IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 84612

APRIL PARKS

Appellant,

v.

THE STATE OF NEVADA ,

Respondent.

Appeal from Amended Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Tierra Jones, District Court Judge
District Court Case No. C-17-321808-1

APPELLANT'S APPENDIX
VOLUME V

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V. STATEMENT OF FACTS

The facts relevant to the claims raised in this appeal are those related to the post-conviction petition, although that issue necessarily encompasses arguments that could have been raised at the time of sentencing.

As stated above, Ms. Parks decided to resolve the charges against her by accepting responsibility by a guilty plea. The general wisdom of that decision is not under review here. But the decision to accept one offer instead of another is.

At the guilty plea canvass, Parks was asked about why she had accepted an Alford plea where the State retained the right to argue for any lawful sentence, which would include consecutive sentencing between all counts. 1 AA 192-193. She was also asked to confirm that she had rejected a stipulated sentence of 8-20 years here, which would have run concurrent to a second prosecution against her as well. 1AA 193.

Because it was an Alford plea, the State provided the factual basis for the plea. According to the State, it would have shown at trial that Parks'

company, “A Private Professional Guardian, LLC” was a criminal enterprise in that through it Parks supposedly committed the “numerous criminal offenses” alleged in the original indictment. 1 AA 197.

The State detailed several schemes relevant to the claim trial counsel failed to properly advocate at sentencing. According to the State, the “multiple billing fraud” scheme involved visiting several wards at one facility but billing separate time for all services provided. 1AA 198. This scheme was alleged to cause a $100,262.25 loss to 27 victims.

Next was the “unnecessary services” scheme in which Parks allegedly inflated billings or used overqualified professionals for menial tasks to bill at a higher rate. 1 AA 198. This scheme was alleged to result in a $60,593.78 loss to 12 victims.

Another issue was the so-called “Christmas gift scam.” 1AA 198. According to the State, Parks would purchase low-cost gifts for wards and then charge exorbitant visitation or delivery fees for the items. This scheme was alleged to result in a $1507.50 loss to 48 victims.

The fourth scheme was styled as the "mortuary and toilet paper scam." 1AA 199. On one single occasion, a codefendant apparently billed $1600 to 12 individuals for picking up cremated remains or delivering toilet paper.

Next, the State detailed a "court paperwork scam" in which Parks used a codefendant to stand in line to file court paperwork at a high billing rate even though electronic filing was supposedly available. This scheme was alleged to result in a $74,229.90 loss to 109 victims. A related scheme supposedly involved overbilling for making trips to banks in the amount of $67,775.00 on behalf of 130 victims. A final scheme involved excessive billed time to complete Social Security paperwork in the amount of $13,044.00. 1AA 199.

The State then detailed a series of individual victims and various transactions which it contended Parks used to cause loss tothe individuals involved. 1 AA 200-202.

Before sentencing, the State filed a memorandum in which it repeated many of the same schemeallegations committed by Parks. 2 AA

206. The State also provided information about twelve individual victims. 2 AA 213-221. The State argued that the only appropriate sentence was the "maximum" sentence, with all counts run consecutive to each other. 2 AA 221. The State also argued, without a clear analysis of how it arrived at the number, that restitution was required in the amount of $559,205.32. 2 AA 221.

The State used its restitution figure to justify its harsh sentencing request. "The restitution figure of $559,205.32 is a large amount." 2 AA 227. The State also used the fact Parks originally faced "over 200 felony charges" as a basis for its recommendation, despite the reality that the State had exclusive control over how many charges it brought for the same conduct. 2 AA 228. The State further contended that Parks "still has shown no remorse for any of her actions…," ignoring the fact she entered into a guilty plea agreement. 2 AA 228. (Further stating, "While Parks has acknowledged that the State could prove the charges against her, she has refused, thus far, to admit her criminal culpability ").

The defense also filed a sentencing memorandum, but it did not provide a particularly deep analysis of mitigating factors and made no effort to identify errors in the State's position. The defense memorandum first pointed out Parks had never used physical violence against any of her wards. 2 AA 233.

Although the defense memorandum claimed to explore the "forensic" accounting of the alleged conduct, the defense arguments were limited to contending that Parks did not steal money because she drove a modest car and eventually filed for bankruptcy. 2 AA 236-37. The defense tried to explain while Parks owned her LLC, others were responsible for billing entries. 2 AA 243. The defense memorandum concluded with "letters of support" from four of Parks' relatives and one friend. 2 AA 246.

Facts related to sentencing issues

At sentencing, the defense sat silently by while speaker after speaker unloaded on Parks. To be sure, Parks had pleaded guilty and some of the information conveyed by speakers was likely relevant. But plenty was not, and the defense could have objected to several statements by speakers or

prosecutors. The relevant facts from sentencing, along with related facts developed during the post-conviction investigation, largely fall into four groups.

1. Facts related to improper arguments by the State

At sentencing, the prosecutor contended that Parks had shown no remorse because she only pleadedguilty under Alford. 2 AA 277. The State also argued that several individuals never needed guardianships. 2 AA 220. The State also tried toargue, with no evidentiary support, the legislative history behind Nevada's exploitation statutes. 2 AA 226. The State also argued that Parks mismanaged funds, left various wards with no guardian, and acted in a "ghoulish" manner.

The post-conviction investigation revealed several additional facts which defense counsel never used First, contrary to the State's arguments, guardianships overseen by Parks were supported by medical evidence that substantiated the need for the guardianship. An exhaustive review of public guardianship files for several of the individual victims revealed the following:

North : A petition for appointment of temporary guardian was filed by Parks in 2013. 2 AA 389. The petition was supported by a statement from Sanghamitra Basu, a medical doctor licensed by the State of Nevada. 2 AA 398. Dr. Basu personally examined Mr. North and concluded a guardianship was necessary based on symptoms of confusion that could lead to a possible accidental overdose. In addition, in an attached report, Dr. Basu explained that Mr. North was a long-term patient, and that the doctor noticed a "significant" decline in behavior before the guardianship. 2 AA 400. Mr. North could not care for his wife, refused to go to the hospital after a 911 call, and needed daily assistance with medication. 2 AA 400.

Neely : A petition for appointment of temporary guardian was filed in 2014. 2 AA 401. The petition was supported by a statement from Akindele Kolade, a medical doctor licensed by the State of Nevada. 2 AA 410. Dr. Kolade concluded that Ms. Neely needed a guardianship because of a diagnosis of schizophrenia, which prevented her from living independently. It was Dr. Kolade's opinion that Ms. Neely's condition was so substantial

that she would not comprehend the reason for any court proceeding about the guardianship. 2 AA 410.

Mesloh: A petition for appointment of guardian was filed in 2013. 3 AA 412. The petition was supported by a statement from John Reyes, a physician assistant licensed to practice in the State of Nevada. Based on a personal examination, Mr. Reyes concluded a guardianship was necessary based on Mr. Mesloh's several health conditions that required 24- hour case. 3 AA 418. In an attached letter, Mr. Reyes added that Mr. Mesloh agreed the guardianship was in his best interest based on his medical problems and that he was "totally dependent on others for all his care." 3 AA 420.

These are examples. A briefer review about every individual identified by the State shows that <u>every single request for guardianship was supported by the diagnosis of a medical provider</u>: Shanna Maclin, G-15-042610-A, certified by Habim Gemil, M.D.; Georgann Cravedi, G-14-040665-A, certified by Chad Hall, physician; Norman Weinstock, G-08-032656-A, certified by Sofronio Soriano, M.D.; Barbara Lasco, G-14-039735-A, certified

by John Reyes, PAC; Joseph McCue, G-14-039900-A, certified by Suresh Bhushan, physician; Jack King, G-14-039730-A, certified by Alex Del Rosario, M.D.; Adolfo Gonzalez, G-13-038316-A, certified by Wenwel Wu, M.D. 1 AA 148-149.

The only individual listed by the State that called for a more complicated analysis is Milly Kaplove. Even so, an examination of the record in that matter reveals that, after an evidentiary hearing attended by Ms. Kaplove, the court found that the initial request for a guardianship by Ms. Parks was "justified," but that the ward had since recovered and no longer needed a guardian. 3 AA 422.

Turning to the legislative history arguments, facts available to defense counsel were that the operative statute about exploitation was NRS 200.5099, which was passed in 1995 as part of Assembly Bill 585 and related Senate Bill 416. What little discussion there is suggests revisions were necessary in particular to "keep violent criminals in prison longer and release nonviolent criminals into probation sooner." 3 AA 442. Testimony focused on the need for a "range of penalties for crimes against elders."

3 AA 447. The Division of Aging Services, which proposed the statutory changes, simply concluded that a "range" of penalties was necessary including "up to 20 years imprisonment or fines of up to $25,000 for more serious cases." 3 AA 450.

2. Facts related to lack of notice about victim speakers

As discussed above, the State admitted at the sentencing that it failed to give notice to the defense regarding victim speakers.

As a result, the court heard substantial testimony from multiple victim speakers which went far beyond what would have been authorized under the statute, with no meaningful rebuttal by trial counsel. Highlights include at least one speaker screaming repeatedly that Petitioner was "Hitler" or a "Nazi" 2 AA 367, 370, 379, 380, that Petitioner impersonated a police officer including by use of a LVMPD badge, 2 AA 353, or that Petitioner was "Lilith," 2 AA 378, a reference to a notorious biblical demon.

During the post-conviction investigation, relevant facts about some speakers were identified. While none of this information was located or

used by trial counsel, it would have undercut the accuracy of information presented by the speakers.

Example No. 1 : Larry Braslow testified at sentencing on behalf of his mother. Larry specifically requested the court “to be the champions they claim to be for all our beloved elderly. Send a clear message to anyone (emphasis added) who wants to steal from and destroy our precious one’s lives.” 2 AA 322. Effective trial counsel could easily have accessed the publicly available guardianship case and learned that there was evidence in it that Larry had in fact stolen from his mother and that was why a non-family member was appointed guardian in the first place. 3 AA 522. Larry was specifically accused by his mother of having stolen her identity and incurred debt in her name. 3 AA 535. Moreover, in a subsequent filing under the pains and penalties of perjury, Larry’s brother Alan asserted that Larry was seeking to“gain control over my mother’s finances and I am strongly opposed to that occurring.” 3 AA 550.

Example No. 2 : The public guardian testified about several individual cases. One involved a Maria Cooper, and as to her, the public guardian asserted there were no cognitive issues and the only impairment was hearing loss –apparently an argument that no guardianship was ever necessary. 2 AA 325.

The public guardian's statements to the court were materially untrue. First, the publicly available petition for guardianship which trial counsel could easily have accessed reveals that the ward suffered from severe panic attacks that led her to call 911 in the middle of the night. 3 AA 577. An examination by Dr. David Wikler revealed a diagnosis of dementia. 3 AA 578. The clock-drawing test, a simple and common tool to screen for dementia, speaks for itself. 3 AA 580.

The public guardian declined to inform the court that not only did Ms. Cooper consent to the guardianship and want April Parks as her guardian, she expressly stated she did not want previously nominated individuals to have control of her estate. 3 AA 582.

Example No. 3: The public guardian argued on behalf of Kathy Godfrey, and contended that no guardianship was necessary in the first instance. 3 AA 334. Yet trial counsel could have accessed publicly available information to determine that Dr. Richard Paguia determined that Ms. Godfrey suffered from chronic alcoholism manifested by increasing falls. 3 AA 591. Court minutes from the proceeding show Ms. Godfrey consented to the guardianship. 3 AA 593.

Example No. 4: The public guardian testified about William Brady, and stated his estate was worth "approximately $148,000" when the guardianship began, but was worth less than $20,000 when the public guardian took over. 2 AA 335. The public guardian explained the guardianship began in 2010 and the public guardian took over in 2015, and that Ms. Parks collected some $33,000 in fees. Effective counsel could have provided some context to these numbers and explained that Ms. Park's fees were collected over a five-year period, leading to a per-year average of $6,600. These fees amount to less than $600 per month. For context, the

accounting from the guardianship shows most of the assets were spent on room and board - $122,000 over a five-year period. 3 AA 598.

Example No. 5: Herman Mesloh (discussed above) testified about his wife's guardianship. Herman explained that his wife "was fine" and did not need a guardianship. 2 AA 339. Buteffective trial counsel could have obtained the petition from Kathy Mesloh's guardianship and learned that Dr. Robert Chiascione determined a guardianship was necessary because the ward could not bathe, cook, groom, or take her medication without assistance. 3 AA 607.

Example No. 6: Amy Wilkening testified on behalf of her deceased father, Norbert Wilkening. 2 AA 346. She testified Norbert was "conscripted" into guardianship by Ms. Parks. She also referenced in a negative way that the guardianship was based on the analysis of a nurse practitioner. 2 AA 347. While the part about a nurse practitioner is true, there is no allegation this was improper under the law. Moreover, the publicly available petition reveals the nurse practitioner provided much more information than did some of the medical doctors to support his

conclusion, which ultimately was that the guardianship was necessary because of dementia. 3 AA 621. The witness also accused Ms. Parks of lying about the need to dispose of the ward's personal property. 2 AA 348. That said, a publicly available independent property report stated that the value of the ward's personal property was "less than $100 for everything" because most items were broken, garbage, stained with human waste and other biohazards, and in overall poor condition. 3 AA 624.

Example No. 7: Elizabeth Indig testified about her mother, who has the same name. 2 AA 353. Ms. Indig testified that Ms. Parks represented herself as a police officer including the use of a "fake" Metro badge. 2 AA 353. The State never produced any evidentiary support of that allegation. The speaker also testified that she was not allowed to visit her mother during the guardianship because she was a "danger" to her mom because she wanted to bring her macaroni and cheese to eat. 2 AA 353. Yet publicly available documents show Ms. Indig was a danger to her mother because there were prior allegations of serious physical abuse. 4 AA 628-629. In fact, a specific likely mandatory, report of abuse was made by a

social worker about "abuse by this patients daughter, Elizabeth Indig." 4 AA 645. In addition, a neighbor reported that Ms. Indig had stolen her mother's jewelry and taken money for her own use out of the mother's bank account. 4 AA 645.

Court minutes from the guardianship show that Ms. Indig was involved in the guardianship from the beginning, repeatedly declined to follow advice given to her by the guardianship court to include steps she could take to assume the mantle of guardian, and ultimately the request was made to declare her a vexatious litigant. 4 AA 645-646.

Example No. 8: Barbara Neely testified on her own behalf that she never needed a guardianship. 2 AA 356-357. However, her situation has already been discussed including that a medical doctor determined that when Ms. Parks was appointed guardian, a guardianship was necessary. 2 AA 410.

Example No. 9: Julie Belshe testified on behalf of her mother Rennie North. Julie purported to read a letter that her mother wrote. 2 AA 368. Interestingly, the letter switches from first to third person mid-way through.

2 AA 368 ("…making my mom sicker"). While in general Julie was likely permitted to act as a speaker, had she been properly noticed (which she was not), she would not have been permitted to mislead the court into thinking her mother wrote something that Julie herself in fact wrote.

3. Facts related to improperly computed restitution

The State sought $559,205.32 in restitution at the time of sentencing. How it arrived at this number is unknown. Applying even the most basic mathematical analysis would have revealed that the restitution number was incorrect.

Facts available to defense counsel which went unutilized at sentencing include the fact that sworn testimony show the largest individual loss, assigned to Dorothy Trumbich, was inaccurate. The amount assigned to Ms. Trumbich in the judgment of conviction was $167,204.49. That amount is precisely the amount testified to as the loss at the grand jury hearing. 4 AA 654.

What the State neglected to inform the sentencing court is that, pursuant to the sworn grand jury testimony, Parks repaid $50,000 to

Ms. Trumbich's estate when it "went to probate court." 4 AA 654. According to publicly available records, the probate case was filed in early 2014. See W14-006398. As a result, Parks repaid the $50,000 before even being involved in this criminal case, and that amount never should have been sought as restitution in the first instance, and any remaining amount was paid by insurance.

Another example is the case of Baxter Burns. According to the judgment of conviction, Burns was awarded $32,006.72 in restitution. But deep in the discovery documents provided in the case was evidence that of that amount, Burns confirmed receipt of the return of $8,529.84. 4 AA 656-658.

Just taking these two examples alone, combined they amount to $58,529.84 which should have been deducted from the restitution amount identified in the judgment of conviction. Had this amount been deducted from the restitution of $554,397.71 stated in the judgment of conviction, the total restitution, and total loss would have been reduced to

$495,867.87, if no other adjustments are made based on the State's many mathematical errors.

This Court should know that, although the District Attorney's answer below was untimely and was not considered by the trial court, it contains an important concession that the $58,529.84 discussed above was, in fact, erroneously added to the restitution. 5 AA 861.

4. Facts related to the reasonableness of the sentence

Ms. Parks will move this Court to have the presentence report transmitted for review. Doing so will inform this Court of the information presented in the report at the time of sentencing, which was: That Ms. Parks received a probation success probability score of 66 and would have generally been recommended for probation. Although the report did not recommend probation, it did recommend parole eligibility after 64 months had been served.

In addition, as part of the post-conviction investigation, a survey of similar cases was conducted. While these are mostly theft cases from Nevada, related cases from other jurisdictions are also included to ensure

an adequate sample size. 4 AA 689-691. Then, a statistical analysis of those sentences was performed to determine just how great an outlier Parks' sentence was. 4 AA 692-695. Parks' predicted minimum sentence would have been just 48 months in prison, not the 192-month sentence the court imposed. In a survey of other major theft cases, typically a lot more money went missing and a lot less time was imposed. 4AA 689-690.

Facts related to the failure to appeal

The trial court's extreme sentence should have provided notice standing alone that Parks would have wanted to appeal. The trial court did ultimately hold an evidentiary hearing on this issue, at which time the following evidence was presented.

Trial counsel testified first and explained that he "definitely" thought Parks could improve on the stipulated eight-year offer by taking the right-to-argue offer. 6 AA 1031. Counsel acknowledged that the sixteen-year sentence ultimately imposed before parole eligibility was double what Parks could have had under the other offer. 6 AA 1032.

Explaining their reactions to the sentence imposed, counsel stated both he and Ms. Parks were "disappointed." 6 AA 1032. Counsel noted that he talked to Ms. Parks in the courtroom right after sentencing, but stated he did not recall what they talked about. 6 AA 1033. Counsel did recall saying he would visit her soon, and did visit her within a day or two.

At the in-person meeting, counsel said he wanted to make sure Parks understood how long the sentence was and see if she had any questions about it. 6 AA 1035. Parks appeared "shellshocked" over the sentence at the meeting. 6 AA 1035.

Counsel explained that Parks then sent him a letter, and he received it during the thirty-day appeal window. 6 AA 1036 and 1040. According to counsel, the letter asked about a sentence modification, but counsel did not believe "getting a higher sentence than anticipated" was a basis to modify the sentence. Counsel did not believe Parks ever asked him about filing a notice of appeal. 6 AA 1037. Counsel did not believe there were legitimate grounds for an appeal or for post-conviction relief. 6 AA 1038.

Counsel also discussed that he sent a letter back to Parks in which he advised if she had any "gripes" about her sentence that she should file a post-conviction petition. 6 AA 1041-42. Counsel never did file a notice of appeal. 6 AA 1042. Counsel stated that he felt the "better" option was for Parks to file for post-conviction relief, but that if she had specifically requested an appeal he would have filed it. 6 AA 1050.

Ms. Parks also testified, and filled in the details that counsel swore under oath that he could not remember. Parks stated that just after sentencing, she discussed the sentence with counsel and informed her not to panic and that there were appeals and "things we can do." 6 AA 1056. Parks testified she told him to do everything possible and that she wanted to appeal. 6 AA 1056.

Parks explained that she was "shocked" when she heard the sentence but was adamant she informed counsel to do everything possible. 6 AA 1057. Parks agreed that counsel visited her within a day or two of sentencing. Parks explained that counsel said to contact him once she got to prison. 6 AA 1060.

Parks explained that she may have some lay legal knowledge, but had zero knowledge about how criminal appeals work. 6 AA 1060. She stated that counsel discussed with her ways to modify the sentence, and that's where she got the language used in her subsequent letter. 6 AA 1060.

Parks explained that after she wrote the letter to counsel, she expected him to respond by filing an appeal. 6 AA 1062. Counsel wrote her back and took a dismissive tone by telling her to file her own post-conviction petition if she was unhappy. 6 AA 1063.

The court ultimately denied relief on all claims including the deprivation of appeal claim. The court found that while counsel and Parks did discuss how to proceed after sentencing, Parks never directly asked for an appeal to be filed. 6 AA 1080. The court noted that Parks asked for a sentence modification, but that counsel wrote back, invited further inquiry if any, and Parks did not further reply to counsel. 6 AA 1080. On the "totality of the circumstances" the court found counsel complied with the duty to "discuss Petitioner's options" after sentencing. 6 AA 1080.

VI. SUMMARY OF ARGUMENT

In hindsight, there's little question the way guardianships were handled in Clark County during Parks' time as a private guardianwas troubled. Fortunately, many changes have occurred since that time. But dumping the entirety of such a complex problem on Ms. Parks ignores the systemic issues that existed during her tenure,and the lopsided sentence the court imposed stemmed from willful ignorance of publicly available facts.

Trial counsel amplified these mistakes and acted ineffectively three ways. First, trial counsel's belief that a "right to argue" plea deal would result in less than eight years of incarceration was flawed and was such a poor strategy that it was like having no strategy at all. This is particularly true where counsel abandoned the work necessary to have a reasonable probability of a better sentence, such as retaining an expert witness or conducting investigation into the claims being made by the aggrieved parties. Counsel could not reasonably have expected to improve on the stipulated offer without putting in the legwork.

Second, counsel did not put in the legwork. The sentencing memorandum was inadequate and made no effort to push back against the egregious accusations made against Ms. Parks. But publicly available documentation would have allowed counsel to do exactly that. Counsel exacerbated this problem by failing to object or otherwise remedy the admitted lack of a proper victim impact notice.

Counsel also failed to identify and object to what are now known to be incorrect computations of restitution by the State. The State of Nevada has now admitted its restitution computation is mistaken by more than $50,000 – nearly ten percent of the total. Because the State relied so heavily at sentencing on the amount of loss to justify its sentencing position, the State cannot now be heard to complain this error was harmless. Reasonably effective counsel would have objected to the improper restitution computation, and had he done so, there was a reasonable probability of a more favorable outcome.

Finally, despite the lopsided sentence imposed that counsel repeatedly described at the evidentiary hearing as “disappointing,” no

direct appeal was ever filed. Nevada law requires counsel to appeal when a client expresses dissatisfaction witha sentence, even one that arises from a guilty plea. The district court's analysis failed to consider these requirements and erred by denying Parks her constitutional right to a direct appeal.

VII. ARGUMENT

Ineffective assistance claims present mixed questions of law and fact and are subject to independent review. State v. Love, 109 Nev. 1136, 1139, 865 P.2d 322, 323 (1993); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102, 1107 (1996). A claim of ineffectiveness of counsel requires a showing that counsel acting for the defendant, was ineffective, and that the defendant suffered prejudice as a result—defined as a reasonable probability of a more favorable outcome. Strickland v. Washington, 466 U.S. 668 (1984).

These errors deprived Parks of her right to effective assistance of counsel under the United States and Nevada Constitutions.

A. Trial counsel was ineffective under the United States or Nevada Constitution by advising Parks to reject a more favorable plea deal and Parks was subsequently sentenced to a much longer period of incarceration .

The claim presented here relies on the longstanding right of criminal defendants to make an informed decision whether or not to plead guilty, as explained in the Supreme Court's 2012 decisions in Missouri v. Frye, 132 S.Ct. 1399 (2012) and Lafler v. Cooper, 132 S.Ct. 1376 (2012). As stated in Frye, the challenge "is not to the advice pertaining to the plea that was accepted but rather to the course of legal representation that preceded it with respect to other potential pleas and plea offers." Id. at 1406. The Supreme Court held that plea bargaining is a critical stage of proceedings during which a defendant is entitled to effective assistance of counsel because plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." Id. at 1407.

> The ultimate holding of Frye is directly relevant to the case at hand: This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. Any exceptions to that rule need not be explored here, for the offer

> was a formal one with a fixed expiration date. When defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires.

Id. at 1408.

Neither Frye nor Lafler purport to break new ground. That is, the Sixth Amendment has always encompassed that criminal defendants "are entitled to the effective assistance of competent counsel" during plea negotiations. Lafler, 132 S.Ct. at 1384citing McMann v. Richardson, 397 U.S. 759, 771 (1970) Nearly every court which has considered the issue has held that Frye and Lafler did not create a new constitutional right which would be retroactively applicable on collateral review, but merely restated longstanding constitutional requirements concerning effective assistance of counsel. Ortiz v. United States, 2012 U.S. Dist. LEXIS 159847 (E.D.N.Y. Nov. 7, 2012) (collecting cases).

The problem here, which is intertwined with the complaints about counsel's performance at the time of sentencing, is that the right-to-argue plea deal Parks accepted had no hope of leading to a better outcome than the stipulated offer, absent serious effort by trial counsel to prepare for the

sentencing proceeding. Trial counsel failed to so prepare, and thus was ineffective in advising Parks to accept the right-to-argue offer.

Parks was only advised that the State "may argue for more than that [8-20 year] stipulated sentence. 1 AA 178. See also plea canvass at 1 AA 193. The written plea agreement and plea canvas left the impression that it was at least possible the State would not ask for more time than the 8-20 year sentence, or at least would not greatly exceed it. In reality, the State ultimately requested that the court maximize every sentence and run every sentence consecutive, for a sentencing recommendation of 307 months to 768 months of incarceration. The incredible recommendation by the State belies any notion that the State gave any good-faith consideration to arguing for equal or less time than the proposed stipulated sentence.

Effective counsel would have explained to the client that the State was not being straightforward when it suggested the mere possibility of a larger sentencing recommendation. That is, effective counsel would have recognized the State's strong desire to make an example of Ms. Parks, and would have warned Ms. Parks that there was a high likelihood of not just a

higher recommendation than 8-20 years by the State, but a high likelihood the actual sentence imposed would also exceed that amount. Had Ms. Parks been given an accurate assessment of the risks and benefits of proceeding with the "right to argue" sentence, she would have stipulated to the 8-20 year sentence instead.

Another problem is that although trial counsel received authorization to retain the services of a forensic accountant, counsel advised Parks to accept a plea deal without receiving any opinion from that accountant. 4 AA 684-688. Counsel was authorized to engage the services of a forensic accountant. But Parks was never provided any assessment of their findings, and counsel's files do not contain any indication of a final report or even preliminary findings by the expert.

Counsel's failure to adequately consult or retain an expert witness has been found to be ineffective assistance of counsel. Buffalo v. State, 111 Nev. 1139, 901 P.2d 647 (1995); see also Richey v. Bradshaw, 498 F.3d 344, 362 (6th Cir. 2007)(finding that wholesale failure to hire an expert

constituted “most egregious” type of ineffectiveness). In Richey, the court explained:

> Even more importantly, it is inconceivable that a reasonably competent attorney would have failed to know what his expert was doing to test the State’s arson conclusion [internal citation and quotation omitted], would have failed to work with the expert to understand the basics of the science involved, at least for purposes of cross-examining the State’s experts, and would have failed to inquire about why his expert agreed with the State. A lawyer cannot be deemed effective where he hires an expert consultant and then either willfully or negligently keeps himself in the dark about what the expert is doing, and what the basis for the expert’s opinion is.

Id. at 362-63.

Counsel therefore advised Parks to accept a guilty plea without first completing an adequate investigation. Had the investigation been completed, many of the other errors including arithmetical errors detailed below and now admitted and acknowledged by the State would have been discovered and Parks would not have accepted the right to argue plea offer.

Relatedly and as explored in detail below, counsel advised Parks to accept the guilty plea while failing to prepare for and perform at the time

of sentencing. These are not mere disagreements with counsel's strategic decisions, because only "informed" strategy choices are reasonable. Pavel v. Hollins, 261 F.3d 210, 218 (2d Cir. 2001). That is, while any defense decision can likely be labeled by the prosecution as "strategic," is it only "the sort of conscious, reasonably informed decision made by an attorney with an eye to benefiting his client that the federal courts have denominated 'strategic' and been especially reluctant to disturb." Id.

This Court should "disturb" counsel's decision to advise Parks to accept a right-to- argue guilty plea because it was not a strategy decision, but an uninformed and ill -advised decision. Parks faced 270 felony counts, the sheer number of which alone should have informed counsel that "right to argue" meant the State would seek a large or maximum sentence without any express restriction in the guilty plea agreement. Counsel made the situation worse by failing to utilize an approved expert and failing to adequately prepare for sentencing.

There is a reasonable probability of a more favorable outcome had counsel advised Parks that she should accept the stipulated offer. Eight

years in prison before parole eligibility is half what Ms. Parks is now serving and in that sense is more "favorable." But the point is made here as well that Parks would have accepted that offer had counsel not acted ineffectively in advising her as detailed above.

The district court's order denied this claim without an evidentiary hearing and gave the issue short shrift. Without the benefit of an evidentiary hearing, the trial court determined there was "no evidence of constitutionally deficient advice by trial counsel that Parks relied on to her detriment." 6 AA 1080. But there is ample evidence of this in the record which includes evidence set forth above, such as the failure to engage an expert, failure to anticipate the State's sentencing position, and failure to adequately prepare for sentencing.

This Court should reverse the district court's denial of this claim and order that the State re-offer Parks the 8-20 year plea deal for acceptance should she so choose, based on counsel's deficient performance in advising Parks to reject that offer.

B. Trial counsel was ineffective under the Nevada or United States Constitution when trial counsel failed to adequately prepare for or advocate at the time of sentencing, or when improper evidence was relied upon by the judge at sentencing and without objection by counsel.

Sentencing courts are required to give proper consideration to non-frivolous arguments for mitigation. Rita v. United States, 551 U.S. 338 (2007). Failure to properly prepare for sentencing and to present mitigating evidence, can constitute ineffective assistance of counsel, even in noncapital cases. Gonzalez v. Knowles, 515 F.3d 1006, 1015 (9th Cir. 2008); Lafler v. Cooper, 132 S.Ct. 1376, 1386 (2012) ("Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in Strickland prejudice because 'any amount of [additional] jail time has Sixth Amendment significance';" citing Glover v. United States, 531 U.S. 192, 203 (2001)

Further, it is a violation of Due Process to impose a sentence based on "misinformation or misreading of court records." Townsend v. Burke, 334 U.S. 736, 741 (1948); Denson v. State, 112 Nev. 489, 915 P.2d 284 (1996)

(Sentence reversed because it punished defendant "for prior acts which were not supported by any evidence").

Trial counsel performed ineffectively either in preparation for or at the time of sentencing in at least four distinct ways.

Failure to challenge improperly computed restitution

Parks had a constitutional right to sentencing based on accurate information. Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976); United States v. Tucker, 404 U.S. 443, 447 (1972). That right extends to restitution, which must also be accurate. United States v. Watchman, 749 F.2d 616, 618 (10th Cir. 1984). Restitution cannot rest on impalpable or highly suspect evidence. Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133 (1999). A defendant has a right to present evidence which challenges the amount of restitution sought. Id.

Parks challenges the accuracy of the restitution order in several ways. First, as outlined above, the $554,397.71 restitution was erroneous because it included amounts, the sworn testimony shows and State concedes, that were already repaid. The repaid amounts include $8,529.84 to Burns, and

$50,000 to Trumbich. The combined amount of this error is $58,529.84, which would reduce the total loss and restitution award to $495,867.87.

While that particular error is conceded, it was far from the only error. As a matter of both due process and State law, the trialcourt could only award restitution in a specific amount to identified victims. Under NRS 176.033, a sentencing court is only authorized to set restitution "for each victim of the offense." Restitution cannot be set in "uncertain terms." Botts v. State, 109 Nev. 567, 854 P.2d 856 (1993)Restitution must be payable, in a specific amount, to a victim of a crime, which can encompass a specific individual or entity. Igbinovia v. State, 111 Nev. 699, 895 P.2d 1304 (1995).

And to comply with the Due Process Clause, restitution awards must be only for the victim or victims of the offense charged, and the amount "must be just and supported by a factual basis within the record." Burt v. State, 445 S.W. 3d 752, 758 (Tex. Crim. App. 2014).

Reasonably effective counsel would have objected to an award of restitution in violation of these requirements, as well as to consideration of the amount of loss as a basis for the court's sentence.

The award of restitution to named victims in the amended judgment of conviction only adds up to $412,943.02. It's no great mystery where the rest of the award comes from: At the plea canvass, the State documented various "scams" it claimed it could prove at trial, such as the "court paperwork scam," "mortuary and toilet paper scam," "holiday gift scam," "bank deposit scam," and "SSA scam." 1 AA 198200. But these alleged schemes were never attributed to a specific victim and instead, whether through inadvertence or shoddy investigation, were simply all lumped together.

The judgment of conviction therefore purports to award restitution for these five scams, but there is no record of who those funds would be payable to. Restitution cannot exist in a vacuum, it must be specifically awarded to a victim for an identifiable loss. NRS 176.033. Reasonably effective counsel would have explained this to the court, and there is a reasonable probability of a more favorable outcome had this been done. In particular, the unadjusted loss/restitution amount could have been reduced to $412,943.02, which then should further have been reduced by the

$58,529.84 Parks already returned, leaving an actual restitution award of no greater than $354,413.18.

The loss amount and restitution amount relied on by the sentencing court are incorrect. While it is likely the parties would debate the degree of incorrectness, the amount is somewhere between $58,529.84 that is agreed upon, or could be as great as almost half of the total.

The State tried to suggest below that these errors made no difference to the sentence imposed, but a legion of caselaw rejects that position in other matters. In federal court, there is no debate: errors about computation of restitution must result in an all-new sentencing proceeding. United States v. Washington, 172 F.3d 1116 (9th Cir. 1999)(On remand, unless expressly specified otherwise, sentence must be recomputed as part of a "new sentencing 'package'").

In other words, the sentencing process must begin "afresh." United States v. Hanson, 936 F.3d 876, 887 (9th Cir. 2019). This is so because "A defendant's substantial rights are affected when he may have been

required to pay more in restitution than he owes." United States v. Burns, 843 F.3d 679, 689 (7th Cir. 2016).

This Court has had limited opportunities to address this issue, but has in prior cases remanded restitution errors for resentencing. Buffington v. State, 110 Nev. 124, 127, 868 P.2d 643 (1994); Botts v. State, 109 Nev. 567, 854 P.2d 856 (1993).

Here, the restitution amount errors created a situation in which there was a reasonable probability of a more favorable outcome without the errors. The sentence cannot be divorced from the loss amount, because the State relied heavily on the amount of loss to justify its maximum sentencing recommendation. 2 AA 279 (citing "vast amount of exploitation that happened here"), discussion of losses to individual victims, 2 AA 272-274, see also 2 AA 227-229 (citing loss amount being "159 times the threshold" for Category B theft as a basis for sentence).

Counsel failed to challenge the restitution amount, several grounds existed to do so, and Ms. Parks was the one who paid the price for counsel's errors.

Failure to challenge State's improper arguments

Besides failing to challenge the restitution computation, defense counsel also declined to object to several improper sentencing arguments by the State.

First, defense counsel failed to respond to the State's argument at sentencing that Petitioner "expresses no remorse" because she "only" pleaded guilty by the Alford decision. The State advanced this improper theme several times. First, in its sentencing memorandum, the State argued:

> It is worth noting that Parks still has shown no remorse for any of her actions, and continues to portray herself as the victim in this case. Even after reviewing the mountain of evidence as noted above, Defendant's plea was only made pursuant to the *North Carolina v. Alford* 400 U.S. 25 (1970) decision. While Parks has acknowledged that the State could prove charges against her, she has refused thus far to admit her criminal culpability. Again, the fact that Parks has shown no remorse for her actions, after ruining the lives of countless victims and causing immeasurable strife in society, cries out for a severe punishment.

2 AA 228.

During sentencing, the State repeated these arguments: "Ms. Parks still has shown no remorse for her actions. Her plea in this case was pursuant to the Alford decisions. And she has refused still to admit criminal culpability." 2 AA 277, see also 2 AA 287 (linking co-defendant's Alford plea to failure to admit guilt).

The State's argument was improper under state law, yet defense counsel completely failed to object or respond to the same. It is well established in Nevada that the exercise of a criminal defendant's Constitutional rights cannot be held against them at the time of sentencing. Brown v. State, 113 Nev. 275, 291, 934 P.2d 235 (1997) (New sentencing hearing ordered where trial court considered exercise of Constitutional right to jury trial commensurate with "lack of remorse"); see also Brake v. State, 113 Nev. 579, 939 P.2d 1029 (1997).

Petitioner exercised her right to accept a plea bargain put forth by the State under the Supreme Court's decision in Alford. The exercise of that right was not equivalent to a lack of remorse and the State's argument to that effect was improper. The same went uncorrected and unchallenged by

defense counsel, and there is a reasonable probability of a more favorable sentence had counsel so objected. Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978) (Punishing defendant for exercising a right under the law is "a due process violation of the most basic sort").

Second, the State argued in its sentencing memorandum that several specific individuals never "actually needed guardianship services." 2 AA 220. Those individuals and the evidence supporting their need for guardianship are discussed above. Specific individuals discussed by the State were all independently evaluated by licensed Nevada medical professions, who concluded the proposed wards required a guardianship. See 2 AA400, 410 and 3 AA 418.

Further, as those documents show, Ms. Parks did not simply use the same physician over and over. Rather, with extremely rare exception, each ward was evaluated by a different physician. The independent medical judgment of these many providers supported the initial requests for guardianship, and there is no evidence this series of doctors would risk

their licenses to support Ms. Parks by making false claims in support of guardianship requests.

Third, trial counsel should have objected to the State's arguments about the amount of charges or the legislative history behind the elder exploitation statutes. There are two subcomponents to this issue. The first problem is that the State placed heavy emphasis on the original number of charges Ms. Parks faced, "over 200 felony charges in the original indictment." 2 AA 228. The State then argued that the reduction in charges in the plea agreement to six counts was all the benefit Ms. Parks was due. 2 AA 228.

This self-created argument ignores that the State exclusively enjoyed the privilege of deciding how to charge the case, and the State should not be allowed to reward itself for overcharging the case. As Justice Brennan once explained:

> Given the tendency of modern criminal legislation to divide the phases of a criminal transaction into numerous separate crimes, the opportunities for multiple prosecutions for an essentially unitary criminal episode are frightening. And given our tradition of virtually unreviewable prosecutorial discretion concerning the initiation and

> scope of a criminal prosecution, the potentialities for abuse . . . are simply intolerable. (Footnotes omitted.)

Ashe v. Swenson, 397 U.S. 436, 451-52 (1970) (Brennan, J., concurring).

Other courts have dealt with the issue much more bluntly. State v. Korum, 157 Wn.2d 614, 666 at n. 19, 141 P.3d 13 (Wash. 2006) ("The prosecutor should not overcharge to obtain a guilty plea."); State v. MacLeod, 141 N.H. 427, 434, 685 A.2d 473 (1996) ("Finally, our trial courts have both the authority and the obligation to curb the prosecution's broad discretion if 'overcharging' poses dangers of confusion, harassment, or other unfair prejudice"). The number of felonies charged simply bears no relation to how the court would or should determine Ms. Parks' sentence.

Fourth, with no evidentiary support at all the State proclaimed that "The fact that the Felony Theft statute allowed for punishment of up to four (4) to ten (10) years in prison, and that Exploitation allows for punishment of up to eight (8) to twenty (20) years in prison, per offense, is proof that the legislature intended for there to be a harsher punishment for serious thefts and exploitation. 2 AA 226.

As explored in the factual section above, the legislative history behind NRS 200.5099 provides no such historical basis for a harsher punishment as requested by the State. At best, the history suggests serious cases as discussed by the legislature are those involving violence. 3 AA 442. The State's own sentencing brief confirmed that even in the State's view, this was a case about maximizing profits, not the physical use of force. 2AA 207.

There is a reasonable probability of a more favorable outcome had counsel objected to these improper arguments.

Failure to challenge lack of notice concerning victim speakers

The sentencing transcript reveals that no proper notice of victim speakers was ever provided to defense counsel. 2 AA 315. As noted above, while a general objection was lodged by counsel, no specific objection was made to any individual speaker, and perhaps based on the lack of notice of who would speak and what they would say, counsel performed zero preparation and made zero response to the speakers' statements.

There's no question counsel had a right to notice of who the victim speakers would be and what they would say. NRS 176.015(4); Buschauer v. State, 106 Nev. 890, 804 P.2d 1046 (1990). By failing to insist on advance notice, trial counsel was ineffective. Alternatively, counsel could have at least asked the trial court for a chance to respond to the victim speakers once the substance of their testimony was disclosed through presentation to the court. In total, allowing the victims to testify by surprise, with no response from counsel, was objectively unreasonable.

As a result, the court heard substantial testimony from multiple victim speakers which went far beyond what would have been authorized under the statute, with no meaningful rebuttal by trial counsel. The "Hitler," "Nazi" and other refences could easily have been prevented or responded to.

The court also heard the nine specific victim accounts detailed in the statement of facts. The problem is, much of the information provided by those speakers was objectively untrue. And it was not even that much work to demonstrate that fact – all counsel had to do was dive into the many

publicly filed guardianship cases to see that many speakers were themselves accused of abusing the wards. Contrary to several arguments, the need for a public guardian did not come from thin air, but from a need for someone to step in due to the fact those closest to the ward had a documented history of abuse.

This type of crucial information was no doubt mitigating, yet defense counsel failed to discover or present it. This error also caused deficient performance, without which there would have been a reasonable probability of a more favorable outcome.

Failure to challenge the reasonableness of the sentence

While the recommendation of the Department of Parole and Probation is not binding on the sentencing court, see Lloyd v. State, 94 Nev. 167, 170 (1978)(citing Collins v. State, 88 Nev. 168 (1972)), the recommendation is based on "the normal punishment given in other jurisdictions for similar offenses." Id. (citing NRS 176.145). And the presentence report, like all information presented at sentencing, cannot

contain impalpable or highly suspect material. Blankenship v. State, 132 Nev. 500, 375 P.3d 407 (2016).

As a result, if a sentencing judge were to sentence well beyond the recommendation of Parole and Probation, then the judge is sentencing well beyond what the normal punishment is for the same or similar crimes in other jurisdictions. Moreover, by disregarding a presentence report that contains accurate information in favor of other, inaccurate information, the ultimate sentence would rely on impalpable information in violation of Nevada law.

As discussed above, the trial court proclaimed it had "no idea" how Parole and Probation decided Parks was recommended for a 64-month sentence before parole eligibility. 2 AA 386. The court then imposed a minimum term of incarceration of 192 months, nearly three times what the PSI had recommended.

In addition, the 16 to 40-year sentence imposed by the trial court was unreasonable and constituted cruel and unusual punishment. Effective trial counsel would have challenged the sentence imposed by way of a motion

for reconsideration, a new trial, or by filing a direct appeal. A sentence of at least 16 years in prison shocks the conscience, because it is unreasonable and disproportionate to any other sentence imposed in Nevada for theft. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246 (2004), overruled on other grounds by Knipes v. State, 124 Nev. 927, 192 P.3d 1178 (2008); see also Solem v. Helm, 463 U.S. 277 (1983).

A necessary component of this analysis is comparison of the offense to the same or similar crimes either within or outside the jurisdiction where the offense occurred. In re Lynch, 8 Cal.3d 410, 427, 503 P.2d 921 (1972). Courts must sentence defendants individually and consider the defendant's circumstances as well as the facts of the crime. Martinez v. State, 114 Nev. 735, 961 P.2d 143 (1998).

Effective counsel could have alerted the court that sentences imposed for similar crimes were far less severe than either the incarceration time sought by the State, or the actual sentence imposed.

As part of the post- conviction investigation, a survey of similar cases was conducted. While these are mainly theft cases from Nevada, related

cases from other jurisdictions are also included to ensure an adequate sample size. 4 AA 689-691. Doesn't take any particular mathematical skill to see that individuals who stole a lot more money than Ms. Parks received much shorter sentences. Several stole millions and received probation. The only person who received a longer minimum sentence stole some $11 million. 4 AA 689. Ms. Parks' sentence was extremely out-of-line with every other major Nevada theft case.

By the State's own words, this was "largely a billing fraud case." 1 AA 195. The sentences imposed was exceptional, and there is a reasonable probability it was based on the extensive improper and incorrect evidence submitted by the State and speakers at the time of sentencing.

The District Court's handling of this claim was deficient

In denying relief on Ground Two, the lower court found that it was not open to consideration of Parks' evidence. ("And having been the sentencing judge who sentenced her, I'm here to say had I known all of that stuff the result would not have been different in the sentence that she received"). 6 AA 1022.

This proclamation does not prove that Parks' claims lack merit, but demonstrates that the trial court had closed its mind to consideration of evidence, some of which is undisputed by the State. It violates Due Process to impose a sentence based on "misinformation or misreading of court records." Townsend v. Burke, 334 U.S. 736, 741 (1948).

The sentencing court's comments reveal that the court had a "closed mind" towards Petitioner's mitigating evidence. Cameron v. State, 968 P.2d 1169, 114 Nev. 1281 (1998); see also Earl v. State, 111 Nev. 1304, 1311, 904 P.2d 1029 (1995). The sentencing court's position is that nothing would change its mind about the sentence imposed, not the fact many errors occurred or even the fact several of those errors are uncontested by the State.

Because the trial court improperly denied relief on Parks' claims, and closed its mind to the substantial additional evidence trial counsel failed to present, relief should be granted and the case remanded for resentencing before a different judge who is unfamiliar with the record of this case. See Brake, 113 Nev. at 585 (sentencing before a different judge required where

consideration of improperly admitted evidence prompted harshest possible sentence).

C. Parks's state or federal constitutional rights were violated when the trial court refused to grant relief on a claim that Parks was deprived of her direct appeal .

In Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994), this Court noted that "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction." Lozada at 354. If counsel fails to file an appeal after a convicted defendant makes a timely request, the defendant (at least previously) was entitled to the Lozada remedy, which consisted of filing a post-conviction petition with assistance of counsel in which the actual appellate claims could be raised. Id. Such a claim did not require any showing of merit as to the issues sought to be raised. Rather, it is enough to receive the relief contemplated by Lozada if a petitioner shows that he was deprived of his right to a direct appeal without his consent. Id. at 357.

The remedy contemplated by Lozada has been largely subsumed by recent revisions to the Nevada Rules of Appellate Procedure, although the

basis for obtaining relief remains generally the same. Now, under NRAP 4(c), an untimely notice of appeal may be filed if:

> (A) A post-conviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and
>
> (B) The district court in which the petition is considered enters a written order containing:
>
> (i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;
>
> (ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and
>
> (iii) directions to the district court clerk to prepare and file —within 5 days of the entry of the district court's order—a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

NRAP 4(c).

The question to be decided is whether Parks was in fact deprived of a direct appeal, and as to that issue, pre-existing Lozada-based decisions remain binding. This Court more recently discussed the contours of appeal deprivation claims that arise in the context of a guilty plea. Toston v. State,

127 Nev. 971, 267 P.3d 795 (2011). As explained, such claims are reviewed under the ineffectiveness standards in Strickland v. Washington, 466 U.S. 668 (1984). In particular, deficient performance can take the form of a failure to inform and consult the client about the right to appeal, or, failure to in fact file an appeal. Toston, 267 P.3d at 799.

As acknowledged in Toston, an attorney's duty to in fact file a direct appeal arises, irrespective of whether the conviction arose from a guilty plea or verdict following a trial, when the defendant actually informs counsel that he would like to appeal. Id. at 800, citing Lozada, 871 P.2d at 949 ("Assuming Lozada's trial counsel failed to perfect an appeal without Lozada's consent, Lozada presumably suffered prejudice because he was deprived of his right to appeal."); and citing Davis v. State, 115 Nev. 17, 974 P.2d 658, 660 (1999) ("[I]f the client does express a desire to appeal, counsel is obligated to file the notice of appeal on the client's behalf").

But there is a second way Toston requires the filing of a direct appeal and that is when the "client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing

on the information that counsel knew or should have known at the time." Id. at 979.

This Court then explained that when a client pleads guilty, relevant considerations include whether the defendant "received the sentence he bargained for," whether "certain issues were reserved for appeal," whether the defendant conveyed a "desire to challenge his sentence within the period for filing an appeal ," or whether the defendant moved to withdraw the plea. Id. at 979-980 (emphasis added). See also Roe v Flores-Ortega, 528 U.S. 470, 480 (2000) (citing example that stipulated sentence, followed at sentencing, probably shows a lack of desire to appeal).

Here, Parks expressed both a desire to appeal and dissatisfaction with her sentence. As for an explicit desire to appeal, the evidence shows counsel could not remember what was discussed right after sentencing, but Ms. Parks testified under oath she specifically requested an appeal and that counsel do "everything" possible to challenge the sentence. 6 AA 1056.

After the evidentiary hearing, the court found that Ms. Parks only "assumed" she asked her attorney to appeal. 6AA 1080. That's not what

the record shows. Ms. Parks was clear that she and defense counsel discussed an appeal just after sentencing. 6 AA 1056. The "assumed" use of the word appeal was during the later visit at the jail. 6 AA 1060. The order disposing of the post-conviction petition neglects to discuss the fact Ms. Parks requested an appeal at the time of sentencing.

But Ms. Parks is entitled to relief under Toston's second prong because her own attorney repeatedly testified to her dissatisfaction with the sentence. And why wouldn't she be? She had rejected an eight-to-twenty-year deal on counsel's advice that a better result could be had under a right to argue deal. The imposed sentence was in fact almost as harsh as possible. A reasonable defendant in Ms. Parks' position would have zero incentive or reason to abandon the remedy of a direct appeal.

The record stands clear that during the time when an appeal could be filed, Ms. Parks confirmed to counsel in writing a desire to challenge her sentence. 2 AA 264. After the evidentiary hearing, the district court fixated on the fact that in her letter, Ms. Parks never mentioned the word appeal. 6 AA 1080. But Toston imposes no such requirement on her; the expression

of a desire to challenge the sentence in any way is enough to trigger the duty to file a notice of appeal. Toston, 267 P.3d at 801.

In Roe, the Supreme Court unambiguously held that where a criminal defendant is deprived of the right to a direct appeal, that defendant is "entitled to a new appeal without any further showing." Roe, 528 U.S. at 485, citing Rodriguez v. United States, 395 U.S. 327 (1969)These same requirements are repeated in this Court's decision in Toston. See Toston, 267 P.3d at 800.

As a result, counsel's belief that there were no grounds for an appeal is as irrelevant as it is mistaken. 6AA 1038. It isn't Parks' fault that her lawyer failed to identify issues for appeal and thereby precluded himself from filing a notice of appeal. This brief touches on multiple issues that could have been (and still are) appropriate for review on direct review, such as the unreasonableness of the overall sentence, the fact the sentence was imposed based on improper arguments by the State and incorrect factual information, the fact restitution was improperly computed, the fact

speakers testified when no proper notice was provided, and a host of other issues.

At a minimum, there were strong arguments Parks could have asserted in a direct appeal that may well have led to a new sentencing proceeding. A new sentencing proceeding would qualify as a form of relief, so counsel's testimony that no appealable issues existed should be disregarded in its entirety.

In denying relief, the district court concluded that counsel did not fail to file a direct appeal on Parks' behalf. 6 AA 1080. The district court's decision was incorrect, because this Court's mandate in Toston governs the situation when, as here, a defendant has nothing to lose and something to gain by appealing, expresses dissatisfaction with the sentence, and requests relief from the sentence during the time when a notice of appeal could be filed. Relief should be granted and Parks should receive a belated direct appeal.

VIII. CONCLUSION

For all these reasons, Parks requests this Honorable Court grant her petition and order the State to re-offer the 8-20-year plea agreement, order a new sentencing proceeding before a judge unfamiliar with the record of this case, or order that Parks receive her right to an untimely direct appeal under the Rules of Appellate Procedure.

DATED this 7th day of September, 2021.

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____
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Attorney for Appellant

RULE 28.2 ATTORNEY CERTIFICATE

1. 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, including 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 upon is 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.

2. I further 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 2016 in 14-point font of the Ebrima style.

3. I further certify 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 proportionally spaced, has a typeface of 14 points or more, and contains 11,477 words.

DATED this 7th day of September, 2021.

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____
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Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 7, 2021. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

APRIL PARKS, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 82876 District Court No. 8th JD A-19-807564-W (Clark County)

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1. Respondent, the State of Nevada, is exempt from filing a disclosure pursuant to Rule 26.1.

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RESPONDENT'S ANSWERING BRIEF

STATEMENT OF JURISDICTION

Appellant April Parks (Parks) appeals from the district court's denial of her state habeas corpus petition. The clerk entered the trial court's order denying the petition on April 15, 2021. 6 AA 1076.[1] Parks filed her notice of appeal on May 4, 2021. 6 AA 1083; see also NRAP 4(b)(1)(A), NRS 34.575(1).

ROUTING STATEMENT

Procedural rules presumptively assign this matter to the Nevada Court of Appeals, because Parks appeals the denial of her state habeas corpus petition challenging a judgment of conviction and sentence for offenses that are not category A felonies. NRAP 17(b)(3).

[1] Respondent refers to items in Appellant's Appendix by volume and page number, e.g., (_AA ___), and in Respondent's Appendix by page number (RA__).

ISSUE PRESENTED FOR REVIEW

Issue One: Trial counsel was not ineffective during Parks' entry of plea.

Issue Two: Trial counsel was not ineffective during sentencing.

Issue Three: Trial counsel was not ineffective for failing to file a notice of appeal.

STATEMENT OF THE FACTS AND HISTORY OF THE CASE

I. PARKS AND HER CODEFENDANTS PUT PROFITS OVER HER FIDUCIARY DUTY TO HER WARDS

April Parks owned A Private Professional Guardian, LLC. Although the company conducted legitimate guardianship activities, Parks and her co-defendants, Mark Simmons and Gary Neal Taylor, engaged in a pattern of conduct that exploited her elderly and/or vulnerable wards, by inflating billings and violating their fiduciary duty to conserve the estates of their wards.

Examples of some of the billings (taken from the State's Sentencing Memorandum, 2 AA 206) included: (1) billing multiple wards for a visit to a single facility housing multiple wards and billing all wards for the time, instead of prorating the visit among all wards; (2) billing a ward $90, for the purpose of passing along a Mother's Day message; (3) billing a ward $75 for depositing a $6.33 check; (4) billing a ward $150 for a visit consisting of "30 minutes of visiting with the ward who 'was not looking well'"—a visit that took place the day after the ward died; and (5) billing multiple wards for filing documents in person at the Family Court

(including while standing in line), while the company had a Wiznet E-filing account. 2 AA 207-08, 210-11.

Parks also diverted life insurance proceeds, gained guardianship over wards who had trustees, removed assets from trusts, and disregarded legitimate requests from wards to conserve assets by utilizing less costly alternatives. Id. at 213-21.

II. DISTRICT COURT PROCEEDINGS

As a result of her abandonment of her fiduciary and legal duties to her wards, in March of 2017, a Clark County grand jury indicted Parks and three co-defendants for 270 counts, including racketeering, exploitation of an older person, theft, offering a false instrument for filing or record, and perjury.[2] Parks retained Anthony Goldstein (Goldstein), an experienced criminal defense attorney, to represent her during these proceedings.

Pursuant to a guilty plea agreement filed in November 2018, Parks entered an Alford[3] plea to 2 counts of exploitation of an older/vulnerable person, 2 counts of theft, and 1 count of perjury in case C-17-321808-1 (this case), as well as an additional charge in another case (C-18-329886). 1 AA 176. In the plea agreement, Parks waived her right to an appeal and made no express reservation of issues to raise on appeal. Id. at 180.

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[2] Not all counts in the indictment applied to all of Parks' co-defendants.

[3] North Carolina v. Alford, 400 U.S. 25 (1970).

The agreement also called for the court to run the sentences in the two cases concurrent. Id. at 177. However, at the time she entered her plea, Parks specifically rejected a stipulated sentence of 8-20 years, permitting the parties to argue for any lawful sentence. 1 AA 177. By rejecting the stipulated sentence, Parks faced sentences of 2-20 years for Counts 1 and 2, 1-20 years for Counts 3 and 4, and a sentence of 1-4 years for Count 5, which could run concurrent or consecutive. 1 AA 178-79. Parks also obtained the possibility of a suspended sentence and probation. 1 AA 179.

The trial court specifically questions Parks about her rejection of the stipulated sentence. 1 AA 193. The court also confirmed that Parks understood that she waived her right to an appeal. 1 AA 195. The court found Parks plea to be knowing, intelligent, and voluntary. 1 AA 203. The district court sentenced Parks on a separate date in order to accommodate the victims who wished to address the court. 1 AA 204.

The parties submitted sentencing memorandums to the court. 2 AA 206 (State's memorandum); 2 AA 230 (Parks' memorandum). In Parks' sentencing memorandum, Goldstein focused on the fact that: (1) no charges were brought against Parks alleged physical abuse or neglect; (2) Parks was not involved in the billing; and, (3) that in one instance, Parks sought to correct neglect or abuse of one of her wards. Id.

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The parties appeared for sentencing. 2 AA 266. Parks personally addressed the court, stating that on the part of her and her company that "there was care and concern" and "these clients were well taken care of." 2 AA 293-94.

After the parties and victim speakers addressed the court, the court ordered restitution of $559, 205.32, to be paid jointly and severally with the co-defendants. Id. At 383. The court expressed shock at the actions of all the co-defendants. Id. At 383 (co-defendant Taylor); 384 (co-defendant Simmons). When addressing Parks, the court stated:

> Ms. Parks, I have to say there is no one in this room who is more culpable than you. And the things that I have heard today that you did to these people is just absolutely shocking that one can continue to go about their life and engage in these activities and watch these people suffer. And you said when you spoke that you never intended to bring any harm to anyone. I cannot fathom how you think that the actions that occurred at the hands of you did not intend to bring any harm to anyone.

Id. at 386.

The court also rejected the recommendation in the presentence investigation report. Id. The court imposed an aggregated sentence of a minimum term of 16 to 40 years in this case, to run concurrent to the 6 to 15-year sentence imposed in C-18-329886. Id. at 387-88.

Parks and Goldstein met via a video visit a couple days after the sentencing hearing to discuss Parks' options. See, 6 AA 1034, 1036. Goldstein recalled

discussing Parks' options to challenge the length of her sentence (including a motion for modification and through habeas corpus proceedings). 6 AA 1037-38. Parks mailed a letter to Goldstein after the meeting, and Goldstein sent a response reminding Parks about the discussions that took place during the meeting. 4 AA 682, 683.

Parks did not appeal.

Less than a month after sentencing, the court conducted a hearing in the presence of counsel and adjusted the amount of restitution because the original judgment listed a victim twice. RA 22.

III. PARKS' STATE HABEAS CORPUS PROCEEDINGS

Parks filed a state habeas corpus petition in December of 2019. 1 AA 124. Parks also filed a supplemental petition in 2021. 1 AA 137. Parks presented three claims:

- Ground One: Trial counsel was ineffective for advising Parks to reject the stipulated sentence.
- Ground Two: Parks' trial counsel was ineffective at sentencing.
- Ground Three: Parks' counsel was ineffective for failing to file a notice of appeal.

1 AA 141, 145, 169.

Respondents filed an answer to Parks' petition, and Parks filed a reply. 4 AA 696 and 5 AA 837 (answers); 6 AA 1004 (reply).

On February 22. 2021, the parties presented argument on the petition. 6 AA 1011. After hearing argument, the court found that Parks failed to demonstrate counsel was ineffective with respect to Grounds One and Two. *Id.* at 1022-23. Addressing Parks' first claim, the trial court found that the plea canvass inquired about Parks' rejection of the stipulated sentence, which the plea agreement expressly rejected. *Id.* at 1022. Rejecting Parks' ineffective assistance claim at sentencing, the district court found that Parks failed to demonstrate that counsel performed deficiently at sentencing, and that Parks failed to also establish prejudice. *Id.* The court ordered an evidentiary hearing on Ground Three, Parks' allegations of deprivation of an appeal. *Id.* at 1023.

On March 18, 2021, the court conducted an evidentiary hearing on Ground Three. 6 AA 1024. After hearing testimony from Mr. Goldstein and Parks, the court took the matter under advisement. *Id.* at 1074.

The clerk filed the order denying the petition and entered the order three days later on April 15, 2021. 6 AA 1076. Parks filed a notice of appeal. *Id.* at 1083.

SUMMARY OF THE ARGUMENT

A defendant's guilty plea must be knowing, intelligent, and voluntary. A defendant has a right to the assistance of competent counsel. Parks' state habeas petition raised three grounds for relief, all of which Parks raises in her brief.

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In Ground One, Parks alleged that Goldstein performed deficiently by advising Parks to reject a more favorable plea deal (a stipulated sentence).

Effective counsel at the plea stage provide their client the tools they need to make an informed choice between alternative courses of action. Giving a client erroneous advice on a point of law at the plea stage may meet the standard for deficient performance. However, incorrectly predicting the outcome of a sentencing hearing does not rise to the level of deficient performance.

In her petition, Parks failed to point out what Goldstein specifically said that constituted "constitutionally deficient" advice. Furthermore, the record reflects that Parks and Goldstein discussed the plea offer provided by the prosecution and that Parks' decision to reject the stipulated sentence constituted her choice among the available options after being fully informed of all alternatives.

The district court correctly rejected this claim because Parks failed to satisfy her burden of showing Goldstein was deficient and that Parks suffered prejudice because of this alleged deficiency.

In her opening brief, Parks adds a new argument to Ground One. She links Goldstein's allegedly deficient advice to new allegations that Goldstein failed to prepare for sentencing. This Court should decline to consider this new "cumulative error" claim because Parks failed to present good cause for failing to raise the claim below.

In Ground Two, Parks alleged that Goldstein was ineffective during sentencing. The claim alleges that Goldstein failed to object to a lack of notice regarding victim impact witnesses. But the record refutes Parks' allegations. Therefore, Parks cannot demonstrate deficient conduct.

In Ground Two, Parks also alleges that Goldstein failed to object to purportedly improper argument by the prosecution and improper comments by victim impact speakers. However, the district court found the sentence imposed by the court reflected the seriousness of the offenses, rather than any purportedly improper argument or comments presented at the sentencing hearing.

In Ground Two, Parks further alleges that Goldstein failed to object to an improper restitution amount. However, the record reflects that the district court adjusted the amount of restitution at a post-sentencing hearing. Also, to the extent that Parks alleges the restitution amount was improperly calculated, there is nothing in the record demonstrating that Parks informed Goldstein of a further need to adjust the amount of restitution owed.

In Ground Two, Parks finally alleges that Goldstein failed to object to a sentence that amounts to cruel and unusual punishment, supplying data that suggests the sentence is disproportionate. However, that supplemental data fails to take into account the fact that the district court pronounced its sentence based on the seriousness of Parks offenses. Likewise, Parks data comparing her sentence to other

sentences (in Nevada and other jurisdictions) fails to take into account the number of Parks' victims or the age and vulnerability of Parks' victims. The sentence imposed in Parks' case is within the statutory range for her offenses. The minimum sentence imposed (16 years) is below the upper third of what the court could have imposed (25 and one-half years). The maximum term imposed (40 years) is also below two-thirds of the possible maximum sentence (64 years) for the offenses. The sentence imposed reflects the trial court's findings that the sentence imposed reflects the seriousness of the crimes and Parks' culpability compared to her co-defendants.

In Parks' final claim (Ground Three), she challenges allegedly that Goldstein's failure to file a notice of appeal. However, after hearing the testimony of both Parks and Goldstein, the district court concluded that Goldstein was not ineffective after finding that Goldstein met with Parks to discuss her options and Parks never expressly requested an appeal.

This Court should affirm.

ARGUMENT

I. THE RELEVANT LAW

A. The Standard of Review

Review of the denial of a habeas corpus petition presents a mixed question of law and fact. See, Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). This Court gives deference to a district court's factual findings "so long as they are

supported by substantial evidence and are not clearly wrong." Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), see also, Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). The Court reviews the district court's application of the law de novo. See, Gonzales v. State, 137 Nev. Adv. Op. 40, 492 P.3d 556, 562 (Nev. 2021).[4]

B. Ineffective Assistance of Counsel In General

In order to establish a claim of ineffective assistance of counsel, a petitioner must demonstrate: (1) that counsel's conduct fell below an objective standard of reasonableness; and (2) actual prejudice. Strickland v. Washington, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); Warden v. Lyons, 100 Nev. 430, 432–33, 683 P.2d 504, 505 (1984) (adopting the standard in Strickland). A reviewing court "may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland, 466 U.S. at 697).

C. Evaluating Counsel's Effectiveness During a Plea

The entry of a guilty plea by a defendant must be knowing, intelligent, and voluntary. Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004).

The United States Supreme Court found that the two-part test in Strickland applies to counsel's performance during plea bargaining. Hill v. Lockhart, 474 U.S.

[4] 137 Nev. Adv. Op. 40.

52, 58 (1985). “The first part of the inquiry is whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.” Turner v. Calderon, 281 F.3d 851, 879 (9th Cir. 2002) (citing Lockhart, 474 U.S. at 56 (internal quotation marks omitted). A petitioner demonstrates prejudice by showing that “counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Lockhart, 474 U.S. at 59.

In 2012, the Court issued two opinions applying Strickland during the plea process. Lafler v. Cooper, 566 U.S. 156 (2012); Missouri v. Frye, 566 U.S. 134 (2012). In Frye, the Court found that defense counsel has a duty to communicate formal plea offers and that allowing a plea offer to expire without communicating the offer to the client constitutes deficient performance. 566 U.S. at 145. In Lafler, the Petitioner (Michigan) conceded ineffective assistance where counsel provided objectively deficient advice (as opposed to merely incorrect advice) when advising his client to reject the State’s plea offer. 566 U.S. at 166. But for the deficient advice, the petitioner would have accepted the plea offer and received a lighter sentence. 566 U.S. at 160-61.

The ultimate decision to accept or reject a plea offer belongs to the defendant. See, Wainwright v. Sykes, 433 U.S. 72, 93 n.1 (1977) (Burger, C.J., concurring).

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D. Evidentiary Hearings

To obtain an evidentiary hearing, a defendant must present specific factual allegations that, if proven to be true, would entitle him to the relief he seeks. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "In instances where a defendant's claim is neither belied by the record, nor procedurally or doctrinally barred, the district court should conduct an evidentiary hearing." Little v. Warden, 117 Nev. 845, 854, 34 P.3d 540, 546 (2001). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

E. Appeal Deprivation Claims

In order to demonstrate deficient performance for failing to file a timely notice of appeal, this Court found there are two separate, but related, components: counsel's duty to inform and consult with the client regarding the right to appeal and counsel's duty to file an appeal. Toston v. State, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011).

Counsel does not have a constitutional duty to always inform his client of the right to an appeal when the conviction results from a guilty plea. Id. (citing Thomas v. State, 115 Nev. 158, 150, 979 P.2d 222, 223 (1999)). In the guilty plea context, the attorney's duty arises when "the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the

right to a direct appeal." Id.

Under Toston, there exist two circumstances when counsel possesses a duty to file an appeal: (1) when the client requests an appeal; and (2) "when the defendant expresses dissatisfaction with his conviction." Toston, 127 Nev. at 978, 267 P.3d at 800, citing Lozada v. State, 110 Nev. 349, 354-57, 871 P.2d 944, 947-49 (1994). Failure to file an appeal in these cases constitutes deficient performance under a Strickland analysis. Id. In contrast, there is no duty to file an appeal if counsel consults with the defendant and no appeal is requested.

Addressing the same issue, the United States Supreme Court found that whether counsel's failure to file a notice of appeal constituted deficient behavior is best by first asking whether counsel "consulted with the defendant about an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000). "Consulting" means discussing "the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant's wishes." Id. The Court found counsel who consulted with his client about an appeal performs deficiently by "failing to follow the defendant's express instructions with respect to an appeal." Id.

II. PARKS' COUNSEL PERFORMED EFFECTIVELY DURING THE PLEA PROCESS

A. Parks' Claim

1.) Parks' petition in the district court

In Ground One, Parks presented a claim that Goldstein "advised Petitioner to

reject a more favorable plea deal and Petitioner was subsequently sentenced to a much longer period of incarceration." 1 AA 141.

In the argument supporting the claim, Parks alleged "The decision to reject the stipulated eight to twenty year sentence was the product of ineffective assistance of counsel. Petitioner received inaccurate and unprofessional advice concerning that offer and only rejected it on that basis." Id. at 143.

Now, after facing rejection of that claim in the district court, Parks presents new argument for the first time on appeal.

2.) The district court rejected Parks' claim without a hearing

After the parties presented argument on Ground One of Parks' petition, the district court found Parks failed to demonstrate deficient conduct or prejudice under Strickland regarding Goldstein's performance regarding the change of plea. 6 AA 1022. The court entered the following findings: (1) In the plea agreement, Parks specifically rejected the stipulated sentence of 8-20 years; (2) The court canvassed Parks on the rejection, as well as the fact that she could receive any legal sentence; and (3) sentencing was strictly up to the court. 6 AA 1022, 1079.

Parks never received an evidentiary hearing because "the record contains no evidence of constitutionally deficient advice by trial counsel that Parks relied on to her detriment." Id. at 1080 (citing Lafler, 566 U.S. at 164). Parks' petition never presented facts justifying an evidentiary hearing. Hargrove, 100 Nev. at 502, 686

P.2d 222.

The district court properly applied *Strickland* to Parks' Ground One claim. The district court found neither deficient conduct nor prejudice.

Now, Parks changes her presentation of Ground One in this Court.

B. Parks' brief presents a different claim to this Court

In her opening brief, Parks presents the same heading as presented in Ground One of her state court petition: Trial counsel was ineffective "by advising Parks to reject a more favorable plea deal and Parks was subsequently sentence to a much longer period of incarceration." OB at 30.

However, Parks abandons her losing argument from below and now argues:

> The problem here, which is intertwined with the complaints about counsel's performance at the time of sentencing, is that the right-to-argue plea deal Parks accepted had no hope of leading to a better outcome than the stipulated offer, absent serious effort by trial counsel to prepare for the sentencing proceeding. Trial counsel failed to so prepare, and thus was ineffective in advising Parks to accept the right-to-argue offer.

OB at 31-32.

This argument can now be read two ways. First, Parks asserts a "new" Ground One claim (asserting a cumulative error argument based upon alleged deficient advice and failure to perform adequately at sentencing). This claim is not properly before the Court. This new claim fundamentally changes Parks' Ground One claim, as explained below.

Second, Parks' claim can be read as "a new argument." In other words, counsel provided strategic advice and did not follow through with the performance needed to ensure Parks received a successful outcome.

In either case, Parks' Ground 1 fails.

1.) Parks' "new" claim is not properly before this Court

Parks' claim before this Court is substantially different than the claim presented in the district court. In fact, the change in the claim alters the claim so substantially, that it changes the relief available were this Court to address the claim and reward relief.

In Parks' original claim in the district court, the remedy upon a finding of ineffective assistance of counsel for incident advice during plea negotiations is reoffering the rejected plea agreement. See, Lafler v. Cooper, 566 U.S. 156, 174 (2012).

In Parks' claim—as argued in the opening brief—the appropriate remedy based upon a finding of ineffective assistance of counsel for failure to prepare for the sentencing hearing, would be a new sentencing hearing (instead of reoffering the rejected plea agreement). See, Gonzales v. State, 492 P.3d 556, 564 (Nev. 2021),[5] citing Weaver v. Warden, 107 Nev. 856, 859, 822 P.2d 112, 114 (1991).

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[5] 137 Nev. Adv. Op. 40.

In prior decisions of the Court, addressing post-conviction claims raised for the first instance on direct appeal, the Court requires a showing of cause and prejudice regarding the failure to raise the claim in the district court. *See* McNelton v. State, 115 Nev. 396, 415-17, 990 P.2d 1263, 1275-76 (1999), citing to Hill v. State, 114 Nev. 169, 178, 953 P.2d 1077, 1084 (1998).

In her brief, Parks presents no cause or prejudice to overcome her failure to argue this claim in the district court in the first instance. Therefore, Respondent requests the Court to decline addresses Parks' new claim and instead affirm the district court denial of the claim as argued before that court.

2.) Parks' Ground One claim as same claim, but new argument

In her petition, Parks alleged:

> The decision to reject the stipulated eight to twenty year sentence was the product of ineffective assistance of counsel. Petitioner received inaccurate and unprofessional advice concerning that offer and only rejected it on that basis. Had the risks and benefits of that offer been fully and correctly explained to Petitioner, she would have accepted the original offer.

1 AA 143.

In her opening brief, Parks now argues:

> The problem here, which is intertwined with the complaints about counsel's performance at the time of sentencing, is that the guilt-to-argue plea deal Parks accepted had no hope of leading to a better outcome than the stipulated offer, absent serious effort by trial counsel to prepare for the sentencing proceeding. Trial counsel

> failed to so prepare, and thus was ineffective in advising Parks to accept the right-to-argue offer.

OB at 31-32.

Parks then asserts, what Goldstein should have said, or should have done at sentencing, moving beyond the allegation of advice to 'reject the stipulated sentence.' Id. at 32-36. Parks concludes that appropriate relief is to mandate a "re-offer" of the stipulated sentence.

However, for several reasons, Parks's fail to demonstrate either deficient conduct or prejudice under Strickland.

C. Despite the new argument Parks' claim still fails

The first reason this Court should affirm the district court is the same reason that Parks' claim failed below. Despite the new argument, the same glaring absence in Parks' state court petition, is still present here. Parks assumes, but never presents, evidence that Goldstein advised Parks to reject the plea.

1.) Parks presents no facts beyond conclusory statements establishing Goldstein provided deficient advice

Parks signed off on the plea agreement and advised the court during the plea colloquy that she affirmatively rejected the plea. 1 AA 176, 192-93.[6]

[6] Parks' argument that Parks was only advised that the State may argue for a higher sentence (OB at 32) is nothing but a red herring. Logically, would the State at sentencing argue for a lower sentence than they bargained for? As equally illogical, would the State argue for the same sentence that they bargained for?

When the parties argued the merits of Ground One before the district court, Parks failed to establish "factual allegations that would, if true," warranted an evidentiary hearing. Hargrove, 100 Nev. at 502, 686 P.2d 222. Parks failed to allege in the district court beyond conclusory statements—and what she continues to fail to allege in her brief, remains. First, Parks never represents any court with what advice Goldstein gave Parks. Second, Parks never explains why the advice allegedly given by Goldstein rose to a level of constitutionally deficient advice?

Absent any facts supporting Parks' claim that Goldstein provided constitutionally deficient advice, the district court denied Parks' Ground One claim without conducting an evidentiary hearing. 6 AA 1022. The court found Parks specifically rejected the stipulated sentence, and further found the court inquired into Parks' rejection of the stipulated sentence during the plea hearing. 6 AA 1022.

Parks' opening brief again presents no facts supporting the claim that Goldstein provided constitutionally deficient advice. OB 30-37. In Lafler, the attorney told his client that the State "would be unable to establish intent to murder." 566 U.S. at 161. Parks opening brief never states what Goldstein said that resulted in Parks' rejecting the stipulated sentence. OB 30-37.

Parks also complains that the State asked for a maximum sentence. Id. In a right to argue situation logic dictates that the State argues for a high sentence, the defendant argues for a low sentence, and the court usually settles for something in the middle. It is no surprise that this happened in Parks' case.

In addition to presenting no facts establishing deficient conduct, Parks failed to demonstrate prejudice under *Strickland*, should the Court choose to address prejudice.

In order to demonstrate prejudice during plea proceedings, a petitioner "must show that there is a reasonable probability, but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial." *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

Parks obviously cannot demonstrate prejudice in that manner. However, under *Lafler* she could demonstrate that both Parks would not reject the stipulated sentence and that the court would have accepted the plea agreement. *Lafler*, 566 U.S. at 164.

While it is obvious that Parks in hindsight would accept the stipulated sentence, Parks presented no evidence or argument in her brief that the district court would have accepted the plea.

D. The District Court Did Not Err When Denying Park's Claim Because Parks Failed to Demonstrate Deficient Performance and Prejudice

The record supports this Court's affirming counsel's conduct was not constitutionally deficient.

The plea agreement signed by Parks specifically stated, "I reject a stipulated aggregate sentence of eight (8) to twenty (20) years concurrent to each other on this case and Case No. C329886, and understand the State may argue for more than that

stipulated sentence." 1 AA 177. The plea agreement also clearly stated the sentencing ranges for each charge, as well as the fact that any sentence imposed included the possibility of probation. Id. at 178-79.

Likewise, the court's plea canvass of Parks confirmed that Parks rejected the stipulated sentence and that Parks understood "the State may argue for more than that stipulated sentence." Id. at 193. The court also reviewed the sentence range for each charge, as well as the fact that the sentences permitted suspension of the sentences and probation. 1 AA 196-97. The court also asked, and Parks understood that sentencing was at the sole discretion of the court, and that whether the sentences "run consecutive or concurrent to each other" was also at the discretion of the court. Id. at 197.

The court found Parks' pleas knowing, intelligent, and voluntary. Id. at 203.

1.) Parks received effective assistance of counsel

In Ground One, Parks alleges Goldstein "advised Petitioner to reject a more favorable plea deal." 1 AA 141. However, Parks' pleading in the district court and the brief before this Court ignore the proverbial 'elephant in the room'—what did Goldstein advise Parks, and what made it "constitutionally deficient" advice. Absent an allegation that Goldstein gave Parks advice that fell below a constitutional standard, Parks cannot satisfy the deficient conduct prong of Strickland

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The record reflects that reflect that Parks' plea "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Stevenson v. State, 131 Nev. 598, 604-05, 354 P.3d 1277, 1281 (2015) (citing to Doe v. Woodford, 508 F.3d 563, 570 (9th Cir. 2007).

Additionally, while Goldstein opined about the offers Parks received, the advice at worst amounted to an inaccurate prediction on the outcome of sentencing, as opposed to 'deficient advice' that violated the constitution.

2.) Examples of "constitutionally deficient advice"

In Lafler, the Court addressed a case involving constitutionally deficient advice. In that case, the State charged Respondent Anthony Cooper with charges including assault with intent to murder. 566 U.S. at 161. The prosecution's plea offer included an offer to dismiss some of the charges and a sentencing recommendation of 51 to 85 months. Id.

Cooper's attorney told him to reject the plea offer—including a less favorable offer extended before trial—explaining "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist." Id. The jury convicted Cooper and the court imposed a sentence of 185 to 360 months imprisonment. Id.

The Court in Hill v. Lockhart also addressed Strickland in the plea context, finding the attorney's advice to his client constitutionally deficient when he

informed the client that "he would become eligible for parole after serving one-third of his prison sentence." 474 U.S. 52, 55 (1985). In reality, petitioner was not parole eligible until serving one-half of his sentence because he was considered a repeat offender under state law. Id.[7]

3.) "Wrong strategic advice" differentiated from "constitutionally deficient" advice

Contrasting Parks' case with the petitioners' in Hill and Lockhart, Parks points to no specific advice offered by Goldstein that was constitutionally deficient. However, Parks failed to demonstrate that Goldstein's opinion constituted "constitutionally deficient advice."

An opinion about which of two options to choose (in the absence of any advice that actually is constitutionally defective), at best falls into the category of "wrong strategic advice."

The Ninth Circuit addressed the implications of constitutionally deficient advice from counsel. Turner v. Calderon, 281 F.3d 851 (9th Cir. 2002). Discussing a Supreme Court case, the panel in Turner found the issue not whether "counsel's advice [was] right or wrong:" Instead, counsel must "give the defendant the tools he needs to make an intelligent decision." 281 F.3d at 881, citing McMann v. Richardson, 397 U.S. 759, 771 (1970).

[7] The Court denied relief because petitioner failed to satisfy the prejudice prong of Strickland. Id. at 60.

Therefore, in order to demonstrate ineffective assistance, the petitioner must demonstrate that the attorney's advice "was incorrect and so insufficient that it undermined his ability to make an intelligent decision about whether to accept the [plea] offer." Turner, 281 F.3d at 880 (internal citation omitted).

The decision in Turner reads harmoniously with the Supreme Court's guidance to reviewing courts in Strickland, review of counsel's performance must be deferential, and "it is all too easy for a court" to engage in review by hindsight. 466 U.S. at 689. As in Turner, Parks does not allege that Goldstein failed to "inform [her] about the plea offer" or "affirmatively misled [her] about the law." 281 F.3d at 880.

That Parks chose incorrectly is not the question, wrong choices are made by litigants daily across the country. Instead, this Court must determine whether Goldstein gave Parks the information needed to make an informed choice. Counsel need not accurately predict outcomes, nor need they "'strongly recommend' the acceptance or rejection of a plea offer." See, Turner, 281 F.3d at 881.

Whether Goldstein gave Parks the information needed to make an informed choice in this case must be answered in the affirmative. Neither Parks' petition nor her brief alleges facts to the contrary.

Additionally, whether the Court views Ground One on appeal as stating a new "hybrid" cumulative error-type claim or merely views Parks presented a new

argument on appeal, the result is also the same: Parks failed to state that counsel provided specific, advice that was "so insufficient" that it impaired Parks' ability to make an informed choice among the alternatives. Instead, the record reflects that Parks made an erroneous decision and now seeks a do-over.

Parks' first claim fails to establish deficient conduct or prejudice under Strickland. The district court properly found that Parks' attorney performed adequately during her entry of plea.

III. PARKS CANNOT DEMONSTRATE COUNSEL PERFORMED DEFICIENTLY AND THAT COUNSEL'S PERFORMANCE RESULTED IN PREJUDICE DURING SENTENCING

A. Parks' Claim

Parks next alleges that trial counsel was ineffective at sentencing. OB at 37.

In her petition Parks' alleged counsel was ineffective for failing to object to the lack of notice regarding victim speakers and allegedly improper comments by the victim speakers. 1 AA 145, 153-59. Parks also alleged in the district court that counsel failed to object to improperly computed restitution. *Id.* at 160-64. Parks also alleged counsel was ineffective for failing to object to argument by the State or failing to challenge a purportedly inappropriate sentence. *Id.* at 146-52, 164-68.

B. The District Court Rejected Ground Two

Denying Ground Two, the district court found that Parks suffered no prejudice from the allegations that counsel failed to object because the sentence imposed by

the court addressed "the seriousness of the allegations against Parks, rather than any allegedly improper argument by the State or inappropriate comments by victims." Id. at 1080.

Furthermore, the court specifically rejected the sentences recommended by the PSI and Parks' sentencing memorandum and imposed what the Court found was an appropriate sentence. Id."

In her brief before this Court, Parks alleges that the district court denied Ground Two with a "closed mind." OB at 53-54. Contrary to Parks assertion, and as discussed below, the record and the law repel Parks' claims.

C. Affirmance of the District Court's Rejection is Proper Because the Record Supports the District Court's Finding of No Prejudice

The record supports the district court's finding of no prejudice under Strickland.

1.) Alleged failure to object to notice of victim statements

Parks alleges that Goldstein failed to challenge the lack of notice concerning victim speakers. OB at 48-50. In support of her arguments, Parks cites NRS 176.015(3) and Buschauer v. State, 106 Nev. 890, 804 P.2d 1046 (1990).

Nevada law permits the victim to address the court at sentencing. NRS 176.015(3). Subsection (4) requires the prosecutor to provide notice to victims. In Buschauer, the Court held notice to a defendant is required if the impact statement includes reference to specific prior acts of the defendant. 106 Nev. at 894, 804 P.2d

at 1048. The Court also held that in instances where such prior bad acts evidence would be offered, due process required swearing in the witness, an opportunity for cross-examination, as well as notice regarding the prior bad acts. Id.

However, the state court record refutes the claim of ineffective assistance of counsel for failure to object to notice. As Parks concedes in her brief, counsel objected to the lack of notice. OB at 48 (citing 2 AA 315).

In order to prove ineffective assistance for failure to object, Parks must prove deficient performance by counsel, and that deficient performance resulted in prejudice. See, Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004) (citing Strickland). In order to prove that counsel was ineffective for failing to object, Parks must of necessity prove that Goldstein failed to object to lack of notice of the victim speakers. However, Goldstein objected to the lack of notice. 2 AA 315. Since Goldstein did what Parks alleged he did not do, the record refutes Parks' allegation of ineffective assistance of counsel for failure to object to a lack of notice. There is no need to examine the prejudice prong regarding this claim. Means, 120 Nev. at 1011, 103 P.3d at 32.

The record supports the district court's rejection of this claim.

2.) Counsel's failure to object to comments of victim speakers

Parks next alleges that counsel was ineffective because Goldstein failed to object to comments made by victim speakers. OB at 49.

As an accommodation to the lack of specific notice of the victim speakers, the district court permitted the defense "the right to make the appropriate objections and I will rule on them at that time."

The sentencing hearing addressed the sentences for Parks and two co-defendants—each represented by their own counsel. 2 AA 267. In her brief, Parks alleges that "substantial testimony" went beyond what is authorized by the statute. OB at 49. While the argument section of Parks' brief cites two specific examples of inflammatory references (OB at 49), as well as citing in general to information which "was objectively untrue." Parks cannot satisfy her burden under Strickland of demonstrating counsel's ineffectiveness for failure to object. Assuming arguendo that Goldstein should have objected to comments by victim speakers, she cannot demonstrate prejudice.

The district court concluded that Parks cannot demonstrate prejudice because the court pronounced sentence based upon the seriousness of the charges, as opposed to any allegedly improper comments by victims. 6 AA 1080 and at 1022-23. A court need not address both prongs of the Strickland analysis if a petitioner failed to satisfy the first prong addressed by the court. Means, 120 Nev. at 1011, 103 P.3d at 32.

Parks failed to demonstrate counsel was ineffective for failing to object to allegedly improper comments from the victims who addressed the court at Parks' sentencing hearing.

3.) Parks cannot prove ineffective assistance of counsel for failing to object to allegedly improper argument by the prosecution at sentencing

For the same reason the district court denied Parks' allegation of ineffective assistance of counsel for failure to object to victim comments, so must this Court affirm the district court's denial of Parks's allegations that Goldstein was ineffective for failing to object to argument by the prosecution.

In her brief, Parks alleges Goldstein failed to object to: (1) the prosecution's sentencing argument that Parks showed no remorse because she entered Alford plea (OB at 43-45); (2) the prosecution's argument in the sentencing memorandum "that several individuals never 'actually' needed guardianship services" (id. at 45-46); (3) the prosecution's arguments about the number of charges or the legislative history behind the elder exploitation statutes (id. at 46-47); and (4) argument that the legislature intended harsher punishments for serious theft and exploitation offenses because of the sentencing ranges for the crimes (id. at 47-48.

Again, assuming arguendo that the prosecution's argument warranted an objection,[8] Parks fails to demonstrate prejudice under Strickland. The plea agreement permitted the State to argue, and the district court to consider at sentencing, "information regarding charges filed, dismissed charges, or charges to be dismissed pursuant to this agreement." 1 AA 179.

[8] Respondents do not concede this fact.

The district court concluded that Parks failed to demonstrate prejudice because the court based its sentence on the allegations against Parks as opposed to improper argument.

Additionally, it is questionable whether the State's comments were inappropriate.

The legislative history for the elder abuse statutes reflects that intentionally obtaining money or property of an elderly person "through deception, intimidation or undue influence is a serious crime," and that higher penalties were available "for more serious cases." 3 AA 450. Logically, the facts supported an argument by the State that taking around a half million dollars from elderly and vulnerable victims through deception constituted a serious crime.

If the legislative history reflects that Parks plead to serious offenses, how can Parks argue that counsel should have objected to the State's argument that Parks committed serious crimes that deserved a sentence higher than what the State agreed to stipulate to in order to resolve the case?

Finally, an Alford plea permits a party to protest innocence, but requests the court treat a party as guilty. *See, State v. Gomes*, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996). Parks' brief argues that an Alford plea is not equivalent to a lack of remorse but fails to cite authority for the argument. OB at 44. In support of her claim of deficient conduct, Parks cites *Bordenkircher v. Hayes*, 434 U.S. 357 (1978) on

page 45 of her brief. However, *Bordenkircher* prohibited the State from seeking a vindictive sentence against a defendant in a subsequent proceeding who successfully challenged a prior conviction and obtained a new trial. Id. at 362-63.

Additionally, the State presented the allegedly objectional argument before Parks' allocution. 2 AA 271 (State's argument); 2 AA 292 (Parks' allocution).

The district court did not need to consider deficient conduct because it rejected Parks' arguments that sought to establish prejudice. *Means*, 120 Nev. at 1011, 103 P.3d at 32; 6 AA 1080. However, should this Court review the performance of Goldstein at sentencing, he cannot be found to have performed deficiently for failure to object to the State's arguments. Those arguments constituted permissible comments upon the nature of Parks' offenses, Alford plea, the victims' vulnerable natures, the amount of money stolen, and the view of the evidence presented before the Legislature that offenses are serious in nature.

4.) Counsel's failure to challenge the amount of restitution

Parks alleges that Goldstein was ineffective for failing to challenge the restitution amounts. OB at 38. In the brief, Parks alleges that certain victims already received restitution and that restitution was ordered without identification of specific victims. Id.

The plea agreement reflects a total restitution amount that contains both a clerical error and an arithmetic error that transferred over to the original Judgment

of Conviction. The Amended Indictment, attached to the plea agreement, lists one victim twice. 1 AA 187 and 188 (listing William Flewellen twice as a victim, with the same amount of restitution in each case). This error transferred over to the Judgment of Conviction, which listed William Flewellen twice. 2 AA 259. The Amended Judgment of Conviction corrected this error. See, id. at 262; RA 22.

The arithmetic error in the plea agreement consists of an error in the total amount of restitution due. The amended information breaks down restitution due by count and victim. 1 AA 184-90. However, after taking out the double listing of William Flewellen, the total restitution due victims pursuant to the amended information is $412, 943.02. Id.

In her brief, Parks alleges that some nefarious scheme resulted in the difference between the itemized amount of restitution due each victim and the aggregated total. OB at 40.

While remand for a corrected or amended judgment of conviction to correct the restitution amount is appropriate, Parks' reliance on Buffington v. State, 110 Nev. 124, 868 P.2d 631 (1994), and Botts v. State, 109 Nev. 567, 854 P.2d 856 (1993), for a finding that a restitution error requires a complete new sentencing hearing, is misplaced.

In Buffington, the defendant initially appealed his judgment and conviction and sentence because the original Judgment of Conviction failed to comply with

Nevada law by setting forth restitution in a specific amount for "each victim of the offense." 110 Nev. at 125, 868 P.2d at 644. On appeal, the Court remanded "for resentencing 'to include a specific amount [of] restitution for each of appellant's victims.'" Id.

The district court then resentenced Buffington, entering an Amended Judgment, ordering restitution in specific amounts. Id. However, that hearing occurred eight days prior to remitter issuing from the Court, when the district court lacked jurisdiction to sentence. 110 Nev. at 125-26, 868 P.2d at 644.

Buffington appealed again, attacking the Amended Judgment and this Court remanded again for resentencing. Id. at 126, 128, 868 P.2d at 644-45.

In Botts, while the Court found the restitution amount failed to set forth restitution with specificity, the Court remanded for resentencing because of the fact that the district court entered a judgment containing illegal sentences. 109 Nev. at 568, 854 P.2d 857 (setting forth alternative sentences of a flat 60 years and life with the possibility of parole after 20 years, when the statute set forth a sentence of life with the possibility of parole after 10 years).

The federal law cited by Pike also creates no mandatory resentencing for a Nevada sentence. OB at 41. Rather, the federal court uses the amount of restitution to potentially enhance a sentence under the federal guidelines. See, United States v. Burns, 843 F.3d 679, 689 (7th Cir. 2016) (loss number enhanced sentence 18 levels).

Parks stole an incredibly large amount of money from a large amount of incredibly vulnerable and elderly victims. The court stated:

> Ms. Parks, I have to say there is no one in this room who is more culpable than you. And the things that I have heard today that you did to these people is just absolutely shocking that one can continue to go about their life and engage in these activities and watch these people suffer. And you said when you spoke, that you never intended to bring any harm to anyone. I cannot fathom how you think that the actions that occurred at the hand of you did not intend to bring any harm to anyone.
>
> These people that have Scotch taped their shoes together, these people that are being charged for getting Christmas gifts, these people that don't have food to eat, how is that not bringing harm to them. And to hear from the people who actually are able to be present today is just absolutely shocking to me that you continued in this behavior. And you went to court and these documents were failed and at no point did anything occur to you until this investigation happened that this is absolutely not appropriate. The actions that you took in this case are just downright offensive.

2 AA 386.

The court imposed its sentence on NRS 3.62 based upon the seriousness of the allegations, rather than added inappropriate argument. 6 AA 1080. Parks presents no argument that the prison sentence in this case was intertwined with restitution that necessitates an entirely new sentencing hearing to correct the aggregate restitution amount in the Amended Judgment of Conviction. See, NRS 176.565.

The State requests the Court reject Parks' claim that a new sentencing hearing

is necessitated when the district court can enter a corrected judgment to fix the arithmetic error regarding the aggregated amount of restitution.

5.) Counsel's failure to challenge the reasonableness of the sentence

Parks' final allegation against Goldstein alleges he failed to object to the "reasonableness of the sentence," which "constituted cruel and unusual punishment." OB at 50-53.

In her brief, Parks alleges "Effective trial counsel would have challenged the sentence imposed by way of a motion for reconsideration, a new trial, or by filing a direct appeal. OB at 51-52. Parks continues by alleging "A sentence of at least 16 years in prison shocks the conscience, because it is unreasonable and disproportionate to any other sentence imposed in Nevada for the same." Id. at 52 (citations omitted).[9]

In Claim Two of her supplemental petition, Parks never alleged that Goldstein was ineffective for failing to file a motion for reconsideration, or a new trial (although Parks' Ground Three alleges a failure to file a direct appeal). 1 AA 164-68. Respondents request the Court rejects Parks' arguments raised for the first time on appeal. See, II(A)(3) above; see also, McNelton, 115 Nev. at 415-990 P.2d at 1275-76.

[9] Parks also presents contradictory claims, alleging that the Court must compare the sentence to same or similar cases, but then states that "Courts must sentence defendants individually." Id.

This Court holds that "A sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (citations omitted); see also Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (The Eighth Amendment does not require strict proportionality, it only forbids "extreme sentences that are 'grossly disproportionate' to the crime.").

While Parks attempts to offer comparisons to sentences rendered in other cases (OB at 52-53 (citing 4 AA 689-91)), Parks comparisons fail to take into account the number of victims in her case, the age and vulnerability of her victims, the breach of her duty as the guardian for her victims, as well the fact that she acted under color of law when appointed by the court to care for the assets of her wards.[10] The district court rejected Parks' presentation of this comparison information, finding that it would not have altered the sentence imposed by the Court.

In this case, Parks pled to 2 counts of exploitation of an older/vulnerable person (carrying a sentence of 2-20 years), 2 counts of theft (carrying a sentence of

[10] Parks also alleges that the prosecutor abused it authority when charging the case. However, the information filed in this matter reflects that an organ independent of the prosecutors (the grand jury) found evidence sufficient to indict Parks.

1-10 years); and 1 count of perjury (carrying a sentence of 1-4 years).[11] Parks faced a maximum exposure of 64 years in prison if the court ran all sentences consecutive. If the court imposed the maximum minimum term, Parks faced just under 26 years in prison (307 months) before becoming eligible for parole.

The district court did not impose the maximum possible sentence. However, the sentence imposed reflected an appropriate sentence given the serious nature of her crimes (see 3 AA 450), the number of victims, the age and vulnerability of her victims), as well as the assets taken from her victims. The sentence imposed reflects a sentence about two-thirds of the maximum possible sentence, a reasonable sentence that takes into account all the relevant information about Parks' crimes.

The sentencing transcript reflects the district court's dismissal of the recommendation in the presentence investigation report, finding: (1) Parks was the most culpable of the co-defendants; (2) Parks' actions were shocking; (3) rejection of Parks' comment that she "never intended to bring any harm to anyone"; (4) finding Parks' actions "downright offensive." 2 AA 386.

The district court rejected Parks' claim that counsel was ineffective for failing to present comparative information, finding that the sentence imposed would not have changed even if counsel presented that information. 6 AA 1022, 1080.

[11] This does not take into account the sentence she faced in case number C329886.

Parks cannot demonstrate that counsel's failure to present comparative information regarding other theft sentences resulted in prejudice. The information presented failed to take into account key information such as the number and types of victims, attempting to gloss over the fact that Parks made victims out of some of the most vulnerable citizens of Nevada.

6.) Conclusion

Parks alleges the district court "was not open to consideration of Parks' evidence," focusing on a single quote of the court. OB at 53.

When rejecting Parks' claim or argument, the court found:

> This Court is not in any way bound by a recommendation from the Division of Parole and Probation. It is simply that, a recommendation. And they don't even include them anymore in the Presentence Investigation Reports because sentencing is strictly up to the Court. And this Court utilized its discretion and gave the sentence that I believe was deserving of those crimes.

6 AA 1022-23.

The court based its sentence upon the allegations against Parks, as opposed to allegedly improper argument or comment (and the failure to object to the argument/comments). Id. at 1080. The court's finding that Parks' arguments would have had no effect on the sentence imposed does not reflect a closed mind. Rather, the court's finding demonstrates that Parks failed to demonstrate prejudice under Strickland

IV. PARKS NEVER REQUESTED AN APPEAL, THEREFORE SHE FAILED TO ESTABLISH COUNSEL WAS INEFFECTIVE

A. Parks' Claim

In her petition, Parks alleged that trial counsel was ineffective because counsel deprived her of her right to a direct appeal. 1 AA 169. In support of her claim, Parks attached exhibits to her petition including (1) a January 21, 2019, letter from Parks to counsel requesting him to proceed on a "sentence modification" (4 AA 682); and (2) a response letter from counsel Anthony Goldstein to Parks reminding her of a discussion that occurred after the sentencing hearing, reminding Parks about the filing of a habeas corpus petition in order to obtain relief from her sentence. 4 AA 683.

After briefing and argument from the parties, the district court conducted an evidentiary hearing on this claim. 6 AA 1023.

B. The Evidentiary Hearing

At the March 18, 2021, evidentiary hearing, Anthony Goldstein and Parks testified. 6 AA 1024.

1.) Goldstein's testimony

Mr. Goldstein testified that he became a licensed attorney in Nevada in 2001, and at present practices exclusively in the area of criminal defense. 6 AA 1029.

After Parks' sentencing hearing, Goldstein testified that he spoke with Parks briefly in the courtroom, stating that he would visit her. *Id.* at 1033. Goldstein

testified that to the best of his memory, Parks did not ask for an appeal at that time "because that would have for sure raised a red flag in my head." Id. Goldstein explained the flag would have been raised "because that triggers my responsibility to do something, and I would have remembered if she had said something like that at the hearing like I want you to appeal." Id. at 1033-34. Goldstein emphasized that the flag would have been raised "especially, you know, moments after hearing the sentence." Id. at 1034.

Goldstein testified that to the best of his recollection, the subsequent meeting with Parks took place a couple days after sentencing. Id. at 1034-35. Goldstein first went through the sentence with Parks to make sure she understood the length of the sentence and just ask her if she had any questions. Id. at 1035. Goldstein added "I commonly do that in a—after a sentencing like that," but then added that this was actually a unique situation with the number of people in the courtroom and the media attention. Id. Goldstein characterized Parks' demeanor as "shell-shocked" and that "she was surprised at the amount of time given, I think." Id.

During the meeting, Goldstein discussed a motion to modify sentence with Parks because of Parks' hope for a much lighter sentence. Goldstein described his conversation with Parks regarding her options and potential issues/problems, summing up that successfully challenging a sentence that was higher than hoped for was unlikely because "it wasn't an illegal sentence, it was just higher than expected

or hoped for." Id. at 1036.

When asked if Parks specifically asked for an appeal, Goldstein replied: "No, I mean, we talked about—I know we talked about modifying the sentence, but if she had discussed—if she had asked for an appeal, I mean, I have a duty to file it and I would have filed it." Id. at 1037.

Goldstein also commented on the viability of an appeal and his obligations as her attorney:

> There weren't grounds. I mean, I—being the—being her trial counsel and having—I'd been her attorney for quite some time at that point, I mean, I knew how the plea went down, I knew how many times I had visited her to discuss the deal. I visited her the—a day or two before sentencing—I think it was the actual day before—just to make sure if she had any—answer any last minute questions. So, to—in my head, there weren't any legitimate legal grounds for appeal.
>
> And I understand that regardless of the existence of grounds, if a defendant asks for an appeal, I have to file it. There's no—it's not my decision, it's hers regardless of the existence of legal grounds, but she—she definitely never asked for one or I would have filed it.

Id. (emphasis added).

Goldstein also believed the plea agreement included a waiver of appellate rights, and without reviewing the plea transcript prior to the hearing, believed the plea agreement contained a waiver of Parks' appellate rights. Id. at 1038, 1043-44.

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Goldstein opined to Parks that the "only legitimate mechanism" for challenging her sentence consisted of filing a post-conviction habeas petition, although Goldstein also believed that legitimate grounds existed for such a petition. Id.

Goldstein identified the letter from Parks, as well as his January 30th reply. Id. at 1039-40. Goldstein stated that during his conversation with Parks, he specifically used the phrase "sentence modification." Id. at 1040-41.

Goldstein added that during his conversation with Parks post-sentence, "if I had thought that she wanted me to file an appeal but didn't use the word appeal," he would have inquired further to ascertain her intent. Id. at 1043. Goldstein also stated that if Parks asked him to file a notice of appeal, he would have filed the notice of appeal despite Parks' waiver of her appellate rights, knowing that such an appeal may have been subject to a motion to dismiss by the prosecution. Id. at 1045.

Goldstein addressed his practice of resolving ambiguity regarding requests for an appeal, stating that he questioned defendant to resolve ambiguity. Id. at 1048-49. Goldstein also stated that he would not talk a client out of filing an appeal. Id. at 1050.

2.) Parks' testimony

Parks testified that at the sentencing hearing, she did not understand the sentence the court imposed. Id. at 1055. Parks stated that after the sentencing she

told Goldstein that she wanted to appeal. Id. at 1056. Parks stated that she did not express her feelings to Goldstein about the sentence because "I'm not a huge feeling person." Id. at 1057. Parks stated that her concern was being at home with her daughter. Id.

Parks confirmed that Goldstein visited with her to discuss options. Id. Parks stated that "We just discussed different things that could be done. I don't remember specifically terms used, but I know that he told me once I got to prison to contact him." Id. at 1059.

When asked by counsel whether she used the word "appeal" during the conversation, Parks only guessed at the possibility by responding "I would assume that I did." Id. at 1060. However, Parks confirmed Goldstein's testimony that they discussed the possibility of sentence modification. Id.

Parks wrote to Goldstein in order to get him moving "on whatever process he wanted—he would—we would like to move forward with." Id. at 1062. Parks stated that the letter from Goldstein contained the statutes regarding the post-conviction process and that they discussed that process, but she had no specific recollection of the term. Id. at 1063.

C. The District Court's Decision

The district court rejected Parks's claim that Goldstein was ineffective for failing to file a notice of appeal.

That court found a discussion took place after sentencing between Parks' and Goldstein in order to determine how to proceed. 6 AA 1080. The court found that Parks' written communication never requested an appeal and the response letter from Goldstein presented his summary of the discussion and further invited Parks to reach out if she had further questions. Id.

Based upon the testimony and the exhibit, the court found that "Goldstein complied with his constitutional duty to discuss [Park's] options after the imposition of sentence," and further found that Parks failed to satisfy her burden that Goldstein failed to file a notice of appeal on her behalf because Parks never expressly asked for an appeal. Id.

D. This Court Should Affirm the District Court

1.) The relevant federal law

In instances where a defendant "neither instructs counsel to file an appeal nor asks that an appeal not be taken," the Supreme Court found that determining whether counsel performed deficiently is best answered by "whether counsel in fact consulted with the defendant about an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000). Where counsel consults with his client, the Court found "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. The prejudice from failure to take an appeal is the forfeiture of the appeal; therefore, the Court in Flores-

Ortega found that demonstrating prejudice under *Strickland* require a petitioner to show that, "but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed." 528 U.S. at 484.

2.) The relevant state law

The Nevada Supreme Court discussed defense counsel's duty to inform clients about a direct appeal when the conviction stems from a guilty plea in *Toston v. State*, 127 Nev. 971, 267 P.3d 795 (2011).

The Court in *Toston* recognized its prior holding that counsel does not have a duty to inform the client or consult with the client when the conviction results from a guilty plea. Id. at 977, 267 P.3d at 799 (citing to *Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)); *see also Flores–Ortega*, 528 U.S. at 479–80.

The Court stated:

> Although trial counsel is not constitutionally required to inform a defendant of the right to appeal when the conviction stems from a guilty plea absent the defendant's inquiry about the right to appeal or the existence of a direct appeal claim that has a reasonable likelihood of success, we clarify that trial counsel has a duty not to provide misinformation about the availability of a direct appeal. Accordingly, we hold that counsel's affirmative misinformation about the right to appeal from a judgment of conviction based on a guilty plea may fall below an objective standard of reasonableness and therefore be deficient.

Id. at 973-74, 267 P.3d at 797.

/ / /

The Court also recorgnized that a defendant can waive his right to an appeal. Id. at 977, 267 P.3d at 800 (citing Cruzado v. State, 110 Nev. 745, 879 P.2d 1195 (1994)), overruled on other grounds by Lee v. State, 115 Nev. 207, 985 P.2d 164 (1999).

3.) Counsel's duty

In Toston, the Court found that counsel possesses a duty to file an appeal on behalf of his client when (1) requested to do so, and (2) when the client "expresses dissatisfaction with his conviction." Id. at 978, 267 P.3d at 800. The Court noted that client dissatisfaction with the conviction "has the potential for mischief" because of the fact that "it is by no means unusual for a criminal defendant to express dissatisfaction after having been convicted and facing a prison term or a period of supervised release." Id.

The client bears the burden of indicating to his attorney a desire to pursue an appeal. Id. at 979, 267 P.3d at 801 (citations omitted).

In Flores-Ortega, the Court held that counsel has a duty to consult when there is reason to think the defendant would want an appeal or demonstrated to counsel an interest in appealing. 528 U.S. at 480. In such situations, the reviewing court must consider factors such as whether the defendant complied with the bargain and whether the defendant reserved issues for appeal or waived appellate rights. Id.

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4.) Counsel conferred with Parks, fulfilling his duty under the law

The record from the evidentiary hearing reflects that Goldstein performed his duty under the law; conferring with Parks about how to proceed post-sentence. Both Parks and Goldstein testified that a video meeting occurred after the court sentenced Parks. 6 AA 1057 (Parks' testimony), 1036 (Goldstein's testimony).

Goldstein recognized his absolute duty to file an appeal if Parks so requested. Id. at 1037 ("if she had asked for an appeal, I mean, I have a duty to file it and I would have filed it"). Goldstein recognized his duty "regardless of the existence of grounds" for an appeal. Id. at 1037, 1045, 1050. Goldstein also recognized that Parks expressly waived her appeal in the plea agreement. Id. at 1038; see 1 AA 180.

Goldstein also never dissuaded Parks from filing an appeal. Id. at 1050. Goldstein stated that Parks never requested an appeal while in court, and if she had "that would have for sure raised a red flag in my head because that triggers my responsibility to do something." Id. at 1033.

Goldstein's advice after sentencing consisted of filing a post-conviction habeas petition. Id. Goldstein also recognized the need to obtain new counsel to raise claims of ineffective assistance of counsel. Id. Goldstein finally stated his opinion that a sentence modification was not viable. Id. at 1040-21.

After Goldstein met with Parks and sent his response letter to Parks, she never expressly asked Goldstein to file a notice of appeal. Id. at 1046.

Parks stated at the meeting with Goldstein, they discussed her options. Id. at 1059. Parks had no memory of "specific [] terms used," including whether she expressly asked Goldstein to file a Notice of Appeal. Id.

5.) Parks failed to demonstrate that she requested an appeal

"The decision to appeal rests with the defendant." Flores-Ortega, 528 U.S. at 479. In Flores-Ortega, the Court found that "If counsel has consulted with the defendant, the question of deficient performance is easily answered: Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (emphasis added).

In Parks case, she gave Goldstein no express instructions to file an appeal (which she waived and would have likely been dismissed had one been filed). Parks' agreed with counsel's testimony that all options were on the table. 6 AA 1059 ("We just discussed different things that could be done. I don't remember specifically terms used.").

Based upon her testimony, Parks desired the post-conviction option that presented the best option of getting relief from her sentence. See, 6 AA 1057 (wanting to be home with her daughter). In her counsel's opinion, a direct appeal offered no success: First, no viable grounds for an appeal existed that would achieve Parks' objective of shortening her otherwise legal sentence. Id. at 1037. Second, a

direct appeal was waived. Goldstein recognized that Parks expressly waived her right to appeal most claims in the plea agreement. *Id.* at 1038; *see* 1 AA 180.

Because Parks waived her right to appeal, an appeal if taken and subsequently dismissed would have taken time—time Parks desired to spend at home with her family rather than in prison. Even if this Court failed to dismiss Parks' appeal because she waived the right in her guilty plea, without viable claims to raise that would shorten the sentence, an appeal again would force Parks to spend time serving a sentence that she wanted to shorten.

After hearing testimony from Parks and Goldstein, the district court correctly found Goldstein's performance satisfied constitutional standards. After sentencing, Goldstein met with Parks to discuss options. Since Parks sought to challenge the length of the sentence imposed, Goldstein discussed Parks' options, including appeal, sentence modification, and a habeas corpus challenge. Goldstein then offered Parks his opinion. Parks never expressly requested an appeal.

Despite the slightly different analyses offered by this Court in *Toston* and by the United States Supreme Court in *Flores-Ortega*, the result is the same: Goldstein consulted with Parks. That consultation included a discussion of Parks' options after sentencing. After that consultation, Parks never expressly asked Goldstein to file a direct appeal challenging her sentence. Respondents therefore request this Court affirm the district court's denial of Parks' Ground Three claim.

CONCLUSION

Based upon the argument and law presented herein, Respondent requests this Court affirm the district court's denial of Marks' state habeas corpus petition.

RESPECTFULLY SUBMITTED this 8th day of November, 2021.

AARON D. FORD
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CERTIFICATE OF COMPLIANCE WITH NRAP 28.2

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 2016, 14-point Times New Roman type style.

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 proportionately spaced, has a typeface of 14 points or more and contains 11,536 words.

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), 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.

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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: November 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consist with NEFCR 9 on November 8, 2021.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Nov 23 2021 07:51 a.m.
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Clerk of Supreme Court

APRIL PARKS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 82876

APPELLANT'S REPLY BRIEF

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Appeal from Judgment of Conviction
Eighth Judicial District Court, Clark County

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

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I. ARGUMENT

Ms. Parks provides the following brief argument in response to each of the issues raised in this appeal.

A. Parks has always contended her lawyer was ineffective in directing her to a "right to argue" plea deal, which she would never have taken had she known counsel would not prepare for or perform at sentencing in a reasonable manner.

The structure of Ground One is straightforward. Parks was given a choice between two plea offers and chose, with her counsel's advice, the far riskier of the two options. While the first option could have capped her prison time at eight years minimum, the "right to argue" offer she accepted contained no such limitation. Predictably, the State argued for and received a much larger sentence.

The State contends, repeatedly, that Parks has raised a new claim on appeal "based upon alleged deficient advice and failure to perform adequately at sentencing." AB, p. 16. But those were always components of the claim, including at the trial court level.

The entire claim below was premised on the fact counsel advised Parks to reject a more favorable plea deal, resulting in a much longer period of incarceration. 1 AA 141. The core of the claim was the risks and benefits of the offer, to include what would happen if the State retained the right to argue at sentencing. 1 AA 143. Effective counsel would have warned Parks that allowing the State to retain the right to argue was too risky. 1 AA 144. This was all the more so given counsel's lack of investigation before sentencing, and, errors counsel declined to address at sentencing. 1 AA 144-145.

There's no way to divorce counsel's performance at sentencing from counsel's performance during plea negotiations. Parks took the deal she did because counsel led her to believe the outcome would be better. Not only was it not better, it had no chance of being better given the other deficiencies in counsel's preparation and performance.

Turning to the State's response to the merits of the claim, the State focuses on Parks' on-the-record rejection of the fixed plea offer. AB, p. 19. But that misses the point. Parks never contended that she misspoke in

rejecting the offer. She rejected it because her attorney convinced her to. The fact the fixed offer was rejected on the record adds nothing to the analysis, because the question before this Court is "why" she rejected it.

The "why" is answered in the allegations below. Counsel provided Parks with advice that the right to argue offer would result in a more favorable sentence than the proposed eight year minimum. 1 AA 144. Counsel failed to advise Parks of the "high likelihood the actual sentence imposed would also exceed that amount." 1 AA 144.

The prejudice from these events is apparent, in that the fixed plea would have resulted in a minimum sentence half the amount actually imposed. This isn't a question of hindsight or Parks making the "wrong choice" as the State calls it. AB, p. 25. Instead, the focus here is on counsel's performance in recommending that the State retain the right to argue in this proceeding. Effective counsel would have advised the client of the extreme risk of a higher sentence, not convince the client that a lower sentence was possible when the actual chance of that happening was miniscule.

B. Parks' sentence is inseparable from the amount of money at issue, which the State conceded is far less than what was presented at sentencing. Where Parks' sentence was based on the so- called high dollar value of the case, and counsel failed to discover errors in those amounts, resentencing is required.

Ground Two and the response to it contain several moving parts. But what looms largest is the fact that the State conceded below, and concedes again on appeal, that the restitution stated in the judgment of conviction is erroneous.

Now, the State offers that the correct amount of restitution is $412,943.02. AB, p. 33. But even the amended judgment of conviction fixes the amount at $554,397.71 and the amount presented at sentencing was even higher. 2 AA 261. An error to the tune of +$140,000 is not minor and is proof, standing alone, of Parks' other point which is that her conduct was not nearly as bad as what the State argued at sentencing.

Below and in the opening brief, Parks pointed out at least nine specific examples of erroneous or misleading information provided at sentencing. OB, pp.13-19. Most of that information was based on public

records and the State never meaningfully disputed any of it. Likewise, there is no dispute trial counsel was not notified that this information would be presented, or that trial counsel did not specifically object to any of it or attempt to rebut the information in any way.

To be sure, the trial court judge dismissed the significance of this information by claiming if the court had known the correct information it would not have affected the sentence. 6 AA 1022. This Court isn't required to accept that rationale. Cameron v. State, 968 P.2d 1169, 114 Nev. 1281 (1998); see also Earl v. State, 111 Nev. 1304, 1311, 904 P.2d 1029 (1995) This Court has remanded sentencing errors for resentencing, before a new judge unfamiliar with the record, to ensure preservation of the Defendant's right to an individualized and accurate sentencing. Brake v. State, 113 Nev. 579, 939 P.2d 1029 (1997).

At sentencing the trial court was presented with restitution that was off by in excess of 20%, and presented with "evidence" of Parks' conduct that was belied in many cases by publicly available information. Yet when these errors were finally presented in postconviction proceedings, the Court

found none of this information could have affected the sentence. Parks contends the far fairer result is to order a new sentencing proceeding in front of a judge unfamiliar with the record because the sheer magnitude of sentencing errors renders the sentence unreliable.

Briefly, there were even more errors at sentencing which would justify a new sentencing proceeding, such as the State's comments about Parks' so-called lack of remorse. As explained in the opening brief, Parks took a plea deal, which was a deal crafted and offered by the State. It cannot legally be used against her in the manner that it was at the time of sentencing. Brown v. State, 113 Nev. 275, 291, 934 P.2d 235 (1997)

Further, trial counsel never presented the court with a comparison of sentences from similar cases. Cases don't need to be identical to provide some historical reference of reasonableness. Evidence was available that in Nevada, far larger thefts generally result in far smaller periods of incarceration. There was a reasonable probability of a smaller period of incarceration had that information been provided by trial counsel at sentencing.

As it did below, the State repeatedly tries to divorce the amount of money at issue from the sentence. But it can't, because those two factors simply go hand in hand. The State acknowledges as much, as it must, in its answering brief. See AB, p. 38 (sentencing factors included "assets taken from her victims"), p. 35 (Parks stole "an incredibly large" amount of money), p. 31 (taking "around a half million dollars…constituted a serious crime").

In the end, the issue is laid bare. The alleged amount of theft was the basis for a harsh sentence. Yet the amount of theft is substantially less than what was represented. If the amount of theft is less, so too should be the sentence. This Court should find counsel performed ineffectively at sentencing and order that Parks receive a new sentencing hearing before a judge unfamiliar with the record of proceedings.

C. The record un equivocally shows Parks asked her lawyer to challenge her sentence withi n thirty days of conviction. Under Toston , she is entitled to a belated direct appeal.

The State's response to the claim that Parks was denied her direct appeal spends much time on the facts presented during the evidentiary

hearing. Parks discussed those in her opening brief as well. But this Court may be interested to zoom in on one specific fact that can't be disputed – during the time when an appeal could have been filed, Parks asked her attorney in writing to challenge her sentence.

This Court has already held that a defendant can be entitled to a belated direct appeal where she conveyed a "desire to challenge [her] sentence within the period for filing an appeal." Toston v. State, 127 Nev. 971, 979-980, 267 P.3d 795 (2011). That happened here, because Parks plainly wrote her attorney a letter right after sentencing and asked him to file for a "sentence modification." 2 AA 264.

While her request doesn't use the word appeal, that cuts the issue too finely. A reasonable attorney would have understood she wanted to challenge her conviction, and the way to do that within thirty days of conviction is typically through an appeal. That such an understanding was reasonable is itself already established given this Court's ruling in Toston.

Worse, the evidentiary hearing established that trial counsel didn't appeal because he didn't think there were appealable issues and didn't

think he was asked to file an appeal. This Court's ruling in Toston resolves the first part of that rationale, and the second is belied by the fact there were many appealable issues as discussed in the briefs before the Court here.

The State here is itself guilty of raising a new issue on appeal, in that it never argued below that Parks somehow waived her right to a direct appeal. In fact, below, the State conceded the claim was proper and that an evidentiary hearing was necessary to resolve it. 4 AA 705. Now though, it appears the State has taken the position Parks waived her direct appeal. AB, p. 50.

Parks offers two responses to that. First, this Court has already determined that the question of whether an appeal is waived is separate from the question of whether a notice of appeal was required to be filed. Burns v. State, 137 Nev. Adv. Op. 50, 495 P.3d 1091 (2021). That alone justifies this Court granting relief, ordering a belated appeal, and taking up the waiver question at that time.

But even if the question was reached here, Parks never waived her entire direct appeal. See AB, p. 50. The supposed waiver appears to be based on language in the guilty plea agreement. 1 AA 180. There's several problems with the State's reliance on that provision.

First, the language at issue is required to be in a particular form, and the guilty plea agreement in this case is not. See NRS 174.063 (plea agreements must be in "substantially" the following form). The mandatory form of a guilty plea agreement requires that the defendant retain the right to appeal "based upon reasonable constitutional, jurisdictional, or other grounds that challenge the legality of the proceedings…" The language at issue here was substantially modified from the required form and is therefore void.

Second, there is a strong argument that someone in Ms. Parks' position could not be required to waive errors which had not yet occurred as of the time a plea was entered. Gonzales v. State, 137 Nev. Adv. Op. 40, 492 P.3d 556 (2021). The errors discussed here, and which largely would have been raised on appeal, all arose during the sentencing. This Court's

decision in Gonzales seems to preserve a right to effective assistance of counsel at sentencing. Assuming that to be so, there is no reason to deprive a criminal defendant of the full panoply of protections against an unconstitutional result at sentencing.

Under Nevada law including NRS 174.063 and Gonzales, Parks could not waive errors that hadn't happened yet, such as by purportedly waiving her right to a fair sentencing at the time of arraignment. Parks did not waive her right to a direct appeal and instead has presented a clear cut case for relief in the form of a belated appeal.

II. CONCLUSION

Parks believes that any issues raised in the opening brief but not addressed here are adequately presented for the Court's review. For all these reasons and those in the opening brief, Parks requests this Honorable Court grant relief on her claims and order that the convictions and sentences be reversed.

DATED this 23rd day of November, 2021.

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____

JAMIE J. RESCH
Attorney for Appellant
2620 Regatta Dr. #102
Las Vegas, Nevada 89128
(702) 483-7360

RULE 28.2 ATTORNEY CERTIFICATE

1. 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, including 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 upon is 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.

2. I further 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 2016 in 14-point font of the Ebrima style.

3. I further certify 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 proportionally spaced, has a typeface of 14 points or more, and contains 2,090 words.

DATED this 23rd day of November 2021.

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____

JAMIE J. RESCH
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 23, 2021. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

STEVEN WOLFSON
Clark County District Attorney
Counsel for Respondent

AARON FORD
Nevada Attorney General

An Employee of RESCH LAW, PLLC, d/b/a Conviction Solutions

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

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

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

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

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

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

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

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

I understand that P&P will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information

COUNT 1 – VOLUNTARY MANSLAUGHTER

did then and there wilfully, unlawfully, feloniously, without malice and without deliberation, kill KHAYDEN QUISANO, a human being, by striking the head and/or body of the said KHAYDEN QUISANO and/or by shaking him and/or by throwing him against a hard surface and/or by other manner or means unknown, all of which resulted in the death of the said KHAYDEN QUISANO.

COUNT 2 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: KHAYDEN QUISANO, being approximately three (3) year(s) of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: severe head trauma resulting in brain injury and/or lung contusions, and/or cause the said KHAYDEN QUISANO to be placed in a situation where he might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: severe head trauma resulting in brain injury and/or lung contusions causing the death of the said KHAYDEN QUISANO, by the Defendant striking the head and/or body of the said KHAYDEN QUISANO and/or by shaking him and/or by throwing him against a hard surface and/or by other manner or means unknown, resulting in substantial bodily harm or mental harm and causing death to the said KHAYDEN QUISANO.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

BY _____
MICHAEL V. STAUDAHER
Chief Deputy District Attorney
Nevada Bar #00008273

DA#13F09094X/jr
LVMPD EV#1306063235
(TK12)

at this point?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. So you don't have any questions that you want to ask the Court, or if you do, the time to ask them is right now?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. And is it your desire today to enter a plea of guilty pursuant to the Alford decision?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Now, you understand that that means that you are denying the facts constituting the offense; therefore, I must make a determination that there was a factual basis for the plea.

The Deputy District Attorney will now state for the record what facts the State would be able to prove if this matter were to proceed to trial.

Mr. Staudaher.

MR. STAUDAHER: Thank you, Your Honor.

The State would, if the case had gone to trial, would be able to prove that on or about June 6th of 2013, Jonathan Quisano had started to care for his son Khayden Quisano around 4:30 in the afternoon after Khayden had been deposited in the home by his grandparents. Prior to that time Khayden had exhibited no injuries or illnesses or any problems whatsoever; however, within an hour of -- a period of about an hour and a half, a window of time that is between the time that Khayden came into the home and 9-1-1 was called, the State believes we would have been able to prove that Jonathan Quisano perpetrated child abuse upon the child such that he eventually died.

Now, the other facts based on what took place that the State would

micro droplets spraying over a period of -- over a space. That was later elucidated by crime scene analysts when they came in and used Leucocrystal Violet to bring that up so it was visible. That clearly is an injury which was not consistent with any form of a fall off a couch and a head injury. It was a lung injury in addition to the head injury that he sustained.

Now, initially after the calling between the wife and Jonathan, she hangs up the phone. She calls 9-1-1. After she calls 9-1-1, she's on the phone with the 9-1-1 operator, and she's not at home. They query her as to what's going on because the person who has care and custody of the child isn't calling them, doesn't indicate that there's a problem, and she is.

She implores them to go to the house; they do. They don't really know what they're going to see when they get there. They don't know that there's a serious problem, but when they arrive on scene, they knock on the door. He opens the door and basically hands them Khayden in essentially an arrested state. He's not breathing at the time. He is lifeless. They immediately take the child, put the child down in the entryway -- entry hallway area.

In the area of where the child was at the time you could not see because of the -- sort of the way the hallway was into the full extent of the great room where the furniture was; however, you could see two recliners, kind of rocker chairs that were in the living room at least from the perspective of where the first responder was that dealt with Khayden initially.

In asking what had happened, Khayden -- about what happened to Khayden, Jonathan says that he fell off of a recliner, rocker. They turn around and they see the rockers. They point to those rockers, and they say, Those chairs, and he says, yes.

> dummy. The acceleration, and the resulting HIC, varied from one experiment to another. Assuming a fall of 32 inches, the HIC for an acceleration of 100 g is 808, and the HIC for an acceleration of 200 g is 2285. The threshold of injury for a 3 year old child is an HIC of 570. The HIC exceeds the threshold for injury by large margins. The probability of skull fracture is 37.5% for an acceleration of 100 g, or 81.9% for an acceleration of 200 g. The force of the fall was easily large enough to cause serious injury or death of an infant.

Report of Dr. John Farley, (updated 6/10/14), attached hereto as Exhibit J. In other words, the assumption that the fall described by Jonathan could not have caused Khayden's head injury and, therefore, compelled Jonathan's arrest for murder, was patently wrong.

In the prosecution's factual basis for Jonathan's *Alford* plea, the presenting prosecutor represented to this Honorable Court that, in essence, certain forensic evidence undercut Jonathan's claim of an accident. In this regard, the prosecutor stated:

> Now we know that in the interim between the calls that took place and between the actual arrival of Jonathan -- excuse me, of Khayden at the house that evening after the injury to Khayden that there was some blood associated with that because we found, and the evidence would show, that there were at least attempts to clean up blood off of Khayden that were located in two different bathrooms and in the kitchen area as well as the main living area. In addition, there appears -- although the medical evidence later on would show that there was some sort of lunch contusions that were sustained by Khayden when he was in the home that night, the evidence on the carpet in front of where supposedly these events took place showed not just blood dripping on the carpet but showed an expectoration of blood, meaning a coughing of blood with micro droplets spraying over a period of -- over a space. That was later elucidated by crime scene analysts when they came in and used the Leucocrystal Violet to bring it up so that was visible. That clearly is an injury which was not consistent with any form of fall off a couch and a head injury. It was a lung injury in addition to the head injury that he sustained.

Exhibit K, Transcript of Proceedings 6/10/14.

The prosecutor went on to describe Khayden's head injury as consisting of a complex stellate fracture to the left posterior parietal occipital area; a non-abrasive injury to the front left scalp with hemorrhaging in the underlying tissue(s); subdural hematomas covering the entirety of the brain; hemorrhaging in the right optic nerves; and deep axonal injury to the brain consistent with a rotational injury. Exhibit K, p. 8-9. This, the prosecutor contended, combined with the

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DISTRICT COURT
CLARK COU NTY, NEVADA

APRIL PARKS,

Petitioner,

vs.

DWIGHT NEVEN; ET.AL.,

Respondent,

Case No: A-19-807564-W

Dept. No: X

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on April 12, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 15, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 15 day of April 2021, I served a copy of this Notice of Entry on the following:

By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

The United States mail addressed as follows:

April Parks# 1210454
4370 Smiley Rd.
Las Vegas, NV 89115

Jamie J. Resch, Esq.
2620 Regatta Dr., Ste 102
Las Vegas, NV 89128

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

FCL
RESCH LAW, PLLC d/b/a Conviction Solutions
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Jresch@convictionsolutions.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

APRIL PARKS, Petitioner, vs. DWIGHT NEVEN, THE STATE OF NEVADA, Respondents.	Case No.: A-19-807564-W Dept. No: XI FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) Date of Hearing: April 20, 2022 Time of Hearing: 1:30 p.m.

This cause having come on for hearing before the Honorable Ellie Roohani, District Court Judge, on April 20, 2022, the Petitioner in the custody of the Nevada Department of Corrections and represented by her attorney of record, Jamie J. Resch, Esq., and Respondent represented by Steven B. Wolfson, District Attorney, and Michael Bongard, Esq., Senior Deputy Attorney General, and the Court having considered the matter, including previously filed briefs, arguments, and documents on file herein, and the Nevada Court of Appeals' Order of Remand, and now therefore makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. In a post-conviction petition filed December 27, 2019 and later filed supplement, Parks alleged among other claims that she had been denied the right to a direct appeal. In the Findings of Fact, Conclusions of Law, and Order denying the petition dated April 12, 2021, the District Court determined that counsel was not ineffective for failing to file a notice of appeal after Parks' conviction and sentence.

2. In a decision dated March 4, 2022, the Nevada Court of Appeals reversed and remanded the denial of post-conviction relief on the issue of denial of a direct appeal. The Court held that Parks' desire to appeal could be "reasonably inferred from the totality of the circumstances." The case was remanded to this Court to "comply with NRAP 4(c)."

3. One such finding required by the Rules of Appellate Procedure and specifically NRAP 4(c) is that the post-conviction petition that asserts the appeal deprivation claim was timely. This Court finds Parks' petition was in fact timely, as the December 27, 2019 petition and later supplement were timely filed and contained an appeal deprivation claim.

4. Another finding required by the rule is whether petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with assistance of appointed or retained counsel. Parks has so established this as well, because the Nevada Court of Appeals' decision on appeal from the denial of post-conviction relief says so. Parks has established ineffective assistance of counsel and presumed prejudice arising therefrom on her claim that she was deprived of a direct appeal.

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CONCLUSIONS OF LAW

1. "In all criminal prosecutions, the accused shall enjoy the right to…have the Assistance of Counsel for his defense." U.S. Const. amend. VI. "[T]he right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686 (1984). In Nevada, the appropriate vehicle for review of whether counsel was effective is a post-conviction relief proceeding. McKague v. Warden, 112 Nev. 159, 912 P.2d 255, 258 at n. 4 (1996). In order to assert a claim for ineffective assistance of counsel, the petitioner must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-pronged test set forth in Strickland. See State v. Love, 109 Nev. 1136, 865 P.2d 322, 323 (1993). Under Strickland, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, absent those errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 697.

2. Trial counsel has a duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing on what counsel knew or should have known at the time. Toston v. State, 127 Nev.Adv.Op. 87, 267 P.3d 795 (2011), see also Davis v. State, 115 Nev. 17, 974 P.2d 658, 660 (1999) ("[I]f the client does express a desire to appeal, counsel is obligated to file the notice of appeal on the client's behalf"). Prejudice is presumed for purposes of establishing the ineffective assistance of counselwhen counsel's conduct completely denies a convicted defendant of a direct appeal. Toston, 267 P.3d at 800, citing Lozada v. State, 110 Nev. 349, 871 P.2d 944, 949 (1994).

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3. The Court therefore finds, as directed by the Nevada Court of Appeals, that Petitioner received ineffective assistance of counsel because a desire to file a direct appeal was reasonably inferable, and counsel failed to file a timely notice of appeal. As a result, Petitioner suffered presumed prejudice due to the complete loss of an opportunity to present a direct appeal.

4. NRAP 4(c) provides that an untimely notice of appeal from a judgment of conviction and sentence may be filed when "[a] post-conviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to NRS 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence, and [t]he district court in which the petition is considered enters a written order containing…specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel…" NRAP 4(c)(1)(a)-(b). This order satisfies those requirements.

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ORDER

IT IS HEREBY ORDERED that Petitioner April Parks' Petition for Writ of Habeas Corpus is GRANTED, and the Court finds Petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence in District Court Case C-17-321808-1, and,

IT IS FURTHER ORDERED that Parks' post-conviction counsel, Jamie Resch, Esq., is WITHDRAWN. Further pleadings, if any, may be served on April Parks at April Parks #1210454, Florence McClure Women's Corr. Ctr., 4370 Smiley Rd., Las Vegas, NV 89115, and,

IT IS FURTHER ORDERED that a status check re: appointment of appellate counsel is set in the underlying criminal case, C-17-321808-1 on May 18, 2022 at 9:00 a.m. Counsel for the State of Nevada was ordered to ensure April Parks' attendance at this hearing, and,

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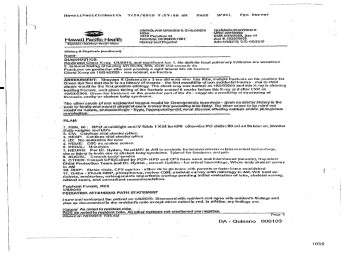
IT IS FURTHER ORDERED that the District Court Clerk shall prepare and file within five (5) days of the entry of this order a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf. Pursuant to NRAP 4(c)(2), the District Court Clerk shall serve certified copies of the district court's written order and the notice of appeal required by Rule 4(c) on the petitioner and petitioner's counsel in the post-conviction proceeding, the respondent, the Attorney General, the district attorney of the county in which the petitioner was convicted (Clark County, Nevada), the appellate counsel appointed to represent the petitioner in the direct appeal, and the clerk of the Supreme Court.



Submitted By:
RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____
JAMIE J. RESCH, Attorney for Petitioner

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

April Parks, Plaintiff(s)	CASE NO: A-19-807564-W
vs.	DEPT. NO. Department 11
Dwight Neven, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Finding of Fact and Conclusions of Law was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/21/2022

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Jennifer Martinez	jmartinez@ag.nv.gov

ASTA

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

STATE OF NEVADA,

Plaintiff(s),

vs.

APRIL PARKS,

Defendant(s),

Case No: C-17-321808-1
Related Case A-19-807564-W
Dept No: XI

CASE APPEAL STATEMENT

1. Appellant(s): April Parks

2. Judge: Tierra Jons

3. Appellant(s): April Parks

Counsel:

April Parks #1210454
4370 Smiley Rd.
Las Vegas, NV 89115

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
   Permission Granted: N/A

   Respondent(s)'s Attorney Licensed in Nevada: Yes
   Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: March 8, 2017

10. Brief Description of the Nature of the Action: Criminal

    Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: No

    Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 22 day of April 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: April Parks

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-17-321808-1

State of Nevada	§	Location:	**Department 11**
vs	§	Judicial Officer:	**Roohani, Ellie**
April Parks	§	Filed on:	**03/08/2017**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**C321808**
	§	Defendant's Scope ID #:	**1571645**
	§	Grand Jury Case Number:	**16AGJ151A**
		ITAG Case ID:	**1870296**

CASE INFORMATION

Case Type: **Felony/Gross Misdemeanor**

Case Status: **01/10/2019 Closed**

Offense		Statute	Deg	Date
1.	EXPLOITATION OF AN OLDER/VULNERABLE PERSON	200.5099.3c	F	12/21/2011
	)LOHG5$&.(7((5,1* Arrest: 03/08/2017	F	3/8/2017	
2.	EXPLOITATION OF AN OLDER/VULNERABLE PERSON	200.5099.3c	F	12/21/2011
	)LOHG7+()7	F	3/8/2017	
3.	THEFT	205.0835.4	F	12/21/2011
4.	THEFT	205.0835.4	F	12/21/2011
5.	PERJURY	199.120	F	12/21/2011
	)LOHG7+()7	F	3/8/2017	
6.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
7.	THEFT	205.0835.4	F	12/21/2011
8.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
9.	THEFT	205.0835.4	F	12/21/2011
10.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
11.	THEFT	205.0835.4	F	12/21/2011
12.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
13.	THEFT	205.0835.4	F	12/21/2011
14.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
15.	THEFT	205.0835.4	F	12/21/2011
16.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
17.	THEFT	205.0835.4	F	12/21/2011
18.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
19.	THEFT	205.0835.4	F	12/21/2011
20.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
21.	THEFT	205.0835.4	F	12/21/2011
22.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
23.	THEFT	205.0835.3	F	12/21/2011
24.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
25.	THEFT	205.0835.3	F	12/21/2011
26.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
27.	THEFT	205.0835.4	F	12/21/2011
28.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
29.	THEFT	205.0835.3	F	12/21/2011
30.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
31.	THEFT	205.0835.4	F	12/21/2011
32.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
33.	THEFT	205.0835.4	F	12/21/2011
34.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
35.	THEFT	205.0835.4	F	12/21/2011
36.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
37.	THEFT	205.0835.4	F	12/21/2011

38.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
39.	THEFT	205.0835.4	F	12/21/2011
40.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
41.	THEFT	205.0835.4	F	12/21/2011
42.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
43.	THEFT	205.0835.4	F	12/21/2011
44.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
45.	THEFT	205.0835.4	F	12/21/2011
46.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
47.	THEFT	205.0835.3	F	12/21/2011
48.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
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52.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
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69.	THEFT	205.0835.4	F	12/21/2011
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71.	THEFT	205.0835.4	F	12/21/2011
72.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
73.	THEFT	205.0835.3	F	12/21/2011
74.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
75.	THEFT	205.0835.3	F	12/21/2011
76.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
77.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
78.	THEFT	205.0835.4	F	12/21/2011
79.	EXPLOITATION OF AN OLDER PERSON	200.5099.3c	F	12/21/2011
80.	THEFT	205.0835.4	F	12/21/2011
81.	THEFT	205.0835.3	F	12/21/2011
82.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
83.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
84.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
85.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
86.	OFFERING FALSE INSTRUMENT FOR	239.330	F	12/21/2011

	FILING OR RECORD			
87.	PERJURY	199.120	F	12/21/2011
89.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
90.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
91.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
92.	PERJURY	199.120	F	12/21/2011
94.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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97.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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100.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
101.	PERJURY	199.120	F	12/21/2011
103.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
104.	PERJURY	199.120	F	12/21/2011
106.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
107.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
108.	PERJURY	199.120	F	12/21/2011
110.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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113.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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119.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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122.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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131.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
132.	PERJURY	199.120	F	12/21/2011
134.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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137.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
138.	PERJURY	199.120	F	12/21/2011
140.	OFFERING FALSE INSTRUMENT FOR	239.330	F	12/21/2011

	FILING OR RECORD			
141.	PERJURY	199.120	F	12/21/2011
143.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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146.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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149.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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152.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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191.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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194.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
195.	PERJURY	199.120	F	12/21/2011

197.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
198.	PERJURY	199.120	F	12/21/2011
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204.	PERJURY	199.120	F	12/21/2011
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212.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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218.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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222.	PERJURY	199.120	F	12/21/2011
224.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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228.	PERJURY	199.120	F	12/21/2011
230.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
231.	PERJURY	199.120	F	12/21/2011
233.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
234.	PERJURY	199.120	F	12/21/2011
236.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
237.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
238.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
239.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
240.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
241.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
242.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
243.	PERJURY	199.120	F	12/21/2011
245.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
246.	PERJURY	199.120	F	12/21/2011

248.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
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257.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
258.	PERJURY	199.120	F	12/21/2011
260.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
261.	PERJURY	199.120	F	12/21/2011
263.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
264.	PERJURY	199.120	F	12/21/2011
266.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
267.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011
268.	PERJURY	199.120	F	12/21/2011
270.	OFFERING FALSE INSTRUMENT FOR FILING OR RECORD	239.330	F	12/21/2011

Related Cases
A-19-807564-W (Writ Related Case)
C-17-321808-2 (Multi-Defendant Case)
C-17-321808-3 (Multi-Defendant Case)
C-17-321808-4 (Multi-Defendant Case)

Statistical Closures
01/10/2019 Guilty Plea with Sentence (before trial) (CR)

Warrants
Indictment Warrant - Parks, April (Judicial Officer: Togliatti, Jennifer)
04/11/2017 2:51 PM Returned - Served
03/08/2017 11:45 AM Active
Hold Without Bond

DATE	CASE ASSIGNMENT

Current Case Assignment

Case Number	C-17-321808-1
Court	Department 11
Date Assigned	01/18/2022
Judicial Officer	Roohani, Ellie

PARTY INFORMATION

/HDG $WWRUQH\V

Defendant	**Parks, April**	**Pro Se**
Plaintiff	**State of Nevada**	**Wolfson, Steven B** 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX

3ULQWHG RQ

EVENTS

03/08/2017 Indictment
> @ ,QGLFWPHQW

03/08/2017 Warrant
> @ ,QGLFWPHQW :DUUDQW

03/08/2017 Ex Parte Motion
> @ ([3DUWH 0RWLRQ RQ %DLO

03/08/2017 Media Request and Order
> @ 0HGLD 5HTXHVW DQG 2UGHU WR [illegible]

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9F

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV [illegible] *UDQG -XU\ +HDULQJ 9I

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9

03/13/2017 Reporters Transcript
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9F

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9R

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9F

03/13/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9R

03/14/2017 Transcript of Proceedings
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV *UDQG -XU\ +HDULQJ 9

03/15/2017 Reporters Transcript
> @ 5HSRUWHU V 7UDQVFULSW RI 3URFHHGLQJV [illegible] *UDQG -XU\ +HDULQJ

04/06/2017 Indictment Warrant Return
> @

04/11/2017 Media Request and Order
> @ 0HGLD 5HTXHVW $QG 2UGHU 7R &RXUW WR &RQVLGHU &DPHUDV LQ &RXUWURRP &DSDFLW\ $FFHVV/$

04/11/2017 Media Request and Order
> @ 0HGLD 5HTXHVW $QG 2UGHU $OORZLQJ &DPHUD $FFHVV 7R &RXUW 3U

04/11/2017 Media Request and Order
> @ 0HGLD 5HTXHVW $QG 2UGHU 7R &RXUW WR &RQVLGHU &DPHUDV LQ &RXUWURRP &DSDFLW\ $FFHVV9HJDV 9RLFH

04/11/2017 Media Request and Order
> @ 0HGLD 5HTXHVW $QG 2UGHU $OORZLQJ &DPHUD $FFHVV 7R &RXUW 3U
352'8&7,216

04/19/2017 Media Request and Order
> @ 0HGLD 5HTXHVW $QG 2UGHU 7R &RXUW WR &RQVLGHU &DPHUDV LQ &RXUWURRP &DSDFLW\ $FFHV

04/20/2017 Petition for Writ of Habeas Corpus
> @ 'HIHQGDQW $SULO 0DUNV 0RWLRQ IRU ([WHQVLRQ RI 7LPH WR)LOH

05/22/2017 Administrative Reassignment - Judicial Officer Change
)URP -XGJH -HVVLH :DOVK WR -XGJH 7LHUUD-RQH

06/29/2017 Stipulation and Order
Filed by: Defendant Parks, April
> @ 6WLSXODWLRQ DQG 2UGHU IRU ([WHQVLRQ RI 7LPH WR)LOH D 3HWL

08/24/2017 Notice of Witnesses and/or Expert Witnesses
Filed By: Plaintiff State of Nevada
> @ 6WDWH V 1RWLFH RI :LWQHVVHV

08/24/2017 Notice of Witnesses and/or Expert Witnesses
Filed By: Plaintiff State of Nevada
> @ 6WDWH V 1RWLFH RI ([SHUW :LWQHVVH

09/06/2017 Motion to Quash
> @ 0RWLRQ WR 4XDVK 6XESRHQD RU LQ WKH $OWHUQDWLYH /LPLW 6FR

09/07/2017 Receipt of Copy
> @ 5HFHLSW RI &RS\

09/07/2017 Receipt of Copy
> @ 5HFHLSW RI &RS\

09/26/2017 Supplemental Witness List
Filed by: Plaintiff State of Nevada
> @ 6WDWH V 6XSSOHPHQWDO 1RWLFH RI ([SHUW :LWQHVVHV

09/29/2017 Order

3ULQWHG RQ

Filed By: Plaintiff State of Nevada
> @ 2UGHU $JUHHLQJ QRW -RRQ 1RWLFH +HDULQJ WDNHQ &RXUW -XGJH &K
:LWQHVVHV IRU 7ULDO 6LPSO\ /D\ :LWQHVVHV

03/28/2018 Joinder ,(
Filed By: Defendant Parks, April
> @ 'HIHQGDQW $SULO 3DUNV V -RLQGHU WR 'HIHQGDQW 0DUN 6LPPRQV \

05/07/2018 Order ,(
Filed By: Defendant Parks, April
> @ 2UGHU IRU &RQWDFW 9LVLW ,QYROYLQJ 'HIHQGDQWV 3DUNV 7D\ORU

11/05/2018 Amended Indictment ,(
> @ $PHQGHG ,QGLFWPHQW

11/05/2018 Guilty Plea Agreement ,(
> @ *XLOW\ 3OHD $JUHHPHQW 3XUVXDQW WR $OIRUG

12/11/2018 PSI ,(
> @

12/28/2018 Memorandum ,(
Filed By: Plaintiff State of Nevada
> @ 6HQWHQFLQJ 0HPRUDQGXP

12/31/2018 Media Request and Order ,(
> @ 0HGLD 5HTXHVW $QG 2UGHU $OORZLQJ &DPHUD $FFHVV 7R &RXUW 3\

01/02/2019 Memorandum ,(
Filed By: Defendant Parks, April
> @ 'HIHQGDQW $SULO 3DUNV V 6HQWHQFLQJ 0HPRUDQGXP

01/10/2019 Judgment of Conviction ,(
> @ -XGJPHQW RI &RQYLFWLRQ 3OHD RI *XLOW\

02/04/2019 Amended Judgment of Conviction ,(
> @ $PHQGHG -XGJPHQW RI &RQYLFWLRQ 3OHD RI *XLOW\ $OIRUG

03/06/2019 Motion to Withdraw As Counsel ,(
Filed By: Defendant Parks, April
> @ 0RWLRQ IRU :LWKGUDZDO RI $QWKRQ\ 0 *ROGVWHLQ

03/11/2019 Clerk's Notice of Hearing ,(
> @ &OHUN V 1RWLFH RI +HDULQJ

03/25/2019 Withdrawal of Attorney ,(
Filed by: Defendant Parks, April
> @ 2UGHU RI :LWKGUDZDO RI $QWKRQ\ 0 *ROGVWHLQ (VT

07/24/2019 Notice of Hearing
> @ 1RWLFH RI +HDULQJ

10/15/2019 Motion
Filed By: Defendant Parks, April
> @ 0RWLRQ IRU 5HWXUQ RI 1RQ (YLGHQWLDO 6HL]HG 3HUVRQDO 3URSH

10/15/2019 Motion
Filed By: Defendant Parks, April
> @ 0RWLRQ IRU 5HWXUQ RI 6HL]HG 3HUVRQDO 3URSHUW\

10/21/2019 Ex Parte Order
Filed By: Defendant Parks, April
> @ ([3DUWH 2UGHU IRU([SHQVH[SHQVH FULSWV DW 6WDWH

12/06/2019 Transcript of Proceedings
Party: Defendant Parks, April
> @ 5HFRUGHU V 7UDQVFULSW RI 3URFHHGLQJV UH 6HQWHQFLQJ)ULGD\

01/30/2020 Order Denying Motion
Filed By: Plaintiff State of Nevada
> @ 2UGHU 'HQ\LQJ 0RWLRQ

08/10/2020 Transcript of Proceedings
Party: Defendant Parks, April
> @ 5HFRUGHU V 7UDQVFULSW RI 3URFHHGLQJV UH 6HQWHQFLQJ)ULGD

01/18/2022 Case Reassigned to Department 11
)URP -XGJH 7LHUUD -RQHV WR -XGJH (OLH 5RKDQL

04/22/2022 Notice of Appeal (Criminal)
1RWLFH RI $SSHDO

04/22/2022 Case Appeal Statement
&DVH $SSHDO 6WDWHPHQW

DISPOSITIONS

11/05/2018 **Disposition** (Judicial Officer: Jones, Tierra)
6. EXPLOITATION OF AN OLDER PERSON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

7. THEFT
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

8. EXPLOITATION OF AN OLDER PERSON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

9. THEFT
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10. EXPLOITATION OF AN OLDER PERSON
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11. THEFT
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12. EXPLOITATION OF AN OLDER PERSON
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13. THEFT
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14. EXPLOITATION OF AN OLDER PERSON
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16. EXPLOITATION OF AN OLDER PERSON
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74. EXPLOITATION OF AN OLDER PERSON
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75. THEFT
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76. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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77. EXPLOITATION OF AN OLDER PERSON
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78. THEFT
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79. EXPLOITATION OF AN OLDER PERSON
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82. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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PCN: Sequence:

87. PERJURY

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PCN: Sequence:

89. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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92. PERJURY
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94. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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104. PERJURY
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108. PERJURY
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125. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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126. PERJURY
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131. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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132. PERJURY

Amended Information Filed/Charges Not Addressed
PCN: Sequence:

134. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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135. PERJURY
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138. PERJURY
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140. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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141. PERJURY
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150. PERJURY
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153. PERJURY
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156. PERJURY
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158. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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159. PERJURY
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161. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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162. PERJURY
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164. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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165. PERJURY
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167. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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168. PERJURY
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170. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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171. PERJURY
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173. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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174. PERJURY
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176. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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177. PERJURY
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179. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD

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180. PERJURY
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182. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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183. PERJURY
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185. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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186. PERJURY
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188. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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189. PERJURY
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191. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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192. PERJURY
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194. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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200. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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201. PERJURY
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207. PERJURY
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209. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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210. PERJURY
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212. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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216. PERJURY
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218. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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219. PERJURY
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221. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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224. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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225. PERJURY

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227. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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228. PERJURY
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230. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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231. PERJURY
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233. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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234. PERJURY
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236. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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243. PERJURY
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245. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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246. PERJURY
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248. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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251. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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252. PERJURY
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254. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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255. PERJURY
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257. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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258. PERJURY
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261. PERJURY
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263. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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264. PERJURY
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266. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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267. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
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268. PERJURY

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PCN: Sequence:

270. OFFERING FALSE INSTRUMENT FOR FILING OR RECORD
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

11/05/2018 **Plea** (Judicial Officer: Jones, Tierra)
1. EXPLOITATION OF AN OLDER/VULNERABLE PERSON
Guilty
PCN: Sequence:

2. EXPLOITATION OF AN OLDER PERSON
Guilty
PCN: Sequence:

3. THEFT
Guilty
PCN: Sequence:

4. THEFT
Guilty
PCN: Sequence:

5. PERJURY
Guilty
PCN: Sequence:

11/05/2018 **Disposition** (Judicial Officer: Jones, Tierra)
1. EXPLOITATION OF AN OLDER/VULNERABLE PERSON
Guilty
PCN: Sequence:

2. EXPLOITATION OF AN OLDER/VULNERABLE PERSON
Guilty
PCN: Sequence:

3. THEFT
Guilty
PCN: Sequence:

4. THEFT
Guilty
PCN: Sequence:

5. PERJURY
Guilty
PCN: Sequence:

01/04/2019 **Adult Adjudication** (Judicial Officer: Jones, Tierra)
1. EXPLOITATION OF AN OLDER/VULNERABLE PERSON
12/21/2011 (F) 200.5099.3c (DC50304)
PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
Term: Minimum:72 Month