



**EIGHTH JUDICIAL DISTRICT COURT
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Elizabeth A. Brown
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March 2, 2022

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: ANTHONY ODELL LONGSTREET, SR. vs. STATE OF NEVADA; ELY STATE PRISON
WARDEN WILLIAM GITTERE
S.C. CASE: 84171
D.C. CASE: A-21-841927-W

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated February 17, 2022, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed March 1, 2022 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ANTHONY LONGSTREET,
~~THE STATE OF NEVADA,~~
Plaintiff,

-vs-

ANTHONY LONGSTREET,
~~#6028264~~ THE STATE OF NEVADA, ET AL.
Defendant.

CASE NO: A-21-841927-W /
C-20-348182-1
DEPT NO: IX

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: DECEMBER 8, 2021
TIME OF HEARING: 11:00 AM

THIS CAUSE having come on for hearing before the Honorable SILVA, District Judge, on the 8th day of December, 2021, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BARBARA SCHIFALACQUA, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On April 16, 2020, Petitioner Anthony Longstreet ("Petitioner") was charged by way of Amended Criminal Complaint with the following: Count 1 - Battery With Substantial

1 Bodily Harm, Victim 60 Years of Age or Older (Category C Felony - NRS 200.481, 193.167);
2 Count 2 - Attempt Robbery (Category B Felony - NRS 200.380, 193.330); and Count 3 -
3 Burglary (Category B Felony - NRS 205.060). On April 30, 2020, the State filed an
4 Information charging Petitioner with one count of Battery With Substantial Bodily Harm
5 (Category C Felony – NRS 200.481). On September 3, 2020, the State filed a Notice of Intent
6 to Seek Punishment as a Habitual Criminal.

7 On November 30, 2020, a signed Guilty Plea Agreement was filed in open court. On
8 December 1, 2020, Petitioner pled guilty to the single count of Battery With Substantial Bodily
9 Harm alleged in the Information.

10 On January 27, 2021, Petitioner was sentenced to a term of nineteen (19) to forty-eight
11 (48) months in the Nevada Department of Corrections. Petitioner received three hundred and
12 thirty-four (334) days credit for time served. On February 7, 2021, the Judgment of Conviction
13 was filed. No direct appeal was taken. On September 30, 2021, Petitioner filed the instant
14 Petition for Writ of Habeas Corpus (Post-Conviction) (“Petition”).

15 On December 8, 2021, this matter came before this Court, at which time this Court
16 heard arguments. The Court stated its Findings, Conclusions, and Order based on the written
17 pleadings, as follows:

18 ANALYSIS

19 I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

20 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
21 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
22 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant must
23 show that there is a “reasonable probability that, but for counsel’s errors, he would not have
24 pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59,
25 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923
26 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). “A
27 reasonable probability is a probability sufficient to undermine confidence in the outcome.”
28

1 McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466
2 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

3 Here, Petitioner's first ground, that had counsel shown the surveillance video at
4 sentencing he likely would have received a lesser sentence, is denied as it was belied by the
5 record. Hargrove, 100 Nev. at 503, 686 P.2d at 225. The court minutes from January 27, 2021,
6 indicated that the Court reviewed a portion of the surveillance video prior to imposing
7 sentence.

8 Petitioner's second ground is an argument that at sentencing his counsel should have
9 presented a mitigation defense that he was intoxicated or unconscious when he committed the
10 offense. This claim is denied as raising such a defense during Petitioner's sentencing would
11 have been futile, because Petitioner's guilt was no longer in dispute, and counsel cannot be
12 ineffective for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d
13 1095, 1103 (2006).

14 To be effective, the constitution "does not require that counsel do what is impossible or
15 unethical. If there is no bona fide defense to the charge, counsel cannot create one and may
16 disserve the interests of his client by attempting a useless charade." United States v. Cronin,
17 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984). Petitioner ignores the fact that his
18 counsel could not have raised this defense at sentencing, as Petitioner's guilt was no longer in
19 dispute.

20 When Petitioner agreed to and signed his GPA prior to his sentencing hearing, he
21 admitted "[t]he facts which support all the elements of the offense". GPA, filed November 30,
22 2020 at 2. Additionally, NRS 194.010 does not provide an exception to imprisonment, as
23 petitioner claims. It's not a mitigation statute; it excuses individuals from criminal liability
24 under certain circumstances. Petitioner entered a plea of guilty, so his criminal liability was
25 already established, rendering NRS 194.010 inapplicable.

26 Lastly, Petitioner failed to meet both prongs of the Strickland standard. 466 U.S. at 687-
27 88, 694, 104 S. Ct. at 2065, 2068. First, Petitioner has failed to assert how counsel's
28 representation fell below an objective standard of reasonableness. Petitioner failed to argue

1 how counsel was per se deficient by not raising an argument based on NRS 194.010. Second,
2 Petitioner failed to explain how raising such an argument would have resulted in a different
3 outcome. Had Petitioner's counsel raised the arguments Petitioner mentions, these arguments
4 would have failed. Raising a defense during a sentencing argument would have been futile,
5 and counsel cannot be ineffective for failing to make futile arguments. Ennis v. State, 122 Nev.
6 694, 706, 137 P.3d 1095, 1103 (2006). Thus, as Petitioner failed to show how his counsel's
7 representation fell below an objective standard of reasonableness or how raising an argument
8 based on NRS 194.010 during his sentencing hearing would have changed the outcome in
9 anyway, Petitioner argument failed both prongs of the Strickland standard.

10 Therefore, Petitioner's claim of ineffective counsel is denied as Petitioner's first ground
11 is belied by the record and Petitioner's second ground is meritless as Petitioner had admitted
12 the facts supporting the offense in his GPA, prior to his sentencing hearing. Further, the law
13 Petitioner relies on does not provide an exception to imprisonment. Ultimately, Petitioner
14 failed to provide a bona fide argument Petitioner's counsel could have made at sentencing.
15 Therefore, this claim is denied.

16 **II. PETITIONER'S INVOLUNTARY INTOXICATION AND LOCAL RULE**
17 **CLAIMS CANNOT BE CONSIDERED ON HABEAS AND FAIL TO**
18 **CONTAIN ANY COGNITIVE ALLEGATIONS**

19 NRS 34.810(1)(a) states that a defendant who pled guilty can only raise habeas claims
20 that his plea was not voluntarily entered or entered without the effective assistance of counsel.
21 Petitioner's claims that he should not have been sentenced to imprisonment under NRS
22 194.010 due to involuntary intoxication and that EDCR 3.70 denied him access to the court
23 are improperly brought on Habeas review. Thus, as both of these claims are improper under
24 Habeas review, they are both denied.

25 **A. Petitioner's Involuntary Intoxication Claim Fails to Contain any Cognitive**
26 **Allegations**

27 NRS 194.010 states in part:

28 5. Persons who committed the act or made the omission charged
under an ignorance or mistake of fact, which disproves any

criminal intent, where a specific intent is required to constitute the offense.

6. Persons who committed the act charged without being conscious thereof.

Petitioner's involuntary intoxication argument under NRS 194.010(5) fails first, because Petitioner fails to allege that he was charged with a specific intent crime. Rather, Petitioner pled guilty to the general intent crime of battery resulting in substantial bodily harm. Byars v. State, 130 Nev. 848, 863, 336 P.3d 939, 949 (2014). Second, Petitioner's argument under NRS 194.010(6) fails because Petitioner fails to allege that he was unconscious when he committed the crime. Thus, because Petitioner fails to contain any cognitive allegations supporting his arguments under NRS NRS 194.010, these claims are denied.

B. Petitioner's Local Rule EDCR 3.70 Claim Fails to Contain any Cognitive Allegations

Criminal defendants represented by counsel typically may not file pro se motions. United States v. Gallardo, 915 F.Supp. 216, 218 n. 1 (D.Nev.1995); Carter v. State, 713 So.2d 1103, 1104 (Fla.Dist.Ct.App.1998). The rule is "an aspect of the doctrine that an accused can proceed by counsel or pro se but not in both capacities at the same time." People v. Neal, 675 N.E.2d 130, 131 (Ill.App.Ct.1996); State v. Muse, 637 S.W.2d 468, 470 (Tenn.Crim.App.1982). Petitioner failed to demonstrate that EDCR 3.70 denied him his constitutional rights, thus this claim is denied.

III. PETITIONER'S CHALLENGE TO THE CONDITIONS OF CONFINEMENT CANNOT BE CONSIDERED ON HABEAS

The Nevada Supreme Court has repeatedly held that a petition for writ of habeas corpus may only challenge the validity of a conviction or sentence, not the conditions of confinement. Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); Director v. Arndt, 98 Nev. 84, 86, 640 P.2d 1318, 1319 (1982). A post-conviction petition for writ of habeas corpus may only be used to request "relief from the conviction or sentence or to challenge the computation of time that the person has served." NRS 34.724(1). To obtain sentence modification, Petitioner must file a motion to modify sentence that demonstrates that his sentence was based on a materially untrue assumption or mistake of fact about his criminal record that has worked

1 to his extreme detriment of the defendant. Edwards v. State, 112 Nev. 704,707, 918 P.2d 321,
2 324 (1996).

3 The Court declines to rule on Petitioner's claims that challenge the conditions of his
4 confinement. Such claims must be done via a separate filing, not in a post-conviction petition
5 for a writ of habeas corpus. See NRS 34.724(1); Bowen v. Warden of Nevada State Prison,
6 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) ("a petition for writ of habeas corpus may
7 challenge the validity of current confinement, but not the conditions thereof.").

8 **ORDER**

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
10 (Post-Conviction) shall be, and it is, hereby denied.

Dated this 1st day of March, 2022

11 ~~DATED this _____ day of February, 2022.~~

12
13 DISTRICT JUDGE

EC

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

77B 131 7D5D 378B
David Barker
District Court Judge

March 2, 2022

16 BY /s/KAREN MISHLER
17 KAREN MISHLER
18 Chief Deputy District Attorney
Nevada Bar #013730



19
20
21 **CERTIFICATE OF SERVICE**

CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

22 I certify that on the 28th day of February, 2022, I mailed a copy of the foregoing
23 proposed Findings of Fact, Conclusions of Law, and Order to:

24 ANTHONY ODELL LONGSTREET SR 1242017
25 P.O. BOX 1989, Ely Nevada 89301

26 BY [Signature]

27 Secretary for the District Attorney's Office

28 20FN0563X

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Anthony Longstreet, Plaintiff(s) | CASE NO: A-21-841927-W
7 vs. | DEPT. NO. Department 9
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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