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Elizabeth A. Brown
Clerk of Supreme Court

ERIC DEAN WERRE,

Appellant,

vs.

CHARLES DANIELS, DIRECTOR OF
THE DEPARTMENT OF
CORRECTIONS FOR THE STATE OF
NEVADA

Respondent .

Volume 3

1 prison, I, you know, dug in some legal -- some legal
2 work or whatever and figured out what my -- what action
3 I had and what I was able to do. And so, that's
4 what -- once I found that out, that's when I started to
5 take place.

6 Q And isn't it true that you primarily pursued
7 that because you believe your sentence was too harsh?

8 A Correct.

9 Q Okay.

10 MR. RYE: I don't have any other questions,
11 Your Honor.

12 THE COURT: Mr. Lasher?

13 MR. LASER: Thank you, Your Honor.

14
15 REDIRECT EXAMINATION

16 BY MR. LASHER:

17 Q So, Mr. Werre, of these six prior felonies,
18 only one resulted in a state prison sentence; is that
19 correct?

20 A Correct.

21 Q And that was for just 16 months?

22 A Yes.

23 Q And Mr. Rye asked about the plea colloquy
24 and -- where you went through -- or where it was asked

1 of you did you discuss the possible defenses with your
2 attorney, remember -- do you remember him asking you
3 that?

4 A Yeah.

5 Q But, you were only aware of the defenses that
6 he discussed with you?

7 A That he had -- that he had brought to my
8 attention, correct.

9 Q So, that's why you would have answered the way
10 you did?

11 A Right.

12 Q You didn't know what you didn't know?

13 A Right.

14 MR. LASHER: I have no further questions.

15 THE COURT: Any follow-up, Mr. Rye?

16 MR. RYE: Nothing based on that, Your Honor.

17 THE COURT: All right. Sir, you can have a
18 seat back at the table.

19 THE WITNESS: Thank you.

20 THE COURT: All right. And next witness.

21 MR. LASHER: I have a question who's witnesses
22 it should be.

23 THE COURT: And if you're talking about lat --
24 I'll give you latitude as to the attorney and --

1 MR. LASHER: Okay. Sure.

2 THE COURT: -- but if Mr. Rye believes I'm
3 giving too much latitude, make the objection, and we'll
4 go from there.

5 MR. LASHER: Okay. So, we will call
6 Mr. Mouritsen.

7 MR. RYE: Your Honor, and I didn't discuss this
8 early on. Does the Court intend to take judicial
9 notice of all documents in 20-CR-00234, the underlying
10 criminal case?

11 THE COURT: All right. Is there any objection
12 if I take --

13 MR. LASHER: No. I think we're -- you're
14 talking about the Presentence report and the priors?

15 MR. RYE: Right. Whether than -- rather than
16 having to introduce all the transcripts and that sort
17 of thing.

18 MR. LASHER: Yeah. No, no. I have no
19 objection.

20 MR. RYE: Notice of that case.

21 THE COURT: Let me just -- so, in terms of the,
22 is it 20-CR-00234?

23 MR. RYE: Yes, Your Honor.

24 THE COURT: All right. And my notes indicate

1 that there are transcripts sentencing and arraignment
2 transcript. Additionally, my file does contain Justice
3 Court proceedings.

4 Are you asking me to take judicial notice of
5 them?

6 MR. RYE: Your Honor, I don't think I'll be
7 referring to anything in that. I know that's part of
8 the Court file. It does indicate that he had some
9 hearings in Justice Court. But I believe the record in
10 the District Court sets forth what had happened in the
11 Justice Court in the sense that the preliminary
12 examination was waived after the arraignment
13 transcript. That's also in the court record in 00234.

14 THE COURT: All right.

15 MR. RYE: So, the Justice Court proceedings, in
16 my opinion, are not critical to this.

17 THE COURT: Okay.

18 Mr. Lasher, do you wish to have me consider the
19 Justice Court or do you want me to limit the --

20 MR. LASHER: Absolutely. I think you're going
21 to rely on it, and possibly even to simplify things, I
22 imagine, my petitioner's appendix.

23 THE COURT: Yeah. I think there was some
24 documents attached as well.

1 MR. LASHER: I have all of this information.
2 So, I mean it's definitely in the record for purposes
3 of this habeas proceeding. But, I have no objection --

4 THE COURT: Okay.

5 MR. LASHER: -- if you -- you know.

6 THE COURT: Then what I'll -- just for purposes
7 of our record today, the Court will take judicial
8 notice of the file in 20-CR-00234. However, I don't
9 believe there's any Justice Court transcripts or
10 anything involved. So, I'll limit the judicial notice
11 to the District Court portion of the file. Is there
12 any objection to that?

13 MR. RYE: State has no objection to that, Your
14 Honor.

15 THE COURT: All right.

16 So, Mr. Mouritsen, if you'd come forward.

17 (Witness sworn.)

18 THE COURT: All right. So, take the stand.
19 Go ahead and state your full name for the
20 record.

21 THE WITNESS: Aaron Sittiporn Mouritsen.

22 THE COURT: And spell the first name.

23 THE WITNESS: Aaron. A-A-R-O-N.

24 THE COURT: And spell the last name.

1 THE WITNESS: Mouritsen. M-O-U-R-I-T-S-E-N.

2 THE COURT: All right. And then the Court has
3 already spoken with the petitioner in this matter. He
4 understands that by questioning you in this matter
5 today he's waiving the attorney/client privilege.

6 THE WITNESS: Okay.

7 THE COURT: All right.

8 Is there anything else we want to inform
9 Mr. Mouritsen regarding the attorney/client?

10 MR. LASHER: Just what I, you know, previously
11 put on the record, that the waiver is only to the
12 matters that are discussed for purposes of this
13 hearing.

14 THE COURT: All right. Anything further?

15 MR. RYE: No, Your Honor. The State's in
16 agreement with that.

17 THE COURT: All right. So, go ahead with your
18 first question, Mr. Lasher.

19
20 AARON MOURITSEN,
21 called as a witness herein by the Petitioner,
22 having been first duly sworn, was examined
23 and testified as follows:
24

DIRECT EXAMINATION

BY MR. LASHER:

Q Okay. Thank you for being here, Mr. Mouritsen.
Appreciate it.

Did you represent Eric Werre in 2020?

A Yes, I did.

Q Great. And you reviewed the discovery on the
case?

A Yes.

Q And what did it consist of?

A I remember there being the report. I remember
the police reports, and I can't recall everything that
was included in that discovery.

Q Okay. And do you have any recollection of
whether you shared the discovery with Mr. Werre?

A He and I discussed it. I don't believe I
shared with him a copy.

Q Okay. So, you did not play for him any of the
oral recordings or voluntary statements?

A I did not play any of the recordings.

Q Any surveillance video?

A No, I did not.

Q Did you advise him of any investigation that
you had done in the case?

1 A He and I discussed the evidence. At the time
2 we waited a little bit to see whether or not the --
3 there would be -- the federal government was going to
4 take the case. And at that point in time, we were
5 waiting to see what testimony would look like from one
6 of the co-defendants.

7 Q Uh-hum. Uh-hum.

8 So, there was no --

9 A I did not retain a private investigator. I
10 didn't do any separate investigation.

11 Q Okay. So -- and so, you had a contract with
12 the County in 2020 to provide criminal defense?

13 A Yes.

14 Q And this maybe more for my edification than for
15 everybody else in this courtroom.

16 But, you would have had to have gotten County
17 funds and hired a private investigator?

18 A Correct. We follow a process where we file a
19 motion requesting the funds, the funds are granted, and
20 then we retain the investigator.

21 Q Okay. And that's something that you have done?

22 A Correct. Yes.

23 Q And -- okay.

24 Did you feel as though there was any

1 investigation to be done in this case?

2 A No, I didn't see a need for additional
3 investigation.

4 Q And did you advise Mr. Werre Assembly Bill 236
5 was not retroactive and did not apply to him?

6 A We did discuss Assembly Bill 236.

7 Q And did you tell him it didn't apply to him?

8 A Yes, it was my opinion that it was not going to
9 be retroactive.

10 Q When you discussed Ms. Sabin's voluntary
11 statement with Mr. Werre, what did you say to him about
12 that?

13 A So, when we discussed kind of our strategy
14 moving forward, once I had the chance to review her
15 testimony, the strategy would have had to been to
16 attempt to exclude that testimony for trial, and then
17 argue that there was insufficient evidence. And
18 that's -- and that's what we discussed as the potential
19 strategy moving forward.

20 However, it was my opinion and we did discuss
21 that I thought that we would be unsuccessful in being
22 able to exclude her testimony because of corroborating
23 evidence.

24 Q And what was the corroborating evidence in this

1 case?

2 A The corroborating evidence was, I believe was
3 the ATF had done a surveillance additionally that had
4 placed him in the residence. There was also a ping on
5 the cell phone which placed him in the vicinity of the
6 burglary at the time that it occurred. As well as
7 evidence that placed his cell phone in California in
8 the place in which the alleged gun sale had on
9 occurred.

10 In addition to that, there was a placement of
11 him in the residence in which some of the alleged drugs
12 as well as the firearms were located in the garage of
13 that residence.

14 Q And how much distance is there between
15 2920 West First Street and the gun storage facility?

16 A I don't know.

17 Q Less than a mile?

18 A It'd probably be less than a mile.

19 Q And did you retain a cell phone expert to look
20 at the information and talk about the pinging?

21 A I did not.

22 Q And Mr. Werre's primary residence is in
23 California; is that correct?

24 A That's correct.

1 MR. LASHER: I have no further questions at
2 this point.

3 THE COURT: Okay.

4 Mr. Rye?

5 MR. RYE: Thank you, Your Honor.

6
7 CROSS-EXAMINATION

8 BY MR. RYE:

9 Q Good morning, sir.

10 A Good morning.

11 Q Now, as part of your work in criminal defense,
12 have you handled Category A and B felonies?

13 A I have.

14 Q Was that part of your regular caseload?

15 A That was part of the regular caseload.

16 Q And have you done jury trials in those kinds of
17 cases?

18 A I have done jury trials in Category A and B
19 felonies.

20 Q And have you done plea agreements in Category A
21 and B felonies?

22 A I've also done plea agreements in both
23 Category A and B felonies.

24 Q Okay. Now, do you recall how many times --

1 well, let me just back up again.

2 Have you had prior cases involving stolen
3 firearms?

4 A Yes.

5 Q Controlled substances?

6 A Yes.

7 Q Now, do you recall in this case how many
8 meetings you had with Mr. Werre?

9 A I can't recall exactly, but I would put it
10 between six and ten.

11 MR. LASHER: Objection, speculation.

12 THE COURT: Yeah.

13 MR. RYE: I'll try to do some additional
14 follow-up.

15 THE COURT: All right. Go ahead and try to lay
16 a foundation.

17 BY MR. RYE:

18 Q Okay. So, you say between a certain number.
19 What are you basing that determination on?

20 A I can recall six visits. There may have been
21 more, but I can't recall.

22 Q Okay. Do you recall where those six visits
23 took place?

24 A Those occurred here at the jail.

1 Q And what about, do those include times that you
2 visited with Mr. Werre during court proceedings?

3 A No. Those six times are times where I went
4 down to the jail.

5 Q Okay. And those visits took place within the
6 jail?

7 A Yes, in the pod.

8 Q Now, did you have a chance during those visits
9 to discuss the case with Mr. Werre?

10 A I did.

11 Q Discuss the possible charges and penalties with
12 Mr. Werre?

13 A I did.

14 Q The pros and cons of going forward with the
15 plea versus a trial?

16 A Yes.

17 Q Now, one of the issues that's come up is
18 Mr. Werre thought that the mandatory sentence in this
19 case was 2 to 15 years. Did you at any time tell
20 Mr. Werre that he would receive a definite sentence of
21 2 to 15 years?

22 A No. I include that as well in the Guilty Plea
23 Agreement. There's also a section that explicitly says
24 that is -- there are those parameters, but it's up to

1 the judge to determine the final sentence within those
2 parameters.

3 Q And are you familiar with the Nevada sentencing
4 structure?

5 A I am.

6 Q Did you talk to Mr. Werre about minimum and
7 maximum sentencing that you discussed alternatives in
8 this case?

9 A I did discuss it, including the Guilty Plea
10 Agreement, what is the minimum and maximum sentence for
11 each charge that he plead guilty to.

12 Q In your experience, does the Court also canvass
13 the defendant on the possible punishment and that the
14 Court actually makes the decision on the punishment?

15 A Yes.

16 Q Now, what -- how would you describe your
17 relationship with Mr. Werre during those visits?

18 A I would say at first he was fairly hesitant
19 when we -- the first few meetings that we had. And
20 then I think our relationship got better, and he was
21 more open with me towards the time where we entered the
22 plea and time of sentencing.

23 Q Did he ever express any dissatisfaction with
24 your representation in those meetings?

1 A At the very of the beginning he was concerned,
2 but then he overcame that.

3 Q Okay. So, as you went to the arraignment,
4 change of plea, and -- or the plea in this case, did he
5 express any concern about your representation?

6 A No, he did not.

7 Q At the sentencing?

8 A No, he did not.

9 Q Now, did you also have discussions with
10 Mr. Werre's father?

11 A I did. He stayed in very good contact with me.

12 Q And do you do that often in cases?

13 A Well, he called me, and then I told his father
14 that I needed to make sure Mr. Werre was okay with me
15 speaking to him about the case. Mr. Werre confirmed to
16 me that he was okay with it, and then I did speak with
17 his father. I only do that in cases where the
18 defendant is okay with it.

19 Q Okay. And so, did that give you a chance to
20 learn a little bit about Mr. Werre's background?

21 A I did. Actually, he gave me a lot of detail in
22 regards to Mr. Werre's background, and he was very
23 helpful in helping me prepare the sentencing.

24 Q Okay. And can you describe just a little bit

1 for the Court how you used that to prepare for
2 sentencing?

3 A I mean, the main focus was the fact that
4 Mr. Werre's father was very supportive of him, and he
5 was very willing to help him when he -- when he got out
6 of prison to assist him in getting employment and
7 staying on the straight and narrow and making sure that
8 he had the support that he needed.

9 And it was very clear to me from talking to him
10 and also talking to Mr. -- and him talking about
11 Mr. Werre's girlfriend, talking to Mr. Werre's
12 girlfriend, that they would be very supportive of him
13 being able to be successful upon release. And so, I
14 used that as the main point in my sentencing to show
15 that Mr. Werre would be successful upon release and was
16 unlikely to return to the court.

17 Q And did you discuss with Mr. Werre the possible
18 defenses in this case when you were discussing whether
19 or not to plead guilty?

20 A I did.

21 Q And what defenses do you remember discussing
22 with him in particular?

23 A The main defense that we discussed was to argue
24 that he had been down here for -- looking for

1 employment, and that while the two other co-defendant's
2 had been involved, he was actually just down here for
3 something else and had not been connected to it, and
4 there was insufficient evidence to connect him to the
5 crime.

6 Q Okay. Did you also -- and what was your
7 professional opinion with respect to that defense?

8 A I believe that it was a decent defense prior to
9 the introduction of the -- I believe that it was a
10 closer case prior to the introduction of the
11 co-defendant's testimony. But, the co-defendant's
12 testimony combined with the evidence was likely to --
13 we would likely lose at trial.

14 Q And is it true that early on in the case that
15 Mr. Werre was charged with, I believe, 43 counts? Does
16 that sound right?

17 A I believe it was 43. It was -- yes, it was 43
18 counts.

19 Q But a significant number of charges?

20 A Yes.

21 Q The majority of which were Category B felonies?

22 A That's correct.

23 Q And the majority of which involved firearm
24 offenses?

1 A That's correct.

2 Q Now -- or firearm related offenses?

3 A Correct.

4 Q Now, did you discuss with Mr. Werre the
5 concerns and possible defenses related to the
6 co-defendant, Ms. Atkins, or I believe her actual name
7 is Ms. Sabin? Did you discuss that with him during
8 your representation of him in this case?

9 A I did.

10 Q Describe that briefly for the Court, that
11 discussion, what you include, how you evaluate those
12 kinds of defenses.

13 A I discuss with him that I thought that if she
14 were to testify, that there was a high likelihood of
15 conviction. And based on that, our best strategy would
16 be to exclude -- or motion to exclude her testimony.
17 And to argue that there was insufficient corroborating
18 evidence connecting him to the crime without her, and
19 therefore her testimony should not be included. And I
20 thought that was our best bet moving forward. But, I
21 also informed him that I thought it was unlikely that
22 that strategy would succeed.

23 Q And what led you to conclude it was unlikely
24 that strategy would succeed?

1 A Under the NRS, essentially it's required -- for
2 a co-defendant's statements to come in against another
3 co-defendant, it's required there is corroborating
4 evidence that has a tendency to connect the defendant
5 to the crime without the co-defendant's statement. And
6 I felt that the fact that he had been observed at the
7 residence, that he was found -- or observed at the
8 residence with the cell phone and the cell phone
9 information, that would be enough to allow her
10 statements to come in, and that would likely mean that
11 she would be able to testify at trial.

12 Q And did you have a chance to review all the
13 reports and the investigation in this case?

14 A I did. I reviewed everything.

15 Q And what was your opinion generally of the
16 investigation done by law enforcement?

17 A I felt that this was an above par
18 investigation. I think the federal government's
19 involvement, actually they were much better written
20 reports that I'm usually used to seeing.

21 Q And was the Lyon County Sheriff's Office also
22 involved?

23 A Lyon County Sheriff's Office was also involved.

24 Q And you had a chance to review all those

1 reports as well?

2 A I reviewed those reports as well.

3 Q Did you review those reports with possible
4 motions and defenses?

5 A I did. I reviewed those to see if there was
6 any motions or defenses to exclude any of that
7 evidence.

8 Q And other than what's been discussed, did you
9 have anything that you wanted to do other than what you
10 did in this case?

11 A I can't recall.

12 Q Okay. Now, at any point did you tell Mr. Werre
13 that he had to plead guilty?

14 A No.

15 Q Were you willing to go to trial if that was
16 Mr. Werre's decision?

17 A I was.

18 Q Your opinion, it was Mr. Werre's decision to
19 plead guilty in this case?

20 A Yes.

21 Q One of the other issues that's been raised in
22 the post-conviction involves the category of controlled
23 substance in this case.

24 You know that in Nevada methamphetamine is a

1 Schedule I controlled substance?

2 A Yes.

3 Q And has it been your understanding that it's
4 been a Schedule I controlled substance for many years?

5 A As far as I know, the entire time I've
6 practiced.

7 Q Okay. And to your knowledge, is there any law
8 in Nevada or elsewhere that says that is an invalid
9 classification?

10 A Not to my knowledge.

11 Q And because it's classified as a Schedule I
12 controlled substance, it fits under the trafficking
13 statute for Schedule I controlled substances?

14 A Yes.

15 Q Now, did you ultimately negotiate a plea in
16 this case?

17 A I did.

18 Q And did you confer with Mr. Werre before you
19 decided to try and negotiate a plea?

20 A I did.

21 Q Can you describe for the Court what you do
22 generally when you're going to try to negotiate a plea?

23 A I review the evidence, I go down and I discuss
24 the matter with the defendant, and then I usually reach

1 out to the District Attorney's Office to see whether or
2 not they already have an offer, and then I discuss it.
3 In this case, it was, I think, much more involved. I
4 spent -- I spent some significant time speaking with
5 the district attorney in regards to trying to find a
6 negotiation that would minus his potential of jail --
7 or prison time.

8 Q Okay. And so, when you said you spent
9 considerable time with the district attorney to discuss
10 the case, do you remember who the deputy district
11 attorney was in this case?

12 A It was Matt Merrill.

13 Q Okay. And have you worked with him previously?

14 A I have.

15 Q And so, in this particular case, was it a
16 scenario where he said this is what you have to plead
17 guilty to and there was no discussion?

18 A No. He made an original offer, and then I
19 counter-offered, and we went back and forth multiple
20 times.

21 Q And so, was -- did he come off the original
22 offer in this particular case?

23 A He did.

24 Q During the course of those discussions was

1 AB236 part of your calculus in determining what an
2 appropriate plea might be in this case?

3 A It was. Even though -- I argued that even
4 though it did not apply retroactively, the fact that it
5 had been passed was good reason to provide better
6 negotiation because it's obviously the intent of the
7 legislature to reduce the penalties for this. And even
8 though that wasn't yet in effect, it met the interests
9 of justice to reduce those penalties.

10 Q And were you successful in those arguments with
11 the District Attorney's Office?

12 A I was.

13 Q And do you remember -- isn't it true that
14 Mr. Werre ended up pleading guilty to four charges?

15 A Yes.

16 Q All Category B felonies?

17 A Yes.

18 Q And that there were no Category A felonies?

19 A Yes.

20 Q Even though he was charged originally with one
21 Category A felony?

22 A That's correct.

23 Q Okay. Now -- and after you were able to
24 negotiate what you determined to be a reasonable plea

1 based on the totality of the case, did you discuss that
2 with Mr. Werre?

3 A I did.

4 Q And what was his reaction when you presented
5 him with that plea?

6 A I believe we discussed it on two occasions. He
7 was -- he was originally recalcitrant to take it, but
8 then agreed that it was a good idea.

9 Q And did you discuss the pros and cons of taking
10 that plea with him?

11 A I did. I compared it to our options at trial
12 and what I thought the likely outcome at trial would
13 be.

14 Q And you provided that professional opinion to
15 Mr. Werre?

16 A I did.

17 Q And it was ultimately his decision to plead
18 guilty?

19 A It was his decision.

20 Q At any time after the arraignment and before
21 sentencing, did Mr. Werre approach you about changing
22 his plea or withdrawing his plea?

23 A Not that I recall.

24 Q So, after the plea was entered -- or let me ask

1 just briefly.

2 Did you review the plea agreement? I may have
3 already asked you that.

4 A I did.

5 Q Okay. And did you review it with Mr. Werre?

6 A I did. Before court I provided him with a
7 copy, I went over each part of it with him, and then
8 left it with him to read and review and then sign.

9 Q Okay. And at any point did he express to you
10 that he had questions about the plea agreement?

11 A I don't recall if he had questions or not.

12 Q Was it your impression that he had any
13 misunderstandings about the plea agreement?

14 A No.

15 Q What did you do as his attorney between the
16 time of arraignment and the time of sentencing?

17 A During that time I spoke with his father, and I
18 spoke with his girlfriend about what his options were
19 in terms of when he was released. And then I also
20 talked to his father about potentially coming up to
21 testify, but he was unable to do so.

22 Q Okay. And did you ask Mr. Werre if he wanted
23 any other witnesses or evidence?

24 A I did.

1 Q And what did he tell you?

2 A I don't recall the answer.

3 Q Okay. But, in any event, you didn't have any
4 other witnesses or evidence?

5 A That's correct.

6 Q Okay. And so, then how did you determine what
7 your sentencing argument was going to be?

8 A I centered my sentencing argument around what I
9 believed was his best chance. That when he -- that it
10 was likely that he'd be serving some prison time. But,
11 showing the judge that it was likely that when he was
12 released, he'd be very successful because he had a good
13 family support network, and had a good -- lot of good
14 options for employment and things like that.

15 And so, I focused instead on the fact that he
16 would be able to be successful upon release from
17 prison, and so releasing him from prison earlier was
18 more likely to be able to put him to work earlier
19 successfully.

20 Q Okay. And in this particular case you asked
21 that the court depart from the Presentence
22 Investigation recommendation?

23 A That's correct.

24 Q And you still suggested that some prison time

1 was probably appropriate in this case?

2 A I did. I recommended a prison sentence.

3 Q And why did you do that in this case?

4 A I knew that it was a likely outcome, and I
5 believe -- I can't recall whether or not one of the
6 trafficking still had a mandatory minimum prison
7 sentence. I can't remember whether there was or not
8 anything in involved in that.

9 Q Okay.

10 A But I believed it was a likely outcome, and so
11 to make it to not come off as unreasonable, I wanted to
12 present a reasonable argument.

13 Q And it's your professional experience that you
14 tend to do better at sentencings if you make an
15 argument that is more reasonable based on the facts of
16 the case?

17 A Yes. I think if I give an absolutely absurd
18 recommendation for a sentencing, it's likely that a
19 judge is not going to listen to anything that I have to
20 say on the subject if I'm already coming off as absurd.

21 Q And did you discuss the sentencing hearing with
22 Mr. Werre?

23 A I did.

24 Q And did you discuss what your plan was for the

1 sentencing?

2 A I can't recall.

3 Q Okay. And with respect to the sentencing, did
4 you review the Presentence Investigation Report?

5 A I did.

6 Q That's the report that's provided by the
7 Division of Parole and Probation?

8 A That's correct.

9 Q Includes background information on Mr. Werre?

10 A That's correct.

11 Q Also, information related to the offense?

12 A That's correct.

13 Q And did you have a chance to review that
14 Presentence Investigation Report with Mr. Werre?

15 A I did, and I also provided him with his own
16 copy.

17 Q And was he allowed to make comments on it to
18 you and provide you with any factual corrections?

19 A He was. So, I took it in to him, allowed him
20 to read and review it, and then let me know if there
21 was anything on it before going in for a sentencing.

22 Q And do you recall whether or not he had any
23 major concerns with the Presentence Investigation?

24 A There were no major concerns. I can't recall

1 our conversation specifically about the Presentence
2 Investigation Report.

3 Q Okay. Fair enough to say that the Presentence
4 Investigation Report in this case included the
5 background, social background on Mr. Werre?

6 A It did.

7 Q Family background?

8 A It did.

9 Q Substance abuse?

10 A It did.

11 Q His prior criminal record?

12 A It did.

13 Q And then also Mr. Werre in this particular
14 case, I believe, made a written statement where he
15 apologized for what he did in this case. Do you recall
16 that?

17 A I don't recall.

18 Q Okay. But, he was nevertheless allowed to make
19 a written statement?

20 A Yes.

21 Q And do you remember if he did an allocution at
22 sentencing?

23 A I don't recall.

24 Q Okay. But, you told him of his option to make

1 an allocution at sentencing?

2 A I did. I generally recommend -- well, I
3 usually want to go over the allocation with them -- or
4 allocution if they want to say something beforehand.

5 Q Okay. And that's your standard practice?

6 A Standard practice.

7 Q And you -- do you ever tell them you have to
8 say something?

9 A No. And in fact, I recommend that if they
10 don't have anything -- you know, if they don't have
11 anything, then they shouldn't just speak. I find that
12 defendants often make themselves more trouble by just
13 speaking off-the-cuff during that allocution than not
14 speaking at all.

15 Q Now, and you're aware of the court sentence in
16 this case?

17 A I can't recall off the top of my head. But
18 I --

19 Q But, it was different than what you asked for
20 in the -- in the case, correct?

21 A It was.

22 Q But, your understanding was that the court
23 sentence was within the parameters that were allowed by
24 the statute?

1 A It was within the parameters.

2 Q And are you aware of any Nevada law that says
3 the penalties for the Category B stolen firearm or
4 Category B trafficking are unconstitutional as cruel
5 and unusual punishment?

6 A No.

7 Q Now, after the sentencing did you discuss with
8 Mr. Werre his right to appeal?

9 A He and I discussed it briefly, and then I also
10 discussed it in more detail with his father.

11 Q Okay. And did he ever contact you to file an
12 appeal?

13 A He did not.

14 Q Okay. Did he express frustration with your
15 representation after the sentencing?

16 A He did not.

17 Q Did he express frustration with the sentence?

18 A Yes. As did his father.

19 Q Were there any discovery issues or anything in
20 this particular case?

21 A No, I had no discovery issues. In fact, the
22 district attorney went out of the way to personally
23 bring me a copy of the interview that was done with the
24 co-defendant immediately after he had a copy of it.

1 Q And so, you talked a little bit about your
2 decision not to hire an investigator in this case?

3 A I did.

4 Q And so, just the process, you have to file a
5 motion or whatever. Have you ever had a motion for an
6 investigator denied?

7 A I've never had one denied.

8 Q So, it's really just a pro forma, you request
9 it and then you hire the investigator?

10 A That's correct. And I've always received the
11 funds that I've requested as well.

12 Q So, you don't do it because of any kind of
13 additional work or fear that the court's going to deny
14 it, you just evaluate the case by case basis?

15 A No. I have a form. I can prepare it in less
16 than a minute and have it ready to go.

17 Q Okay. So, in this particular case, your
18 decision not to hire an investigator was based on the
19 investigation, your discussions with the District
20 Attorney's Office, and your discussion with Mr. Werre?

21 A That's correct.

22 Q Was anything during the course of the case
23 brought to your attention that would have changed your
24 opinion to hire an investigator in this case?

1 A No.

2 Q And you indicated that you did discuss AB236
3 with the District Attorney's Office. Did you discuss
4 that with Mr. Werre?

5 A We did discuss the fact that there was that law
6 that had gone into effect, that went into effect in
7 July. I don't know if I called it AB236 specifically,
8 but I referred to the contents of it.

9 Q Okay. And so, you were aware of that during
10 the course of your negotiations in this case?

11 A I was. I had -- I had actually planned on a
12 variety of cases to argue AB236. I did a significant
13 amount of research thinking that I might be able to
14 apply it retroactively to -- I had three or four
15 different trafficking cases that I was doing research
16 and concluded that it was unlikely that I would
17 succeed.

18 Q And isn't it correct that to this date there's
19 no decision in Nevada that says it's retroactive?

20 A As far as I'm aware, yes.

21 THE COURT REPORTER: As far as what?

22 THE WITNESS: As far as I'm aware.

23 MR. RYE: I don't have any other questions,

24 Your Honor.

1 THE COURT: All right, Mr. Lasher?

2 MR. LASHER: Thank you.

3
4 REDIRECT EXAMINATION

5 BY MR. LASHER:

6 Q So, Mr. Mouritsen, you had a contract with the
7 County in 2020 to provide criminal defense. Could you
8 describe that contract?

9 A So, the contract is to represent indigent
10 defendants for the -- for the Lyon County. At the time
11 there were two other individuals who also had a
12 contract. And then if there were multiple
13 co-defendants, we would each take an individual
14 co-defendant. But, additionally we each covered a
15 region. At that time I was mainly covering Fernley
16 cases coming out of Fernley, Nevada.

17 Q So, you were basically -- you and two others
18 were basically the public defenders of the entire
19 County?

20 A That's correct.

21 Q And so, typically how many cases would you have
22 at a time then?

23 A I don't know the exact number of misdemeanor
24 cases. I do know that we averaged about 140 felony

1 cases a year.

2 Q And so, at that point in 2020, you had been
3 licensed to practice four or five years?

4 A That's correct.

5 Q And had you had any prior cases with 44
6 charges?

7 A I don't recall. I believe I did have one that
8 had more than 50 charges involving a sex assault case.

9 Q And were you required to keep billing sheets
10 for the County?

11 A No, I did not keep any billing sheets.

12 Q So, there was nothing preventing you from
13 filing the motion to exclude Ms. Sabin's voluntary
14 statements?

15 A There was -- there was not. The reason I did
16 not move forward with that is as a general rule, once I
17 file that motion or we move forward, it's likely that
18 the offer that was previously made would be rescinded
19 by the District Attorney's Office.

20 Q As a general rule, but in this case was that
21 conveyed to you by the prosecutor's office?

22 A It was not directly conveyed, no.

23 Q And what is the level of corroboration that's
24 needed?

1 A What do you mean?

2 Q So, there's a standard for corroboration. What
3 does the case law say concerning the level of
4 corroboration?

5 A I don't -- I don't recall.

6 Q What is the jurisprudence regarding whether
7 there has to be corroboration for each charge or just
8 enough to bring the statements in?

9 A I'm trying to remember the exact wording when I
10 looked at it. I want to say -- I can't recall.

11 Q So, you mentioned you did some research into
12 retroactivity of AB236 or however you might have
13 referred to it.

14 Nonetheless, you didn't mention that at
15 sentencing; is that correct?

16 A That's correct.

17 Q And in your research, did you see that
18 Assembly Person Yeager mentioned it would be unfair if
19 it was not retroactive?

20 A I did not.

21 Q So, you mentioned that methamphetamine is a
22 Schedule I controlled substance in Nevada.

23 Are you aware of how the federal government
24 schedules it?

1 A I am not.

2 Q Are you aware of NAC 453.520(4)(c)?

3 A I am not.

4 Q I'd also like to ask, what are the grounds for
5 appeal when a plea is entered?

6 A For post-sentencing -- are you asking, like,
7 what I would appeal?

8 Q Well, Mr. Rye asked repeatedly about whether
9 Mr. Werre had indicated he wanted to do an appeal. And
10 so, I'm just wondering when somebody puts in a plea,
11 what is your understanding of the potential appellate
12 issues?

13 A Potential appellate issues could be some sort
14 of error during the arraignment or sentencing process.
15 A cruel, unusual punishment in regards to sentence
16 itself. Those are the main ones that come out in an
17 appeal.

18 Q But there is still a separate habeas proceeding
19 in which other types of issues can be raised?

20 A Correct.

21 Q Okay. And Probation and Parole is -- it's a
22 State agency, correct?

23 A That's correct.

24 Q And in some ways they're tasked with being kind

1 of experts as to recommendations for things such as
2 sentencing?

3 A That's correct.

4 Q So, they're not absurd in any sense? Their
5 recommendations or roles, you wouldn't categorize them
6 as absurd?

7 A I think because they use the system and don't
8 always focus on -- or don't necessarily know the
9 individual in the same way or the case and they use a
10 point system, sometimes their recommendations can, I
11 think, be absurd.

12 MR. LASHER: Court's indulgence?

13 I have nothing further.

14 THE COURT: All right, Mr. Rye?

15

16 RECROSS EXAMINATION

17 BY MR. RYE:

18 Q Mr. Mouritsen, I just want to clarify.

19 I mentioned 43 counts, but in reviewing the
20 amended criminal complaint, it looks like -- looks like
21 there were 35 counts. Does that sound right?

22 A I can't recall exactly.

23 Q But, it was many counts?

24 A It was many counts.

1 Q Okay. And are you aware of anything in the
2 legislation, AB236, that indicates it's retroactive?

3 A There's nothing in the language itself that
4 indicates either way, whether it is or isn't
5 retroactive as far as I can tell.

6 Q But, there is language that says certain
7 sections are effective on July 1, 2020, correct?

8 A That's correct.

9 Q And that date was after this offense was
10 committed?

11 A That's correct.

12 MR. RYE: I don't have any other questions.

13 THE COURT: Any follow-up, Mr. Lasher?

14 MR. LASHER: Nothing further, Your Honor.

15 THE COURT: All right. Is Mr. Mouritsen done
16 for today then? I can let him go?

17 MR. LASHER: Yes.

18 THE COURT: Okay.

19 Thank you. Have a good day.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Any additional
22 witnesses or evidence?

23 MR. LASHER: No additional witnesses, Your
24 Honor.

1 THE COURT: All right. Would the State wish to
2 put on any additional witnesses or evidence?

3 MR. RYE: No, Your Honor.

4 THE COURT: Okay. All right. Do we want to
5 take five minutes, and then I'll hear closing?

6 MR. LASHER: The Court's pleasure, whatever.

7 THE COURT: All right. We'll take five
8 minutes, and then I'll hear closing arguments.

9 MR. RYE: Thank you, Your Honor.

10 (Recess.)

11 THE COURT: So, let's go back on the record.
12 All right, Mr. Lasher, your argument?

13 MR. LASHER: Thank you, Your Honor.

14 Your Honor has reviewed my pleading. So, I'll,
15 you know, I'll be brief. But, you know, fundamentally
16 trial counsel here failed in many ways resulting in a
17 sentence that was far beyond what was recommended by
18 Probation and Parole. And the Court has to look at,
19 too, the record itself and not post-hoc
20 rationalizations. And I think the record here speaks
21 for itself.

22 So, I contend that trial counsel could have
23 done more to inform this Court of everything prior to
24 sentencing. Despite the research into AB236, the

1 record is clear, it did not come up. And I think
2 effective counsel would have argued in light of the
3 massive restructuring of criminal law here, that that
4 should be a factor in this Court's decision to hew to
5 the Probation and Parole sentence.

6 A mere six months later and this most serious
7 charge here would have been a Category C case with the
8 possibility of probation. I think that should be
9 weighed in the mix here given that Mr. Werre was really
10 at the wrong place at the wrong time.

11 I think that effective counsel also would have
12 argued the relative culpability. Again, tying in with
13 Mr. Werre being at the wrong place at the wrong time.
14 He was out here for a job interview. He was staying at
15 a house that had narcotics and firearms, but he did not
16 have access to the narcotics. So, clearly Mr. Werre's
17 culpability was much lower than the people who lived in
18 the home and had much more evidence of culpability in
19 terms of amounts of money on their person, firearms,
20 pay/owe sheets, and whatnot.

21 So, in terms of what was presented here at
22 sentencing, I think that this Court would have
23 benefitted with a little bit more information.

24 In terms of the State's argument that there

1 would be no prejudice, Probation and Parole took into
2 account Mr. Werre's priors, and they still made a
3 recommendation that was significantly less than the
4 sentence that ultimately was handed down. They are
5 professionals. I realize the Court has discretion to
6 go beyond their recommendation, but to call their
7 recommendation absurd I think indicates that some of
8 the rationals presented here were post-hoc.

9 Again, the record speaks for itself. There
10 could have been a motion to strike the voluntary
11 statement of the co-defendant, but that was not done.
12 From there, then there could have been a different
13 assessment as to what should happen going forward.

14 And if I might have the Court's indulgence for
15 one second as to the other points as well?

16 You know, the last point that I will make is
17 that Mr. Werre's testimony was that he was not fully
18 advised of the possible defenses. Had he better
19 understood the requirements of corroboration, he would
20 not have entered into the plea. And so, I don't think
21 that it was a voluntary plea.

22 And I also think prior to advising Mr. Werre
23 about whether to plea in a case this serious, one of
24 the most serious cases that has ever been presented,

1 there was a duty to do investigation. Strickland makes
2 it clear that any strategic decision must be based on
3 reasonable investigation, and in this case it just was
4 not done. Had there been some investigation, we had
5 testimony today, it seems reasonably probable that a
6 different picture of Mr. Werre's role would have
7 emerged. And --

8 THE COURT: Let me interrupt you. All right.
9 So, then the investigation goes to the sentencing and
10 not the decision to plea?

11 MR. LASHER: It's a fair question. Your Honor,
12 I think it actually goes to both. So, I think it goes,
13 you know, to the advice prior to plea, but then also
14 into the argument of relative culpability. You know,
15 in a case this heavy where somebody is facing three
16 decades, six weeks between beginning representation and
17 plea seems very, very precipitous.

18 THE COURT: Okay. Go ahead.

19 MR. LASHER: And then, you know, just finally
20 whether Mr. Werre expressed dissatisfaction is
21 irrelevant to the calculus here. You know, Strickland
22 just makes it clear there are two prongs. Was
23 counsel's representation reasonable, and was Mr. Werre
24 prejudice.

1 For the reasons I've indicated, it was not
2 adequate under the sixth amendment, and he was
3 prejudiced because I think this Court would have had a
4 more robust picture prior to the sentence, and the
5 information would have been helpful in arguing that
6 P and P's recommendation should be followed.

7 And with that, I'll submit it.

8 THE COURT: All right, Mr. Rye?

9 MR. RYE: Thank you, Your Honor.

10 That is true in this case that Mr. Werre
11 received a significant sentence. However, that alone
12 is not a basis for this Court to grant post-conviction
13 relief. As Mr. Werre sits here today he's guilty.
14 This is not a time where the Court gets to re-evaluate
15 the evidence and decide somehow that his culpability is
16 less than what he plead guilty to. The law pronounced
17 him guilty. He stands before you guilty.

18 The issue before the Court today is was his
19 counsel ineffective. And you heard the testimony of
20 Mr. Mouritsen covering what he did in this case, and he
21 did everything that should be expected of counsel. He
22 reviewed the reports. He spoke with the District
23 Attorney's Office. He discussed the reports and the
24 evidence against Mr. Werre several times during the

1 representation.

2 He evaluated the case based on his professional
3 judgment and made a determination of what he thought
4 might be best for Mr. Werre, but the whole time
5 allowing Mr. Werre to retain those decisions that were
6 his. Which is the decision to plead guilty or whether
7 to go to jury trial. He provided Mr. Werre with
8 sufficient information to make that decision.

9 The court in evaluating what he did in this
10 case can consider Mr. Werre's background, six prior
11 felony convictions. He spent a significant amount of
12 his adult life, by his testimony, in the criminal
13 justice system. And the court can certainly take that
14 into account as to whether or not he understood this
15 process. He understood what was going on.
16 Mr. Mouritsen testified clearly that he went over the
17 Guilty Plea Agreement. He went over the charges, the
18 range of penalties that's set forth in the Guilty Plea
19 Agreement. That's set forth in the transcript.

20 All of the things that Mr. Mouritsen is
21 required to do to make the plea voluntary and make sure
22 Mr. Werre understood were done in this case. His
23 representation was reasonable under any Strickland
24 standard. There is no requirement for investigation in

1 every case. The requirement is that an investigation
2 be done when it's warranted by the facts and
3 circumstances.

4 Now, we can argue culpability, but that -- all
5 that information is before the court at the time of
6 sentencing. You have the Presentence Investigation.
7 Clearly states that when the officers approached
8 Mr. Werre, he was at the house where the guns were
9 located, where Ms. Sabin and the other co-defendant,
10 Mr. Kennedy, lived. In his pocket when the police pat
11 searched him is methamphetamine. In the house is
12 methamphetamine. This is a serious case. Over 80 guns
13 stolen. Evidence indicating they were sold in
14 California to a Mexican cartel. And Mr. Werre is
15 linked throughout the reports that Mr. Mouritsen
16 reviews, as being involved in those transactions.

17 He was charged with 35 counts in the -- in the
18 Justice Court. All -- one Category A felony and the
19 rest Category B felonies. Mr. Mouritsen has an
20 obligation under Strickland, based on the Lafler v.
21 Cooper case and its progeny, to be effective in plea
22 negotiations. What Mr. Mouritsen testified to in this
23 case, he had numerous meetings with the DA's Office.
24 He negotiated a plea from 35 counts, including one life

1 sentence Count A, to four counts of Category B felony.

2 And based on the facts, the totality of the
3 facts and circumstances in this case, that work by
4 Mr. Mouritsen and his evaluation of this case is
5 reasonable. That's the only standard. Not that
6 Mr. Werre gets the best possible deal. Not that he
7 gets off scot-free, not that he gets probation, but
8 that Mr. Mouritsen provided reasonable representation,
9 and there's nothing in the record before this Court
10 that would indicate otherwise.

11 There's a lot of discussion about he didn't go
12 over the defenses with Mr. Werre. However, that's
13 contradicted by Mr. Mouritsen himself. He said that he
14 discussed the testimony of Ms. Sabin with Mr. Werre,
15 and in his professional opinion, it was coming in. And
16 this Court knows the standard. That corroboration can
17 be taken from the circumstances and evidence as a
18 whole, Cheatham v. State 104 Nevada 500.

19 Which in that case, the facts were essentially
20 that it wasn't an isolated incident where that person
21 was with the co-defendants, but was over a course of
22 time. Guess what? Same evidence in this case. They
23 had evidence based on the surveillance, as you heard
24 from Mr. Mouritsen today, by officers that Mr. Werre

1 was around the house. He was driving the motorcycle.
2 He was doing other things that showed involvement with
3 the co-defendants. It wasn't an isolated, wrong place
4 and wrong time. He had the methamphetamine in his
5 pocket. He was at the house with access to the guns.
6 All that information was provided to the court in the
7 Presentence Investigation.

8 And it was discussed -- more importantly, it
9 was discussed with Mr. Werre by Mr. Mouritsen. And
10 it's a reasonable decision. Would it be right or
11 wrong? That, again, is not the question before the
12 Court. It's whether Mr. Mouritsen provided adequate
13 representation. And with respect to the defense of the
14 co-defendant testimony, he certainly did.

15 He also told the Court that they discussed
16 other defenses which he thought were decent, including
17 the culpability. Although that got worse after
18 Ms. Sabin agreed to testify. She made a statement to
19 law enforcement and recorded the statement. So, that
20 is evidence against Mr. Werre that any reasonable
21 attorney would consider in advising his or her client
22 what to do. That's exactly what Mr. Mouritsen did.

23 As far as AB236, he indicated that he discussed
24 that with Mr. Werre, that he researched it, he had

1 several trafficking cases going. There is not a case
2 in Nevada that says it's retroactive. The bill itself
3 says that its effective provisions related to
4 controlled substances and other criminal penalties are
5 effective July 1, 2020.

6 THE COURT: Was there any unpublished opinions?

7 MR. RYE: There is an un -- a couple
8 unpublished --

9 THE COURT: Published.

10 MR. RYE: -- opinions that indicated it is not
11 retroactive. It would be nice if the Supreme Court or
12 the Court of Appeals decided one way or the other in
13 published opinion, but to my knowledge, and Mr. Lasher
14 may know otherwise, I'm not aware of a published
15 opinion.

16 But, I think the State can rely on the
17 published opinion which is cited in the State response,
18 which is the Second Judicial District Court. I can't
19 find the cite right now. But, it's a case that dealt
20 with retroactivity in another -- State versus Second
21 Judicial District Court, 124 Nevada 564. And the
22 analysis in that case is applicable in this particular
23 case with AB236.

24 And I will discuss briefly the prejudice prong

1 with respect to the AB236 argument. The petitioner
2 wants this Court to think that well, if you apply
3 AB236, you get the same plea deal. That's not true
4 either. That is not the way the system works. You
5 consider that in the calculus, you may adjust the plea,
6 but just look at the crimes that were committed, and
7 there's no difference in the penalties if you look at
8 the actual crimes.

9 He was charged initially with possessing, I
10 believe, about 80 plus grams of methamphetamine. Which
11 under the old law was in fact a Category A. Under the
12 new law is a Category B with 2 to 15 year sentence.
13 So, you can't speculate that oh, because of AB236, the
14 State would automatically provide a reduced charge. If
15 you look at facts of what he actually did, the penalty
16 is what he was sentenced under.

17 The same thing with the firearms charges.
18 Again, they changed the burglary statutes with respect
19 to entering a structure other than a residence, and it
20 is a lesser penalty. But, it is not if you gain
21 possession of a firearm or have a firearm during the
22 commission of the crime. It remains the same penalty.
23 And so, in this particular case, the firearm penalties
24 are not adjusted significantly because of the change in

1 AB236.

2 So, the State's position is there is no
3 prejudice. Even if you found that somehow AB236 would
4 have changed this, you rewind the clock, he still gets
5 the same penalties because the statute still provides
6 the same penalties.

7 And the gripe in this case deals with the
8 sentence, and that is not a basis for this Court. As
9 long as the sentence is within the statutory guidelines
10 he's made aware of and enters his plea voluntarily,
11 this Court cannot grant post-conviction relief because
12 the penalty in the petitioner's opinion is too hefty.
13 And that's what they asked for in this particular case.

14 The petitioner has not shown this Court
15 anything that Mr. Mouritsen's done that was
16 unreasonable or below the standard established by
17 Strickland. Certainly, we can always look with
18 hindsight, as this Court knows for many years as a
19 judge, attorneys do things differently, but that's not
20 the question. The question is what did Mr. Mouritsen
21 do in this case and was it reasonable? And based on
22 his testimony today and the entire record in this case,
23 it was reasonable.

24 With respect to the prejudice, again, I've

1 covered the AB236. Again, with respect to the
2 defenses, there's nothing before the Court today from
3 Mr. Werre or otherwise that said he would not have
4 plead guilty had something been different. He says
5 well, my attorney didn't discuss these things in
6 detail, I wouldn't have done it this way, but there's
7 no concrete evidence that meets the prejudice prong.
8 And as you know from the case law, if you fail to meet
9 either, the petition must be dismissed.

10 And so, because Mr. Werre has failed to show
11 that Mr. Mouritsen's representation was inadequate
12 under the Strickland standard, it should be dismissed.
13 And because he's failed to establish prejudice, it
14 should be dismissed.

15 THE COURT: All right, Mr. Lasher?

16 MR. LASHER: Thank you. Just briefly, Your
17 Honor.

18 Because I just want to clarify my argument.
19 You know, we're not -- we're not arguing that Mr. Werre
20 should be scot-free, should go scot-free. We're just
21 arguing that because of counsel's failings, you were
22 not given sufficient information prior to sentencing
23 such that counsel could have argued to hew to Probation
24 and Parole's recommendation here.

1 So, whether AB236 was retroactive, it's not the
2 point. I'm not saying that it was or that counsel
3 should have argued that. I'm saying that in light of
4 the massive changes that were about to happen, that is
5 a very strong reason why this Court should of hewed to
6 P and P's recommendation here.

7 So, I just want to be clear that's what the
8 argument is. That's what other attorneys throughout
9 the State were doing. That's prong one for Strickland.
10 And, you know, as I indicated before, P and P took into
11 account his priors and still reached this
12 recommendation.

13 In terms of the investigation, I just want to
14 indicate that it's true. Investigation is not
15 necessary in every case, but when there are triggering
16 facts, that may require investigation. Here Mr. Werre
17 told his attorney various things about his level of
18 culpability. Those were triggering facts to do
19 investigation. That was just not done here. It easily
20 could have been done.

21 And I think my last point is just there was
22 testimony that had Mr. Werre realized the requirement
23 for corroboration, he would not at that moment have put
24 the plea in. That would have, again, fit in with the

1 triggering facts to do investigation here on a very
2 serious case.

3 So, you know, my argument, again, is not that
4 AB236 is retroactive. Just this was a very strong
5 reason to hew to what P and P was recommending to this
6 Court. Thank you.

7 THE COURT: All right. So, I'm going to take
8 the recommend -- take the matter under submission.
9 Only thing I'm going to state for the record in terms
10 of the P and P, they also changed the Presentence
11 Investigation Report where P and P no longer makes
12 recommendations.

13 And, again, having been on the bench for years,
14 it was interesting to the Court that the reason they
15 put P and P in there was to give a third-party outside
16 representation, and they thought, you know, from what I
17 had read in the materials, that that would keep the
18 judges from doing what the judges were doing. And then
19 from what I read in the legislation where they got rid
20 of the Presentence Investigation Report
21 recommendations, it was -- a lot on the defense bar was
22 ticked off that the judges were actually following the
23 recommendations most of the time.

24 And so, now the court gets a Presentence

1 Investigation Report without the benefit of the
2 Division of Parole and Probation. They do use a point
3 system. It wasn't perfect. But, again, as a -- as a
4 judge who appreciated having the additional view of --
5 from P and P, you know, I miss that now, and I hope
6 maybe the legislature will figure out what's going on.

7 If they want to go to standardized sentencing
8 and just tell the judge this is what he gets, that's
9 fine. That's the legislature. But, you can't give
10 discretion and then complain that judges are exercising
11 it. So, all right, that's just my two cents on that.

12 So, hopefully, I believe by statute I have to
13 have a -- have it decided within 30 days, and I'm
14 hopeful I'll have a decision within two weeks.

15 MR. LASHER: Okay. Thank you, Your Honor.

16 MR. RYE: Thank you.

17 THE COURT: I thank counsel very much and
18 appreciate the professionalism at today's hearing. And
19 the Court is in recess.

20 MR. RYE: Thank you.

21 MR. LASHER: Thank you, Your Honor.

22
23 (End of Proceedings.)

24 * * * * *

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CERTIFICATE

STATE OF NEVADA)
) SS.
CARSON CITY)

I, Kathy Terhune, CCR 209, do hereby certify
that I reported the foregoing proceedings; that the
same is true and correct as reflected by my original
machine shorthand notes taken at said time and place
before the Honorable Leon A. Aberasturi, District
Judge, presiding.

Dated at Carson City, Nevada, this
16th day of January, 2022.



CCR #209

Case No. 21-CV-00291
Dept. No. II

FILED

2022 JAN 26 AM 9:16

TANYA SLEWING
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
ANDREA ANDERSEN

The Undersigned hereby affirms that this document does
Not contain the Social Security number of any person

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

* * *

ERIC WERRE,

Petitioner,

v,

WILLIAM HUTCHING, WARDEN
Southern Desert Correctional Center, STATE
OF NEVADA

Respondent.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 25th day of January, 2021, the court entered an
ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) in
this matter, a true and correct copy of which is attached to this notice.

Dated: This 25th day of January, 2022.

By

Quoc Thai