied having any knowledge or involvement with the shooting.

During the investigation, it was found that Mr. Cunningham used another inmate's phone account to call his girlfriend and told her someone was "running their mouth." Investigators interviewed Mr. Cunningham's girlfriend. She initially was hesitant to provide any information. She later informed investigators that Mr. Cunningham admitted to her that he was with Mr. Gipson, and that Mr. Gipson had gotten into an argument with victim #2, when victim #2 pulled out a gun; Mr. Gipson then pulled his gun and began shooting at both victims. According to Mr. Cunningham's girlfriend, one victim was shot in the chest and another in the stomach. A female then exited the residence and began shooting back at them. Mr. Cunningham and Mr. Gipson then fled the scene in the vehicle.

Phone records indicated Mr. Cunningham and Mr. Gipson were together before and after the time of the shooting. Phone records also show Mr. Demarius was around the scene area at the time of the shooting and had several calls to and from victim #1's cell phone which corroborate victim #1's statement.

An arrest warrant was requested on November 23, 2018. On February 17, 2019 Joshua Jeremiah Gipson was extradited from California and was transported to Clark County Detention Center where he was booked accordingly.

Presentence Investigation Report, prepared February 13, 2020, at 5-6; see 2 ROA 241-250.

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SUMMARY OF THE ARGUMENT

Gipson entered his guilty plea agreement freely, knowingly, and voluntarily. The facts he admitted during his plea canvass provided a sufficient basis for the district court to have accepted his plea.

ARGUMENT

Gipson claims he signed his guilty plea agreement under coercion by his attorney and was promised he would only receive 3 to 15 years imprisonment. AOB at 3-4. Both claims are belied by the record. Gibson also attacks the factual basis for his plea. AOB at 4.

I. GIPSON SIGNED HIS GUILTY PLEA AGREEMENT FREELY, KNOWINGLY, AND VOLUNTARILY

Gipson asserts his attorney coerced him into signing the guilty plea agreement by misleading him and pressuring him to take a deal. AOB at 3. He claims his attorney promised him a sentence of 3 to 15 years. AOB at 3. He asserts the attorney assigned to determine if he had a basis for withdrawing his guilty plea also assured him he would receive a sentence of either 3 to 15 or 3 or 8 years imprisonment. AOB at 6. Further, he claims his attorney disparaged him. AOB at 5.

Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the burden is on a defendant to show that the plea was not

voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

To determine whether a guilty plea was voluntarily entered, the Court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. A proper plea canvass should reflect that:

[T]he defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev. 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel. Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

The court accepting the plea must personally address the defendant to determine whether he understands the nature of the charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a written

plea agreement without some verbal interaction with a defendant. Id. Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a formal setting, such as that occurring between an official sitting in judgment of an accused at plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require the articulation of talismanic phrases,” but only that the record demonstrates a defendant entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970).

Gipson acknowledged in his guilty plea agreement that he understood that he faced a potential sentence of 1 to 6 years for Count One, 2 to 15 years for Count Two, with a consecutive sentence of 1 to 15 years for the deadly weapon enhancement, and 2 to 15 years for Count Three. 1 ROA 231-32. He knew the State retained the right to argue but would not argue for a sentence greater than 15 to 40 years. 1 ROA 229-30. He agreed the sentencing court had the discretion to order his sentences be served either consecutively or concurrently. 1 ROA 232. Gipson avowed he signed the agreement “voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.” 1 ROA 234-35.

In court, in the presence of his attorney, Gipson was canvassed. 2 ROA 340-56. Gipson affirmed he understood the proceeding. 2 ROA 346. He said he had spoken with his attorney about his case, that he made his plea freely and voluntarily, and that no one had coerced him, and that no one had promised him a particular sentence. 2 ROA 346-48, 350. Gipson then explained to the sentencing court the factual basis for his plea. 2 ROA 350-53, 354. The district court found his plea of guilty but mentally ill was freely and voluntarily made and that Gipson understood the nature of the offense and the consequences of his plea. 2 ROA 355.

When Gipson complained he wished to withdraw his plea, the district court appointed independent counsel to assess whether a basis existed for doing so. That attorney told the district court, “After having reviewed discovery and discussing the matter with not only Mr. Goldstein, his previous attorney, but Mr. Gipson, I do not find that there’s a basis for him at this point to withdraw his guilty plea.” 2 ROA 364. Regarding Gipson’s complaint, also raised here, that his attorney rushed him through the process, she said:

And as Mr. Goldstein has pointed out, he’s done an excellent job, and it seems that spending additional time with that disability in mind going through the guilty plea and the ramifications of accepting the guilty plea agreement. The court record would also support that finding that there was sufficient basis and relevant questions asked and that everything was freely and voluntarily entered into and understood at the time of—he entered his plea.

2 ROA 367.

Gipson's claim that he was promised a sentence of 3 to 8 or 3 to 15 years is belied by the record. At sentencing, he claimed he signed the agreement believing he would receive one of those two sentences, despite the canvass in open court in which the district court advised him he faced a potential sentence of 3 to 51 years and that the State had agreed not to argue for more than 15 to 40 years. 2 ROA 380-81. He confirmed he understood the aggregate sentencing range to be from 3 to 51 years in prison. 2 ROA 359. Gipson stated he had not been promised a particular sentence and that his actual sentence would be up to the district court. 1 ROA 232.

Regarding Gipson's claim that his attorney disparaged him, his lawyer used Gipson's mental deficiencies as mitigating circumstances at sentencing. 2 ROA 382. He pointed out Gipson had been in special education classes even before he suffered his head injury. 2 ROA 382. He said Gipson had a very low IQ and that his cousin had been living off of Gibson's disability checks. 2 ROA 383. He argued Gipson did not have the capacity to mastermind the robbery as the State asserted. 2 ROA 384. He said Gipson is gullible and trusted his cousin. 2 ROA 385. He used all this information to argue Gipson was not as culpable as his co-defendant. 2 ROA 386. Despite counsel's impassioned pleas, the sentencing court said protecting society was what mattered. 2 ROA 391, 392. The court also noted how the case nearly encompassed murder rather than attempt murder. 2 ROA 391.

The record shows Gipson entered his plea voluntarily and without being coerced. He knew the range of punishment his plea exposed him to, and acknowledged no one had promised him a particular sentence. This claim is belied by the record and suitable only for summary dismissal under Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make specific factual allegations that if true would entitle him to relief. ‘Bare’ and ‘naked’ allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.” Id.

II. THE RECORD REFLECTS A FACTUAL BASIS FOR THE CRIMES TO WHICH GIBSON PLED GUILTY

Gipson asserts he pled guilty to more serious crimes than he was charged with.

AOB at 4. Although he pled guilty to a robbery with use of a deadly weapon instead of to attempt robbery with use of a deadly weapon along with two counts of attempt murder with use of a deadly weapon and other charges, he asks this Court to grant him an evidentiary hearing so he can prove he and his co-defendant were not successful in making away with their booty. AOB at 6. He would like appointed counsel to defend him against this robbery charge. AOB at 6.

Gipson did not raise the issue of the factual basis for his plea below. ROA A-21-840211-W 1-11. In his habeas petition, he alleged his counsel failed to file a motion for an evidentiary hearing. Id. at 2-3, 7. He alleged he was promised a

sentence of 3 to 8 years. Id. at 5. He argued this was objectively unreasonable as that is not the sentence he received. Id. The only argument Gipson made concerning the robbery charge is that he stated the property alleged to have been stolen should have been listed in his discovery. Id. His exhibits included four pages from the preliminary hearing in which one of the victims testified regarding many issues but also said the shooters did not successfully take any property. Id. at 12.

Gipson did not cogently present to the district court the issue of whether the evidence adduced at the Grand Jury hearing supported the charge of robbery. He may not now raise this issue for the first time on appeal.

The district court did, however, address the issue of whether Gipson entered into his plea knowingly. ROA A-21-840211-W 25-32. “Gipson was aware that, pursuant to negotiations, the parties would jointly recommend that Count 1 run concurrently to the other counts, and that the State agreed not to ‘ask the Court to impose a sentence greater than fifteen (15) to forty (40) years’ overall.” Id. at 27.

During plea negotiations, Gipson faced a choice:

Option One—plead guilty but mentally ill to three felonies, one of which was fictitious. By running the conspiracy charge concurrent, the maximum sentence Gipson could face was 3 to 51 years imprisonment.

Option Two—go to trial on ten felonies. If each had run consecutively to the others, he faced a potential prison sentence of 18 to 177 years.

Gipson decided to accept option one. He pled guilty to significantly less serious charges than those he was charged with. He was charged with ten felonies, including conspiracy to commit a robbery, attempt robbery with the use of a deadly weapon, burglary while in possession of a firearm, two counts of attempt murder, two counts of battery with use of a deadly weapon resulting in substantial bodily harm, assault with a deadly weapon, and two counts of firing into an occupied structure. 1 ROA 1-8. By contrast, he pled guilty to three felonies: the conspiracy, a robbery with deadly weapon, and battery with a deadly weapon resulting in substantial bodily harm. 2 ROA 340-56. These three Category B felonies are much less severe than the ten original Category B felonies.

Gipson fails to allege he would prefer to go to trial on ten felonies rather than three. He asks this Court to resentence him to reflect there never was a robbery or a conspiracy to commit a robbery. AOB at 7. He, however, does not ask to be resentenced, or even to proceed to trial, on the attempt murder and other charges that were dismissed under his plea agreement.

A fictitious plea undertaken to avoid more substantial charges at trial does not offend traditional notions of justice and fair play. Nevada precedent reflects “that where a guilty plea is not coerced and the defendant [is] competently represented by counsel at the time it [is] entered, the subsequent conviction is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v. Sheriff, Clark

County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined that a defendant lacked standing to challenge the validity of a plea agreement because he had “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev. 468, 477, 958 P.2d 91, 96 (1998).

Further, the Nevada Supreme Court has explained:

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

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

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

Gipson affirmed to the district court that he had conspired with his cousin to commit a robbery with a deadly weapon. 2 ROA 350. When asked if he had taken property from the victims by force or violence, Gipson initially said they had not

taken anything. 2 ROA 350. His attorney elucidated that he had explained conspirator liability to Gipson. 2 ROA 350-51. Gipson then admitted he was with his cousin, who took property during the incident. 2 ROA 354. He admitted he helped his cousin with the robbery. 2 ROA 351. He denied personally having a firearm but admitted his cousin did and he was helping him out. 2 ROA 351. He admitted he or someone in his party shot the victims and they all fled. 2 ROA 352-53. The district court then reemphasized that during a conspiracy, “the act of one is the act of all.” 2 ROA 354.

Because Gipson was convicted of less serious charges than he faced at trial, he may not now challenge the basis for his guilty plea. The terms of the plea agreement are precisely the same as he negotiated. Now that he has benefited from his agreement, he must live by its terms.

III. THIS CLAIM HAS BEEN LITIGATED

Gipson continuously relitigates the same issue, thus diverting judicial resources from defendants with meritorious claims. He sought to withdraw his guilty plea on February 14, 2020, by asserting his attorney had promised him a sentence of 3 to 8 years. 2 ROA 251-69. The district court appointed counsel to look into the issue, then addressed the allegation on the merits. ROA A-21-840211-W 51. He filed a second motion to withdraw his plea, asserting he had been promised a sentence of 3 to 15 years, on June 1, 2020. 2 ROA 270-73. He voluntarily withdrew this motion.

2 ROA 476. He then filed his habeas petition, arguing he had been promised a certain sentence. ROA A-21-840211-W 25-34.

If Gipson had been convicted at trial, he would not have been permitted to reraise this issue. NRS 34.810(1)(b) requires dismissal of a petition when the conviction was “the result of a trial” if the claims were or could have been “presented to the trial court” and/or “[r]aised in any other proceeding that the petitioner has taken to secure relief from the petitioner’s conviction and sentence.” However, since Gipson was convicted pursuant to a guilty plea, this subsection is inapplicable to him.

A conviction pursuant to a guilty plea is covered under NRS 34.810(1)(a): “The petitioner’s conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.”

It seems unlikely the legislature intended that a person who proclaimed his innocence until a jury found him guilty have fewer opportunities to litigate his issues than one who admits his culpability in open court under a guilty plea agreement. Gipson’s allegations, regarding a promise allegedly made by his attorney, have been litigated on the merits. NRS 34.810 appears to allow him to relitigate the issue ad

nauseum.¹ Gipson never appealed the denial of either of his motions to withdraw his plea. He simply files new documents in district court in front of the same judge, hoping to wear down the judicial system until he achieves his goal. This issue has been heard and rejected.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court AFFIRM the denial of Gipson's Post-Conviction Petition for Writ of Habeas Corpus.

Dated this 23rd day of May, 2022.

Respectfully submitted,

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¹ In fact, Gipson has filed a second and third, original, habeas petition in the Nevada Supreme Court. See Dockets 84323 and 84551.

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 4,429 words and 18 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 23rd day of May, 2022.

Respectfully submitted

STEVEN B. WOLFSON
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BY */s/ John T. Afshar*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 23rd day of May, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JOHN T. AFSHAR
Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOSHUA GIPSON #1240597
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P.O. Box 650
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/s/ J. Hall

Employee, Clark County
District Attorney's Office

JTA/Suzanne Rorhus/jg