

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Elizabeth A. Brown
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THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL TODD BOTELHO,

Defendant.

Sup. Ct. Case No. 83996

Case No. CR03-2156

Dept. 1

RECORD ON APPEAL

VOLUME 4 OF 12

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IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTELHO
PETITIONER2015 AUG 19 PM 3:54
CASE NO. CR03-2156

VS.

DEPT NO. 3

JACQUELINE RYAN
CLERK OF COURT

JAMES BENEDETTI,

ATTN: CHIEF JUDGE HARDY

STATE OF NEVADA, et al
RESPONDENTS

DEPT. NO. 15

EXTRAORDINARY WRIT OF MANDAMUS FOR THE RECUSAL AND THE
DISQUALIFICATION OF JUDGE POLAHA, DEPT. NO. 3

COMES NOW, MICHAEL TODD BOTELHO, PETITIONER IN PRO SE AND
IN FORMA PAUPERIS, BRINGING FORTH PETITION FOR EXTRAORDINARY WRIT
OF MANDAMUS FOR THE RECUSAL AND DISQUALIFICATION OF JUDGE
POLAHA, IN DEPT. NO. 3, BASED ON NRS 1.230 AND NRS 1.235, AND AFFIDAVIT HEREIN.

STATEMENT OF FACTS

PETITIONER, PURSUANT TO U.S. DISTRICT ORDER TO COME DOWN TO
STATE COURT TO EXHAUST HIS CLAIMS/ISSUES SEE EXHIBIT (I) AS FILED
IN THIS COURT WITH HIS HABEAS CORPUS PETITION ON 1-27-2010.

PETITIONER FILED WITH PETITION, MOTION FOR APPOINTMENT OF COUNSEL
AND MOTION FOR IN FORMA PAUPERIS. JUDGE POLAHA GRANTED MOTION FOR
IN FORMA PAUPERIS BUT CHOSE [N]OT TO RULE ON MOTION FOR APPT.
OF COUNSEL.

PETITIONER, ON 2-8-2010, FILED IN THIS COURT, MOTION TO RECUSE
JUDGE POLAHA PURSUANT TO NRS 1.230 AND HIS DISQUALIFICATION
PURSUANT TO NRS 1.235. THIS CRITICAL MOTION WAS NEVER ADDRESSED
AS REQUIRED BY NEVADA LAW, COURT RULES, RULES OF NEVADA CIVIL
PROCEDURE, JUDICIAL CANNONS, NOR THE OATH OF OFFICE.

IN FAILING TO ADDRESS THESE, AND OTHER MOTIONS FILED IN 12-20-2011
AND 2012 IN THIS COURT. JUDGE POLAHA DELIBERATELY IGNORED AND WHOLLY
DISREGARDED PETITIONERS CONSTITUTIONAL RIGHTS OF DUE PROCESS

1 AND EQUAL PROTECTION, INALIENABLE RIGHTS GUARANTEED BY BOTH NEVADA
2 AND UNITED STATES CONSTITUTION(S).

3 U.S. V. BOSCH OLDSMOBILE, INC. 909 F2d 657, 661 (1ST 1990) A JUDGMENT IS
4 VOID, AND THEREFORE SUBJECT TO RELIEF, ONLY IF THE COURT THAT RENDERED
5 JUDGMENT LACKED JURISDICTION [OR] IN CIRCUMSTANCES IN WHICH THE
6 COURT'S ACTION AMOUNTS TO A PLAIN USURPATION OF POWER CONSTITUTING
7 A VIOLATION OF DUE-PROCESS.

8 U.S. V. NICHOLS, 937 F2d 1257 (7TH 1991) "DUE-PROCESS PROTECTS CRIMINAL
9 DEFENDANTS AGAINST PROSECUTORIAL OR JUDICIAL ACTION INTENDED AS
10 PENALTY FOR DEFENDANTS EXERCISE OF CONSTITUTIONAL RIGHTS."; SEE ALSO
11 BLAIR V. CRAWFORD, 275 F3d 1156 (8TH 2002); U.S. V. DETERS; 143 F3d 577
12 (10TH 1998); U.S. V. GOMEZ, 67 F3d 1515 (10TH 1995); ROCHIN V. CALIF. 342 U.S.
13 165, 72 S.Ct. 26 (1952); ZINERMAN V. BURCH, 444 U.S. 113, 125-128, 110 S.Ct.
14 975, 983-88 (1990); AND SEE BLAY LOCK V. SCHWINDEN, 856 F2d 107 (9TH 1998).

15 JUDGE POLAHA DELIBERATELY SHIRKED HIS DUTIES, ABROGATED HIS
16 POWERS; HIS EGREGIOUS, ARBITRARY AND CARRICIOUS ACTIONS HAVE CAUSED
17 IRREPARABLE DAMAGE TO BOTELHO IN HIS WILLING AND KNOWINGLY DISREGARDING
18 THE ADMINISTRATION OF JUSTICE, THE LAW, PETITIONERS RIGHTS, HIS OATH OF
19 OFFICE, AND IS REPUGNANT TO BOTH NEVADA AND OUR [STILL VALID] UNITED
20 STATES CONSTITUTION(S).

21 BOTELHO'S DUE-PROCESS, EQUAL PROTECTION, HIS RIGHT TO REDRESS
22 HIS GRIEVANCE BEFORE THIS COURT AND THE CALLED AND UNUSUAL PUNISHMENT
23 HAVE AMOUNTED TO THE PREJUDICIAL AND IRREPARABLE HARM AND DAMAGE
24 AS A DIRECT RESULT OF POLAHA'S DELIBERATE INDIFFERENCE AND HIS
25 PRE-MEDITATED ACTIONS AGAINST BOTELHO SINCE HIS ARREST IN 2003.

26 POLAHA'S WILLINGLY AND KNOWINGLY VIOLATED HIS OATH OF OFFICE,
27 THE JUDICIAL CANNONS AND NEVADA LAW WHEN HE SHIRKED HIS DUTIES
28 PURSUANT TO NRS 1.230 GROUNDS FOR DISQUALIFYING JUDGE,

1 (1) A JUDGE SHALL NOT ACT AS SUCH IN AN ACTION OR PROCEEDING WHEN THE
 2 JUDGE ENTERTAINS ACTUAL BIAS FOR OR AGAINST ONE OF THE PARTIES TO THE
 3 ACTION; (2) A JUDGE SHALL NOT ACT AS SUCH IN AN ACTION OR PROCEEDING WHEN
 4 IMPLIED BIAS EXISTS IN ANY OF THE FOLLOWING RESPECTS: (a) WHEN THE JUDGE
 5 IS A PARTY TO OR [I]NTERESTED IN THE ACTION OR PROCEEDING.
 6 SEE NRS 1.235, PROCEDURE FOR DISQUALIFYING JUDGES, (1) ANY PARTY TO AN
 7 ACTION OR PROCEEDING PENDING IN ANY COURT OTHER THAN NEV. SUPREME COURT,
 8 WHO SEEKS TO DISQUALIFY A JUDGE FOR ACTUAL OR IMPLIED BIAS OR PREJUDICE
 9 MUST FILE AN AFFIDAVIT SPECIFYING THE FACTS UPON WHICH THE DISQUALIFICATION
 10 IS SOUGHT; (a) NOT LESS THAN 20 DAYS BEFORE DATE SET FOR TRIAL OR HEARING OF
 11 CASE; (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION 2 AND SUBSECTION 3,
 12 IF A CASE IS NOT ASSIGNED TO A JUDGE BEFORE TIME REQUIRED UNDER SUBSECTION
 13 1 FOR FILING THE AFFIDAVIT, THE AFFIDAVIT [M]UST BE FILED; (a) WITHIN 10 DAYS
 14 AFTER PARTY OR HIS ATTORNEY IS NOTIFIED, THE CASE HAS BEEN ASSIGNED TO A JUDGE;
 15 (c) BEFORE JURY EMPANELED, EVIDENCE TAKEN OR [A]NY RULING MADE IN THE
 16 TRIAL OR HEARING; (4) AT TIME AFFIDAVIT IS FILED, A COPY MUST BE SERVED TO
 17 THE JUDGE SOUGHT TO BE DISQUALIFIED, SERVICE MUST BE MADE BY DELIVERING
 18 THE COPY TO THE JUDGE OR LEAVING IT AT JUDGES CHAMBERS; (5) THE JUDGE
 19 AGAINST WHOM AN AFFIDAVIT ALLEGING PREJUDICE OR BIAS IS FILED [S]HALL
 20 PROCEED NO FURTHER WITH THE MATTER AND [S]HALL: (a) IMMEDIATELY TRANSFER
 21 THE CASE TO ANOTHER DEPARTMENT OF THE COURT, IF THERE IS MORE THAN ONE
 22 DEPARTMENT, TO PRESIDE AT THE TRIAL OR HEARING OF THE MATTER; ^{OR} (b) FILE
 23 A WRITTEN ANSWER WITH THE CLERK OF THE COURT WITHIN 5 JUDICIAL DAYS
 24 AFTER THE AFFIDAVIT IS FILED, ADMITTING OR DENYING ANY OR ALL OF THE
 25 ALLEGATION(S) CONTAINED IN THE AFFIDAVIT AND SETTING FORTH ANY ADDITIONAL
 26 FACTS WHICH BEAR ON THE QUESTION OF THE JUDGES DISQUALIFICATION. THE
 27 QUESTION OF THE JUDGES DISQUALIFICATION [M]UST THEREUPON BE HEARD
 28 AND DETERMINED BY ANOTHER JUDGE AGREED UPON BY THE PARTIES OR, IF

1 UNABLE TO AGREE, BY A JUDGE APPOINTED, (1) BY A PRESIDING JUDGE OF THE JUDICIAL
2 DISTRICT COURT HAVING MORE THAN ONE JUDGE.

3 BOTELHO FURTHER ASSERTS AND THIS COURTS OFFICIAL RECORD MUST CONCUR
4 THAT THE SECOND JUDICIAL DISTRICT COURT CHIEF JUDGE SHIRKED HIS DUTIES
5 BY HIS GROSS NEGLIGENCE AND INCOMPETENCE, AND HIS OATH OF OFFICE; OR IN
6 THE ALTERNATIVE, CHOSE TO ABROGATE HIS DUTIES AND THE NEW LAW PURSUANT TO
7 NRS 3.026, CHIEF JUDGE; ADDITIONAL DUTIES, (1)(a) CHIEF JUDGE [S] SHALL
8 ENSURE THAT: (2) CASES AND OTHER PROCEEDINGS WITHIN THE JURISDICTION OF THE
9 DISTRICT COURT [A]RE CONSIDERED AND DECIDED IN A [T]IMELY MANNER.

10 "COURTS ARE CONSTITUTED BY AUTHORITY AND THEY CANNOT GO BEYOND
11 THAT POWER DELEGATED TO THEM. IF THEY ACT BEYOND THAT (POWER) AUTHORITY,
12 AND CERTAINLY IN CONTRAVENTION OF IT, THEIR JUDGMENTS AND ORDERS ARE
13 REGARDED AS NULLITIES, THEY ARE NOT VOIDABLE, BUT SIMPLY VOID, AND
14 THIS EVEN [P]RIOR TO REVERSAL." WILLIAMSON V. BERRY, 8 HOW. 945, 540,
15 12 L. Ed. 1170, 1189 (1850).

16 PETITIONER STRENUOUSLY ASSERTS THAT JUDGE POLAHA HAS PURSUANT TO
17 18 USC 1501, "OBSTRUCTED JUSTICE", IN HIS INDIVIDUAL CAPACITY, UNDER THE COLOR
18 OF LAW AND THAT POLAHA DID IN FACT IMPEDE AND OBSTRUCT THOSE (BOTELHO)
19 WHO SEEK JUSTICE "AND" FAIRNESS IN A COURT "AND THE ACT BY OR WHICH ONE
20 OR MORE PERSONS [ATTEMPT] TO PREVENT, OR [D]O PREVENT THE EXECUTION OF
21 LAWFUL PROCESS, AND SEE TOMIYOSU V. GOLDEN, 81 N.W. 140, 400 P.2d 415-17
22 "A SECRET COMBINATION, CONSPIRACY, OR CONCERT OF ACTION BETWEEN 2 OR
23 PERSONS FOR FRAUDULENT, OR DECEITFUL PURPOSE."

24 BOTELHO ALLEGES THAT JUDGE POLAHA, THE COURT CLERK, THE CHIEF JUDGE
25 AND THE WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE ENGAGED IN CONDUCT TO
26 DEPRIVE PETITIONER OF HIS CONSTITUTIONAL GUARANTEES, CIVIL RIGHTS, DUE-
27 PROCESS - CONTRARY TO THE TOMIYOSU STD/ DEFINITION.

28 AND, HAS ACTED WITH LEGAL MALICE WHEREIN JUDGE POLAHA WAS AND IS

1 OPERATING WITH A ^{W/ VINDICTIVENESS} WICKEDNESS OF DISPOSITION, AND RECKLESSNESS OF CONSEQUENCES.
 2 AND MIND, REGARDLESS OF SOCIAL DUTY WHICH INDICATES AN UNJUSTIFIED
 3 DISREGARD FOR RIGHTS OF PETITIONER ... I.E. THE INTENTIONAL DOING OF A
 4 WRONGFUL ACT WITHOUT JUST CAUSE, "LABRIER V. ANHEUSER FORD, MO.
 5 621 S.W. 2d 51-58.

6 POLAHA HAS ACTED IN BAD FAITH, SEE STAHL V. WILLIAMS, IND. APP 367 N.E.
 7 2d 1120-24, BY "GENERALLY IMPLYING, INVOLVING ACTUAL OR CONSTRUCTIVE
 8 FRAUD, AND/OR DESIGN TO MISLEAD ANOTHER, OR A NEGLECT OR [R]EFUSAL
 9 TO FULFILL SOME DUTY, NOT PROMPTED BY AN HONEST MISTAKE" AS TO ONE'S
 10 RIGHTS, OR DUTIES."

11 POLAHA ACTED UNDER COLOR OF LAW - AS ACTS DONE WITHOUT ANY OR BEYOND
 12 THE BOUNDS OF THEIR (HIS) LAWFULL AUTHORITY WHILE DISTRICT COURT JUDGE
 13 POLAHA WAS PERFORMING OR PRETENDING TO ACT IN THE PERFORMANCE OF HIS
 14 OFFICIAL DUTIES, IN AN ABUSE, OR MIS-USE OF POWER - WHICH IS POSSESSED
 15 BY THE OFFICIAL ONLY BECAUSE HE IS AN OFFICIAL."

16 DISTRICT COURT JUDGES MAY NOT ADOPT PROCEDURE THAT IMPAIRS
 17 PETITIONERS RIGHT TO DUE PROCESS OR HIS OTHER RIGHTS GUARANTEED BY THE
 18 CONSTITUTION, SEE U.S. V. THOMPSON, 827 F2d 1254 (9th 1982); PROCUINER V.
 19 MARTINEZ, 416 U.S. 396 (1974); BELL V. WOLFISH, 441 U.S. 520 (1979); AND
 20 WOLF V. Mc DONNELL, 418 U.S. 539 (1974).

21 SEE HAYGOOD V. YOUNGER, 718 F2d 1472 (9th 1983) "DELIBERATE INDIFFERENCE
 22 STANDARD APPLIES TO DETERMINATION OF SITUATIONS IN WHICH PRISONER
 23 COMPLAINS OF SPECIFIC (DOCUMENTED) MISTREATMENT BY THE [C]OURTS NOT
 24 GENERALLY SUFFERED BY ALL INMATES.

25 U.S. V. BROOKS, 145 F3d 446 (1st 1998) "JUDGES MUST NOT ONLY BE
 26 SCRUPULOUSLY FAIR IN THE ADMINISTRATION OF JUSTICE, BUT ALSO [M]UST
 27 FOSTER AN AURA OF FAIRNESS."

28

1 PETITIONER ASSERTS AND THE COURT RECORD SUPPORTS THE ADDITIONAL
 2 FACTS AND ALLEGATIONS OF JUDGE POLAHA'S ACTIONS UNDER THE COLOR OF
 3 LAW, THE FRAUD AND ABRIGATION OF HIS DUTIES AND POWERS, REGARDING BOTELHO'S
 4 CASE STARTING IN 2003, AS FOLLOWS:

5 (1) POLAHA TOOK CONTROL OF BOTELHO'S CASE FROM AGNO JUSTICE COURT, AS
 6 POLAHA DID IN GREG BENNETT V. STATE, CASE NO. CRO4-2871, DEPT. 3, - CHIEF
 7 JUDGE HARDY IS AWARE OF THIS ARGUMENT IN THAT CASE. (FILED JUNE, 2014)

8 POLAHA HELD AN EX PARTE COMMUNICATION IN CHAMBERS WITH THE WASHOE
 9 COUNTY DISTRICT ATTORNEY VIA TELEPHONE BECAUSE BOTELHO'S MOTHER HAD CALLED
 10 THE WASHOE COUNTY SHERIFFS DEPT. TO FIND OUT HOW TO ARRANGE BAIL FOR HER
 11 SON. THE COPS MISLED HER THEN THE COPS CALLED THE DISTRICT ATTORNEY. THE
 12 D.A. THEN CALLED JUDGE POLAHA IN CHAMBERS ASKING FOR IMMEDIATE HIGHER
 13 BAIL. THE RECORD IS CLEAR, POLAHA GRANTED THE STATE A BAIL INCREASE FROM
 14 \$50,000.00 BOND TO \$275,000.00 "CASH ONLY". THIS WAS DONE WITHOUT PRIOR
 15 NOTIFICATION. SEE NRS 178.499 INCREASE IN BAIL, (1) AT ANY TIME AFTER A DISTRICT
 16 OR JUSTICE COURT HAS ORDERED BAIL TO BE SET AT A SPECIFIC AMOUNT AND BEFORE
 17 ACQUITTAL OR CONVICTION, THE COURT MAY, UPON ITS OWN MOTION OR UPON THE
 18 MOTION OF THE DISTRICT ATTORNEY (AND) [A]FTER NOTICE TO THE DEFENDANT'S ATTORNEY
 19 OF RECORD OR, IF NONE, TO THE DEFENDANT, INCREASE THE AMOUNT OF BAIL FOR
 20 GOOD CAUSE SHOWN.

21 IT IS A MATTER OF COURT RECORD, THAT BOTELHO WAS NOT YET APPOINTED
 22 COUNSEL AS REQUESTED, NOR WAS HE GIVEN NOTICE OF, OR GIVEN A HEARING.
 23 POLAHA CHOSE TO JUST GIVE THE STATE ITS BAIL INCREASE OVER THE PHONE,
 24 WITHOUT COUNSEL, WITHOUT NOTICE [PRIOR TO] TO BOTELHO, WITHOUT A HEARING
 25 TO CONTEST THE BAIL INCREASE AND VIOLATED BOTELHO'S DUE PROCESS AND
 26 THE ILLEGAL BAIL INCREASE AMOUNTED TO CRUEL AND UNUSUAL PUNISHMENT
 27 AS THE INCREASE WAS FAR, FAR BEYOND ANY AMOUNT BOTELHO COULD EVER
 28 RAISE. THE STATE ACTED IN COLLUSION, UNDER COLOR OF LAW AND IS INDISPUTABLE.

1 THE JUDGE FURTHER VIOLATED NRS 178.498(BAIL AMOUNT) AS BOTELHO
2 WAS DENIED NOTICE PRIOR TO, NOR A HEARING TO CONTEST THE INCREASE PURSUANT
3 TO (1), (2), (3) AND (4). BOTELHO WAS NEVER TOLD UNTIL AFTER THE FACT AND WHEN
4 HE WAS FINALLY APPOINTED COUNSEL, COUNSEL NEVER SAID A WORD ABOUT IT.
5 THIS WAS DONE WILLFULLY AND PURPOSEFULLY AND VIOLATED ARTICLE I, SECTION
6 6, OF THE NV. CONSTITUTION AND U.S. CONSTITUTION. (SEE 1ST, 5TH, 8TH, 9TH AND 14TH
7 AMENDMENTS OF U.S. CONST. THEREIN).

8 THE JUDGE VIOLATED NRS 178.388, AS PETITIONER HAD TO BE PRESENT AT
9 HIS BAIL HEARING. (1) PRESENCE [M]UST BE PRESENT AT EVERY STAGE. BOTELHO
10 ALSO HAD A CONSTITUTIONAL RIGHT TO COUNSEL AT THIS STAGE OF PROCEEDING,
11 SEE NRS 178.397, ASSIGNMENT OF COUNSEL.
12 (2) AFTER POLAHA TOOK JURISDICTION FROM THE JUSTICE COURT BY CONVENING
13 A GRAND JURY HEARING AND AFTER FINALLY BEING APPOINTED COUNSEL, BOTELHO
14 WAS GIVEN A DOCUMENT ABOUT THE GRAND JURY HEARING AND WAS TOLD
15 BY COUNSEL THAT I WAS BEING INVITED TO ATTEND AND IF WANTING TO DO SO,
16 THAT TO LET THEM KNOW. I SPECIFICALLY SAID I WANTED TO GO BUT WHEN
17 OCT. 8, 2003 ARRIVED, BOTELHO WAS [N]OT ALLOWED TO ATTEND AND WAS
18 VERY UPSET ABOUT IT. BOTELHO WAS FINALLY ALLOWED TO ATTEND THE
19 NEXT DAY, OCT 9, 2003. BOTELHO WAITED IN JUSTICE COURT HOUSE FOR
20 SEVERAL HOURS WITHOUT SEEING COUNSEL OR ANYONE TIL A COURT PERSON
21 TOLD PETITIONER THAT THE JUSTICE COURT PRELIMINARY HEARING HAD BEEN
22 CANCELLED BECAUSE BOTELHO HAD BEEN INDICTED YESTERDAY, OCT. 8, 2003.
23 AGAIN NO COUNSEL ON OCT 9, 2003 TO BE THERE TO AT LEAST INFORM
24 HIM THAT (1) HE HAD BEEN INDICTED, (2) IT WAS A CRITICAL STAGE THAT HE
25 WAS INVITED TO AND ULTIMATELY DENIED AN OPPORTUNITY TO ATTEND.
26 BOTELHO WROTE A GRIEVANCE FROM JAIL TO POLAHA INFORMING HIM OF
27 SUCH (IN THE RECORD)

28 BOTELHO WAS EVEN DENIED THE GRAND JURY TRANSCRIPTS BY THE COURT

1 CLERK AND ULTIMATELY BY COUNSEL, AS COUNSEL TOLD BOTELHO THAT THE
 2 STATE WAS WILLING TO MAKE A DEAL BUT HE HAD TO DECIDE THAT VERY DAY
 3 OR SUFFER THE CONSEQUENCES. BOTELHO, SINCE HE WAS DENIED BEING ALLOWED
 4 TO ATTEND HIS OWN GRAND JURY HEARING (A CRITICAL STAGE OF PROCEEDING)
 5 ASKED COUNSEL ABOUT THE HEARING AND ASKED TO SEE THE TRANSCRIPTS.
 6 COUNSEL INFORMED BOTELHO THAT THE TRANSCRIPTS COUNSEL HAD WERE
 7 INCOMPLETE, BUT THAT IT DIDNT LOOK GOOD. THAT MY BEST BET WAS TO JUST
 8 TAKE THE PLEA EVEN THOUGH IT WAS OPEN TO ARGUE. COUNSEL SAID HE AND
 9 THE STATE AGREED THAT THEY WOULD ASK FOR A 5 TO 15, 5 TO 20, 5 TO 20, 5 TO
 10 20 AND THAT I WOULD RECEIVE A 5 TO 15 AND (3) 5 TO 20'S, RUN CONCURRENT
 11 BUT CONSECUTIVE TO 5 TO 15, AND THAT WITH GOODTIME, WORKING, PROGRAMMING
 12 OR GOING TO SCHOOL, THAT HE WOULD GO HOME IN 8 1/2 YEARS. POLAHA
 13 CHOSE TO IGNORE THIS AS PRESENTED IN HIS HABEAS.

14 PETITIONER NEVER SAW A POLICE REPORT OR HIS GRAND JURY TRANSCRIPTS
 15 UNTIL YEARS LATER AND THAT IS ALSO WHEN BOTELHO FOUND OUT THAT COUNSEL
 16 SOLD HIM DOWN THE RIVER. BOTELHO FOUND OUT THAT HIS COUNSEL WROTE TO
 17 THE DISTRICT ATTORNEY ASKING TO PLEAD BOTELHO OUT. BOTELHO IS STILL
 18 VERY UPSET ABOUT THIS, AS HIS COUNSEL FLAT LIED TO HIM. BOTELHO
 19 FILED PAPERWORK WITH THE CLERK AND THIS COURT TO GET THE D.A. OR
 20 THE COURT TO FORWARD THIS LETTER. AS OF AUGUST 2015, PETITIONER
 21 STILL HAS [N]EVER SEEN THIS LETTER. NOW IT MAKES SENSE AS TO WHY
 22 HIS WORTHLESS COUNSEL [N]EVER PERFORMED EVEN AN EFFORT TO
 23 INVESTIGATE THE CASE, PERIOD! THERE WERE EVENTS PERPETRATED BY THE
 24 COPS THAT HAVE JUST RECENTLY COME TO LIGHT ALSO THAT THE STATE
 25 WANTS KEPT HIDDEN.

26 WHEN BOTELHO FIRST WENT TO ARRAIGNMENT IN DISTRICT COURT, HIS
 27 LAWYER TOLD POLAHA AND THIS COURT THAT COUNSEL BELEIVED BOTELHO
 28 HAD SOMETHING LIKE PTSD. THE JUDGE IGNORED THIS CONCLUSION, EVEN

1. THOUGH, PURSUANT TO NRS 178.405, SUSPENSION OF TRIAL OR PRONOUNCEMENT
 2. OF JUDGMENT WHEN [D]OUBT ARISES AS TO COMPETENCE. BECAUSE NRS
 3. 178.415, APPOINTMENT OF PERSONS TO EXAMINE DEFENDANT; HEARING; FINDINGS
 4. WAS NOT ADHERED TO, NRS 178.420, PROCEDURE ON FINDING DEFENDANT NOT
 5. COMPETENT, OR, NRS 178.425, PROCEDURE ON FINDING DEFENDANT INCOMPETENT.
 6. THIS ALSO PRECLUDED THE COURT FROM IMPLEMENTING NRS 178.455, NRS 178.
 7. 460. THIS IS EGREGIOUS AND PREJUDICIAL AND CAUSED GREAT IRREPARABLE
 8. DAMAGE TO BOTELHO.

9. AFTER BOTELHO WAS TRICKED INTO CHANGING HIS PLEA TO GUILTY (TRICKED WITHOUT
 10. HIS KNOWLEDGE), POLAHA CANVASSED BOTELHO ABOUT HIS PLEA AND BOTELHO DID
 11. NOT [Y]ET KNOW HE HAD BEEN DECEIVED AND TRICKED INTO HIS GUILTY PLEA, BUT,
 12. WHEN BOTELHO FOUND OUT LATER & PLT INTO HIS HABEAS THIS FACT, POLAHA JUST
 13. IGNORED IT.

14. THE STATE WAITED UNTIL IT HELPED BOTELHO'S COUNSEL TRICK HIM INTO PLEADING
 15. GUILTY, THEN THE STATE BROUGHT FORTH PRIOR BAD ACTS EVIDENCE WHICH POLAHA
 16. READ PRIOR TO THE HEARING (BAD ACTS HEARING) (1) POLAHA ALLOWED THE STATE
 17. TO USE A COP AS A WITNESS TO GO AROUND THE SPOUSAL PRIVILEGE ASSERTED;
 18. (2) THERE WAS NO PRIOR BAD ACT, EVER!; (3) BOTELHO'S COUNSEL BEGGED POLAHA
 19. TO RECUSE HIMSELF, ORALLY, ONLY TO BE CHASTIZED FOR NOT FOLLOWING THE
 20. RULES AND THUS, DENYING HIS PLEAS TO RECUSE POLAHA. POLAHA THEREIN PROVED
 21. PETITIONERS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM. LATER IN
 22. PETITIONERS HABEAS CORPUS, POLAHA CHOSE TO ALSO IGNORE THIS FACT.

23. POLAHA DURING THIS HEARING CHOSE TO, [WITHOUT THE STATE ASKING]
 24. INFORM THE STATE THAT HE WOULD ALLOW THE STATE TO BRING THE UNTRUE
 25. AND HIGHLY INFLAMMATORY AND PREJUDICIAL EVIDENCE AS HEARSAY, INTO
 26. BOTELHO'S SENTENCING HEARING BY THE COP WHO ALLEGEDLY HEARD THIS INFORMATION
 27. SECOND HAND. THIS WAS HIGHLY IMPROPER. POLAHA SHOULD HAVE ORDERED
 28. THE STATE TO PRODUCE LISA BOTELHO, PETITIONERS EX-WIFE. THE STATE

1 AS IT TURNED OUT, KNOWING PUT A WITNESS ON THE STAND WHO WAS FACTUALLY
2 LYING, AS IT CAME TO LIGHT WHILE DETECTIVE HERRERA WAS GIVING HIS FALSE
3 TESTIMONY (WITHOUT CONSEQUENCES).

4 BOTELHO WAS NEVER TOLD BY COUNSEL THAT HE COULD WITHDRAW HIS GUILTY
5 PLEA BEFORE SENTENCING BECAUSE HE WOULD HAVE DONE SO IMMEDIATELY.

6 THE STATE, THE COURT FAILED TO PROVIDE PETITIONER WITH P.S.I. REPORT UNTIL
7 [5 MINUTES] BEFORE SENTENCING. THIS VIOLATED NRS. 176.153, WHEREIN BOTELHO SHALL
8 HAVE BEEN GIVEN HIS P.S.I. REPORT TO COMPORT WITH THE LAW (ANOTHER REASON
9 TO HAVE WITHDRAWN HIS GUILTY PLEA).

10 BOTELHO WATCHED HIS COUNSEL GIVE TO JUDGE POLAHA, LETTERS FROM
11 BOTELHO'S FAMILY AND FRIENDS LITERALLY TWO MINUTES BEFORE SENTENCING
12 STARTED. SO POLAHA DID NOT GIVE THEM ANY CREDENCE, AS HE DID [N]OT
13 READ THEM.

14 BOTELHO'S COUNSEL DID NOT DO ANY INVESTIGATION (THE RECORD IS CLEAR)
15 BUT PRIOR TO SENTENCING, AFTER TRICKING BOTELHO INTO TAKING HIS GUILTY
16 PLEA, COUNSEL ASKED THIS COURT, JUDGE POLAHA, TO GRANT THE EXPENSE OF
17 AN INVESTIGATOR TO GET A HOLD OF FAMILY AND FRIENDS FOR SENTENCING MITIGATION.
18 BY THE ACTIONS OF COUNSEL, THIS COURT AND JUDGE POLAHA, BOTELHO WAS
19 AGAIN DENIED A FAIR SENTENCE HEARING.

20 AGAIN, AT SENTENCING, COUNSEL ORALLY PLEADED WITH POLAHA TO RECUSE
21 HIMSELF BUT POLAHA REFUSED AGAIN. THE STATES LYING HERESAY WITNESS,
22 A COP, WAS CAUGHT LYING AND PROVED BOTELHO POSITION AS BOTELHO HAD STATED
23 FROM THE START OF THE "CIRCUS BAD ACTS DEBACKLE" WHICH PREJUDICED AND
24 DAMAGED BOTELHO AND HIS DUE PROCESS. POLAHA STILL REFERRED TO THE COPS
25 REMARKS AND GAVE BOTELHO 45 YEARS VERSES THE 10 HE WAS TOLD HE WOULD
26 GET BY COUNSEL (LIE DETECTOR TEST, BRING IT ON!).

27 POLAHA WENT EVEN FURTHER, AFTER SENTENCING BOTELHO TO 5 TO 15
28 YEARS ON COUNT I, POLAHA CHANGED THE SENTENCE STRUCTURE OF COUNT I

1 ON BOTELHO'S JUDGMENT OF CONVICTION TO 5 TO LIFE, THIS WAS "ANOTHER"
2 PRE-MEDITATED ACT BY THIS ONCE HONORABLE JUDGE.

3 AFTER BOTELHO'S SHAM SENTENCING, BOTELHO TRIED TO WITHDRAW HIS PLEA
4 BUT APPELLATE COUNSEL CHOSE NOT TO ACT OR RESPOND, THEN, DRAGGED OUT THE
5 DIRECT APPEAL PROCESS BY REPEATED EXTENSIONS OF TIME, YET NOT SPEAKING TO
6 BOTELHO. WHEN APPELLATE COUNSEL FINALLY "DID" FILE BOTELHO'S DIRECT APPEAL,
7 HE DID NOT BRING UP LEGITIMATE ISSUES AND WORSE YET, PROVED HIS INCOMPETENCE
8 AND DELIBERATE INDIFFERENCE TOWARDS BOTELHO'S CASE BY [N]OT FEDERALIZING
9 THE CONSTITUTIONAL VIOLATION, THE ONLY ONE (1) HE BROUGHT TO START WITH.

10 AS A RESULT OF THE WILFUL ACTIONS BY BOTELHO'S COUNSEL (TRIAL AND
11 APPELLATE), THE STATE, THIS COURT, AND POLAHA, BOTELHO DID NOT FINALLY GET
12 TO FINALLY SEE EVIDENCE, POLICE REPORTS, J.O.C, ETC.,... UNTIL ALMOST TWO (2)
13 YEARS LATER (EVIDENCE AND REPORTS BOTELHO HAD A RIGHT TO SEE BEFORE BEING
14 TRICKED INTO TAKING GUILTY PLEA).

15 IT WAS TWO YEARS LATER THAT BOTELHO FOUND OUT THAT HIS ATTORNEY
16 WROTE A LETTER TO THE DISTRICT ATTORNEY, A.D.A. VILLORIA [NOW TERMINATED
17 FOR HER ACTIONS IN PEOPLES CASES?] AND SEAN SULLIVAN, BOTELHO'S TRIAL COUNSEL,
18 SOLD BOTELHO OUT BY WANTING TO PLEAD HIM OUT. BOTELHO WAS STUNNED.
19 HAD BOTELHO KNOWN, HE WOULD NEVER HAVE PLEADED GUILTY. BOTELHO TRIED
20 TO HAVE A COPY OF THIS LETTER GIVEN TO HIM BY COUNSEL, THE STATE AND THIS
21 COURT. TO THIS DAY, BOTELHO HAS [NOT] RECEIVED A COPY OF THIS LETTER!

22 BOTELHO THEN, IN PRO SE, FILED HIS POST-CONVICTION WRIT OF HABEAS
23 CORPUS, WITH MOTION TO APPOINT COUNSEL; MOTION FOR INFORMA PAUPERIS
24 AND MOTION TO ~~RECOGNIZE~~ RECUSE POLAHA WITH AFFIDAVIT. POLAHA
25 THEN GRANTED MOTION FOR INFORMA PAUPERIS; AND MOTION TO APPOINT COUNSEL
26 BUT HEARD AND RULED HIMSELF, DENYING BOTELHO'S MOTION TO RECUSE AND SAID
27 HE WAS NOT PROPERLY SERVED [FABRICATION].

28 POLAHA THEN IGNORED AND CHOSE ONLY CLAIMS HE THOUGHT HE COULD

1 EASILY DISMISS, THEN GAVE BOTELHO AN EVIDENTIARY HEARING WITH A COUPLE
2 HOURS TO ARGUE SEVERAL GROUNDS.

3 POLAHA LET COUNSEL PUT A DOCTOR ON THE STAND TO JUSTIFY POLAHA'S
4 EFFORT TO COVER UP ONE OF HIS ERRORS. THE FACT THAT HE IGNORED BOTELHO'S
5 POSSIBLE COMPETENCY ISSUES FROM THE BEGINNING, THE FACT IS THAT SEVERAL
6 YEARS LATER, POLAHA AT GREAT EXPENSE TO THE STATE ORDERED A PSYCHOSEXUAL
7 EVALUATION WHICH WAS IRRELEVANT TO HIS QUESTION OF COMPETENCY AND SEVERAL
8 YEARS AFTER THE FACT. PETITIONER WAS THEN IN A DIFFERENT TIME AND SPACE AND
9 NO MATTER THE OUTCOME OF [ANY] EVALUATION, THE OR ANY EVALUATION WOULD [N]OT
10 HOLD WATER. AGAIN DUE PROCESS WAS WILLFULLY VIOLATED.

11 AFTER THE DOCTOR GOT OFF THE STAND, POLAHA SAID HE WAS SATISFIED AND
12 THAT THE HEARING WAS CONCLUDED. POLAHA DID NOT ADDRESS THE REMAINING ISSUES
13 HE GAVE TIME TO ARGUE FOR. BOTELHO WAS SHOCKED, BOTELHO TRIED TO SPEAK
14 AND WAS TOLD TO SHUT UP. BOTELHO HAD A RIGHT TO ADDRESS THE COURT, BUT,
15 POLAHA TOLD HIM THAT BECAUSE COUNSEL DID NOT PUT BOTELHO ON THE STAND,
16 THAT HE WAS [N]OT ALLOWED TO SPEAK. BOTELHO'S COUNSEL DID NOT SAY A WORD
17 TO THE COURT OR TO BOTELHO. BOTELHO'S COUNSEL KNEW HE WANTED TO BE PUT
18 ON THE STAND. POLAHA DID NOT ALLOW BOTELHO TO SPEAK AND VIOLATED HIS
19 DUE PROCESS AGAIN. BOTELHO WAS NOW REALLY PISSED OFF AND FILED MOTION
20 FOR TRANSCRIPTS OF THIS [SHAM] EVIDENTIARY HEARING BUT THE COURT
21 CLERK REFUSED TO DO SO, BOTELHO TRIED REPEATEDLY TO GET THESE TRANSCRIPTS
22 BUT ONLY RECEIVED THE "MINUTES", WHICH SUCCESSFULLY AND CONVENIENTLY
23 LEFT THE CRITICAL FACTS OUT (I.E. NOT BEING ALLOWED TO ADDRESS THE COURT).

24 ALL PETITIONERS COUNSEL WOULD SAY (AFTER) THE EVIDENTIARY HEARING WAS
25 THAT SHE (MARY LOU WILSON) WOULD EXHAUST ALL GROUNDS (18-20) TO THE NEVADA
26 SUPREME COURT ON APPEAL. COUNSEL PURPOSEFULLY CHOSE NOT TO DO SO.

27 COUNSEL ONLY FILED (1) GROUND ON APPEAL AND WHEN PETITIONER FOUND
28 OUT, HE WROTE TO WILSON 3-4 TIMES ASKING WHY SHE DID NOT FILE APPEAL

1 WITH ALL BOTELHO'S ISSUES AS HE WANTED AND COUNSEL PROMISED. COUNSEL
2 WOULD NOT, DID [N]OT RESPOND TO PETITIONER'S CONCERNS. IN FACT COUNSEL
3 HAS [N]EVER SPOKEN TO BOTELHO SINCE THAT DAY, AFTER THE SHAM EVIDENTIARY
4 HEARING ABRUPTLY ENDED.

5 BOTELHO FILED MOTION IN NV. SUPREME COURT, MOTION TO TERMINATE COUNSEL
6 AND GAVE AS EXHIBITS THE LETTERS TO COUNSEL AND THE FACT THAT THERE WERE
7 18-20 GROUNDS AND THAT BOTELHO WANTED, ASKED FOR AND HAD A RIGHT TO BRING
8 FORTH TO THE NV. S. CT. ON APPEAL. THE NV. SUPREME COURT CHOSE TO IGNORE
9 BOTELHO'S CONTENTIONS AND DENIED BOTELHO'S MOTION TO TERMINATE COUNSEL
10 STATING THAT BOTELHO HAD NOT SHOWN GOOD CAUSE. (REALLY)!

11 THAT LEFT BOTELHO WITH NO CHOICE BUT TO FILE IN PRO-SE, A SUPPLEMENTAL
12 APPEAL TO FAIRLY PRESENT ALL BOTELHO'S GROUNDS/ISSUES TO THE STATE'S
13 HIGHEST COURT. THE NV. SUPREME COURT CHOSE TO STAMP SUPPLEMENTAL APPEAL
14 AS RECEIVED/RETURNED AND RETURNED SUPPLEMENTAL APPEAL TO BOTELHO AND
15 THEN SUMMARILY DISMISSED BOTELHO'S (ATTORNEY FILED, ONE GROUND APPEAL)
16 ONE (1) GROUND APPEAL.

17 BOTELHO THEN FILED IN PRO SE, HIS NOW 2254 TO THE U.S. DISTRICT COURT
18 BECAUSE HE HAD MADE A GOOD FAITH EFFORT BY PRESENTING HIS GROUNDS FAIRLY
19 TO NV. SUPREME COURT, AS A RESULT BOTELHO HAD EXHAUSTED HIS CLAIMS,

20 BOTELHO ALSO FILED MOTION TO APPOINT COUNSEL, AS HE OBVIOUSLY WAS IN NEED
21 OF SUCH. THE COURT DENIED THE MOTION, OF COURSE, THEN TOLD PETITIONER TO
22 AMEND HIS PETITION AS IT WAS DIS-JOINTED AND CONFUSING (ONLY PROVING
23 PETITIONER'S CONTENTION THAT HE NEEDED COUNSEL (U.S. DISTRICT COURT PROVED
24 ITSELF, THAT PETITIONER, WAS IN FACT, IN NEED OF APPOINTED COUNSEL.

25 THE STATE JUMPED AT THE CHANCE TO FILE MOTION TO DISMISS AS A MIXED
26 PETITION WITH UNEXHAUSTED CLAIMS. THE U.S. DISTRICT COURT DISMISSED PETITION
27 WITHOUT PREJUDICE AND TOLD BOTELHO TO GO BACK TO STATE COURT TO
28 EXHAUST HIS STATE CLAIMS.

1 DUE TO THE STATES ACTION, THIS COURT AND ULTIMATELY OUR "ONCE"
2 HONORABLE NEVADA SUPREME COURTS ACTION; BOTELHO DUE-PROCESS RIGHTS
3 HAD BEEN REPEATEDLY AND EGREGIOUSLY VIOLATED AND THE 2ND JUDICIAL DISTRICT
4 COURT AND THE NV. SUPREME COURT WILLFULLY SHIRKED ITS (THEIR) DUTIES,
5 THEIR OATH OF OFFICE, JUDICIAL CANNONS, PETITIONERS CONSTITUTIONAL RIGHTS
6 AND THE COMMANDS OF THE NEVADA AND UNITED STATES CONSTITUTION(S) AND
7 THEIR [STILL VALID] COMMANDS THEREOF.

8 AS A RESULT, BOTELHO, AGAIN, IN PRO SE, WITHOUT COUNSEL, WAS FORCED
9 TO BRING BACK HIS ORIGINAL STATE HABEAS TO THIS COURT FOR THE EXHAUSTION
10 OF GROUNDS ALREADY FAIRLY PRESENTED TO OUR ONCE HONORABLE NEVADA
11 SUPREME COURT. THE STATES FAULT, NOT BOTELHO'S, THEY KNOW THIS FACT!

12 BOTELHO THEN ON 1-27-2010, RE-FILED, RE-PRESENTED HIS ORIGINAL
13 STATE HABEAS PETITION ALONG WITH MOTION TO APPOINT COUNSEL AND MOTION FOR
14 IN FORMA PAUPERIS STATUS. BOTELHO THEN ON FEB. 8, 2010 FILED MOTION TO
15 AGAIN RECUSE JUDGE POLAHA WITH SUPPORTING AFFIDAVIT.

16 POLAHA GRANTED MOTION OF IN FORMA PAUPERIS, THEN CHOSE AGAIN TO
17 JUST IGNORE BOTELHOS MOTION TO APPOINT COUNSEL AND SAT ON MOTION
18 TO RECUSE POLAHA. POLAHA THEN CHOSE TO IGNORE BOTELHOS HABEAS
19 PETITION ALTOGETHER.

20 BOTELHO WROTE TO COURT CLERK ABOUT FILE STAMPED COPIES OF MOTIONS
21 AND PETITION THAT HE HAD NOT RECEIVED. BOTELHO'S WIFE ALSO CONTACTED
22 THE CLERK OF THE COURT ON 2 DIFFERENT OCCASSIONS TO ASCERTAIN STATUS
23 AS WELL, WITH NO SATISFACTION.

24 BOTELHO THEN FURTHER FILED ACTIONS IN THIS CASE (SEE MOTION TO STRIKE)
25 AND AGAIN THIS COURT SAT ON THOSE UNTIL BOTELHO FILED MANDAMUS IN
26 NV. SUPREME COURT TO COMPEL THE STATE, THIS COURT TO GRANT PETITIONERS
27 MOTION FOR JUDGMENT AS A MATTER OF LAW. THE NV. SUPREME COURT AGAIN
28 SHIRKED ITS DUTIES AND WILLFULLY, AGAIN, VIOLATED THE NEVADA CONSTITUTION

1 THEIR OATH, NV. LAW AND PETITIONERS DUE PROCESS AND EQUAL PROTECTION RIGHTS
 2 SECURED BY THE U.S. CONSTITUTION WHEN THE NV. SUPREME COURT "SUA SPONTE"
 3 DENIED BOTELOHO'S WRIT OF MANDAMUS BY STATING "WITHOUT REVIEWING THE
 4 MERITS, WE DECLINE TO ENTERTAIN ORIGINAL JURISDICTION". THE COURT FURTHER
 5 PREJUDICED AND IRREPARABLY DAMAGED BOTELOHO.

6 PETITIONER, IN PRO-SE, ASSERTS IN GOOD FAITH, AND THE RECORD OF THIS COURT
 7 WILL PROVE THAT PETITIONER, AN UNTRAINED IN THE LAW, PRO-SE PERSON, AND
 8 CONVENIENTLY WITHOUT COUNSEL, PERSON HAS BROUGHT FORTH CONTINUAL ACTIONS
 9 TO RESOLVE THIS CASE. THE STATE, THIS COURT, THE COURT CLERK, JUDGE
 10 POLAHA, THE CHIEF JUDGE AND ALSO THE NV. SUPREME COURT. HAS MADE
 11 CONCERTED EFFORTS AND ACTED IN COLLUSION (IN PETITIONERS OPINION) TO KEEP
 12 AND DENY BOTELOHO'S GOOD FAITH ATTEMPTS TO HAVE HIS CASE ADJUDICATED ON THE
 13 [M]ERITS.

14 THE ACTIONS OF PETITIONER(S) COUNSEL(S), THE DISTRICT ATTORNEY, THE COURT
 15 CLERK, JUDGE POLAHA, THE CHIEF JUDGE, AND THE NV. SUPREME COURT AS WELL AS
 16 THE ATTORNEY GENERAL OF NEVADA ARE CRYSTAL CLEAR. THE CONCERTED EFFORTS
 17 TO OBSTRUCT JUSTICE, TO IGNORE, HINDER, DELAY AND DENY BOTELOHO'S CONSTITUTIONAL,
 18 INALIENABLE RIGHTS GUARANTEED BY THE NV. AND U.S. CONSTITUTIONS HAVE
 19 AMOUNTED TO THE COMPLETE MISARRIAGE OF JUSTICE AND THE EXTREMELY PREJUDICIAL
 20 AND [I]RREPARABLE HARM AND DAMAGE TO BOTELOHO AND HIS CONSTITUTIONAL RIGHTS.
 21 BOTELOHO ASSERTS THAT HE INCLUDED THESE EVENTS FOR THE CHIEF JUDGE
 22 TO SEE FOR HIMSELF THE EGREGIOUS ACTIONS, FRAUD, COLLUSION, CONSPIRACY,
 23 THE INTENTIONAL DISREGARD OF THEIR OATH OF OFFICE, PROFESSIONAL STANDARDS,
 24 NEVADA JUSTICE COURT RULES, SECOND JUDICIAL DISTRICT COURT RULES, NV.
 25 DISTRICT COURT RULES, NEVADA RULES OF CIVIL PROCEDURE, NV. LAW(S),
 26 PETITIONERS 1ST, 5TH, 8TH, 9TH AND 14TH AMENDMENT RIGHTS GUARANTEED BY THE
 27 NEVADA AND UNITED STATES CONSTITUTIONS, AND THE DISREGARDING OF NV.
 28 AND U.S. CONSTITUTION(S) AND POLAHA'S VARIOUS AND REPEATED VIOLATIONS OF

1 OF THE NV. JUDICIAL CANNON(S).

2 PETITIONER CLAIMS THE PROTECTIONS OF PORTER V. SINGLETARY, 49 F3d.
 3 1483 (11TH 1995) "DUE PROCESS REQUIRES THAT LITIGANT CLAIMS BE HEARD BY
 4 FAIR AND IMPARTIAL FACT FINDER APPLIES TO ADMINISTRATIVE, AS WELL AS
 5 JUDICIAL PROCEEDINGS", HAVE, IN FACT, BEEN WHOLLY DISREGARDED; SEE
 6 U.S. V. DETERS, 143 F3d 577 (10TH 1998); U.S. V. LEFLEUR, 917 F2d 200 (9TH 1991);
 7 BILLS V. DAHM, 32 F3d 333 (8TH 1994); AND CENTRAL AIRLINES, INC. V. U.S.,
 8 138 F3d 333 (8TH 1998).

9 JUDGE POLA HAS ACTIONS AND EXTRA JUDICIAL ACTIONS (EFFORTS) TO
 10 PREJUDICE BOTELHO, ARE, IN FACT ON GOING AND CONTINUING IN THIS MATTER.
 11 SEE U.S. V. STRAWBERRY, 963 F2d 1323 (10TH 1992); U.S. V. CLARK, 732 F2d 1536 (11TH 1984);
 12 HOBSON V. WILSON, 737 F2d 1 (D.C. CIR. 1984); U.S. V. HILL, 953 F2d 452 (9TH 1991);
 13 AND SCOTT V. ROSS, 140 F3d 1275 (9TH 1998) THE JUDGE'S AND COURT CLERKS ACTIONS
 14 CLEARLY VIOLATE THE PROVISIONS OF 42 USC 4 1985(3) AND 42 USC 1986.
 15 THE NEVADA SUPREME COURT HAS OFTEN STATED IN VARIOUS CASES THAT
 16 "SINCE THE CONSTITUTION IS INTENDED FOR THE OBSERVANCE OF THE
 17 JUDICIARY AS WELL AS THE OTHER DEPARTMENTS OF GOVERNMENT, AND THE
 18 JUDGES ARE SWORN TO SUPPORT ITS PROVISIONS, THE COURTS ARE NOT
 19 AT LIBERTY TO OVERLOOK OR DISREGARDS ITS COMMANDS.

20 FILED IN ACCORDANCE WITH BOAG V. MCDOUGAL, 454 U.S. 364, 102 S. CT 700 (1982);
 21 HAWES V. KERNER, 404 U.S. 579, 92 S. CT 594 (1972) PRO SE LITIGANTS PLEADINGS
 22 ARE TO BE CONSTRUED LIBERALLY AND HELD TO LESS STRICT STANDARDS THAN
 23 FORMAL PLEADINGS DRAFTED BY LAWYERS, AND SEE BLACKMON V. CRAWFORD,
 24 305 F. SUPP. 2d 117 (D. Nev. 2004); BALESTRERI V. PACIFICA POLICE DEPT., 901 F2d
 25 696 (9TH 1990) AND BATEMAN V. U.S. POSTAL SERVICE, 231 F3d 1220-24 (9TH 2002);
 26 ALSO, WARSHAW V. XOMA CORP., 74 F3d 953, 957 (9TH 1996) "COURT HAS A DUTY
 27 TO PUT ANY CASE LAW PERTINENT TO MY CASE."

28 THIS COURT ACTED WITH BIAS AND PREJUDICE AGAINST A PRO SE PERSON

1 AND PERPETRATED AN EGREGIOUS AND COMPLETE MISCARriage OF JUSTICE.
 2 "A JUDGMENT IS VOID IF THE COURT ACTED IN A MANNER INCONSISTANT WITH
 3 DUE PROCESS, A VOID JUDGMENT IS A NULLITY AND MAY BE VACATED AT ANY TIME."
 4 IN RE MARRIAGE OF HAMPSHIRE, 261 KAN. 854, 862, 934 P.2d 58 (1997),
 5 NO COURT, NOR JUDGE CAN PRACTICE LAW (AS DONE IN THIS CASE). THIS
 6 COURT, AND JUDGE POLAHA, AS DOES THE STATE, HAVE NO STANDING IN THIS
 7 MATTER, AS A RESULT OF DISTRICT COURT JUDGE POLAHAS ACTIONS, WHO
 8 [TAMPERED] WITH A CRIMINAL ACTION AND JUDICIAL PROCESS, HAS COMMITTED
 9 FRAUD UPON THE COURT, OBSTRUCTED JUSTICE AND VIOLATED PETITIONERS RIGHTS
 10 OF DUE PROCESS AND EQUAL PROTECTION GUARANTEED BY NV. & U.S. CONSTITUTIONS.
 11 AS A RESULT OF THESE ACTIONS, INDISPUTABLE, EGREGIOUS, BAD FAITH,
 12 FRAUD, FRAUD UPON THE COURT, FRAUD UPON THE RECORD BY JUDGE POLAHA;
 13 CHIEF JUDGE HARDY HAS NO CHOICE BUT TO REMOVE JUDGE POLAHA FROM THIS
 14 CASE; AND ORDER THIS CASE VOID WITH PREJUDICE.
 15 PETITIONER FURTHER RESPECTFULLY DEMANDS THAT POLAHA BE REMOVED FROM
 16 THE BENCH PURSUANT TO NV. LAW AND JUDICIAL CANNONS. SEE U.S. V. CLAYBORNE,
 17 765 F.2d 734 (9th 1985) "FED. COURT JUDGE COULD BE PROSECUTED EVEN THOUGH
 18 HE HAD NOT BEEN IMPEACHED BY CONGRESS.
 19 SEE U.S. V. FLOWERS, 764 F.2d 759 (11th 1985) "LIKE FACTS COMMAND LIKE
 20 RESULTS." SEE ALSO STANDING COMMITTEE V. YAGMAN, 55 F.3d 1430 (9th 1995)
 21 "TRUTH IS ABSOLUTE DEFENSE." SEE MORLEY V. WALKER, 175 F.3d 756, 759
 22 (9th 1999) "THE COURT TAKES AS TRUE, ALL ALLEGATIONS."
 23 BOTE LHO, BY JUDGE POLAHA AND THIS COURTS ACTIONS HAS BEEN WILLFULLY
 24 AND REPEATEDLY DENIED ACCESS TO THE COURTS. SEE EDWARDS V. CALIF. 319 U.S. 160,
 25 62 S. CT 164; CHAMBERS V. FLORIDA, 309 U.S. 227, 60 S. CT 472. COMPARE POWELL
 26 V. ALABAMA, 287 U.S. 45, 53 S. CT 55; BETTS V. BRADY, 316 U.S. 455, 62 S. CT 1252,
 27 "EQUAL PROTECTION".
 28 "ANY TIME AN ACTION TAKEN BY A JUDGE IS [N]OT AN ADJUDICATION

1 BETWEEN THE PARTIES, IT IS LESS LIKELY THAT THE ACT IS A JUDICIAL ONE "
 2 SANTIAGO V. CITY OF PHILADELPHIA, 435 F. SUPP 136 (ed PA. 1977).

3 "CRIME IS CONTAGIOUS IF THE STATE OR FEDERAL GOVERNMENT(S) BECOME
 4 THE LAW BREAKERS, IT BREEDS CONTEMPT FOR THE LAW" ELKINS V. U.S., 364
 5 US 218, 80 Sct AT 1444, FURTHER STATING "THE CRIMINAL GOES FREE, IF HE MUST,
 6 BUT IT IS THE LAW THAT SETS HIM FREE. NOTHING CAN DESTROY A GOVERNMENT MORE
 7 QUICKLY THAN ITS FAILURE TO OBSERVE ITS OWN LAWS, OR WORSE, ITS DISREGARD
 8 OF THE CHARTER OF ITS OWN EXISTANCE" JUSTICE BRANDEIS SAID IN DISSENT IN
 9 OLMSTEAD V. U.S. 277 US 438, 485, 48 S. CT 564, 575 (1928).

10 BROWN V. NATIONS BANK CORP. 188 F3d 579 (5th 1999) THE GUARANTEE OF DUE -
 11 PROCESS PROTECTS CITIZENS AGAINST DELIBERATE HARM FROM GOVERNMENT
 12 OFFICIALS; N. CAROLINA V. PEARCE, 395 US 711, 89 S. CT 2072 (1969) VINDICTIVENESS
 13 ON THE PART OF A JUDGE.

14 U.S. V. CLASSIC, 313 US 299, 61 Sct 1031 "MISUSE OF POWER POSSESSED BY
 15 VIRTUE OF STATE LAW AND MADE POSSIBLE ONLY BECAUSE THE WRONGDOER IS
 16 CLOTHED WITH THE AUTHORITY OF STATE LAW, IS ACTION TAKEN 'UNDER COLOR OF
 17 STATE LAW.' AND SEE MONROE V. PAPE, 365 US 167, 81 Sct. 473

18 AS STATED IN NORTH V. RUSSELL, 427 US 328, 96 Sct 2769 (1976) "JUDGES
 19 IGNORANCE OF THE LAW IS NO EXCUSE." AN UNCONSTITUTIONAL CHILL WILL ONLY
 20 EXIST IF THE GOVERNMENT ACTION HAS INJURED THE INDIVIDUAL OR PLACES THE
 21 INDIVIDUAL IN IMMEDIATE DANGER OF SUSTAINING A DIRECT INJURY. Id AT 13,
 22 92 Sct AT 2325-26.

23 SEE DALLEW V. FOWLER, 285 KY. 149, 147 S.W.2d 65, 66; AND SEE IN RE
 24 HUMBOLT RIVER SYSTEMS, 77 NEV. 244, 362 P2d 265, 267 (FRAUD BY CLERKS &
 25 JUDGES).

26 THE U.S. SUPREME COURT SAID IN TUMELY V. OHIO, 273 US 510, 532, 47
 27 S. CT 437 "EVERY PROCEDURE WHICH WOULD OFFER A POSSIBLE TEMPTATION
 28 TO THE AVERAGE MAN AS A JUDGE NOT TO HOLD THE BALANCE NICE, CLEAR AND

1 TRUE BETWEEN THE STATE AND THE ACCUSED, DENIES THE LATTER DUE-PROCESS
2 OF LAW."

3 SEE YICK WO V. HOPKINS, 6 SCT 1034; ALSO ROUSE V. BENSON, 193 F3d
4 936 (8TH 1999) "IMPAIRMENT, AND/OR OBSTRUCTION OF THOSE WHO SEEK JUSTICE
5 IN ANY COURT IS A CRIME AND IS PUNISHABLE BY IMPRISONMENT UNDER U.S.
6 CODE.

7 SEE IN RE PETITION TO RECALL DUNLEAVY, 104 Nev. 784, 788, 769 P2d 1271, 1274
8 (1988) AN OPINION FORMED BY A JUDGE ON THE BASIS OF FACTS INTRODUCED OR
9 EVENTS OCCURING IN THE COURSE OF THE CURRENT PROCEEDINGS, OR OF PRIOR
10 PROCEEDINGS, CONSTITUTES A BASIS FOR BIAS OR PARTIALITY MOTION WHERE
11 THE OPINION DISPLAYS "A DEEP SEATED FAVORITISM OR ANTAGONISM THAT WOULD
12 MAKE FAIR JUDGMENT IMPOSSIBLE." Id.; QUOTING LITEKY V. U.S., 510 US 540,
13 555, 114 SCT 1147 (1994) (JUDICIAL BIAS)

14 ESPECIALLY SEE U.S. V. U.S. DIST. COURT FOR THE CENTRAL DIST. OF CALIF.,
15 858 F2d 534 (9TH 1988) "IF THE GOVERNMENT, POLICE AND PROSECUTORS COULD ALWAYS
16 BE TRUSTED TO DO THE RIGHT THING, THERE WOULD HAVE NEVER BEEN NEED FOR THE
17 BILL OF RIGHTS," 9TH CIR. JUSTICE LEVANTHAL AND HIS INTERPRETATION ON STRICT
18 CRIMINAL LIABILITY.

19 PROSECUTION, AS A MATTER OF LAW

20 BOTELHO RE-ASSERTS, THAT ALL PARTIES INVOLVED IN THE EGREGIOUS
21 ACTIONS BE PROSECUTED TO THE FULLEST EXTENT OF THE LAW, AS LAW AND JUSTICE
22 REQUIRE, "AS A MATTER OF LAW," FOR THE WILLFUL IGNORANCE OF, AND DISREGARD
23 OF BOTELHOS CONSTITUTIONAL RIGHTS, NEVADA LAW AND PROCEDURE, THE JUDGE,
24 THE STATE AND THIS COURTS MANY CONSTITUTIONAL AND CRIMINAL VIOLATIONS
25 PERPETRATED AGAINST BOTELHO AS ASSERTED HEREIN, IN REFERENCE(S) TO THE
26 OFFICIAL COURT RECORD, PETITIONERS PETITION(S) AND MOTION(S) ALREADY
27 BEFORE THIS COURT. (YOU CAN REFER TO THE RECORD YOURSELF). ALSO SEE THE
28 MANY, MANY WILFUL VIOLATIONS AND THE COMPLETE DISREGARD FOR NRS

CHAPTER 34.

SEE ALSO, NRS 1.4653, CIRCUMSTANCES UNDER WHICH JUDGE MAY BE DISCIPLINED OR RETIRED: (1)(a), (4)(b) 2) (3)(i)(ii) AND SEE NEVADA CONSTITUTION, ARTICLE 6, SECTION 4.

REQUESTED RELIEF, AS A MATTER OF LAW

JUDGE POLAHA MUST BE RECUSED, PROSECUTED AND RETIRED, AS A MATTER OF LAW, AND SEE, TURNER V. STATE, 114 NEV. 682, 962 P.2d 1223 (1998), FAILURE TO RECUSE HIMSELF, ALSO VIOLATED NV. CANNON 3(E).

THIS COURT HAS NO AUTHORITY TO REACH MERITS OF THIS CASE. IN SUCH A SITUATION, THE ACTION SHOULD BE DISMISSED FOR THIS COURTS WANT OF JURISDICTION. SEE WILLIAMS V. STATE, 489 F. SUPP. 2d 1179 (NV 2007), QUOTING MELO V. U.S., 505 F.2d 1026 (1974); RANKIN V. HOWARD, 633 F.2d 844 (10TH 1980); BRADLEY V. FISHER, 80 U.S. (13 WALL); AND SEE U.S. STEEL CO. V. CITIZENS FOR A BETTER ENVIRONMENT, 523 U.S. 83, 118 S. CT. 1003

SEE PRETEAN V. SMITH, 899 F.2d 1391 (5TH 1989) AND SEE BARNES V. HOUSE-WRITE, 622 F. SUPP. 82 (D. NV. 1986) ONLY THE STATE CAN ARGUE ABUSE OF THE WRIT BY THE STATES ACTION(S) AND THOSE OF THIS COURT. JUDGE POLAHA MUST BE "GONE" AND CHIEF JUDGE HARDY MUST ORDER THE STATES MOTION TO DISMISS AS VOID AND MUST FURTHER ORDER BOTELHO'S CASE AS A NULLITY & VOID WITH PREJUDICE, FOREVER BARRING STATE ACTION IN THIS CASE AND THE IMMEDIATE AND UNCONDITIONAL RELEASE OF BOTELHO, AS A MATTER OF LAW AND AS LAW AND JUSTICE REQUIRE FOR THE WANTON DISREGARD OF BOTELHOS DUE PROCESS AND EQUAL PROTECTION CONSTITUTIONAL RIGHTS, AND FOR THE EGREGIOUS, PREJUDICIAL AND IRREPARABLE DAMAGE AND HARM DONE TO BOTELHO AS A RESULT OF THE [I]NTENTIONAL ABUSE(S) PERPETRATED UPON BOTELHO. THE STATE CANNOT ARGUE ABUSE OF WRIT NOW!

THE STATE AND THIS COURT HAS NO STANDING IN THIS CASE AND BOTELHO MUST BE GRANTED A VOID JUDGMENT WITH PREJUDICE AND IMMEDIATE RELEASE.

1 THE STATE HAS CHOSEN TO STAND SILENT AND THIS WILLFUL
 2 DISREGARD [M]UST BE CONSTRUED AS A "CONFESSION OF ERROR"
 3 PETITIONER PRAYS THIS HONORABLE CHIEF JUDGE WILL ORDER POLANA (GONE)
 4 DISMISSED FROM THIS CASE, FURTHER GRANTING ALL RELIEF PRAYED FOR HEREIN AND
 5 IN MOTION TO STRIKE AS JUDICIAL ESTOPPEL LEAVES THIS COURT WITH ONLY
 6 LIMITED JURISDICTION AND TO DO ANYTHING LESS THAN TO GRANT BOTELHO THE
 7 RELIEF REQUIRED AND ASKED FOR BY BOTELHO WILL BE SUBORNATION OF PERJURY
 8 AND TREASON TO BOTH THE NEVADA AND UNITED STATES CONSTITUTION(S) AND
 9 SUBJECT TO FEDERAL CRIMINAL PROSECUTION. SEE ALSO COHENS V. VIRGINIA, 6
 10 WHEAT, 19 US 264-404 (1821) AND MARBURY V. MADISON, 5 US 137, 177-78, 2 L Ed
 11 60 (1803)

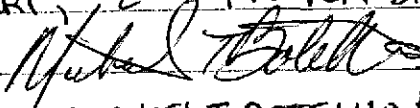
12 AFFIRMATION AND CERTIFICATE OF SERVICE

13 I, MICHAEL TODD BOTELHO, SWEAR UNDER THE PENALTY OF PERJURY, THAT
 14 ALL STATEMENTS ARE TRUE AND CORRECT, PURSUANT TO 28 USC 1746 AND
 15 18 USC 1621. THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL-SECURITY-
 16 NUMBER OF ANY PERSON.

17 I, ALSO, DO CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF FOREGOING
 18 WRIT OF HABEAS CORPUS FOR RECUSAL AND DISQUALIFICATION OF JUDGE POLANA, TO THIS
 19 COURT AND TO THE ADDRESSED BELOW, BY PLACING SAID WRIT IN THE U.S. MAIL
 20 VIA PRISON LAW LIBRARY STAFF, PURSUANT TO FRCP 5(b), MAIL BOX RULE,
 21 HOUSTON V. LACKS, 487 US 266 (1988) AND CALDWELL V. AMEND, 30 F3d 1199 (9th 1994)
 22 SEE BRASS SLIP NUMBER 2171236 FOR COURT, # 2146992 FOR DIST. ATTY.

23 DATED, AUGUST 13, 2015

24
 25 WASHOE CO. DISTRICT ATTORNEY
 26 ATTN: CHRIS HICKS
 27 P.O. BOX 11130
 28 RENO, NEV. 89520-0027


 MICHAEL T. BOTELHO # 80837
 NNCC
 P.O. BOX 7000
 CARSON CITY, NEV 89702

PETITIONER, IN PRO-SE

V4. 477 AND FOR THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTELHO
PETITIONER

CASE NO. CR03-2156, 2015 AUG 21 3 PM 4:22
DEPT. NO. 10

VS.

JAMES BENEDETTI,
STATE OF NEVADA, et al
RESPONDENTS

"MOTION"
TO SHOW CAUSE

JACQUELINE HAYES
CLERK OF THE COURT

DEPUTY

COMES NOW, MICHAEL TODD BOTELHO, IN PROPER PERSON AND IN FORMA
PAUPERIS, BRINGING FORTH THIS "MOTION TO SHOW CAUSE" AS TO WHY THE STATE
WASHOE COUNTY DISTRICT ATTORNEY, CHRIS HICKS AND WASHOE COUNTY ASSISTANT DISTRICT
ATTORNEY TERRENCE MCCARTHY SHOULD HAVE STANDING IN THIS CASE.

BOTELHO ASSERTS THAT WASHOE COUNTY DISTRICT ATTORNEY CHRIS HICKS
HAS [N]OT PERFECTED HIS OFFICE PURSUANT TO HIS OATH OF OFFICE AND AS SUCH
TERRENCE MCCARTHY, WASHOE COUNTY A.D.A., ALSO IS WITHOUT STANDING TO
ANSWER. IN ADDITION TO ITS FAILURE TO RESPOND SINCE 2010. SEE CONFESSION OF ERROR.

STATEMENT OF FACTS

LEGAL STANDARDS

PURSUANT TO NRS. 282.010 (2) ALL OFFICERS ELECTED, EXCEPT SENATORS AND
MEMBERS OF ASSEMBLY, SHALL QUALIFY, AND EXECUTE AND DELIVER THEIR
OFFICIAL BONDS WHEN REQUIRED, AS PROVIDED IN THIS SECTION, PRIOR TO THE
TUESDAY AFTER THE FIRST MONDAY IN JANUARY ENSUING THEIR ELECTION.

BOTELHO ASSERTS THAT HE RECENTLY OBTAINED, BY AND THROUGH, THE WASHOE
COUNTY CLERKS OFFICE, AN ACTUAL COPY OF CHRISTOPHER HICKS "OFFICIAL BOND"
BEING "PUBLIC RECORD". THE DESCRIBED "OFFICIAL BOND" NO. LSM0681928, NAMING
MR. HICKS AS PRINCIPAL AND IDENTIFIES THE "RLI INSURANCE COMPANY" AS THE
"SOLE" SURETY UPON SAID BOND IN VIOLATION OF NRS. 282.120.

AFTER AN EXTENSIVE SEARCH OF COUNTY PUBLIC RECORDS, THERE ARE NO
OTHER OFFICIAL BONDS EXISTING THAT IDENTIFY CHRIS HICKS, NOR ANY OTHER
OFFICER WITHIN THE WASHOE COUNTY DISTRICT ATTORNEYS OFFICE, AS TO THE
VALIDATION OF ANY OFFICIAL OFFICER WITHIN SAID DISTRICT ATTORNEYS OFFICE.

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900069330-007
STATE VS. MICHAEL TODD BOTELHO 5 Pages
08/21/2015 04:22 PM
K10NEC

SEE EXHIBIT 1, MARKED OFFICIAL BOND, # LSMO 681928. THIS OFFICIAL BOND WAS SIGNED AND SEALED ON DEC. 5, 2014, TO BECOME ACTIVE ON JAN. 5, 2015.

NRS. 282.120 STATES (VERBATIM) "UNLESS OTHERWISE EXPRESSLY PROVIDED, THERE [SHALL] BE AT LEAST TWO (2) SURETIES UPON THE OFFICIAL BOND OF EVERY OFFICER."

MR. CHRIS HICKS' OFFICIAL BOND CONTAINS ONLY ONE (1) SINGLE SURETY. SEE NEVADA 2X-121 W.H. DAVENPORT V. LAUGHTON, 14 NEV. 202, 8P 344 (1885).

AFTER AN EXTENSIVE SEARCH THROUGHOUT THE NEVADA STATUTORY LAWS, THERE IS NO SUCH STATUTE THAT DOES EXPRESSLY PROVIDE OR AUTHORIZE ANY DISTRICT ATTORNEY WITHIN ANY COUNTY OF NEVADA, AS TO PRESENT A SURETY BOND THAT CONTAINS ANYTHING BUT A MINIMUM OF TWO (2) SURETIES UPON EVERY OFFICIAL BOND.

SEE NRS. 282.200(2) "FORFEITURE OF OFFICE OR APPOINTMENT UPON FAILURE TO FILE NEW OR ADDITIONAL BOND; SUSPENSION OF FUNCTION OF OFFICE

"IF A NUMBER OF SURETIES ON ANY BOND OR UNDERTAKING, REPRESENTING HALF THE AMOUNT OF THE PENALTY THEREOF, UNITE IN THE SAME. THE RIGHT OF SUCH OFFICE OR PERSON TO EXERCISE THE DUTIES AND FUNCTIONS OF SUCH OFFICE OR APPOINTMENT IMMEDIATELY CEASES UNTIL THE OFFICER OR PERSON FILES AND HAS ACCEPTED AND APPROVED A NEW OR ADDITIONAL BOND OR UNDERTAKING.

SEE STATE V. RHODES, 6 NEV. 352 (1871).

NRS. 282.200(1) "IF [ANY] OFFICER OR PERSON FAILS WITHIN 10 DAYS FROM THE DATE OF A PERSONAL SERVICE, OR WITHIN 30 DAYS FROM THE DATE OF THE FIRST INSERTION OF A PUBLICATION OR POSTED SERVICE, TO FILE A NEW OR ADDITIONAL BOND OR UNDERTAKING, THE OFFICE OR APPOINTMENT OF THE PERSON OR OFFICER SO FAILING SHALL BECOME VACANT, AND SUCH OFFICER OR PERSON SHALL FORFEIT SUCH OFFICE OR APPOINTMENT. THE OFFICE OR APPOINTMENT SHALL BE FILLED AS IN OTHER CASES OF VACANCY, AND IN THE MANNER PROVIDED BY LAW, AND THE PERSON APPLYING TO BE RELEASED FROM LIABILITY ON THE BOND OR UNDERTAKING SHALL

NOT BE LIABLE THEREON AFTER THE DATE PROVIDED FOR VACATING AND FORFEITING OFFICE.

IN ADDITION, NRS 252.070(2) DISTRICT ATTORNEYS ARE RESPONSIBLE ON THEIR "OFFICIAL BONDS" FOR [A]LL OFFICIAL MALFEASANCE OR NON FEASANCE OF THE "DEPUTIES" "BONDS" FOR THE FAITHFUL PERFORMANCE OF THEIR OFFICIAL DUTIES "MAY" BE REQUIRED OF DEPUTIES BY "DISTRICT ATTORNEYS".

AS SUCH, IT HAS BEEN CLEARLY ESTABLISHED BY AND THROUGH "STATUTORY LAW" AND "PUBLIC RECORD" THAT CHRIS HICKS, d.b.a. WASHOE COUNTY DISTRICT ATTORNEY SINCE JANUARY 2015, HAS SO [FAILED] TO PERFECT AND VALIDATE HIS OFFICIAL OATH, FOR WHICH IT DOES IN FACT SO RENDER HIS "INVALID" OFFICE TO BE "UNLAWFUL" AND WITHOUT ANY LEGAL AUTHORITY. "

THIS, INTERN, HEREBY RENDERS "ANY" AND "ALL" APPOINTMENTS MADE BY THE "INVALID" OFFICE OF CHRIS HICKS, TO BE ALSO IDENTIFIED AS "INVALID" AND "WITHOUT ANY LEGAL AUTHORITY."

THIS IS TO ALSO, AS A MATTER OF LAW AND FACT, RENDER "ANY AND ALL" PLEADINGS AND OTHER LEGAL PRESENTMENTS IN THE NAME OF WASHOE COUNTY AND/OR THE STATE OF NEVADA. BY AND THROUGH MR. CHRIS HICKS OR ANY ALLEGEDLY APPOINTED DEPUTY, TO ONLY BE RECOGNIZED AS BEING TRULY "INVALID" TO BE WITHOUT ANY LEGAL AUTHORITY OR AS HAVING [N]O FORCE OR EFFECT.

ALSO, AS TO CONFIRM THE NON VALIDITY OF HICKS OFFICIAL BOND, SEE NAS 282.080. AS THIS "OFFICIAL BOND" IS PART OF PUBLIC RECORD AND IS TO BE KEPT ON FILE, IN THE OFFICE OF THE COUNTY CLERK OF THEIR RESPECTIVE COUNTIES.

BOTELHO, ASSERTING AND CHARGING THAT THE CLEAR, OBVIOUS AND DOCUMENTED FACT, AS PER "PUBLIC RECORD", THAT CHRIS HICKS, d.b.a. WASHOE COUNTY DISTRICT ATTORNEY, OFFICIAL BOND IS TRULY "INVALID AND INSUFFICIENT" AS HAVING ONLY ONE (1) SINGLE SURETY.

BOTELHO HAS FACTUALLY PROVED THAT THE STATE HAS NO STANDING IN THIS CASE

AS CHRIS HICKS NEVER UPHELD AND FOLLOWED THROUGH ON HIS OATH OF OFFICE AND THE CLEAR AND UNAMBIGUOUS NRS 282 AND NRS 252, AS STATED HEREIN CLEARLY PROVE.

AS A RESULT, THE STATE CANNOT RESPOND OR ANSWER. THIS FACT RENDERS "ANY AND ALL" PLEADINGS AND OTHER LEGAL PRESENTMENTS IN THE NAME OF WASHOE COUNTY AND/OR THE STATE OF NEVADA, BY AND THROUGH CHRIS HICKS OR ANY ALLEGEDLY APPOINTED DEPUTIES. TO ONLY BE RECOGNIZED AS BEING TRULY [INVALID] AND WITHOUT ANY LEGAL AUTHORITY OR AS HAVING NO FORCE OR EFFECT.

FURTHERMORE, AS BOTELHO HAS CLEARLY AND FACTUALLY PROVEN, AS IS ALREADY IN THIS COURTS RECORD AND HIS "MOTION TO STRIKE" FILED ON AUGUST 11, 2015, AND THE SUBSEQUENTLY FILED "WRIT OF MANDAMUS TO CHIEF JUDGE HARDY," AS FILED VIA PRISON MAILBOX RULE, SEE HOUSTON V. LACKS ON 8-14-2015, FURTHER EXPOUND UPON THE FACT THAT THE STATES WILLFUL FAILURE AND DISREGARD FOR THE LAW, THE OATH OF OFFICE, THE NEVADA CONSTITUTION, AND BOTELHO INALIENABLE RIGHTS OF DUE-PROCESS, EQUAL PROTECTION AND CRUEL AND UNUSUAL PUNISHMENT AS GUARANTEED BY THE U.S. CONSTITUTION, AND THEIR WILLFUL DISREGARD OF THE U.S. CONSTITUTION HAVE RESULTED IN BOTELHO'S PETITION FOR WRIT OF HABEAS CORPUS SITTING IN THIS COURT SINCE 2010 AND DISREGARDED BY THE STATE, THIS COURT, THIS COURT CLERK, AND JUDGE POLAHA. THIS HAS RESULTED IN THE EGREGIOUS MISCARRIAGE OF JUSTICE AND THE GRAVELY PREJUDICIAL AND IRREPARABLE HARM AND DAMAGE. THE STATE CANNOT ANSWER OR RESPOND IN THIS CASE, PERIOD, REGARDLESS OF THE INVALID BOND.

BOTELHO RESPECTFULLY DEMANDS THAT THE STATE SHOW CAUSE WHY CHRIS HICKS BOND IS IRRELEVANT TO THIS CAUSE AND WHY HE SHOULD "NOT" BE REQUIRED TO BE HELD TO THE REQUIREMENTS OF THE NRS STATUTES IMPLICATED HEREIN. STATUTES THAT ARE LAW OF THIS STATE. NO ONE IS ABOVE THE LAW! NOT EVEN THE STATE!

BOTELHO ASSERTS THAT THIS COURT ONLY HAS LIMITED JURISDICTION IN

THIS CASE. THE STATES ACTIONS IN THIS CASE AMOUNT TO "CONFESSION OF ERROR IN ADDITION TO THE STATES LACK OF STANDING CONCERNING THE 'BOND'."

BOTELHO ASSERTS THAT ANY AND ALL PAPERS, PLEADINGS AND OTHER LEGAL DOCUMENTS FILED ^{BY THE STATE} IN THIS CASE AS FILED ^{SINCE} 2010, ARE IN FACT "NULL AND VOID, WITHOUT FORCE AND EFFECT OF LAW AND ARE, AS A MATTER OF LAW AND JUSTICE REQUIRE [VOID]. THIS COURT MUST GRANT BOTELHO'S RELIEF AS REQUESTED IN HIS MOTION TO STRIKE FILED AUGUST 11, 2015 AND THE SUBSEQUENT WRIT OF MANDAMUS TO CHIEF JUDGE HARDY, FILED 8-14-2015."

AFFIRMATION AND CERTIFICATE OF SERVICE

I, MICHAEL TODD BOTELHO, IN PROPER PERSON, DO SWEAR UNDER THE PENALTY OF PERJURY, UNDER LAWS OF THE U.S. OF A, THAT THE FORGOING MOTION IS TRUE AND CORRECT, PURSUANT TO 18 USC 1621 AND 28 USC 1746 AND THAT THIS MOTION CONTAINS NO PERSONS SOCIAL-SECURITY NUMBER.

I FURTHER ASSERT THAT I PLACED A TRUE, ORIGINAL, AND/OR PHOTO COPY OF PETITIONERS MOTION TO SHOW CAUSE, IN FIRST CLASS PRE-PAID, U.S.P.S. MAIL SERVICES VIA PRISON MAIL BOX RULE (GRASS SLIP NO.) TO THIS COURT AND TO THE ADDRESSED BELOW.

DATED 8-17-2015

WASHOE COUNTY DISTRICT ATTYS OFFICE

ATTN: CHRIS HICKS

P.O. BOX 11130

RENO, NV. 89520-0027

MICHAEL T. BOTELHO # 80837
NNCC
P.O. BOX 7000
CARSON CITY, NV. 89702

5 PG. MOTION

2 PG COVER SHEET AND EXHIBIT

* 7 PGS TOTAL.

IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTE LHO
PETITIONER

VS

CASE NO. CRO 3-2156 PM 4:10

DEPT. NO. 3

JACQUELYNNE DRYANT
CLERK OF THE COURT

AND OBJECTION

BY

REPLY TO OPPOSITION TO MOTION
TO STRIKE

JAMES BENEDETTI, WARDEN

STATE OF NEVADA, et al.
RESPONDENTS

COMES NOW, MICHAEL TODD BOTE LHO, IN PROPER PERSON, BRINGING

AND OBJECTION

FORTH "REPLY" TO OPPOSITION TO MOTION TO STRIKE. THE STATE (A.D.A.

9 TERRENCE MCCARTHY) HAS INTENTIONALLY MISREPRESENTED ITS POSITION
10 AND COMMITTED PERJURY IN THIS CASE.STATEMENT OF FACTS12 (1) ON 8-17-2015, PETITIONER RECEIVED NOTICE OF CHANGE OF RESPONSIBLE
13 ATTORNEY STATING TERRANCE MCCARTHY HAS REPLACED GARY HATLESTAD
14 AS RESPONSIBLE ATTORNEY FOR RESPONDENT HEREIN.15 PETITIONER ASSERTS THAT THIS ^{IS} NOT TRUE. PLEASE REFER TO APPELLANTS
16 OPENING BRIEF IN NEV. SUPREME COURT, ⁽¹⁾ DATED 9-14-2007. TERRENCE MCCARTHY
17 HAS BEEN INVOLVED SINCE 9-14-2007; NO NOTICE WAS GIVEN THEN AND HIS
18 NOTICE DATED 8-13-2015 IS FACTUALLY UNTRUE. SEE COURT RECORD.19 (2) THE STATE ASSERTS INCORRECTLY THAT PETITIONER WAS REQUIRED TO MOVE
20 HIS CASE ALONG, NRC P 41(e), IN MOTION TO DISMISS AND OPPOSITION,21 PETITIONER ASSERTS THAT THE STATE IS AGAIN MISLEADING THIS COURT. SEE
22 THE FOLLOWING:23 (1) IN PETITIONERS MOTION TO STRIKE AND OPPOSITION TO RESPONDENTS
24 MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS, AS FILED 8-11-2015,
25 PETITIONER CLEARLY AND FACTUALLY PROVED TO THIS COURT AND THE STATE THAT
26 PETITIONER, ACTING IN PRO-SE AND WITHOUT COUNSEL (DUE TO JUDGE POLANA),
27 DID, AS AN UNTRAINED IN THE LAW PERSON, ACT WITH DUE DILIGENCE TO
28 HAVE HIS PETITION, MOTIONS, AND SUBSEQUENT MOTIONS ADDRESSED BY THEFOOTNOTES(1) EXHIBIT - SEE IN HABEAS
PETITION AS FILED IN 2010

1 THE STATE AND RULED UPON BY THIS COURT.

2 (a) SEE EXHIBIT (i) AS FILED WITH HABERS IN 2010, WHEREIN U.S. DIST. COURT

3 ORDERED PETITIONER TO COME BACK DOWN TO STATE COURT TO EXHAUST.

4 (b) SEE EXHIBITS (#1); (#2); (#3); AND (#4) IN PETITIONERS MOTION TO

5 STRIKE, PROVING HIS DUE DILIGENCE.

6 (c) PETITIONER CORRECTLY ARGUED AND HIS AVERMENTS CLEARLY PROVE

7 THAT THE STATE "AND" THIS COURT HAD A DUTY TO RESPOND TO, AND THIS COURT HAD

8 A LEGAL DUTY TO ORDER THE STATE TO RESPOND AND THIS COURT TO RULE ON THE

9 CASE PROPERLY BROUGHT BEFORE THIS COURT.

10 (d) SEE ARGUMENT(S) CONCERNING VIOLATION(S) OF: NV. RULES OF CIVIL

11 PROCEDURE; SECOND JUDICIAL DISTRICT COURT RULES; NV. DISTRICT COURT

12 RULES; NRS CHAPTER 34; NRS CHAPTER 1; NRS CHAPTER 3; PETITIONERS

13 CONSTITUTIONAL RIGHTS; NEVADA AND UNITED STATES CONSTITUTION(S). ALSO SEE,

14 ESPECIALLY NRCP RULE 12, DEFENSES AND OBJECTIONS, AS IT CLEARLY STATES

15 THAT THE STATE "SHALL" SERVE AN ANSWER. REFER TO PAGES 12-16, THEREIN.

16 (2) THE STATE BLATHERS ON ABOUT "STANDING" AND THE FACT THAT PETITIONER

17 IDENTIFIES THE WARDEN OF A STATE PRISON AS RESPONDENT. PETITIONER ASSERTS

18 THAT THE WARDEN IS IN FACT PETITIONERS KEEPER AND PETITIONER CORRECTLY

19 LABELED THE STATE OF NEVADA AS A RESPONDENT ALSO. THIS IS DICTUM AND FLUFF

20 BY THE STATE, WITHOUT ADDRESSING PETITIONERS FACTUAL ASSERTIONS.

21 (a) FURTHERMORE, THE STATE TRIES TO FURTHER MISDIRECT THIS COURT BY

22 ACTING IGNORANT OF THE FACT THAT BOTELHO KNEW WHAT HE ASSERTED. THE STATE

23 KNOWS THAT IT HAS NO STANDING TO ARGUE ITS POSITION IN 2015 AFTER THE

24 FAILURE(S) TO ADDRESS PETITIONERS WRIT(S) AND MOTION(S) AS FILED IN THIS CASE

25 CASE SINCE 2010, 2011, 2012. THERE IS NO "SECOND BITE OF THE APPLE" BY THE

26 STATE.

27 "A PARTY IS NOT BOUND BY THE LABEL HE PUTS ON HIS PAPERS," SEE N.C. DASH, INC.

28 V. SCHWANTES, 125 NEV. 647, 218 P3d 853 (2009).

(3) IN THE STATES REPLY TO OPPOSITION TO MOTION TO STRIKE, IT PURPOSEFULLY DID [N]OT ADDRESS THE FACTS AS ASSERTED IN PETITIONERS MOTION TO STRIKE. THE STATE CHOSE TO IGNORE AND DISREGARD THESE FACTS TO MISLEAD THIS COURT. ALL THE STATE DID WAS STATE THAT IT WAS PETITIONERS DUTY TO "MOVE THE CASE ALONG AND FLUTHER, WENT ON AND ON ABOUT HOW PETITIONER LABELED HIS "MOTION". SEE N.C. DASH, SUPRA.

(a) THE STATE ONCE AGAIN DID NOT ADDRESS THE FACTS AND ISSUES ASSERTED BY PETITIONER IN HIS MOTION TO STRIKE (SEE REPLY TO OPPOSITION BY THE STATE).

(b) BY THE STATES FAILURE TO RESPOND OR ANSWER AND DEFEND THEIR POSITION IN 2010, 2011, 2012, THE STATE DID NOT PLEAD AN AFFIRMATIVE DEFENSE, IT IS DEEMED WAIVED. BY THAT ACTION, THE STATE IS/HAS PROCEDURALLY DEFAULTED ITS STANDING, THUS, BARRING "ANY" ANSWER OR RESPONSE IN 2015. SEE PIERCE LATHINGS CO. V. I. SEC., 956 P2d 93; SECOND BAPTIST CHURCH V. FIRST NAT'L BANK, 510 P2d 630 (1973); WOODS V. STATE, 291 P3d 1284 (2003) (PER CURIAM); AND KLEIN V. HARRIS, 667 F2d 274 (2ND 1981); LWIN V. I.N.S., 144 F3d 505 (7TH 1998).

(c) FURTHER, WHERE PETITIONERS ALLEGATIONS AND GROUNDS/ISSUES WERE NOT THEN, NOR ARE NOW ^{ARGUED} IN 2015, THEY WERE/ARE ACCEPTED AS A MATTER OF LAW AND AMOUNTED TO [CONFESSION OF ERROR], SEE BARROWS V. HOGAN, 379 F.SUPP. 314 "28 USC 2248 (1974); STATE DMV V. STONE, 587 P2d 1325 (1978); STATE V. PRINS, 613 P2d 408 (NV 1980); AND POLK V. STATE, 233 P3d 357 (NV 2010) WHEREIN THE SUPREME COURT OF NEVADA HELD "THAT AS A RESULT OF "CONFESSION OF ERROR", THE JUDGMENT OF CONVICTION IS [V]OID, [W]ITHOUT ANY CONSIDERATION OF THE MERITS (1) WHERE PETITIONERS ALLEGATIONS WERE [NOT] DISPUTED AND WERE ACCEPTED AS A MATTER OF LAW" (28 USC 2248). THE STATE, THUS, HAS NO "STANDING" TO RESPOND NOW, OR EVER!

(4) AS PETITIONER FILED MOTION TO SHOW CAUSE VIA PRISON MAIL BOX RULE ON 8-18-2015, PETITIONER HAS DEMANDED THE "STATE" SHOW CAUSE, AS THE WASHOE COUNTY DISTRICT ATTORNEY CHRIS HICKS, AND A.D.A. TERRENCE MCCARTHY, PURSUANT

1 TO NRS CHAPTERS 282 AND 252, [A]NY AND [A]LL PLEADINGS AND OTHER
 2 LEGAL PRESENTMENTS IN THE NAME OF WASHOE COUNTY AND/OR THE STATE OF
 3 NEVADA, BY AND THROUGH CHRIS HICKS OR ANY ALLEGEDLY APPOINTED DEPUTIES
 4 TO ONLY BE RECOGNIZED AS BEING TRULY "INVALID" AND "WITHOUT" ANY LEGAL
 5 AUTHORITY OR AS HAVING [N]O FORCE OR EFFECT.

6 (a) PETITIONER BROUGHT THIS CONCERN TO THE STATE AND THIS COURT IN
 7 PETITIONER'S MOTION TO STRIKE. THE STATE AGAIN, CHOSE NOT TO RESPOND TO
 8 THIS MATERIAL FACT. AGAIN, THE STATE HAS "NO STANDING" TO RESPOND REGARDLESS.
 9 FURTHERMORE, THIS COURT HAS NOT TO THIS POINT, SINCE 2010 UNTIL NOW, 2015,
 10 ORDERED THE STATE TO RESPOND TO ANY PLEADINGS, ASSERTIONS AND ACCUSATIONS
 11 BROUGHT FORTH BY PETITIONER.

12 (5) PETITIONER ASSERTS AND FACTUALLY PROVES THAT THE STATE HAS ACTED IN
 13 BAD FAITH AND COMMITTED FRAUD UPON THIS COURT; HAS BEEN DELIBERATELY
 14 INDIFFERENT AND SHIRKED THEIR DUTIES AND LEGAL OBLIGATIONS.

15 "CRIME IS CONTAGIOUS IF THE STATE OR FEDERAL GOVERNMENT(S) BECOME THE
 16 LAW BREAKERS, IT BREEDS CONTEMPT FOR THE LAW," LOUIS BRANDEIS, U.S. SUPREME
 17 COURT JUSTICE IN ELKINS V. U.S., 364 US 2, AT 364 US, AT 218, 80 SET AT 1444, SEE
 18 U.S. V. U.S. DIST COURT FOR THE CENTRAL DIST. OF CALIF., 858 F2d 534 (9th 998)

19 "IF THE GOVERNMENT, POLICE, AND PROSECUTORS COULD ALWAYS BE TRUSTED TO DO
 20 THE RIGHT THING, THERE WOULD NEVER HAVE BEEN A NEED FOR THE BILL OF RIGHTS,"

21 PETITIONER HAS BROUGHT FORTH AND FACTUALLY PROVEN THAT THE STATE
 22 HAS LOST THE RIGHT TO ADDRESS, ANSWER OR RESPOND TO PETITIONERS
 23 FACTUAL ALLEGATIONS [THESE ARE NOT BARE AND NAKED ALLEGATIONS] BY ITS
 24 ACTIONS AND INACTIONS PERTAINING TO THIS CASE. SEE MORLEY V. WALKER, 175
 25 F3d 756, 759 (9th 1998) "THE COURTS TAKE AS TRUE, ALL ALLEGATIONS OF MATERIAL
 26 FACT STATED IN COMPLAINT, THE COURT CONSTRUES IN LIGHT MOST FAVORABLE TO
 27 PLAINTIFF"; SEE NOLL V. CARLSON, 809 F2d 1146 (9th 1987) AND SEE COOPER V. PATE,
 28 398 US 546, 84 S. CT. 1733 (1964) "COURT [M]UST ACCEPT ALLEGATIONS IN PLEADINGS

1 AS TRUE."

2 (6) PETITIONER FURTHER ASSERTS THAT AS PROVIDED AS PART OF EXHIBIT (2),
 3 OF HIS MOTION TO STRIKE, THAT HE SENT A LETTER TO THE COURT CLERK,
 4 DATED FEB. 21, 2012, WHEREIN HE WROTE AND ASKED FOR A STATUS CHECK
 5 IN THIS CASE AND ALSO ASKED FOR FILED COPIES OF PLEADINGS FILED IN THIS CASE
 6 ON 2-8-2010. AGAIN, THE STATE DID ~~(NOT)~~ DISPUTE THIS FACT. PETITIONER IS
 7 CHARGING THE STATE AND THIS COURT, THAT, AS THIS ALSO ^{WAS} A GOOD FAITH EFFORT
 8 BY PETITIONER AND MUST HAVE BEEN CONSTRUED AS SUBMISSION ON THE PLEADINGS.
 9 THE COURT CLERK ALSO HAD NO RIGHT NOT TO ENSURE THE DOCKETING OF
 10 PETITIONERS ACTION. SEE AGAIN, N.C. DASH, SUPRA, "A PARTY IS NOT BOUND
 11 BY THE LABEL HE PUTS ON HIS PAPERS." (NV 2009).

12 PETITIONER IS NOW PUTTING THE STATE AND THIS COURT ^{ON NOTICE} THAT THERE IS/ARE
 13 NO NRCP/NRAP, NOR DISTRICT COURT RULES, NOR NEVADA LAW THAT STATES
 14 A PARTY MUST FILE A MOTION FOR SUBMISSION, SEE STATES [REQUEST] FOR
 15 SUBMISSION DATED AUGUST 13, 2015. "NO WHERE" IS THERE ANY REFERENCE TO
 16 ANY NEV. LAW OR RULES OF PROCEDURE GIVING THE STATE AUTHORITY TO BRING
 17 FORTH SUCH "REQUEST FOR SUBMISSION."

18 AS SUCH PETITIONER, ASSERTS THAT AS AN UNTRAINED IN THE LAW, PRO SE
 19 PERSON, WOULD NOT KNOW THIS. FURTHER, HAD PETITIONER BEEN APPOINTED COUNSEL,
 20 LIKE THE MOTION HE FILED AND ASKED FOR, BEEN GRANTED, PETITIONER WOULD NOT
 21 BE IN THIS POSITION THAT THE STATE AND THIS COURT HAS PUT HIM IN.

22 "A STATE PROCEDURAL RULE MUST BE REGULARLY ADHERED TO IF IT IS TO BE
 23 AN ADEQUATE STATE GROUND, SUPPORTING A PROCEDURAL BAR, JAMES V.
 24 KENTUCKY, 466 U.S. 341, 348-51, 104 S. CT. 1830 (1984).

25 REQUESTED RELIEF

26 PETITIONER STATES ^{AS} A MATTER OF FACT AND AS A MATTER OF LAW, THAT
 27 DUE TO THE STATES ACTIONS AND REFUSAL TO RESPOND TO HIS 2010, 2011, 2012,
 28 PLEADINGS, THEY CONFESSED ERROR. THE STATE HAS NO POSITION TO NOW

1 ARGUE, ANSWER OR RESPOND TO PETITIONERS CASE. THE STATE LOST THAT RIGHT
 2 PRIOR TO ITS 2015 MOTION TO DISMISS. THE STATE YET NOW CHOSE TO RESPOND
 3 (HOW CONVENIENT, THAT NOW THE STATE ACTS LIKE ITS DOING IT JOB) WHEN IT
 4 HAD/HAS NO AUTHORITY TO. FURTHERMORE, AFTER PETITIONER PROVED HIS
 5 REPEATED DUE DILIGENCE AND FURTHER INFORMED THE STATE AND THIS COURT OF
 6 THE STATES LACKING THE STANDING TO ANSWER AS A MATTER OF LAW PURSUANT TO
 7 NRS 282 AND NRS 252, CONCERNING THE OFFICIAL BOND. THE STATE AGAIN,
 8 ACTED IN BAD FAITH AND IGNORED THE MERITS OF PETITIONERS MOTION TO STRIKE
 9 WHEN IT RESPONDED. THE STATE, LIKE IT ALWAYS DOES, CHOSE TO EXPOUND IN
 10 LITTLE DETAIL ABOUT PETITIONER HAVING A WARDEN AND THE STATE OF NV. AS THE
 11 RESPONDENTS. THIS FURTHER PROVES BOTELHO'S POINT OF FACT(S).

12 BOTELHO HAS MATERIALLY AND FACTUALLY PROVEN [WITHOUT DISPUTE] THAT
 13 HIS ASSERTIONS, ALLEGATIONS, AND FACTS HAVE DIRECT BEARING ON HIS MOTION TO
 14 STRIKE AND AS A MATTER OF LAW AND JUSTICE, AS A MATTER OF LAW, THAT THE
 15 STATES MOTION TO DISMISS AND MOTION IN OPPOSITION TO MOTION TO STRIKE,
 16 MUST BE DISMISSED. THE STATE HAS NO AUTHORITY TO RESPOND, AS A MATTER
 17 OF LAW.

18 PETITIONER ASSERTS THAT HIS DUE-PROCESS AND EQUAL PROTECTION
 19 RIGHTS GUARANTEED BY OUR NV. AND U.S. CONSTITUTION(S) HAVE BEEN
 20 IRREVERSABLY AND IRREPARABLY DAMAGED, THE CAUSE AND EFFECT OF DENIAL
 21 OF DUE-PROCESS WAS AND IS EGREGIOUS AND THE PREJUDICE THRUST UPON
 22 PETITIONER IS TOO MUCH TO OVERCOME. BOTELHO RESPECTFULLY DEMANDS THIS
 23 COURT TO ORDER THE STATES MOTION DISMISSED AND GRANT BOTELHO A
 24 VOID JUDGMENT AND UNCONDITIONAL RELEASE.


AFFIRMATION AND CERTIFICATE OF SERVICE

25 I, MICHAEL TODD BOTELHO, IN PROPER PERSON, DO SWEAR UNDER THE PENALTY OF PERJURY,
 26 UNDER U.S. LAWS, THAT THE FOREGOING IS TRUE AND CORRECT, PER 18 USC 1621, 28 USC 1746..
 27 AND THAT I PLACED A TRUE ORIGINAL, AND/OR PHOTO-COPY OF PETITIONERS REPLY TO
 28 OPPOSITION TO MOTION TO STRIKE IN FIRST CLASS MAIL VIA PRISON MAILBOX RULE,
 TO THIS COURT AND TO THE WASHOE CO. DISTRICT ATTORNEY, ADDRESSED BELOW.
 MAIL BRASS SLIP NO #

DATED THIS 19TH DAY, AUGUST, 2015

WASHOE CO. DISTRICT ATTORNEY
 ATTN: CHRIS HICKS
 PO Box 11130
 RENO, NEV. 89520-0027

6


 MICHAEL T. BOTELHO # 80837
 NNCC, P.O. Box 7000
 CARSON CITY, NV. 89702

V4 488 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MICHAEL TODD BOTELHO
PETITIONER

VS

CASE NO. CR03-2156-30

DEPT. NO. 3

JAMES BENEDETTI, WARDEN,
STATE OF NEVADA, et al.
RESPONDENTS.

ADDENDUM TO SHOW CAUSE MOTION

BY: JACQUELINE W. CLARK, CLERK OF COURT
DEPUTY

6 COMES NOW, MICHAEL T. BOTELHO, IN PROPER PERSON AND IN FORMA
7 PAUPERIS, BRINGING FORTH INSTANT ADDENDUM TO SHOW CAUSE MOTION.

8 STATEMENT OF FACTS

9 PETITIONER, DUE TO THE DELAY CAUSED BY NNCC LAW LIBRARY STAFF,
10 HAD SENT "MOTION FOR SHOW CAUSE" TO THIS COURT AND WASHOE COUNTY
11 DISTRICT ATTORNEY (INVALID OFFICE HOLDER) CHRIS HICKS, AUGUST 17, 2015,
12 WITHOUT EXHIBIT 1 (CHRIS HICKS BOND) AT THE LAST MINUTE. NNCC LAW LIBRARY
13 WOULD NOT COPY MY EXHIBIT "BOND". (1) PROVES THAT NDOC FREE STAFF IN
14 NNCC DO READ LEGAL WORK, DOCUMENTS AND EXHIBIT (DONE MANY TIMES
15 TO ME, AND OTHERS) AND FURTHER (2) THAT MS. SIMMONS MAKES HER OWN
16 DETERMINATION AS TO WHAT [SHE] FEELS I/WE CAN MAKE COPIES OF, TO
17 USE IN THE COURSE OF OUR COURT ACTIONS. I SPOKE TO MS. SIMMONS
18 AND SHE DID ALLOW ME TO MAKE (2) TWO COPIES OF BOND, ONE TO W.C.D.A.'S
19 OFFICE AND ONE TO THIS COURT BUT NO MORE! THAT IS A WILLFUL VIOLATION
20 OF BOTELHO'S CONSTITUTIONAL RIGHTS.

21 PETITIONER JUST RECEIVED THESE (2) COPIES, TODAY, 8-21-2015, SO
22 THIS ADDENDUM TO SHOW CAUSE MOTION IS BEING GIVEN TO NDOC MAIL ROOM
23 VIA PRISON MAILBOX RULE (BRASS SLIP NO. 2171131), TODAY!

24 AFFIRMATION AND CERTIFICATE OF SERVICE

25 I, MICHAEL TODD BOTELHO, IN PRO-SE DO SWEAR UNDER PENALTY OF PERJURY UNDER
26 U.S. LAWS, THAT FORGOING ADDENDUM IS TRUE AND CORRECT, PER. 18 USC 1621, 28 USC
1746. AND THAT I PLACED A TRUE ORIGINAL, AND/OR PHOTO-COPY OF ADDENDUM IN
27 FIRST-CLASS PRE PAID MAIL VIA PRISON ~~MAIL~~ MAILBOX RULE, TO THIS COURT AND
W.C.D. ATTY, INVALID CHRIS HICKS

DATED 8-21-2015

Michael T. Botelho

28 WASHOE CO. DIST. ATTY
CHRIS HICKS
P.O. BOX 11130
RENO, NV. 89520-0027

MICHAEL T. BOTELHO #80837
NNCC, P.O. BOX 7000
CARSON CITY, NV. 89702

CR03-2156 DC-09900069543-011
STATE VS. MICHAEL TODD BOTTEL 2 Pages
District Court 08/27/2015 08:39 AM
Washoe County 1020
K10NFS

EXHIBIT 1
DISTRICT ATTORNEYS BOND
1 PG

RLI

RLI Insurance Company
P.O. Box 3967 Peoria IL 61612-3967
Phone: (309)692-1000 Fax: (309)683-1610

Official Bond And OathBond No. LSM0681928**KNOW ALL MEN BY THESE PRESENTS:**

That we, Christopher Hicks
as Principal, and RLI Insurance Company, a corporation duly
licensed to do business in the State of Nevada, as Surety, are held and firmly bound unto
the Washoe County - Attn: Doreen Ertell in the penal sum of
One Hundred Thousand and 00/100 DOLLARS
(\$ 100,000.00), to the payment of which sum, well and truly to be made, we jointly and severally bind ourselves
and our legal representatives firmly by these presents.

DATED this 5th day of December, 2014.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, the said Principal was duly ☒ elected ☐ appointed
to the office of District Attorney in the State of
Nevada for the term commencing on the 5th day of January, 2015 and ending on
January 5, 2019.

NOW THEREFORE, if the said Principal shall faithfully perform the duties of his said office, then this obligation shall be
void and of no effect.

This bond is executed by the Surety upon the following express conditions:

FIRST, the Surety shall not be liable hereunder for the loss of any public moneys or funds occurring through or resulting
from the failure of, or default in payment by, any banks or depositories in which any public moneys or funds have been
deposited, or may be deposited, or placed to the credit, or under the control of the Principal, whether or not such banks or
depositories were or may be selected or designated by the Principal or by other persons; or by reason of the allowance to, or
acceptance by the Principal or any interest on said public moneys or funds, any law, decision, ordinances, or statute to the
contrary notwithstanding.

SECOND, that the Surety shall not be liable for any loss or losses, resulting from the failure of the Principal to collect any
taxes, licenses, levies, assessments, etc., with the collections or which he may be chargeable by reason of his election or
appointment as aforesaid.

THIRD, that the Surety may, if it shall so elect, cancel this bond by giving thirty (30) days notice in writing to the Obligor
and this bond shall be deemed canceled at the expiration of said thirty (30) days; the Surety remaining liable, however,
subject to all the terms, conditions and provisions of this bond for any act or acts covered by this bond which may have been
committed by the Principal up to the date of such cancellation.

Brandon Lewis
Countersigned at Reno, Nevada
WELLS FARGO INSURANCE SERVICES USA, INC.

Christopher Hicks
Principal
Margo L. May
Attorney in Fact
ILLINOIS
SEAL
INSURANCE COMPANY
RLI Insurance Company

APPROVAL:

I have inspected the above Bond and do hereby certify
that the same is sufficient.

Approving Officer

Title

OFF 0107 (2/94)

Page 1 of 2
00000813-20.30

Handwritten notes:
This is to certify that the above is a true and correct copy of the original.
50 PD

1
2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **MICHAEL TODD BOTELHO,**

Case No. CR03-2156

10 **Petitioner,**

Dept. No. 3

11 **vs.**

12
13 **JAMES BENEDETTI, STATE OF**
14 **NEVADA, et. al,**

Respondents.

15 _____ /
16 **ORDER GRANTING MOTION TO DISMISS PETITION AND DENYING MOTION TO**
17 **STRIKE**

18 Currently before the Court is the Respondent's Motion to Dismiss Petition for Writ of
19 Habeas Corpus filed July 24, 2015. The Petitioner filed a Motion to Strike the State's motion and an
20 Opposition to it on August 11, 2015, and a Reply was filed August 13, 2015. The matter was
21 submitted for decision the same day. Because of the age of the file with the exception of the very
22 recent filings, and since nothing was done to advance the matter in 5 years, the Court reviewed the
23 entire file in an effort to fairly address the parties' issues especially concerning the reason for the
24 delay.

25 The procedural history of this matter is nothing to downplay. The Petitioner was convicted
26 on April 7, 2004, pursuant to guilty pleas to one count of first-degree kidnapping and three counts
27 of sexual assault on a child. The victim was a 14 year old girl who was enticed by the petitioner to
28 accompany him on a promise of a baby sitting job which resulted in her being driven by him to a
secluded area and sexually assaulted. He admitted in his probation investigation statement that he

1 had acted out a fantasy he had. Petitioner was sentenced to a combined term of 45 years to life for
2 his criminal actions. The Supreme Court of Nevada upheld the sentence and affirmed the
3 Petitioner's judgment of conviction in April of 2005.

4 Thereafter, the Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction)
5 on March 6, 2006. After appointing counsel, allowing a Supplemental Petition to be filed, and
6 conducting an evidentiary hearing, the Court denied the petitions on May 31, 2007. Earlier, on
7 December 29, 2006, this Court denied most of the grounds of the original *pro se* petition. Without a
8 hearing. The Petitioner subsequently appealed those dismissals and the Nevada Supreme Court
9 issued an Order of Affirmance on May 18, 2008, upon a finding that this Court did not err in
10 rejecting the claims presented in the First and Supplemental Petitions.

11 Subsequently, on January 27, 2010 the Petitioner filed his second, albeit untimely, Petition
12 for Writ of Habeas Corpus which is the subject of the instant motion¹. After some five years of
13 inaction, the Respondent filed the instant Motion to Dismiss.

14 In support of its motion, the Respondent argues that dismissal is warranted for want of
15 prosecution under NRCP 41(e) as the Petitioner has failed to bring the action to trial within five
16 years of filing the petition. Alternatively, it is asserted that the petition should be dismissed as it was
17 untimely filed and because it is successive in nature.

18 In opposition, the Petitioner's main contention is that the Court and the Respondent have
19 acted in concert and purposefully ignored his filings for the previous five years. Specifically, the
20 Petitioner claims that the Court has acted in concert with the Respondent in not taking any action on
21 the petition in violation of his constitutional rights. In doing so, the Petitioner asserts that he cannot
22 be found at fault for his failure to prosecute the matter as it was the clerk of this Court who never
23 informed him regarding the status of his case. As such, and based upon the Petitioner's belief that it
24 was the Respondent who has failed to act, it is asserted that dismissal would be inappropriate at this
25 time. The Court agrees with the State as to who has the burden of moving the case forward but also
26

27 ¹ On February 18, 2010, the Petitioner filed a motion for recusal of this Court but he failed to follow the requirements of NRS 1.235
28 in that he never personally served this Court with the motion notwithstanding he was granted the status of *in forma pauperis* and
could have had a sheriff deputy effect such service at no cost to him and he never submitted the matter for decision which would have
at least brought its pendency to the Court's attention. This was after the sentencing hearing when he and his lawyer were told what
statute controls judicial recusal procedure. That motion was procedurally ineffective and the Court was not made aware of it.

1 agrees with the Petitioner that it would be inappropriate and unfair to dismiss the successive petition
2 summarily for the NRCP 41(e) reason put forth by the State. In reviewing the entire file it appears
3 that administrative peculiarities occurring over the time frame of this case resulted in this matter
4 languishing as it has. The review of the file and the Second Judicial Court's procedures in
5 processing filings revealed some flaws in the process which certainly are not Petitioner's fault. At
6 the time of the processing of the criminal case all such cases were numbered CR, indicating a
7 Criminal case and included a number indicating the year of its filing and a hyphen followed by a
8 number assigned to the particular case –i.e., CR03-2156. Post-conviction cases at the time were
9 designated with the letter 'P' after the year – CR03P – 2156. During the course of this case's
10 progress there were 3 different Court Administrators and a major change in the manner cases were
11 moved forward and finally the 'P' designation was abandoned and the originally assigned case
12 number remained even if there were post-conviction pleadings. What this meant was there had to
13 be a re-designation of those earlier cases into the original designated case file. While these cases
14 were being changed the Second Judicial District was converting from paper files to digital files.
15 Also involved in the situation was the fact that there were no 'Request for Submissions' filed on any
16 of the Petitioner's motions until the State's Reply to its motion for dismissal on August 13, 2015.²
17 Had there been such a request the matter would have been noted and forwarded to this Court for
18 decision. That is the only way this Court is made aware of a pending matter that must be decided
19 along with the 'open case history' sheet that normally indicates how many days a matter which is
20 awaiting decision have passed. Each judge has a 60 day limit for pending matters of open files.

21 What happened here apparently was that in May 2005 the Supreme Court issued its remitter
22 in Case No. 43247 –the criminal case appeal – CR03-2156 and on September 13, 2005 this Court
23 signed an order granting a motion to relieve counsel from further representation in this case. On
24 that date the criminal file was designated as being closed. That file was never designated 're-
25 opened' notwithstanding numerous subsequent filings and the merging of the post-conviction files
26 into the criminal files.

27
28

² NCR 13 (4); WDCR 12 (4); also LCR 7 (f).

1 As for the 'P' file in this matter, it was opened on March 6, 2006 with the filing of
2 Petitioner's Petition and Points and Authorities. It contains the post-conviction filings up to
3 December 17, 2007 when it too was designated as being 'closed'. Although later Nevada Supreme
4 Court filings were placed into the file subsequently, that file was never re-opened nor was the 2010
5 petition brought to the Court's attention in any manner, notwithstanding NRS 34.740, until the State
6 requested submission on its motion to dismiss this year. Since the file was never re-opened, an
7 'open case' history was never set into motion. Additionally, the order granting petitioner *in forma*
8 *pauperis* status and transferring the case to Department 3, (this Court), was signed by the Chief
9 Judge on February 17, 2010 but there is no record of that order being served on or of this case
10 having been officially assigned to, Department 3 by the court administration.³

11 What all that means is that the Court was not aware of the petition filed in 2010 and hence, it
12 languished. Therefore the Court finds that the petitioner was not at fault for the 5 year period of
13 inaction in this matter and justice requires the Court to consider the petition on its merits. Hence the
14 State's motion to dismiss for undue delay pursuant to NRCP 41(e) is DENIED.

15 The Court turns next to the State's alternate argument for dismissal: the Petition was
16 untimely and is successive in nature. For this analysis the Court will disregard the 5 year delay and
17 consider the petition as of the date it was filed – January 27, 2010. NRS 34.726 requires petitions
18 for post-conviction relief to be filed within 1 year of the appellate court's remittitur; here the 2010
19 petition was filed in excess of 4 ½ years after the remittitur issued, hence the filing is untimely The
20 Court's processing delay occurred after the filing and had no effect on the petitioner's delay of 4 ½
21 years to filing. NRS 34.810 provides additional reasons for dismissal of petitions. Any petition that
22 presents arguments about anything other than the plea was involuntary or unknowing or without the
23 effective assistance of counsel must be dismissed. NRS 34.810 (1) (a).

24 A successive petition must be dismissed if it fails to allege new or different grounds for
25 relief and the prior determination was on the merits. An abuse of the writ finding results in a
26 dismissal when the grounds raised could have been included in the prior petition. NRS 34.810 (2).

27
28 ³ The usual procedure is for such assignments to be filed with the Clerk who then prepares a Notice of Case Assignment to whatever
department that gets the case. There is no record of that in the Court's file.

1 1. Successive Claims

2 The standards this Court must follow when considering a petition for post-conviction relief
3 are set out in NRS 34.720 et seq. and certain relevant case decisions of the Nevada Supreme Court.
4 As that Court pointed out, the Nevada Legislature never intended for petitioners to have multiple
5 opportunities to obtain post-conviction relief absent extraordinary circumstances. *Pelligrini v. State*,
6 117 Nev. 860, 876, 34 P.3d 519 (2001).

7 NRS 34.726 (1) requires that a petition that challenges the validity of conviction or sentence
8 must be filed within one year of the entry of judgment or after remitter from the Supreme Court
9 after appeal, unless good cause is shown for the delay. Good cause exists if the petitioner
10 demonstrates that the delay was not his fault and that the dismissal of the petition as untimely would
11 unduly prejudice him. NRS 34.745(4) and 34.810(2) require the court to dismiss second or
12 successive petitions found to be abusive of the writ process. NRS 34.810 requires dismissal for
13 other reasons also. An untimely or successive petition is procedurally barred and must be dismissed
14 absent a demonstration of good cause for the delay and undue prejudice. *Id.*; NRS 34.810(1)(b)(2).

15 Without good cause for the delay and prejudice, the procedural bar may be excused only if
16 the petitioner can demonstrate that a failure to consider his claims would result in a fundamental
17 miscarriage of justice. *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *cf.* NRS
18 34.800(1

19 “Good cause” means a “substantial reason; one that affords a legal excuse”. *Colley v. State*,
20 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). In order to demonstrate good cause, a Petitioner
21 must show that an impediment external to the defense prevented him or her from complying with
22 the state procedural default rules. *Pellegrini v. State*, 117 Nev. 860, 886–87, 34 P.3d 519, 537
23 (2001); *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). An impediment external to
24 the defense may be demonstrated by a showing “that the factual or legal basis for a claim was not
25 reasonably available to counsel, or that ‘some interference by officials,’ made compliance
26 impracticable.” *Murray v. Carrier*, 477 U.S. 478, 488 (1986). “[T]he mere fact that counsel failed to
27 recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it,
28 does not constitute cause for a procedural default.” *Id.* at 486. Prejudice can be shown by

1 demonstrating that the errors worked to a petitioner's actual and substantial disadvantage. *Hogan v.*
2 *Warden*, 109 Nev. 952, 959-960, 860 P.2d 710, 716 (1993).

3 The 2010 petition was untimely in as much as the date of conviction was April 7, 2004 and
4 the remittitur had been issued in May, 2005 and there was no good cause demonstrated in the
5 pleading other than petitioner's conclusory statement that his filing was timely because he was still
6 within the original 1 year window. The Court disagrees with his reasoning.

7 In Ground One of the Second Petition the Petitioner alleges that the decisions made by Post-
8 Conviction counsel in pursuit of the First Petition and Supplemental Petition were so faulty as to
9 constitute ineffective assistance of counsel. The Petitioner argues that these failures on the part of
10 Post-Conviction counsel leave him unable to exhaust all of his claims in state court and therefore
11 unable to pursue those claims in federal court. Thus, Petitioner in effect argues; the Court should
12 find that the instant successive petition is justified because Post-Conviction counsel's ineffective
13 assistance amounts to good cause for Petitioner's failure to bring all of the claims contained in the
14 instant successive Second Petition in the First Habeas Proceeding, and prejudice exists because the
15 Petitioner will be unable to pursue all of the claims from both the First Petition and the Second
16 Petition in federal court upon exhaustion of state remedies. This Court disagrees. Just as there is no
17 right to counsel in Post-Conviction proceedings under the U.S. Constitution or the Nevada
18 Constitution, there can be no constitutional claim of ineffective assistance of counsel in Post-
19 Conviction proceedings. *Pennsylvania v. Finley*, 492 U.S. 551 (1987); *Brown v. McDaniel*, 130
20 Nev. ____, 331 P.3d 867 (Nev. 2014); *McKague v. Whitley*, 112 Nev. 159, 164-165, 912 P.2d 255,
21 259 (1996). Hence the Petitioner has not demonstrated good cause for the successive claims in the
22 Second Petition.

23 2. New or Additional Claims

24 As far as any new or different grounds stated in the Second Petition, NRS 34.810 provides
25 for dismissal based on abusive filing of successive petitions. NRS 34.810 (2) states that a second or
26 successive petition must be dismissed if new and different grounds are alleged, and the judge finds
27 that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the
28 writ." NRS 34.810 (3) provides that the petitioner has the burden of pleading specific facts that

1 demonstrate good cause for their failure to present the claim in the first petition and actual prejudice
2 to the petitioner.

3 The only claim listed in the Second Petition that could not have been brought in the First
4 Petition is the allegation regarding Post-Conviction Counsel. However, the argument has already
5 been considered and rejected, *supra*, as the ground for the Petitioner's argument that his successive
6 claims should be heard. Again, since there is no right to counsel in Post-Conviction proceedings
7 under the U.S. Constitution or the Nevada Constitution, there can be no constitutional claim of
8 ineffective assistance of counsel in Post-Conviction proceedings. *Pennsylvania v. Finley*;
9 *McCaughey v. Whitley*; *Brown v. McDaniel*, *supra*. Furthermore, this Court's December 29, 2006
10 Order dismissed all of the claims the Petitioner asserts that his counsel failed to pursue. Therefore,
11 the Petitioner's claim regarding Post-Conviction counsel's failure to litigate every claim in the First
12 Petition is baseless and need not be considered.

13 3. Additional Discussion

14 In any event, the Court finds that it would not have mattered if the Petitioner's Post-
15 Conviction counsel had pursued all of the claims in the First Petition, as the Petitioner's claims lack
16 merit. A selection of the claims which lack merit include, (1) any claim of ineffective assistance of
17 counsel relating to pretrial matters, (2) any claim arising from the use of testimonial evidence
18 considered at sentencing, (3) any claim alleging that the Petitioner's guilty plea was not entered
19 knowingly, intelligently, and voluntarily.

20 a. *Ineffective Assistance of Counsel in Pretrial Matters*

21 Throughout the two Petitions, the Petitioner makes numerous arguments in which he alleges
22 that trial counsel was ineffective based on pretrial actions. Many of these arguments are based on
23 allegations that trial counsel failed to secure the Petitioner's attendance at Grand Jury proceedings,
24 or failed to make various pretrial motions. Any of these arguments relating to anything other than
25 whether the Petitioner's guilty plea was knowingly, intelligently, and voluntarily entered are barred.

26 By pleading guilty a defendant waives all errors, including the deprivation of constitutional
27 rights that occurred prior to the entry of his guilty plea. *Tollet v. Henderson*, 411 U.S. 258, 267;
28 *Webb v. St.* 91 Nev. 469, 470, 538 P.2d 164 (1975). ' . . . [A] Guilty plea represents a break in the

1 chain of events which has preceded it in the criminal process. When a criminal defendant has
2 solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he
3 may not thereafter raise independent claims relating to the deprivation of constitutional rights that
4 occurred prior to the entry of the guilty plea. . . .’ *Webb*, at 470 (quoting *Cline v. State*, 90 Nev. 17,
5 518 P.2d 159 (1974)).

6 Therefore, at the moment the Petitioner pleaded guilty in open court, he foreswore any
7 claims for ineffective assistance of trial counsel based on anything other than trial counsel’s failure
8 to ensure that the Petitioner entered a knowing, intelligent, and voluntary plea.

9 *b. Knowing, Intelligent, and Voluntary Guilty Plea*

10 The Petitioner alleges that because he was not fully informed of the consequences of
11 pleading guilty, his guilty pleas were not entered knowingly, intelligently, and voluntarily. Among
12 those items that the Petitioner alleges he was unaware are; (i) that the Court had sole discretion to
13 impose consecutive or concurrent terms, (ii) in effect, that the Court had sole discretion as to the
14 appropriate sentence and that it was not bound by plea negotiations between the parties, (iii) that the
15 Court did not properly advise the Petitioner of the assorted statutory consequences of pleading
16 guilty (including, *inter alia*, lifetime registration on a list of known sex offenders, and lifetime post
17 release counseling), (iv) that his counsel allegedly promised him that he would receive less than the
18 maximum sentence if he did not proceed to trial, (v) a repetition of the allegations already disposed
19 of in the Court’s discussion of the testimonial evidence considered at sentencing, (vi) the Petitioner
20 reiterates the argument from the First Petition that he will be prejudiced in future parole proceedings
21 because of the lack of a baseline psychological report.

22 All of these allegations were raised and pleaded in the Petitioner’s First Petition or in the
23 Supplemental Petition. They were disposed of during those previous proceedings when the
24 Petitioner, through his counsel, either elected not to pursue them or were dismissed by this Court
25 and subsequently affirmed by the Nevada Supreme Court.

26 In addition, and more specifically, Items (i) - (iii) of these allegations are belied by the
27 record. Specifically, the Defendant’s signed and witnessed December 20, 2003 Guilty Plea
28 Memorandum indicates assent to Paragraph 12 of the Guilty Plea Memorandum, which states:

1 “12. I understand that the Court is not bound by the agreement
2 of the parties and that the matter of sentencing is to be
3 determined solely by the Court. I have discussed the charge(s)
4 with my attorney. All of the foregoing rights, waiver of rights,
5 elements, possible penalties, and consequences have been
6 carefully explained to me by my attorney. I am satisfied with
7 my counsel’s advice and representation leading to this
8 resolution of my case. I am aware that if I am not satisfied
9 with my counsel I should advise the Court at this time...”

10 The Transcript of Proceedings: Change of Plea dated December 11, 2003 (“the Transcript”),
11 also contradicts the Petitioner’s allegations. The Transcript shows that the Petitioner was thoroughly
12 canvassed by the Court before his guilty pleas were accepted and entered. According to lines one
13 through five of the Transcript, the Petitioner indicated that he had read and understood the Guilty
14 Plea Memorandum. At the Change of Plea hearing the Petitioner was again asked each of the
15 questions set out in the Guilty Plea Memorandum and answered each in the affirmative. Thus, the
16 Petitioner’s allegations are refuted in the Transcript in addition to the Guilty Plea Memorandum.
17 Specifically, as to (iv) the Transcript provides the Petitioner’s statement indicating that no promises
18 were made to him in return for his guilty plea.

19 ...
20 THE COURT: All right. Do you understand that what happens to you at sentencing is up to
21 the court?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Now, in this regard, *did anybody make any promises to you in that*
24 *respect?*

25 THE DEFENDANT: No, sir.

26 (Transcript at 14) (Emphasis added).

27 ...

28 Allegation (iii) is likewise contradicted by the record. The Petitioner states that he was
unaware that he would be required to endure lifetime supervision if he is granted parole. The
Transcript states, specifically:

...

1 THE COURT: All right. And then the District Attorney reminded the court that pursuant to
2 NRS 176.093(1) lifetime supervision is required. That means that if you get out on parole
3 you are required to undergo supervision for life. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 ...

6 (The Transcript at 15).

7 Therefore, by the Petitioner's own statement; the Petitioner understood the consequences of
8 pleading guilty, all of the rights, waiver of rights, and possible penalties that were set to result from
9 his pleas; the Petitioner had not been promised anything by the Prosecutor or Defense Attorney in
10 return for his guilty pleas; understood the meaning of concurrent and consecutive terms; and
11 understood that the final sentencing decision belonged to the Court alone. The Court finds that the
12 Petitioner did, indeed, fully understand the consequences of his guilty pleas, including, but not
13 limited to; the nature of the waiver of his rights, the possible penalties, and the fact that the Court
14 had sole discretion to assign an appropriate sentence.

15 *c. Testimonial Evidence Considered at Sentencing*

16 The Petitioner asserts in several Grounds across the two petitions that the Court abused its
17 discretion by allowing improper testimony at the sentencing stage of the proceedings in the form of
18 the testimony of witness Detective Greg Herrera ("the Detective") regarding the content of
19 conversations the Detective held with the Petitioner's ex-wife, Melissa Botelho. The Petitioner
20 argues that the contents of the Detective's conversations with the Petitioner's ex-wife should have
21 been excluded from the sentencing hearing as a privileged communication under the marital
22 privilege evidentiary exception or alternatively as hearsay evidence.

23 Again, NRS 34.810 (1) (a) states that a court shall dismiss a petition if the conviction was
24 based upon a plea of guilty and the petition is not based upon an allegation that the plea was
25 involuntary or unknowing or entered without effective assistance of counsel. The sentencing aspect
26 of a case is well after the plea hearing; hence this is an additional ground to dismiss the petition.

27 ///

CONCLUSION

Accordingly, and good cause appearing,

Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus filed July 24, 2015, is hereby GRANTED because the claims in the March 6, 2006 Petition were considered and dismissed and the Petitioner has failed to demonstrate that good cause and prejudice require the successive claims to be reheard and the sole original claim in the January 27, 2010 Petition to be considered. The Petition is procedurally barred as a matter of law under the provisions of NRCP 34.726(1) and NRS 34.810 (1)(a) and (2).

The Court finds the second petition is untimely, successive and constitutes an abuse of the writ process and must be and is, dismissed.⁴

Lastly, as a consequence of the above reasoning, Petitioner's motion to strike is DENIED.

IT IS SO ORDERED.

Dated this 15TH day of September, 2015.


JEROME POLAHA
DISTRICT JUDGE

⁴ Since the Second Petition was procedurally dismissed there was no need to have appointed counsel.

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 16 day of September, 2015, I deposited for mailing a copy of the foregoing to:

The following was served via e-filing:

Terrence P. McCarthy, Esq.

The following was served via USPS:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

Gillespie

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Judge:

HONORABLE JEROME M. POLAHA

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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Ord Granting Mtn

Filed By:

Judicial Asst. JUlleseit

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BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTELHO
PETITIONERCASE NO. CR03-2156, DEPT. NO. 22 AM 8:46
ATTN: CHIEF JUDGE HARDY

VS.

MOTION TO VACATE JUDGMENT OF
CONVICTION AND NRCIN.P. RULE 9(b)
FRAUD BY [Signature] DEPUTYJAMES BENEDETTI, WARDEN,
STATE OF NEVADA, et-al.
RESPONDENTS

COMES NOW, MICHAEL TODD BOTELHO, IN PROPER PERSON AND IN FORMA
PAUPERIS, RESPECTFULLY BRINGING FORTH MOTION TO VACATE JUDGMENT OF
CONVICTION AND NRCIN.P. 9(b) FRAUD, BEFORE THIS HOPEFULLY STILL
HONORABLE COURT.

THE ABOVE CAPTIONED MOTION, POINTS AND AUTHORITIES ARE BASED
UPON ALL PAPERS, PLEADINGS AND RECORDS ON FILE IN THIS COURT AND THE
NEV. SUPREME COURT, AS WELL AS THE EXHIBITS AND AFFIDAVIT(S) FILED BY
PETITIONER HEREIN. FURTHER MORE, BRINGING FORTH NEWLY DISCOVERED
EVIDENCE WHICH REPRESENT FRAUD, CONSPIRACY AND COLLUSION,
WILLFULLY VIOLATING PETITIONERS CONSTITUTIONAL RIGHTS AND ULTIMATELY
RESULTING IN PETITIONERS FRAUDULENT AND ILLEGAL CONVICTION
[EMPHASIS STRONGLY ADDED]. THESE ARE [N]OT BARE AND NAKED
ALLEGATIONS, AND AS SUCH, HAVE CAUSED PETITIONER EGREGIOUS
IRREPARABLE HARM AND PREJUDICE AS A RESULT OF THIS STATE'S
"RUNNING-A-MUCK" IN THIS CASE (EMPHASIS ADDED).

PETITIONER (HEREIN AFTER BOTELHO) DEMANDS THAT THE ENTIRE
RECORD OF THIS CASE BE PRESERVED IN THE RECORD FOR APPEAL, IN THE
EVENT THAT THIS COURT SHIRKS ITS DUTIES [AGAIN], IN THIS CASE.

"A PARTY IS NOT BOUND BY THE LABEL HE PUTS ON HIS PAPERS," SEE
N.C. DASH, INC. V. SCHWANTES, 125 NEV. 647, 218 P3d 853 (2009) (A MOTION
MAY BE TREATED AS AN INDEPENDANT ACTION OR VISA-VERSA, IS
APPROPRIATE).

1 SEE U.S. V. U.S. DISTRICT COURT FOR THE CENTRAL DIST. OF CALIF.
 2 858 F2d 534 (9th 1998) "IF THE GOVERNMENT, POLICE AND PROSECUTORS
 3 COULD ALWAYS BE TRUSTED TO DO THE RIGHT THING, THERE WOULD NEVER
 4 HAVE BEEN NEED FOR THE BILL OF RIGHTS."

5 "COURTS ARE CONSTITUTED BY AUTHORITY AND THEY CANNOT GO
 6 BEYOND THAT POWER DELEGATED TO THEM. IF THEY ACT BEYOND THEIR
 7 AUTHORITY, AND CERTAINLY IN CONTRAVENTION OF IT, THEIR JUDGMENTS
 8 AND ORDERS ARE REGARDED AS NULLITIES, AND THIS EVEN PRIOR TO
 9 REVERSAL." WILLIAMSON V. BERRY, 8 HOW 945, 540 LEd 1170, 1189 (1850).

10 BOTELHO FILES THIS ACTION IN ACCORDANCE WITH BOAG V. McDOUGAL,
 11 454 US 364, 102 Sct 700 (1982); HAINES V. KERNER, 404 US 519, 92 Sct. 594 (1972).
 12 PRO SE LITIGANTS PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO
 13 LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS BY ATTORNEYS TO
 14 STATE VALID CLAIM ON WHICH LITIGANTS COULD PREVAIL, IT SHOULD DO SO
 15 DESPITE FAILURE TO CITE PROPER LEGAL AUTHORITY, CONFUSION OF LEGAL
 16 THEORIES, POOR SYNTAX AND SENTENCE CONSTRUCTION, OR LITIGANTS
 17 UNFAMILIARITY WITH PLEADING REQUIREMENTS. SEE ALSO BLACKMON V.
 18 CRAWFORD, 305 F.SUPP. 2d 117 (D.NV. 2004); BALESTRERI V. PACIFICA POLICE
 19 DEPT, 901 F2d 696 (9th 1990); AND BATEMAN V. U.S. POSTAL SERVICE, 231 F3d 1220-24
 20 (9th 2002).

21 STATEMENT OF FACTS

22 BOTELHO HAS ALREADY CLEARLY PROVED THE INDISPUTIBLE FACTS OF
 23 THIS CASE, SEE THE RECORD ALREADY BEFORE THIS COURT (E.G. PETITION,
 24 MOTIONS, EXHIBITS); TO SHOW ^(SHOWCASE) CASE THE STATES WILLFUL DISREGARD OF,
 25 AND VIOLATIONS OF NEVADA LAW, FEDERAL LAW, NEV. RULES OF CIVIL
 26 PROCEDURE, OATH OF OFFICE, THE STATES INABILITY TO PROSECUTE THIS
 27 CASE FOR FAILURE TO OBTAIN THE REQUIRED VALID BOND TO PERFECT THE
 28 OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY AND FOR THE DEPUTY DISTRICT

1 ATTORNEYS, NV. CODE OF PROFESSIONAL CONDUCT, NEVADA AND NATIONAL
2 ^(BAR) STANDARDS AND RULES, BOTELHO'S CONSTITUTIONAL RIGHTS OF DUE PROCESS
3 AND EQUAL PROTECTION AS GUARANTEED BY NEVADA AND UNITED STATES
4 CONSTITUTION(S), AND BY THE STATES TOTAL DISREGARD OF THE NEVADA
5 CONSTITUTION AND OUR [STILL VALID] UNITED STATES CONSTITUTION, AS
6 CITED IN BOTELHO'S PETITION AND MOTION(S) PREVIOUSLY BEFORE THIS
7 COURT AND IN THE COURT RECORD (SEE PETITION AND EXHIBITS (1)(2)(3)(4)
8 IN BOTELHO'S MOTION TO STRIKE).

9 (I) NEWLY DISCOVERED EVIDENCE: PETITIONER ASSERTS AND FACTUALLY
10 PROVES THAT THE WASHOE COUNTY SHERIFFS OFFICE (HEREIN AFTER, W.C.S.O.),
11 SPECIFICALLY, DETECTIVE DIVISION, CAPTAIN CRAIG CALLAHAN, DETECTIVE
12 DIVISION COMMANDER, FAXED A [S]UBPOENA TO CELLCO PARTNERSHIP DBA:
13 VERIZON WIRELESS, ATTN: MICHAEL ROZYLA, IN BRANCHBURG, NEW JERSEY,
14 ON AUGUST 8, 2003 (SEE EXHIBIT 1, HEREIN).

15 THE "SUBPOENA" STATES "IN FURTHERANCE OF A CRIMINAL [OR] CIVIL
16 INVESTIGATION CONDUCTED BY W.C.S.O., AND IN ACCORDANCE WITH NRS.
17 193.340, YOU ARE COMMANDED TO PRODUCE SUBSCRIBER INFORMATION ON
18 THE FOLLOWING ACCOUNT,"

19 (a) THIS [S]UBPOENA WAS FRAUDULENT AND FICTICIOUS ON ITS FACE. IT
20 HAD ABSOLUTELY [N]O FORCE AND EFFECT OF LAW. THIS "SUBPOENA" WAS A
21 COMPUTER GENERATED [L]ETTER DISGUISED AS A VALID, REAL SUBPOENA.

22 (b) THIS FRAUDULENT AND FICTICIOUS SUBPOENA WAS PRESENTED TO
23 VERIZON WIRELESS IN THE PRETENSE OF BEING A LAWFULLY VALID SUBPOENA
24 BY W.C.S.O., STATE OF NEVADA. THE COMPUTER GENERATED LETTER (FAKE
25 SUBPOENA) WAS NOT EVEN GENERATED ON OFFICIAL W.C.S.O. LETTERHEAD.

26 THESE ACTIONS WERE IN KNOWING CONTRAVENTION OF STATE AND FEDERAL
27 LAW AND RULES, UNDER THE COLOR OF LAW.

28

1 SEE NEVADA RULES OF CIVIL PROCEDURE, RULE 45:

2 (a) [E]VERY SUBPOENA "SHALL BE ISSUED BY THE "CLERK" UNDER "SEAL OF
3 THE COURT, SHALL STATE NAME OF COURT AND TITLE OF ACTION. FURTHER,
4 THE [C]LERK SHALL ISSUE A SUBPOENA, [OR] SUBPOENA FOR PRODUCTION
5 OF DOCUMENTARY EVIDENCE, SIGNED AND SEALED, BUT OTHERWISE BLANK,
6 TO A PARTY REQUESTING IT, WHO SHALL FILL IT IN BEFORE SERVICE, SEE
7 (1)(A)(B)(C).

8 (2) IT STATES IN PART- IF SEPERATE FROM A SUBPDENA COMMANDING THE
9 ATTENDANCE OF A PERSON, A SUBPOENA FOR PRODUCTION OR INSPECTION "SHALL"
10 ISSUE FROM THE COURT FOR WHICH DISTRICT, THE ACTION IS PENDING. IF
11 THE ACTION IS PENDING.

12 (b)(2) A SUBPOENA MAY BE SERVED AT ANY PLACE [W]ITHIN THE STATE.

13 SEE 28 USC FEDERAL RULES OF CIVIL PROCEDURE, RULE 45: EVEN PURSUANT
14 TO 28 USC, FR CIV. P. RULE 45, IT CLEARLY STATES - (A)(1)(A) "EVERY" SUBPOENA
15 [N]UST (i) STATE THE COURT FROM WHICH IT IS ISSUED. (CLEAR AND CONCISE)

16 BOTELHO PUTS THIS COURT ON "NOTICE", THAT EVEN U.S. PRESIDENT OBAMA
17 GOT A COURT ORDER TO GET SUBSCRIBER INFORMATION, AS STATED BY GOOD
18 MORNING AMERICA, ON ABC TELEVISION ON JUNE 6, 2013.

19 EVEN THE PRESIDENT FOLLOWED THE LAW IN THIS REGARD, BUT, NOT W.C.S.O.,
20 THEY ACTED BEYOND AND ABOVE THE LAW, ACTING UNDER THE COLOR OF LAW, IN
21 SO DOING, COMMITTED FRAUD, VIOLATING BOTH STATE AND FEDERAL LAW.

22 (C) THE W.C.S.O.'S FICTICIOUS SUBPDENA COMMANDED VERIZON WIRELESS TO
23 COMPLY WITH THE FAKE SUBPDENA PURSUANT TO NRS 193.340. SEE EXHIBIT (4),
24 HEREIN). (1) NRS 193.340 - THE REQUIRED DISCLOSURE OF CERTAIN INFORMATION
25 BY [PROVIDER OF INTERNET SERVICE]; ISSUANCE AND ENFORCEMENT OF
26 ADMINISTRATIVE SUBPOENAS.

27 (2) NRS 193.340 (1) PROVIDER OF INTERNET SERVICE; VIOLATIONS OF
28 18 USC 2703. VERIZON WIRELESS WAS [N]OT A PROVIDER OF INTERNET SERVICE"

1 TO BOTELHO, AT ANY TIME. BOTELHO HAD A LONG TERM ANALOG PHONE
 2 CONTRACT WITH VERIZON WIRELESS, NOTHING MORE! (SEE EXHIBIT 4, HEREIN)
 3 (3) NRS. 193.340(2) SPECIFICALLY STATES "IN INVESTIGATING CRIMINAL
 4 ACTIVITY THAT INVOLVES OR MAY INVOLVE THE USE OF A [C]OMPUTER. IT
 5 FURTHER STATES "IF THERE IS REASONABLE CAUSE TO BELIEVE THAT AN
 6 INDIVIDUAL SUBSCRIBER/CUSTOMER OF A PROVIDER OF INTERNET SERVICE
 7 HAS COMMITTED AN OFFENSE THROUGH THE USE OF THE SERVICES OF THE
 8 PROVIDER OF INTERNET SERVICE, ISSUE A "SUBPOENA" TO CARRY OUT THE
 9 PROCEDURE SET FORTH IN 18 USC 2703.

10 BOTELHO DID [NOT] HAVE INTERNET SERVICE, NOR WAS HE BEING INVESTIGATED
 11 FOR ANY CRIMINAL ACTIVITY INVOLVING A COMPUTER, PERIOD!

12 (4) NRS. 193.340(4) CLEARLY SPEAKS OF A SUBPOENA IN A CIVIL ACTION.
 13 THIS FURTHER MAKES N.R. CIV. P. RULE 45, CLEARLY APPLICABLE. W.C.S.O.
 14 CLEARLY CHOSE NOT TO COMPLY WITH THIS RULE.

15 (5) NRS. 193.340(5) STATES "PROVIDER OF INTERNET SERVICE" HAS MEANING
 16 ASCRIBED TO IT IN NRS. 205.4758. SEE:

17 (a) NRS. 205.4758⁽¹⁾, "PROVIDER OF INTERNET SERVICE" DEFINED, MEANS,
 18 "ANY PROVIDER WHO SUBSCRIBES WITH ACCESS TO INTERNET OR ELECTRONIC
 19 MAIL ADDRESS.

20 BOTELHO CLEARLY PROVES THAT NRS. 193.340, WAS INAPPLICABLE AS USED
 21 AGAINST BOTELHO PURSUANT TO THE FICTITIOUS AND FRAUDULENT SUBPOENA
 22 USED TO GAIN SUBSCRIBER/CUSTOMER TELEPHONE INFORMATION. THIS WAS A
 23 CRIMINAL MISREPRESENTATION TO VERIZON WIRELESS. (FRAUD)

24 THIS FRAUDULENT FISHING EXPEDITION RESULTED IN AN ILLEGAL
 25 SEARCH AND SEIZURE. THIS ILLEGAL SEARCH AND SEIZURE DIRECTLY LED
 26 W.C.S.O. TO BOTELHO, RESULTING IN THE DIRECT INVESTIGATION OF BOTELHO.

27 THIS ULTIMATELY LED THE WASHOE COUNTY SHERIFFS OFFICE TO
 28 FILE AN AFFIDAVIT IN SUPPORT OF, AND THE ISSUANCE OF A

FOOTNOTE

5

(1) SEE PAGES 5(a) AND 5(b)
 THEN PAGE 6.

1 SEARCH WARRANT ISSUED IN DAYTON TOWNSHIP, LYON COUNTY, NEVADA,
 2 AND THE RESULTING SEARCH OF BOTELHO'S HOME AND PROPERTY. THIS WAS
 3 A DIRECT CONSEQUENCE OF W.C.S.O.'S FICTITIOUS SUBPOENA, AS A RESULT,
 4 BOTH SEARCHES AND SEIZURES WERE ILLEGAL AND FRUITS OF THE POISONOUS
 5 TREE. SEE SEARCH WARRANT IN COURT RECORD.

6 "FRUITS OF POISONOUS TREE DOCTRINE" EXCLUDES ALL EVIDENCE DERIVED
 7 FROM INFORMATION GAINED IN AN ILLEGAL SEARCH, 43 A.L.R. 385.

8 PARKHURST V. TRAPP, 77 F.3d 707 (3RD 1996) "UNLAWFUL SEARCH CAN
 9 NEVER BE JUSTIFIED BY ITS FRUITS." IN U.S. V. BOONE, 62 F.3d 323 (10TH 1995)

10 "EVIDENCE THAT IS ACQUIRED OF PRIOR ILLEGAL POLICE ACTIVITY, GENERALLY,
 11 MUST BE EXCLUDED AS FRUITS OF POISONOUS TREE ILLEGALLY"; U.S. V. WATSON,

12 118 F.3d 1315 (9TH 1997) ILLEGALLY OBTAINED EVIDENCE IS INADMISSIBLE IN
 13 GOVERNMENTS DIRECT CASE, OR OTHERWISE, AS SUBSTANTIVE EVIDENCE OF
 14 GUILT. SEE ALSO, U.S. V. MEJA, 69 F.3d 309 (9TH 1995) "INEVITABLE DISCOVERY

15 DOCTRINE DID NOT APPLY WHERE THE POLICE SIMPLY FAILED TO GET WARRANT."

16 "WE HAVE HELD THAT INTANGIBLE AS WELL AS TANGIBLE EVIDENCE MAY BE
 17 SUPPRESSED", WONG SUN V. U.S., 371 US 471, 485-86, 83 S.Ct 407; AND SEE

18 KATZ V. U.S., 389 US 347, 88 S.Ct 507 (1967).

19 (d) THE W.C.S.O. OBSTRUCTED JUSTICE, AFTER FRAUDULENTLY AND ILLEGALLY
 20 OBTAINING BOTELHO'S PHONE SUBSCRIBER INFORMATION, BY BLACKING OUT
 21 BOTELHOS PHONE LOG, A LOG WHICH SHOWED BOTELHO CALLING W.C.S.O. AND
 22 TRYING TO CO-OPERATE AND FURTHER SHOWING BOTELHO CALLING ATTORNEYS
 23 AND HAVING A CONVERSATION WITH ONE. THE VERY ONE WHO TOLD BOTELHO TO LEAVE
 24 THE STATE, GET A JOB, AND AFTER SAVING ENOUGH MONEY, TO COME BACK TO
 25 NEVADA AND GO TO W.C.S.O. TO SPEAK TO THEM. DUE TO W.C.S.O. BLACKING THIS
 26 INFORMATION OUT, BOTELHO WAS DENIED DUE PROCESS AND BEING ABLE TO
 27 VALIDATE CLAIMS HE WOULD HAVE BROUGHT UP. BOTELHO WAS AND STILL IS
 28 UNABLE TO USE THIS AS EVIDENCE, AS A RESULT. SEE EXHIBITS 2 AND 3, HEREIN,

1 SEE ADDITIONAL NRS 205 SUBSECTIONS RELEVANT TO NRS 205.475.8
 2 (ABOVE, HEREIN).
 3 NRS 205.473, DEFINITIONS- AS USED IN NRS 205.473 TO .513, INCLUSIVE,
 4 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE WORDS AND TERMS DEFINED IN
 5 NRS 205.4732 - 476, INCLUSIVE, HAVE THE MEANING ASCRIBED TO THEM IN
 6 THOSE SECTIONS. IN OTHER WORDS, NRS 205.475.8, BY ITS CLEAR AND SIMPLE
 7 DEFINITION, WAS [N]OT APPLICABLE TO BOTELHO'S PHONE NUMBER, WHATSOEVER.
 8 AS USED IN NRS 193.340 IN THIS FICTITIOUS SUBPOENA, PURSUANT TO NRS
 9 205.4735, COMPUTER, DEFINED- MEANS AN ELECTRONIC DEVICE WHICH PERFORMS
 10 LOGICAL, ARITHMETIC, AND MEMORY FUNCTIONS BY MANIPULATING ELECTRONIC OR
 11 MAGNETIC IMPULSES AND INCLUDES ALL EQUIPMENT RELATED TO THE COMPUTER IN
 12 A SYSTEM OR NETWORK. THIS CLEARLY PROVES THAT NRS 193.340 WAS [NOT]
 13 APPLICABLE AS USED FOR BOTELHO'S CUSTOMER INFORMATION, PHONE INFORMATION!
 14 FURTHERMORE, BOTELHO ACCUSES THE W.C.S.O. OF KNOWING THESE FACTS
 15 AND ESPECIALLY SEE, NRS. 205.498, PROVIDER OF INTERNET SERVICE REQUIRED TO
 16 KEEP CERTAIN INFORMATION CONCERNING SUBSCRIBERS CONFIDENTIAL; NOTICE
 17 REQUIRED TO BE PROVIDED TO SUBSCRIBERS-
 18 (1) A PROVIDER OF INTERNET SERVICES SHALL KEEP CONFIDENTIAL:
 19 (a) ALL INFORMATION CONCERNING A SUBSCRIBER, OTHER THAN THE ELECTRONIC
 20 MAIL ADDRESS OF THE SUBSCRIBER, UNLESS SUBSCRIBER GIVES PERMISSION, IN
 21 WRITING OR BY ELECTRONIC MAIL, TO PROVIDER OF INTERNET SERVICE TO
 22 DISCLOSE THE INFORMATION.
 23 (2) PROVIDER OF INTERNET SERVICE SHALL PROVIDE NOTICE OF THE REQUIREMENTS
 24 OF SUBSECTION (1) TO EACH OF ITS SUBSCRIBERS, THE NOTICE MUST INCLUDE
 25 WITHOUT LIMITATION, A CONSPICUOUS STATEMENT THAT A SUBSCRIBER MAY
 26 REQUEST, IN WRITING OR BY ELECTRONIC MAIL, TO HAVE THE ELECTRONIC MAIL
 27 ADDRESS OF THE SUBSCRIBER KEPT CONFIDENTIAL.
 28 (3) A PROVIDER OF INTERNET SERVICE WHO VIOLATES ANY PROVISION OF THIS
 29 SECTION IS GUILTY OF A MISDEMEANOR, FOR EACH VIOLATION.
 30 (4) AS USED IN THIS SECTION "PROVIDER OF INTERNET SERVICE" MEANS A PROVIDER
 31 OF INTERNET SERVICE WHO CHARGES A SUBSCRIBER FOR ACCESS TO THE INTERNET
 32 OR ELECTRONIC MAIL ADDRESS OF THE SUBSCRIBER.
 33 DOES
 34 THIS STATUTE WOULD REQUIRE THE PROVIDER OF INTERNET SERVICE TO KEEP
 35 SUBSCRIBER INFORMATION CONFIDENTIAL. BUT, NRS 193.340 IS IN DIRECT
 36 CONTRAVENTION OF NRS 205.498, SEE PAGE 3, LINES 15-18, HEREIN AND EXHIBIT (1)
 37 HEREIN.

5(a) AFTER Pg 6

1 CLEARLY, NRS 193.340, IS APPLICABLE TO A PROVIDER OF INTERNET
2 SERVICE RELATING TO A [COMPUTER], NOT A PHONE. NRS 205.4758, CLEARLY
3 DEFINES INTERNET PROVIDER, WHO SUBSCRIBES WITH ACCESS TO INTERNET
4 OR ELECTRONIC MAIL ADDRESS. BOTELHO'S ANALOG PHONE NUMBER AND
5 PHONE WERE CLEARLY NOT A COMPUTER, NOR HAD INTERNET SERVICE, WITH
6 VERIZON WIRELESS.

7 FURTHERMORE, NRS 205.498, IS CLEARLY IN CONTRAVENTION WITH THE
8 COMMANDS OF NRS 193.340, REGARDING SUBSCRIBER INFORMATION "AND"
9 PRIOR NOTICE TO SUBSCRIBER. NRS 205.498 ALSO DOES NOT EVEN SPEAK
10 OF SEARCH WARRENTS OR SUBPOENAS, AS TO LAWFULLY OBTAINING THIS
11 INFORMATION PROTECTED BY THIS STATUTE.

12 BOTELHO HAS PROVED THAT NRS 193.340, WAS CLEAR AND UNAMBIGUOUS
13 AS IT RELATES TO COMPUTERS, AS SUCH, HAD ABSOLUTELY NO FORCE AND EFFECT
14 UPON BOTELHO'S CUSTOMER RECORDS. FURTHERMORE, NRS 205.498 WAS IN
15 DIRECT CONTRAVENTION WITH NRS 193.340, THUS, RENDERING THEM VOID REGARDLESS.
16 THE SUBPOENA WAS FICTITIOUS AND FRAUDULENT ON ITS FACE REGARDLESS
17 OF THE COMMANDS OF NRS 193.340, WHICH WERE NOT RELEVANT TO A PHONE
18 NUMBER ANYWAY.

19 THE FRAUDULENT SUBPOENA RESULTED IN THE ILLEGAL SEIZURE OF EVIDENCE
20 WHICH DIRECTLY LED W.C.S.O. TO BOTELHO AND THE SEARCH WARRANT USED TO
21 ILLEGALLY OBTAIN D.N.A. FROM BOTELHO'S CHILDREN BY THREATENING HIS WIFE.

22 THE ILLEGAL SEARCH AND SEIZURE WERE A DIRECT VIOLATION OF LAW AND
23 RESULTED IN THE ILLEGAL SEARCH AND SEIZURE PURSUANT TO A FRAUDULENTLY
24 OBTAINED SEARCH WARRANT RESULTING IN THE ILLEGAL TAKING OF D.N.A. BY
25 W.C.S.O. THESE SEIZURES, ALL OF THEM, ARE FRUITS OF THE POISONOUS TREE,
26 RESULTING IN THE ILLEGAL ARREST AND ULTIMATELY TRICKED INTO AND LIED TO,
27 TO GET BOTELHO TO PLEAD GUILTY. THIS CRIMINAL ENTERPRISE CAUSED THE
28 ILLEGAL CONVICTION OF BOTELHO AND MUST BE VACATED, VOIDED WITH PREJUDICE.

5(b) ADDENDUM

1 SEE 18 USC 1501, OBSTRUCTION OF JUSTICE. SEE ALSO, COLLUSION, SEE
2 TOMIYOSU V. GOLDEN, 81 NEV. 140, 400 P2d 415-417, "A SECRET COMBINATION,
3 CONSPIRACY, OR CONCERT OF ACTIONS BETWEEN 2 OR MORE PERSONS FOR
4 FRAUDULENT, OR DECEITFUL PURPOSE."
5 "A VOID JUDGMENT IS ONE THAT HAS BEEN PROCURED BY EXTRINSIC OR
6 COLLATERAL FRAUD, OR ENTERED BY A COURT THAT DID NOT HAVE JURISDICTION
7 OVER THE SUBJECT MATTER OF THE PARTIES." ROOK V. ROOK, 233 VA. 92, 95,
8 353 S.E. 2d 756, 758 (1987).
9 (2) THE W.C. DISTRICT ATTORNEY'S OFFICE, PRODUCED A SECOND SUBPOENA,
10 ACCORDING TO EXHIBIT 3, HEREIN, WHERE ADDITIONAL CUSTOMER INFORMATION WAS
11 TURNED OVER TO THE DISTRICT ATTORNEY. SOMEONE NAMED ALICE MAEZ (MAEZ),
12 IS SHE AN ATTORNEY? BOTELHO IS UNABLE TO ASCERTAIN HER POSITION. BOTELHO
13 HAS NEVER SEEN THIS SECOND "SUBPOENA", AS THE DISTRICT ATTORNEY DID NOT, NOR,
14 STILL, WILL NOT TURN THIS DOCUMENT OVER TO PETITIONER. BOTELHO ASSERTS
15 THAT THE DISTRICT ATTORNEY HAS ALSO WITHHELD THIS DOCUMENT FROM THE COURT
16 ~~RECORD~~ RECORD FROM THE BEGINNING OF THIS CASE. (WHY IS THAT?) EXHIBIT 3,
17 FURTHER SHOWS ADDITIONAL TAMPERING OF ILLEGALLY SEIZED EVIDENCE BY THE
18 WASHOE COUNTY DISTRICT ATTORNEYS OFFICE. (HEREIN AFTER W.C.D.A.)
19 EXHIBIT 3, FURTHER SHOWS THAT THE W.C.D.A. FAXED A COPY OF CERTIFICATE
20 OF CUSTODIAN OF RECORDS, PURSUANT TO NRS 51. 135, TO VERIZON WIRELESS
21 FOR MICHAEL ROZYLA, OF VERIZON WIRELESS LEGAL DEPT. TO SIGN AND
22 NOTARIZE (SEE EXHIBIT 3, PG. 4).
23 BOTELHO ASSERTS THAT THIS DOCUMENT WAS NOT VALIDLY USED IN ITS
24 APPLICATION. THIS DOCUMENT IS VALID AS USED BY NEVADA, IN NEVADA.
25 MICHAEL ROZYLA, OF VERIZON WIRELESS IN NEW JERSEY HAD A LEGAL DUTY TO
26 USE NEW JERSEY FORM, SUBJECT TO NEW JERSEY LAW, THEN SEND IT TO
27 W.C.D.A., SHOWING THE VALIDITY OF THE DOCUMENT PURSUANT TO NEW
28 JERSEY LAW. THE FORM SENT TO W.C.D.A. BY VERIZON WIRELESS, SEE

1 THE CERTIFICATE OF CUSTODIAN OF RECORDS AS PRESENTED, IS INFECT,
2 WITHOUT FORCE AND EFFECT OF LAW, IS A NULLITY AND VOID. BOTELHO
3 CONTENDS THAT AS SUCH, THE ILLEGALLY SEIZED RECORDS/EVIDENCE
4 CANNOT BE CONSTRUED AS AUTHENTIC. THIS FACT FURTHER SOLIDIFIES
5 THE TAINT OF THE RECORDS/INFORMATION/EVIDENCE OBTAINED AS A RESULT
6 OF THE W.C.S.O.'S ACTIONS, AND THE W.C.D.A. OFFICE.

7 (F) BOTELHO HAS PROVED THAT HE HAD NO INTERNET PROVIDER; NO COMPUTER
8 CRIME; JUST AN OLD ANALOG TELEPHONE SERVICE. ALL THE W.C.S.O. HAD WAS A
9 PHONE NUMBER TO GO ON, SO RATHER THAN FOLLOWING STATE AND FEDERAL
10 PROCEDURE(S) IN ACCORDANCE WITH LAW AND LEGALLY OBTAINING THE CUSTOMER
11 INFORMATION/RECORDS, THE W.C.S.O. GENERATED A FICTICIOUS AND FRAUDULENT
12 LETTER DISGUISED AS A SUBPOENA (NOT EVEN DISGUISED AS AN ADMINISTRATIVE
13 SUBPOENA) TO MISLEAD VERIZON WIRELESS AND GO ON THEIR ILLEGAL
14 FISHING EXPEDITION. (EMPHASIS ADDED)

15 NRS 193.340, WAS CLEARLY INAPPLICABLE AS USED, REGARDING A PHONE
16 NUMBER, AS IT WAS SPECIFIC, TO THE USE OF A COMPUTER [AND] ANY POTENTIAL
17 CRIMINAL ACTIVITY CONCERNING THE USE OF A [C]OMPUTER. THUS, NRS. 193.340
18 HAD NO FORCE AND EFFECT OF LAW UPON ITS APPLICATION AS USED.

19 THE FACTS ARE CLEAR AND INDISPUTIBLE. THE W.C.S.O. COMMITTED FRAUD BY
20 THE KNOWING USE OF THEIR FICTICIOUS SUBPOENA AND FURTHERMORE, [IF] IT
21 HAD BEEN PROCURED PROPERLY AND LEGALLY, IT WOULD STILL BE "NULL AND
22 VOID" ON ITS FACE, AS NRS. 193.340, COULD NOT, WOULD NOT, BE LEGALLY
23 APPLICABLE PURSUANT TO THE COMMANDS OF SAID "FAKE" SUBPOENA,
24 CONCERNING A CUSTOMER PHONE NUMBER.

25 THE W.C.S.O. IS CLEARLY GUILTY OF CONSPIRACY, SEEN AS 199.480,

26 (3)(c) FALSELY TO INSTITUTE OR MAINTAIN ANY ACTION OR PROCEEDING; (f)
27 TO COMMIT ACT INJURIOUS TO PUBLIC MORALS, OR FOR THE PERVERSION OR
28 CORRUPTION OF PUBLIC JUSTICE OR DUE TO ADMINISTRATION OF LAW AND;

(9) TO ACCOMPLISH ANY CRIMINAL OR UNLAWFUL PURPOSE OR TO ACCOMPLISH A PURPOSE, NOT IN ITSELF CRIMINAL OR UNLAWFUL, BY CRIMINAL MEANS OR UNLAWFUL MEANS (MIS CARRIAGE OF JUSTICE),

THE W.C.S.O. IS GUILTY OF DESTROYING EVIDENCE, SEE NRS 199. 220; AND SEE NRS. 239. 300, INCLUSIVE (STEALING, ALTERING OR DEFACING RECORDS)

THE W.C.S.O. BY ITS ACTIONS, HAVE VIOLATED MULTIPLE CRIMINAL FEDERAL STATUTES PURSUANT TO 18 USC CODE, AS WELL AS VIOLATING F.C.C. RULES AND PROBABLY MORE THAN BOTELHO IS AWARE OF.

(II) NEWLY DISCOVERED EVIDENCE. BOTELHO STRONGLY ASSERTS THAT THE W.C.S.O., WHILE SERVING A SEARCH WARRANT UPON BOTELHO'S WIFE, MARILOU BOTELHO, AT BOTELHO'S RESIDENCE AND SURROUNDING PROPERTY, DID, INFACIT, EXCEED THE SCOPE OF THE SEARCH WARRANT. (EMPHASIS ADDED).

BOTELHO WAS BEYOND MAD, WHEN, WHILE TALKING TO HIS WIFE, HE FOUND OUT BY CHANCE, THAT DET. CARRY:

(A) AFTER KNOCKING ON THE DOOR AND ANNOUNCING THEIR PRESENCE, THAT THEY HAD A SEARCH WARRANT AND WERE GOING TO SEARCH THE PREMISES, SHOWED MRS. BOTELHO A PAPER, SAYING IT WAS THE WARRANT AND MARILOU ASKED TO SEE IF IT WAS A SEARCH WARRANT. DET. CARRY WOULD NOT LET BOTELHOS WIFE SEE THE "ALLEGED" WARRANT UNTIL THEY WERE DONE SEARCHING, THEN GAVE IT TO HER. THIS REALLY UPSET MARILOU, BUT SHE DID NOT KNOW THEY DID ANYTHING WRONG UNTIL BOTELHO WAS TALKING TO HER ABOUT IT. THAT WAS WHEN BOTELHO TOLD HER THAT WAS ILLEGAL. IT WAS ALSO DURING THIS CONVERSATION THAT BOTELHO ALSO LEARNED THE DISTURBING FACT THAT:

(B) THE W.C.S.O. DETECTIVE CARRY, MARILOU SAID, TOLD MARILOU BOTELHO THAT HE WANTED HER TO SIGN A WAIVER GIVING PERMISSION FOR THE W.C.S.O. TO COLLECT D.N.A. FROM HER AND BOTELHO'S TWO BABY BOYS (AGE 2 1/2 AND 13 MONTHS OLD) AND SHE SAID NO. BOTELHO SAID HIS WIFE THEN TOLD HIM

1 THAT SHE WAS TOLD SOMETHING LIKE "IF YOU DONT GIVE US VOLUNTARY
2 CONSENT TO GATHER D.N.A., THAT YOU WILL BE ARRESTED AS AN
3 ACCESSORY AFTER THE FACT, THAT YOU BOYS WILL BE TAKEN INTO CHILD
4 PROTECTIVE SERVICE."

5 BOTELHO'S WIFE WAS/IS A FOREIGNER, WHO HAD RECENTLY BECOME A U.S.
6 CITIZEN AND WAS NOT KNOWLEDGEABLE ABOUT SEARCH WARRANTS, NOR THAT
7 SHE COULD REFUSE TO CO-OPERATE IN THE W.C.S.O.'S REQUEST/ THREAT TO
8 OBTAIN DNA. MARILOU WAS ALREADY HURT AND SCARED AND TO THEN HAVE
9 A COP THREATEN TO ARREST HER AND TAKE THE BABY BOYS WAS MORE THAN
10 SHE COULD TAKE, SO SHE VERY RELUCTANTLY CO-OPERATED WITH THE COMMAND
11 [THREAT]. (EMPHASIS ADDED)

12 BOTELHO PUTS THIS COURT ON "NOTICE", THAT HE STRONGLY BELIEVES THIS
13 AFFIDAVIT (SWORN AFFIDAVIT) WILL DISAPPEAR, HE WILL WAIT FOR THIS
14 COURT TO ORDER MARILOU BOTELHO TO PROVIDE SWORN AFFIDAVIT DIRECTLY
15 TO THE JUDGE IN THIS CASE (NOT POLAHA). BOTELHO ALSO DEMANDS THAT THIS
16 BE PROSECUTED. THERE WERE 5 OR 6 PEOPLE THERE, IT STINKS OF COLLUSION,
17 CONSPIRACY, THREATS, COERSION, UNDER THE COLOR OF LAW.

18 THESE VERY RECENT REVELATIONS TO BOTELHO, BY MARILOU BOTELHO,
19 BRINGS THESE INSTANT FACTS TO LIGHT.

20 (1) THAT BOTELHO'S WIFE WAS FORCED TO CONSENT TO VOLUNTARY GATHERING
21 OF D.N.A. TO USE AGAINST HER HUSBAND.

22 (2) THAT W.C.S.O. WILLFULLY EXCEEDED THE SCOPE OF THE SEARCH WARRENT!

23 (3) THAT W.C.S.O. VIOLATED PROCEDURE(S) I.E. NRS 179.075 EXECUTION AND
24 RETURN OF WARRANT WITH INVENTORY. THE COP WOULD NOT LET MARILOU READ
25 OR HAVE COPY OF WARRENT UNTIL SEARCH WAS COMPLETED AND NO
26 AFFIDAVIT CONTAINING PROBABLE CAUSE STATEMENT ^{WAS ATTACHED} TO THE SEARCH WARRANT.
27 SEE STATE V. ALLEN, 60 P.3d 475 (NV 2002). ALSO, MARILOU WAS [NOT] GIVEN A
28 COPY OF INVENTORY TAKEN FROM THE PREMISES.

(4) MARILOU STATED THAT W.C.S.O. TOOK BOTELHO'S SMITH VALLEY VOLUNTEER FIRE DEPARTMENT UNIFORM SHIRT, WHICH INCLUDED HIS NAME PLATE, HIS E.M.T. GOLD PINS AND HIS S.V.V.F.D. BADGE WITH HIS LAST NAME AND BADGE NUMBER ON IT. THESE WERE ALL STILL PINNED ON HIS FIRE DEPT. SHIRT. IT WAS TAKEN BUT, IN ADDITION TO MARILOU NOT GETTING AN INVENTORY COPY OF ITEMS SEIZED, BOTELHO CHECKED RETURN TO DAYTON JUSTICE COURT AND IT DOES "NOT" LIST THE MISSING ITEM. FURTHERMORE, IT WAS NOT LISTED ON EVIDENCE SHEET RETURNED TO W.C. FORENSIC DEPT., FURTHER, THE CHAIN OF CUSTODY IS NON-EXISTANT (IMAGINE THAT).

(5) THAT W.C.S.O. VIOLATED NRS. 179.045, ISSUANCE AND CONTENTS (SEARCH WARRENT) (a) TAKING FIRE DEPT. SHIRT, NOT LISTING IT IN RETURN, NOR EVIDENCE SHEET.

(b) BY EXCEEDING SCOPE OF WARRENT WHEN BY ACT OF THREAT AND COERCION, FORCED BOTELHO'S WIFE TO GIVE VOLUNTARY CONSENT TO COLLECT D.N.A. OF HER TWO BABY BOYS, KNOWING THEY CORRUPTED THE PROCESS AND WILLFULLY BROKE THE LAW, AND VIOLATED ARTICLE I, SECTION 18, OF NV. CONSTITUTION, AS TO PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE, AND THE 4TH AMENDMENT.

(c) BY VIOLATING MARILOU AND LANCE AND TODD BOTELHO'S CONSTITUTIONAL RIGHTS GUARANTEED BY NEV. AND UNITED STATES CONSTITUTION(S).

(d) BY VIOLATING THEIR OFFICIAL SWORN OATH TO UPHOLD THE LAWS OF THE STATE OF NEVADA, AND NV. AND U.S. CONSTITUTION(S).

(6) BY VIOLATING AND COMMITTING CRIMES OF THREATS; COERCION; COLLUSION; CONSPIRACY; INTIMIDATION; FRAUD; AND SEE 18 USC 241 AND 242; 42 USC 1985 AND 1986.

(7) BY VIOLATING NRS. 179.105. RETENTION OF PROPERTY TAKEN ON WARRANT I.E., FIRE DEPT. SHIRT AND D.N.A. TAKEN FROM MARILOU AND 2 BOYS. IT STATES "THE MAGISTRATE SHALL CAUSE IT TO BE RESTORED TO THE PERSON FROM WHOM IT WAS TAKEN.

(8) PROPERTY ILLEGALLY SEIZED WAS NEVER RETURNED TO BOTELHO, BOTELHO'S WIFE. BOTELHO'S PROPERTY WAS [N]EVER RETURNED. (EMPHASIS ADDED)

1 (9) CLEARLY VIOLATED NRS. 205.390, OBTAINING SIGNATURE BY FALSE PRETENSE,
2 TO OBTAIN D.N.A. A CLASS 'D' FELONY. (EMPHASIS ADDED)

3 (10) VIOLATED 18 USC 9, FRAUD UPON THE COURT; 18 USC 35, IMPARTING OR
4 CONVEYING FALSE INFORMATION; 18 USC 1501, OBSTRUCTION OF JUSTICE; 18 USC 1621,
5 PERJURY; 18 USC 1623, FALSE DECLARATION BEFORE GRAND JURY OR COURT; 18 USC
6 1622, SUBORNATION OF PERJURY, WHOEVER PROCURES ANOTHER TO COMMIT
7 PERJURY [FORCED MARILOU TO SIGN VOLUNTARY & CONSENT FORM ALLOWING
8 SEIZURE OF D.N.A. FROM HER AND KIDS]; 18 USC 2234, AUTHORITY EXCEEDED IN
9 EXECUTING WARRANT. (EMPHASIS ADDED).

10 (11) VIOLATED NRS 199.130, FALSE AFFIDAVIT OR COMPLAINT TO EFFECT ARREST
11 OR SEARCH (APPLICABLE TO EVERY AFFIDAVIT AS USED IN THIS CASE). SEE COURT
12 RECORD, AS USED TO SUPPORT, FOR FRAUDULENT SUBPOENA, ALL ALLEGATIONS
13 AGAINST BOTELHO, TO SECURE SEIZURE ORDER, ARREST WARRANT, SEARCH WARRANT,
14 GRAND JURY, PROBABLE CAUSE, etc...

15 (12) VIOLATED NRS 199.145, STATEMENT MADE IN DECLARATION UNDER PENALTY OF
16 PERJURY, SEE ABOVE (11) AND SEE SUBSECTIONS (1) AND (2)

17 (13) VIOLATED NRS 199.150, ATTEMPT TO SUBORN PERJURY (BY PUBLIC OFFICIALS)
18 AS DONE TO MARILOU BOTELHO TO PROCURE SIGNATURE OF CONSENT AND D.N.A.

19 (14) VIOLATED NRS 199.200, STATEMENT OF WHAT ONE DOES NOT KNOW TO BE
20 TRUE, I.E. AFFIDAVITS, SEE (11). SEE SIRAGUSA V. BROWN, 971 P2d 801 (NV 1998)

21 (15) VIOLATED NRS 199.210, OFFERING FALSE EVIDENCE (FICTITIOUS SUBPOENA)

22 (16) VIOLATED NRS 199.220, DESTROYING EVIDENCE, ALTER, ERASE, CONCEAL,
23 I.E. RECORDS ALTERED IN ILLEGAL SEIZURE PURSUANT TO FRAUDULENT SUBPOENA,
24 SEE HEREIN. EXHIBITS (2) AND (3).

25 (17) VIOLATED NRS 199.450, PEACE OFFICER EXCEEDING AUTHORITY IN
26 EXECUTION OF SEARCH WARRANT, SHALL WILLFULLY EXCEED HIS AUTHORITY,
27 OR EXERCISE IT WITH UNNECESSARY SEVERITY (THREAT TO MRS. BOTELHO,
28 TO FORCE HER TO VOLUNTARILY SIGN AUTHORIZATION TO COLLECT D.N.A.).

1 (18) VIOLATED NRS 199.480, CONSPIRACY (ILLEGAL COLLECTION OF D.N.A.).

2 (19) VIOLATED NRS 199.340, CRIMINAL CONTEMPT (4) WILLFUL DIS-
3 OBEDIENCE TO LAWFUL PROCESS OR MANDATE OF COURT (EXCEEDING
4 SEARCH WARRANT) (EMPHASIS ADDED).

5 SEE U.S. V. SNOW, 919 F2d 1458 (10th 1990) WHEN LAW ENFORCEMENT OFFICER
6 GROSSLY EXCEEDS SCOPE OF SEARCH WARRANT, SUPPRESSION OF ALL
7 EVIDENCE UNDER THAT WARRANT IS REQUIRED (EMPHASIS ADDED).

8 MCNABB V. U.S., 318 US 332, 63 S. CT. 608, HELD, "A CONVICTION RESTING ON
9 EVIDENCE SECURED THROUGH SUCH FLAGRANT DISREGARD OF THE PROCEDURE
10 WHICH CONGRESS HAS COMMANDED, CANNOT BE ALLOWED TO STAND WITHOUT
11 MAKING THE COURTS THEMSELVES ACCOMPLICES IN WILLFUL DISOBEDIENCE
12 OF THE LAW." 318 US AT 345, EVEN LESS, SHOULD THE FEDERAL COURTS BE
13 ACCOMPLICES IN THE WILLFUL DISOBEDIENCE OF THE CONSTITUTION THEY ARE
14 SWORN TO UPHOLD.

15 SEE U.S. V. TODD, 963 F2d 207 (8th 1992), FLORIDA V. BOSTIC, 501 U.S. 429, 111 S. CT.
16 2382 (1991); U.S. V. CHILDS, 994 F2d 491 (9th 1991), AS LONG AS THE POLICE DO [NOT]
17 CONVEY A MESSAGE THAT COMPLIANCE WITH THEIR REQUESTS IS REQUIRED, THEY CAN
18 ASK QUESTIONS, REQUEST TO SEARCH AND REQUEST IDENTIFICATION. [NOT DONE]
19 U.S. V. FOSTER, 100 F3d 846 (10th 1996) EVEN EVIDENCE WHICH IS PROPERLY
20 SEIZED PURSUANT TO A WARRANT MUST BE SUPPRESSED IF OFFICERS EXECUTING
21 WARRANT EXHIBIT "FLAGRANT DISREGARD" FOR ITS TERMS.

22 "FRUITS OF POISONOUS TREE" DOCTRINE, EXCLUDES ALL EVIDENCE DERIVED
23 FROM INFORMATION GAINED IN AN ILLEGAL SEARCH." 43 A.L.R. 385.; U.S. V.
24 BOONE, SUPRA.; AND U.S. V. WATSON, SUPRA.

25 IN W.C.S.O. DET. CARRY'S AFFIDAVIT IN SUPPORT OF SEARCH WARRANT, HE
26 LEFT OUT HOW W.C.S.O. OBTAINED BOTELHO'S INFORMATION AND IDENTITY AS A
27 RESULT OF SUBPOENA AND THAT IT WAS ILLEGALLY SEIZED. WHETHER
28 PROBABLE CAUSE IS LACKING BECAUSE OF ALLEGED MISSTATEMENTS OR OMISSIONS

1 IN THE SUPPORTING AFFIDAVIT IS REVIEWED DE NOVO, U.S. V. HERNANDEZ,
2 937 F2d 1490, 1494 (9th 1991).

3 KATZ V. U.S., 389 U.S. 347, 357, 88 S. CT. 507, 514 (1967) IT IS AXIOMATIC
4 THAT "SEARCHES CONDUCTED OUTSIDE JUDICIAL PROCESS, WITHOUT PRIOR
5 APPROVAL OF JUDGE OR MAGISTRATE, ARE PER SE UNREASONABLE UNDER THE
6 4TH AMENDMENT, SUBJECT ONLY TO A FEW SPECIFICALLY ESTABLISHED AND
7 WELL-DELINEATED EXCEPTION."

8 AND SEE, U.S. V. TAHERI, 649 F2d 598, 600-01 (9th 1981); AND U.S. V. NELSON,
9 459 F2d 884, 888-89 (6th 1972), TURN ON DETERMINATION THAT THERE WAS NOT
10 SUFFICIENT "LEGALLY-OBTAINED" EVIDENCE TO SUPPORT A FINDING OF PROBABLE
11 CAUSE. (EMPHASIS ADDED).

12 U.S. V. HINTON, 218 F3d 910 (8th 2000); U.S. V. SANDERS, 211 F3d 711 (2nd 2000); KNOX V.
13 JOHNSON, 224 F3d 470 (5th 2000); FORBES V. NAPOLITANO, 236 F3d 1009 (9th 2000); PAYLIK
14 V. WOOD, 237 F3d 1054 (9th 2001); RUCKER V. DAVIS, 237 F3d 1113 (9th 2001); PHILLIPS V.
15 WOODFORD, 257 F3d 966 (9th 2001); WILSON V. LAWRENCE, 260 F3d 946 (8th 2001)
16 IF OFFICERS USE FALSE EVIDENCE, INCLUDING FALSE TESTIMONY, TO SECURE
17 A CONVICTION, THE DEFENDANTS DUE PROCESS RIGHTS ARE VIOLATED.

18 SEE TERRY V. OHIO, 392 U.S. 1, 17-18 (1968) "THIS COURT HAS HELD IN THE PAST
19 THAT A SEARCH WHICH IS REASONABLE AT ITS INCEPTION MAY VIOLATE THE 4TH
20 AMENDMENT BY VIRTUE OF ITS INTOLERABLE INTENSITY AND SCOPE." Id AT 28-29;
21 U.S. V. RETTING, 589 F2d 418, 423 (9th 1978); U.S. V. CLARK, 531 F2d 928, 931 (8th 1976).
22 WHEN INVESTIGATORS FAIL TO LIMIT THEMSELVES TO THE PARTICULARS IN THE WARRANT,
23 BOTH THE PARTICULARITY REQUIREMENT AND THE PROBABLE CAUSE REQUIREMENT
24 ARE DRAINED OF ALL SIGNIFICANCE AS RESTRAINING MECHANISMS, AND THE WARRANT
25 LIMITATION BECOMES A PRACTICAL NULLITY. OBEDIENCE TO THE PARTICULARITY
26 REQUIREMENT BOTH IN DRAFTING AND EXECUTING A SEARCH WARRANT IS
27 THEREFORE ESSENTIAL TO PROTECT AGAINST THE CENTURIES-OLD FEAR OF
28 GENERAL SEARCHES AND SEIZURES.

1 SEE NRS 199.490, COVERT ACT NOT NECESSARY (CONSPIRACY)
2 THE OFFENSE OF CONCEALING A FELONY COMMITTED BY ANOTHER, BUT WITHOUT
3 SUCH PREVIOUS CONCERT OR SUBSEQUENT ASSISTANCE TO THE FELON AS WOULD
4 MAKE THE PARTY CONCEALING AN ACCESSORY BEFORE OR AFTER THE FACT. ELEMENTS
5 OF THE CRIME ARE THE PRINCIPAL COMMITTED AND COMPLETED THE FELONY ALLEGED THAT
6 THE DEFENDANT FAILED TO NOTIFY AUTHORITIES, AND THE DEFENDANT TOOK AN
7 AFFIRMATIVE STEP TO CONCEAL THE CRIME. SEE U.S. V. CIAMBRONE, 750 F2d 1416, 1417;
8 U.S. V. VAGHELA, 169 F3d 729; U.S. V. KANCHANALAK, 37 F.SUPP2d 115, WHOEVER, HAVING
9 KNOWLEDGE OF THE ACTUAL COMMISSION OF A FELONY, AS SOON AS POSSIBLE, MAKE
10 KNOWN THE SAME TO SOME JUDGE OR OTHER PERSON IN CIVIL OR MILITARY AUTHORITY
11 UNDER THE UNITED STATES IS GUILTY OF THE FEDERAL CRIME OF "MISPRISON OF
12 FELONY", 18 USC 4, SEE U.S. V. PERLSTEIN, 136 F2d 789, 798, SEE ALSO "OBSTRUCTION
13 OF JUSTICE AND SUBORNATION OF PERJURY TO THE U.S. CONSTITUTION.
14 VIOLATED NRS 22.010, ACTS OR OMISSIONS CONSTITUTING CONTEMPT.
15 (B) DISOBEDIENCE OR RESISTANCE TO ANY LAWFUL WRIT, ORDER, RULE OR
16 PROCESS ISSUED BY THE COURT OR JUDGE AT CHAMBERS (SEE SEARCH WARRANT)
17 (7) ABUSING THE PROCESS OR PROCEEDINGS OF THE COURT OR FALSELY
18 PRETENDING TO ACT UNDER THE AUTHORITY OF AN ORDER OR PROCESS OF COURT.
19 SEE SEARCH WARRANT IN COURT RECORD AND EXHIBIT 1, HEREIN
20 U.C.S.O. VIOLATED NRS 199.181, SUBORN TO PERJURY BY POLICE OFFICIALS,
21 TOLD THAT THIS STATUTE DOES NOT EXIST, UNABLE TO CONFIRM. WHY IS THAT?
22 PURSUANT TO NRS 197.200, THE COPS COMMITTED OPPRESSION UNDER THE
23 COLOR OF OFFICE, SEE (1)(a)(b)(d) (SEE SEARCH WARRANT IN COURT RECORD)
24 SEE NRS 197.210, FRAUDULENT APPROPRIATION OF PROPERTY OR MONEY.
25 WHEREIN THE COPS, UNDER THE GUISE OF MARILOU BOTELHO'S ^{THREATENED} ARREST AND
26 SEIZURE OF TWO BABY BOYS, FRAUDULENTLY OBTAINED SIGNATURE GIVING
27 VOLUNTARY CONSENT FOR COLLECTION OF D.N.A, WHICH DIRECTLY LED TO
28 IDENTIFICATION OF BOTELHO AS SUSPECT, HIS ARREST AND CONVICTION.
(SEE THEREIN, SEARCH WARRANT)

1 SEE ALSO NRS 281.360, FAILURE BY PUBLIC OFFICIAL OR EMPLOYEE
 2 TO PERFORM DUTY (EXHIBITS 1, 2, 3, 4, HEREIN). AND SEE EXHIBIT 5 [OBSTRUCTION]
 3 THE W.C.S.O. AND LYON COUNTY SHERIFFS OFFICE WILLFULLY VIOLATED 42 USC
 4 1985 AND 1986, CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS. SEE U.S. V.
 5 STRAWBERRY, 963 F2d 1323 (10TH 1992); U.S. V. CLARK, 732 F2d 1536 (11TH 1984); HOBSON V.
 6 WILSON, 737 F2d 1 (D.C. CIR. 1984), U.S. V. HILL, 953 F2d 452 (9TH 1990); AND SCOTT V.
 7 ROSS, 140 F3d 1275 (9TH 1998). WHEN THEY COERCED AND THREATENED MARILOU
 8 BOTELHO INTO "VOLUNTARILY" CONSENTING OF DNA SEIZURE DURING THEIR
 9 ILLEGAL SEARCH. ALSO VIOLATING 18 USC 241, CONSPIRACY AGAINST RIGHTS,
 10 TO INTURE, OPPRESS, THREATEN OR INTIMIDATE AND 18 USC 242, DEPRIVATION
 11 OF RIGHTS UNDER THE COLOR OF LAW. SEE SEARCH WARRANT IN COURT RECORD.
 12 UNDER PINKERTON V. U.S., 328 US 640, 66 S. CT. 1180 (1946) A CONSPIRATOR IS
 13 "CRIMINALLY LIABLE FOR THE SUBSTANTIVE OFFENSES COMMITTED BY A CO-CONSPIRATOR
 14 WHEN THEY ARE REASONABLY FORSEEABLE AND COMMITTED IN FURTHERANCE OF THE
 15 CONSPIRACY." U.S. V. LONG, 301 F3d 1095, 1103 (9TH 1992) (CITING PINKERTON, 328 US
 16 AT 645-648).
 17 BOTELHO STRONGLY ASSERTS THAT THE PROOF IS CLEAR, THESE ARE NOT SIMPLE,
 18 BARE AND NAKED ALLEGATIONS OF WHICH THIS COURT CAN SWEEP UNDER THE RUG
 19 AS IT HAS DONE WITH THE REST OF THIS CASE! THESE ARE SERIOUS CRIMINAL
 20 VIOLATIONS KNOWN IN PART BY, AND PERPETRATED BY THE POLICE, THE INVALID
 21 OFFICE HOLDER - W.C. DISTRICT ATTORNEY AND THIS COURT.
 22 (III) NEWLY DISCOVERED EVIDENCE; INTERVIEW WITH MELISSA BOTELHO,
 23 12-1-2006. A CERTIFIED TRANSCRIPT PRESENTED TO THIS COURT BY PAMELA D.
 24 LONGONI. WHY WAS IT PRESENTED TO THIS COURT?
 25 BOTELHO MUST ASSUME THAT THIS INTERVIEW WAS DONE BY HIS PATHETIC,
 26 DECEITFUL ATTORNEY, MARILOU WILSON (SHAM ATTORNEY) AS THIS DOCUMENT IS
 27 DEVOID OF ANY INFORMATION CONCERNING WHO DID THE INTERVIEW AND WHOM
 28 ELSE THIS DOCUMENT [M]AY HAVE BEEN FORWARDED TO (I.E. INVALID D.A. & HIS OFFICE).

1 BOTELHO STRONGLY ACCUSES THE STATE WITH OBSTRUCTION OF JUSTICE,
 2 18 USC 1501; 18 USC 241, 242, CONSPIRACY; 28 USC 1985 AND 1986, PETITIONER
 3 DEMANDS A "REAL" DEPT. OF JUSTICE INVESTIGATION AS THE W.C.S.O, THE STATE
 4 AND AT TIMES, EVEN THIS COURT HAS CONSPIRED TO BREAK THE LAW, DEPRIVE,
 5 OPPRESS, DELAY, HINDER, BOTELHO'S CASE FROM ITS INCEPTION AND HIS CONSTITUTIONAL
 6 RIGHTS, INCLUDING THE 1ST, 4TH, 5TH, 6TH, 8TH, 9TH AND 14TH AMENDMENTS GUARANTEED BY
 7 THE NEVADA AND UNITED STATES CONSTITUTION(S). BOTH ARE [STILL] VALID EVEN IF
 8 THIS COURT DOES "NOT" LIKE IT. (EMPHASIS ADDED).

9 SEE ESPECIALLY, EXHIBIT 5, HEREIN, SEE PAGE 4, LINES 11-17, SPECIFICALLY,
 10 WHEREIN THE PERSON INTERVIEWING THE VERY UNTRUSTWORTHY [A FACT] EX-
 11 WIFE MELISSA BOTELHO IS ASKED "ARE YOU FOR HIM OR AGAINST HIM", AND TELLS
 12 MELISSA, WE ARE WORKING FOR HIM. HE'S FILED A PETITION SAYING THAT HIS LAWYER
 13 WAS INEFFECTIVE. SO WE ARE WORKING ON THAT." NO THEY DID NOT (EMPHASIS ADDED)
 14 MELISSA SAYS "IT WASN'T INEFFECTIVE. HE DIDN'T WANT ME TO GO TO COURT AND
 15 TESTIFY. THAT'S THE REASON WHY HE PLEAD." NOT TRUE!

16 THAT IS A LIE, BOTELHO TRIED TO WITHDRAW HIS GUILTY PLEA BUT HIS COUNSEL
 17 WOULD NOT DO IT, THIS EVEN PRIOR TO SENTENCING. WHEN THE BIASED JUDGE
 18 TOLD THE STATE HE WOULD ALLOW THE LYING DETECTIVE TO BRING MELISSA BOTELHO'S
 19 ALLEGED STATEMENT IN BY HEARSAY AFTER CALLING THE ALLEGED STATEMENT AS
 20 A SPOUSAL PRIVILEGE AND THEN CIRCUMVENTING THAT PRIVILEGE.

21 ON LINE 15, MELISSA WAS ASKED, "NOW, MR. SULLIVAN (BOTELHO'S COMPLICITIOUS
 22 TRIAL ATTORNEY) SAID HE DIDN'T WANT YOU TO COME TO COURT?" BOTELHO DID
 23 TELL HIS LYING ATTORNEY BEFORE SENTENCING THAT HE WANTED TO SEE THAT
 24 LYING BITCH ON THE STAND."

25 LINE 16, CLEARLY PROVES OBSTRUCTION OF JUSTICE! BY THE STATE.
 26 MELISSA CLEARLY STATES "YEAH. THAT'S EXACTLY WHAT THE DISTRICT ATTORNEY
 27 TOLD ME." AND THE INTERVIEWER SAYS ON LINE 17 "OKAY, THAT'S INTERESTING."
 28 THIS WAS CLEAR AND OBVIOUS WITNESS TAMPERING, SEE NRS. 199.230,

1 PREVENTING/DISUADING PERSON FROM TESTIFYING OR PRODUCING EVIDENCE.
 2 SINCE THIS COURT HAS IGNORED THE ACCUSATIONS OF FACT FROM THE START OF THIS
 3 CASE, BY PETITIONER, THIS COURT IS COMPLICIT. THE TAUNT HAS CAUSED PREJUDICIAL
 4 AND EGBREGIOUS, IRREPARABLE HARM TO BOTELHO. (EMPHASIS STRONGLY ADDED)
 5 BOTELHO'S APPELLATE COUNSEL, MARILLO WILSON, TOOK THIS STATEMENT FROM
 6 BOTELHO'S EX-WIFE, MELISSA BOTELHO. BOTELHO'S COUNSEL WAS THUS, CLEARLY
 7 APPRISED OF THE FACT THAT THE DISTRICT ATTORNEY INTERFERED WITH A WITNESS
 8 WHO SHOULD HAVE BEEN THERE. MELISSA WAS THE STATES WITNESS, BOTELHO
 9 WOULD HAVE PROVEN HER ALLEGED STATEMENTS AS FALSE AND WAS DENIED
 10 DUE PROCESS WHEN DET. HERRERA WAS ALLOWED (ENCOURAGED) TO BRING IN HER
 11 STORY AS HERESAY AND BOTELHO WAS DENIED THE OPPORTUNITY TO CROSS-EXAMINE
 12 THE LYING EX-WIFE, VIOLATING HIS RIGHT TO CROSS-EXAMINE HER.
 13 MARILLO WILSON HAD A MORAL, ETHICAL AND LEGAL OBLIGATION TO REPORT
 14 THIS TO THE AUTHORITIES, THIS COURT, AND IN BOTELHO'S HABEAS PETITION, THIS
 15 DISTURBING FACT. MELISSA WAS THE STATES OWN WITNESS AND SHE [C]LEARLY
 16 THREW THEM UNDER THE BUS. NOW MS. WILSON IS GUILTY OF A CRIME, AS WELL.
 17 IT WAS A FACT THAT DET. HERRERA LIED ON THE STAND REGARDING THE
 18 HERESAY THAT JUDGE POLAHA NOT ONLY ALLOWED BUT ENCOURAGED (SEE BAD
 19 ACT HEARING, IN THE COURT RECORD), AND THE STATE WITH W.C.S.O. DET. HERRERA
 20 ORCHISTRATED THE EVENT TO JUSTIFY SENTENCING BOTELHO, IN THE MANNER THE
 21 ONCE HONORABLE JUDGE POLAHA SENTENCED HIM. SEE NRS 199.120¹²⁰ PERJURY
 22 AND SUBORNATION OF PERJURY BY PERSON IN A JUDICIAL PROCEEDING.⁽¹⁾
 23 THE STATE, THIS COURT, NOR THE LAZY, LYING PUBLIC DEFENDER HAD
 24 ~~PER~~ PERJURY CHARGES BROUGHT AGAINST DET. HERRERA, WHY IS THAT?
 25 BOTELHO ACCUSES THIS COURT OF DISREGARDING AND IGNORING THIS STATEMENT
 26 AS THIS CASE WOULD BE IN TROUBLE AND SO WOULD JUDGE POLAHA'S FELLOW
 27 STATE COURT OFFICERS, ATTORNEYS AND IN FACT, HIS FRIENDS. POLAHA HAD A
 28 DUTY TO ADDRESS THIS BUT AGAIN SHIRKED HIS DUTIES!

FOOTNOTE

(1) SEE DET. HERRERA,
 SENTENCING TRANSCRIPTS.

1 BOTELHO ASSERTS AND PROVES THAT THE W.C.S.O., THE STATE AND EVEN THIS
 2 COURT HAVE VIOLATED THE LAW TO PROTECT THEMSELVES. DET. HERERRA, FOR
 3 INSTANCE, IS ALSO GUILTY OF VIOLATING NRS 205.390, OBTAINING SIGNATURE BY
 4 FALSE PRETENSE, TO SUPPORT THE STATES AFFIDAVIT IN SUPPORT OF ARREST WARRANT,
 5 AND ALSO THE SEARCH WARRANT. W.C.S.O. DET. CARRY IS GUILTY OF NRS 205.390
 6 TO GET D.N.A. FROM BOTELHO'S WIFE AND LITTLE BOYS. DET. HERERRA FURTHER
 7 VIOLATED NRS 205.4605 BY INTENTIONALLY PUTTING BOTELHO'S ADDRESS AND
 8 HIS SOCIAL-SECURITY-NUMBER ON AN ATL (ATTEMPT TO LOCATE) NOTICE.
 9 THIS PUT HIS AND HIS WIFE'S CREDIT IN JEOPARDY AND FURTHER ENDANGERED
 10 BOTELHO'S WIFE AND VERY LITTLE BOYS BY TELLING EVERYONE WHERE THEY LIVED.

11 [REDACTED] CONCLUSION

12 BOTELHO HAS PROVEN BY CLEAR AND INDISPUTIBLE FACTS AND EVIDENCE AS
 13 DISCOVERED WHEN SPEAKING TO HIS WIFE IN JULY, 2015. BOTELHO SAID SOMETHING
 14 TO HIS WIFE, MARILOU BOTELHO, AND SHE MATTER OF FACTLY MENTIONED WHAT
 15 WAS DONE WHILE THE W.C.S.O. WAS SEARCHING THE HOUSE CONCERNING HOW
 16 IT CAME TO BE THAT THE W.C.S.O. OBTAINED THE D.N.A. (EMPHASIS ADDED)

17 BOTELHO ALSO, JUST BY CHANCE, WAS GOING THROUGH HIS CASE AND WAS
 18 TALKING TO ANOTHER INMATE. THIS INMATE ASKED ME ABOUT THE "SUBPOENA," SAYING
 19 IT WAS A FAKE, AND NOT VALID. THAT WAS JUNE 4, 2015. HOW WOULD BOTELHO
 20 HAVE KNOWN THIS SUBPOENA WAS A FICTICIOUS DOCUMENT, OTHERWISE?

21 BOTELHO HAS NOT ONLY PROVED THAT THE W.C.S.O. REPEATEDLY BROKE THE
 22 LAW FROM THE VERY BEGINNING OF PETITIONERS ^{CASE} BUT THAT THEY ALSO, REPEATEDLY
 23 VIOLATED BOTELHO'S CONSTITUTIONAL RIGHTS AND THOSE ALSO, OF HIS WIFE AND
 24 CHILDREN. (EMPHASIS STRONGLY ADDED).

25 BOTELHO HAS FURTHER PROVEN THE STATES COMPLICITY, BY ITS ARBITRARY
 26 AND CAPRICIOUS ACTIONS, BY BREAKING THE LAW, THEIR OATH, PROFESSIONAL
 27 RULES OF CONDUCT, PETITIONER CONSTITUTIONAL RIGHTS AND NCRP (NV. RULES
 28 OF CIVIL PROCEDURE), AND PERJURY.

FOOTNOTE

(1) IN REFERENCE TO SUBPOENA
 ALLEGEDLY ISSUED BY DET. HERERRA.

1 FURTHERMORE, BOTELHO, IN HIS MOTION TO STRIKE; HIS REPLY AND
2 OBJECTION TO OPPOSITION TO MOTION TO STRIKE; HIS WRIT OF MANDAMUS TO
3 CHIEF JUDGE HARDY AND HIS MOTION TO SHOW CAUSE, HAS CLEARLY PROVEN
4 AS A MATTER OF FACT, THAT THE STATE HAS, UNDER THE COLOR OF LAW, WITH
5 DELIBERATE INDIFFERENCE TO THE RULE OF LAW, ADMINISTRATION OF JUSTICE, AND
6 BOTELHO'S CONSTITUTIONAL RIGHTS, WILLFULLY VIOLATED EVERY ASPECT OF
7 THIS CASE FROM THE BEGINNING, ALONG WITH THE WILLING HELP OF PUBLIC
8 DEFENDERS SEAN SULLIVAN, MICHAEL SPECCIO AND MARILOU WILSON, APPELLATE
9 COUNSEL.

10 THIS COURT IGNORED BOTELHO'S CLAIMS IN HIS HABEAS, THEN GAVE HIM A SHAM
11 EVIDENTIARY HEARING, THEN BOTELHO WAS FURTHER VIOLATED BY THE NEVADA SUPREME
12 COURT, ULTIMATELY RESULTING IN THE STATE CRYING FOUL IN U.S. DISTRICT COURT.
13 AS A RESULT OF THE STATES ACTIONS, BOTELHO WAS TOLD TO COME BACK DOWN
14 TO STATE COURT AS SEEN IN EXHIBIT FILED WITH HABEAS CORPUS PETITION
15 ON 1-27-2010.

16 JUDGE POLAHA HAS WILLFULLY VIOLATED BAIL REQUIREMENTS, EX-PARTE PHONE
17 BAIL CONVERSATION AND BAIL INCREASE PRIOR TO EMERGENCY EX PARTE MOTION FILED
18 BY THE STATE, KNEW THAT BOTELHO WAS ASKED TO ATTEND AND HE AGREED TO GO TO HIS
19 GRAND JURY HEARING BUT WAS NOT ALLOWED TO ATTEND. THUS, BOTELHO'S RIGHTS WERE
20 VIOLATED WITHOUT CONSEQUENCE; ABUSED THIS AUTHORITY AND DISCRETION DURING
21 BAD ACTS HEARING, WOULD NOT RECUSE HIMSELF AFTER BEING ORALLY ASKED
22 TWICE TO DO SO IN TWO HEARINGS; WAS BIASED TO BOTELHO AT SENTENCING;
23 IGNORED PERJURY ON THE STAND AT SENTENCING BY W.C.S.O. DET. HERERRA,
24 MADE PREJUDICIAL UNTRUE, UNFOUNDED REMARKS ABOUT BOTELHO BEFORE
25 SENTENCING HIM, NOT ALLOWING BOTELHO'S FAMILY ON THE STAND DURING
26 MITIGATION, ONLY THE VICTIM AND FAMILY, POLAHA SENTENCED BOTELHO, THEN
27 AFTERWARDS CHANGED HIS SENTENCE IN THE JUDGMENT OF CONVICTION.
28 POLAHA, THEN FURTHER IGNORED NV. LAW AND JUDICIAL CANNONS WHEN

1 BOTELHO, IN PRO-SE, FILED HIS PETITION IN 2005-06 (HABEAS CORPUS), ALSO
 2 FILING MOTION TO GRANT IN FORMA PAUPERIS, MOTION FOR APPOINTMENT OF
 3 COUNSEL. POLAHA APPOINTED COUNSEL AND GRANTED IN FORMA PAUPERIS BUT AGAIN
 4 CHOSE TO HEAR HIS OWN RECUSAL MOTION FILED BY PETITIONER, WHEREIN POLAHA
 5 FOR A THIRD TIME, WOULD NOT RECUSE HIMSELF, STATING HE WAS NOT PROPERLY
 6 SERVED. HE WAS PROPERLY SERVED. (EMPHASIS ADDED)

7 POLAHA FLUTHER IGNORED BOTELHO'S PROVEN CLAIMS BUT CHOSE TO GRANT
 8 AN EVIDENTIARY HEARING ON A FRIVOLOUS CLAIM BOTELHOS COUNSEL HAD FILED
 9 IN SUPPLEMENTAL PETITION, NOT EVEN HIS COMPETENCY CLAIM OR ALTERED SENTENCE
 10 WAS ADDRESSED. BOTELHO TRIED TO SPEAK WHEN POLAHA ABRUPTLY ENDED THE
 11 HEARING BUT WAS TOLD TO SIT DOWN AND SHUT UP BECAUSE BOTELHO'S COUNSEL
 12 DID NOT PUT HIM ON THE STAND, BOTELHO HAD A CLEAR RIGHT OF DUE-PROCESS
 13 TO ADDRESS THE COURT BUT WAS DENIED BY POLAHA AND OF COURSE, POLAHA
 14 WOULD NOT ALLOW BOTELHO TO HAVE EVID. HEARING TRANSCRIPTS, ONLY
 15 THE MINUTES, BOTELHO FINALLY GOT TRANSCRIPTS FROM COUNSEL MUCH LATER,
 16 BUT STILL LEFT OUT THE PART WHEREIN BOTELHO TRIED TO SPEAK TO THE
 17 COURT, FURTHER VIOLATING HIS 1ST, 5TH, 9TH, 14TH AMENDMENT RIGHTS.

18 AS BOTELHO WAS FORCED TO RE-FILE HIS POST-CONVICTION HABEAS
 19 PETITION BECAUSE OF THE STATE AND THE NV. S. CT. ON 1-27-2010, BOTELHO
 20 ALSO FILED MOTION TO RECUSE POLAHA (FOR THE 4TH TIME) WITH AFFIDAVIT;
 21 MOTION FOR APPOINTMENT OF COUNSEL BECAUSE BOTELHO NEEDED COUNSEL EVEN
 22 MORE SO AS A RESULT AND MOTION FOR IN FORMA PAUPERIS. (EMPHASIS ADDED)

23 AS STATED IN BOTELHO'S MOTION TO STRIKE AND BY EXHIBITS PRESENTED
 24 THEREIN, BOTELHO HAD USED DUE DILIGENCE TO THE BEST OF HIS UNTRAINED
 25 IN THE LAW, PRO-SE, ABILITY. BOTELHO'S IN FORMA PAUPERIS WAS GRANTED AND
 26 THE COURT CLERK HAD A DUTY TO DOCKET ALL MOTIONS, ETC. FILED BY PRO-SE
 27 IN MATE. SEE BOWMAN V. 8TH JUD. DIST. CT. 728 P2d 433

28 AS THE STATE POINTS OUT IN ITS MOTION TO DISMISS, IT HAD BEEN MORE

1 THAN 5 YEARS SINCE PETITION AND (3) MOTIONS WERE FILED.
 2 THE STATE COMMITTED PERJURY AND ^{AND} FRAUD UPON THE COURT WITH THE
 3 FILING OF ITS MOTION TO DISMISS. THE STATE KNOWS THAT BOTELHO FILED
 4 (1) A MOTION CHALLENGING SUBJECT-MATTER JURISDICTION; (2) MOTION FOR
 5 JUDGMENT ON PLEADINGS; (3) WRIT OF MANDAMUS TO NV. SCT. TO COMPEL THIS
 6 COURT TO GRANT BOTELHOS RELIEF, (4) AND 60 (6). ALSO INCLUDED IN EXHIBIT
 7 (2) WAS THE LETTER TO COURT CLERK ASKING FOR STATUS CHECK AND FILED,
 8 STAMPED COPIES OF ALL MOTIONS AND PLEADINGS FILED. BOTELHO WAS NEVER ANSWERED.
 9 THE STATE FURTHER IGNORED, FAILED TO RESPOND TO THIS [INDISPUTABLE FACT].
 10 IN ITS OPPOSITION TO MOTION TO STRIKE.
 11 BOTELHO HAS TRIED REPEATEDLY AS A PRO SE LITIGANT IN THIS CASE, TO HAVE HIS
 12 DAY IN COURT. THE STATE ALSO HAS NOT PERFECTED ITS OFFICE, PURSUANT TO
 13 SHOW CAUSE MOTION FILED AGAIN IN THIS COURT.
 14 THE STATE VIOLATED STATE LAW, NEV. RULES OF CIVIL PROCEDURE, THE NEVADA
 15 AND U.S. CONSTITUTIONS AND PETITIONERS CONSTITUTIONAL RIGHT OF DUE PROCESS
 16 AND ACCESS TO THE COURT. THE STATE, AFTER BOTELHO HAD FILED HIS POST-
 17 CONVICTION PETITION, A TOTAL OF SIX MOTIONS AND A WRIT OF MANDAMUS TO
 18 COMPEL THIS COURT TO RULE AND A ~~RE~~ REQUEST FOR STATUS CHECK, OVER
 19 THE ENTIRETY OF THIS 5 1/2 YEAR DELAY, FINALLY CHOSE TO RESPOND AND TRY TO
 20 FINISH OFF BOTELHOS' CONSTITUTIONAL RIGHT OF ACCESS AND DUE PROCESS.
 21 THE STATE, PURSUANT TO NV. LAW AND NRCP, WAS AND IS PROCEDURALLY
 22 BARRIED FROM RESPONDING WHATSOEVER IN BOTELHOS CASE AS STATED
 23 CLEARLY IN BOTELHO'S MOTION TO ~~STRIKE~~ ^{STRIKE}, FILED 8-6, 2015; HIS REPLY AND
 24 OBJECTION, FILED 8-19, 2015; AND HIS MOTION TO SHOW CAUSE, FILED 8-17,
 25 2015. AND DUE TO THE GROSS MISCARRIAGE OF JUSTICE AND BOTELHO'S RIGHTS.
 26 FURTHERMORE, AS THIS NEW DISCOVERED EVIDENCE CLEARLY PROVES,
 27 THE WASHOE COUNTY SHERIFFS OFFICE, ESPECIALLY CRAIG CALLAHAN, CAPTION
 28 DETECTIVE DIVISION, DET. DAVID NIKOLEY, DET. HERERRA AND DET. CARRY,

1 KNOWINGLY AND WILLINGLY VIOLATED NEVADA AND FEDERAL LAW BY FRAUDULENTLY
2 ISSUING A FICTICIOUS SUBPOENA, WITHOUT FORCE AND EFFECT OF LAW, ON A
3 FISHING EXPEDITION TO QUICKLY GAIN INFORMATION TO USE IN ITS INVESTIGATION.
4 THE W.C.S.O. AND THE STATE THEN USED THIS ILLEGALLY SEIZED INFORMATION
5 TO SPECIFICALLY FOCUS IN ON BOTELHO. THESE ILLEGAL AND PREJUDICIAL ACTIONS
6 WERE USED AS PROBABLE CAUSE IN THE W.C.S.O. AFFIDAVIT OF DET. CARRY, IN
7 SUPPORT OF SEARCH WARRANT ISSUED BY DAYTON JUSTICE COURT, LYON COUNTY,
8 NEVADA. THE W.C.S.O. THEN FURTHER DISREGARDED THE SCOPE OF SEARCH
9 WARRANT BY THREATENING MARILOU BOTELHO WITH ARREST AND TAKING [OUR]
10 BOYS INTO CHILD PROTECTIVE SERVICES [IF] SHE DID NOT SIGN A WAIVER GIVING
11 THE W.C.S.O. PERMISSION TO SEIZE D.N.A. FROM OUR TWO BOYS AND ALSO WANTING TO
12 KNOW IF BOTH BOYS WERE PETITIONERS. MARILOU WAS SCARED TO DEATH AND FORCED
13 TO COMPLY OR PAY THE CONSEQUENCES.

14 TO FURTHER PROVE THIS POINT, SEE DETECTIVE CARRYS AFFIDAVIT IN SUPPORT
15 OF SEARCH WARRANT WHEREIN DET. CARRY CLEARLY STATES THAT MRS. BOTELHO
16 HAS BEEN UN-COOPERATIVE, YET SHE WILLINGLY AGREED TO GIVE CONSENT TO COLLECT
17 D.N.A. NOT A CHANCE! BESIDES, WHEN THE W.C.S.O. CAME TO THE HOUSE, THEY SAID
18 THEY HAD A WARRANT BUT WOULD NOT LET HER SEE IT UNTIL THEY WERE DONE, THEN
19 SHOWED IT AT HER AND WITHOUT AN INVENTORY/EVIDENCE SHEET SHOWING
20 ITEMS SEIZED. IT WASNT TIL AFTER THEY LEFT THAT MARILOU BOTELHO NOTICED
21 HER HUSBANDS FIRE DEPT. SHIRT WAS MISSING. THAT IS WHEN BOTELHO'S
22 WIFE SHARED THE SHIRT AND D.N.A. INFORMATION TO BOTELHO IN JULY, 2015,
23 WHEN HE WAS TELLING HER ABOUT THE FICTICIOUS SUBPOENA, THE W.C.S.O.
24 USED TO GAIN THE INFORMATION THAT DIRECTLY LED THE W.C.S.O. TO BOTELHO,
25 HIS HOME, HIS FAMILY, HIS CHILDREN. THEN DET. CARRY DID NOT PUT THE
26 FIRE DEPT. SHIRT ON EVIDENCE LOG SHEET, OR RETURN TO DAYTON JUSTICE COURT
27 JUDGE.

28 AFTER THE W.C. CRIME LAB MADE A MATCH FROM THE CHILDRENS DNA AND

1 BOTELHOS D.N.A. THE STATE USED THIS INFORMATION IN AFFIDAVIT FOR
 2 PROBABLE CAUSE ARREST WARRANT. ALSO IN THIS AFFIDAVIT, FORMER A.D.A.
 3 VILORIA, STATED THAT DET. HERRERA SERVED A SUBPOENA UPON VERIZON
 4 WIRELESS WHICH DIRECTLY LED TO SEARCH WARRANT, FAILED TO STATE THAT
 5 THE W.C.S.O. ILLEGALLY SEIZED D.N.A, WHICH DIRECTLY LED TO BOTELHO, TO
 6 PROCURE THE PROBABLE CAUSE ARREST WARRANT. THE STATE SAW THE EVIDENCE,
 7 KNOWING THAT DET. HERRERA DID [N]OT SERVE THE SUBPOENA, AND THAT
 8 SUBPOENA WAS INFACT FICTICIOUS, WITHOUT FORCE AND EFFECT OF LAW, ALSO
 9 THE FACT THAT NRS 193.340 WAS APPLICABLE TO THE USE OF INTERNET SERVICES
 10 INVOLVING COMPUTERS, NOT BOTELHOS' PHONE, ALSO KNOWING THE SCOPE OF
 11 SEARCH WARRANT WAS EXCEEDED, THAT CRIMES WERE PERPETRATED UPON BOTELHO,
 12 HIS WIFE AND KIDS BY THE ILLEGAL SEIZURE OF DNA DURING THE SEARCH UPON
 13 BOTELHOS HOME.

14 FURTHERMORE, THAT THE STATE SENT A SECOND [BOGUS?] SUBPOENA TO
 15 VERIZON WIRELESS AS SHOWN IN EXHIBIT 3, HEREIN. THE STATE DID NOT, NOR
 16 WILL NOT PROVIDE A COPY OF THIS "PHANTOM SUBPOENA" TO PETITIONER. I WONDER
 17 WHY?

18 AS FRUITS OF THE POISONOUS TREE DOCTRINE, ALL EVIDENCE DERIVED FROM
 19 INFORMATION GAINED IN AN ILLEGAL SEARCH ARE EXCLUDED. 42 ALR 385, AND
 20 SEE PG. 6, HEREIN, LINES 6-18. ANY AND [ALL] INFORMATION [D]ERIVED FROM
 21 THE UNLAWFUL SEARCH AS A RESULT OF THE FICTICIOUS, FRAUDULENT SUBPOENA,
 22 THE INFORMATION GAINED BY THE SEARCH WARRANT AND RESULTING PROBABLE
 23 CAUSE ARREST WARRANT, AS WELL AS ALL INFORMATION GAINED BY BOTELHOS
 24 ILLEGAL ARREST, STATEMENTS AND HIS "TRICKED INTO" GUILTY PLEA, ARE A
 25 DIRECT RESULT OF THE W.C.S.O.'S AND THE STATES ACTIONS IN THIS CASE.
 26 OBTAINED THROUGH FRAUDULENT, DECEITFUL MEANS, IN VIOLATION OF STATE AND
 27 FEDERAL LAW, THE NEVADA AND UNITED STATES CONSTITUTION(S) AND THE
 28 REPEATED VIOLATIONS OF BOTELHOS' CONSTITUTIONAL RIGHTS,

1 ALL THIS EVIDENCE AND ALL OTHER EVIDENCE DERIVED THROUGH THESE
 2 MEANS HAVE BEEN ILLEGALLY SEIZED AND MUST BE EXCLUDED. FURTHERMORE,
 3 THE INEVITABLE DISCOVERY DOCTRINE CANNOT APPLY TO THIS CASE. ALL EVIDENCE
 4 [M]UST BE SUPPRESSED. THESE MANY EGREGIOUS, CRIMINAL ACTIONS ARE
 5 [F]ATAL TO THIS CASE. SEE AT LINE 21, BELOW.

6 FURTHER STILL, THE U.C.S.D., THE STATE AND THIS COURT ARE GUILTY OF
 7 VIOLATING NRS 239.300, STEALING, ALTERING OR DEFACING RECORDS,
 8 DOCUMENTS OR INSTRUMENTS. SUBSECTION (1) SEE SUBPOENA, EXHIBITS (1), (2), (3),
 9 HEREIN, AFFIDAVIT IN SUPPORT OF SEARCH WARRANT AND AFFIDAVIT IN SUPPORT OF
 10 ARREST WARRANT, AND EVIDENCE SEIZED PURSUANT TO SUBPOENA AND SEARCH
 11 WARRANT; VIOLATING SUBSECTION (2), SEE ISSUANCE OF FRAUDULENT SUBPOENA,
 12 EXHIBIT 1, HEREIN, AFFIDAVITS IN SUPPORT OF SEARCH WARRANT AND ARREST
 13 WARRANT AND HOW EVIDENCE OF DNA WAS ACTUALLY, WAS SEIZED DURING
 14 SEARCH OF BOTELHO'S HOME; VIOLATING SUBSECTION (3) SEE EXHIBITS (1), (2), (3),
 15 AFFIDAVIT(S) IN SUPPORT OF SEARCH WARRANT AND ARREST WARRANT, THE RETURN
 16 IN SEARCH WARRANT; AND SEE BOTELHO'S JUDGEMENT OF CONVICTION, WHEREIN
 17 JUDGE POLAHA CHANGED BOTELHO'S SENTENCE AFTER SENTENCING. SEE SUBSECTION
 18 (4) THIS WAS INTENTIONAL AS BOTELHO ASSERTED THIS CLAIM IN HIS INITIAL HABEAS
 19 PETITION WHICH POLAHA DISMISSED AS WITHOUT MERIT. THIS IS A CLASS "C" FELONY
 20 AND BOTELHO DEMANDS PROSECUTION FOR THESE ACTIONS.

21 IN FRANKS V. DELAWARE, 438 U.S. 154, 98 S.Ct. 2674, WHEREIN THE SEARCH
 22 WARRANT HAD TO BE VOIDED AND THE FRUITS OF THE SEARCH EXCLUDED TO THE
 23 SAME EXTENT AS IF PROBABLE CAUSE WAS LACKING ON THE FACE OF THE AFFIDAVIT,
 24 AND SEE U.S. V. HALSEY, 257 F.Supp. 1002, 1005, WHEREIN JUDGE FRANKEL
 25 STATED "NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED
 26 BY OATH OR AFFIRMATION", FURTHER STATING "[W]HEN THE 4TH AMENDMENT
 27 DEMANDS A FACTUAL SHOWING SUFFICIENT TO COMPRISE PROBABLE CAUSE, 'THE
 28 OBVIOUS ASSUMPTION' IS THAT THERE WILL BE A TRUTHFUL SHOWING"
 (EMPHASIS ADDED).

1 (IV) BOTELHO FURTHER ASSERTS THAT HE WAS NEVER ARRAIGNED IN 48 TO 72
 2 HOURS PURSUANT TO STATE AND FEDERAL LAW. BOTELHO WAS ^{NEVER} ARRAIGNED AND
 3 READ THE CHARGES ARRESTED FOR. ITS A MATTER OF COURT RECORD, THAT
 4 THE COURT CLERK HAS NO RECORD OF JUSTICE COURT ARRAIGNMENT. THIS WAS
 5 A CRITICAL STAGE OF PROCEEDINGS AND WITHOUT ASKED FOR, COUNSEL.

6 BOTELHO FURTHER CHARGES THAT THIS COURT ACTED IN SEIZING BOTELHO'S
 7 CASE FROM JUSTICE COURT AND USING THE GRAND JURY TO INDICT HIM WITHOUT
 8 [A]CQUIRING SUBJECT-MATTER-JURISDICTION OVER THE CASE AND BOTELHO.
 9 BOTELHO WAS NEVER ARRAIGNED! [EMPHASIS ADDED] IN JUSTICE COURT. SEE
 10 THE COURT RECORD THEREIN. & "WAS NOT ARRAIGNED IN JUSTICE COURT."

11 BOTELHO CLAIMS THAT DISTRICT COURT JUDGE BLAHA DID [N]OT POSSESS
 12 LAWFUL JURISDICTION TO HEAR, DECIDE OR ADJUDICATE THE CAPTIONED CASE.
 13 IN VIOLATION OF NEVADA CONSTITUTION, ARTICLE 3, SECTION 1, AND ARTICLE
 14 6, SECTION 6, AND BOTELHO'S CONSTITUTIONAL RIGHTS TO THE 5TH AND 14TH
 15 AMENDMENTS UNDER THE UNITED STATES CONSTITUTION.

16 TO TAKE JURISDICTION WHERE IT CLEARLY DOES NOT EXIST IS USURPATION,
 17 AND NO ONE IS BOUND TO FOLLOW ACTS OF USURPATION SINCE THEY ARE VOID AND
 18 UN-ENFORCEABLE, SEE HOOVER V. BOLES, 346 F.2d 285, 286 (1965) "NO
 19 AUTHORITY NEED BE CITED FOR THE PROPOSITION THAT, WHEN A COURT LACKS
 20 SUBJECT-MATTER-JURISDICTION, ANY JUDGMENT RENDERED BY IT IS VOID, AND
 21 UN-ENFORCEABLE."

22 EAGERTON V. VALUATIONS, 698 F.2d 1115, 1118 (11TH 1983), "THAT SUBJECT-MATTER-
 23 JURISDICTION CANNOT BE CREATED OR WAIVED BY AGREEMENT OF THE PARTIES,"
 24 U.S. V. BROADWELL, 959 F.2d 242 (9TH 1992) "BECAUSE THE ERROR IS
 25 JURISDICTIONAL [THE DEFENDANT] NEED NOT SHOW HARM AND PREJUDICE,"
 26 SEE U.S. V. GRIFFEN, 303 US. 226-229, 82 L.ED. 764, 58 S.Ct. (T-601, 1938), LATIN
 27 AM. PROPERTY & CASUALTY INS. CO. V. HI-LIFT MARINA, INC., 887 F.2d 1447-1479
 28 (1TH 1989), AND KELLY V. U.S., 29 F.3d 1107 (7TH 1994) KELLY EXPOUNDS ON BROADWELL.

1 TO ASSUME JURISDICTION IN THIS CAUSE WOULD RESULT IN TREASON,
 2 "WE JUDGES HAVE NO MORE RIGHT TO DECLINE THE EXERCISE OF JURISDICTION
 3 WHICH IS GIVEN, THAN TO USURP THAT WHICH IS NOT GIVEN. THE ONE OR THE
 4 OTHER WOULD BE TREASON TO THE CONSTITUTION," CHIEF JUDGE (JUSTICE) MARSHALL,
 5 IN COWENS V. VIRGINIA, 6 WHEAT (19 U.S.) 264, 404 (1821).

6 COURTS ARE CONSTITUTED BY AUTHORITY AND THEY CANNOT GO BEYOND THAT
 7 POWER DELEGATED TO THEM. IF THEY ACT BEYOND THEIR AUTHORITY, AND CERTAINLY
 8 IN CONTRAVENTION OF IT, THEIR JUDGMENTS AND ORDERS ARE REGARDED AS
 9 NULLITIES; THEY ARE NOT VOIDABLE, BUT SIMPLY VOID, AND THIS EVEN PRIOR TO
 10 REVERSAL, "WILLIAMSON V. BERRY, 8 HOW. 945, 540 12 L ED 1170, 1189 (1850).

11 ONCE JURISDICTION IS CHALLENGED, THE COURT CANNOT PROCEED WHEN IT
 12 CLEARLY APPEARS THAT THE COURT LACKS JURISDICTION, THE COURT HAS NO
 13 AUTHORITY TO REACH MERITS, BUT RATHER, SHOULD DISMISS THE ACTION."
 14 MELLO V. U.S., 505 F2d 1026.

15 A JUDGMENT IS VOID, ONLY IF THE COURT THAT RENDERED JUDGMENT LACKED
 16 JURISDICTION OR IN CIRCUMSTANCES IN WHICH THE COURTS ACTION AMOUNTS TO A
 17 PLAIN USURPATION OF POWER CONSTITUTING A VIOLATION OF DUE PROCESS.
 18 U.S. V. BOSCH OLDSMOBILE, INC. 909 F2d 657, 661 (1ST 1990).

19 "A COURT CANNOT CONFER JURISDICTION WHERE NONE ^{EXISTED} EXISTED AND CANNOT
 20 MAKE VOID PROCEEDINGS VALID. IT IS CLEAR AND WELL SETTLED (ESTABLISHED)
 21 LAW THAT A VOID ORDER CAN BE CHALLENGED IN ANY COURT, "OLD WAYNE MUT. L.
 22 ASSN. V. McDONOUGH, 204 U.S. 8, 27 S Ct 236 (1907)." THE LAW IS WELL SETTLED THAT
 23 A VOID ORDER JUDGMENT IS VOID EVEN BEFORE REVERSAL, "VALLEY V. NORTHERN
 24 FIRE AND MARINE INSUR. CO., 254 U.S. 348, 41 S. Ct 116 (1920).

25 THERE IS NO DISCRETION TO IGNORE LACK OF JURISDICTION, JOYCE V. U.S., 474
 26 2d 15; KLEIN V. HARRIS, 667 F2d 274 (2ND 1981); LWIN V. I.N.S., 144 F3d 505 (7TH 1998).
 27 SEE ALSO N.R.C.P. 8(c)(2) LACK OF AFFIRMATIVE DEFENSE. "DEMURRERS ABOLISHED (1951).
 28 "JURISDICTION, ONCE CHALLENGED, CANNOT BE ASSUMED, IT MUST BE PROVEN TO

1 TO EXIST." STUCK V. MEDICAL EXAMINERS, 94 CA. 2d 751, 211 P2d 389; AND
 2 MAINE V. THIBOUTOT, 100 Sct 2502.
 3 SEE AMERICAN SURETY CO. V. BALDWIN, 287 U.S. 156, 166-167 (1932)
 4 (APPLYING RES JUDICATA TO ACTION SEEKING TO SET ASIDE JUDGMENT FOR
 5 "LACK OF" JURISDICTION) AND SEE BROWNING V. NAVARRO, 887 F2d 553, 558-
 6 59 (5th 1989) (RES JUDICATA APPLIES TO ACTIONS TO VOID JUDGMENT FOR FRAUD).
 7 IN A LONG AND VENERABLE LINE OF CASES, THE U.S. SUPREME COURT HAS
 8 HELD THAT, WITHOUT PROPER JURISDICTION, A COURT CANNOT PROCEED AT ALL, BUT
 9 CAN ONLY NOTE THE JURISDICTIONAL DEFECT AND DISMISS THE SUIT, SEE E.G.,
 10 CAPRON V. VAN NOORDEN, 2 CRANCH 126; ARIZONANS FOR OFFICIAL ENGLISH V. ARIZONA,
 11 520 U.S. 43, 117 Sct 1055 (1997); BELL V. HOOD, 327 U.S. 678, 66 Sct 773 (1946); NATIONAL
 12 RAILROAD PASSENGERS CORP. V. NATIONAL ASSN. OF RAILROAD PASSENGERS, 414 U.S.
 13 453, 465; NORTON V. MATHEWS, 427 U.S. 524, 531; SECRETARY OF NAVY V. AVERCH,
 14 418 U.S. 676, 678 (PER CURIAM); U.S. V. AUGENBUCK, 393 U.S. 348; PHILBROOK V.
 15 GLODETT, 421 U.S. 707, 721; AND CHANDLER V. JUDICIAL COUNSEL OF 10th CIRCUIT, 398
 16 U.S. 74, 86-88, DISTINGUISHED. FOR A COURT TO PRONOUNCE UPON A LAW'S
 17 MEANING OR CONSTITUTIONALITY WHEN IT HAS NO JURISDICTION TO DO SO IS, BY VERY
 18 DEFINITION, AN ULTRA VIRES ACT. PP. 8-17.
 19 IN STATE V. STEVENSON, 465 P2d 720, HELD - A COURT LACKS JURISDICTION TO
 20 ACT UPON OFFENSES WHICH ARE [NOT] BROUGHT BEFORE IT IN THE MANNER PROVIDED
 21 BY LAW.
 22 FOR THE COURT TO ACT WHEN IT HAS NO JURISDICTION TO DO SO IS FOR THE
 23 COURT TO ACT ULTRA VIRES, STEEL CO. V. CITIZENS FOR BETTER ENVIRONMENT,
 24 523 U.S. 83, 94, 118 Sct 1003; RUHRGAS V. MARATHON OIL, 526 U.S. 574, 583, 119
 25 S.Ct. 1563.
 26 CHAMBERS V. ARMONTROUT, 16 F3d 257, 260 (8th 1994) "RELIEF FROM
 27 VOID JUDGMENT IS [N]OT DISCRETIONARY." SEE U.S. V. PRIDGEDN, 14 Sct 746, 15345
 28 48 (1814) (INVALID INFORMATION OR INDICTMENT, SENTENCE IS VOID.

1 THERE CAN BE NO DISPUTE THAT LACK OF SUBJECT-MATTER-JURISDICTION
 2 RENDERS A JUDGMENT VOID. SEE, LAUER V. DIST. COURT, 140 P2d 953 (N.V. 1943),
 3 DANIELS V. DANIELS, 12 N.V. 118 (1887).

4 IT IS ELEMENTARY THAT THE JURISDICTION OF THE COURT OVER THE SUBJECT-
 5 MATTER OF THE ACTION IS THE MOST CRITICAL ASPECT OF THE COURTS AUTHORITY TO
 6 ACT. WITHOUT IT, THE COURT LACKS ANY POWER TO PROCEED. GALLOWAY V. TRUESDELL,
 7 83 N.V. 13, 422 P2d 237 (1967); ALUKHAN V. U.S., 200 F3d 732 (11th 2000)
 8 LOUISVILLE & NASHVILLE R. CO. V. MOTTLEY, 211 U.S. 149, 29 Sct 42 (1908)
 9 DEFECTS IN SUBJECT-MATTER-JURISDICTION REQUIRE CORRECTION REGARDLESS
 10 OF WHETHER THE ERROR WAS RAISED IN DISTRICT COURT.

11 IN REMAIN V. BELL INDUSTRIES, INC. 196 F3d 970, 976 (9th 1999) A COURT ABUSES
 12 ITS DISCRETION IF IT DOES NOT APPLY THE CORRECT LAW; AND SEE U.S. V. DOE,
 13 94 F3d 532, 536 (9th 1996).

14 THE QUESTION OF WHETHER THERE IS STANDING IS ONCE AGAIN
 15 NECESSARILY A FACTUAL ONE IN WHICH WE VIEW THE FACTS IN THE LIGHT MOST
 16 FAVORABLE TO THE PLAINTIFF. MARYLAND CASUALTY CO. V. PACIFIC COAL AND OIL,
 17 312 U.S. 270, 273, 61 Sct 510 (1941).

18 "DUE PROCESS PROTECTS CRIMINAL DEFENDANTS AGAINST PROSECUTORIAL OR
 19 JUDICIAL ACTIONS INTENDED AS PENALTY FOR DEFENDANTS EXERCISE OF CONSTITUTIONAL
 20 RIGHTS." U.S. V. NICHOLS, 937 F2d 1257 (7th 1991); BLAIR V. CRAWFORD, 275 F3d 1156
 21 (9th 2002); ROCHIN V. CALIF. 342 U.S. 165, 72 Sct 26 (1952); ZINERMAN V. BURCH, 444
 22 U.S. 113, 125-128, 110 S. CT. 975, 983-88 (1980); AND BLAYLOCK V. SCHWINDEN, 856 F2d 107
 23 (9th 1998)

24 BOTEHO HAS CLEARLY PROVEN THE FACTS AS PRESENTED IN HIS PLEADINGS,
 25 EXHIBITS HEREIN AND CONTAINED IN THE COURT RECORD. NOT BARE, NAKED ALLEGATIONS.

26 SEE STANDING COMMITTEE V. YAGMAN, 55 F3d 1430 (9th 1995) "TRUTH IS ABSOLUTE
 27 DEFENSE"; MORLEY V. WALKER, 175 F3d 756, 759 (9th 1999) "THE COURT TAKES AS TRUE,
 28 ALL ALLEGATIONS; COURTS ACCEPT AS TRUE ALL WELL-PLED FACTUAL ALLEGATIONS

1 , SET ASIDE LEGAL CONCLUSIONS, AND VERIFY THAT THE FACTUAL ALLEGATIONS
 2 STATE A PLAUSIBLE CLAIM FOR RELIEF. ASHCROFT V. IQBAL, 556 U.S. 662,
 3 679 (2009); THE COMPLAINT IS CONTRUED IN THE LIGHT MOST FAVORABLE TO THE
 4 PLAINTIFF, CHUBB CUSTOM INS. CO. V. SPACE SYSTEMS/LORAL, INC., 710 F.3d 946,
 5 956 (9th 2013)

6 AS WAS SAID IN ELKINS V. U.S., 364 U.S. AT 222, 80 S.Ct. AT 1447, THE CRIMINAL GOES
 7 FREE, IF HE MUST, BUT IT IS THE LAW THAT SETS HIM FREE. NOTHING CAN DESTROY A
 8 GOVERNMENT MORE QUICKLY THAN ITS FAILURE TO OBSERVE ITS OWN LAWS, OR WORSE,
 9 ITS DISREGARD OF THE CHARTER OF ITS OWN EXISTANCE. AS JUSTICE BRANDEIS,
 10 DISSENTING, SAID IN OLMSTEAD V. U.S., 277 U.S. 438, 485, 48 S.Ct. 564, 575 (1928) "IF
 11 GOVERNMENT BECOMES THE LAW BREAKER, IT BREEDS CONTEMPT FOR THE LAW, IT
 12 INVITES EVERY MAN TO BECOME A LAW UNTO HIMSELF, IT INVITES ANARCHY."
 13 ELKINS, 364 U.S. AT 218, 80 S.Ct. AT 1444.

14 RELIEF REQUIRED

15 BOTELHO CLEARLY PROVES WITH THIS NEWLY DISCOVERED EVIDENCE, THE
 16 EVIDENCE IN THE COURT RECORD, THE DISTRICT ATTORNEY'S LACK OF SUFFICIENT
 17 BOND, THE FRAUD, THEFT, CONSPIRACY, COLLUSION, THREATS, COERCION, PERJURY,
 18 FICTICIOUS DOCUMENTS, HIDING-CONCEALING FACTS OF CRIMES COMMITTED AGAINST
 19 BOTELHO AND HIS FAMILY, INTIMIDATION, TAMPERING, VIOLATIONS OF 18 USC 241 § 242,
 20 28 USC 1985 AND 1986, CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, UNDER COLOR OF
 21 STATE LAW, AND OBSTRUCTED JUSTICE! WILLFULLY VIOLATIONS OF 5th AND 14th AMENDMENTS. (1)

22 THE STATE WAS AND IS COMPLICIT, AS EXHIBITS HEREIN AND THE RECORD PROVE,
 23 THE LACK OF SUFFICIENT BOND TO ARGUE, CONSPIRACY, COLLUSION, PERJURY, 18 USC 241,
 24 242, 28 USC 1985, 1986, OBSTRUCTION OF JUSTICE (SEE EXHIBIT 5, HEREIN), WITNESS
 25 TAMPERING, CONCEALING CRIMES PERPETRATED BY WASHOE COUNTY SHERIFFS OFFICE,
 26 THE STATES KNOWING THAT BOTELHO HAD A RIGHT TO GO, AS ASKED, BUT WAS DENIED, (1)
 27 THE ILLEGAL EX PARTE BAIL INCREASE PRIOR TO EMERGENCY HEARING WITHOUT
 28 COUNSEL, THE ILLEGAL SEIZURE OF BOTELHO'S CASE FROM JUSTICE COURT BY

(1) BY W.C.S.O.

FOOTNOTE:

30

(2) TO GO TO GRAND JURY
PROCEEDING

1 BY POLAHA IN THE DISTRICT COURT, AS BOTELHO WAS [NOT] PROPERLY ARRAIGNED
 2 IN JUSTICE COURT AND DID NOT HAVE SUBJECT-MATTER-JURISDICTION OF CASE
 3 OR BOTELHO (EMPHASIS ADDED).

4 FURTHERMORE, BOTELHO PROPERLY BROUGHT POST-CONVICTION HABEAS
 5 BACK TO THIS COURT TO EXHAUST HIS STATE CREATED IMPEDIMENTS OF EXHAUSTION,
 6 BOTELHO FILED HIS PETITION AND TWO MOTIONS, A WEEK LATER, A THIRD MOTION AND
 7 FURTHER FILED CHALLENGE TO SUBJECT-MATTER-JURISDICTION, MOTION FOR JUDGMENT
 8 ON PLEADINGS AND MANDAMUS TO NV. S. CT. TO COMPEL THE COURT TO GRANT RELIEF
 9 AND ALSO A STATUS CHECK. BOTELHO PROVED HIS DUE DILIGENCE, EVEN WITHOUT
 10 COUNSEL. BOTELHO HAS PROVEN HIS DUE DILIGENCE IN THIS CASE. THE STATE
 11 AND THIS COURT CHOSE NOT TO RESPOND, HEAR OR DENY ANY OF BOTELHO'S
 12 MOTIONS AND PETITION SINCE 1-27-2010. (CONFESSION OF ERROR, 28 USC 2248)

13 IT IS THE STATE WHO DID NOT RESPOND PURSUANT TO NEV. LAW AND NRC.P.
 14 AND IGNORING THE OATH OF OFFICE, RULES OF PROFESSIONAL CONDUCT,
 15 NOT PERFECTING THE OFFICE, THE MANY CRIMINAL VIOLATIONS BY THE STATE,
 16 INCLUDING OBSTRUCTION OF JUSTICE, THE NV. AND U.S. CONSTITUTIONS AND
 17 PETITIONER CONSTITUTIONAL RIGHTS (I.E. 1ST, 5TH & 14) GUARANTEED BY THE
 18 CONSTITUTION(S). THE STATE HAS [N]EVER RESPONDED TO ANY OF BOTELHO'S
 19 PLEADINGS BEFORE THIS COURT OVER 5 1/2 YEARS. WILLFULLY VIOLATING BOTELHO'S
 20 DUE PROCESS AND CANNOT ARGUE NOW AS THEY ARE SO DOING. THE STATE IS
 21 SUBJECT TO CONFESSION OF ERROR, 28 USC 2248. FOR THE COURT TO INTENTIONALLY
 22 IGNORE THE PLEADINGS FILED IN THIS COURT WITH^{OUT} ORDERING A SINGLE RESPONSE,
 23 NO HEARINGS, NO RULINGS (EXCEPT TO GRANT IN FORMA PAUPERIS) AND TO DISREGARD
 24 THE OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING AS BOTELHO PROVES
 25 IN EXHIBIT 5, HEREIN, BY THE STATE IS HIGHLY PREJUDICIAL AND REPUGNANT.
 26 AS A RESULT OF THE MANY CRIMINAL VIOLATIONS, EGREGIOUS VIOLATIONS
 27 UNDER THE COLOR OF AUTHORITY, COLOR OF LAW, BOTH STATE AND FEDERAL,
 28 THE FRAUD, OPPRESSION, CONSPIRACY, OBSTRUCTION, THE ABUSE OF DISCRETION,

1 THE LACK OF SUBJECT-MATTER JURISDICTION OVER THE CASE AND THE
 2 PARTY [BOTELHO], THE REPEATED VIOLATIONS OF BOTELHOS CONSTITUTIONAL
 3 RIGHTS, THE REPEATED VIOLATIONS OF THE NEVADA AND UNITED STATES
 4 CONSTITUTION(S), USURPATION OF AUTHORITY, JUDICIAL TAMPERING, BY THE
 5 ABROGATION OF POWERS AND AUTHORITY, THE ARBITRARY AND CAPRICIOUS
 6 ACTIONS OF AND BY THE WASHOE COUNTY SHERIFFS OFFICE, THE STATE
 7 (THE IN VIOLATION OF LAW, RENDERING THE WASHOE COUNTY DISTRICT ATTORNEY
 8 AND HIS DEPUTIES, WITHOUT POWER TO ACT [SEE SHOW CAUSE MOTION], AND BY
 9 THIS COURT AND JUDGE POLAHA. (EMPHASIS ADDED)

10 BOTELHO HAS BEEN THE VICTIM OF AN OBSCURDLY GROSS MIS-CARRIAGE OF
 11 JUSTICE. BOTELHO HAS BEEN GROSSLY PREJUDICED AND HIS DUE PROCESS HAS
 12 BEEN [I]RRREPARABLY HARMED. THE COURT MUST ACT ACCORDINGLY, BY
 13 GRANTING BOTELHO HIS RELIEF IN ITS ENTIRETY!

14 AS SUCH, BOTELHO RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT
 15 VACATE BOTELHO'S JUDGMENT OF CONVICTION, ORDER VOID JUDGMENT WITH
 16 PREJUDICE, AND ORDER BOTELHOS IMMEDIATE AND UNCONDITIONAL RELEASE FROM
 17 CUSTODY FORTHWITH.

18 BOTELHO FURTHER DEMANDS THAT THE D.N.A. TAKEN FROM BOTELHO [A]ND
 19 HIS TWO CHILDREN, LANCE BOTELHO AND TODD BOTELHO, BE REMOVED FROM THE
 20 STATE AND FEDERAL DATABASE AS A RESULT OF THE ILLEGAL AND EGRESSIOUS
 21 ACTIONS RESULTING IN THE COLLECTION OF DNA AND ILLEGAL ~~RE~~ ARREST OF
 22 BOTELHO AND COLLECTION OF D.N.A. FROM BOTELHO AS A RESULT.

23 AFFIRMATION AND CERTIFICATE OF SERVICE
 24 I, MICHAEL T. BOTELHO, SWEAR UNDER THE PENALTY OF PERJURY, THAT ALL STATEMENTS
 25 ARE TRUE AND CORRECT, PUR. 28 USC 1746 AND 18 USC 1621. THIS DOCUMENT DOES NOT
 26 CONTAIN THE S.S.N. OF ANY PERSON.

27 I DO CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF MOTION TO VACATE J.O.C.
 28 TO THIS COURT AND TO ADDRESSED BELOW BY PLACING SAID MOTION IN THE
 U.S. MAIL VIA PRISON LAW LIBRARY STAFF, PUR. FRCP 5(b), MAIL BOX RULE, SEE
 HOUSTON V. LACKS, 487 U.S. 266 (1988). SEE BRASS SLIP NO. FOR O.A. 2134308 AND
 BRASS SLIP NO. 2134307 TO 2ND JUD. DIST. COURT.

DATED @ SEPT. 15 2015

TO:

WASHOE CO. DISTRICT ATTY OFFICE
 ATTN: CHRIS HICKS, MASQUARADING AS... 32
 P.O. BOX 11136
 RENO, NV. 89520-0027.

Michael T. Botelho
 MICHAEL T. BOTELHO # 80837
 NNCC, P.O. Box 7000
 CARSON CITY, NV. 89702

(54) TOTAL PGS INCLUDING EXHIBITS V4. 539

INDEX OF EXHIBITSExhibit Number 1 Number of Pages 1Exhibit Description FRAUDULENT & FICTITIOUS SUBPOENAExhibit Number 2 Number of Pages 4Exhibit Description SUBSCRIBER INFORMATIONExhibit Number 3 Number of Pages 4Exhibit Description FACSIMILE SHEET, SUBSCRIBER INFORMATION AND CERTIFICATE OF RECORDSExhibit Number 4 Number of Pages 1Exhibit Description NRS STATUTE 193.340Exhibit Number 5 Number of Pages 5Exhibit Description INTERVIEW WITH MELISSA BOTELHO

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

CR03-2156 DC-09900070220-018
STATE VS. MICHAEL TODD BOTEL 2 Pages
District Court 09/22/2015 08:46 AM
Washoe County 2490
KJONES
cv1

EXHIBIT 1

WASHOE COUNTY SHERIFF'S OFFICE
DETECTIVE DIVISION
911 Parr Blvd.
Reno, Nevada 89512

SUBPOENA

Date: 8/8/03

TO: Cellco Partnership DBA: Verizon Wireless
Attn: Michael Rozyla
51 Chubb Way
Branchburg, NJ 08876

Fax 1-908-203-5364

In furtherance of a criminal or civil investigation conducted by the Washoe County Sheriff's Office, and in accordance with NRS 193.340, you are commanded to produce subscriber information on the following account:

Cellular Telephone # 775-781-2054

YOUR HONORABLE JUDGE
(THIS PHONE NUMBER BELONG TO
MICHAEL AND MARILYN BOTELHO -
MTB.)

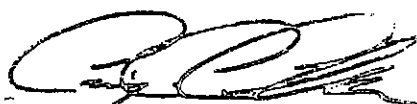
Please do not disclose this request, disclosure may jeopardize an ongoing criminal investigation. Thank you for your assistance in this matter.

RETURN INFORMATION:

Please fax the requested information to the attention of Sergeant David Nikoley
at (775) 328-3056

DATED THIS 8TH day of AUGUST, 2003.

DENNIS BALAAM, Sheriff



Craig Callahan / Captain - 0163
Washoe County Sheriff's Office
Detective Division Commander

EXHIBIT I (1 PAGE)

CR03-2156
STATE VS. MICHAEL TODD BOTEL
District Court
Washoe County
Nev
DC-09900070220-019
TODD BOTEL 5 Pages
09/22/2015 08:46 AM
2490
K10MFR

EXHIBIT 2

The Verizon Wireless logo, featuring the word "verizon" in a bold, italicized sans-serif font, followed by the word "wireless" in a lighter, lowercase sans-serif font. A checkmark-like shape is formed by two lines above the "verizon" text.

FACSIMILE TRANSMITTAL SHEET

TO:	David Nikoley	FROM:	Subpoena Compliance
COMPANY:	Washoe County Sheriff's Office	DATE:	8/11/2003
FAX NUMBER:	775-328-3056	TOTAL NO. OF PAGES INCLUDING COVER:	4
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	08-08-03-91896WE
RE:		YOUR REFERENCE NUMBER:	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

David:

Enclosed is the subscriber information for the subpoena that was sent to us on 08-08-03

Cordially,

Michael Rozyla
Legal Dept.-Verizon Wireless

EXHIBIT II (PAGE 1 OF 4)

The information contained in this message and any attachment may be proprietary, confidential and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to this message and delete the message from your system and do not use the information contained therein. Thank you.

WASHOE COUNTY SHERIFF'S OFFICE
DETECTIVE DIVISION
911 Parr Blvd.
Reno, Nevada 89512

SUBPOENADate: 8/8/03

TO: Celco Partnership DBA: Verizon Wireless
Attn: Michael Rozyla
51 Chubb Way
Branchburg, NJ 08876

Fax 1-908-203-5364

In furtherance of a criminal or civil investigation conducted by the Washoe County Sheriff's Office, and in accordance with NRS 193.340, you are commanded to produce subscriber information on the following account:

Cellular Telephone # 775-781-2054

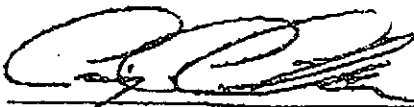
Please do not disclose this request, disclosure may jeopardize an ongoing criminal investigation. Thank you for your assistance in this matter.

RETURN INFORMATION:

Please fax the requested information to the attention of Sergeant David Nikoley
at (775) 328-3056

DATED THIS 8TH day of AUGUST, 2003.

DENNIS BALAAM, Sheriff



Craig Callahan / Captain - 0163
Washoe County Sheriff's Office
Detective Division Commander

EXHIBIT II (PAGE 2 OF 4)

VISION WES Contact Customer Account Summary View

File Edit Show Options Help

[X]

VERI ON wireless

Exit

Print

Help

Customer Information

Billing Account Information

Name : [REDACTED]
Addr : [REDACTED]

City : YERINGTON
State: NU Zip: 89447 9717

Name : [REDACTED]
Addr : [REDACTED]

City : YERINGTON
State: NU Zip: 89447 9717

EXHIBIT II (PAGE 3 OF 4)

VISION WEST Contact Customer Account Summary View

File Edit Show Options Help

verizon WIRELESS

Exit

Print

Help

Mobile Telephone and Equipment Information

Mobile TN

: 775 781 2054

EXHIBIT II (PAGE 4 OF 4)

CR03-2156 DC-09900070220-020
STATE VS. MICHAEL TODD BOTEH 5 Pages
District Court 09/22/2015 08:45 AM
Washoe County 2490
K INLES

EXHIBIT 3

The Verizon Wireless logo, featuring the word "verizon" in a bold, lowercase sans-serif font, followed by "wireless" in a lighter, lowercase sans-serif font. A checkmark-like shape is formed by the negative space above the "v" and the "i" in "verizon".

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Alice Maez	Subpoena Compliance
COMPANY:	DATE:
Washoe County DA	9/26/2003
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
775-328-3283	4
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
	09-26-03-94367WE
RE:	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Alice

Here as requested for the subpoena sent on 09-26-03 Also will be mailed.

Cordially,

Michael Rozyla
Legal Dept.-Verizon Wireless
Branchburg NJ 08876
Ph# 800-451-5242 x4213

EXHIBIT III (PAGE 1 OF 4)

The information contained in this message and any attachment may be proprietary, confidential and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to this message and deleting it and all copies and backups thereof. Thank you.

File Edit View Window Help

Account Summary View

1

Mobile Telephone and Equipment Information

Mobile IN: 775 781 2054

Ext:

Page 1 of 1

EXHIBIT III (PAGE 2 OF 4)

V4.551 WFL Contact Customer Account Summary View

File Edit Show Options Help

View on

Exit

Print

Help

Customer Information

Billing Account Information

Name : MARRI LOU O. BOTELHO
Addr : 537 PETE HENDRICHS RD

Name : MARRI LOU O. BOTELHO
Addr : 537 PETE HENDRICHS RD

City : YERINGTON
State : NV Zip : 89447 9717

City : YERINGTON
State : NV Zip : 89447 9717

End Date:

Hot Remarks

Dup.

EXHIBIT III (PAGE 3 OF 4)

V4: 552

CERTIFICATE OF CUSTODIAN OF RECORDS
(NRS 51.135)

STATE OF NEVADA)

) ss.

COUNTY OF WASHOE)

I, Michael Rozyla, do hereby swear under penalty of perjury that the assertions of this affidavit are true.

1. That Michael Rozyla is the custodian of records for the institution known as Venzon Wireless and has access to the files and records of said entity.

2. That the undersigned has searched the files and records of said entity and has made a true, complete and correct reproduction of the records and documents of said institution, maintained in the ordinary course of business and on file herein, and has attached a true and complete reproduction of said records and documents hereto.

3. That the attached records and documents are true and complete reproductions of records and documents actually maintained and filed in the offices of said entity and are hereby certified as being maintained in the course of a regularly conducted activity of this entity and were made at or near the time of said activity reflected hereon.

4. That the deponent/undersigned's position with said entity is that of Subpoena Compliance Coord and that I am authorized to make this certification as custodian of records for the attached records and documents.

Michael Rozyla

Subscribed and sworn to before me this 26 day of SEPT,
1999 - 2003

Michael J. Kennedy
Notary Public

My appointment expires on: 3/25/04

MICHAEL J. KENNEDY
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/25/2004

EXHIBIT III
(PAGE 4 OF 4)

V4: 552

CR03-2156 DC-09900070220-021
STATE VS. MICHAEL TODD BOTEL 2 Pages
District Court 09/22/2015 08:46 AM 2490
Washoe County KIMMFC
rva

EXHIBIT 4

193.340. Required disclosure of certain information by provider of Internet service; penalty; issuance and enforcement of administrative subpoena; fee for information.

1. A provider of Internet service who violates the provisions of 18 U.S.C. § 2703 is guilty of a misdemeanor and shall be punished by a fine of not less than \$50 or more than \$500 for each violation.

2. In investigating criminal activity that involves or may involve the use of a computer, the Attorney General, a district attorney, the sheriff of any county in this State, the head of any organized police department of any municipality in this State, the head of any department of this State engaged in the enforcement of any criminal law of this State and any sheriff or chief of police of a municipality may, if there is reasonable cause to believe that an individual subscriber or customer of a provider of Internet service has committed an offense through the use of the services of the provider of Internet service, issue a subpoena to carry out the procedure set forth in 18 U.S.C. § 2703 to compel the provider of Internet service to provide information concerning the individual subscriber or customer that the provider of Internet service is required to disclose pursuant to 18 U.S.C. § 2703.

3. If a person who has been issued a subpoena pursuant to subsection 2 charges a fee for providing the information, the fee must not exceed the actual cost for providing the information.

4. If a person who has been issued a subpoena pursuant to subsection 2 refuses to produce any information that the subpoena requires, the person who issued the subpoena may apply to the district court for the judicial district in which the investigation is being carried out for the enforcement of the subpoena in the manner provided by law for the enforcement of a subpoena in a civil action.

5. As used in this section, "provider of Internet service" has the meaning ascribed to it in NRS 205.4758, but does not include a public library when it is engaged in providing access to the Internet.

2001, ch. 560, § 1, p. 2784; 2003, ch. 58, § 1, p. 429.

NRS 205.4758: PROVIDER OF "INTERNET SERVICE" DEFINED: "PROVIDER OF INTERNET SERVICE" MEANS ANY PROVIDER WHO SUBSCRIBES WITH ACCESS TO THE INTERNET OR AN ELECTRONIC MAIL ADDRESS.

EXHIBIT 4 (1 of 1)

CR03-2156
STATE VS. MICHAEL TODD BOTTEL 6 Pages
District Court 09/22/2015 08:46 AM
Washoe County
2490
K10N1F5

EXHIBIT 5

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 MICHAEL TODD BOTELHO,

10 Petitioner,

CASE NO: CR03P2156

11 v.

DEPT NO: 3

12 THE STATE OF NEVADA,

13 Respondent.
14 _____ /

15 INTERVIEW WITH MELISSA BOTELHO

16 DECEMBER 1, 2006

17 Q: State your name for me.

18 A: Melissa Botelho.

19 Q: Okay. And you were married to Mr. Botelho? Is that correct?

20 A: Yep.

21 Q: And you had talked to an officer, I believe, Herrera. Is that correct?

22 A: That could be his name.

23 Q: Okay. On two separate occasions – on that he recorded, one he did not. Does that
24 sound familiar to you?

25 A: I believe so.

26 Q: Okay. And the second statement that you spoke with him about that you were
27 recorded on, you didn't mention that Mr. Botelho spoke of actual dismemberment or torture.

28 Did he actually talk to you about that?

EXHIBIT 5

1 A: Yes. And he threatened me with it.

2 Q: Okay. What did he say to you?

3 A: Well, it's down to the point that if I left him or anything else, he would dismember
4 me. He figured out ways, down to the point, since he was cop, he knew how to bypass their
5 forensics.

6 Q: Wow. That's nice. So he obviously then made statements to you then regarding that
7 he wanted to torture and possibly dismember a young girl?

8 A: (Inaudible) torture and dismember any young girl, but the thing of it was what he
9 wanted to do was go get a mail order bride and claim that all she was going to do was be a
10 nanny and basically just sexually abuse her, and that way he could have his thrills because
11 I wouldn't do what he wanted to do.

12 Q: Okay. You mentioned during your guys intimate encounters with each other that in
13 order for him to basically get off that he would mention these things to you. Is that correct?

14 A: Oh yeah.

15 Q: Okay. What would he kind of say to you?

16 A: Well, basically, I wouldn't have anal sex with him and he figured he could hold it
17 over somebody's head to be able to have it. He wanted to have twosomes and threesomes
18 and I wouldn't do it. And he figured if he got another person he could hold it over her head
19 just like he's done with his third wife that he's working on.

20 Q: Right. Did he mention that it would be a younger female or anything like that?

21 A: Oh yes. He preferred the younger ones. And you have to understand, when I met him
22 I was 16.

23 Q: Oh. Well that makes sense then. Okay. And he mentioned like bondage, was it kind
24 of like light bondage, or was it more kind of seriously dark stuff. What kind of stuff did he
25 say to you about that?

26 A: Let's put it this way, his idea would go from very light and depending upon his mood
27 and maybe how much he had to drink, to very hard stuff.

28 Q: Like actual like cutting or torturing.

- 1 A: Beating the crap out of you which he's done to me several times during ... alright, I'll
2 deal with it. Go on, please.
- 3 Q: Oh no. Did he also, he didn't say like he want to dismember a girl and bury her
4 somewhere?
- 5 A: The thing of it was that if she decided to go tell the authorities of what was taking
6 place, if he actually was able to get a hold of one, that's what he would do. And that is the
7 reason why when I was told about this and I was absolutely shocked that he let her go
8 because he had to have known what was coming. It's stupidity.
- 9 Q: Do you think he felt guilty or anything and that's why he let her go?
- 10 A: I'm sure in a sense he did feel guilty.
- 11 Q: And that's why he let her go?
- 12 A: It's like (inaudible) person. He'll beat the living tar out of you and a day later, it's
13 like oh I'm sorry.
- 14 Q: Right.
- 15 A: You know, he's a normal abusive person. Yeah, he's got, oh what's the word? I
16 can't think of the word I'm looking for but he has a thoughtful side on one side of him, but
17 on the other side, he's a creepy person.
- 18 Q: Kind of a split personality kind of thing?
- 19 A: Well it's not even a split personality. It's just the way he is. He will lie, cheat and
20 anything else to get what he wants and that's just the way it is.
- 21 Q: But he never really ... the only time he mentioned that he would actually like
22 physically really harm somebody like killing them or dismembering them or torturing them
23 is if he was to get caught. Is that right?
- 24 A: That's right.
- 25 Q: Okay. But he never wanted to do that out of pleasure. It was just more out of not
26 being guilty. Is that right?
- 27 A: That's it.
- 28 Q: Okay. Perfect. Is there anything else that you think I should know?

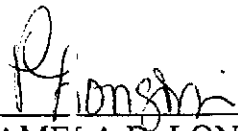
- 1 A: He ought to stay where he's at.
- 2 Q: Yeah.
- 3 A: There are a few people that would be better off with that. I'm sure his two little boys
- 4 down there would be much better off, too.
- 5 Q: Right. You have two children with him, is that right?
- 6 A: Yes, ma'am.
- 7 Q: Okay. If I have any more questions, is it okay to give you a call again?
- 8 A: Sure.
- 9 Q: Do you want to take my number or anything if you think of anything?
- 10 A: Oh no. Are you for or against him?
- 11 Q: We are working for him. He's filed a petition saying that his lawyer was ineffective.
- 12 So we are working on that.
- 13 A: It wasn't ineffective. He didn't want me to go to Court and testify. That's the reason
- 14 why he plead.
- 15 Q: Now, Mr. Sullivan said he didn't want you to come to Court?
- 16 A: Yeah. That's exactly what the District Attorney told me.
- 17 Q: Okay. That's interesting.
- 18 A: It was that what we had in our marriage was confidential. Well it's only confidential
- 19 if that's the way I want to keep it. Trust me. He did what he did to that girl and he deserves
- 20 what he gets because if I ever got a hold of him, I'd be sure he wouldn't walk away from it.
- 21 And he knows when he stops what a person can do to a young child. And a man of his
- 22 stature, he can produce some beatings. And she didn't deserve what she got. And he knows
- 23 it.
- 24 Q: Right. Okay. That's perfect. That's exactly what I needed to know. And it's okay
- 25 to give you a call if I have any more questions?
- 26 A: Sure.
- 27 Q: Okay. I appreciate your time, Melissa. Thank you so much. Have a good night. Bye.
- 28 A: Bye.

1 STATE OF NEVADA }
2 COUNTY OF WASHOE } SS:

3 I, PAMELA D. LONGONI, do hereby certify that I was provided a cassette tape
4 regarding the interview of Melissa Botelho, and that said transcript, which appears
5 hereinbefore was transcribed verbatim into typewriting as herein appears to the best of my
6 knowledge, skill, and ability and is a true and correct record thereof.

7 I further certify that I am not an attorney or counsel for any of the parties, nor a
8 relative or employee of any attorney or counsel connected with the action, nor financially
9 interested in the action.

10 DATED this 5th day of January, 2007.

11
12 
13 _____
14 PAMELA D. LONGONI
15
16
17
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19
20
21
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28

FILED

AFFIDAVIT IN SUPPORT OF:

2015 SEP 22 AM 8:46

STATE OF NEVADA)

SS. AFFIDAVIT OF: MICHAEL TODD BOTELHO

COUNTY OF CARSON)

BY

DEPUTY

TO WHOM IT MAY CONCERN:

I, MICHAEL TODD BOTELHO, THE UNDERSIGNED, DO HEREBY SWEAR

UNDER THE PENALTY OF PERJURY THAT THE ASSERTIONS OF THIS AFFIDAVIT ARE TRUE AND CORRECT.

THE WASHOE COUNTY SHERIFFS OFFICE; THE UNFILLED OFFICE OF THE WASHOE COUNTY DISTRICT ATTORNEY AND ITS DEPUTY DISTRICT ATTORNEYS (LACKING VALID BOND TO PERFECT OFFICE); THE SECOND JUDICIAL DISTRICT AND JUDGE POLANA, DEPT. 3. HAVE SERVED AND FILED FRAUDULENT DOCUMENTS TO VERIZON WIRELESS AND DAYTON JUSTICE COURT, RENO JUSTICE COURT AND THE SECOND JUDICIAL DISTRICT COURT. THEY HAVE COMMITTED FRAUD, OBSTRUCTED JUSTICE, COMMITTED PERJURY, SUBORNATION OF PERJURY, CONSPIRACY, COLLUSION, VIOLATED RIGHTS UNDER COLOR OF LAW, VIOLATED CIVIL RIGHTS, MADE THREATS, INTIMIDATION, COERCION, WITNESS TAMPERING, (KIDNAPING-ILLEGAL ARREST), VIOLATED OTHER NRS STATUTES, THE NV. AND UNITED STATES CONSTITUTION(S), PETITIONERS CONSTITUTIONAL RIGHTS UNDER THE 1ST, 4TH, 5TH, 6TH, 8TH, 9TH AND 14TH AMENDMENTS. SEE NEWLY DISCOVERED EVIDENCE IN MOTION AND ALREADY IN THE COURT RECORD. SEE ALSO THEFT, ABUSE OF DISCRETION AND PRESENTING FALSE EVIDENCE.

LASTLY, BOTELHO WAS NOT PROPERLY ARRAIGNED IN RENO JUSTICE COURT AND SECOND JUDICIAL DISTRICT COURT NEVER ACQUIRED JURISDICTION OVER THE SUBJECT-MATTER OR THE PETITIONER. AS SUCH BOTELHOS ILLEGAL CONVICTION IS VOID, WITH PREJUDICE. A GROSS MIS CARRIAGE OF JUSTICE. SEE IN MOTION THEREIN. THESE ARE [N]OT BARE NAKED ALLEGATIONS, THESE ARE [F]ACTS!

DATED 9-15-2015

MICHAEL T. BOTELHO # 80837
P.O. Box 7000, NNCC
CARSON CITY, NV. 89702
V4. 561

DC-09900070220-023
STATE VS. MICHAEL TODD BOTELHO 1 Page
District Court 09/22/2015 08:46 AM 1030
Washoe County

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MICHAEL TODD BOTELHO,
PETITIONER

VS

BENEDETTI, WARDEN,
STATE OF NEVADA, ET-AL,
RESPONDENTS

CASE NO. CR03-2156

DEPT 2 INDOORS 22 AM 8:46

JACQUELINE L. YANT
CLERK OF THE COURT

BY

REQUEST FOR SUBMISSION

COMES NOW, MICHAEL TODD BOTELHO, IN PRO-SE AND IN FORMA PAUPERIS,
BRINGING FORTH THIS REQUEST FOR SUBMISSION FOR REPLY AND
OBJECTION TO OPPOSITION TO MOTION TO STRIKE, FILED ON 8-19-2015,
ALSO FOR THIS COURT CLERK TO FORWARD STAMP FILED COPY TO
PETITIONER AS HE IS ENTITLED TO.

AFFIRMATION AND CERTIFICATE OF SERVICE

I, MICHAEL TODD BOTELHO, SWEAR UNDER THE PENALTY OF PERJURY, THAT ALL
STATEMENTS ARE TRUE AND CORRECT, PURSUANT TO 28 USC 1746 AND 18 USC
1621. THIS DOCUMENT DOES NOT CONTAIN S-S-N OF ANY PERSON.

I, ALSO, DO CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF THE
FOREGOING REQUEST FOR SUBMISSION FOR REPLY AND OBJECTION TO
OPPOSITION TO MOTION TO STRIKE, TO THIS COURT AND THE ADDRESSED BELOW,
BY PLACING SAID REQUEST IN THE U.S.P.S. MAIL VIA PRISON LAW LIBRARY
STAFF, PURSUANT TO FRCP 5(b), MAIL BOX RULE, HOUSTON V. LACKS, 487 U.S.
266 (1988) AND CALDWELL V. AMEND, 30 F3d 1199 (9th 1994). SEE BRASS SLIP
NO. 2170754

DATED 9-8-2015

WASHOE CO. DISTRICT ATTORNEYS OFFICE
ATTN: THE YET TO PERFECT OFFICE, CHRIS HICKS
P.O. BOX 11130
RENO, NV. 89520-0027

Michael T. Botelho
MICHAEL T. BOTELHO # 80837
NNCC, P.O. BOX 7000
CARSON CITY, NV. 89702

1 CODE #2645
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

11 v.

Case No. CR03-2156

12 JAMES BENEDETTI, WARDEN, and
13 THE STATE OF NEVADA,

Dept. No. 3

14 Respondent. _____/

15 OPPOSITION TO "MOTION TO VACATE JUDGMENT OF CONVICTION AND NRCIV P.
16 RULE 9(b) FRAUD."

17 COMES NOW, the State of Nevada and opposes the relief sought in the document
18 captioned as a "MOTION TO VACATE JUDGMENT OF CONVICTION AND NRCIV P. RULE
19 9(b) FRAUD." This motion is based upon the records of this court and the following points and
20 authorities.

21 POINTS AND AUTHORITIES

22 Defendant Michael Botelho previously filed petitions for writs of habeas corpus in this
23 court. The last one was dismissed on September 16, 2015. The court can reconsider a
24 judgment denying a habeas corpus but only until the judgment is reduced to writing, signed by
25 the judge and filed by the clerk. At that point it becomes final. *Tener v. Babcock*, 97 Nev. 369,
26 632 P.2d 1140 (1981). Thus, if the instant motion was intended as some sort of motion to

1 reconsider that order denying the latest petition, it would be too late.

2 The post-conviction habeas corpus petition “[c]omprehends and takes the place of all
3 other common-law, statutory or other remedies which have been available for challenging the
4 validity of the conviction or sentence, and must be used exclusively in place of them.” NRS
5 34.724. Thus, the motion is the wrong vehicle for attacking the conviction and should be
6 denied.

7 AFFIRMATION PURSUANT TO NRS 239B.030

8 The undersigned does hereby affirm that the preceding document does not contain the
9 social security number of any person.

10 DATED: September 25, 2015.

11 CHRISTOPHER J. HICKS
12 District Attorney

13 By /s/ TERRENCE P. McCARTHY
14 TERRENCE P. McCARTHY
15 Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on September 25, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-09-25 10:33:26.183.
GARY HATLESTAD, ESQ. - Notification received on 2015-09-25 10:33:25.637.
JOHN PETTY, ESQ. - Notification received on 2015-09-25 10:33:26.151.
DIV. OF PAROLE & PROBATION - Notification received on 2015-09-25 10:33:25.917.
SEAN SULLIVAN, ESQ. - Notification received on 2015-09-25 10:33:25.683.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

09-25-2015:08:48:23

Clerk Accepted:

09-25-2015:10:32:13

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MICHAEL TODD BOTELHO,
PETITIONER

CASE NO. 80837-2015-18

VS.

DEPT NO. 3

BENEDETTI, WARDEN,
STATE OF NEVADA, et al,
RESPONDENTS

MOTION FOR RE-CONSIDERATION

FILED

OCT 14

2015 SEP 31 PM 4:18

JACQUELINE RYANT
CLERK OF THE COURT

7 COMES NOW, MICHAEL TODD BOTELHO, IN PRO-SE AND IN FORMA
 8 PAUPERIS, BRINGING FORTH INSTANT MOTION FOR RE-CONSIDERATION
 9 OF THIS COURTS ORDER DATED SEPT. 15, 2015.
 10 PETITIONER ASSERTS THAT THIS COURT MISPOKE THROUGHOUT THE
 11 ENTIRETY OF ITS PREJUDICIAL ORDER.⁽¹⁾ I.e. BOTELHO DID NOT PRESENT NEW
 12 ISSUES FOR THIS COURT, (2) BOTELHO WAS ONLY EXHAUSTING GROUNDS
 13 [P]REVIOUSLY BEFORE THIS COURT, (3) POLAHA DID NOT ADDRESS THE FACT
 14 THAT THE U.S. DISTRICT COURT TOLD BOTELHO TO RETURN TO STATE COURT
 15 TO EXHAUST HIS GROUNDS, AND (4) THAT THE STATE FAILED TO ADDRESS THE
 16 WRIT IN 2010 AND ALL SUBSEQUENT MOTIONS FILED THEREIN, THUS, LACHES
 17 APPLIED. I.e. NRCP (7) AND (8) AND SEE 28 USC 2248, CONSENT OF DEFECT
 18 (CONFESSION OF ERROR)
 19 PETITIONER RESPECTFULLY REQUEST THAT THIS COURT RE-CONSIDER
 20 ITS PREVIOUS ORDER AND VOID BOTELHOS JUDGMENT OF CONVICTION WITH
 21 PREJUDICE, AS LAW AND JUSTICE REQUIRE, AS A MATTER OF LAW.

AFFIRMATION AND CERTIFICATE OF SERVICE

23 I SWEAR UNDER THE PENALTY OF PERJURY, THAT ALL STATEMENTS ARE TRUE AND
 24 CORRECT, PER. 28 USC 1746 AND 18 USC 1621. THIS DOCUMENT DOES NOT CONTAIN
 25 THE S-S-N. OF ANY PERSON.

26 I, FURTHER CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF MOTION FOR
 27 RE-CONSIDERATION TO ADDRESSED BELOW, BY PLACING MOTION IN U.S. MAIL VIA
 28 PRISON LAW LIBRARY STAFF, PURSUANT TO FRCP 5(b). (BRASS SLIP NO. 2169473)

COPY TO:

DATED: 9-23-2015

WASHOE CO. DISTRICT ATTY'S OFFICE
 ATTN: CHRIS HICKS (FRAUD & IMPOSTER)
 P.O. BOX 11130
 RENO, NV. 89520-027

Michael Todd Botelho
 MICHAEL TODD BOTELHO # 80837
 NNCC
 P.O. BOX 7000
 CARSON CITY, NV. 89702

JUDICIAL NOTICE

NRS 47.130/FED RULE 201

CASE NO. CR03-2156

FILED

MICHAEL TODD BOTELHO, PETITIONER, IN PRO-SE, IN FORMA PAUPERIS,
AND BECAUSE OF THIS COURT, WITHOUT COUNSEL, HEREBY INFORMS HIS SECOND
JUDICIAL DISTRICT COURT CLERK AND CHIEF JUDGE HARDY THAT:

(1) THE COURT CLERK HAS A LAWFUL DUTY TO FILE, BY CALENDER FOR HEARINGS,
BOTELHOS PRO-SE WRITS AND MOTIONS, AS WELL AS MAILING STAMP FILED
COPIES BACK TO BOTELHO. SEE BOWMAN V. 8TH JUD. DIST. CT., AND HEUBLER V.
STATE (YOU LOOK IT UP). YOU ARE HELD TO YOUR OATH, NRS 246.020, YOUR
DUTIES, NRS 246.060 AND NRS 246.030, FOR YOUR DEPUTIES. YOU ARE SUBJECT
TO NRS 3.250, NRS 3.260, NRS 3.275, AS WELL, THE CLERK OBSTRUCTS
THE ORDERLY ADMINISTRATION OF LAW, AS LAW AND JUSTICE REQUIRE, WHEN AS IN
THIS CASE, THE CLERK -

(a) WILL NOT FORWARD STAMP FILED COPIES (TOP PAGE) OF WRIT OF MANDAMUS
TO CHIEF JUDGE HARDY AND MOTION FOR SHOW-CAUSE HEARING TO BOTELHO,
EVEN THOUGH ENTITLED TO VERIFICATION OF FILING. [WAS IT EVEN FILED]?

(b) BOTELHO MUST CORRECTLY PRESUME THAT THE CLERK HAS DONE SO
INTENTIONALLY, AS THIS IS NOT THE FIRST TIME. [WAS IT EVEN FILED]?

(c) BOTELHO MUST ALSO PRESUME THAT THIS COURT CLERK DID NOT
CALENDER HIS WRIT OF MANDAMUS, NOR TRANSFERRED IT TO CHIEF JUDGE HARDY,
FURTHERMORE, ITS PRESUMED THAT THIS COURT CLERK FURTHER OBSTRUCTED
JUSTICE BY NOT CALENDERING THE MOTION FOR SHOW-CAUSE, THUS, ATTEMPTING
TO FURTHER SHIELD THE STATE AND THIS COURT FROM ITS GROSS ABUSE(S) AND
GROSS MIS-CARRIAGE OF JUSTICE, AND ON-GOING VIOLATIONS OF BOTELHOS
CONSTITUTIONAL RIGHTS. (EMPHASIS STRONGLY ADDED)

(d) BOTELHO MUST PRESUME THAT (a), (b), (c) ARE INFACT TRUE, OTHERWISE,
POLA HA WOULD NOT HAVE IGNORED THESE CRITICAL FILINGS PROPERLY BEFORE
THE COURT AND RULED AGAINST BOTELHO IN THIS CASE! OR IS HE THAT
ARROGANT AND FEELS HE IS ABOVE THE LAW?

DC-09900070552-007
CR03-2156 MICHAEL TODD BOTELHO 4 Pages
STATE VS. MICHAEL TODD BOTELHO 04:48 PM
District Court 10/02/2015 2610
Washoe County

(2) HAS THE COURT CLERK BEEN PRACTICING LAW SO TO SPEAK?

FURTHERMORE, POLAHA, WHEN HE FILED HIS ILLEGAL AND PERJURED DISMISSAL OF BOTELHO'S CASE, DID NOT SPEAK OF, NOR ADDRESSED THESE TWO (2) VERY SERIOUS MATTERS IN THIS CASE. AGAIN, WERE THEY EVEN FILED? WHY'D HE ANSWER?

(4) LASTLY, BOTELHO FILED REQUEST FOR SUBMISSION(S) FOR BOTH WRIT OF MANDAMUS AND SHOW-CAUSE MOTION. THE CLERK DID FILE COPY AND RETURN THESE, IN THESE, BOTELHO, AGAIN ASKED THE COURT CLERK TO SEND FILE STAMPED COPY(S) OF BOTH. IT WAS OBVIOUSLY IGNORED BUT YET CHOSE TO SEND BOTELHO FILED COPIES OF BOTH REQUESTS FOR SUBMISSION(S). WHY IS THAT? CANNOT EXPLAIN THAT AWAY!

(2) THE COURT CLERK, PURSUANT TO NRS 1.235(4) WAS REQUIRED BY [LAW] TO SERVE JUDGE POLAHA, WHEN BOTELHO FILED HIS WRIT OF MANDAMUS TO CHIEF JUDGE HARDY, TO RECUSE POLAHA (FOR EXTREME PREJUDICE & BIAS). OBVIOUSLY, POLAHA WAS NOT SERVED, NOR WAS FORWARDED TO CHIEF JUDGE HARDY, NOR WAS IT CALENDERED OR HEARD. THESE ACTIONS IN VIOLATION OF NEVADA LAW AND UNDER COLOR OF AUTHORITY.

(3) IF CHIEF JUDGE HARDY WAS FORWARDED THE WRIT OF MANDAMUS, IT MUST STILL BE PRESUMED NOT TO HAVE BEEN FILED, CALENDERED AND ACTED UPON AS REQUIRED BY LAW.

(a) SEE NRS 1.465.3 (1)(a)(b), (2), (4)(b)(2)(3)(I)(II), FOR VARIOUS VIOLATION(S) KNOWN TO CHIEF JUDGE HARDY AS A RESULT OF BOTELHO'S WRIT OF MANDAMUS, AND/OR VIOLATIONS BY CHIEF JUDGE HARDY, IF HE WAS IN POSSESSION OF EXTRAORDINARY WRIT OF MANDAMUS [D]IRECTED TO CHIEF JUDGE HARDY 30 DAYS PRIOR TO ALLOWING JUDGE POLAHA TO FURTHER DAMAGE BOTELHO AND HIS DUE-PROCESS, CAUSING YET FURTHER IRREPARABLE INJURY AND PREJUDICE TO BOTELHO.

(b) CHIEF JUDGE HARDY, HAD PURSUANT TO HIS OFFICIAL OATH, JUDICIAL CANONS AND NV. LAW, AS WELL AS THE NV. AND U.S. CONSTITUTION(S) AND BOTELHO'S CONSTITUTIONAL RIGHTS, A DUTY TO ACT ACCORDINGLY. SEE

NRS 3.026 (1)(a) CHIEF JUDGE SHALL ENSURE THAT: (2) CASES AND OTHER PROCEEDINGS WITHIN THE JURISDICTION OF THE DISTRICT COURT ARE CONSIDERED AND DECIDED IN A TIMELY MANNER (IE 5 1/2 YEARS FOR PETITION & MOTIONS FILED IN 2010, 2011 AND 2012 AND FOR WRIT OF HABEAS CORPUS AND SHOW-CAUSE MOTIONS IN 2015) ALSO VIOLATING (b)(1)(2)

(C) CHIEF JUDGE HARDY IS ALSO GUILTY OF VIOLATING NEVADA JUDICIAL CANNONS (1), 1-1.1, 1-1.2.

(2), 2-2.1, 2-2.2, 2-2.3(A), 2-2.4(A)(B)(C), 2-2.5(A)(B), 2-2.6, 2-2.7, 2-2.9 (PETITIONERS LEGITIMATE BELIEF UNDER THESE CIRCUMSTANCES) 2-2.12, SUPERVISORY DUTIES, AND ESPECIALLY SEE 2-2.15, RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT.

CANNON (3) ESPECIALLY SEE 3-3.10, FOR PRESUMABLY ALLOWING JUDGE POLAHA TO PRACTICE LAW FROM THE BENCH (POLAHA DISMISSING BOTELHO'S CASE)

BOTELHO ASSERTS AND PUTS THIS COURT CLERK AND CHIEF JUDGE HARDY, ON NOTICE, FOR THE ACTS AND VIOLATION(S) WILLFULLY COMMITTED AGAINST BOTELHO, AS A MATTER OF RECORD, AS A MATTER OF LAW. BOTELHO BELIEVES THAT THIS HAS BEEN DONE WITH MALICE AND WILLINGNESS AGAINST BOTELHO, TO FURTHER PROTECT THE STATE, THIS COURT, THE JUDGE(S) AND COURT CLERK, AT ALL COSTS.

YOU ARE NOT ABOVE THE LAW. YOU, BY YOUR ACTIONS HAVE RESULTED IN FURTHER CRIMINAL VIOLATIONS OF LAW, I.E. 18 USC 4 (MISPRISON OF FELONY); NRCF (FRCP 9 (FRAUD UPON THE COURT); 18 USC 2.41 (CONSPIRACY AGAINST RIGHTS); 18 USC 242 (DEPRIVATION OF RIGHTS UNDER COLOR OF LAW); 42 USC 1985, 1986 (CONSPIRACY OF CIVIL RIGHTS (TO INTERFERE WITH)); ALSO THE VIOLATIONS OF THE NV. AND U.S. CONSTITUTIONS AND BOTELHO'S CONSTITUTIONAL RIGHTS OF BOTH CONSTITUTION(S) (I.E. 1ST, 5TH, 9TH, 14TH AMENDMENTS).

BOTELHO, IS IN THIS "JUDICIAL NOTICE", IS RESPECTFULLY BRINGING FORTH THE FACTS OF THE ACTIONS AND INACTIONS BY THE SECOND JUDICIAL DISTRICT COURT CLERK AND SECOND JUDICIAL DISTRICT COURT JUDGE, CHIEF JUDGE, AS A RESULT OF BOTELHOS FILING OF EXTRAORDINARY WRIT OF MANDAMUS TO CHIEF JUDGE HARDY TO RECUSE JUDGE POLANA AND HIS MOTION FOR SHOW-CAUSE, TO PROVE THE STATES FAILURE TO PERFECT OFFICE AND ITS INABILITY AS SUCH, TO RESPOND AGAINST AND IN BOTELHOS CASE, PERIOD (STRONG EMPHASIS ADDED).

BOTELHO, FURTHER, DEMANDS THAT THIS "JUDICIAL NOTICE" BE FILED, STAMP FILED AND GIVEN COPY OF THIS "NOTICE". BOTELHO, ALSO DEMANDS, THAT THIS [JUDICIAL NOTICE] BE [I]NCLUDED IN THE RECORD ON APPEAL, TO BE CERTIFIED BY THE CLERK OF THE COURT AND TRANSCRIBED TO THE CLERK OF THE NEVADA SUPREME COURT.

[A]LL MOTIONS, PLEADINGS, TRANSCRIPTS, EXHIBITS (INCLUDING THIS ONE) * FOR THE PURPOSE OF CRIMINAL AND CIVIL PROSECUTION AND LITIGATION.

DATED THIS 28TH DAY OF SEPTEMBER, 2015

REFERENCE

// (1) BOTELHO FILED WRIT OF MANDAMUS TO CHIEF JUDGE HARDY ON:
8-13-2015

(2) BOTELHO FILED MOTION FOR SHOW-CAUSE ON:
8-17-2015

// (3) POLANA FILED MOTION TO DISMISS BOTELHOS PETITION ON:
9-17-2015

~~MORE THAN 30 DAYS AFTER WRIT
FILED IN JUDGE HARDY'S DEPT. COURT.~~

Michael Todd Botelho
MICHAEL TODD BOTELHO # 80837
CR03-2156
NNCC, P.O. Box 7000
CARSON CITY, NV. 89702

BRASS SLIP NO- 2169112

C.C. FILE

1 CODE #2645
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

11 v.

Case No. CR03-2156

12 BENEDETTI, WARDEN, and
13 THE STATE OF NEVADA

Dept. No. 3

14 Respondent.
_____ /

15 OPPOSITION TO MOTION FOR RECONSIDERATION

16 COMES NOW, the State of Nevada and opposes the "Motion for Reconsideration" filed
17 by petitioner Botelho on or about October 1, 2015.

18 Orders concerning habeas corpus hearings can only be reconsidered up until the point
19 when they are reduced to writing, signed by the judge and filed by the clerk. *Tener v. Babcock*,
20 97 Nev. 369, 632 P.2d 1140 (1981). The order of this court was signed by the judge and filed on
21 September 15, 2015. Thus, it is no longer subject to reconsideration. Accordingly, the motion
22 should be denied.

23 / / /

24 / / /

25 / / /

26 / / /

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: October 6, 2015.

CHRISTOPHER J. HICKS
District Attorney

By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on October 6, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-06 09:56:06.875.
GARY HATLESTAD, ESQ. - Notification received on 2015-10-06 09:56:06.719.
JOHN PETTY, ESQ. - Notification received on 2015-10-06 09:56:06.844.
DIV. OF PAROLE & PROBATION - Notification received on 2015-10-06 09:56:06.797.
SEAN SULLIVAN, ESQ. - Notification received on 2015-10-06 09:56:06.75.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

10-06-2015:08:25:00

Clerk Accepted:

10-06-2015:09:55:36

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT IN THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTELHO,
PETITIONER.

CASE NO: CR03-215615 DEPT RD 338

VS.

JAMES BENEDETTI, WARDEN
STATE OF NEVADA, ET-AL,
RESPONDENTSREPLY AND OBJECTION TO OPPOSITION TO
MOTION TO VACATE JUDGMENT OF CONVICTION
FOR NRCIV.P. 9(b) FRAUD.

COMES NOW, MICHAEL T. BOTELHO, IN PROPER PERSON AND UNTRAINED IN THE
LAW, BRINGING FORTH REPLY AND OBJECTION TO THE STATES OPPOSITION TO
MOTION TO VACATE JUDGMENT OF CONVICTION FOR NRCIV.P. 9(b) FRAUD. THIS REPLY
AND OBJECTION IS BASED UPON THE RECORD OF THE COURT AND THE FOLLOWING
POINTS AND AUTHORITIES.

STATEMENT OF FACTS

PETITIONER (HEREIN, BOTELHO) HAS PREVIOUSLY IN THIS CASE, REPEATEDLY
AND IRREFUTIBLY PROVED BEYOND A DOUBT AND THE EVIDENCE AND COURT
RECORD REFLECTS THAT BOTELHOS CONSTITUTIONAL RIGHT TO REDRESS HIS
GRIEVANCE(S) BEFORE THE COURT UNDER THE 1ST AMENDMENT; HIS PROCEDURAL
AND SUBSTANTIVE DUE PROCESS RIGHTS, EQUAL PROTECTION, UNDER THE 5TH AND
14TH AMENDMENT(S) TO THE U.S. CONSTITUTION, ALSO OUR NEVADA CONSTITUTION,
HAVE BEEN SYSTEMATICALLY AND KNOWINGLY VIOLATED IN A [STILL-ONGOING]
EFFORT TO DENY BOTELHO HIS DUE AND JUST RELEASE AS LAW AND JUSTICE
REQUIRE, AS A MATTER OF LAW AND FOR THE EGREGIOUS VIOLATION(S) OF HIS
CIVIL RIGHTS, FRAUD AND OBSTRUCTION OF JUSTICE PERPETRATED UPON BOTELHO
FROM THE START OF BOTELHOS CASE PRIOR TO, DURING AND AFTER HIS ILLEGAL
AND UNCONSTITUTIONAL ARREST IN 2003 AS WELL AS HIS CONTINUED DETENTION
UNTIL THIS VERY DAY!

[1] BOTELHO ASSERTS AND STRONGLY EMPHASIZES THAT THIS MOTION TO VACATE
HIS JUDGMENT OF CONVICTION AND NRCIV.P. 9(b) FRAUD AND NEWLY DISCOVERED
EVIDENCE, ARE IN FACT, A [SEPERATE AND DISTINCT] ACTION UNDER NRCIV.P
RULE 9(b).

DC-09000070843-001
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
CR03-215615 DEPT RD 338
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1 AS SUCH, BOTELOHO'S MOTION TO VACATE J.O.C. AND /FOR NRC P 9 (b) ARE, INFACT,
 2 AN INDEPENDENT ACTION [N]OT INVOLVING HIS ALREADY EXISTING POST-CONVICTION
 3 WRIT OF HABEAS CORPUS, AS BEFORE THIS ONCE "JUST AND HONORABLE" COURT.
 4 BOTELOHO FURTHER STRONGLY EMPHASIZES HIS DISDAIN FOR, AND TAKES [NO]
 5 CREDENCE OF, AND GIVES NO RECOGNITION TO, THE STATES INVALID RESPONSE. (SEE
 6 BOTELOHO'S MOTION TO SHOW CAUSE AGAINST THE STATE). THE STATE WOULD NOT, DID NOT,
 7 DARE TO, ON THE PUBLIC COURT RECORD, RESPOND TO, TO DISPUTE BOTELOHO'S LEGAL AND
 8 VALID ASSERTIONS OF STILL VALID NEVADA LAW AS TO THE VALIDITY OF THE STATES
 9 POSITION TO RESPOND TO OR ANSWER IN BOTELOHO'S CASE, PERIOD! I.E. SEE HIS MOTION TO
 10 STRIKE PREVIOUSLY FILED IN HIS HABEAS ACTION (YOU HAVE TO ACTUALLY READ IT).
 11 THEREFORE, AS A MATTER OF COURT RECORD, BOTELOHO ASSERTS THAT HE IS ONLY
 12 RESPONDING UNDER DURESS, OUT OF SHEER ABUNDANCE OF CAUTION TO PROTECT HIS
 13 CAUSE OF INDEPENDANT ACTION AS A RESULT OF THE STATE AND THIS COURTS ON-GOING
 14 ABUSE OF DISCRETION, DISREGARD OF RULES OF PROCEDURE, NEVADA LAW AND IN THE
 15 WILLFUL, DIRECT AND REPUGNANT CONTRAVENTION OF BOTH NEVADA AND OUR STILL
 16 VALID UNITED STATES CONSTITUTION(S). (EMPHASIS STRONGLY ADDED)
 17 (a) THE STATE KNOWINGLY CHOSE [N]OT TO RESPOND TO HIS⁽¹⁾ HABEAS PETITION AND
 18 MANY MOTION(S) FILED IN GOOD FAITH SINCE 2010. IT WAITED UNTIL 2015, THEN DECIDED
 19 TO RESPOND 5 1/2 YEARS LATER AND CLEARLY JUSTIFYING THE HARM CAUSED BOTELOHO
 20 BY PUTTING THE BLAME ON BOTELOHO WHEN THE STATE LEGALLY KNEW THEY HAD A CIVIL,
 21 STATUTORY AND CONSTITUTIONAL DUTY TO RESPOND TO, AND THE COURTS DUTY TO ACT
 22 UPON, HEAR AND DETERMINE ON THE MERITS, THE FACTS PRESENTED IN BOTELOHO'S
 23 PETITION AND MANY MOTIONS FILED THEREIN. SEE MOTION TO STRIKE IN COURT RECORD.
 24 THE ON-GOING HARMFUL ERRORS HAVE RESULTED IN EXTREME PREJUDICE
 25 AND IRREPARABLE HARM TO BOTELOHO, HIS CONSTITUTIONAL RIGHTS AND THE FREEDOM
 26 DENIED HIM, TO BE WITH HIS WIFE AND CHILDREN, NOW FOR 12 YEARS.
 27 SEE HATHAWAY V. STATE OF NEVADA, 119 NV. 248, 71 P3d 503 (2003) STATE
 28 CREATED IMPEDIMENTS, GOVERNMENT ACTION DESIGNED TO PREVENT AN INDIVIDUAL

FOOTNOTE
 (1) BOTELOHO

FROM UTILIZING LEGAL REMEDIES MAY INFRINGE UPON THE FIRST AMENDMENT
 RIGHT TO PETITION THE COURTS, SEE IN RE WORKERS COMP. ^{RE}FUND, 46 F.3d 813 (8th 1995),
U.S.V. GUTHRIE, 789 F.2d 356 (5th 1986) FOR THE GOVERNMENT TO PUNISH A PERSON BECAUSE
 HE HAD DONE WHAT THE LAW PLAINLY ALLOWS HIM TO DO IS A DUE PROCESS VIOLATION OF
 THE MOST BASIC SORT. FOLCHA V. LOUISIANA, 504 U.S. 11, 80, 112 S.Ct. 1780 (1992) "FREEDOM
 FROM BODILY RESTRAINT HAS ALWAYS BEEN AT THE CORE OF THE LIBERTY PROTECTED BY THE
 DUE-PROCESS CLAUSE FROM ARBITRARY GOVERNMENTAL ACTION."

A JUDGMENT RENDERED IN VIOLATION OF DUE-PROCESS IS VOID, IN THE RENDERING
 STATE AND IS NOT ENTITLED TO FULL FAITH AND CREDIT ELSEWHERE!

(b) THE STATE, IN ITS INVALID AND ILLEGALLY PRESENTED OPPOSITION TO MOTION TO
 VACATE J.O.C. AND /FOR NRCP 9(b) FRAUD, STATED:

(i) FILED PETITION(S) OF HABEAS CORPUS IN THIS COURT, LAST ONE DISMISSED ON
 9-16-2015. (SEE LINES 22-23, PG 1)

(a) THE STATE DID NOT MENTION THAT THE PETITION WAS INFACIT THE VERY SAME,
 PREVIOUSLY FILED PETITION AS FILED IN 2005-2006, AND WAS PROPERLY BEFORE THE
 COURT AS A RESULT OF U.S. DISTRICT COURT ORDER ALSO INCLUDED WITH PETITION
 FILED IN 2010. THIS FOR EXHAUSTION PURPOSES ONLY, AS THE STATE CREATED BOTELHO'S
 FAILURE TO EXHAUST. (SMOKE AND MIRRORS)

(b) THE STATE INCORRECTLY CITED THE DATE OF DISMISSAL AS BEING 9-16-2015.
 IT WAS INFACIT 9-15-2015, WHEN JUDGE POLAHA FURTHER ABUSED HIS DISCRETION BY
 "SUA SPONTE" DENYING BOTELHO'S PETITION AND ACTED ^{BY IGNORING} IN IGNORANCE BY SKIRTING
 THE PRESENTED ISSUES (ALL OF THEM, ON THEIR MERITS) IN PETITION AND ALL MOTION(S)
 THEREIN. FURTHERMORE, POLAHA WAS AWARE THAT BOTELHO FILED A WRIT OF MANDAMUS
 30 DAYS EARLIER TO HAVE HIM RECUSED. THE STATE WAS SERVED WITH THE WRIT OF
 MANDAMUS TO CHIEF JUDGE HARDY TO RECUSE POLAHA. THE STATE NEVER RESPONDED
 TO THIS. THE STATE KNOWS THAT POLAHA SIDE-STEPPED BOTELHO'S WRIT OF MANDAMUS
 AND SHOW-CAUSE MOTION, ACTING IN EXCESS OF HIS JURISDICTION AND VIOLATING THE
 THE LAW AND FURTHER KNOWINGLY VIOLATING BOTELHO'S PROCEDURAL DUE-PROCESS

1 RIGHTS, WHILE KNOWINGLY OBSTRUCTING JUSTICE. THE STATE KNOWS THAT
 2 POLAHA'S ORDER WAS AND STILL IS VOID, WITHOUT FORCE AND EFFECT OF LAW. ITS
 3 AN ABSOLUTE FACT, THAT HAD POLAHA RULED AS LAW AND JUSTICE REQUIRE, THAT
 4 BOTELHO WOULD HAVE HAD HIS CASE VACATED/VOIDED WITH EXTREME PREJUDICE
 5 AND BOTELHO WOULD HAVE RIGHTFULLY AND JUSTIFIABLY BEEN RELEASED FROM
 6 PRISON.

7 FURTHERMORE, THE STATE KNEW THAT POLAHA ALSO RULED WITHOUT ORDERING
 8 A STATE RESPONSE, BECAUSE IF HE HAD, IT WOULD ALL BE ON THE RECORD, I.E.
 9 THE INVALID BOND, THE STATES WILLFUL FAILURE TO PROSECUTE THIS ACTION IN ITS
 10 ENTIRETY SINCE 2010, BOTELHO'S LAWFUL RELEASE FOR ACTIONS TAKEN TO THAT POINT,
 11 ETC. THE STATE KNEW THAT POLAHA ACTED AS AN APOLOGIST FOR THE STATE BY PRACTICING
 12 LAW FROM THE BENCH. THE STATE KNEW POLAHA VIOLATED HIS OATH OF OFFICE, HIS
 13 JUDICIAL CANNONS, STATE LAW, AND BOTELHOS PROCEDURAL DUE PROCESS RIGHTS UNDER
 14 THE 14TH AMENDMENT. (EMPHASIS ADDED), SEE MANDAMUS TO RECUSE POLAHA, FILED 8-13-2015
 15 THE STATE AND THIS COURT KNOW THAT ONLY THE STATE CAN ARGUE ABUSE OF THE
 16 WRIT. SEE BARNES V. HOUSEWRIGHT, 622 F. SUPP. 82 (D.C. NEV. 1985), AND SEE PREJEAN
 17 V. SMITH, 899 F.2d 1391 (5TH 1988). IN BARNES, NO HEARING WAS HELD AND WRIT COULD [NOT]
 18 BE REFUSED.

19 SEE ALSO TREST V. CAIN, 522 U.S. 87, 118 S. CT. 478 (1997) WHEREIN THE SUPREME
 20 COURT VACATED THE JUDGMENT BECAUSE THE STATE COURT DID NOT RAISE ISSUE IN
 21 PETITION AS A DEFENSE, BUT RATHER, IT WAS ERROR FOR THE 5TH CIRCUIT COURT TO
 22 RAISE THE ISSUE "SUA SPONTE" (ON ITS OWN) WHEN THE GOVERNMENT DID NOT RAISE IT."
 23 ALSO, 28 USC 2248, RETURN AND ANSWER, ^{OR} CONCLUSIVENESS. THE ALLEGATIONS OF
 24 A RETURN TO A WRIT OF HABEAS CORPUS, OR OF AN ANSWER TO AN ORDER TO SHOW
 25 CAUSE IN A HABEAS PROCEEDING, IF NOT TRAVERSED, SHALL BE ACCEPTED AS TRUE
 26 EXCEPT TO THE EXTENT THAT THE JUDGE FINDS THE EVIDENCE THAT THEY ARE NOT
 27 TRUE, SEE BARROWS V. HOGAN, 379 F. SUPP. 34 (1974).

28 AS SUCH, THE STATE KNEW THIS COURTS ORDER WAS VOID, WITHOUT FORCE AND

EFFECT OF VALID LAW. THIS SHOWS THAT THE STATES OPPOSITION IS FURTHER BASED ON CONSPIRACY, FRAUD AND OBSTRUCTION OF JUSTICE. THE STATE COULD NOT ACT IN GOOD FAITH, IT WAS BETTER TO ACT IN BAD FAITH AND FURTHER SUPPORT THE DENIAL OF HABEAS AS DENIED ON 9-15-2015.

(2) THE STATE (TERRENCE MCCARTHY) WHO INVALIDLY HOLD^S THE POSITION OF APPELLATE DEPUTY DISTRICT ATTORNEY (SEE SHOW CAUSE MOTION IN COURT RECORD, IN WHICH THE STATE ADMITTED BOTELHOS ASSERTED LEGAL STANDARDS BY CHOOSING NOT TO RESPOND AS A MATTER OF RECORD).

(a) WHO PERTURED HIMSELF IN HIS NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY ON 8-13-2015, (HE HAS BEEN ARGUING THIS CASE SINCE 2006) SEE COURT RECORDS

(b) SEE I.E. WHEREIN MCCARTHY FILED THE STATES INFLAMMATORY AND PROCEDURALLY BARRED "MOTION TO DISMISS" ON 7-24-2015. THIS WAS A FRAUDULENT AND PERTURED MOTION FILED ON THE RECORD BY MCCARTHY, IN THIS COURT. A MOTION THE STATE HAD NO PROCEDURAL OR LEGAL RIGHT TO FILE TO BEGIN WITH. THESE FACTS, EVEN THIS COURT CANNOT IGNORE, NOT EVEN THE CORRUPT JUDGE POLAHA.

(c) MCCARTHY SEEMED TO BE UTTERLY CONFUSED AS TO HIS STATEMENT MADE ON PG. 1, LNS 23-25, STATING "THE COURT CAN RECONSIDER A JUDGMENT DENYING A HABEAS CORPUS BUT ONLY UNTIL THE JUDGMENT IS REDUCED TO WRITING, SIGNED BY THE JUDGE AND FILED BY THE CLERK, AT THAT POINT IT BECOMES FINAL."

AS AN ASSUMED TO BE EDUCATED LAWYER (?) WHO ALLEGEDLY KNOWS WHAT HE IS DOING, MCCARTHY HAS ALREADY PERTURED AND MISREPRESENTED HIMSELF AND HIS FRAUDULENT DOCUMENTS FILED IN THIS COURT, NOW EXPECTS BOTELHO TO SERIOUSLY BELIEVE THAT THE COURT CAN RECONSIDER A JUDGMENT BEFORE IT EVEN MADE AND BECOMES FINAL! DOES WASHOE COUNTY HAVE A DRUG TESTING POLICY? IF SO, MCCARTHY NEEDS TO BE DRUG TESTED! THIS LAME ARGUMENT IS REDICULOUS AND INCOMPETENT AS IT CANNOT BE RE-CONSIDERED [UNTIL] IT BECOMES FINAL, NOT BEFORE, AS HE SO INELLIGUENTLY STATED.

THE STATE CITES AS ITS ONLY CASE, "TENER V. BABCOCK", 97 NEV. 369,

1 632 P2d 1140 (1981), McCARTHY FURTHER RAMBLES ON ABOUT THE POSSIBILITY OF BEING
 2 INTENDED AS SOME SORT OF MOTION FOR RE CONSIDERATION. THIS WAS DONE TO CHANGE
 3 THE DIRECTION OF THIS MOTION BECAUSE OF THE OBSTRUCTION OF JUSTICE, CONSPIRACY,
 4 THREATS, INTIMIDATION, FRAUD, PERJURY, AND THE ILLEGAL KIDNAP AND ARREST OF BOTEHO
 5 AS A DIRECT RESULT OF THE STATES & COFS ACTIONS BROUGHT TO THIS COURT IN BOTEHO'S
 6 MOTION TO VACATE, THE STATE MUST ADDRESS THESE INDISPUTIBLE FACTS. BUT CHOSE
 7 TO GO DOWN A DIFFERENT ROAD OF FANTASY, LEADING THIS COURT BY THE NOSE!
 8 McCARTHY IN SO INELIQUENTLY CITING TENER V. BABCOCK, 97 NEV. 369, 632 P2d
 9 1140 (1981), CITED HOMEWOOD INVESTMENT CO., INC V. GENTRY, 97 NEV. 378, 632 P2d 1140 (1981).
 10 BOTEHO TRIED TO GET TENER V. BABCOCK FOR A WEEK BUT WAS FINALLY GIVEN
 11 HOMEWOOD ON 10-2-2015 BY THE NNCC LAW LIBRARY. THIS GIVE BOTEHO NO TIME TO
 12 ADEQUATELY TRY TO LOCATE THE "GHOST" TENER V. BABCOCK CASE, IF IT EXISTS!
 13 HOMEWOOD IS ABOUT AN APPEAL FROM ORDER DENYING SUMMARY JUDGMENT CONCERNING
 14 BUSINESS. THE LAW CLERK SAID 632 P2d 1140 (1981) DOES [NOT EXIST] AS TENER V. BABCOCK!
 15 (EMPHASIS ADDED)

16 (d) BOTEHO ASSERTS THAT THE INVALID, UNACKNOWLEDGED STATE ACTOR, McCARTHY,
 17 FURTHER RAMBLED ON AS STATED ON PG. 2, LNS 2-5. SEE THEREIN, THE STATE AGAIN HOPES
 18 BOTEHO WILL BELIEVE THAT POST-CONVICTION HABEAS CORPUS PETITIONS TAKES PLACE OF
 19 [ALL] OTHER COMMON-LAW, STATUTORY, OR OTHER REMEDIES WHICH HAVE BEEN
 20 AVAILABLE FOR CHALLENGING THE VALIDITY OF CONVICTION OR SENTENCE, AND "MUST" BE
 21 USED EXCLUSIVELY IN PLACE OF THEM. NRS 34.724.

22 (1) THE STATE AGAIN TRIES TO MISLEAD BOTEHO AND THIS COURT. NRS 34.724(2)(a)
 23 CLEARLY STATES "SUCH A PETITION" IS [N]OT A SUBSTITUTE FOR AND DOES [N]OT AFFECT
 24 ANY REMEDIES WHICH ARE INCIDENT TO THE PROCEEDINGS IN THE TRIAL COURT OR THE
 25 REMEDY OF DIRECT REVIEW OF THE SENTENCE OR CONVICTION.

26 (i) NRCIV RULE 60, IS JUST AN EXAMPLE OF BOTEHO'S CONTENTION, SEE
 27 ALSO NRCIV 9(6) FRAUD. FRAUD, MISTAKE, CONDITION OF THE MIND - IN ALL AVERMENTS
 28 OF FRAUD OR MISTAKE, CIRCUMSTANCES CONSTITUTING FRAUD OR MISTAKE SHALL BE

1 STATED WITH PARTICULARITY. MALICE, INTENT, KNOWLEDGE, AND OTHER CONDITIONS OF THE
2 MIND OF A PERSON MAY BE AVERRED GENERALLY.

3 UNDER NRCP 9(b), DIRECT ATTACKS ON JUDGMENTS OR DECREES ON GROUNDS OF
4 EXTRINSIC FRAUD, WHICH HAVE BECOME FINAL IN THIS JURISDICTION MUST BE SUPPORTED
5 BY SUCH PLEADING AND PROOF, GARTER V. GARTER, 70 NV. 77, 254 P2d 804 (1953).

6 SEE ALSO BRADY V. MARYLAND, 373 US. 87 (1963) DUE-PROCESS REQUIRES THE PROSECUTION
7 TO DISCLOSE EVIDENCE FAVORABLE TO ACCUSED UPON HIS REQUEST WHEN SUCH EVIDENCE
8 IS MATERIAL TO GUILT OR PUNISHMENT. I.E. EXHIBIT(S) 5 AND ILLEGAL SEARCH RESULTING
9 FROM THREATS, INTIMIDATION, PERJURY, 18 USC 241, 242, 28 USC 1985, 1986, ETC. (SEE NEWLY
10 DISCOVERED EVIDENCE IN MOTION TO VACATE) (STRONGLY EMPHASIZED)

11 [2] BOTELHO'S NEWLY DISCOVERED EVIDENCE HAS CLEARLY AND WITHOUT DISPUTE BY THE
12 STATE, ESTABLISHED ITS MATERIALITY TO HIS DEFENSE. THE FRAUD, OBSTRUCTION, ETC.,
13 AND LACK OF JURISDICTION OVER THE SUBJECT-MATTER AND THE PARTIES, ARE PRIMA
14 FACIE EVIDENCE SUPPORTING BOTELHO'S MOTION TO VACATE J.O.C. FOR FRAUD.
15 "RELIEF FROM VOID JUDGMENT IS NOT DISCRETIONARY", CHAMBERS V. ARMONTROUT,
16 16 F3d 257, 260 (8th 1994). IN STATE V. STEVENSON, 465 P2d 720, HELD "A COURT LACKS
17 JURISDICTION TO ACT UPON OFFENSE WHICH ARE NOT BROUGHT BEFORE IT IN THE MANNER
18 PROVIDED BY LAW (I.E. JUSTICE COURT ARRAIGNMENT).

19 JURISDICTIONAL ERRORS CAN NEVER BE WAIVED OR PROCEDURALLY DEFAULTED/BARRED,
20 CITY OF KENOSHA WISE V. BRUNO, 412 US. 507, 93 S. CT. 2222, 2225; MARGOLD V. DIST.
21 COURT, 109 NEV. 804, 858 P2d 33 (1993); PHILBROOK V. BLODETT, 95 Sct 1893, 1902 (1975).

22 THE DISTRICT COURT HAD AN INDEPENDANT OBLIGATION TO DETERMINE WHETHER
23 SUBJECT-MATTER-JURISDICTION EXISTED IN 2003. THERE CAN BE NO DISPUTE THAT LACK
24 OF SUBJECT-MATTER-JURISDICTION RENDERS A JUDGMENT VOID, SEE LAUER ET-AL V.
25 DIST. COURT, 140 P2d 953 (NV 1943); DANIELS V. DANIELS, 12 NEV. 118 (1871).

26 SEE STATE INDUS. INSUR SYSTEM V. SLEEPER, 679 P2d 1273 (NV 1984) (DISTRICT
27 COURTS ORDER WAS VOID, OR IN EXCESS OF ^{ITS} JURISDICTION BECAUSE THE
28 UNDERLYING ORDER UPON WHICH IT WAS BASED WERE VOID, SINCE THE DISTRICT

1 COURT WAS WITHOUT SUBJECT-MATTER-JURISDICTION TO ENTER THAT ORDER.

2 ONCE A DEFENDANT HAS ALLEGED THAT THE COURT LACKS JURISDICTION IN PERSONAM,
3 THE PLAINTIFF BARES THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE
4 THAT JURISDICTION IS PROPER, MIRAGE CASINO-HOTEL V. CARAM, 762 F. SUPP. 296,
5 1991 U.S. DIST. LEXIS 5894 (D. NV 1991); ALSO, LEVINSON V. SECOND JUD. DIST. COURT, 742
6 P2d 1024 (NV 1987).

7 IF A COURT DOES NOT HAVE JURISDICTION OVER A PARTY, THEN IT MAY [N]OT CREAT
8 THAT JURISDICTION BY JUDICIAL FIAT, COMPAGNIE DES BAUXITES DE GUINEA V.
9 INSUR. CORP. OF IRELAND, 454 U.S. 963, 102 Sct 502 (1981).

10 FOR A COURT TO ACT WHEN IT HAS NO JURISDICTION TO DO SO IS FOR THE COURT
11 TO ACT ULTRA VIRES, U.S. STEEL CO. V. CITIZENS FOR BETTER ENVIRONMENT, 523 U.S.
12 83, 94, 118 Sct 1003; RUHRGAS V. MARATHON OIL, 526 U.S. 574, ~~528~~ 583, 119 Sct 1563.
13 IN U.S. STEEL, SUPRA, THE COURT CANNOT PROCEED AT ALL IN THE CAUSE, Id AT 523 U.S. 94.
14 IN LOUISVILLE & NASHVILLE R. CO. V. MOTTLEY, 211 U.S. 149, 29 Sct 42 (1908) DEFECTS IN
15 S-M-J REQUIRE CORRECTION REGARDLESS OF WHETHER THE ERROR WAS RAISED IN
16 DISTRICT COURT.

17 A VOID JUDGMENT IS ONE THAT HAS BEEN PROCURED BY EXTRINSIC [OR]
18 COLLATERAL FRAUD [OR] ENTERED BY A COURT THAT DID NOT HAVE JURISDICTION OVER
19 THE SUBJECT-MATTER OR THE PARTIES, ROOK V. ROOK, 233 VA. 92, 95, 353 S.E. 2d 756,
20 758 (1987), (SEE FURTHER, PG 26, LINES 22 THROUGH PG 29, LINE 18) IN MOTION TO VACATE)).

21 [3] BOTELHO CLEARLY PROVED IN MOTION TO VACATE THAT ALL EVIDENCE SEIZED ILLEGALLY
22 AND KNOWINGLY USED IN COURT, AGAINST BOTELHO, WAS GAINED THROUGH FRAUDULENT,
23 DECEPTIVE, CRIMINAL MEANS, WILLFULLY VIOLATING BOTELHOS CONSTITUTIONAL RIGHTS.

24 AS SUCH, ALL EVIDENCE DERIVED FROM THESE HIGHLY ILLEGAL AND PREJUDICIAL
25 ACTS AS STATED IN MOTION TO VACATE, ARE TAINTED, FRUITS OF THE POISONOUS TREE
26 DOCTRINE. BOTELHO WAS INTENTIONALLY DECEIVED AND TRICKED INTO A GUILTY PLEA
27 AS A RESULT OF STATE ACTIONS AND THE ABUSES OF/BY HIS TRIAL COUNSEL, THE
28 LAME, LYING, SEAN SULLIVAN. THE POLICE AND THE STATE CANNOT COMMIT CRIMES

1 TO INVESTIGATE, ARREST AND PROSECUTE A CITIZEN, NO MATTER HOW MUCH THEY
 2 THINK THEY ARE ABOVE THE LAW. PERIOD [EMPHASIS STRONGLY ADDED].
 3 [4] THE CRIMES COMMITTED BY THE WASHOE COUNTY SHERIFFS OFFICE AND THE STATE, AGAINST
 4 BOTE LHO, CANNOT GO UNCORRECTED AND UNPUNISHED. THE LACK OF SUBJECT-MATTER-
 5 JURISDICTION AND MANY EGREGIOUS VIOLATIONS OF BOTE LHO'S PROCEDURAL, SUBSTANTIVE
 6 DUE-PROCESS AND EQUAL PROTECTION RIGHTS, INALIENABLE RIGHTS GUARANTEED HIM
 7 BY THE NV. AND U.S. CONSTITUTION(S) CANNOT BE IGNORED. THE PREJUDICE AND IRREPARABLE
 8 HARM CANNOT BE OVERCOME. THE FRAUD PERPETRATED UPON BOTE LHO, THE COURT AND
 9 COURT RECORD ARE CRIMINAL IN NATURE AND INEXCUSIBLE. THE COURT CANNOT GET
 10 AROUND THESE GROSS, METHODICAL AND KNOWINGLY CRIMINAL ACTIONS TO JUSTIFY
 11 BOTE LHO'S ILLEGAL AND UNCONSTITUTIONAL ARREST AND CONVICTION. (EMPHASIS ADDED)
 12 BOTE LHO HAS PROVED THE MERITS OF HIS MOTION TO VACATE J.O.C. FOR FRAUD.
 13 BOTE LHO'S MOTION IS NOT A JUDICIAL TIGHTROPE TO BE WALKED AT PERIL, AND MUST NOT
 14 BE PENALIZED FOR ANY "SUPPOSED" WRONG CHOICE OF PROCEDURE. SEE N.C. DASH, INC.
 15 V. SCHWANTES, 125 NEV. 647, 218 P3D 853 (2009) "A PARTY IS NOT BOUND BY THE LABEL
 16 HE PUTS ON HIS PAPERS" (A MOTION MAY BE TREATED AS AN INDEPENDANT ACTION OR
 17 VISA-VERSA, IS APPROPRIATE).
 18 [5] BOTE LHO EMPHASIZES THAT THE UNQUALIFIED SHAM RESPONSE BY THE STATE IS,
 19 IN FACT, FURTHER VIOLATIVE OF NV. RULES OF PROCEDURE(S). THE STATES RESPONSE, BY
 20 DESIGN, FAILS TO ADDRESS AND CONTRADICT EVEN ONE OF BOTE LHO'S PRIMA FACIE
 21 ACCUSATIONS, AND NEWLY DISCOVERED EVIDENCE OF FRAUD, OBSTRUCTION, LACK OF
 22 JURISDICTION, ETC., AS DELINEATED IN BOTE LHO'S MOTION TO VACATE J.O.C. FOR FRAUD.
 23 THE STATE WAS UNQUALIFIED TO RESPOND BUT CHOSE TO DO SO, THEN MISLEADS THIS
 24 COURT AND [S]PECIFICALLY FAILS TO CONTRADICT THE EVIDENTIARY FACTS AND CRIMINAL
 25 ASSERTIONS THEREIN. THE STATE HAD AN ABSOLUTE DUTY TO RESPOND TO THIS ISSUES
 26 OF FACT, YET, CHOSE NOT TO CONTRADICT A SINGLE FACT PRESENTED, NOT EVEN THE
 27 LACK OF JURISDICTION. THE STATE HAD NO CHOICE BUT TO RESPOND, BUT WOULD NOT!
 28 BY THE STATES BAD FAITH ACTIONS, HAS ADMITTED CONSENT OF DEFECT. THE STATE

1 IS FURTHER LACHED, AND CANNOT ARGUE FURTHER IN THE FUTURE, REGARDLESS.
 2 SEE DIST. COURT RULE 13(MOTIONS) THE STATE DID NOT FILE A SUPPORTING
 3 AFFIDAVIT AS REQUIRED, TO PREVENT FURTHER PERTURB AND FRAUD UPON THE
 4 COURT. THE STATE WOULD NOT RESPOND OR CONTRADICT A SINGLE AVERTMENT AND
 5 ACCUSATION AS PRESENTED. THE RECORD IS CLEAR AND IRREFUTIBLE!

6 SEE DIST. COURT RULE 15, IT STATES THAT BOTELHO MUST AGREE THAT ANY
 7 ISSUE OF LAW AND MOTIONS MAY BE CONSIDERED IN CHAMBERS WITHOUT BOTELHO'S
 8 PERMISSION (HAS NOT DONE SO). FURTHER, ANY PROCEEDING WHICH REQUIRES
 9 EVIDENCE, TESTIMONY OR FACT FINDING, MUST BE HEARD IN OPEN COURT.
 10 BOTELHO ASSERTS THAT HE WAS ENTITLED TO A FULL AND FAIR "PUBLIC" HEARING
 11 IF THE COURT CHOSE TO FURTHER EXPOSE ITSELF, THE POLICE AND THE STATE, FOR
 12 THE EGREGIOUS CRIMES AGAINST BOTELHO, HIS WIFE AND TWO BOYS, TO SECURE
 13 AN ILLEGAL AND UNCONSTITUTIONAL CONVICTION AND DETENTION OF BOTELHO.
 14 (EMPHASIS STRONGLY ADDED)

15 SEE N.A. CIV. P. 7(a) THE STATE ANSWERED (NOT LEGALLY), BUT FAILED TO ADDRESS,
 16 RESPOND AND CONTRADICT ANY ACCUSATION, ALLEGATION, THEREIN. SEE (2) IT CLEARLY
 17 STATES "IF AFFIRMATIVE DEFENCES ARE [N]OT PLEADED OR TRIED BY CONSENT, THEY
 18 ARE WAIVED. THE STATE VIOLATED THIS CLEARLY, SEE: IN GENERAL, AN AFFIRMATIVE
 19 DEFENSE NOT RAISED IN THE PLEADINGS IS ORDINARY(ELY) "DEEMED" "WAIVED", 121 NEV. 662,
 20 119 P3d 1241 (1992)

21 SEE N.R. CIV. P. 8(b) A PARTY SHALL STATE IN SHORT, PLAIN TERMS, THE PARTIES DEFENSES
 22 TO [EACH] CLAIM ASSERTED AND "SHALL" ADMIT OR DENY THE AVERTMENTS UPON WHICH
 23 THE ADVERSE PARTY RELIES. (STRONGLY EMPHASIZED) THE STATES OPPOSITION FAILED TO
 24 DO SO. 8(c) BOTELHO CHALLENGED THE LACK OF JURISDICTION OVER THE SUBJECT-MATTER
 25 AND THE PARTIES. ALSO THE CRIMINAL ACCUSATIONS IN NEWLY DISCOVERED EVIDENCE,
 26 UNDER NRCP 8(c), IF AN AFFIRMATIVE DEFENSE IS NOT PROPERLY ASSERTED OR TRIED
 27 BY CONSENT, IT IS WAIVED. EQUITABLE ESTOPPEL IS AN AFFIRMATIVE DEFENSE AND
 28 [MUST] BE AFFIRMATIVELY PLEADED. SECOND BAPTIST CHURCH V. FIRST NATL BANK,

89 NEV. 217, 220, 510 P2d 630 (1973); IF AN AFFIRMATIVE DEFENSE IS [N]OT PLEADED,
IT IS DEEMED WAIVED, AND [NO] EVIDENCE CAN BE SUBMITTED RELEVANT TO THAT
ISSUE. PIERCE LATHING CO. V. I SEC., 956 P2d 93; AND CHISHOLM V. REDFIELD,
75 NEV. 502, 508, 347 P2d 523, 526 (1959); AND SEE JOYCE V. U.S., 474 F2d 15;
KLEIN V. HARRIS, 667 F2d 274; AND LWIN V. I.N.S., 144 F3d 505 (7th 1998). AND SEE (1)

THIS COURT CHOSE TO IGNORE THE MOTION TO VACATE BY BOTELHO AND ORDER A
RESPONSE AS REQUIRED. THE DAMAGE IS DONE. THE STATE IS PRECLUDED FROM FURTHER
ACTION IN THIS CRIMINAL AND JURISDICTIONAL MATTER. MAYBE THE STATE FELT THIS
WOULD AVOID A PUBLIC HEARING ON THE RECORD!, AND WHEN CASE VOIDED, THE TRUTH
BEHIND THE FACTS WOULD BE UNKNOWN TO THE PUBLIC. (EMPHASIS STRONGLY ADDED)
THIS COURT KNOWS IT MUST VOID THIS CASE WITH PREJUDICE, SO DO IT!

SEE NRCP 12(b) EVERY DEFENSE, IN LAW ^{OR} AND FACT, SHALL BE ASSERTED IN THE
RESPONSIVE PLEADINGS IF ONE IS REQUIRED. IT WAS ABSOLUTELY REQUIRED
BUT "AGAIN" NOT DONE! (EMPHASIS ADDED). THIS COURT ABUSED ITS DISCRETION BY ITS
FAILURE TO ORDER AN IMMEDIATE HEARING AND STATE RESPONSE, IN CONTRAVENTION OF
LAW, THE NEVADA AND UNITED STATES CONSTITUTION(S). (EMPHASIS STRONGLY ADDED).
IN NRCP 12(h)(1) A DEFENSE OF LACK OF JURISDICTION OVER THE PERSON, INSUFFICIENCY OF
PROCESS, IS WAIVED:

12(h)(1)(A) IF OMITTED FROM A MOTION IN CIRCUMSTANCES DESCRIBED IN
SUBSECTION(S)(B) OR (b), IF IT IS NEITHER MADE BY A MOTION OR AMENDED THEREOF,
PERMITTED BY RULE 15(a) TO BE MADE AS A MATTER OF COURSE.

12(h)(1)(B) WHENEVER IT APPEARS BY SUGGESTION OF THE PARTIES OR OTHERWISE,
THAT THE COURT LACKS JURISDICTION OF THE SUBJECT MATTER, THE COURT [SHALL] DISMISS
THE ACTION. (STRONGLY EMPHASIZED).

[6] BOTELHO HAS CLEARLY AND INDISPUTEDLY PROVEN HIS CLAIMS. THE FACT THAT THE
STATE HAS CHOSEN NOT TO RESPOND TO, AND CONTRADICT THE FACTUAL CLAIMS ASSERTED,
IS THE STATES PROBLEM, NOT BOTELHO'S. THATS A FACT!

RESPONDENTS HAVE CHOSEN TO REMAIN SILENT AND AS SUCH, HAVE CONFESSED.

FOOTNOTE

(1) WOODS V. STATE, 291 P3d 1284
(PER CURIAM)

1 ERROR. MELVIN LUKINS & SONS V. KAST, 91 NV. 116 (1975). THE SUPREME COURT WILL NOT
 2 COMB THE RECORD TO ASCERTAIN MATTERS WHICH SHOULD HAVE BEEN SET FORTH IN
 3 RESPONDENTS BRIEF; INSTEAD, IT WILL ELECT TO TREAT RESPONDENTS FAILURE TO
 4 FILE ANSWERING BRIEF AS A CONFESSION OF ERROR. STATE V. PRINS, 613 P.2d 408 (1980).
 5 THE COURT TREATED THE FAILURE OF ERROR, AND REVERSED THE JUDGMENT WITHOUT
 6 CONSIDERATION OF THE MERITS OF THE APPEAL. STATE, DMV V. PALMER, 614 P.2d 5 (1980);
 7 SUMMA CORP. V. BROOKS RENT-A-CAR, 602 P.2d 192 (1979); AND SEE FOLK V. STATE, 2010
 8 NEV. LEXIS 2010 (2010).
 9 THIS COURT AND THE (ILLEGITIMATE) RESPONDENTS HAVE CLEARLY ACKNOWLEDGED,
 10 CONCEDED AND ADMITTED, FRAUD, OBSTRUCTION OF JUSTICE, CONSPIRACY, COLLUSION,
 11 PERJURY, SUBORNATION OF PERJURY, THREATS, INTIMIDATION, COERCION, WITNESS
 12 TAMPERING, THEFT (D.N.A, FIREMAN SHIRT, [REDACTED]), VIOLATIONS OF 18 USC
 13 241², 242, 28 USC 1985², 1986, VIOLATIONS OF OATH OF OFFICE (I.E. POLICE AND DISTRICT
 14 ATTORNEY), VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT, DISTRICT COURT RULES,
 15 NEV. RULES OF CIVIL PROCEDURE, VIOLATED 18 USC 9, 18 USC 35, 18 USC 1501, 18 USC 1621, 18 USC
 16 1623, 18 USC 1622, 18 USC 2234 (EMPHASIS ADDED), (30-35) VIOLATIONS OF NEVADA REVISED
 17 STATUTE SECTIONS AND SUBSECTIONS (INCLUDING DESTROYING EVIDENCE), THE ILLEGAL
 18 ARREST AND STILL ON-GOING DETENTION OF BOTE LHO, VIOLATIONS OF THE NEVADA AND
 19 U.S. CONSTITUTIONS, AND THE REPEATED VIOLATIONS OF BOTE LHO'S PROCEDURAL, SUBSTANTIVE
 20 DUE PROCESS RIGHTS, HIS EQUAL PROTECTION, SEE ALSO HIS 1ST, 4TH, 5TH, 6TH, 8TH, 9TH, 14TH AMENDMENTS,
 21 AND THE VIOLATIONS OF MARILOU BOTE LHO (BOTE LHO'S WIFE), HIS BOYS- LANCE AND TODD
 22 BOTE LHO'S CONSTITUTIONAL RIGHTS SECURED BY THE NV. AND U.S. CONSTITUTION(S).
 23 LASTLY, CONCEDED AND ADMITTING THE LACK OF JURISDICTION OVER THE SUBJECT-
 24 MATTER AND THE PARTIES. (EMPHASIS STRONGLY ADDED).
 25 SEE MORLEY V. WALKER, 175 F.3d 756-759 (9TH 1990) THE COURT TAKES AS TRUE, ALL
 26 ALLEGATIONS OF MATERIAL FACT STATED IN COMPLAINT, THE COURT CONSTRUES IN THE
 27 LIGHT MOST FAVORABLE TO PLAINTIFF, " ASHKROFT V. IQBAL, 556 U.S 662, 679 (2009);
 28 NOLL V. CARLSON, 809 F.2d 1446 (9TH 1987) AND SEE CHUBB CUSTOM INSUR.CO V. SPACE

1 SYSTEMS/LORAL, INC., 710 F.2d 946, 956 (9th 2013) AND SEE STANDING COMMITTEE V.
2 YAGMAN, 55 F.3d 1430, "TRUTH IS ABSOLUTE DEFENSE"

3 FOR THIS COURT TO ACT WHEN IT HAS NO JURISDICTION TO DO IS FOR THE COURT TO
4 "ACT ULTRA VIRES", U.S. STEEL CO. V. CITIZENS FOR BETTER ENVIRONMENT, 523 U.S. 83,
5 94, 118 S. CT. 1003, AND RUHRGAS V. MARATHON OIL, 526 U.S. 574, 583, 119 S. CT. 1563; AND
6 SEE ARIZONANS FOR OFFICIAL ENGLISH V. ARIZONA, 520 U.S. 43, 73, 117 S. CT. 1055 (1997).

7 U.S. V. BROADWELL, 959 F.2d. 242 (9th 1992) "BECAUSE THE ERROR IS JURISDICTIONAL
8 [THE DEFENDANT] NEED NOT SHOW CAUSE AND PREJUDICE"; SEE U.S. V. GRIFFEN, 303 U.S.
9 226-229, 58 S. CT. 601 (1939). COURTS ARE CONSTITUTED BY AUTHORITY AND THEY CANNOT
10 GO BEYOND THAT POWER DELEGATED TO THEM. IF THEY ACT BEYOND THEIR AUTHORITY,
11 AND CERTAINLY IN CONTRAVENTION OF IT, THEIR JUDGMENTS AND ORDERS ARE REGARDED
12 AS NULLITIES; THEY ARE NOT VOIDABLE, BUT SIMPLY VOID, AND "THIS EVEN PRIOR TO"
13 REVERSAL". WILLIAMSON V. BERRY, 8 HOW. 945, 540, 12 L. ED. 1170, 1189 (1850); AND TO
14 USURP THAT AUTHORITY WHICH IS NOT GIVEN, SEE COWENS V. VIRGINIA, 6 WHEAT 19 U.S.
15 264, 404 (1821); AND U.S. V. BOSCH OLDSMOBILE, INC., 909 F.2d 657, 661 (1st 1990).

16 SEE BROWNING V. NAVARRO, 887 F.2d 853, 558-59 (5th 1991) (RES JUDICATA APPLIES
17 TO ACTIONS TO VOID JUDGMENT FOR FRAUD); ROOK V. ROOK, 233 VA. 92, 95, 353
18 S.E. 2d 756, 758 (1987). A VOID JUDGMENT CAN [NEVER] ACQUIRE VALIDITY THROUGH
19 LACHES, CROSBY V. BRAD STREET CO., 312 F.2d 483 (2ND CIR. CERT. DEN. 373 U.S. 911,
20 83 S. CT. 1300 (1963).

21 THE ABUSES BY THE WASHOE COUNTY SHERIFFS OFFICE, THE ILLEGITIMATE WASHOE
22 COUNTY DISTRICT ATTORNEYS OFFICE (THE STATE), AND THIS COURT, REMIND ME OF THE
23 ABUSES IN LYMON & GAE CO V. U.S., 579 F.3d 79 (1st 2009) THIS COURT SHOULD SERIOUSLY REVIEW
24 THAT CASE!

25 "MERE PUBLIC INTOLERANCE, OR ANIMOSITY CANNOT CONSTITUTIONALLY
26 JUSTIFY THE DEPRIVATION OF A PERSONS PHYSICAL LIBERTY." O'CONNER V. DONALDSON,
27 422 U.S. 563, 575, 95 S. CT. 2486 (1975)

1 BOTELHO HAS LEGALLY AND FACTUALLY PROVEN, AND THE PRIMA FACIE EVIDENCE
2 STRONGLY SUPPORTS BOTELHO'S CRIMINAL, JURISDICTIONAL AND CONSTITUTIONAL
3 ACCUSATIONS AND MATERIAL ALLEGATIONS PRESENTED IN HIS MOTION TO VACATE
4 JUDGMENT OF CONVICTION FOR FRAUD. THATS A FACT!

5 THE STATE (ILLEGITIMATE) KNEW OF CRIMES COMMITTED BY THE COPS AND FAILED
6 TO ACT. THE STATE THEN ACTED IN BAD FAITH (NOW GUILTY OF MISPRISON OF FELONY),
7 THEN BECAME COMPLICIT IN THE ON-GOING CRIMINAL CONSPIRACY AND FRAUD, FURTHER
8 OBSTRUCTING JUSTICE AND TAMPERING WITH A WITNESS. THE STATE KNEW THAT THIS
9 COURT LACKED JURISDICTION BUT REMAINED SILENT. (EMPHASIS STRONGLY ADDED)

10 THE STATE FAILED TO ANSWER AND PROVE ITS OWN VALIDITY PURSUANT TO NV.
11 LAW (SHOW CAUSE). THE STATE HAS KNOWINGLY CHOSEN TO REMAIN SILENT AND
12 ACCEPT BOTELHO'S FACTUAL ALLEGATIONS AS DETAILED IN MOTION TO VACATE.
13 BOTELHO HAS FACTUALLY SHOWN AND THE STATE ADMITS CONSENT OF DEFECTS BY
14 NOT CONTRADICTING ANY ISSUES CLAIMED THEREIN, THE STATES REFUSAL TO RESPOND
15 TO BOTELHO'S CLAIMS PROVE THE FATAL, CRIMINAL, JURISDICTIONAL AND CONSTITUTIONAL
16 DEFECTS IN BOTELHO'S CASE. (STRONGLY EMPHASIZED)

17 BOTELHO STRONGLY EMPHASIZES THAT THE STATE IS ESTOPPED AND LACHED, PROCEEDING
18 NO FURTHER IN THIS CASE, EVER! THERE IS NO JUSTIFICATION TO CONTINUE TO USURP
19 POWER AND SET ASIDE THE NV. AND U.S. CONSTITUTION(S)⁽¹⁾. THE STATES OPPOSITION IS
20 NOT JUSTIFIED. THIS COURT MUST DISPOSE OF THIS CASE AS LAW AND JUSTICE FOR "ALL",
21 REQUIRES. THIS COURT HAS ONLY [LIMITED] JURISDICTION TO ACT IN THIS MATTER AND
22 THEREFORE [MUST] GRANT BOTELHO HIS RELIEF IN ITS ENTIRETY AS REQUESTED
23 IN HIS MOTION TO VACATE JUDGMENT OF CONVICTION FOR NRCP 9(b) FRAUD. (STRONGLY EMPHASIZED)

24 AFFIRMATION AND CERTIFICATE OF SERVICE
25 I, MICHAEL T. BOTELHO, SWEAR UNDER THE PENALTY OF PERJURY THAT ALL STATEMENTS ARE
26 TRUE AND CORRECT, PUR. TO 28 USC 1746 AND 18 USC 1621. THIS DOCUMENT DOES NOT CONTAIN
27 THE S-S-N OF ANY PERSON. I FURTHER CERTIFY THAT I MAILED A TRUE AND COMPLETE
28 COPY OF REPLY AND OBJECTION TO THIS COURT AND TO ADDRESSED BELOW, BY PLACING SAID
MOTION IN U.S. MAIL VIA PRISON LAW LIBRARY STAFF, PUR. TO FRCP 5(b), MAIL BOX RULE.
SEE BRASS SLIP NO: 2169767

DATED 10-4-2015

Michael T. Botelho
MICHAEL T. BOTELHO # 80837
NNCC, P.O. Box 7000
CARSON CITY, NV. 89702

TO: WASHOE CO. DIST ATTYS OFFICE
CHRIS ~~BOB~~ HICKS (ALIAS D.A.)
P.O. Box 11130
RENO, NV. 89520-0027

FOOTNOTE

(1) SEE U.S. V. FLOWERS, 764 F2d 759
(11th 1985) LIKE FACTS, COMMAND
LIKE RESULTS.

1 CODE #3860
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520
(775)328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

v.

Case No. CR03-2156

11 JAMES BENEDETTI, WARDEN, and
12 THE STATE OF NEVADA,

Dept. No. 3

13 Respondent.
14 _____/

15 REQUEST FOR SUBMISSION

16 It is requested that the "Motion to Vacate Judgment of Conviction and NRCIV P. Rule
17 9(b) Fraud," filed on September 22, 2015, be submitted to the Court for decision.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain the
20 social security number of any person.

21 DATED: October 14, 2015.

22 CHRISTOPHER J. HICKS
District Attorney

23 By /s/ TERRENCE P. McCARTHY
24 TERRENCE P. McCARTHY
Chief Appellate Deputy
25
26

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on October 14, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-14 09:00:24.677.
GARY HATLESTAD, ESQ. - Notification received on 2015-10-14 09:00:24.599.
JOHN PETTY, ESQ. - Notification received on 2015-10-14 09:00:24.755.
DIV. OF PAROLE & PROBATION - Notification received on 2015-10-14 09:00:24.708.
SEAN SULLIVAN, ESQ. - Notification received on 2015-10-14 09:00:24.646.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

10-14-2015:08:30:47

Clerk Accepted:

10-14-2015:08:59:59

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Request for Submission

Filed By:

Terrence McCarthy

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TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTELHO,
PETITIONER

VS

JAMES BENEDETTI, WARDEN,
STATE OF NEVADA, ET-AL
RESPONDENTS,

2015 OCT 15 AM 10:58

JACOB L. BROWN, III
CLERK OF COURT

BY

CASE NO: CRO3-2156, DEPT. NO. 3

REPLY AND OBJECTION TO OPPOSITION
TO MOTION FOR RECONSIDERATION

8
9 COMES NOW, MICHAEL TODD BOTELHO, IN PROPER PERSON AND UNTRAINED
10 IN THE LAW, BRINGING FORTH REPLY AND OBJECTION TO THE STATES OPPOSITION
11 TO MOTION FOR RECONSIDERATION. THIS REPLY AND OBJECTION IS BASED
12 UPON THE RECORD OF THE COURT AND THE FOLLOWING POINTS AND AUTHORITIES,

STATEMENT OF FACTS, POINTS AND AUTHORITIES

14 PETITIONER (HEREIN, BOTELHO), PURSUANT TO U.S. DISTRICT COURT ORDER,
15 RIGHTFULLY RETURNED TO THIS COURT IN 2010, TO EXHAUST ALL HIS STATE AND
16 FEDERAL CONSTITUTIONAL CLAIMS. BOTELHO'S MIXED PETITION WAS CAUSED BY
17 A STATE CREATED IMPEDIMENT.

18 BOTELHO'S PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS, HIS EQUAL
19 PROTECTION, AND RIGHT TO REDRESS HIS GRIEVANCE(S) BEFORE THIS COURT, UNDER
20 THE 1ST, 5TH AND 14TH AMENDMENTS OF THE [STILL VALID] UNITED STATES CONSTITUTION
21 HAVE BEEN, AND ARE STILL BEING SYSTEMATICALLY AND KNOWINGLY VIOLATED
22 BY THE STATE AND THIS COURT [MORE SPECIFICALLY, JUDGE POLAHA].

23 BOTELHO FILED HIS PETITION FOR HABEAS CORPUS ON 1-27-2010. ALSO
24 FILED ON 1-27-2010, WERE MOTION(S) TO APPOINT COUNSEL AND IN FORMA
25 PAUPERIS. BOTELHO FILED ON 2-8-2015, MOTION TO RECUSE JUDGE POLAHA,
26 WITH AFFIDAVIT ATTACHED/INCLUDED WITH MOTION.

27 THIS COURT DID [NOT] RETURN FILED STAMPED COPIES OF THE PETITION
28 AND THREE MOTIONS PROPERLY FILED BEFORE THIS COURT, NEVER DONE!

CR03-2156
STATE VS MICHAEL TODD BOTELHO
District Court 10/15/2015 10:58 AM
Washoe County
3795
K10455

ON - - 2010, THE SECOND JUDICIAL DISTRICT COURT CHIEF JUDGE GRANTED BOTE LHOS MOTION OF IN FORMA PAUPERIS AND DID RECIEVE THIS FILED COPY.

AS OF 12-20-2011, THIS COURT AND THE STATE IGNORED, FAILED TO RESPOND TO, ANSWER, CONTRADICT, AND HEAR, AND GRANT OR DENY BOTE LHOS WRIT OF HABEAS CORPUS, HIS MOTION FOR APPOINTMENT OF COUNSEL, NOR HIS MOTION TO RECUSE POLAHA (NOW AT THAT POINT, PROPERLY ASKED TO BE RECUSED FOR PREJUDICE AND OBVIOUS BIAS) FOUR (4) TIMES).

BOTE LHO, ON 12-20-2011, FILED MOTION TO CHALLENGE THIS COURTS LACK OF SUBJECT-MATTER-JURISDICTION IN THIS CASE. BOTE LHO RECIEVED FILED STAMPED COPY. THIS COURT HAD A CONSTITUTIONAL DUTY AT THAT POINT TO ORDER A RESPONSE BY THE STATE AND MAKE AN IMMEDIATE JUDICIAL DETERMINATION. THE STATE AND THIS COURT CHOSE TO IGNORE THIS CONSTITUTIONAL QUESTION OF GREAT IMPORTANCE TO BOTE LHOS FREEDOM. AT THAT POINT, BOTE LHOS CONVICTION WAS [VOID], PERIOD!

BOTE LHO, ON 2-21-2012, FILED MOTION FOR JUDGMENT ON THE PLEADINGS. ALSO REQUESTED WAS A STATUS CHECK, AND THEREIN ASKED FOR FILED STAMPED COPIES OF PETITION AND THREE (3) MOTIONS PROPERLY FILED BEFORE THIS COURT (EMPHASIS STRONGLY ADDED).

BOTE LHO DID RECIEVE FILED COPY OF MOTION FOR JUDGMENT, BUT, WAS NOT GIVEN FILED STAMPED COPIES AS REQUESTED, NOR DID THIS COURTS CLERK ACT UPON THE REQUESTED "STATUS CHECK"

BOTE LHO, WAS FORCED BY THIS COURTS LACK OF RESPECT FOR NEVADA LAW, NEVADA DISTRICT COURT RULES, NEVADA RULES OF CIVIL PROCEDURE, THE NEVADA AND UNITED STATES CONSTITUTION(S) AND BOTE LHOS INALIENABLE RIGHTS OF DUE PROCESS GUARANTEED BY BOTH THE [STILL VALID] NEVADA[AND] UNITED STATES CONSTITUTION(S), TO FILE AN EXTRAORDINARY WRIT OF MANDAMUS IN THE NEVADA SUPREME

1 COURT ON 3-26-2012, THAT COURT COMMITTED TREASON TO OUR
2 STILL VALID NV. AND U.S. CONSTITUTIONS, WHEN IT KNOWINGLY
3 STATED "WITHOUT REVIEWING THE MERITS, WE DECLINE TO ENTERTAIN
4 ORIGINAL JURISDICTION". BOTELHO WAS PROPERLY BEFORE THE NV.
5 SUPREME COURT, TO COMPEL THE SECOND JUDICIAL DISTRICT COURT TO
6 GRANT BOTELHO'S RELIEF AS REQUIRED BY LAW. BOTELHO HAD NO
7 REMEDY, NO SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE
8 OF LAW TO GET THIS COURT TO DO ITS JOB.

9 THE NV. SUPREME COURT'S ACTION/[DENIAL] WAS REPUGNANT TO BOTH
10 NV. AND U.S. CONSTITUTIONS. THE NEVADA SUPREME COURT FURTHER
11 ACTED ARBITRARILY AND CAPRICIOUSLY BY COMPLETELY IGNORING AND
12 DISREGARDING THE ALREADY PREJUDICIAL AND IRREPARABLE HARM CAUSED
13 BOTELHO BY THIS COURT. AND, NOW BY THE NV. SUPREME COURT.

14 BOTELHO, BECAUSE OF THIS COURTS ACTIONS AND INACTIONS, WAS AND STILL
15 IS WITHOUT COUNSEL, AND UNTRAINED IN THE LAW. BOTELHO WAS AND STILL
16 NEEDS HELP. HAD THIS COURT NOT PERPETRATED THIS IRREPARABLE MIS-
17 CARRIAGE OF JUSTICE, BOTELHO WOULD NOT BE IN THIS [STATE-CREATED]
18 POSITION. BOTELHO WOULD BE HOME WITH HIS WIFE AND KIDS, ALREADY.

19 THIS COURT IS DIRECTLY RESPONSIBLE FOR BOTELHO'S COMPLETE
20 DENIAL OF HIS PROCEDURAL AND SUBSTANTIVE DUE PROCESS, NOW 5 1/2
21 YEARS! THIS COURT WAS REQUIRED TO ACT AND CHOSE NOT TO DO SO.

22 BOTELHOS APPOINTMENT OF COUNSEL AND MOTION TO RECUSE WERE
23 DISREGARDED, AS WAS HIS CHALLENGE TO SUBJECT-MATTER-JURISDICTION.
24 BOTELHO'S STATUS CHECK WAS DISREGARDED, BY THIS COURT. THIS
25 COURT ACTED IN BAD FAITH BY NOT GRANTING BOTELHOS REQUESTED
26 RELIEF ON 2-21-2012.

27 THIS COURT FURTHER ABUSED ITS DISCRETION, ACTED IN BAD FAITH, BY
28 ALLOWING THE STATE TO FILE MOTION TO DISMISS HABEAS CORPUS PETITION

1 ON 7-24-2015, MORE THAN 5 1/2 YEARS LATE. WHEN THIS COURT WAS AGAIN
2 REQUIRED TO ACT BY VOIDING BOTELHO'S JUDGMENT OF CONVICTION, THIS
3 COURT KNEW AS A MATTER OF LAW THAT IT ONLY HAD LIMITED JURISDICTION
4 TO ACT BY GRANTING BOTELHO HIS REQUIRED VOID JUDGMENT, IN THE
5 INTEREST OF JUSTICE FOR ALL. THIS COURT WAS NOW IN THE PUBLIC EYE
6 AND ACTED BEYOND ITS JURISDICTION BY DENYING BOTELHO'S PETITION AND HIS
7 REQUIRED RELIEF.

8 THIS COURT (SPECIFICALLY, JUDGE POLAHA) COMPLETELY DISREGARDED THE
9 MOTION TO STRIKE BY BOTELHO AND HIS ALLEGATIONS / CLAIMS OF MATERIAL
10 FACT BASED ON THIS COURT'S OWN RECORD. JUDGE POLAHA PLAINLY DISREGARDED
11 THE FACTS IN BOTELHO'S MOTION TO STRIKE. POLAHA WAS KNOWINGLY, FLATHER
12 ABUSING HIS DISCRETION, WHEN HE FAILED TO ACT AS LAW AND JUSTICE
13 REQUIRE, BY GRANTING BOTELHO'S REQUIRED RELIEF.

14 THIS COURT HAD NO AUTHORITY AND NO DISCRETION TO ENTERTAIN THE
15 STATE'S MOTION TO DISMISS AS ARGUED IN MOTION TO STRIKE AND HEREIN.
16 THE STATE WAS PRECLUDED, PROCEDURALLY BARRED FROM NOW RESPONDING
17 TO, ANSWERING AND/OR ARGUING AGAINST BOTELHO'S PETITION, MOTIONS AND
18 CHALLENGE OF LACK OF SUBJECT-MATTER-JURISDICTION, AS FILED IN
19 2010, 2011, 2012. THIS COURT, FOR THE REASONS ARGUED HEREIN, AND IN
20 MOTION TO STRIKE, AND FOR THE GROSS MISARRIAGE OF JUSTICE, HAD NO
21 CHOICE BUT TO GRANT BOTELHO'S REQUIRED RELIEF.

22 THIS COURT WAS PUT ON NOTICE THAT THE STATE COMMITTED PERJURY
23 IN NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY AND IN MOTION TO
24 DISMISS. THIS COURT WAS ADVISED / NOTICED THAT THE WASHOE COUNTY
25 DISTRICT ATTORNEY HAD NOT PROPERLY PERFECTED HIS OFFICE PURSUANT
26 TO HIS OATH OF OFFICE AND NEVADA REVISED STATUTES, FURTHERMORE,
27 THAT HIS DEPUTY DISTRICT ATTORNEYS WERE NOT PROPERLY APPOINTED AS
28 A RESULT OF THE BOND REQUIREMENT. AS SUCH, IN ADDITION TO ALREADY

1. IGNORING THESE FACTS, THIS COURT CHOSE NOT TO SANCTION THE STATE.

2. BOTELHO, ON 8-13-2015, FILED IN THIS COURT, "EXTRAORDINARY WRIT OF
 3. MANDAMUS" TO CHIEF JUDGE HARDY, TO HAVE JUDGE POLAHA RECUSED FOR
 4. BIAS, CAUSE AND PREJUDICE. BOTELHO HAS NOT RECEIVED STAMP FILED COPY.

5. BOTELHO ASSERTS THAT JUDGE POLAHA HAD NO AUTHORITY, NOR, DISCRETION
 6. TO PROCEED FURTHER IN THIS CASE. POLAHA WAS NOW ASKED TO BE RECUSED (5) TIMES.

7. THE CHIEF JUDGE HAD AN ABSOLUTE DUTY TO ORDER BOTELHO'S CASE
 8. RE-ASSIGNED TO ANOTHER JUDGE IN ANOTHER DEPARTMENT. IT IS OBVIOUS TO
 9. BOTELHO THAT CHIEF JUDGE HARDY HAS IGNORED THIS WRIT, FURTHER, ALLOWING
 10. BOTELHO'S PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS TO CONTINUE TO BE
 11. VIOLATED AT THIS COURTS LEISURE.

12. SEE MARBURY V. MADISON, 5 U.S. 137, 2 L. ED. 60 (1803) JUDGES WHO REFUSE
 13. TO HEAR WRIT OF MANDAMUS IS A CRIMINAL ACT [JUDGE HARDY] IN ITSELF,
 14. SUBJECT-MATTER-JURISDICTION, AND TREASON TO THE U.S. CONSTITUTION,
 15. FURTHER STATING "IT IS EMPHATICALLY THE PROVINCE AND DUTY OF THE
 16. JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS." THIS IS THE U.S. SUPREME
 17. COURTS "ALL WEATHERING" CORNERSTONE CASE THAT OUR HIGHEST COURT
 18. STILL ADHERES TO!

19. TO ASSUME JURISDICTION IN THIS CASE HAS RESULTED IN TREASON.
 20. "WE JUDGES HAVE NO MORE RIGHT TO DECLINE THE EXERCISE OF JURISDICTION
 21. WHICH IS GIVEN, THE ONE OR THE OTHER WOULD BE TREASON TO THE CONSTITUTION."
 22. COHENS V. VIRGINIA, 6 WHEAT, 19 U.S. 264, 404 (1821).

23. "COURTS ARE CONSTITUTED BY AUTHORITY AND THEY CANNOT GO BEYOND
 24. THAT POWER DELEGATED TO THEM. IF THEY ACT BEYOND THAT AUTHORITY, AND,
 25. CERTAINLY IN CONTRAVENTION OF IT, THEIR JUDGMENT AND ORDERS ARE
 26. REGARDED AS NULLITIES, THEY ARE NOT VOIDABLE, BUT SIMPLY VOID, AND
 27. THIS, EVEN PRIOR TO REVERSAL." WILLIAMSON V. BERRY, 9 HOW 945,
 28. 540, 12 L. ED. 1170, 1189 (1850); AND SEE, IN RE COOPER V. TIRE & RUBBER CO,

568 F3d 1180, 1186-87 (10th 2009).

CHIEF JUDGE HARDY IS NOW COMPLICIT IN ALLOWING THIS CIRCUS TO CONTINUE IN JUDGE POLAHA'S COURT. THE CHIEF JUDGE HAS BY HIS SILENCE AND THE STATE'S FAILURE TO RESPOND, FURTHERSTILL, HAS NOW ALLOWED JUDGE POLAHA TO CONTINUE TO ABUSE HIS DISCRETION, TO ACT BEYOND HIS CONSTITUTIONAL AND JURISDICTIONAL AUTHORITY AND CONTINUE TO VIOLATE BOTELOHO'S DUE PROCESS RIGHTS. (EMPHASIS STRONGLY ADDED)

BOTELOHO, ON 8-17-2015, FILED IN THIS COURT, A MOTION TO SHOW-CAUSE, WHEREIN THE COURT MUST ORDER A RESPONSE AND MAKE A DETERMINATION AS TO WHETHER THE DISTRICT ATTORNEY, CHRIS HICKS, VALIDLY HOLDS OFFICE, AND THAT HIS DEPUTY DISTRICT ATTORNEYS ARE INFECT LAW EMPLOYEES OF SAID OFFICE.

AGAIN THIS COURT DID NOT RETURN A FILED STAMPED COPY TO BOTELOHO. THE COURT, HAD IT ORDERED A RESPONSE FROM THE STATE, WOULD HAVE FORCED THE WASHOE COUNTY DISTRICT ATTORNEY (THE STATE) TO COMMIT PERJURY TO VALIDATE HIS "ALLEGED" AUTHORITY. BY NOT ORDERING A REQUIRED RESPONSE AND A PROMPT LEGAL AND "VERY PUBLIC" DETERMINATION, THIS COURT, LET THE STATE OFF THE HOOK. THIS IS COLLUSION'S FINEST HOUR! THIS FURTHER PREJUDICED BOTELOHO AND VIOLATED HIS DUE PROCESS, YET AGAIN!

THE STATE WAS ALREADY PRECLUDED FROM ANSWERING, RESPONDING, AND CONTRADICTING BOTELOHO'S MATERIAL, FACTUAL ASSERTIONS PRIOR TO 2015 IN THIS CASE. BY BOTELOHO'S MOTION TO SHOW-CAUSE, IT FURTHER, CLEARLY AND UNDISPUTEDLY PROVED THAT THE STATE WAS WITHOUT THE POWER AND AUTHORITY TO RESPOND, EITHER WAY! THIS WAS, AND IS THE STATE'S PROBLEM, NOT BOTELOHO'S.

BOTELOHO FILED REQUEST(S) FOR SUBMISSION FOR WRIT OF MANDAMUS AND SHOW-CAUSE ON 9-8-2015. ALTHOUGH PROPERLY ADDRESSED AND MAILED, THEY CAME BACK "RETURNED AND UN-OPENED" WITHOUT ANY EXPLANATION. BOTELOHO RE-MAILED THEM TO THE [SAME]

COURT ADDRESS AND YET RECIEVED BACK. BOTH REQUESTS FOR
SUBMISSION, STAMPED FILED. BOTELHO AGAIN, NOTES THAT IN REQUESTS FOR
SUBMISSIONS, BOTELHO ASKED FOR FILED STAMPED COPIES OF WRIT OF
MANDAMUS AND SHOW CAUSE MOTION IN THESE REQUESTS, HE STILL HAS
[NOT] RECIEVED EITHER ONE! (EMPHASIS ADDED)

THIS COURT (JUDGE POLAHA), ON⁽¹⁾, ORDERED BOTELHOS PETITION DISMISSED,
THE CLERK CONVENIENTLY ~~SENT~~ IT ON 9-17-2015, WAITING TIL THE END OF THE
WEEK SO THAT BOTELHO WOULD NOT GET ORDER UNTIL THE FOLLOWING WEEK.
IT WAS LATE 9-21-2015, WHEN BOTELHO RECIEVED THE ORDER. THIS FURTHER
HINDERED BOTELHOS ABILITY TO RESPOND AND HAVE THE PREJUDICIAL, UNCONSTITUTIONAL
ORDER VOIDED AND HAVE BOTELHOS RELIEF [VOID JUDGMENT] GRANTED AS
LAW AND JUSTICE REQUIRE, "IMMEDIATELY", THAT IS THE ONLY CURE AVAILABLE!

BOTELHO ASSERTS, AND NOW FORMALLY ACCUSES JUDGE POLAHA OF KNOWINGLY
ACTING BEYOND HIS AUTHORITY, ABUSING HIS DISCRETION, VIOLATING NEVADA LAW
AND JUDICIAL CANNONS AND FURTHERMORE, OBSTRUCTING JUSTICE BY SIDE-
STEPPING THE WRIT OF MANDAMUS TO CHIEF JUDGE HARDY AND THE MOTION TO
SHOW-CAUSE. THESE CRITICAL ACTIONS BEFORE THE COURT WERE FILED
30 DAYS [BEFORE] POLAHA KNOWINGLY RULED AGAINST BOTELHO, AGAIN, ACTING
BEYOND THE JURISDICTION OF THE COURT. ALL FURTHER PROCEEDINGS IN THIS
CASE MUST HAVE BEEN STAYED PENDING AN INDEPENDENT AND LEGALLY JUST
DETERMINATION MADE REGARDING THE MANDAMUS TO RECUSE POLAHA, BY
CHIEF JUDGE HARDY (EMPHASIS STRONGLY ADDED).

POLAHA, HAD NO AUTHORITY TO ACT FURTHER IN THIS MATTER, FOR HIS
PREVIOUS AND REPEATED ACTIONS IN THIS CASE AND THE COMPLETE DENIAL OF
BOTELHOS DUE PROCESS RIGHTS AMOUNTING TO A GROSS MISCARRIAGE OF
JUSTICE AND THE PREJUDICE, AND IRREPARABLE HARM CAUSED BOTELHO.
(EMPHASIS STRONGLY ADDED).

BOTELHO STRONGLY EMPHASIZE THE FACT THAT INSPIRE OF BOTELHOS

FOOTNOTE (1)
9-15-2015

1 GROSS MISCARRIAGE OF JUSTICE. POLAHA, ACTING BEYOND HIS JURISDICTION,
 2 CHOSE TO "SUA SPONTE", PRETEND TO CURE THE DEFECTS IN THIS CASE BY
 3 RULING ON HIS HABEAS CORPUS PETITION, MORE THAN 5 1/2 YEARS LATER.
 4 JUDGE POLAHA DID NOT ORDER A RESPONSE BY THE STATE BECAUSE THE
 5 STATE WAS PRECLUDED FROM DOING SO, AS AVERED HEREIN AND IN BOTELHO'S
 6 MOTION TO STRIKE, HIS REPLY AND OBJECTION TO, AND MOTION FOR SHOW-CAUSE.
 7 THE STATE ALSO, DID NOT RESPOND, PURSUANT TO COURT RULES, AND NEV. RULES
 8 OF CIVIL PROCEDURE, AND NV. LAW, ANYWAY. AS SUCH, BOTELHO'S FACTUAL
 9 ASSERTIONS OF LAW ARE MEMORIALIZED.

10 BOTELHO ASSERTS THAT POLAHA HAD NO AUTHORITY, NOR, JURISDICTION TO
 11 ACT, BUT, IN AN ABUNDANCE OF CAUTION, BOTELHO, ADDRESSES POLAHAS
 12 INVALID, WITHOUT FORCE AND EFFECT OF LAW, PREJUDICIAL, NON-BINDING, SHAM
 13 ORDER, AS PERPETRATED UPON BOTELHO. (EMPHASIS STRONGLY ADDED).

14 (1) BOTELHO [STRONGLY EMPHASIZES] POLAHAS' EAGERNESS TO QUICKLY
 15 DISPOSE OF BOTELHO'S CASE [AFTER] THE STATE FILED MOTION TO DISMISS
 16 PETITION. ITS AN IRREFUTABLE FACT THAT BOTELHO FILED HABEAS PETITION,
 17 FOUR (4) MOTIONS, A CHALLENGE OF SUBJECT-MATTER-JURISDICTION, AND
 18 AN EXTRAORDINARY WRIT OF MANDAMUS TO COMPEL THIS COURT TO DO
 19 ITS JOB, AND A REQUEST FOR STATUS CHECK, OVER THIS 5 1/2 YEAR
 20 EGREGIOUS DELAY PERPETRATED BY THIS COURT, UPON BOTELHO.

21 POLAHA DELIBERATELY MISREPRESENTED THE FACT THAT BOTELHO
 22 DID NOTHING TO ADVANCE THE MATTER IN 5 YEARS. (SEE PGS 1, LINES 20-21)
 23 THIS IS FRAUD UPON THE RECORD, PLAIN AND SIMPLE! THIS IS FRAUD
 24 PERPETRATED BY THE COURT ITSELF!

25 BOTELHO CLEARLY PROVES HIS UNTRAINED IN THE LAW, PRO SE EFFORTS
 26 WENT UNHEARD BY THIS COURT FOR 5 1/2 YEARS. THE RECORD IS CLEAR!
 27 POLAHA LEFT BOTELHO WITHOUT COUNSEL IN 2016, WHEN POLAHA IGNORED
 28 BOTELHO'S MOTION FOR APPOINTMENT OF COUNSEL AND BOTELHO HAS

PAID DEARLY FOR IT WITH HIS ILLEGAL, UNCONSTITUTIONAL DETENTION NOW MORE THAN 12 YEARS. (EMPHASIS STRONGLY ADDED). IF BOTELHO HAD COUNSEL, THE ^{COURT} WOULD NOT HAVE IGNORED THESE PLEADINGS. THIS IS INDISPUTABLE FACT.

AFTER THIS COURT (POLAHA) INTENTIONALLY DISREGARDED [ALL] OF BOTELHOS PLEADINGS FOR 5 1/2 YEARS WITHOUT COUNSEL, THIS COURT ACTED SWIFTLY WHEN THE STATE FILED MOTION TO DISMISS. THIS COURT TOOK 50-55 DAYS TO RESPOND TO STATES MOTION TO DISMISS AND DENY BOTELHOS PETITION, EVEN THOUGH IT HAD [NO] JURISDICTION TO DO SO. THIS COURT RECOGNIZED THE STATE AS COURT OFFICERS AND ACTED SWIFTLY WHILE SHOWING DELIBERATE INDIFFERENCE TO BOTELHO ACTING IN PRO SE AND UNTRAINED IN THE LAW, FOR 5 1/2 YEARS.

(2) POLAHA STATES (PG 1, LNS 21-23) THAT "THE COURT REVIEWED THE ENTIRE FILE IN AN EFFORT TO FAIRLY ADDRESS THE PARTIES ISSUES, [ESPECIALLY] CONCERNING THE REASON FOR THE DELAY." THIS COURT HAD NO OTHER REMEDY AVAILABLE, BUT TO GRANT BOTELHOS RELIEF.

THIS COURT WAS SO FALSELY CONCERNED, THAT IT DID [NOT] ORDER THE STATE TO RESPOND. THIS COURT DID NOT APPOINT COUNSEL. THIS COURT DID NOT ORDER AN EVIDENTIARY HEARING (POLAHA HAD PREVIOUSLY DENIED BOTELHO HIS PROCEDURAL DUE PROCESS DURING HIS FIRST HEARING). THIS COURT DID NOT ORDER BOTELHOS PRESENCE AT HIS HEARING BECAUSE NO HEARING WAS HELD.

THIS DENIAL WAS ADJUDICATED IN CHAMBERS, AND BOTELHO IS SURE THE STATE WAS WITH POLAHA DISCUSSING THIS MATTER IN CHAMBERS WHILE MAKING THIS ILLEGAL, PREJUDICIAL AND UNCONSTITUTIONAL RULING AND WITHOUT JURISDICTION TO DO SO.

(3) JUDGE POLAHA, MISREPRESENTED THE FACTS AGAIN (SEE P.2, LN 4-10)

POLAHA INTENTIONALLY LEFT OUT THE FACT THAT BOTELHO PROPERLY FILED A MOTION TO RECUSE POLAHA IN 2006, AND THAT POLAHA ABUSED HIS DISCRETION IN DENYING IT HIMSELF, WITH OUT POLAHA FILING AN AFFIDAVIT. POLAHA DID NOT EVEN MENTION THE PROPER RECUSAL MOTION IN THIS EDITED HISTORY OF THIS CASE. POLAHA FURTHER FAILED TO STATE THAT ALTHOUGH BOTELHO DID HAVE AN EVIDENTIARY HEARING, IT WAS A SHAM, A FARSE, BOTELHO WAS ALLOWED TO PROCEED ON SEVERAL GROUNDS, INCLUDING INEFFECTIVE ASSISTANCE OF COUNSEL, BUT POLAHA ONLY ALLOWED BOTELHO TO ADDRESS (1) SINGLE ISSUE, AN ISSUE HE CREATED BY ORDERING AN EVALUATION YEARS LATER TO TRY COVER UP HIS NEGLIGENCE. BOTELHO'S COUNSEL ADDRESSED THIS COURT DURING HIS INITIAL APPEARANCE BEFORE POLAHA AND SAID HE BELIEVED BOTELHO WAS SUFFERING FROM SOME KIND OF PTSD, OUT OF SOME CONCERN FOR BOTELHO'S COMPETENCY. THIS COURT IGNORED COUNSEL'S CONCERNS AND ABUSED ITS DISCRETION BY NOT HAVING ORDERED A COMPETENCY EVALUATION. POLAHA, AFTER REVIEWING THIS ASSERTION IN BOTELHO'S PETITION, ORDERED A PSYCHOSEXUAL EVALUATION TO TRY CURE THIS PROBLEM. THE PROBLEM WAS, IT WAS THE WRONG KIND OF EVALUATION AND IT WAS YEARS AFTER THE FACT. THE COURT WAS NEVER SURE [LEGALLY] AS TO BOTELHO'S COMPETENCY TO GO FORWARD IN 2003. THE EVALUATION WAS GIVEN YEARS LATER WAS TOO LATE, THE WRONG ONE, AND COST THE STATE \$4-5,000.00. IT DID NOT CURE BOTELHO'S ISSUE.

POLAHA FAILED TO STATE THAT AFTER HE ADDRESSED THE (1) SINGLE GROUND, HE ABRUPTLY ENDED THE HEARING, NOT ADDRESSING THE REMAINING GROUNDS. BOTELHO'S FORMER TRIAL ATTORNEY, SEAN SULLIVAN, WAS THERE, BUT WAS NOT PUT ON THE STAND BECAUSE POLAHA IGNORED THE I.A.C. GROUND. BOTELHO TRIED TO SPEAK BUT POLAHA TOLD BOTELHO TO SIT DOWN AND SHUT-UP BECAUSE HE WAS NOT PUT ON THE STAND. HOW COULD BOTELHO BE ON THE STAND WHEN POLAHA ABRUPTLY ENDED THE HEARING. BOTELHO WAS AGAIN DENIED HIS

DUE PROCESS.

(4) BACK TO THE RECUSAL IN 2006. POLAHA WAS PROPERLY SERVED BY THE COURT CLERK. POLAHA HAD NO AUTHORITY TO RULE ON MOTION TO RECUSE HIM. FURTHER, POLAHA HAD A STATUTORY DUTY TO PRESENT AN AFFIDAVIT TO DISPUTE THE ALLEGED BIAS. [HE DID NOT] HIS 2006 DENIAL OF RECUSAL MOTION [AND] HIS FURTHER ABUSE OF DISCRETION THEREAFTER, RENDER HIS SUBSEQUENT JUDGMENT AND ORDERS [VOID] AND WITHOUT FORCE AND EFFECT OF LAW. POLAHA ACTED BEYOND THE JURISDICTION OF THE COURT AT THAT POINT.

FURTHERMORE (SEE PG 2, LNS 11-13 THEREIN) POLAHA, AGAIN MISREPRESENTED THE FACTS IN THE COURT RECORD:

(A) BOTELHO'S PETITION WAS [NOT] UNTIMELY. IT WAS FILED TO EXHAUST ALL HIS GROUNDS PURSUANT TO U.S. DIST. COURT ORDER. POLAHA INTENTIONALLY LEFT THIS FACT OUT. POLAHA ALSO LEFT OUT THE FACT THAT IT WAS A STATE CREATED IMPEDIMENT THAT CAUSED BOTELHO'S EXHAUSTION ISSUES FORCING HIM TO FILE THE SAME PETITION AGAIN.

(B) ON LINE 12, POLAHA STATED "PETITION FOR WRIT OF HABEAS CORPUS WHICH IS THE SUBJECT OF THE INSTANT MOTION". POLAHA, THIS COURT LACKED THE AUTHORITY TO EVEN ENTERTAIN THE PREJUDICIAL MOTION; PERIOD

(C) ALSO ON LINE 12 [FOOTNOTE] POLAHA SPEAKS OF BOTELHO'S 2010 MOTION TO AGAIN [RECUSAL OF POLAHA] RECUSE POLAHA. AGAIN, THE FACTS AND REQUIREMENTS OF NRS 1.235 [ARE MISREPRESENTED]. BOTELHO PROPERLY FILED MOTION TO RECUSE POLAHA WITH AFFIDAVIT ON 2-8-2010 (NOT 2-18-2010).

SEE NRS 1.235 (4) BOTELHO FILED MOTION TO RECUSE POLAHA, WITH AFFIDAVIT TO THIS COURT. THE COURT CLERK WAS REQUIRED TO SERVE POLAHA, BY TAKING IT TO HIM IN CHAMBERS. BOTELHO WAS IN PRO SE AND INDIGENT. POLAHA WAS AGAIN PROPERLY SERVED. NRS 1.235 (5) POLAHA SHALL PROCEED NO FURTHER AND SHALL: (a) IMMEDIATELY TRANSFER CASE (b) FILE A WRITTEN ANSWER WITH THE CLERK OF THE COURT AND HEARD BY ANOTHER JUDGE AGREED UPON BY THE PARTIES. POLAHA WOULD NOT DO THIS. THIS WAS NOT BEFORE ANOTHER JUDGE. POLAHA VIOLATED THE

1 STATUTE, THE SPIRIT OF THE STATUTE AND JUDICIAL CANNON(S) IN SO DOING.
 2 ADDITIONALLY, IN THE INTERESTS OF JUSTICE, FOR THE ACCUSATION OF IMPLIED BIAS,
 3 SHOULD HAVE VOLUNTARILY RECUSED HIMSELF (THIS WAS NOW THE 4TH TIME POLAHA
 4 HAD BEEN MOVED FOR RECUSAL, TWICE BY PUBLIC DEFENDER, VERBALLY AND
 5 CHASTIZED FOR IT. ALSO TOLD COUNSEL THAT HAD HE FOLLOWED PROCEDURE, HE WOULD
 6 HAVE RECUSED HIMSELF. THIS PROVED THAT POLAHA WAS BIASED TOWARD BOTEHO
 7 AND FURTHER PROVED INEFFECTIVE ASSISTANCE OF COUNSEL (POLAHA SAID AS
 8 MUCH IN BAD ACTS AND SENTENCING HEARINGS.) POLAHA IGNORED THIS FACT IN
 9 BOTEHO'S PETITION OF COURSE.

10 (D) BOTEHO FILED MANDAMUS TO CHIEF JUDGE HARDY, WITH AFFIDAVIT, ON
 11 8-13-2015, SO AGAIN, CHIEF JUDGE HARDY, AND/OR COURT CLERK WAS TO
 12 SERVE POLAHA. AGAIN, NOW A 5TH TIME, FAILED TO RECUSE HIMSELF, FAILED
 13 TO FILE AFFIDAVIT OR ANSWER TO ANOTHER JUDGE. POLAHA, AGAIN, FURTHER
 14 PREJUDGED BOTEHO, SHIRKED HIS DUTIES AND ABUSED HIS DISCRETION.
 15 POLAHA WAS ACTING BEYOND HIS AUTHORITY, NV. LAW, AND BEYOND THE JURISDICTION
 16 OF THIS COURT WHEN 30 DAYS LATER, HE RULED AGAINST BOTEHO AND
 17 DID SO SUA SPONTE, WITHOUT AN ORDERED STATE RESPONSE, POLAHA RULED AND
 18 ANSWERED, PRACTICING LAW FROM THE BENCH. ONLY THE STATE CAN ARGUE ABUSE
 19 OF THE WAIT. FURTHERMORE, THE STATE IN ITS [UNQUALIFIED] MOTION, FAILED
 20 TO ADDRESS ANY ISSUES PRESENTED, ESPECIALLY THE FACT THAT BOTEHO
 21 WAS RIGHTFULLY BEFORE THIS COURT TO EXHAUST HIS ISSUES AND IN FOLLOWING
 22 A FEDERAL COURT ORDER. ~~CONVENIENTLY~~ ENOUGH, POLAHA MISREPRESENTED
 23 THIS CRUCIAL FACT IN HIS DENIAL.

24 (E) PG. 2, LL 12-13, POLAHA LIED, CONSPIRED TO COVER UP THE FACT THAT
 25 BOTEHO HAD BEEN ACTIVE (SEE PG (1), (2), (3) HEREIN) IN CONTESTING HIS ILLEGAL
 26 AND UNCONSTITUTIONAL ARREST AND CONVICTION. POLAHA MISREPRESENTED THE
 27 FACTS THAT PURSUANT TO DISTRICT COURT RULES, NV. RULES OF CIVIL PROCEDURE,
 28 NEVADA LAW AND THE NV. AND U.S. CONSTITUTION(S), THE STATE AND THIS COURT

HAD A DUTY TO ACT UPON THESE PLEADINGS BUT IGNORED THEM AS PRESENTED BY THE COURT CLERK.

(F) POLAHA, IN PGS 3-4, MAKES EXCUSES FOR THE INJUSTICE PERPETRATED UPON BOTEELHO, BY BLAMING IT ON A SYSTEM CHANGE OVER. THIS WAS NOT BOTEELHO'S PROBLEM. NOR WAS THE 5 1/2 YEAR DELAY.

(1) SEE PG 3, LNS 15-18, POLAHA BLAMES BOTEELHO FOR FAILING TO FILE A REQUEST FOR SUBMISSION AS CAUSE FOR NOT BEING ADDRESSED. POLAHA KNOWS THAT PURSUANT TO PROCEDURAL RULES, THE CLERK, THIS COURT, POLAHA AND THE CHIEF JUDGE HAD A DUTY TO ENSURE THESE MOTIONS, ETC. WERE ADDRESSED AS FILED. SEE

(2) POLAHA KNOWS BOTEELHO LACKED COUNSEL, ACTING IN PRO SE AND UNTRAINED IN THE LAW, TOOK ADVANTAGE OF BOTEELHO. BOTEELHO HAD FILED MULTIPLE MOTIONS AND A REQUEST FOR STATUS CHECK. THE COURT CLERK HAD A DUTY TO CORRECT THE "ALLEGED CHANGE" THEN.

(3) BOTEELHO WAS [NOT] REQUIRED TO FILE A "REQUEST FOR SUBMISSION", THIS IS NOT A RULE, PROCEDURE, NOR NEVADA LAW. POLAHA JUSTIFIES BOTEELHO'S COMPLETE DENIAL OF DUE PROCESS ON THIS FACT! FURTHERMORE, THIS COURT KNEW BOTEELHO WAS NOT HELD TO THE SAME STANDARDS AS A PRO SE LITIGANTS. SEE BALESTRERI V. PACIFICA POLICE DEPT, 901 F2d 696 (9TH 1990); GREEN V. BRANSON, 108 F3d 1296; BOAG V. McDUGAL, 454 U.S. 364, 102 Sct 700 (1982); HAINES V. KERNER, 404 U.S. 519, 92 S. CT 594 (1972); AND BATEMAN V. U.S. POSTAL SERVICE, 231 F3d 1220-1224 (9TH 2002).

FOR POLAHA TO STATE THAT THIS IS THE ONLY WAY THIS COURT IS MADE AWARE OF A PENDING MATTER IS UNTRUE. THE COURT CLERK IS RESPONSIBLE FOR THE COURT CALENDAR AND HAD A DUTY TO ENSURE BOTEELHO'S PLEADINGS WERE CALENDERED, WAITING FOR DECISION.

POLAHA LIED AGAIN. IF THIS WAS TRUE IT WOULD HAVE BEEN INSTITUTED UNDER AN N.R.S. STATUTE [AND/OR] NEVADA RULE OF CIVIL PROCEDURE!
(EMPHASIS STRONGLY ADDED)

1 BOTELHO WAS NOT REQUIRED TO FILE A REQUEST FOR SUBMISSION, PERIOD!

2 (4) PG 3, LNS 21-26, AGAIN, POLAHA MAKES ADDITIONAL EXCUSES FOR THE
3 COURT AND COURT CLERK TO JUSTIFY DENIAL OF BOTELHOS DUE PROCESS.

4 (5) PG 4, LNS 7-10, POLAHA BLAMES THE CHIEF JUDGE ^{FOR} NOT SERVING THIS DEPT.,
5 AND ALSO COURT ADMINISTRATION

6 (6) PG 4, LNS 11-14, POLAHA STATES THAT BOTELHO WAS [NOT] AT FAULT FOR 5 YEAR
7 DELAY AND STATES "JUSTICE REQUIRES THE COURT TO CONSIDER THE PETITION
8 ON ITS MERITS." AT THAT POINT THIS COURT SHOULD HAVE ORDERED TO STATE
9 TO FILE A RESPONSE TO THE PETITION ON ITS MERITS, NOT JUST ACCEPTING ITS
10 SIMPLE ARGUMENT FOR NON PROSECUTION AND SUCCESSIVE PETITION - FAILURE
11 TO ADDRESS THE MERITS BY THE STATE LACKED THE ~~THE~~ APPEARANCE OF A JUST
12 AND FAIR ARGUMENT. (EMPHASIS ADDED).

13 AGAIN, JUDGE POLAHA "SUA SPONTE" PRACTICED LAW FROM THE BENCH, FOR
14 A JUDGE WHO SIDE STEPPED HIS NECESSARY REFUSAL TO RULE WITHOUT A
15 PROPER RESPONSE FROM THE STATE, RULING FROM CHAMBERS, ON HIS OWN, GAVE
16 THE APPEARANCE OF PARTIALITY AND IMPROPRIETY. POLAHA STUNK OF PARTIALITY
17 AND BIAS BY RULING, BEYOND HIS AUTHORITY AND JURISDICTION OF THIS COURT.
18 (4) PGS 4-6 (SUCCESSIVE PETITION, CLAIMS). POLAHA FAILS TO STATE THAT BOTELHO
19 WAS TOLD TO COME DOWN TO EXHAUST HIS CLAIMS BY FEDERAL COURT. THE 5 1/2
20 YEAR DELAY FURTHER DENIED HIS DUE PROCESS.

21 (1) THIS COURTS PRIOR DETERMINATION WAS [NOT] ON THE MERITS AS FALSELY
22 CLAIMED.

23 (2) CITED IS NRS 34.810(2), BOTELHO'S CLAIMS WERE INCLUDED IN PRIOR
24 PETITION. BOTELHO WAS EXHAUSTING PREVIOUS CLAIMS SO HE COULD GO TO
25 FEDERAL COURT TO GET A FAIR AND HONEST DETERMINATION OF THE MERITS OF
26 PETITION NOT FAIRLY HEARD BY THIS COURT PREVIOUSLY.

27 (3) POLAHA CITED PELLIGRINI V. STATE, 34 P3d 519 (2001) REGARDING NOT HAVING
28 MULTIPLE OPPORTUNITIES FOR RELIEF ABSENT EXTRAORDINARY CIRCUMSTANCES.

1 BOTELHO'S CIRCUMSTANCES WERE EXTRAORDINARY AS BOTELHO COULD
 2 NOT PROCEED TO FEDERAL COURT UNTIL HIS CLAIMS WERE FIRST EXHAUSTED
 3 IN STATE COURT. THE COURT (FEDERAL) TOLD BOTELHO TO COME DOWN TO
 4 EXHAUST THESE CLAIMS SO HE COULD GO BACK TO FEDERAL COURT. BOTELHO
 5 DID JUST THAT.

6 FURTHER, IN NRS 34.810(1)(b)(2) BOTELHO HAS SHOWN A DEMONSTRATION OF
 7 GOOD CAUSE FOR THE DELAY AND UNDUE PREJUDICE. BOTELHO HAD A VALID,
 8 LEGAL EXCUSE THAT FAILURE TO CONSIDER HIS CLAIMS WOULD AND HAVE
 9 RESULTED IN A FUNDAMENTAL MISCARriage OF JUSTICE. SEE COLLEY V. STATE,
 10 773 P.2d 1229 (1989).

11 AS STATED IN ^{MURRAY V. CARRIER 477 U.S. 478, 488 (1986)} ~~608 P.2d 1111 (1980)~~ BOTELHO HAD PROVED AN
 12 EXTERNAL IMPEDIMENT CAUSED AND CREATED A FACTUAL OR LEGAL BASIS FOR A
 13 CLAIM WAS NOT REASONABLY AVAILABLE TO COUNSEL, OR THAT 'SOME INTERFERENCE
 14 BY OFFICIALS,' MADE COMPLIANCE IMPRACTICAL.

15 BOTELHO HAS DEMONSTRATED PREJUDICE THAT ERRORS WORKED TO PETROV'S
 16 ACTUAL AND SUBSTANTIAL DISADVANTAGE. HOGAN V. WARDEN, 860 P.2d 710 (1993).

17 (3) POLAHA ON PG. 6, ARGUES THAT BOTELHO IS NOT RIGHT TO COUNSEL IN
 18 POST-CONVICTION PROCEEDINGS. BOTELHO CONCURS, BUT, THIS LEAVES BOTELHO
 19 IN JEOPARDY AS FOLLOWS:

20 BOTELHO ASSERTS THAT BY GRANTING HIM POST-CONVICTION COUNSEL, THIS
 21 COURT ACTED IN COLLUSION WITH APPELLATE COUNSEL TO EFFECTIVELY END
 22 BOTELHOS CASE IN THE NV. SUPREME COURT, BEING FOREVER UNABLE TO PURSUE
 23 THIS COURTS INJUSTICES IN FEDERAL COURT BY SIMPLY APPOINTING COUNSEL
 24 AND COUNSEL NOT FILING CLAIMS TO BOTELHO'S DETRIMENT AND THE NV. SUPREME
 25 NOT ALLOWING BOTELHO TO FIRE COUNSEL TO BE ABLE TO PRESENT ALL HIS
 26 CLAIMS FAIRLY BEFORE THE STATES HIGHEST COURT.

27 BOTELHO ASSERTS THAT THIS IS A WELL DESIGNED PROCEDURAL TRAP
 28 INFLECTED UPON ALL LITIGANTS BY THE STATE OF NEVADA, TO STOP FURTHER

1 LITIGATION BY PETITIONERS. WORSE YET. THE LAWYERS OATH AND ALLEGIANCE
2 IN NEVADA IS SWORN TO THE STATE, TO DEFEND AND PROTECT THE STATE OF
3 NEVADA AND THE STATES INTERESTS AT ALL COST. THIS IS WHY THE CLIENT
4 IS NOT SPOKEN OF, THIS IS WHY ATTORNEYS IN NEVADA WILL NOT DEFEND BOTELHO
5 AND OTHERS. TO THE BEST OF THEIR ABILITY BECAUSE IT CLEARLY VIOLATES
6 THEIR UNDIVIDED LOYALTY TO THIS STATE. THIS SHOWS WHY THE INEFFECTIVE
7 ASSISTANCE OF COUNSEL CLAIMS ARE SO NUMEROUS.

8 BOTELHO ASSERTS AND THE RECORD CLEARLY PROVES THAT TRIAL COUNSEL
9 DID ABSOLUTELY [NO] INVESTIGATION, HE FAILED TO FOLLOW PROPER PROCEDURE
10 TWICE (IN TWO SEPERATE HEARINGS) TO RECUSE POLAHA. POLAHA TOLD HIM SO
11 AND FURTHER TOLD HIM THAT IF HE HAD FOLLOWED PROPER PROCEDURE, HE
12 WOULD HAVE RECUSED HIMSELF. THIS CLEARLY PROVED INEFFECTIVE ASSISTANCE OF
13 TRIAL COUNSEL AND ALLOWED AND PROVED FURTHER PREJUDICE AND BIAS BY
14 JUDGE POLAHA. BOTELHO EMPHASIZES THIS FACT, AS WHEN BROUGHT FORTH AS
15 ISSUES IN BOTELHOS HABEAS PETITION, POLAHA IGNORED THE MERITS OF THESE
16 CLAIMS. A CLEAR EXAMPLE OF FURTHER PREJUDICE & BIAS BY POLAHA.

17 TRIAL COUNSEL DID NOT BRING OR INSIST ON BRINGING THE STATE WITNESS INSTEAD
18 OF ALLOWING THE COP TO GO ON THE STAND AND LIE LIKE A BITCH! THIS PERTURBED
19 TESTIMONY WAS PERJURY AND EXTREMELY PREJUDICIAL AND COMPLETELY UNTRUE.
20 HAD COUNSEL ENSURED MELISSA BOTELHO'S APPEARANCE IN COURT, BOTELHO
21 WOULD HAVE BROUGHT FORTH NO LESS THAN 6 WITNESSES TO COMPLETELY
22 DISCREDIT HER FICTICIOUS [ALLEGED] COMMENTS ALLOWED TO BE BROUGHT FORTH
23 AS HEARSAY. THE ALLEGED MOTIVE, PLAN EXCEPTION WAS NOT SIMILAR ANYWAY.

24 TRIAL COUNSEL MISLED (LIED TO) BOTELHO INTO TAKING A GUILTY PLEA. HE
25 SPECIFICALLY STATED THE GRAND JURY TRANSCRIPTS WERE INCOMPLETE AS WAS
26 THE POLICE REPORTS WHEN HE TOLD BOTELHO ABOUT THE STATES PLEA OFFER.
27 HE TOLD BOTELHO THAT THE STATE WOULD PROVE ONE COUNT AND IF HE WENT
28 TO TRIAL, THE JURY WOULD CONVICT ON ALL COUNTS. COUNSEL DID [NOT] TELL

1 BOTELHO THAT HE WROTE A LETTER TO THE STATE WANTING TO PLEAD HIM OUT.
 2 BOTELHO HAS REPEATEDLY TRIED TO GET A COPY OF THIS LETTER FROM TRIAL ATTY,
 3 THE STATE AND THIS COURT, YET HAS STILL NEVER SEEN IT! COUNSEL TOLD
 4 BOTELHO THE PLEA WAS OPEN TO ARGUE BUT THAT THE STATE HAD AGREED TO
 5 CT I, 5 TO 15 YEARS, COUNT 3, 4, 5 TO BE CONCURRENT AND 5 TO 20 YEARS TO
 6 BE CONSECUTIVE TO 5 TO 15. BOTELHO WAS TOLD BY COUNSEL THAT HE WOULD
 7 GET 10 YEARS, BUT IF WORK, PROGRAM AND GO TO SCHOOL HE COULD AND
 8 MOST LIKELY WOULD BE OUT IN 8 YEARS BECAUSE THE GOOD TIME, WORK TIME
 9 COMES OFF THE FRONT! THAT WAS A LIE! COUNSEL TOLD BOTELHO THE STATE CAME
 10 TO HIM WITH THE OFFER. COUNSEL TOLD BOTELHO ABOUT THE PLEA OFFER THE
 11 LAST DAY IT WAS STILL ON THE TABLE, BOTELHO HAD ONLY (1) DAY TO DECIDE TO
 12 TAKE THE PLEA AND WAS LIED TO IN EVERY ASPECT AS TO THE PLEA. IT WAS 2 YEARS
 13 LATER WHEN BOTELHO FINALLY GOT (MOST) OF HIS CASE FILE ^{AND FOUND} THAT HE (COUNSEL) WAS
 14 IN POSSESSION OF BOTELHOS PLEA OFFER FOR [30 DAYS].
 15 BOTELHO WAS NEVER TOLD ABOUT THE ALLEGED BAD ACTS EVIDENCE PRIOR TO PLEA
 16 YET COUNSEL KNEW FOR AWHILE. BOTELHO WAS NEVER TOLD ABOUT THE PHONY SUBPOENA
 17 USED TO MAKE BOTELHO A SUSPECT, WAS NOT TOLD THAT HE WAS NOT PROPERLY
 18 ARRAIGNED IN JUSTICE COURT AND THAT THIS COURT LACKED JURISDICTION IN THIS CASE,
 19 WAS NOT TOLD THAT THE SEARCH WARRANT WAS PROCURED AS A RESULT OF FRAUDULENT
 20 SUBPOENA IN BOTELHOS CASE. NEVER TOLD THAT FRUITS OF SEARCH WARRANT COULD
 21 NOT BE USED, WAS NEVER TOLD THAT PERJURY WAS COMMITTED TO SECURE SEARCH
 22 WARRANT, WAS NOT TOLD THAT THE COPS WILLFULLY EXCEEDED THE SCOPE OF THE
 23 SEARCH WARRANT, WAS NOT TOLD THAT BOTELHOS WIFE WAS THREATENED SO SHE
 24 WOULD GIVE CONSENT TO COLLECT D.N.A, WAS NOT TOLD THAT THE STATE PERJURED
 25 AFFIDAVIT IN SUPPORT OF ARREST WARRANT, WAS NOT TOLD HIS ARREST WAS ILLEGAL,
 26 WAS NOT TOLD THAT DNA CHAIN OF EVIDENCE WAS NON EXISTENT, WAS NOT TOLD
 27 THAT BOTELHOS STATEMENTS HAD BEEN [A]LTERED BY THE COPS AFTER THE
 28 FACT, WAS NOT TOLD THAT COPS ALTERED / DESTROYED EVIDENCE IN CUSTOMER

1 RECORDS, WAS NEVER TOLD THAT BECAUSE HE WAS INVITED TO AND ASKED TO GO TO
 2 GRAND JURY HEARING AND WAS NOT ALLOWED TO ATTEND-THAT HIS CONSTITUTIONAL
 3 RIGHTS WERE VIOLATED, WAS NEVER TOLD THAT THE STATE HAD TELEPHONE EX PARTE
 4 COMMUNICATION WITH POLAHA TO INCREASE BAIL WITHOUT COUNSEL-WITHOUT- PRIOR
 5 NOTIFICATION AND WITHOUT A BAIL HEARING AND THE FACT THAT [A]FTER ALREADY
 6 INCREASING BOTELHO'S BAIL-THE STATE FILED EMERGENCY MOTION, WAS NEVER
 7 TOLD THAT HE WAS ^{NOT} POSITIVELY IDENTIFIED-NOR WAS HIS ^{ALLEGED} VEHICLE-BY VICTIM,
 8 WAS NEVER TOLD THESE FACTS, EVER.

9 FURTHERMORE, BOTELHO WAS NOT AWARE PRIOR TO 2005, OF ANY OF THESE FACTS,
 10 NOR THE FACT THAT NO INVESTIGATION WAS EVER DONE! HE DID NOT EVEN ENSURE
 11 THAT BOTELHO RECIEVED A COMPETENCY HEARING, HAD A SEPERATE D.N.A. ANALYSIS
 12 DONE, INVESTIGATE MELISSA BOTELHO AND HER ALLEGED STATEMENT(S), A FAIR AND UNBIASED
 13 JUDGE. BOTELHO WAS TAKING PSYCHOTROPIC DRUGS WHEN SIGNED PLEA AND ARRAIGNED
 14 IN DISTRICT COURT- BETWEEN HIS POTENTIAL COMPETENCY ISSUES AND PSYCH DRUGS,
 15 BOTELHO COULD NOT EVEN PLEAD, LET ALONE, BE ARRAIGNED IN DISTRICT COURT!
 16 THESE FACTS, SOME NEWLY DISCOVERED, BY BOTELHO (AS MENTIONED IN MOTION TO
 17 VACATE J.D.C. FOR FRAUD, CLEARLY PROVE ~~THE~~ BEYOND A REASONABLE DOUBT THAT
 18 BOTELHO, DID NOT, NOR COULD NOT HAVE MADE A KNOWING, INTELLIGENT AND
 19 VOLUNTARY PLEA. COUNSEL HAD AN ABSOLUTE DUTY TO FILE MOTION TO DISMISS THIS CASE!

20 FURTHERMORE, THIS COURT IGNORED THESE FACTS AND MORE WHEN POLAHA LIED
 21 STATING THESE HAD NO MERIT IN BOTELHOS PETITION. WORSE STILL, BOTELHO WAS
 22 NEVER TOLD HE COULD WITHDRAW HIS GUILTY PLEA PRIOR TO TRIAL OR ● HE WOULD
 23 HAVE GONE TO TRIAL, HE ASKED TRIAL COUNSEL RIGHT AFTER SENTENCING TO WITHDRAW
 24 HIS PLEA AND COUNSEL TOLD HIM "IT WAS TOO LATE"

25 POLAHA ALLOWED TIME TO ARGUE HIS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
 26 CLAIMS AT BOTELHOS EVIDENTIARY HEARING BUT ABRUPTLY ENDED HEARING WITHOUT
 27 ADDRESSING THESE SERIOUS ISSUES. WHEN BOTELHO CONTESTED, HE WAS TOLD TO
 28 SIT DOWN AND SHUT-UP! THIS AFTER BOTELHO FILED MOTION TO RECUSE POLAHA

1 PRIOR TO EVIDENTIARY HEARING (PROVES FURTHER PREJUDICE AND BIAS).
 2 BOTEHO PLEA COULD NOT STAND UP TO THESE FACTS^E; FRAUD, PERJURY, THREATS,
 3 LACK OF JURISDICTION, ETC.....

4 FURTHERMORE, BOTEHO'S APPELLATE COUNSEL CHARGED THE STATE, BUT, DID NOT
 5 ACTUALLY INVESTIGATE ANYTHING OTHER THAN SIMPLY CALLING BOTEHO'S EX-WIFE
 6 (STATE WITNESS - NOT CALLED TO STAND FOR FEAR OF BEING DISCREDITED). HAD COUNSEL
 7 ACTUALLY INVESTIGATED, SHE WOULD HAVE ASKED FOR A CRIMINAL INVESTIGATION INTO
 8 THE WASHOE COUNTY SHERIFFS ACTIONS AND CRIMES. SHE WOULD HAVE ALSO DONE THE
 9 SAME FOR THE WASHOE COUNTY DISTRICT ATTORNEYS ACTIONS, INCLUDING THOSE OF
 10 PERJURY, SUBORNATION OF PERJURY, WITNESS TAMPERING, FRAUD ON THE RECORD,
 11 FRAUD ON THE COURT AND OBSTRUCTION OF JUSTICE, AS WELL AS MULTIPLE VIOLATIONS
 12 OF BOTEHO'S CIVIL RIGHTS. SHE WOULD HAVE INFORMED THE COMMISSIONS OF/ON
 13 JUDICIAL DISCIPLINE AND THE NV. BAR ASSOCIATION AND, LASTLY, SHE WOULD HAVE INFORMED
 14 THE NEVADA ATTORNEY GENERAL. MARY LOU WILSON HAD A LEGAL AND CONSTITUTIONAL
 15 DUTY TO DO SO, EVEN THOUGH SHE SWORE "ALLEGIANCE" TO THE STATE.

16 TO PROVE BOTEHO'S POINT, IN DECEMBER 2006, WILSON'S ASSISTANT SPOKE TO
 17 MELISSA BOTEHO IN ALASKA, PRIOR TO BOTEHO'S SCHEDULED EVIDENTIARY HEARING AND
 18 WAS TOLD BY MELISSA THAT "BOTEHO'S ATTORNEY WASN'T INEFFECTIVE, HE DIDN'T WANT
 19 ME TO GO TO COURT TO TESTIFY [A BOLD FACED LIE]. THAT'S THE REASON WHY HE
 20 PLEAD." MELISSA WAS ASKED "NOW, MR SULLIVAN SAID HE DIDN'T WANT YOU TO COME TO"
 21 COURT? ANSWER ["YEAH. THAT'S EXACTLY WHAT THE DISTRICT ATTORNEY TOLD ME"]
 22 AND THE ASSISTANT SAID "OKAY. THAT'S INTERESTING" THIS TRANSCRIPT WAS
 23 GIVEN TO THIS COURT, POLAHA WAS AWARE OF WHAT HAD HAPPENED! POLAHA HAD
 24 A LAWFUL DUTY TO REPORT THIS FACT BUT COVERED FOR THE STATE, THIS PRIOR TO
 25 BOTEHO'S EVIDENTIARY HEARING. SEE PG 4, EXHIBIT 5, IN SEPERATE ACTION OF MOTION TO VACATE!

26 BOTEHO ASSERTS THAT THIS COURT, AND POLAHA BECAME CO-CONSPIRATORS,
 27 COMMITTED "MISPRISON OF FELONY" FOR ITS WILLFUL FAILURE TO INFORM THE PROPER
 28 AUTHORITIES OF A KNOWN CRIME. THIS^{IS} CRIMINAL AND ALL ARE SUBJECT TO CRIMINAL AND
 CIVIL ACTIONS!

(EMPHASIS STRONGLY ADDED)

1 FURTHERMORE, WILSON NEVER ADDRESSED THIS FACT BEFORE THIS COURT AT THE
2 EVIDENTIARY HEARING.

3 AFTER THE SHAM EVIDENTIARY HEARING, THE VERY LAST WORDS EVER SPOKEN BY
4 THE LAME COUNSEL, MARILOU WILSON WERE "I WILL FILE THE APPEAL TO THE
5 NEVADA SUPREME COURT AND I WILL FILE "ALL" OF YOUR GROUNDS FOR EXHAUSTION
6 PURPOSES. COUNSEL NEVER MENTIONED THE CRIMINAL ACTIONS OF THE WASHOE
7 COUNTY DISTRICT ATTORNEY TO THE NV. S. CT. THE DISTRICT ATTORNEY SPOKE TO MELISSA
8 BEFORE BOTELHO'S SENTENCING. THIS CRIMINAL ACTION FORCED BOTELHO'S CASE TO
9 VACATED/VOIDED BUT POLA HA AND APPELLATE COUNSEL PROTECTED THE STATE AND
10 KEPT QUIET.

11 BOTELHO'S COUNSEL FILED ONLY (1) GROUND TO NV. S. CT. IN BOTELHO'S APPEAL.
12 THERE WERE 17-18 MORE GROUNDS. BOTELHO WROTE TO COUNSEL 3-4 TIMES AND TRIED
13 TO CALL HER. SHE WOULD NOT ANSWER! BOTELHO TRIED DESPERATELY TO ADDRESS THESE
14 SERIOUS CONCERNS. BOTELHO WAS FIGHTING FOR HIS LIFE AND HIS COUNSEL REFUSED
15 TO RESPOND AND ACT AS WAS HER DUTY. BOTELHO FILED MOTION TO TERMINATE
16 COUNSEL AND THE NV. SUPREME COURT VIOLATED BOTELHO'S CONSTITUTIONAL RIGHTS
17 OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS BY STATING BOTELHO FAILED TO
18 SHOW GOOD CAUSE [CRAP] THE NV. SUPREME COURT WAS THEN PRESENTED WITH
19 BOTELHO'S SUPPLEMENTAL APPEAL TO PRESENT ALL HIS GROUNDS BEFORE THE STATES
20 HIGHEST COURT. THE NV. S. CT. RETURNED BOTELHO SUPPLEMENTAL APPEAL TO BOTELHO;
21 THEY WERE STAMPED "RECEIVED" AND "RETURNED". BOTELHO WAS ONLY ABLE TO PRESENT
22 (1) GROUND, WHICH THE NV. SUPREME COURT COULD NOT DENY FAST ENOUGH.

23 THE STATE CREATED THIS IMPEDIMENT EXTERNAL TO BOTELHO. THE NV. SUPREME COURT
24 KNOWINGLY AND EFFECTIVELY DESTROYED BOTELHO APPELLATE PROCEDURAL AND
25 SUBSTANTIVE DUE PROCESS.

26 BOTELHO FILED HIS ENTIRE HABEAS WITH ALL HIS CLAIMS/CONSTITUTIONAL
27 GROUNDS IN US DISTRICT COURT, RENO, NEVADA. THE COURT TOLD BOTELHO TO
28 AMMEND HIS PETITION AS IT WAS CONFUSING. THIS PROVES THAT APPELLATE COUNSEL

1 FAILED TO ADDRESS AND CORRECT THESE PROBLEMS. ITS ALSO DISAPPOINTING THAT
2 THE U.S. DISTRICT COURT CHOSE NOT TO APPOINT BOTELHO COUNSEL AS HE REQUESTED.
3 THEN TOLD HIM HIS PETITION WAS A MESS. IT FURTHER PROVES BOTELHOS I.A.C.
4 ARGUMENTS.

5 THE STATE OF NV. OPPOSED BOTELHO'S PETITION, STATING THAT BOTELHO HAD BROUGHT
6 FORTH ONLY (1) GROUND THAT WAS EXHAUSTED AND ASKED THE REMAINING UNEXHAUSTED
7 GROUNDS BE DISMISSED. THE U.S. DISTRICT COURT ULTIMATELY DISMISSED BOTELHO'S PETITION
8 WITHOUT PREJUDICE AND TOLD BOTELHO TO COME BACK DOWN TO STATE TO EXHAUST THE
9 REMAINING CLAIMS.

10 BOTELHO ASSERTS THAT ALTHOUGH HE WAS NOT ENTITLED TO COUNSEL IN POST-
11 CONVICTION PROCEEDINGS, ONCE HE WAS APPOINTED COUNSEL BY THIS COURT, HE WAS
12 IN FACT "ENTITLED" TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AT THAT POINT.
13 BOTELHO CLEARLY AND DELIBERATELY RECEIVED [GROSSLY] INEFFECTIVE ASSISTANCE
14 OF COUNSEL.

15 BOTELHO ASSERTS THAT ANY PROCEDURAL DEFAULT IN HIS CASE IS DUE TO AN "OBJECTIVE
16 FACTOR" THAT WAS "EXTERNAL" TO BOTELHO, AND THAT "CANNOT BE FAIRLY ATTRIBUTED TO HIM".
17 COLEMAN V. THOMPSON, 501 US 722, 753, 111 Sct 2546 (1991); HOWEVER, A PROCEDURAL
18 DEFAULT ARISING FROM THE FAILURE TO EXHAUST MAY BE EXCUSED IF THE PETITIONER
19 CAN DEMONSTRATE CAUSE, MANNING V. FOSTER, 224 F3d 1129, 1133 (9th 2000), FOR THE
20 DEFAULT AND ACTUAL PREJUDICE AS A RESULT OF THE ALLEGED VIOLATION OF FEDERAL
21 LAW OR DEMONSTRATE THAT FAILURE TO CONSIDER THE CLAIMS WILL RESULT IN A
22 FUNDAMENTAL MISCARRIAGE OF JUSTICE." COLEMAN, 501 US. AT 750.

23 A PETITIONER NEED ALLEGE A CONSTITUTIONAL VIOLATION IN ORDER TO
24 ESTABLISH CAUSE FOR A PROCEDURAL DEFAULT, MURRAY V. CARRIER, 477 US 478, 488
25 (INTERFERENCE BY OFFICIALS MAY BE CAUSE AND I.A.C.

26 BOTELHO HAD/HAS A DEADBANG WINNER HAD THIS COURT AND OTHERS FOLLOWED THE
27 LAW, THE NV. AND U.S. CONSTITUTIONS.

28 AND SEE MARTINEZ V. RYAN, 132 S. CT. 1309 (2012) WHEREIN, HELD THAT THE

1 INITIAL-REVIEW COLLATERAL PROCEEDING IS THE FIRST DESIGNATED PROCEEDING FOR
2 A PRISONER TO RAISE INEFFECTIVE-ASSISTANCE CLAIM, THE COLLATERAL PROCEEDING IS
3 THE EQUIVALENT OF A PRISONER'S DIRECT APPEAL AS TO THAT CLAIM BECAUSE THE
4 STATE HABEAS COURT DECIDES THE CLAIMS MERITS, NO OTHER COURT HAS ADDRESSED
5 THE CLAIMS, AND DEFENDANTS "ARE GENERALLY ILL EQUIPPED TO REPRESENT THEMSELVES."
6 HALBERT V. MICHIGAN, 545 U.S. 605, 617. [AN ATTORNEY'S ERRORS DURING AN APPEAL
7 ON DIRECT REVIEW MAY PROVIDE CAUSE TO EXCUSE A PROCEDURAL DEFAULT].
8 ALSO HELD, WHETHER MARTINEZ'S ATTORNEY IN HIS FIRST COLLATERAL PROCEEDING WAS
9 INEFFECTIVE AND WHETHER HIS INEFFECTIVE ASSISTANCE AT TRIAL COUNSEL IS SUBSTANTIAL,
10 AS WELL AS THE QUESTION OF PREJUDICE, ARE QUESTIONS THAT REMAIN FOR A DECISION ON
11 REMAND. BECAUSE BOTELHO HAD CAUSE FOR THE DEFAULT, HIS FIRST POSTCONVICTION
12 COUNSEL WAS INEFFECTIVE IN FAILING TO RAISE CLAIMS IN FIRST NOTICE OF POST-
13 CONVICTION RELIEF.
14 BY DELIBERATELY CHOOSING TO MOVE TRIAL INEFFECTIVENESS CLAIMS OUTSIDE OF
15 THE DIRECT-APPEAL PROCESS, WHERE COUNSEL IS CONSTITUTIONALLY GUARANTEED, THE STATE
16 SIGNIFICANTLY DIMINISHES PRISONER'S ABILITY TO FILE SUCH CLAIMS.
17 WHEN AN ATTORNEY ERROR AMOUNTS TO CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF
18 COUNSEL, THAT ERROR IS IMPUTED TO THE STATE (FOR THE STATE HAS FAILED TO COMPLY WITH
19 THE CONSTITUTIONAL REQUIREMENT TO PROVIDE EFFECTIVE COUNSEL), RENDERING
20 THE ERROR EXTERNAL TO PETITIONER COLEMAN, SUPRA, AT 754; CARRIER, SUPRA, AT 488.
21 (5) POLAHA IN HIS ARGUMENT ABOUT TESTIMONIAL EVIDENCE CONSIDERED AT SENTENCING,
22 AGAIN MISREPRESENTED THE FACTS. POLAHA NOT ONLY ALLOWED THE PREJUDICIAL TESTIMONY.
23 HE TOLD THE STATE ON HIS OWN ACCORD THAT THE STATE COULD BRING IN TESTIMONY BY
24 HERESAY, WHEN HE SHOULD HAVE ORDERED THE WITNESS TO APPEAR. POLAHA ALLOWED THE
25 STATE TO BRING IN UNCONTESTED HERESAY. POLAHA FURTHER FAILED TO MENTION THE
26 FACT THAT THE COP WAS CAUGHT LYING ON THE STAND CONCERNING THE ALLEGED HERESAY.
27 THE COP COMMITTED MULTIPLE FELONIES AND GROSS MISDEMEANORS (IE. SEE NEWS MEDIA
28 REPORTS, LEAKED BY HE AND/OR THE STATE PRIOR TO HEARING AND FALSE INFORMATION

1 LEADING TO THE BAD ACTS HEARING). POLAHA, NOW THE STATE ORDERED AN INVESTIGATION
 2 AND CRIMINAL FELONY CHARGES AGAINST ~~██████~~ DET. HERRERA.
 3 FURTHERMORE, POLAHA IGNORED THE STATES OBSTRUCTION OF JUSTICE AND
 4 WITNESS TAMPERING OF ITS OWN WITNESS PRIOR TO SENTENCING AND MOST LIKELY
 5 PRIOR TO BAD ACTS HEARING. POLAHA IS NOW JUST A GUILTY AS THE STATE.

6 LASTLY, POLAHA STATES THAT NAS 34.810(1)(g) SHALL DISMISS PETITION IF THE
 7 CONVICTION WAS BASED ON PLEA OF GUILTY AND PETITION IS [NOT] BASED UPON AN
 8 ALLEGATION THAT THE PLEA WAS INVOLUNTARY ~~██████~~ OR UNKNOWNING OR ENTERED WITHOUT
 9 EFFECTIVE ASSISTANCE OF COUNSEL. (SEE PG 10, LNS 22-24) POLAHA AGAIN LIED. THE
 10 PETITION IS BASED ^{ON} UNKNOWNING OR ~~██████~~ INVOLUNTARY PLEA AND/OR ENTERED
 11 WITHOUT EFFECTIVE ASSISTANCE OF COUNSEL. POLAHA HAS SINCE FIRST ACQUIRING THIS
 12 CASE, IGNORED AND APPLIED ANY FACTS, ANY WHICH WAY HE SEES FIT, WHETHER LEGAL OR
 13 NOT, CONSTITUTIONAL, OR NOT, TO BEND TO HIS WILL TO EFFECTUATE A WIN FOR THE
 14 STATE, NO MATTER HOW MANY LAWS, RULES, CONSTITUTIONS OR CANNONS HE VIOLATES.
 15 WHY? BECAUSE THE LEGISLATURE HAS GIVEN HE AND OTHER JUDGES ABSOLUTE IMMUNITY,
 16 SO POLAHA HAS ACTED ABOVE THE LAW AND FEELS UNTOUCHABLE.

17 CONCLUSION

18 BOTELHO WAS RIGHTFULLY BEFORE THIS COURT TO EXHAUST HIS CLAIMS.
 19 BOTELHO PROPERLY CAME BACK TO EXHAUST HIS MIXED PETITION CAUSED BY THE STATE.
 20 BY AN EXTERNAL IMPEDIMENT BEYOND HIS CONTROL. BOTELHO FILED PETITION, MOTION FOR
 21 APPOINTMENT FOR COUNSEL ON 1-27-2010, ALONG WITH MOTION FOR INFORMA PAUPERIS.
 22 HIS INFORMA PAUPERIS MOTION WAS GRANTED. THIS COURT DID NOT ORDER ANY RESPONSES,
 23 NOR DID THE ~~██████~~ STATE BRING ANY. BOTELHO AGAIN FILED MOTION TO RECUSE POLAHA,
 24 BUT, THIS COURT IGNORED IT. THESE WERE NEVER ADJUDICATED IN VIOLATION OF NV. LAW.
 25 BOTELHO CHALLENGED SUBJECT-MATTER-JURISDICTION IN THIS CASE IN 2011. THIS COURT
 26 IGNORED THIS CHALLENGE AND DID NOT ORDER THE STATE TO RESPOND. THIS COURT LOST
 27 JURISDICTION AS A RESULT, HIS CASE WAS [VOID], THEN AND THERE!
 28 BOTELHO FILED MOTION FOR JUDGMENT ON PLEADINGS, IN FEB. 2012, IT WAS FILED, BUT,

1 AGAIN, NO RESPONSE FROM THE STATE AND NO DECISION DELIVERED. ALSO FILED WAS A
 2 STATUS CHECK OF THIS CASE AND ASKED COURT CLERK FOR FILED COPIES OF PLEADINGS,
 3 THIS WAS AGAIN IGNORED. BOTELHO THEN FILED MANDAMUS IN NV. SUPREME COURT TO
 4 COMPEL THIS COURT TO GRANT BOTELHOS REQUIRED RELIEF. THAT COURT HAD ORIGINAL
 5 JURISDICTION TO GRANT BOTELHOS WRIT AND FORCE THIS COURT TO ACT BY GRANTING
 6 BOTELHOS [REQUIRED] RELIEF. THE NV. SUPREME AGAIN ACTED ARBITRARILY AND CAPRICIOUSLY,
 7 AND IN TOTAL DISREGARD TO BOTH NV. AND U.S. CONSTITUTIONS AND BOTELHOS RIGHT
 8 OF DUE PROCESS.

9 POLAHA ALLOWED BOTELHOS ACTION TO SIT 5 1/2 YEARS, AS DID THE STATE. WHEN
 10 THE STATE DID RESPOND, IT HAD NO AUTHORITY, NO DISCRETION TO RESPOND AT THAT
 11 POINT. POLAHA HAD NO DISCRETION TO ACT UPON THE STATES MOTION TO DISMISS.

12 BOTELHO HAD, AS AN UNTRAINED IN THE LAW, AND WITHOUT COUNSEL, AS A PRO-SE
 13 LITIGANT, PROPERLY BROUGHT BEFORE THIS COURT, HIS ACTION(S) IN THIS CASE. HE
 14 HAD CONTESTED HIS CASE REPEATEDLY, IN GOOD FAITH, AND THIS COURT KNEW IT.

15 WHEN THE STATE ANSWERED AFTER 5 1/2 YEARS, IT HAD NO AUTHORITY TO DO SO,
 16 FURTHER, IT DID NOT REFUTE, OR CONTEST A SINGLE MERIT / CLAIM IN BOTELHOS PETITION,
 17 NOR HIS CONSTITUTIONAL CHALLENGE TO SUBJECT-MATTER-JURISDICTION. THE STATE WAS
 18 PROCEDURALLY BARRED TO RESPOND.

19 POLAHA, AND THIS COURT, HAD ONLY LIMITED JURISDICTION TO VOID BOTELHOS CASE.
 20 POLAHA TRIED TO MAKE THE APPEARANCE OF FAIRNESS TO BOTELHO AS A RESULT OF THE
 21 PREJUDICIAL 5 1/2 YEAR DELAY BY ENTERTAINING HIS PETITION (THOUGH HE LIED, MISREPRESENTED
 22 GROUNDS AND FACTS, AND IGNORED HIS LACK OF DISCRETION, AUTHORITY AND JURISDICTION).
 23 POLAHA IN HIS FAIRNESS TO BOTELHO, DID NOT ORDER A RESPONSE BY THE STATE ON THE MERITS
 24 OF BOTELHOS PETITION. SEE NRS. 34.745. THEN CHOSE TO "SUA SPONTE" RULE, EVEN
 25 THOUGH THERE WAS AN EXTRAORDINARY WRIT OF MANDAMUS BEFORE CHIEF JUDGE HARDY 30 DAYS
 26 EARLIER. POLAHA DID NOT HAVE THE AUTHORITY OR THE JURISDICTION TO RULE AT THAT
 27 POINT, YET DISREGARDED HIS OATH OF OFFICE, NRS 1235 AND JUDICIAL CANNONS, PROVING
 28 FURTHER PREJUDICE AND BIAS AGAINST BOTELHO, POLAHA'S ORDER IS VOID AND A NULLITY,

1 WITHOUT FORCE AND EFFECT OF LAW, POLAHA HAD NO BUSINESS BEING FURTHER INVOLVED.
2 POLAHA IN HIS ALLEGED FAIRNESS TO BOTELHO, DID NOT ORDER A RESPONSE BY THE
3 STATE IN HIS VALID MOTION TO SHOW-CAUSE.

4 POLAHA HAS LIED, MISREPRESENTED THE FACTS, SHIRKED HIS DUTIES, HAS REPEATEDLY
5 ACTED WITH PREJUDICE AND BIAS, VIOLATED COURT RULES, NV. RULES OF CIVIL PROCEDURE,
6 NV. LAW, VIOLATED JUDICIAL CANNONS, ABUSED HIS DISCRETION, VIOLATED THE NEVADA
7 CONSTITUTION, VIOLATED THE UNITED STATES CONSTITUTION, VIOLATED BOTELHOS PROCEDURAL
8 AND SUBSTANTIVE DUE PROCESS RIGHTS GUARANTEED BY THE NV. AND U.S. CONSTITUTIONS,
9 REPEATEDLY IGNORED THE PROPERLY FILED MOTION(S) AND WRIT OF MANDAMUS TO
10 RECUSE HIM. BOTELHO HAS BEEN THE VICTIM OF POLAHAS ABUSE(S) SINCE BEFORE HE
11 WAS UNCONSTITUTIONALLY BROUGHT TO DISTRICT COURT FOR ARRAIGNMENT (I.E. GRAND
12 JURY AND BAIL VIOLATIONS PREVIOUSLY ADDRESSED HEREIN) AND LASTLY BECAUSE
13 POLAHA FAILED IN 2003, TO PROPERLY DETERMINE WHETHER HE HAD JURISDICTION OVER
14 THE SUBJECT-MATTER AND THE PARTIES IN DISTRICT COURT.

15 BOTELHO WAS NEVER ARRAIGNED AND READ THE CHARGES AGAINST HIM IN JUSTICE
16 COURT, NOR COMPLIED WITH SPEEDY 48-72 HR. REQUIREMENT, NOR HAD COUNSEL.
17 BOTELHO WAS NOT ARRAIGNED AND READ CHARGES EXPLAINING HIS ILLEGAL ARREST
18 UNTIL DONE SO IN DISTRICT COURT MANY WEEKS LATER.

19 POLAHA HAD NO DISCRETION TO CONSIDER THE STATES MOTION TO DISMISS, NOR
20 THE RIGHT AND AUTHORITY TO "SUA SPONTE" DENY BOTELHO'S HABEAS, PRACTICING LAW
21 FROM THE BENCH.

22 THEREFORE POLAHAS ORDER TO DISMISS MUST BE VOIDED, AND THIS COURT HAS
23 ONLY LIMITED JURISDICTION TO ACT. IT MUST VOID THIS JUDGMENT WITH
24 PREJUDICE, GRANT BOTELHO'S RELIEF IN ITS ENTIRETY

DATED 10-11-2015

AFFIRMATION, CERTIFICATE OF SERVICE

26 I SWEAR UNDER THE PENALTY OF PERJURY, THAT ALL STATEMENTS
27 ARE TRUE AND CORRECT, PER 18 USC 1621 AND 29 USC 1746. THIS
28 DOCUMENT DOES NOT CONTAIN THE S.S.N. OF ANY PERSON. I ALSO
CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF REPLY AND
OBJECTION TO ADDRESSED BELOW BY PLACING SAID REPLY IN U.S. MAIL
VIA PRISON LAW LIBRARY STAFF, PER FRCP 5(b) BASS CLIP NO. 2169480

SENT TO

WASHOE COUNTY DIST. ATT.
CHRIS HICKS
P.O. BOX 11130
RENO, NV. 89520-0027

Michael T. Botelho
MICHAEL T. BOTELHO #80837
NNCC P.O. BOX 7000
CARSON CITY, NV 89702

DATED 10-11-2015

Michael T. Botelho

1 CODE #3860
2 CHRISTOPHER J. HICKS
3 #7747
4 P. O. Box 11130
5 Reno, Nevada 89520
6 (775)328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 MICHAEL TODD BOTELHO,

14 Petitioner,

15 v.

Case No. CR03-2156

16 BENEDETTI, WARDEN, and
17 THE STATE OF NEVADA,

Dept. No. 3

18 Respondent.

19 _____/

20 REQUEST FOR SUBMISSION

21 It is requested that Petitioner's Motion for Re-Consideration, filed on October 1, 2015,
22 be submitted to the Court for decision.

23 AFFIRMATION PURSUANT TO NRS 239B.030

24 The undersigned does hereby affirm that the preceding document does not contain the
25 social security number of any person.

26 DATED: October 19, 2015.

CHRISTOPHER J. HICKS
District Attorney

By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on October 19, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-19 09:23:46.386.
GARY HATLESTAD, ESQ. - Notification received on 2015-10-19 09:23:46.308.
JOHN PETTY, ESQ. - Notification received on 2015-10-19 09:23:46.449.
DIV. OF PAROLE & PROBATION - Notification received on 2015-10-19 09:23:46.417.
SEAN SULLIVAN, ESQ. - Notification received on 2015-10-19 09:23:46.355.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

10-19-2015:08:45:26

Clerk Accepted:

10-19-2015:09:23:13

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Request for Submission

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

FILED

MICHAEL TODD BOTELHO
PETITIONER

OCT 19 2015

CASE NO: CRO3-2156

DEPT. NO: 3

VS

JACQUELINE BRYANT, CLERK

By:

DEPUTY CLERK

NOTICE OF APPEAL AND
DESIGNATION OF RECORD ON APPEAL

JAMES BENEDETTI, WARDEN
STATE OF NEVADA, ET-AL
RESPONDENTS

NOTICE IS HEREBY GIVEN THAT MICHAEL TODD BOTELHO, IN PROPER PERSON,
HEREBY APPEALS THE ORDER DENYING HABEAS CORPUS PETITION ENTERED IN
THIS ONCE HONORABLE COURT ON THE 15TH DAY OF SEPTEMBER, 2015.

PETITIONER, FURTHER, HEREIN DESIGNATES THE ENTIRE RECORD ON APPEAL TO
THE CLERK OF THE NEVADA SUPREME COURT. [ALL] MOTIONS, PLEADINGS AND
TRANSCRIPTS, AND EXHIBITS.

DATED THIS 14TH DAY OF OCTOBER, 2015.

MICHAEL T. BOTELHO # 80837
NNCC, P.O. BOX 7000
CARSON CITY, NEV. 89702

AFFIRMATION AND CERTIFICATE OF SERVICE

I SWEAR UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE
U.S., PURSUANT TO 18 USC 1621 AND 28 USC 1746, THAT THE FOREGOING IS TRUE
AND CORRECT, AND THAT THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL-
SECURITY-NUMBER OF ANY PERSON

I FURTHER CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF NOTICE
OF APPEAL & DESIGNATION OF RECORD ON APPEAL TO THIS COURT AND ADDRESSED
BELOW, BY PLACING SAID NOTICE IN U.S. MAIL VIA PRISON LAW LIBRARY STAFF,
PURSUANT TO FRCP 5(b), MAILBOX RULE - HOUSTON V. JACKS, 487 U.S. 266 (1988),
AND SIGNED APPEAL LOG BOOK, BRASS SLIP NO. 2169635

DATED THIS 14TH DAY OF OCTOBER, 2015

Michael T. Botelho
MICHAEL T. BOTELHO # 80837
NNCC, P.O. BOX 7000
CARSON CITY, NV. 89702

TO:
WASHOE CO. DIST. ATTY'S OFFICE
ATTN: CHRIS HICKS - INVALID D.A.
P.O. BOX 11130
RENO, NEVADA 89520-0027

AFFIDAVIT

STATE OF NEVADA

COUNTY OF CARSON CITY }

} SS. AFFIDAVIT OF: MICHAEL TODD BOTELHO

IN SUPPORT OF ISSUES PRESENTED ON APPEAL OF CRO3-2156

TO WHOM IT MAY CONCERN:

I, MICHAEL TODD BOTELHO, THE UNDER SIGNED, DO HEREBY SWEAR UNDER THE PENALTY OF PERJURY, THAT THE ASSERTIONS OF THIS AFFIDAVIT ARE TRUE AND CORRECT. THE AFFIANT, BOTELHO, RESPECTFULLY REQUESTS THIS AFFIDAVIT IS TO REMAIN ATTACHED TO THIS NOTICE OF APPEAL AND SHALL BE TRANSMITTED TO WHICHEVER COURT IS TO ADJUDICATE THIS APPEAL.

AFFIANT, FIRST AND FORMOST, SHALL SWEAR AND ATTEST TO THE FACT THAT THE SHAMEFUL, REPUGNANT, ERRONEOUS, ARBITRARY, CAPRICIOUS, UNLAWFUL ACTS, AND BEYOND THE COURTS JURISDICTION, HAVE BEEN PERPETRATED UPON BOTELHO, BY THE ALLEGED PROFESSIONAL & ALLEGEDLY EDUCATED, DISTRICT COURT JUDGE, JEROME POLAHA, DEPT. 3, SECOND JUDICIAL DISTRICT COURT, AND THE FURTHER PREJUDICAL FAILURE OF CHIEF DISTRICT COURT JUDGE HARDY TO GRANT BOTELHOS WRIT OF MANDAMUS, HE DID NOT EVEN BOTHER TO RULE, LEAVING BOTELHO FURTHER PREJUDICED BY THE CRIMINAL AND BIASED DECISION OF POLAHA DENYING BOTELHOS WRIT OF HABEAS CORPUS, EXCEEDING THE JURISDICTION OF THIS COURT AND ABUSING HIS DISCRETION, HIS AUTHORITY, VIOLATING JUDICIAL CANNONS, NV. LAW, THE NV. AND U.S. CONSTITUTIONS, AND VIOLATING BOTELHOS PROCEDURAL DUE PROCESS EVEN FURTHER. FURTHERMORE COMMITTING PERJURY, FRAUD UPON THE RECORD AND COVERING UP OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING AND FRAUD BY THE STATE. (EMPHASIS STRONGLY ADDED)

IT IS CLEAR AND OBVIOUS, BY THE COURT RECORD, THAT POLAHA HAS NOW CONSPIRED WITH THE STATE TO FORM AN ACT OF COLLUSION WITH MEMBERS OF THE ALREADY PROVEN NOT TO BE VALIDLY HOLDING THE OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY, AND HIS DEPUTIES, IN AN EFFORT TO SHIELD THESE INDIVIDUALS, AS UNQUALIFIED STATE ACTORS IN BOTELHOS CASE.

FOR FAILURE TO POST VALID, LAWFUL BOND, THESE ARE NOT LAWS THAT THE STATE AND NEVADA COURTS CAN [CHOOSE] TO FOLLOW IF IT FITS THEIR AGENDA. THEY ARE [NOT] ABOVE THE LAW.

THE FACTS ARE PRESENTED UPON THE RECORD AS CLEARLY DESCRIBED, BUT NOT LIMITED TO BOTE LHO'S MOTION TO SHOW-CAUSE, REGARDING THE LACK OF PROPERLY REQUIRED BOND TO PERFECT OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY

BOTE LHO HAS PRESENTED IRREFUTABLE EVIDENCE, STATUTORY LAW, AND PUBLIC RECORD, THAT UNQUESTIONABLY PROVE HIS FACTUAL CLAIMS, WITHOUT DISPUTE BY THE STATE AND THE COURT. AS SUCH, BOTE LHO HAS CHALLENGED BOTH THIS "ALLEGEDLY" EDUCATED AND IMPARTIAL JUDGE POLAHA AND THE UNLAWFULLY HELD OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY AND HIS DEPUTIES, TO OPPOSE, ARGUE AGAINST OR CONTRADICT BOTE LHO'S ALREADY PROVEN CLAIMS REGARDING HIS PETITION, MOTIONS AND STATUS CHECK, THE BOND ISSUE, THE CHALLENGE TO S-M-J, THE NOW (5) VALID ATTEMPTS TO PROPERLY RECUSE POLAHA, IGNORING THE COURT RULES, STATE RULES, JUDICIAL CANNONS, THE NV. AND U.S. CONSTITUTION(S) AND THE EGREGIOUS, BAD FAITH VIOLATIONS OF BOTE LHO'S CONSTITUTIONAL RIGHT TO REDRESS HIS GRIEVANCES BEFORE THE COURT UNDER THE 1ST AMENDMENT, THE ON-GOING VIOLATIONS OF BOTE LHO'S PROCEDURAL DUE-PROCESS AND EQUAL PROTECTIONS GUARANTEED BY THE 14TH AMENDMENT(S) OF THE U.S. CONSTITUTION. THIS HAS CAUSED EXTREME PREJUDICE AND IRREPARABLE HARM TO BOTE LHO, AND THE FACT THAT THE COURT ACTED BEYOND ITS JURISDICTION, REPEATEDLY!

THIS ORDER IS A NULLITY, WITHOUT FORCE AND EFFECT. BOTE LHO'S CASE IS NOT VOIDABLE, BUT, SIMPLY VOID, AND THIS EVEN BEFORE ITS LEGALLY REQUIRED REVERSAL. BOTE LHO, WHETHER THE COURT LIKES IT OR NOT, IS CLEARLY ENTITLED TO A VOID JUDGMENT WITH PREJUDICE, AND HIS REQUIRED RELIEF REQUESTED THEREIN.

BOTELHO HAS FACTUALLY ESTABLISHED, AND THE STATE DOES NOT DISPUTE, THAT THE STATE, THIS COURT, AND SPECIFICALLY, JUDGE POLAHA, HAS KNOWINGLY, WITH PURPOSE AND SPECIFIC INTENT, COVERED-UP, CONCEALED, MISREPRESENTED THE FACTS, THE LAW, OBSTRUCTED JUSTICE, TAMPERED WITH A WITNESS, SUBORNED PERJURY, FRAUD, FAILED TO DETERMINE JURISDICTION, THEN EXCESSED JURISDICTION ANY WAY! VIOLATED 18 USC 241, 242 (VIOLATING BOTELHO'S CIVIL RIGHTS, VIOLATING 28 USC 1985, 1986, AS WELL)

BOTELHO RESPECTFULLY SUBMITS THIS COMPLETELY FACTUAL AND TRUTHFUL AFFIDAVIT, SO THAT THE IRREPARABLE HARM BE PROPERLY ADDRESSED WITHOUT THE NEXT COURT SHIRKING ITS DUTIES AND AGAIN IGNORE THE NV AND U.S. CONSTITUTIONS, TO FURTHER PROTECT THE STATE, POLAHA, THE CHIEF JUDGE, THIS COURT, THE POLICE, AND ALL THOSE INVOLVED IN THIS SICKENING, GROSS AND CRIMINAL, MISCARRIAGE OF JUSTICE AS PERPETRATED AT ALL COSTS AGAINST BOTELHO.

BOTELHO FURTHER STATES WITH COMPLETE CONFIDENCE THAT THIS CASE WILL BE INVESTIGATED BY THE REAL POLICE AND PROPER LEGAL AND INVESTIGATIVE AGENCIES. ALSO THE STATE DOES NOT HAVE IMMUNITY BECAUSE OF INVALIDLY HELD POSITIONS, AND THIS COURT, JUDGE POLAHA AND NOW CHIEF JUDGE ARE CRIMINAL ACTORS AGAINST BOTELHO'S DENIED JUSTICE IN THIS CASE. THEREFORE ALL IMMUNITY IS LOST, BETVA! (STRONGLY EMPHASIZED)

DATED 10-14-2015

Michael Todd Botelho
MICHAEL TODD BOTELHO
NNCC
P.O. BOX 7000
CARSON CITY, NV, 89702

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MICHAEL TODD BOTELHO,

Petitioner,

Case No. CR03-2156

vs.

Dept. No. 3

JAMES BENEDETTI, WARDEN,
STATE OF NEVADA, et al,

Respondents.

_____ /

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Michael T. Botelho.
2. This appeal is from an order entered by the Honorable Judge Jerome Polaha.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Michael T. Botelho #80837
N.N.C.C.
P.O. Box 7000
Carson City, Nevada 89702
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Terrance McCarthy, Esq., SBN: 2745
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed on February 17, 2010 in the District Court.
9. Proceeding commenced by the filing of an Indictment filed on October 8, 2003.
10. This is a criminal proceeding and the Appellant is appealing the Order Granting Motion to Dismiss Petition and Denying Motion to Strike filed on September 16, 2015.
11. The case has been been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 43247 and 49586
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 22nd day of October, 2015.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

MICHAEL TODD BOTELHO,

Case No. CR03-2156

Dept. No. 3

Petitioner,

vs.

**JAMES BENEDETTI, WARDEN,
STATE OF NEVADA, et al,**

Respondents

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 22nd day of October, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 22nd day of October, 2015

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-22 09:18:38.927.
GARY HATLESTAD, ESQ. - Notification received on 2015-10-22 09:18:38.849.
JOHN PETTY, ESQ. - Notification received on 2015-10-22 09:18:39.005.
DIV. OF PAROLE & PROBATION - Notification received on 2015-10-22 09:18:38.973.
SEAN SULLIVAN, ESQ. - Notification received on 2015-10-22 09:18:38.895.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

10-22-2015:09:17:39

Clerk Accepted:

10-22-2015:09:18:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69046
District Court Case No. CR032156

JB

RECEIPT FOR DOCUMENTS

TO: Michael Todd Botelho
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

10/23/2015 Appeal Filing Fee waived. Criminal.
10/23/2015 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: October 23, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-28 14:32:42.376.
GARY HATLESTAD, ESQ. - Notification received on 2015-10-28 14:32:40.94.
JOHN PETTY, ESQ. - Notification received on 2015-10-28 14:32:42.469.
DIV. OF PAROLE & PROBATION - Notification received on 2015-10-28 14:32:42.422.
SEAN SULLIVAN, ESQ. - Notification received on 2015-10-28 14:32:41.439.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

10-28-2015:14:28:52

Clerk Accepted:

10-28-2015:14:31:49

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR03-2156
No. 69046 03

FILED

NOV 05 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28 (a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

1. J. L. Smith, C.J.

cc: Michael Todd Botelho
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-11-13 08:59:04.074.
GARY HATLESTAD, ESQ. - Notification received on 2015-11-13 08:59:04.012.
JOHN PETTY, ESQ. - Notification received on 2015-11-13 08:59:04.137.
DIV. OF PAROLE & PROBATION - Notification received on 2015-11-13 08:59:04.106.
SEAN SULLIVAN, ESQ. - Notification received on 2015-11-13 08:59:04.043.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

11-13-2015:08:57:57

Clerk Accepted:

11-13-2015:08:58:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

V4.648 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CR03-2156
DC-C9900071995-054
STATE VS. MICHAEL TODD BOTELHO 2 Pages
District Court 11/24/2015 10:59 AM
Washoe County
K JONES

MICHAEL TODD BOTELHO
PETITIONER

- VS -

JAMES BENEDETTI, WARDEN
STATE OF NEVADA, ET-AL,
RESPONDENTS

FILED

2015 NOV 24 11:18 AM
CASE NO: CR03-2156, DEPT. NO. 3
MOTION TO ORDER COURT CLERK TO
FORWARD DISPOSITION OF ALL RECORDS
IN THIS COURT AND DOCKETING RECORD
TO PETITIONER
DEPUTY

COMES AGAIN, MICHAEL T. BOTELHO, IN PRO SE AND IN FORMA
PAUPERIS, BRINGING FORTH MOTION TO ORDER COURT CLERK TO FORWARD
DOCKETING AND DISPOSITION OF ALL RECORDS AND PLEADINGS FILED/
RECEIVED BY THIS COURT TO PETITIONER.

PETITIONER HAS FILED MOTION(S) AND WRIT OF MANDAMUS WITH THIS
COURT, FURTHER, FILING MULTIPLE REQUESTS FOR SUBMISSIONS FOR
MOTION FOR SHOW-CAUSE AND WRIT OF MANDAMUS TO CHIEF JUDGE
HARDY. PETITIONER HAS RECEIVED FILED COPIES OF REQUESTS FOR
SUBMISSION. BUT, IN THOSE REQUESTS, IT WAS AGAIN ASKED FOR
STAMP FILED COPIES OF ABOVE MENTIONED, AGAIN, WITHOUT RESPONSE.
PETITIONER HAS ALSO INFORMED THE CLERK, JACQUILYN BRYANT ABOUT
THE DEPUTY CLERKS ACTIONS WITHOUT RESPONSE. PETITIONER HAS ALSO
TRIED TO FILE JUDICIAL NOTICE WITH THIS COURT, ONLY TO BE INTERFERRED
WITH BY K. JONES, DEPUTY COURT CLERK.

PETITIONER ASSERTS THAT HIS LEGAL DOCUMENTS HAVE BEEN REPEATEDLY
INTERFERRED ^{WITH}, IMPEDED, AND/OR DISREGARDED IN THEIR ENTIRETY, THUS,
VIOLATING PETITIONERS 1ST, 5TH AND 14TH AMENDMENT RIGHTS [GUARANTEED]
BY THE [STILL] VALID UNITED STATES CONSTITUTION. ALSO, ASSERTING
THAT THE OATH OF OFFICE, THE NEVADA REVISED STATUTES, DISTRICT
COURT RULES, NEV RULES OF CIVIL PROCEDURE AND THE CLERKS LAWFUL
DUTIES HAVE BEEN WILLFULLY COMPROMISED IN THEIR EFFORTS TO
HELP THE STATE KEEP THE ENTIRE RECORD AND INDISPUTIBLE FACTS

FROM PUBLIC VIEW BECAUSE OF THE OBSTRUCTION, FRAUD, LACK OF SUBJECT-MATTER JURISDICTION, PERJURY, SUBORNATION OF PERJURY, CONSPIRACY, COLLUSION, MISPRISON OF FELONY, WITNESS TAMPERING, FALSE STATEMENTS, THEFT, COERCION, THREATS, FALSE EVIDENCE, NO SUFFICIENT BOND, 18 USC 1341 & 1342, 28 USC 1985 & 1986 AND SEE 18 USC 1701-1708, ALSO KIDNAPPING & ILLEGAL ARREST.

THIS COURT SEEMS TO HAVE NO PROBLEM DISREGARDING THE LAW. THE JUSTICE SYSTEM / JUDICIAL SYSTEM IS ABOUT "JUSTICE", NOT WINNING, NOT COVERING-UP, TO ENSURE WINNING AT ALL COST. THESE ARE FACTS, NOT BARE & NAKED ALLEGATIONS.

PETITIONER RESPECTFULLY DEMANDS THIS ONCE JUST AND HONORABLE COURT, ORDER THE COURT CLERK TO EXPIDITE A TRUE AND COMPLETE DOCKETING AND DISPOSITION RECORD IN ITS ENTIRETY FROM 2003 TO PRESENT FOR APPEAL PURPOSES AND ALSO THE COPY OF THE ENTIRE DISPOSITION OF RECORDS BEING FILED BY THIS COURTS CLERK IN THE NEVADA SUPREME COURT, TO PETITIONER, FOR APPEAL PURPOSES AND FOR PUBLIC CONSUMPTION.

AFFIRMATION AND CERTIFICATE OF SERVICE

I, MICHAEL T. BOTELHO, IN PROPER PERSON, DO SWEAR UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE U.S., THAT THE FOREGOING MOTION IS TRUE AND CORRECT, PURSUANT TO 18 USC 1621 AND 28 USC 1746, AND THIS MOTION CONTAINS NO PERSONS SOCIAL SECURITY NUMBER.

I, FURTHER ASSERT THAT I PLACED A TRUE, ORIGINAL, AND/OR PHOTO COPY OF SAID MOTION TO ORDER COURT CLERK TO FORWARD RECORD, IN FIRST-CLASS PRE-PAID, USPS MAIL SERVICES VIA PRISON LAW LIBRARY STAFF, VIA MAILBOX RULE, TO THIS ONCE HONORABLE COURT AND TO THE ADDRESSED BELOW.

DATED 11-16-2015

Michael T. Botelho

MICHAEL T. BOTELHO

80837

NNCC

P.O. BOX 7000

CARSON CITY, NV,

89702

COPY TO:

WASHOE CO. DISTRICT ATTY'S OFFICE
P.O. BOX 11130
RENO, NV. 89520-0027

1 CODE:
2
3
4
5

6 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 MICHAEL TODD BOTELHO,

10 Petitioner,

Case No. CR03-2156

11 vs.

Dept. No. 15

12 BENEDETTI, WARDEN, and THE STATE OF
13 NEVADA,

14 Respondents.
15 _____/

16
17 ORDER

18 Petitioner Michael Todd Botelho is currently incarcerated in the Northern Nevada
19 Correctional Center in Carson City. Before this Court is his August 19, 2015, petition for
20 "extraordinary writ of mandamus for the recusal and the disqualification of Judge Polaha,
21 Dept. No. 3."

22 Background and Procedural History

23 This Court will briefly review the case history to provide context for this opinion.
24 Prior orders entered by the Department 3 judge contain a more complete recitation of the
25 facts. In 2004, Mr. Botelho pled guilty in Department 3 to one count of first-degree
26 kidnapping and three counts of sexual assault on a child. The factual basis for the plea
27 included the enticement of a 14 year-old girl with the promise of a babysitting job. She
28 accompanied Mr. Botelho to a secluded area where he forcefully acted out a sexual
fantasy. Judge Polaha sentenced Mr. Botelho to a combined term of 45 years to life. In

1 2005, the Supreme Court of Nevada upheld the sentence and affirmed the judgment of
2 conviction.

3 Mr. Botelho filed a petition for writ of habeas corpus in 2006. After conducting an
4 evidentiary hearing, the court dismissed the petition in 2007. The Nevada Supreme Court
5 affirmed the dismissal in 2008.

6 In January of 2010, Mr. Botelho filed another petition for writ of habeas corpus. It
7 appears no certificate of service was attached to the petition, and no request to submit the
8 petition for decision was ever filed. As a result, the petition lay dormant for over five and
9 one-half years. The State filed a motion to dismiss the petition on July 24, 2015. Judge
10 Polaha granted the motion to dismiss on September 16, 2015, holding that the claims in the
11 first habeas petition were considered and dismissed, and Mr. Botelho failed to
12 demonstrate that good cause and prejudice required the successive claims to be reheard
13 and the sole original claim to be considered. The court also held the petition was
14 procedurally barred by NRS 34.726(1) and NRS 34.810. Finally, it denied Mr. Botelho's
15 motion to appoint counsel.

16 The petition for "extraordinary writ of mandamus for the recusal and
17 disqualification of Judge Polaha" was filed on August 19, 2015. It is twenty-one pages
18 long and contains numerous allegations against Judge Polaha and the district court. Those
19 allegations include bail increase without a hearing, an improperly procured indictment, an
20 overly harsh sentence, his own lack of competence at the time of the entry of plea, and
21 improperly admitted evidence at the evidentiary hearing. Other allegations include
22 "fraud, collusion, conspiracy, the intentional disregard of [Judge Polaha's] oath of office,
23 [violation of] professional standards," violation of applicable court rules, and more. See,
24 e.g., Pet. at 15. At conclusion, Mr. Botelho requests Judge Polaha "be recused, prosecuted
25 and retired." Id. at 20. One principal concern is the failure to address the 2010 petition in
26 a timely manner; Mr. Botelho believes this evidences bias, hostility, arbitrariness, and
27 general wrongdoing:

28 Judge Polaha deliberately shirked his duties, abrogated his
powers; his egregious, arbitrary and capricious actions have

1 caused irreparable damage to Botelho in his willing and
2 knowingly disregarding the administration of justice, the law,
3 petitioner's rights, his oath of office, and is repugnant to both
Nevada and our . . . United States Constitution.

4 Id. at 2.

5 Analysis

6 Mr. Botelho directed his petition to this Court because the chief judge of this district
7 sits in Department 15. As a result, this Court's ability to rule on the matter is extremely
8 limited.

9 Preliminarily, this Court recognizes "a document for what it is, rather than the
10 name assigned to it." Whitehead v. Nevada Comm'n on Judicial Discipline, 110 Nev. 380,
11 404, 873 P.2d 946, 961 (1994). Upon review of the substance of Mr. Botelho's filing, this
12 Court concludes it is: (1) a request for this Court to address the merits of Mr. Botelho's
13 underlying criminal case, (2) a challenge to several of Judge Polaha's rulings, including his
14 orders denying the petitions for writ of habeas corpus, (3) a request for professional
15 sanctions against Judge Polaha for violating ethical rules of professionalism, and (4) a
16 document seeking to disqualify Judge Polaha from the case.

17 This Court will not entertain any request to address the merits of Mr. Botelho's case;
18 it has no authority to hear such matters. NRS 3.026(2)(a). Nor does it possess authority to
19 address any of Mr. Botelho's challenges in regards to the merits of any decision or ruling
20 Judge Polaha has made. NRS 3.026(2)(b).

21 This Court does enjoy some authority to address a request to disqualify a judge in
22 this district.¹ See NRS 1.235(5) (granting the presiding judge the ability to appoint a
23 district judge to hear a challenge to another judge's qualification). In reviewing the
24 substance of Mr. Botelho's filing, this Court finds no basis to disqualify Judge Polaha.
25 NRS 1.230 sets forth grounds for disqualification. See also NCJC Canon 3E. A judge must
26 entertain actual or implied bias or prejudice in order to be disqualified. A judge might

27
28 ¹ However, this Court lacks authority to address Mr. Botelho's request to "prosecute" or "retire" Judge
Polaha. The Nevada Revised Statutes only give the chief judge power to review some requests to disqualify
a district judge.

1 also be disqualified for possessing personal knowledge about the facts of the case. The fact
2 that a judge has ruled against a party is not a sufficient basis for disqualification and does
3 not alone evidence bias or prejudice. Duke v. Simon, 124 Nev. 1464, 238 P.3d 808 (2008).

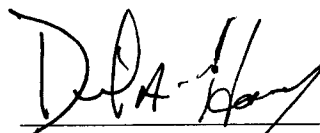
4 Neither does the five-year delay in responding to Mr. Botelho's filings evidence bias
5 or prejudice. Mr. Botelho alleges the court and the State acted in concert to purposefully
6 ignore his filings. This Court concludes this is highly unlikely for several reasons. First,
7 no request to submit the petition was filed for any of Mr. Botelho's motions prior to 2015.
8 If Mr. Botelho had submitted such a request, the matter would have been immediately
9 brought to the attention of the district judge. Furthermore, Judge Polaha has enumerated
10 several procedural and administrative factors that contributed to the unintentional delay
11 of the matter. Those may be found in Judge Polaha's September 15, 2015, order addressing
12 the motion to dismiss and the motion to strike. As a result, Department 3 was unaware of
13 Mr. Botelho's filings until the State responded to them in 2015. These administrative and
14 procedural shortcomings are not the fault of the Petitioner; however, they do not indicate
15 any bias, hostility, prejudice, or intentional wrongdoing that would require Judge Polaha's
16 disqualification.

17 Conclusion

18 This Court lacks authority to address the majority of issues raised in Mr. Botelho's
19 filing. See NRS 3.026(2). However, this Court has some authority to review the writ as a
20 request to disqualify Judge Polaha. See NRS 1.235(5). To the extent it is within this
21 Court's purview to do so, it denies the request to disqualify Judge Polaha.

22 **IT IS SO ORDERED.**

23 Dated: December 3, 2015.

24 
25 _____
26 David A. Hardy
27 District Court Judge
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 3rd day of December, 2015, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:


TERRENCE P. MCCARTHY, ESQ. for STATE OF NEVADA

GARY HOWARD HATLESTAD, ESQ.

JOHN REESE PETTY, ESQ. for MICHAEL TODD BOTELHO

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD BOTELHO

Further, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:


Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-12-03 11:16:44.028.
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JOHN PETTY, ESQ. - Notification received on 2015-12-03 11:16:44.09.
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

12-03-2015:11:15:25

Clerk Accepted:

12-03-2015:11:16:04

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Order...

Filed By:

Judicial Asst. SParke

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DIV. OF PAROLE & PROBATION

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BOTELHO

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MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

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5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**
7

8 **MICHAEL TODD BOTELHO,**

Case No. CR03-2156

9 **Petitioner,**

Dept. No. 3

10 **vs.**

11 **JAMES BENEDETTI, STATE OF**
12 **NEVADA, et. al,**

13 **Respondents.**
14 _____ /

15 **ORDER DENYING MOTION**

16 Currently before the Court is the Petitioner's Motion to Vacate Judgment of Conviction and
17 NRCIV P Rule 9(b) Fraud ("the Motion") filed September 22, 2015. The Respondent filed an
18 Opposition September 25, 2015. A Reply and Objection to the Opposition was filed October 9,
19 2015, and the matter was submitted for consideration by the Respondent on October 14, 2015.

20 In the Motion, the Petitioner asserts numerous grounds that Petitioner asserts require the
21 Court to vacate the Judgment of Conviction in this case, order the judgment void with prejudice,
22 and order that the Petitioner be released from custody. In addition, the Petitioner requests that this
23 Court order the removal of DNA evidence allegedly taken from the Petitioner and his children from
24 any state and federal databases.

25 In support of the Motion, the Petitioner maintains that new evidence has recently been
26 unearthed, leading to new claims against the state. The Petitioner asserts that (1) the Washoe
27 County Sheriff's Office illegally obtained information regarding the Petitioner through allegedly
28 fraudulent subpoenas sent to the Petitioner's cell phone carrier; (2) according to recent
communications with the Petitioner's wife, the Washoe County Sheriff's Office allegedly exceeded

1 the scope of a search warrant while serving the warrant at the Petitioner's home by coercing the
2 Petitioner's wife to allow the seizure of DNA samples from the Petitioner's sons, refusing to show
3 her the search warrant, and removing property from the premises without an inventory list following
4 the search; and (3) the District Attorney and Public Defender colluded to prevent the Petitioner's
5 ex-wife from testifying in this matter.

6 In Opposition, the Respondent asserts that if the instant Motion is an attempt to file a Motion
7 for Reconsideration it is too late because the Court has already reduced its judgment to writing. *See*
8 *Tener v. Babcock*, 97 Nev. 369, 632 P.2d 1140 (1981). The Respondent alternatively argues that the
9 Motion should be denied because the language of Chapter 34 of the Nevada Revised Statutes
10 provides that the post-conviction habeas corpus petition "[c]omprehends and takes the place of all
11 other common-law, statutory or other remedies which have been available for challenging the
12 validity of the conviction or sentence, and must be used exclusively in place of them." NRS 34.724.

13 NRS 34.780 provides that, "[t]he Nevada Rules of Civil Procedure, to the extent that they
14 are not inconsistent with NRS 34.360 to 34.830, inclusive, apply to proceedings pursuant to NRS
15 34.720 to 34.830, inclusive." NRCP 9(b) is a rule requiring pleadings in civil matters containing
16 averments of fraud to be stated with particularity. While the heightened pleading standard for fraud
17 allegations are not necessarily inconsistent with the provisions of NRS 34.360 to 34.380, the post-
18 conviction petition for habeas corpus "takes the place of all other..." remedies for challenging
19 convictions. Thus, NRCP 9(b) is not a valid ground for a post-conviction motion.

20 This Court enjoys only limited jurisdiction over matters currently on appeal until remittitur
21 issues from the relevant court of appeal. When an appeal is perfected, the district court is divested
22 of jurisdiction to revisit issues that are pending before the Nevada Supreme Court. *See Mack-*
23 *Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006). The district court retains
24 jurisdiction to enter orders on matters that are collateral to and independent from the appealed order,
25 *i.e.*, matters that in no way affect the appeal's merits. *Id.*


26 The Petitioner has filed a timely Notice of Appeal of various Orders of this Court to the
27 Nevada Supreme Court. This Court finds that the Motion is collateral to the Orders currently on
28 Appeal to the Nevada Supreme Court. NRS 37.724 provides, as noted *supra*, that a post-conviction

1 petition for habeas corpus “[c]omprehends and takes the place of all other common-law, statutory or
2 other remedies which have been available for challenging the validity of the conviction or sentence,
3 and must be used exclusively in place of them.” The Petitioner’s Motion to Vacate Judgment of
4 Conviction is therefore the wrong vehicle for attacking the validity of the Petitioner’s conviction.

5 Based on the foregoing, the Petitioner’s Motion to Vacate Judgment of Conviction and
6 NRCIV P. Rule 9(b) Fraud is hereby DENIED.

7 IT IS SO ORDERED.

8 Dated this 8th day of December, 2015.

9 
10 JEROME POLAHA
11 DISTRICT JUDGE
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CERTIFICATE OF MAILING

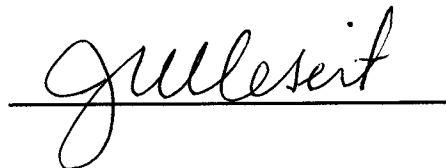
I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 10 day of December, 2015, I deposited for mailing a copy of the foregoing to:

The following was served via e-filing:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA
GARY HOWARD HATLESTAD, ESQ.
JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO
SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following was served via USPS:

**Michael Todd Botelho #80837
NNCC
P O Box 7000
Carson City, NV 89702**



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SEAN SULLIVAN, ESQ. - Notification received on 2015-12-10 15:29:24.819.

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A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

12-10-2015:15:28:13

Clerk Accepted:

12-10-2015:15:28:51

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. JUlleseit

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DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

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BOTELHO

STATE OF NEVADA for STATE OF NEVADA

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5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**
7

8 **MICHAEL TODD BOTELHO,**

Case No. CR03-2156

9 **Petitioner,**

Dept. No. 3

10 **vs.**

11 **JAMES BENEDETTI, STATE OF**
12 **NEVADA, et. al,**

13 **Respondents.**
14 _____ /

15 **ORDER DENYING MOTION FOR RECONSIDERATION**

16 Currently before the Court is the Petitioner's Motion for Reconsideration ("the Motion")
17 filed October 1, 2015. The Respondent filed an Opposition October 6, 2015. A Reply and Objection
18 to the Opposition was filed October 15, 2015, and the Motion was submitted for consideration by
19 the Respondent on October 19, 2015.

20 Although the Court is fully aware of the facts in this matter, a brief procedural review of
21 recent filings is warranted. The Petitioner filed a Petition for Writ of Habeas Corpus (Post-
22 Conviction) ("the Petition") on January 27, 2010. The Petition was never submitted for
23 consideration, and due to the case file having been closed the Petition never came to the Court's
24 attention. After a five year delay, the Respondent filed a Motion to Dismiss the Petition.¹ The
25 Petitioner filed an Opposition and Motion to Strike on August 11, 2015. A Reply was filed August
26 13, 2015. The Court issued an Order Granting the Motion to Dismiss and Denying the Motion to
27 Strike on September 16, 2015. The Petitioner has since appealed the September 16, 2015 Order to
28 _____

¹ This Court addressed the delay at length in its Order Granting Motion to Dismiss and Denying Motion to Strike dated September 16, 2015, before dismissing the Petition on other grounds.

1 Strike on September 16, 2015. The Petitioner has since appealed the September 16, 2015 Order to
2 the Nevada Supreme Court as indicated in the Notice of Appeal received by this Court on October
3 19, 2015.

4 This Court enjoys only limited jurisdiction over matters currently on appeal until remittitur
5 issues from the relevant court of appeal. The Nevada Supreme Court has consistently explained that
6 a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in the
7 Nevada Supreme Court, and that the point at which jurisdiction is transferred from the district court
8 to the Nevada Supreme Court must be clearly defined. *See Mack-Manley v. Manley*, 122 Nev. 849,
9 855, 138 P.3d 525, 529-30 (2006). When an appeal is perfected, the district court is divested of
10 jurisdiction to revisit issues that are pending before the Nevada Supreme Court. *Id.* The district
11 court retains jurisdiction to enter orders on matters that are collateral to and independent from the
12 appealed order, *i.e.*, matters that in no way affect the appeal's merits. *Id.*

13 A notice of appeal must be filed after entry of a written judgment or order, and no later than
14 30 days after the date that written notice of entry of the judgment or order appealed from is served.
15 NRAP 4(a). A notice of appeal submitted by a prisoner acting in proper person is deemed filed on
16 the date that it is hand delivered to a prison official. *Kellog v. Journal Communications*, 108 Nev.
17 474, 835 P.2d 12 (1992) (citing *Houston v. Lack*, 487 U.S. 266 (1988)).

18 The Court finds that the Motion for Reconsideration of the September 16, 2015, Order
19 Granting Motion to Dismiss Petition and Denying Motion to Strike ("the September 16, 2015
20 Order") directly relates to the merits of the appealed order. This Court further finds that the Notice
21 of Appeal and supporting Affidavit of Michael Todd Botelho is dated October 14, 2015. Although
22 the Notice of Appeal and supporting Affidavit of Michael Todd Botelho do not specifically indicate
23 the date they were hand delivered to a prison official, the Court finds that the Notice of Appeal was
24 timely filed on October 14, 2015. Thus, the Petitioner has filed a timely Notice of Appeal of

25 //

26 //

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28 //

1 the September 16, 2015 Order.

2 Therefore, and based on the foregoing, this Court is divested of jurisdiction to consider the
3 Petitioner's Motion for Reconsideration. The Petitioner's Motion for Reconsideration is therefore,
4 DENIED.

5 IT IS SO ORDERED.

6 Dated this 8th day of December, 2015.

7 
8 JEROME POLAHA
9 DISTRICT JUDGE
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CERTIFICATE OF MAILING

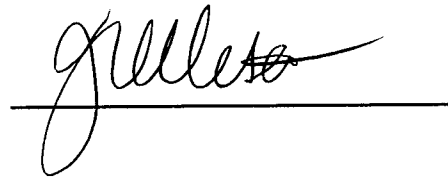
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BOTELHO
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P O Box 7000
Carson City, NV 89702



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A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

12-10-2015:15:31:21

Clerk Accepted:

12-10-2015:15:32:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. JUlleseit

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