

ST 10
FILED

MAY -9 2022

Elizabeth A. Brown
CLERK OF COURT

Electronically Filed
May 31 2022 01:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 KELVIN WILLIAMS #
2 88265 In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

5 Eight DISTRICT COURT
6 Clark COUNTY NEVADA

7
8 Kelvin Williams,

9 Petitioner,

10 -v-

11 Calvin Johnson,

12 Respondent,

Case No. C-17-322527-1

Dept.No. 19

Docket _____

13
14 **NOTICE OF APPEAL**

15 Notice is hereby given that the Petitioner, Kelvin
16 Williams, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court denying Petitioner's Petition for a Writ of
19 Habeas Corpus (Postconviction)

20
21 Dated this date, 4-27-2022.

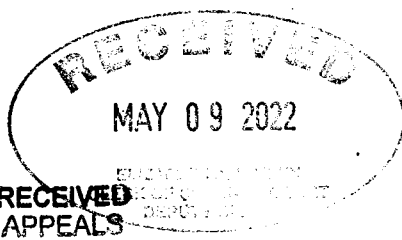
C-17-322527-1
NOASC
Notice of Appeal (Criminal)
4993737



22
23 Respectfully Submitted,

24
25 *K. Williams*

26 In Proper Person



27
28 MAY 26 2022

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Kelvin Williams, hereby certify, pursuant to NRCP 5(b), that on this 27
day of April, 2022, I mailed a true and correct copy of the foregoing, "Notice of
Appeal
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Calvin Johnson
Warden - H.D.S.P.
3955 W. Russell Road
Las Vegas, NV 89118

Clark County D.A.
200 Lewis Avenue
Las Vegas, NV 89155

Office of The Attorney General
100 N. Carson St
Carson City, NV 89701

DATED: this 27 day of April, 2022

Kelvin Williams 88265
88265
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal
(Title of Document)

filed in District Court Case number C-17-322527-1



Does not contain the social security number of any person.

-OR-



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

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

(State specific law)

-or-

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

K. Williams
Signature

4-27-2022
Date

KELVIN WILLIAMS
Print Name

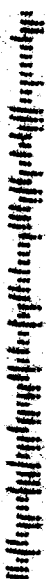
Pro Se
Title

Kelvin Williams #88246 (H.O.S.P.)
P.O. Box 650
Indian Springs NV 89070

LAS VEGAS NV 890
2 MAY 2022 PM 3 L

Confidential
Legal Mail

69701-478051

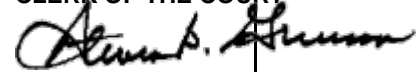


Supreme Court of Nevada
Office of The Clerk
201 S. Carson Street Suite 201
Carson City, Nevada 89701

6 LHM

MAY 01 2022

HIGH DESERT STATE PRISON



1 ASTA
2
3
4
5

6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 KELVIN WILLIAMS,

14 Defendant(s),
15

Case No: C-17-322527-1

Dept No: III

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Kelvin Williams

20 2. Judge: William Kephart

21 3. Appellant(s): Kelvin Williams

22 Counsel:

23 Kelvin Williams #88265
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 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: April 5, 2017

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

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 79390

12. Child Custody or Visitation: N/A

Dated This 26 day of May 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: Kelvin Williams

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-17-322527-1

State of Nevada
vs
Kelvin Williams

§ Location: Department 3
§ Judicial Officer: Trujillo, Monica
§ Filed on: 04/05/2017
§ Case Number History:
§ Cross-Reference Case Number: C322527
§ Defendant's Scope ID #: 1958447
§ ITAG Booking Number: 1700139857
§ ITAG Case ID: 1860527
§ Lower Court Case # Root: 17F03475
§ Lower Court Case Number: 17F03475X
§ Metro Event Number: 1701222412
§ Supreme Court No.: 79390

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. ROBBERY	200.380	F	01/22/2017		
Filed As: CONSPIRACY TO COMMIT ROBBERY	F	6/27/2017		Case Status:	02/01/2018 Closed
Arrest: 02/28/2017					
2. BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON	205.060.4	F	01/22/2017		
3. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	01/22/2017		
4. CONSPIRACY TO COMMIT ROBBERY	200.380	F	01/22/2017		
5. BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON	205.060.4	F	01/22/2017		
6. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	01/22/2017		

Related Cases

A-19-788384-W (Writ Related Case)

Statistical Closures

02/01/2018 Guilty Plea with Sentence (before trial) (CR)
05/17/2017 Transferred (before/during trial)

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number C-17-322527-1
Court Department 3
Date Assigned 01/04/2021
Judicial Officer Trujillo, Monica

PARTY INFORMATION

Defendant	Williams, Kelvin	Lead Attorneys
		Fischer, David R Retained 702-547-3944(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX















EVENTS

04/05/2017

In














CASE SUMMARY

CASE NO. C-17-322527-1





	 Commitment and Order <i>[1]</i>	#1
05/17/2017	 Criminal Order to Statistically Close Case <i>[2] Criminal Order to Statistically Close Case</i>	In #2
05/19/2017	 Order Filed By: Plaintiff State of Nevada <i>[3] Order of Competency (Remand)</i>	In #3
06/26/2017	 Criminal Bindover Packet Justice Court <i>[4]</i>	In #4
06/26/2017	 Criminal Bindover - Confidential <i>[5]</i>	In #5
06/27/2017	 Information Party: Plaintiff State of Nevada <i>[6] Information</i>	In #6
08/04/2017	 Notice of Witnesses and/or Expert Witnesses Filed By: Plaintiff State of Nevada <i>[7] Notice of Expert Witnesses</i>	In #7
08/14/2017	 Receipt of Copy Filed by: Plaintiff State of Nevada <i>[8] Receipt of Copy7</i>	In #8
08/15/2017	 Notice of Witnesses and/or Expert Witnesses Filed By: Plaintiff State of Nevada <i>[9] State's Notice of Witnesses</i>	In #9
08/22/2017	 Receipt of Copy Filed by: Plaintiff State of Nevada <i>[10] Receipt of Copy</i>	In #1
08/28/2017	 Supplemental Witness List Filed by: Plaintiff State of Nevada <i>[11] State's Supplemental Notice of Witnesses</i>	In #1
08/28/2017	 Notice Filed By: Plaintiff State of Nevada <i>[12] State's Notice of Intent to Seek Punishment as a Habitual Criminal</i>	In #1
08/29/2017	 Notice of Witnesses Party: Defendant Williams, Kelvin <i>[13] Defendant's Notice of Witnesses</i>	In #1
08/30/2017	 Amended Information	In

CASE SUMMARY

CASE NO. C-17-322527-1

	<i>[14] Amended Information</i>	#1
08/30/2017	 Guilty Plea Agreement <i>[15]</i>	In #1
11/22/2017	 PSI <i>[16]</i>	In #1
01/10/2018	 Notice of Rescheduling of Hearing <i>[17] Notice of Rescheduling of Hearing</i>	In #1
01/10/2018	 Notice of Rescheduling of Hearing <i>[18] Notice of Rescheduling of Hearing</i>	In #1
02/01/2018	 Judgment of Conviction <i>[19] JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>	In #1
02/13/2018	 Reporters Transcript <i>[20] Reporter's Transcript of Preliminary Hearing 6-26-17</i>	In #2
08/08/2019	 Notice of Appeal (Criminal) <i>[21] Notice of Appeal</i>	In #2
08/09/2019	 Case Appeal Statement Filed By: Defendant Williams, Kelvin <i>[22] Case Appeal Statement</i>	In #2
09/27/2019	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[23] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>	In #2
04/29/2020	 Findings of Fact, Conclusions of Law and Order <i>[24] Findings of Fact, Conclusions of Law, and Order</i>	In #2
04/30/2020	 Notice of Entry <i>[25] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	In #2
01/04/2021	Case Reassigned to Department 1 <i>Judicial Reassignment to Judge Bita Yeager</i>	
01/04/2021	Case Reassigned to Department 3 <i>Judicial Reassignment to Judge Monica Trujillo</i>	
04/29/2021	 Application to Proceed in Forma Pauperis Filed By: Defendant Williams, Kelvin <i>[26]</i>	In #2
04/29/2021	 Motion to Produce Transcript Filed By: Defendant Williams, Kelvin	In #2

CASE SUMMARY
CASE NO. C-17-322527-1

	<i>[27] Motion to Produce Transcripts Evidentiary Hearing at State's Expense</i>	
07/07/2021	 Opposition to Motion <i>[28] STATE S OPPOSITION TO MOTION TO PRODUCE TRANSCRIPTS AT STATE S EXPENSE</i>	In #2
09/07/2021	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>[29] Order Denying Defendants Motion to Produce Transcripts Evidentiary Hearing at State's Expense</i>	In #2
05/09/2022	 Notice of Appeal (Criminal) <i>[30] Notice of Appeal</i>	In #2
05/26/2022	 Case Appeal Statement <i>Case Appeal Statement</i>	In #2
	<u>DISPOSITIONS</u>	
05/19/2017	Disposition (Judicial Officer: Kephart, William D.) 1. COMPETENCY DETERMINATION Remanded To Justice Court PCN: Sequence:	
08/30/2017	Disposition (Judicial Officer: Kephart, William D.) 2. BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence: 3. ROBBERY WITH USE OF A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence: 4. CONSPIRACY TO COMMIT ROBBERY Amended Information Filed/Charges Not Addressed PCN: Sequence: 5. BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence: 6. ROBBERY WITH USE OF A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence:	
08/30/2017	Plea (Judicial Officer: Kephart, William D.) 1. ROBBERY Guilty PCN: Sequence:	
01/29/2018	Disposition (Judicial Officer: Kephart, William D.) 1. ROBBERY Guilty PCN: Sequence:	
01/29/2018	Adult Adjudication (Judicial Officer: Kephart, William D.) 1. ROBBERY	

CASE SUMMARY**CASE NO. C-17-322527-1**

01/22/2017 (F) 200.380 (DC50137)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Life with the possibility of parole after:10 Years

Credit for Time Served: 336 Days

Comments: Large Habitual Statute

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

Genetic Marker

Analysis AA Fee

3.00

\$3

Fee Totals \$

28.00


\$150 Waived

HEARINGS05/12/2017  **Further Proceedings: Competency (9:00 AM)** (Judicial Officer: Becker, Nancy)

Found Competent;

Journal Entry Details:


Also present: Christina Greene of the Specialty Courts. There being no challenge by Defense Counsel, COURT FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature of the charges against him / her and is able to assist counsel in his / her defense and ORDERED, pursuant to 178.420, matter TRANSFERRED back to the originating court for further proceedings. CASE CLOSED. CUSTODY 5/17/17 7:30 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT JUSTICE COURT DEPT. 5 ;

06/28/2017  **Initial Arraignment (10:00 AM)** (Judicial Officer: Rigsby, Thomas)

Trial Date Set;

Journal Entry Details:

Deputized Law Clerk, Alexander Robbins appearing for the State. Jennifer Pandullo, Esq., appearing for Mr. Printy on behalf of the deft. DEFT. WILLIAMS ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. As the available trial dates within the 60-day limit will not allow his/her attorney adequate preparation time, Deft. WAIVED ONE (1) WEEK to the next criminal trial stack. Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript; further, Counsel has an obligation under case law, statute and rules regarding discovery. CUSTODY 8/02/17 8:30 AM PRE TRIAL CONFERENCE (DEPT. 19) 8/30/17 8:30 AM CALENDAR CALL (DEPT. 19) 9/05/17 10:00 AM JURY TRIAL (DEPT. 19);

08/02/2017  **Pre Trial Conference (8:30 AM)** (Judicial Officer: Kephart, William D.)

Matter Heard;

Journal Entry Details:

Upon Court's inquiry, Mr. Fischer advised he has two other cases on the same stack who have also invoked. Ms. Derjavina advised State anticipates ready and provided additional discovery this morning in open court as well as there is an outstanding finger print report which needs to be provided. COURT ORDERED, trial date STANDS. CUSTODY;

08/30/2017  **Calendar Call (8:30 AM)** (Judicial Officer: Kephart, William D.)

Plea Entered;

Journal Entry Details:

Amended Information FILED IN OPEN COURT...NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT Statement by Mr. Dickerson. COURT ORDERED, the following STRICKEN from the Amended Information: page 1, line 20, "with use of a deadly weapon", line 27, "with use", line 28, "of a deadly weapon, to wit: a firearm" and the following is STRICKEN from the Guilty Plea Agreement: page 1, line 16, "with use of a deadly", line 17, "weapon", page 2, line 15 "plus", line 16, "a consecutive minimum of not less than ONE (1) year and a maximum term of not more", line 17, "than FIFTEEN (15) years for the Deadly Weapon enhancement", and exhibit one, amended information, attached to the guilty plea agreement STRICKEN as list above. DEFT. WILLIAMS ARRAIGNED AND PLED GUILTY to ROBBERY (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. CUSTODY 12/6/17 8:30 AM SENTENCING;

09/05/2017 **CANCELED Jury Trial (10:00 AM)** (Judicial Officer: Kephart, William D.)

CASE SUMMARY

CASE NO. C-17-322527-1

Vacated - per Judge

12/06/2017



Sentencing (8:30 AM) (Judicial Officer: Kephart, William D.)

12/06/2017, 01/24/2018, 01/29/2018

Matter Continued;

Matter Continued;

Defendant Sentenced;

Journal Entry Details:

Court noted matter previously continued in order for Mr. Frizzell to review the plea and determine if there are grounds to withdraw the plea; however, based on Mr. Frizzell's review it was determined there are no grounds to withdraw the guilty plea. Upon Court's inquiry, parties advised they are prepared to go forward with sentencing. DEFT. WILLIAMS ADJUDGED GUILTY of ROBBERY (F). Matter argued and submitted. Statement by Defendant. Exhibits presented (see worksheets). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and a \$3.00 DNA Collection fee; Deft. SENTENCED UNDER LARGE HABITUAL STATUTE to LIFE in the Nevada Department of Corrections (NDC) with parole eligibility after a MINIMUM of TEN (10) YEARS; with THREE HUNDRED THIRTY-SIX (336) DAYS credit for time served. FURTHER ORDERED, \$150.00 DNA Analysis fee including testing to determine genetic markers WAIVED as previously ordered. NDC;

Matter Continued;

Matter Continued;

Defendant Sentenced;

Matter Continued;

Matter Continued;

Defendant Sentenced;

Journal Entry Details:

Mr. Fischer advised Defendant has indicated he would like to withdraw his guilty plea and requested counsel be appointed to review the plea and make the appropriate determination. COURT ORDERED, Kenneth Frizzell APPOINTED for the limited purposes of addressing Defendant's request to withdraw guilty plea and the transcript from entry of plea shall be prepared. FURTHER ORDERED, matter CONTINUED and SET for Status Check; Defendant's pending Motion to Withdraw Counsel shall be RESET. CUSTODY 1/17/2018 8:30 AM SENTENCING ... STATUS CHECK: DEFENDANT'S REQUEST TO WITHDRAW GUILTY PLEA ... DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL & APPOINT COUNSEL;

01/24/2018

Motion to Dismiss (8:30 AM) (Judicial Officer: Kephart, William D.)

Defendant's Motion to Dismiss Counsel & Appoint Alternate Counsel

Denied;

01/24/2018

Status Check (8:30 AM) (Judicial Officer: Kephart, William D.)

Status Check: Defendant's Request to Withdraw Guilty Plea

Matter Heard;

01/24/2018



All Pending Motions (8:30 AM) (Judicial Officer: Kephart, William D.)

Matter Heard;

Journal Entry Details:

STATUS CHECK: DEFENDANT'S REQUEST TO WITHDRAW GUILTY PLEA ... DEFENDANT'S MOTION TO DISMISS COUNSEL & APPOINT ALTERNATE COUNSEL ... SENTENCING Mr. Frizzell advised he was appointed to address Defendant's request to withdraw his guilty plea; however, based on his review of the information he was unable to find any legal grounds to withdraw the guilty plea. COURT ORDERED, Sentencing CONTINUED. CUSTODY 1/29/2018 8:30 AM SENTENCING;

05/24/2021



Motion to Produce Transcript (8:30 AM) (Judicial Officer: Trujillo, Monica)

05/24/2021, 07/28/2021

Events: 04/29/2021 Motion to Produce Transcript

Defendant's Motion to Produce Transcripts Evidentiary Hearing at State's Expense

Matter Continued;

Denied;

Journal Entry Details:

Court FINDS the motion was a fugitive document and was unclear as to why Deft's needed the transcripts, therefore, ORDERED, motion DENIED. State to prepare the Order consistent with the Opposition. NDC ;

Matter Continued;

Denied;

Journal Entry Details:

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-17-322527-1

Following colloquy, COURT ORDERED, State's Opposition DUE 7/6/21; Deft's Reply DUE 7/20/21; matter CONTINUED. NDC 7/28/21 8:30 AM - DEFENDANT'S MOTION TO PRODUCE TRANSCRIPTS EVIDENTIARY HEARING AT STATE'S EXPENSE;

DATE

FINANCIAL INFORMATION

Defendant Williams, Kelvin

Total Charges

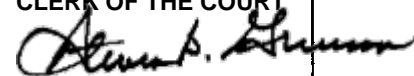
28.00

Total Payments and Credits

0.00

Balance Due as of 5/26/2022

28.00



1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **TALEEN PANDUKHT**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005734**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**
15
16 **Plaintiff,**

17 **-vs-**

18 **KELVIN WILLIAMS,**
19 **#1958447**

20 **Defendant.**

CASE NO: A-19-788384-W

C-17-322527-1

DEPT NO: XIX

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

22 **DATE OF HEARING: MARCH 12, 2020**
23 **TIME OF HEARING: 8:30 AM**

24 **THIS CAUSE, having come on for hearing before the Honorable WILLIAM D.**
25 **KEPHART, District Judge, on the 12th day of March 2020, the Petitioner being present, pro**
26 **per, the Respondent being represented by STEVEN B. WOLFSON, Clark County District**
27 **Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and the Court**
28 **having considered the matter including briefs, transcripts, documents on file herein, and the**
testimony of David Fisher, Esq., now therefore, the Court makes the following findings of fact
and conclusions of law:

//

//

//

//

W:\2017\2017F\034\75\17F03475-PFCO-(WILLIAMS_KELVIN)-002.DOCX

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On June 27, 2017, Defendant Kelvin Williams ("Defendant") was charged by way of
4 Information with the following: Count 1, Conspiracy to Commit Robbery; Count 2, Burglary
5 While In Possession of a Deadly Weapon; Count 3, Robbery With Use of a Deadly Weapon;
6 Count 4, Conspiracy to Commit Robbery; Count 5, Burglary While in Possession of a Deadly
7 Weapon; and Count 6, Robbery With Use of a Deadly Weapon. Information at 1-3. On June
8 28, 2017, Defendant pled not guilty to all charges and invoked his right to a speedy trial.

9 At calendar call on August 30, 2017, an Amended Information was filed and Defendant
10 entered a plea of guilty to one count of Robbery.

11 On January 29, 2018, Defendant was sentenced under the Large Habitual statute to Life
12 in the Nevada Department of Corrections with parole eligibility after a minimum of ten (10)
13 years have been served, with 336 days credit for time served. Defendant's Judgment of
14 Conviction was filed February 1, 2018. Defendant did not file a direct appeal.

15 On January 28, 2019, Defendant filed the instant post-conviction Petition for Writ of
16 Habeas Corpus, Motion to Appoint Counsel, and Request for Evidentiary Hearing in case A-
17 19-788384. The State filed its Response on April 23, 2019. On March 12, 2020, this Court
18 held an evidentiary hearing and David Fischer, Esq. testified. Thereafter, this Court denied
19 Defendant's Petition.

20 **STATEMENT OF FACTS**

21 The Court relied on the following factual background from the Presentence
22 Investigation Report ("PSI") in sentencing Defendant, which indicated the instant offense
23 occurred substantially as follows:

24 On January 22, 2017, two males entered a local business
25 and walked around, browsing at items. A store employee, Victim#
26 1, approached one of the men and inquired if he needed help. The
27 male grabbed Victim#1 by the arm and took her to the register
28 area, where he demanded money. One subject simulated a
handgun while the other subject had pepper spray in his hand as
they both stood by the counter. Victim # 1 complied with the

1 subjects' demands and later told detectives she was afraid for her
2 life and did not want to die. The two subjects took money and
3 merchandise and were last seen heading through the parking lot.
4 Video surveillance and detailed descriptions were provided to
5 detectives, who later identified defendant Kelvin Williams as one
6 of the subjects.

7 On January 30, 2017, two male subjects entered a local fast
8 food restaurant and began to place and order. The business had
9 several other customers inside and the two subjects waited
10 approximately 20 to 25 minutes before completing their order.
11 One the subjects, later identified as defendant Kelvin Williams,
12 approached the register where Victim # 2 attempted to complete
13 the sale. Mr. Williams provided two separate credit cards, both of
14 which were declined. Mr. Williams then produced a black semi-
15 automatic handgun and demanded money from the register.
16 Victim # 2 gave Mr. Williams approximately \$80.00 to \$100.00.
17 Both subjects took the money and sandwiches exited the business,
18 fleeing on foot. Video surveillance and detailed descriptions were
19 provided to detectives, who later identified defendant Kelvin
20 Williams as one of the subjects.

21 On February 19, 2017, a subject was arrested for a robbery
22 at a local business. While being questioned by detectives, the
23 subject admitted to participating in two additional robberies just
24 weeks prior. The subject identified Mr. Curtis Williams as the
25 second suspect in the two previous robberies. On February 28,
26 2017, detectives located Mr. Kelvin Williams at a local apartment
27 complex, where clothing worn by the defendant during the
28 robberies was located. Mr. Kelvin Williams was arrested and
transported to the Clark County Detention Center, where he was
booked accordingly.

PSI filed November 22, 2017 at 4.

AUTHORITY

A habeas corpus petitioner must prove disputed factual allegations by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004). The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective

1 assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063
2 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

3 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
4 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
5 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
6 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
7 representation fell below an objective standard of reasonableness, and second, that but for
8 counsel's errors, there is a reasonable probability that the result of the proceedings would have
9 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
10 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

11 The court begins with the presumption of effectiveness and then must determine
12 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
13 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
14 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
15 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
16 537 P.2d 473, 474 (1975).

17 "There are countless ways to provide effective assistance in any given case. Even the
18 best criminal defense attorneys would not defend a particular client in the same way."
19 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "As a general rule, defense counsel has the duty
20 to communicate formal prosecution offers to accept a plea on terms and conditions that may
21 be favorable to the accused." Missouri v. Frye, 566 U.S. 133, 132 S. Ct. 1399, 1402 (2012).

22 Even if a defendant can demonstrate that his counsel's representation fell below an
23 objective standard of reasonableness, he must still demonstrate prejudice and show a
24 reasonable probability that, but for counsel's errors, the result of the trial would have been
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
26 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
27 sufficient to undermine confidence in the outcome." *Id.* (citing Strickland, 466 U.S. at 687-89,
28 694, 104 S. Ct. at 2064-65, 2068).

1 I. DEFENDANT HAS FAILED TO SUPPORT HIS CLAIM OF
2 INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO FILE AN
3 APPEAL

4 Defendant argues in Ground One of the instant Petition that trial counsel David Fischer
5 failed to file a direct appeal of Defendant's Judgment of Conviction. Petition at 6-7. Defendant
6 further alleges he asked counsel to file an appeal. Petition at 6-7.

7 The United States Supreme Court requires courts to review three factors when
8 determining whether a defendant was deprived of his right to an appeal: (1) whether the
9 defendant asked counsel to file an appeal; (2) whether the conviction was the result of a trial
10 or a guilty plea; and (3) whether the defendant had any non-frivolous issues to raise on appeal.
11 Roe v. Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Nevada Supreme Court
12 has held that the court can assess the credibility of witnesses when conducting an evidentiary
13 hearing to determine whether a defendant was deprived of an appeal. Barnhart v. State, 122
14 Nev. 301, 130 P.3d 650, 652 (2006).

15 Additionally, the other two Roe v. Ortega factors weigh in favor of the State. As to the
16 second factor, when a defendant is found guilty pursuant to a plea, counsel normally does not
17 have a duty to inform a defendant about his right to an appeal. Toston v. State, 127 Nev. 971,
18 977, 267 P.3d 795, 799-800 (2011) (citing Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222,
19 223 (1999)). Here, Defendant was informed of his rights regarding appeals in his Guilty Plea
20 Agreement ("GPA"):

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

23 The *right to appeal* the conviction, with the assistance of
24 an attorney, either appointed or retained, unless the appeal is based
25 upon reasonable constitutional jurisdictional or other grounds that
26 challenge the legality of the proceedings and except as otherwise
27 provided in subsection 3 of N.R.S. 174.035. I understand this
28 means *I am unconditionally waiving my right to a direct appeal* of
this conviction, including any challenge based on reasonable
constitutional, jurisdictional or other grounds that challenge the
legality of the proceedings as stated in NRS 177.015(4).

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

1 GPA August 30, 2017 at 4-5 (emphasis added).

2 As to the third factor of Roe v. Ortega, whether the defendant had any non-frivolous
3 issues to raise on appeal, Defendant has failed to establish the existence of any non-frivolous
4 issues he would have pursued on direct appeal had counsel filed such an appeal. In the instant
5 Petition, Defendant merely alleges he was "unhappy" with the sentence he received from the
6 sentencing judge. Petition at 6. Defendant has set forth no legal basis that he would be entitled
7 to relief on direct appeal due to his lack of happiness. Based on the testimony of David Fischer,
8 Esq., the Court finds that Defendant has failed to support this claim and the claim is further
9 belied by the record. Thus, this Court denies Defendant's claim.

10 **II. DEFENDANT'S CLAIMS THAT COUNSEL WAS INEFFECTIVE FOR**
11 **THE ALLEGED FAILURE TO INVESTIGATE AND/OR**
12 **COMMUNICATE ARE BELIED BY THE RECORD**

13 Defendant claims trial counsel was ineffective for failing to interview Defendant's
14 suggested witnesses Lekita Reynolds, Ruby Davis, and "Manager Crystal of the Budget
15 Suites," that counsel never ordered an independent fingerprint analysis, and that counsel did
16 not communicate as well as Defendant would have preferred during an in-custody visit.
17 Petition at 8. A defendant who contends his attorney was ineffective because he did not
18 adequately investigate must show how a better investigation would have rendered a more
19 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).
20 Further, A defendant is not entitled to a particular "relationship" with his attorney. Morris v.
21 Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific
22 amount of communication as long as counsel is reasonably effective in his representation. See
23 id. Further still, the Nevada Supreme Court has held that guilty pleas cut short investigation
24 claims and all constitutional claims based on events occurring prior to the entry of the pleas.
25 See Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984);
26 Molina, 120 Nev. at 87 P.3d 533 (2004).

27 //

28 //

1 In this case, Defendant has failed to support his claims that counsel failed to investigate
2 or communicate effectively. Based on the testimony of David Fischer, Esq., these claims are
3 further belied by the record. Therefore, these claims are hereby denied.

4
5 **III. COUNSEL WAS NOT INEFFECTIVE FOR THE ALLEGED FAILURE TO**
6 **ADEQUATELY INFORM DEFENDANT OF THE CONSEQUENCES OF**
7 **HIS GUILTY PLEA AGREEMENT**

8 Defendant's Petition alleges in Grounds Two and Three that counsel's alleged
9 ineffectiveness rendered the entry of his guilty plea "unknowing[], unintelligent[], and
10 involuntar[y]" due to counsel's alleged failure to investigate certain witnesses prior to the entry
11 of plea, and for failure to adequately explain the consequences of the GPA. Petition at 14.
12 Notwithstanding that Defendant's claims that counsel was ineffective for failing to investigate
13 and/or communicate are waived by virtue of his guilty plea, Defendant's allegations that trial
14 counsel's ineffectiveness affected the knowing, voluntary, and intelligent entry of his guilty
15 plea are denied for the following reasons.

16 Under the Strickland test, a defendant must show first that his counsel's representation
17 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
18 there is a reasonable probability that the result of the proceedings would have been different.
19 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. In Hargrove v. State, 100 Nev. 498, 503,
20 686 P.2d 222, 225 (1984), the Court held that claims asserted in a petition for post-conviction
21 relief must be supported with specific factual allegations, which if true, would entitle the
22 petitioner to relief. "Bare" and "naked" allegations are not sufficient, nor are those belied and
23 repelled by the record. Id. A defendant who contends that his attorney was ineffective because
24 he did not adequately investigate must show how a better investigation would have rendered
25 a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Such
26 a defendant must allege with specificity what the investigation would have revealed and how
27 it would have altered the outcome of the trial. United States v. Porter, 924 F.2d 395, 397 (1st
28 Cir. 1991), quoting United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989). "Where
counsel and the client in a criminal case clearly understand the evidence and the permutations

1 of proof and outcome, counsel is not required to unnecessarily exhaust all available public or
2 private resources.” Molina, 120 Nev. at 192, P.3d at 538. Further, it is well established that a
3 claim of ineffective assistance of counsel alleging a failure to properly investigate will fail
4 where the evidence or testimony sought does not exonerate or exculpate the defendant. See
5 Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989). Counsel cannot be ineffective for failing to
6 make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095,
7 1103 (2006). Trial counsel has the “immediate and ultimate responsibility of deciding if and
8 when to object, which witnesses, if any, to call, and what defenses to develop.” Rhyne v.
9 State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

10 Defendant alleges witnesses Lekita Reynolds and “Manager Crystal of the Budget
11 Suites” would have testified at trial that Defendant was at home at the time of the Subway
12 robbery, and that Ruby Davis would have testified that Defendant was at her home during the
13 Family Dollar robbery. Petition at 8-9. Defendant also alleges trial counsel should have
14 ordered independent fingerprint analysis of the glass window at Subway, “just in case the State
15 lied about the prints being inconclusive.” Petition at 9-10. First, Defendant has failed under
16 Molina to show that any witness testimony presented at trial would have rendered a more
17 favorable outcome probable. Even if these witnesses had testified that Defendant was not at
18 the either the Subway store or the Family Dollar Store during the robberies, Defendant cannot
19 show that a jury would have found their testimonies more credible than the overwhelming
20 evidence present in this case. As referenced in the PSI, both the Subway store and the Family
21 Dollar store provided video surveillance footage of Defendant robbing the stores, along with
22 “detailed descriptions” of Defendant obtained from the employees of each store. Further, while
23 Defendant alleges counsel should have obtained an independent fingerprint analysis “just in
24 case,” he does not allege that the fingerprints found at the scene would have exculpated him.

25 The decision not to contact Defendant’s proposed witnesses and not to obtain an
26 independent fingerprint analyst in light of the overwhelming evidence against the Defendant
27 is not objectively unreasonable, as Defendant cannot establish that witness testimony would
28 have actually been exculpatory. Thus, Defendant has failed to show under that first prong of

1 Strickland that counsel's performance was objectively unreasonable. Further, Defendant
2 cannot show that he was prejudiced by counsel's alleged ineffectiveness, nor that there is a
3 reasonable probability that he would have rejected negotiations and proceeded to trial had trial
4 counsel contacted his suggested witnesses. Thus, Defendant also cannot show that counsel was
5 ineffective under the second prong of Strickland.

6 Further, Defendant's claim that he would have rejected the negotiations and gone to
7 trial is belied by the record, and as such his claims cannot warrant relief pursuant to Hargrove.
8 At entry of plea, Defendant agreed that he was in truth and in fact guilty of the subject offense:
9 "I understand that by pleading guilty I admit the facts which support all the elements of the
10 offense(s) to which I now plead..." GPA at 2.

11 Defendant's claim in Ground Three of his Petition, that counsel failed to explain the
12 consequences of the GPA, is similarly belied by the record. Defendant claims counsel
13 represented that "the State was offering a deal of 5 to 12 ½ years under the small habitual and
14 that at sentencing the max I could be given was a 6 to 15 years." Petition at 12. Defendant
15 also alleges "counsel had misled him into believing that he had signed a deal for a small
16 habitual sentence (5 to 12 1/2) (NRS 207.010)..." Petition at 14. This claim is belied by the
17 plain text of the GPA. The negotiations were set forth in the GPA as follows:

18 The Parties stipulate to Habitual Felon sentencing under NRS
19 207.012. The State will retain the right to argue, but the State will not
20 recommend a sentence of Life Without the Possibility of Parole.

21 I understand that if I am sentenced under the "large" habitual
22 criminal enhancement the Court must sentence me to Life without the
23 possibility of parole; Life with the possibility of parole; parole
24 eligibility begins after a minimum of ten (10) years have been served;
25 or a definite term of twenty-five years, parole eligibility begins after
26 a minimum of ten (10) years have been served.

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

26 GPA at 1-3.

27 Further, Defendant's claims that he had been misled about the nature of his
28 negotiations, or that he was in some way dissatisfied with the investigation or communication

1 regarding his case and possible defenses, vis-à-vis his proposed witnesses and/or a fingerprint
2 analysis, as well as claims regarding the availability of a direct appeal, are wholly belied by
3 the plain text of the GPA:

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

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

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

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

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

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

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

25 GPA at 5.

26 Defendant also attempted to withdraw his guilty plea prior to sentencing; even after
27 being appointed counsel Kenneth Frizzell, Esq., for the limited purpose of determining
28 whether there was a legal basis to withdraw Defendant's plea, appointed counsel could find
no such basis. Court Minutes, January 24, 2018.

Thus, all of Defendant's claims regarding ineffective assistance of counsel as they
pertain to the voluntariness of his guilty plea are belied by the record and cannot form the basis
of relief pursuant to Hargrove. Further, Defendant cannot show that but for counsel's alleged
deficient performance in communicating the terms of the guilty plea he would not have pled
guilty and proceeded to trial, as his guilty plea states he believed that pleading guilty and
accepting the plea bargain was in his best interest. As Defendant's claims are belied by the

1 record, he has failed to show that his counsel's performance was objectively unreasonable.
2 Defendant has also failed to show that but for counsel's alleged deficiency, that he would have
3 rejected the negotiations and proceeded to trial, or that but for counsel's alleged deficiency,
4 the outcome of the proceedings would have been any different. Defendant's claim of
5 ineffective assistance of counsel in regards to the voluntary entry of his guilty plea is therefore
6 denied.

7 IV. DEFENDANT IS NOT ENTITLED TO APPOINTED COUNSEL

8 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
9 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
10 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
11 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right
12 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to
13 counsel provision as being coextensive with the Sixth Amendment to the United States
14 Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a)
15 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
16 "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at
17 164, 912 P.2d at 258.

18 However, the Nevada Legislature has given courts the discretion to appoint post-
19 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and
20 the petition is not dismissed summarily." NRS 34.750. NRS 34.750 reads:

21 A petition may allege that the petitioner is unable to pay the costs
22 of the proceedings or to employ counsel. If the court is satisfied
23 that the allegation of indigency is true and the petition is not
24 dismissed summarily, the court may appoint counsel to represent
25 the petitioner. In making its determination, the court may consider,
among other things, the severity of the consequences facing the
petitioner and whether:

- 26 (a) The issues are difficult;
27 (b) The Defendant is unable to comprehend the proceedings; or
28 (c) Counsel is necessary to proceed with discovery.

1 Under NRS 34.750, the court has discretion in determining whether to appoint counsel
2 when the petition is not summarily dismissed. However, the issues presented in the instant
3 Petition are not difficult, there is no indication that Defendant is unable to comprehend the
4 proceedings, and Defendant has set forth no argument that he requires assistance with
5 discovery. As such, appointment of counsel is unwarranted under the NRS 34.750(1)(a)-(c)
6 factors, and Defendant's Motion to Appoint Counsel is denied.

7 CONCLUSION

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

10 DATED this 22nd day of April, 2020.

11 *Will Kephart*
12 DISTRICT JUDGE

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #1565

15 BY *BB* *for*
16 TALEEN PANDUKHT
17 Chief Deputy District Attorney
18 Nevada Bar #005734

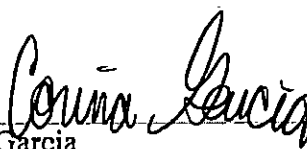
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 29th day of April, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

KELVIN WILLIAMS, BAC #88265
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NY 89070

BY



C. Garcia
Secretary for the District Attorney's Office

cg/L2



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KELVIN WILLIAMS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-17-322527-1

Dept No: IX

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

PLEASE TAKE NOTICE that on April 29, 2020 , 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 30, 2020.

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 30 day of April 2020, 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:

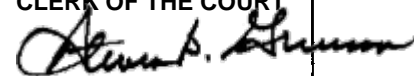
Kelvin Williams # 88265
P.O. Box 650
Indian Springs, NV 89070

David R. Fischer, Esq.
400 S. 4th St., Ste 500
Las Vegas, NV 89101

Kenneth G. Frizzell, Esq.
619 S. 6th St.
Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **TALEEN PANDUKHT**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005734**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**
15
16 **Plaintiff,**

17 **-vs-**

18 **KELVIN WILLIAMS,**
19 **#1958447**

20 **Defendant.**

CASE NO: A-19-788384-W

C-17-322527-1

DEPT NO: XIX

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

22 **DATE OF HEARING: MARCH 12, 2020**
23 **TIME OF HEARING: 8:30 AM**

24 **THIS CAUSE, having come on for hearing before the Honorable WILLIAM D.**
25 **KEPHART, District Judge, on the 12th day of March 2020, the Petitioner being present, pro**
26 **per, the Respondent being represented by STEVEN B. WOLFSON, Clark County District**
27 **Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and the Court**
28 **having considered the matter including briefs, transcripts, documents on file herein, and the**
testimony of David Fisher, Esq., now therefore, the Court makes the following findings of fact
and conclusions of law:

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1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On June 27, 2017, Defendant Kelvin Williams ("Defendant") was charged by way of
4 Information with the following: Count 1, Conspiracy to Commit Robbery; Count 2, Burglary
5 While In Possession of a Deadly Weapon; Count 3, Robbery With Use of a Deadly Weapon;
6 Count 4, Conspiracy to Commit Robbery; Count 5, Burglary While in Possession of a Deadly
7 Weapon; and Count 6, Robbery With Use of a Deadly Weapon. Information at 1-3. On June
8 28, 2017, Defendant pled not guilty to all charges and invoked his right to a speedy trial.

9 At calendar call on August 30, 2017, an Amended Information was filed and Defendant
10 entered a plea of guilty to one count of Robbery.

11 On January 29, 2018, Defendant was sentenced under the Large Habitual statute to Life
12 in the Nevada Department of Corrections with parole eligibility after a minimum of ten (10)
13 years have been served, with 336 days credit for time served. Defendant's Judgment of
14 Conviction was filed February 1, 2018. Defendant did not file a direct appeal.

15 On January 28, 2019, Defendant filed the instant post-conviction Petition for Writ of
16 Habeas Corpus, Motion to Appoint Counsel, and Request for Evidentiary Hearing in case A-
17 19-788384. The State filed its Response on April 23, 2019. On March 12, 2020, this Court
18 held an evidentiary hearing and David Fischer, Esq. testified. Thereafter, this Court denied
19 Defendant's Petition.

20 **STATEMENT OF FACTS**

21 The Court relied on the following factual background from the Presentence
22 Investigation Report ("PSI") in sentencing Defendant, which indicated the instant offense
23 occurred substantially as follows:

24 On January 22, 2017, two males entered a local business
25 and walked around, browsing at items. A store employee, Victim#
26 1, approached one of the men and inquired if he needed help. The
27 male grabbed Victim#1 by the arm and took her to the register
28 area, where he demanded money. One subject simulated a
handgun while the other subject had pepper spray in his hand as
they both stood by the counter. Victim # 1 complied with the

1 subjects' demands and later told detectives she was afraid for her
2 life and did not want to die. The two subjects took money and
3 merchandise and were last seen heading through the parking lot.
4 Video surveillance and detailed descriptions were provided to
5 detectives, who later identified defendant Kelvin Williams as one
6 of the subjects.

7 On January 30, 2017, two male subjects entered a local fast
8 food restaurant and began to place and order. The business had
9 several other customers inside and the two subjects waited
10 approximately 20 to 25 minutes before completing their order.
11 One the subjects, later identified as defendant Kelvin Williams,
12 approached the register where Victim # 2 attempted to complete
13 the sale. Mr. Williams provided two separate credit cards, both of
14 which were declined. Mr. Williams then produced a black semi-
15 automatic handgun and demanded money from the register.
16 Victim # 2 gave Mr. Williams approximately \$80.00 to \$100.00.
17 Both subjects took the money and sandwiches exited the business,
18 fleeing on foot. Video surveillance and detailed descriptions were
19 provided to detectives, who later identified defendant Kelvin
20 Williams as one of the subjects.

21 On February 19, 2017, a subject was arrested for a robbery
22 at a local business. While being questioned by detectives, the
23 subject admitted to participating in two additional robberies just
24 weeks prior. The subject identified Mr. Curtis Williams as the
25 second suspect in the two previous robberies. On February 28,
26 2017, detectives located Mr. Kelvin Williams at a local apartment
27 complex, where clothing worn by the defendant during the
28 robberies was located. Mr. Kelvin Williams was arrested and
transported to the Clark County Detention Center, where he was
booked accordingly.

PSI filed November 22, 2017 at 4.

AUTHORITY

A habeas corpus petitioner must prove disputed factual allegations by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004). The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective

1 assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063
2 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

3 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
4 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
5 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
6 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
7 representation fell below an objective standard of reasonableness, and second, that but for
8 counsel's errors, there is a reasonable probability that the result of the proceedings would have
9 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
10 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

11 The court begins with the presumption of effectiveness and then must determine
12 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
13 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
14 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
15 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
16 537 P.2d 473, 474 (1975).

17 "There are countless ways to provide effective assistance in any given case. Even the
18 best criminal defense attorneys would not defend a particular client in the same way."
19 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "As a general rule, defense counsel has the duty
20 to communicate formal prosecution offers to accept a plea on terms and conditions that may
21 be favorable to the accused." Missouri v. Frye, 566 U.S. 133, 132 S. Ct. 1399, 1402 (2012).

22 Even if a defendant can demonstrate that his counsel's representation fell below an
23 objective standard of reasonableness, he must still demonstrate prejudice and show a
24 reasonable probability that, but for counsel's errors, the result of the trial would have been
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
26 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
27 sufficient to undermine confidence in the outcome." *Id.* (citing Strickland, 466 U.S. at 687-89,
28 694, 104 S. Ct. at 2064-65, 2068).

1 I. DEFENDANT HAS FAILED TO SUPPORT HIS CLAIM OF
2 INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO FILE AN
3 APPEAL

4 Defendant argues in Ground One of the instant Petition that trial counsel David Fischer
5 failed to file a direct appeal of Defendant's Judgment of Conviction. Petition at 6-7. Defendant
6 further alleges he asked counsel to file an appeal. Petition at 6-7.

7 The United States Supreme Court requires courts to review three factors when
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9 defendant asked counsel to file an appeal; (2) whether the conviction was the result of a trial
10 or a guilty plea; and (3) whether the defendant had any non-frivolous issues to raise on appeal.
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15 Additionally, the other two Roe v. Ortega factors weigh in favor of the State. As to the
16 second factor, when a defendant is found guilty pursuant to a plea, counsel normally does not
17 have a duty to inform a defendant about his right to an appeal. Toston v. State, 127 Nev. 971,
18 977, 267 P.3d 795, 799-800 (2011) (citing Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222,
19 223 (1999)). Here, Defendant was informed of his rights regarding appeals in his Guilty Plea
20 Agreement ("GPA"):

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

23 The *right to appeal* the conviction, with the assistance of
24 an attorney, either appointed or retained, unless the appeal is based
25 upon reasonable constitutional jurisdictional or other grounds that
26 challenge the legality of the proceedings and except as otherwise
27 provided in subsection 3 of N.R.S. 174.035. I understand this
28 means *I am unconditionally waiving my right to a direct appeal* of
this conviction, including any challenge based on reasonable
constitutional, jurisdictional or other grounds that challenge the
legality of the proceedings as stated in NRS 177.015(4).

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

1 GPA August 30, 2017 at 4-5 (emphasis added).

2 As to the third factor of Roe v. Ortega, whether the defendant had any non-frivolous
3 issues to raise on appeal, Defendant has failed to establish the existence of any non-frivolous
4 issues he would have pursued on direct appeal had counsel filed such an appeal. In the instant
5 Petition, Defendant merely alleges he was "unhappy" with the sentence he received from the
6 sentencing judge. Petition at 6. Defendant has set forth no legal basis that he would be entitled
7 to relief on direct appeal due to his lack of happiness. Based on the testimony of David Fischer,
8 Esq., the Court finds that Defendant has failed to support this claim and the claim is further
9 belied by the record. Thus, this Court denies Defendant's claim.

10 **II. DEFENDANT'S CLAIMS THAT COUNSEL WAS INEFFECTIVE FOR**
11 **THE ALLEGED FAILURE TO INVESTIGATE AND/OR**
12 **COMMUNICATE ARE BELIED BY THE RECORD**

13 Defendant claims trial counsel was ineffective for failing to interview Defendant's
14 suggested witnesses Lekita Reynolds, Ruby Davis, and "Manager Crystal of the Budget
15 Suites," that counsel never ordered an independent fingerprint analysis, and that counsel did
16 not communicate as well as Defendant would have preferred during an in-custody visit.
17 Petition at 8. A defendant who contends his attorney was ineffective because he did not
18 adequately investigate must show how a better investigation would have rendered a more
19 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).
20 Further, A defendant is not entitled to a particular "relationship" with his attorney. Morris v.
21 Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific
22 amount of communication as long as counsel is reasonably effective in his representation. See
23 id. Further still, the Nevada Supreme Court has held that guilty pleas cut short investigation
24 claims and all constitutional claims based on events occurring prior to the entry of the pleas.
25 See Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984);
26 Molina, 120 Nev. at 87 P.3d 533 (2004).

27 //

28 //

1 In this case, Defendant has failed to support his claims that counsel failed to investigate
2 or communicate effectively. Based on the testimony of David Fischer, Esq., these claims are
3 further belied by the record. Therefore, these claims are hereby denied.

4
5 **III. COUNSEL WAS NOT INEFFECTIVE FOR THE ALLEGED FAILURE TO**
6 **ADEQUATELY INFORM DEFENDANT OF THE CONSEQUENCES OF**
7 **HIS GUILTY PLEA AGREEMENT**

8 Defendant's Petition alleges in Grounds Two and Three that counsel's alleged
9 ineffectiveness rendered the entry of his guilty plea "unknowing[], unintelligent[], and
10 involuntar[y]" due to counsel's alleged failure to investigate certain witnesses prior to the entry
11 of plea, and for failure to adequately explain the consequences of the GPA. Petition at 14.
12 Notwithstanding that Defendant's claims that counsel was ineffective for failing to investigate
13 and/or communicate are waived by virtue of his guilty plea, Defendant's allegations that trial
14 counsel's ineffectiveness affected the knowing, voluntary, and intelligent entry of his guilty
15 plea are denied for the following reasons.

16 Under the Strickland test, a defendant must show first that his counsel's representation
17 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
18 there is a reasonable probability that the result of the proceedings would have been different.
19 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. In Hargrove v. State, 100 Nev. 498, 503,
20 686 P.2d 222, 225 (1984), the Court held that claims asserted in a petition for post-conviction
21 relief must be supported with specific factual allegations, which if true, would entitle the
22 petitioner to relief. "Bare" and "naked" allegations are not sufficient, nor are those belied and
23 repelled by the record. Id. A defendant who contends that his attorney was ineffective because
24 he did not adequately investigate must show how a better investigation would have rendered
25 a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Such
26 a defendant must allege with specificity what the investigation would have revealed and how
27 it would have altered the outcome of the trial. United States v. Porter, 924 F.2d 395, 397 (1st
28 Cir. 1991), quoting United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989). "Where
counsel and the client in a criminal case clearly understand the evidence and the permutations

1 of proof and outcome, counsel is not required to unnecessarily exhaust all available public or
2 private resources." Molina, 120 Nev. at 192, P.3d at 538. Further, it is well established that a
3 claim of ineffective assistance of counsel alleging a failure to properly investigate will fail
4 where the evidence or testimony sought does not exonerate or exculpate the defendant. See
5 Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989). Counsel cannot be ineffective for failing to
6 make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095,
7 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and
8 when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v.
9 State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

10 Defendant alleges witnesses Lekita Reynolds and "Manager Crystal of the Budget
11 Suites" would have testified at trial that Defendant was at home at the time of the Subway
12 robbery, and that Ruby Davis would have testified that Defendant was at her home during the
13 Family Dollar robbery. Petition at 8-9. Defendant also alleges trial counsel should have
14 ordered independent fingerprint analysis of the glass window at Subway, "just in case the State
15 lied about the prints being inconclusive." Petition at 9-10. First, Defendant has failed under
16 Molina to show that any witness testimony presented at trial would have rendered a more
17 favorable outcome probable. Even if these witnesses had testified that Defendant was not at
18 the either the Subway store or the Family Dollar Store during the robberies, Defendant cannot
19 show that a jury would have found their testimonies more credible than the overwhelming
20 evidence present in this case. As referenced in the PSI, both the Subway store and the Family
21 Dollar store provided video surveillance footage of Defendant robbing the stores, along with
22 "detailed descriptions" of Defendant obtained from the employees of each store. Further, while
23 Defendant alleges counsel should have obtained an independent fingerprint analysis "just in
24 case," he does not allege that the fingerprints found at the scene would have exculpated him.

25 The decision not to contact Defendant's proposed witnesses and not to obtain an
26 independent fingerprint analyst in light of the overwhelming evidence against the Defendant
27 is not objectively unreasonable, as Defendant cannot establish that witness testimony would
28 have actually been exculpatory. Thus, Defendant has failed to show under that first prong of

1 Strickland that counsel's performance was objectively unreasonable. Further, Defendant
2 cannot show that he was prejudiced by counsel's alleged ineffectiveness, nor that there is a
3 reasonable probability that he would have rejected negotiations and proceeded to trial had trial
4 counsel contacted his suggested witnesses. Thus, Defendant also cannot show that counsel was
5 ineffective under the second prong of Strickland.

6 Further, Defendant's claim that he would have rejected the negotiations and gone to
7 trial is belied by the record, and as such his claims cannot warrant relief pursuant to Hargrove.
8 At entry of plea, Defendant agreed that he was in truth and in fact guilty of the subject offense:
9 "I understand that by pleading guilty I admit the facts which support all the elements of the
10 offense(s) to which I now plead..." GPA at 2.

11 Defendant's claim in Ground Three of his Petition, that counsel failed to explain the
12 consequences of the GPA, is similarly belied by the record. Defendant claims counsel
13 represented that "the State was offering a deal of 5 to 12 ½ years under the small habitual and
14 that at sentencing the max I could be given was a 6 to 15 years." Petition at 12. Defendant
15 also alleges "counsel had misled him into believing that he had signed a deal for a small
16 habitual sentence (5 to 12 1/2) (NRS 207.010)..." Petition at 14. This claim is belied by the
17 plain text of the GPA. The negotiations were set forth in the GPA as follows:

18 The Parties stipulate to Habitual Felon sentencing under NRS
19 207.012. The State will retain the right to argue, but the State will not
20 recommend a sentence of Life Without the Possibility of Parole.

21 I understand that if I am sentenced under the "large" habitual
22 criminal enhancement the Court must sentence me to Life without the
23 possibility of parole; Life with the possibility of parole; parole
24 eligibility begins after a minimum of ten (10) years have been served;
25 or a definite term of twenty-five years, parole eligibility begins after
26 a minimum of ten (10) years have been served.

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

26 GPA at 1-3.

27 Further, Defendant's claims that he had been misled about the nature of his
28 negotiations, or that he was in some way dissatisfied with the investigation or communication

1 regarding his case and possible defenses, vis-à-vis his proposed witnesses and/or a fingerprint
2 analysis, as well as claims regarding the availability of a direct appeal, are wholly belied by
3 the plain text of the GPA:

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

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

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

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

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

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

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

25 GPA at 5.

26 Defendant also attempted to withdraw his guilty plea prior to sentencing; even after
27 being appointed counsel Kenneth Frizzell, Esq., for the limited purpose of determining
28 whether there was a legal basis to withdraw Defendant's plea, appointed counsel could find
no such basis. Court Minutes, January 24, 2018.

Thus, all of Defendant's claims regarding ineffective assistance of counsel as they
pertain to the voluntariness of his guilty plea are belied by the record and cannot form the basis
of relief pursuant to Hargrove. Further, Defendant cannot show that but for counsel's alleged
deficient performance in communicating the terms of the guilty plea he would not have pled
guilty and proceeded to trial, as his guilty plea states he believed that pleading guilty and
accepting the plea bargain was in his best interest. As Defendant's claims are belied by the

1 record, he has failed to show that his counsel's performance was objectively unreasonable.
2 Defendant has also failed to show that but for counsel's alleged deficiency, that he would have
3 rejected the negotiations and proceeded to trial, or that but for counsel's alleged deficiency,
4 the outcome of the proceedings would have been any different. Defendant's claim of
5 ineffective assistance of counsel in regards to the voluntary entry of his guilty plea is therefore
6 denied.

7 IV. DEFENDANT IS NOT ENTITLED TO APPOINTED COUNSEL

8 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
9 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
10 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
11 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right
12 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to
13 counsel provision as being coextensive with the Sixth Amendment to the United States
14 Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a)
15 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
16 "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at
17 164, 912 P.2d at 258.

18 However, the Nevada Legislature has given courts the discretion to appoint post-
19 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and
20 the petition is not dismissed summarily." NRS 34.750. NRS 34.750 reads:

21 A petition may allege that the petitioner is unable to pay the costs
22 of the proceedings or to employ counsel. If the court is satisfied
23 that the allegation of indigency is true and the petition is not
24 dismissed summarily, the court may appoint counsel to represent
25 the petitioner. In making its determination, the court may consider,
among other things, the severity of the consequences facing the
petitioner and whether:

- 26 (a) The issues are difficult;
27 (b) The Defendant is unable to comprehend the proceedings; or
28 (c) Counsel is necessary to proceed with discovery.

1 Under NRS 34.750, the court has discretion in determining whether to appoint counsel
2 when the petition is not summarily dismissed. However, the issues presented in the instant
3 Petition are not difficult, there is no indication that Defendant is unable to comprehend the
4 proceedings, and Defendant has set forth no argument that he requires assistance with
5 discovery. As such, appointment of counsel is unwarranted under the NRS 34.750(1)(a)-(c)
6 factors, and Defendant's Motion to Appoint Counsel is denied.

7 CONCLUSION

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

10 DATED this 22nd day of April, 2020.

11 *Will Kephart*
12 DISTRICT JUDGE

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #1565

15 BY *BB* *for*
16 TALEEN PANDUKHT
17 Chief Deputy District Attorney
18 Nevada Bar #005734

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 29th day of April, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

KELVIN WILLIAMS, BAC #88265
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NY 89070

BY Corina Garcia
C. Garcia
Secretary for the District Attorney's Office

cg/L2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 12, 2017

C-17-322527-1 State of Nevada
 vs
 Kelvin Williams

May 12, 2017

9:00 AM

**Further Proceedings:
Competency**

HEARD BY: Becker, Nancy

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:

Mains, Theresa
Pace, Barter G
State of Nevada

Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- Also present: Christina Greene of the Specialty Courts.

There being no challenge by Defense Counsel, COURT FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature of the charges against him / her and is able to assist counsel in his / her defense and ORDERED, pursuant to 178.420, matter TRANSFERRED back to the originating court for further proceedings. CASE CLOSED.

CUSTODY

5/17/17 7:30 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT JUSTICE COURT DEPT. 5

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 28, 2017

C-17-322527-1 State of Nevada
vs
Kelvin Williams

June 28, 2017 10:00 AM Initial Arraignment

HEARD BY: Rigsby, Thomas **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Williams, Kelvin Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Alexander Robbins appearing for the State. Jennifer Pandullo, Esq., appearing for Mr. Printy on behalf of the deft.

DEFT. WILLIAMS ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. As the available trial dates within the 60-day limit will not allow his/her attorney adequate preparation time, Deft. WAIVED ONE (1) WEEK to the next criminal trial stack. Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript; further, Counsel has an obligation under case law, statute and rules regarding discovery.

CUSTODY

8/02/17 8:30 AM PRE TRIAL CONFERENCE (DEPT. 19)

8/30/17 8:30 AM CALENDAR CALL (DEPT. 19)

9/05/17 10:00 AM JURY TRIAL (DEPT. 19)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 02, 2017

C-17-322527-1 State of Nevada
 vs
 Kelvin Williams

August 02, 2017 8:30 AM Pre Trial Conference

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Derjavina, Ekaterina	Attorney
	Fischer, David R	Attorney
	State of Nevada	Plaintiff
	Williams, Kelvin	Defendant

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Fischer advised he has two other cases on the same stack who have also invoked. Ms. Derjavina advised State anticipates ready and provided additional discovery this morning in open court as well as there is an outstanding finger print report which needs to be provided. COURT ORDERED, trial date STANDS.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 30, 2017

C-17-322527-1 State of Nevada
vs
Kelvin Williams

August 30, 2017 8:30 AM Calendar Call

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: April Watkins

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Dickerson, Michael	Attorney
	Fischer, David R	Attorney
	State of Nevada	Plaintiff
	Williams, Kelvin	Defendant

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT...NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT

Statement by Mr. Dickerson. COURT ORDERED, the following STRICKEN from the Amended Information: page 1, line 20, "with use of a deadly weapon", line 27, "with use", line 28, "of a deadly weapon, to wit: a firearm" and the following is STRICKEN from the Guilty Plea Agreement: page 1, line 16, "with use of a deadly", line 17, "weapon", page 2, line 15 "plus", line 16, "a consecutive minimum of not less than ONE (1) year and a maximum term of not more", line 17, "than FIFTEEN (15) years for the Deadly Weapon enhancement", and exhibit one, amended information, attached to the guilty plea agreement STRICKEN as list above.

DEFT. WILLIAMS ARRAIGNED AND PLED GUILTY to ROBBERY (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing.

CUSTODY

12/6/17 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 06, 2017

C-17-322527-1 State of Nevada
 vs
 Kelvin Williams

December 06, 2017 8:30 AM Sentencing

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Clowers, Shanon	Attorney
	Fischer, David R	Attorney
	State of Nevada	Plaintiff
	Williams, Kelvin	Defendant

JOURNAL ENTRIES

- Mr. Fischer advised Defendant has indicated he would like to withdraw his guilty plea and requested counsel be appointed to review the plea and make the appropriate determination. COURT ORDERED, Kenneth Frizzell APPOINTED for the limited purposes of addressing Defendant's request to withdraw guilty plea and the transcript from entry of plea shall be prepared. FURTHER ORDERED, matter CONTINUED and SET for Status Check; Defendant's pending Motion to Withdraw Counsel shall be RESET.

CUSTODY

1/17/2018 8:30 AM SENTENCING ... STATUS CHECK: DEFENDANT'S REQUEST TO WITHDRAW GUILTY PLEA ... DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL & APPOINT COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 24, 2018

C-17-322527-1 State of Nevada
 vs
 Kelvin Williams

January 24, 2018 8:30 AM All Pending Motions

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Frizzell, Kenneth G. Attorney
 State of Nevada Plaintiff
 Williams, Kelvin Defendant
 Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- STATUS CHECK: DEFENDANT'S REQUEST TO WITHDRAW GUILTY PLEA ... DEFENDANT'S MOTION TO DISMISS COUNSEL & APPOINT ALTERNATE COUNSEL ... SENTENCING

Mr. Frizzell advised he was appointed to address Defendant's request to withdraw his guilty plea; however, based on his review of the information he was unable to find any legal grounds to withdraw the guilty plea. COURT ORDERED, Sentencing CONTINUED.

CUSTODY

1/29/2018 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 29, 2018**

C-17-322527-1 State of Nevada
vs
Kelvin Williams

January 29, 2018 8:30 AM Sentencing

HEARD BY: Kephart, William D.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Tia Everett**RECORDER:** Christine Erickson**REPORTER:****PARTIES**

PRESENT:	Derjavina, Ekaterina	Attorney
	Fischer, David R	Attorney
	State of Nevada	Plaintiff
	Williams, Kelvin	Defendant

JOURNAL ENTRIES

- Court noted matter previously continued in order for Mr. Frizzell to review the plea and determine if there are grounds to withdraw the plea; however, based on Mr. Frizzell's review it was determined there are no grounds to withdraw the guilty plea. Upon Court's inquiry, parties advised they are prepared to go forward with sentencing.

DEFT. WILLIAMS ADJUDGED GUILTY of ROBBERY (F). Matter argued and submitted. Statement by Defendant. Exhibits presented (see worksheets). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and a \$3.00 DNA Collection fee; Deft. SENTENCED UNDER LARGE HABITUAL STATUTE to LIFE in the Nevada Department of Corrections (NDC) with parole eligibility after a MINIMUM of TEN (10) YEARS; with THREE HUNDRED THIRTY-SIX (336) DAYS credit for time served. FURTHER ORDERED, \$150.00 DNA Analysis fee including testing to determine genetic markers WAIVED as previously ordered.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 24, 2021

C-17-322527-1 State of Nevada
 vs
 Kelvin Williams

**May 24, 2021 8:30 AM Motion to Produce
 Transcript**

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Grecia Snow

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Fischer, David R Attorney
 State of Nevada Plaintiff
 Waters, Steven L Attorney

JOURNAL ENTRIES

- Following colloquy, COURT ORDERED, State's Opposition DUE 7/6/21; Deft's Reply DUE 7/20/21; matter CONTINUED.

NDC

7/28/21 8:30 AM - DEFENDANT'S MOTION TO PRODUCE TRANSCRIPTS EVIDENTIARY HEARING AT STATE'S EXPENSE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 28, 2021

C-17-322527-1 State of Nevada
 vs
 Kelvin Williams

**July 28, 2021 8:30 AM Motion to Produce
 Transcript**

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Grecia Snow

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Brooks, Parker Attorney
 Fischer, David R Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court FINDS the motion was a fugitive document and was unclear as to why Deft's needed the transcripts, therefore, ORDERED, motion DENIED. State to prepare the Order consistent with the Opposition.

NDC

EXHIBIT(S) LIST

Case No.: C322527

Hearing / Trial Date: 1/29/2018

Dept. No.: 19

Judge: William Kephart

Plaintiff: The State of Nevada

Court Clerk: Tia Everett

Recorder / Reporter: Christine Erickson

Counsel for Plaintiff: Ekaterina Derjavina

VS.

Defendant: Kelvin Williams

Counsel for Defendant: David Fischer

HEARING / TRIAL BEFORE THE COURT

STATE'S _____ EXHIBITS

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

KELVIN WILLIAMS,

Defendant(s).

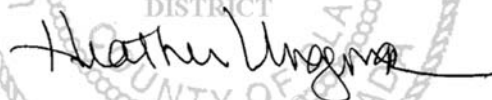
Case No: C-17-322527-1

Dept No: III

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 26 day of May 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

