

FILED

1 David Roy Abbott #81673  
2 In Propria Personam  
3 Post Office Box 208, S.D.C.C.  
4 Indian Springs, Nevada 89018

2022 JUN 10 PM 3:48

ALICIA LEE  
CLERK OF THE COURT Electronically Filed  
BY Elizabeth A. Brown Jun 15 2022 03:48 p.m.  
DEPUTY CLERK OF THE SUPREME COURT

5 IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF Washoe

9 David Roy Abbott  
10 Plaintiff,  
11 vs.  
12 the State of Nevada  
13 Defendant.

Case No. CRO9-1603  
CRO9-1604  
Dept. No. 1  
Docket \_\_\_\_\_

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,

18 David Roy Abbott, in and through his proper person, hereby  
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or  
20 dismissing the

21 ORDER (1) GRANTING STATE'S MOTION TO DISMISS AND  
22 (2) DENYING PETITION FOR WRIT OF HABEAS CORPUS

23 ruled on the 18 day of May, 20 22

25 Dated this 18 day of May, 20 22

26 Respectfully Submitted,

27 David R Abbott

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Notice of Appeal  
(Title of Document)

filed in District Court Case number CR09-1603, CR09-1604

Does not contain the social security number of any person.

-OR-

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

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

\_\_\_\_\_  
(State specific law)

-or-

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

David R Abbott  
Signature

5-18-22  
Date

David Roy Abbott  
Print Name

Plaintiff  
Title

1 Code 1310  
2  
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4  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 **DAVID ROY ABBOTT,**

10 **Petitioner,**

**Case No. CR09-1604  
CR09-1603**

11 **vs.**

12 **THE STATE OF NEVADA,**

**Dept. No. 1**

13 **Respondent.**  
14 \_\_\_\_\_/

15 **CASE APPEAL STATEMENT**

16 This case appeal statement is filed pursuant to NRAP 3(f).

- 17 1. Appellant is David Roy Abbott.
- 18 2. This appeal is from an order entered by the Honorable Judge Kathleen M.  
19 Drakulich.
- 20 3. Appellant is representing himself in Proper Person on appeal. The Appellant's  
21 address is:  
22 David Roy Abbott #81673  
23 Post Office Box 208, S.D.C.C.  
24 Indian Springs, Nevada 89018
- 25 4. Respondent is the State of Nevada. Respondent is represented by the Washoe  
26 County District Attorney's Office:  
27 Jennifer P. Noble, Esq., SBN: 9446  
28 P.O. Box 11130  
Reno, Nevada 89520

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- 5. Respondent's attorney is not licensed to practice law in Nevada: NA
- 6. Appellant is not represented by counsel in District Court.
- 7. Appellant is not represented by counsel on appeal.
- 8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
- 9. Proceeding commenced by the filing of an Indictment on August 12<sup>th</sup>, 2009.
- 10. This is a criminal proceeding and the Appellant is appealing the Order (1) Granting State's Motion to Dismiss and (2) Denying Petition for Writ of Habeas Corpus filed April 19<sup>th</sup>, 2022.
- 11. The case has been the subject of a previous appeal to the Supreme Court.  
Supreme Court No.: 56713
- 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 13th day of June, 2022.

Alicia L. Lerud  
Clerk of the Court  
By: /s/ Y.Viloria  
Y.Viloria  
Deputy Clerk

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE**

Case History - CR09-1604

DEPT. D1

HON. KATHLEEN DRAKULICH

Report Date & Time

6/13/2022

4:54:31PM

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**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

**Case ID:** CR09-1604

**Case Type:** CRIMINAL

**Initial Filing Date:** 8/12/2009

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**Parties**

PLTF	STATE OF NEVADA - STATE
DA	Marilee Cate, Esq. - 12563
DA	Jennifer P. Noble, Esq. - 9446
DEFT	DAVID ROY ABBOTT - @40563
PNP	Div. of Parole & Probation - DPNP

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**Charges**

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>		<i>Charge Description</i>
1	F1050	8/12/2009	IND	TRAFFICKING IN A CONTROLLED SUBSTANCE (2)
2	F270	8/12/2009	IND	CONSPIRACY TO SELL A CONTROLLED SUBSTANCE
3	F150	8/12/2009	IND	BEING AN EX-FELON IN POSSESSION OF A FIREARM
4	F155	1/11/2010	ISI	BEING AN HABITUAL CRIMINAL

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**Plea Information**

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
1	F1050	10/6/2009	PLED NOT GUILTY
3	F150	10/6/2009	PLED NOT GUILTY
4	F155		
2	F270	10/6/2009	PLED NOT GUILTY

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**Sentences**

<i>Date</i>	<i>Charge No.</i>	<i>Charge Desc</i>	<i>Time Served</i>	<i>Sentence Text</i>
10/20/2011	1 - Life Without Poss of Parole			DEFENANT DEEMED A HABITUAL CRIMINAL UNDER 207.010. NDOC FOR THE TERM OF LIFE, WITHOUT THE POSSIBLITY OF PAROLE + FEES + RESTITUTION.
10/20/2011	2 - Life Without Poss of Parole			DEFENDANT DEEMED A HABITUAL CRIMINAL UNDER 207.010. NDOC FOR THE TERM OF LIFE WITHOUT THE POSSIBLITY OF PAROLE. COURT ORDERED SAID COUNT TO RUN CONCURRENTLY WITH THE SENTENCE IMPOSED IN COUNT I.
10/20/2011	3 - Life Without Poss of Parole			DEFENDANT DEEMED A HABITUAL CRIMINAL UNDER 207.010. NDOC FOR THE TERM OF LIFE, WITHOUT THE POSSIBLITY OF PAROLE. COURT ORDERED SAID COUNT TO RUN CONCURRENTLY WITH THE SENTENCE IMPOSED IN COUNT II. COURT ORDERED SAID SENTENCE TO RUN CONCURRENTLY WITH THE SENTENCE IMPOSED IN CR09-1603. COURT ORDERED SAID SENTENCE NUNC PRO TUNC TO THE 12TH DAY OF AUGUST 2010.

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**Release Information**

*Custody Status*

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**Hearings**

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

**Case ID: CR09-1604 Case Type: CRIMINAL Initial Filing Date: 8/12/2009**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
1 D1	ARRAIGNMENT	10/6/2009	09:00:00	10/6/2009

Event Extra Text: TO BE HEARD WITH CR09-1603

**Disposition:**  
D725 10/6/2009  
INDICTMENT

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
2 D1	MOTION TO CONFIRM TRIAL	2/25/2010	09:00:00	2/25/2010

Event Extra Text: TRAFFICKING (3) COUNTS- 3- DAY JURY TRIAL- APRIL 5, 2010 AT 9:30 A.M.

**Disposition:**  
D425 2/25/2010  
MOTION TO CONFIRMT TRIAL

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
3 D1	MOTION IN LIMINE	3/18/2010	11:00:00	3/18/2010

Event Extra Text: SET EXHIBIT MARKING

**Disposition:**  
D425 3/18/2010  
MOTION TO CONFIRM TRIAL

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
4 D1	EXHIBITS TO BE MARKED W/CLERK	4/2/2010	14:00:00	4/2/2010

Event Extra Text:

**Disposition:**  
D596 4/2/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
5 D1	TRIAL - JURY	4/5/2010	09:30:00	4/5/2010

Event Extra Text: CONFIRMED / TRAFFICKING (3) COUNTS- 3 DAY JURY TRIAL

**Disposition:**  
D832 4/5/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
6 D1	TRIAL ONGOING	4/6/2010	10:30:00	4/6/2010

Event Extra Text:

**Disposition:**  
D832 4/6/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
7 D1	TRIAL ONGOING	4/7/2010	09:00:00	4/7/2010

Event Extra Text:

**Disposition:**  
D895 4/7/2010  
COUNT I - TRAFFICKING IN A CONTROLLED SUBSTANCE  
COUNT II - CONSPIRACY TO SELL A CONTROLLED  
SUBSTANCE  
COUNT III - EX FELON IN POSSESSION OF A FIREARM

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
8 D1	SENTENCING	6/10/2010	14:00:00	6/10/2010

Event Extra Text: SPECIAL SET / GUILTY BY JURY / 2 HOURS / STATE SEEKING HABITUAL CRIMINAL

**Disposition:**  
D455 6/10/2010

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

**Case ID: CR09-1604 Case Type: CRIMINAL Initial Filing Date: 8/12/2009**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
9 D1	Tickle Start Code	6/16/2010	07:00:00	6/18/2010

Event Extra Text: MOTION TO DISMISS FILED BY COUNSEL FOR DEFENDANT

**Disposition:**  
T200 6/18/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
10 D1	Tickle Start Code	6/25/2010	07:00:00	6/24/2010

Event Extra Text: OPPOSITION TO MOTION TO DISMISS HABITUAL CRIMINAL COUNT FILED BY STATE

**Disposition:**  
T200 6/24/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
11 D1	Tickle Start Code	6/30/2010	07:00:00	6/30/2010

Event Extra Text: DEFENDANTS REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION TO DISMISS HABITUAL

**Disposition:**  
T200 6/30/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
12 D1	MOTION TO DISMISS...	7/16/2010	10:00:00	7/1/2010

Event Extra Text: HABITUAL CRIMINAL COUNT / SET WITH CR09-1603 / SPECIAL SET SENTENCING

**Disposition:**  
D845 7/1/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
13 D1	MOTION TO DISMISS...	7/29/2010	14:00:00	7/14/2010

Event Extra Text: HABITUAL CRIMINAL COUNT / SET WITH CR09-1603 / SPECIAL SET SENTENCING

**Disposition:**  
D845 7/14/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
14 D1	SENTENCING	8/12/2010	14:00:00	8/12/2010

Event Extra Text: TO BE HEARD WITH CR09-1603 STATE SEEKING HABITUAL CRIMINAL PENDING DEFENSE MOTION TO DISMISS HABITUAL COUNT

**Disposition:**  
D765 8/12/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
15 D1	Request for Submission	8/18/2010	14:00:00	8/24/2010

Event Extra Text: MOTION TO APPOINT APPELLATE COUNSEL

**Disposition:**  
S200 8/24/2010

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
16 D1	SENTENCING	10/20/2011	09:00:00	10/20/2011

Event Extra Text: REMANDED FOR NEW SENTENCING (THREE CONVICTIONS)

**Disposition:**  
D766 10/20/2011  
ON LIMINTED REMAND FROM THE NEVADA SUPREME COURT

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

**Case ID: CR09-1604 Case Type: CRIMINAL Initial Filing Date: 8/12/2009**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>
17 D1	Request for Submission	7/7/2017 15:24:00	7/17/2017
Event Extra Text: MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS		<b>Disposition:</b> S200 7/17/2017	
18 D1	Tickle Start Code	7/25/2017 07:00:00	8/16/2017
Event Extra Text: RESP TO MTN FOR RETURN OF SIEZED PROPERTY?		<b>Disposition:</b> T200 8/16/2017	
19 D1	Request for Submission	11/29/2017 14:20:00	1/26/2018
Event Extra Text: MOTION FOR ORDER PARTIES....FIL STAMPED 11/15/17		<b>Disposition:</b> S200 1/26/2018 MOTION TO ORDER PARTIES TO PROVIDE USABLE FILES FOR PETITIONER - GRANTED 1/26	
20 D1	Request for Submission	11/15/2021 14:09:00	11/19/2021
Event Extra Text: PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)		<b>Disposition:</b> S200 11/19/2021 SUBMISSION OF PETITION FOR WRIT OF HABEAS CORPUS VACATED (SEE ORDER ISSUED 11/19/21)	
21 D1	Request for Submission	2/25/2022 14:42:00	4/19/2022
Event Extra Text: MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS FILED JAN 18, 2022		<b>Disposition:</b> S200 4/19/2022 SUBMISSION OF MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS FILED JAN 18, 2022 VACATED (SEE ORDER ISSUED 4/19/22)	

**Agency Cross Reference**

<i>Code</i>	<i>Agency Description</i>	<i>Case Reference I.D.</i>
DA	District Attorney's Office	DA404258
PC	PCN number	PCNWASO0007052C
RJ	Reno Justice's Court	RCR2009049088
SC	Supreme Court	SCN 56713
WC	Washoe County Sheriff's Office	WC09005798

**Actions**

<i>Action Entry Date</i>	<i>Code</i>	<i>Code Description</i>	<i>Text</i>
8/12/2009	1795	Indictment	
8/12/2009	1300	Bench Warrant Filed-Case Clsd	BAIL SET AT \$75,000.00 CASH ONLY
8/12/2009	3370	Order ...	ORDER STAYING PROCEEDINGS IN RENO JUSTICE COURT
8/24/2009	4189	Grand Jury Transcript	GRAND JURY PROCEEDINGS - AUGUST 12, 2009 - Transaction 991081 - Approved By: TPRINCE : 08-24-20
10/6/2009	1280	** 60 Day Rule - Waived	
10/16/2009	MIN	***Minutes	ARRAIGNMENT - Transaction 1103974 - Approved By: NOREVIEW : 10-16-2009:13:14:13

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

<b>Case ID:</b>	<b>CR09-1604</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>8/12/2009</b>
10/16/2009	NEF	Proof of Electronic Service	Transaction 1103988 - Approved By: NOREVIEW : 10-16-2009:13:16:13		
1/11/2010	1805	Information Supplementing Ind			
2/23/2010	2245	Mtn in Limine			
2/25/2010	NEF	Proof of Electronic Service	Transaction 1344717 - Approved By: NOREVIEW : 02-25-2010:16:50:33		
2/25/2010	MIN	***Minutes	2/25/10 - MTC - Transaction 1344615 - Approved By: NOREVIEW : 02-25-2010:16:40:23		
3/9/2010	1260	Application Produce Prisoner	APPLICATION FOR ORDER TO PRODUCE PRISONER		
3/11/2010	3340	Ord to Produce Prisoner	NSP SHALL BRING STEPHANIE MICHELLE HINDS TO DISTRICT COURT ON APRIL 2, 2010		
3/12/2010	2565	Notice Intent Use Expt Witness	NOTICE OF EXPERT WITNESS PURSUANT TO NRS 174.234		
3/23/2010	2592	Notice of Witnesses	NOTICE OF WITNESSES PURSUANT TO NRS 174.234		
3/25/2010	MIN	***Minutes	3/18/10 - MOTION IN LIMINE HEARING - Transaction 1396282 - Approved By: NOREVIEW : 03-25-2010:16:37		
3/25/2010	NEF	Proof of Electronic Service	Transaction 1396331 - Approved By: NOREVIEW : 03-25-2010:16:46:12		
3/26/2010	1775	General Receipt			
3/31/2010	3340	Ord to Produce Prisoner			
3/31/2010	1260	Application Produce Prisoner			
4/5/2010	MSEAL	**Sealed Minutes	JUROR NAMES		
4/7/2010	4235	Unused Verdict Form(s)...	NOT GUILTY - COUNT III - BEING AN EX-FELON IN POSSESSION OF A FIREARM		
4/7/2010	4245	Verdict(s)...	GUILTY - BEING AN EX-FELON IN POSSESSION OF A FIREARM		
4/7/2010	FIE	**Document Filed in Error	4/13/10 - K. MATERASSO		
4/7/2010	4235	Unused Verdict Form(s)...	NOT GUILTY - COUNT I - TRAFFICKING IN A CONTROLLED SUBSTANCE		
4/7/2010	4235	Unused Verdict Form(s)...	NOT GUILTY - COUNT II - CONSPIRACY TO SELL A CONTROLLED SUBSTANCE		
4/7/2010	4245	Verdict(s)...	GUILTY - COUNT I - TRAFFICKING IN A CONTROLLED SUBSTANCE		
4/7/2010	4245	Verdict(s)...	GUILTY - COUNT II - CONSPIRACY TO SELL A CONTROLLED SUBSTANCE		
4/7/2010	1885	Jury Instructions			
4/7/2010	1885	Jury Instructions	INSTRUCTIONS FOR BIFURCATED PORTION - EX FELON IN POSSESSION OF A FIREARM		
4/8/2010	1695	** Exhibit(s) ...	STATE'S EXHIBIT 1-15 - MARKED AND ADMITTED		
4/16/2010	MIN	***Minutes	4/8/10 - TRIAL EXHIBIT LIST - Transaction 1435400 - Approved By: NOREVIEW : 04-16-2010:15:43:26		
4/16/2010	NEF	Proof of Electronic Service	Transaction 1435403 - Approved By: NOREVIEW : 04-16-2010:15:44:23		
5/20/2010	NEF	Proof of Electronic Service	Transaction 1500522 - Approved By: NOREVIEW : 05-20-2010:14:40:17		
5/20/2010	MIN	***Minutes	4/5/10 - JURY TRIAL - DAY 1 - Transaction 1500504 - Approved By: NOREVIEW : 05-20-2010:14:37:48		
5/20/2010	MIN	***Minutes	4/6/10 - JURY TRIAL DAY 2 - Transaction 1500504 - Approved By: NOREVIEW : 05-20-2010:14:37:48		
5/20/2010	MIN	***Minutes	4/7/10 - JURY TRIAL - DAY 3 - Transaction 1500504 - Approved By: NOREVIEW : 05-20-2010:14:37:48		
5/26/2010	4500	PSI - Confidential	Transaction 1510321 - Approved By: NOREVIEW : 05-26-2010:14:03:33		
5/26/2010	NEF	Proof of Electronic Service	Transaction 1510322 - Approved By: NOREVIEW : 05-26-2010:14:04:54		
6/11/2010	4185	Transcript	MOTION TO CONFIRM TRIAL - FEBRUARY 25, 2010 - Transaction 1538587 - Approved By: TPRINCE : 06-11-		
6/11/2010	NEF	Proof of Electronic Service	Transaction 1538754 - Approved By: NOREVIEW : 06-11-2010:13:50:04		
6/14/2010	2610	Notice ...	NOTICE OF INTENT TO SEEK HABITUAL CRIMINALITY		
6/16/2010	2475	Mtn to Strike...	MOTION TO STRIKE NOTICE OF HABITUAL CRIMINAL; OPPOSITION TO ENHANCEMENT OF SENTENCE		
6/18/2010	NEF	Proof of Electronic Service	Transaction 1551082 - Approved By: NOREVIEW : 06-18-2010:12:00:45		
6/18/2010	4185	Transcript	MOTIONS IN LIMINE - 03-18-10 - Transaction 1551079 - Approved By: AZION : 06-18-2010:11:59:21		

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

Case ID:	CR09-1604	Case Type:	CRIMINAL	Initial Filing Date:	8/12/2009
6/18/2010	T200	Tickle End Code			
6/24/2010	T200	Tickle End Code			
6/25/2010	3880	Response...	RESPONSE TO DEFENDANT'S MOTION TO STRIKE NOTICE OF HABITUAL CRIMINALITY AND DEFENDAN		
6/30/2010	T200	Tickle End Code			
7/7/2010	MIN	***Minutes	6/10/10 - SENTENCING - CONTINUED - Transaction 1585199 - Approved By: NOREVIEW : 07-07-2010:15:40:		
7/7/2010	NEF	Proof of Electronic Service	Transaction 1585222 - Approved By: NOREVIEW : 07-07-2010:15:42:00		
8/12/2010	1695	** Exhibit(s) ...	STATE'S EXHIBIT 1-6 - MARKED AND ADMITTED		
8/13/2010	NEF	Proof of Electronic Service	Transaction 1656444 - Approved By: NOREVIEW : 08-13-2010:08:48:15		
8/13/2010	MIN	***Minutes	8/12/10 - SENTENCING- EXHIBITS - Transaction 1656440 - Approved By: NOREVIEW : 08-13-2010:08:46:42		
8/13/2010	1850	Judgment of Conviction	Transaction 1657691 - Approved By: NOREVIEW : 08-13-2010:13:49:15		
8/13/2010	NEF	Proof of Electronic Service	Transaction 1657697 - Approved By: NOREVIEW : 08-13-2010:13:50:27		
8/17/2010	2590	Notice Withdrawal of Attorney	NOTICE OF WITHDRAWAL OF COUNSEL (DENNIS CAMERON, ESQ. WITHDRAWS AS COUNSEL FOR DEF		
8/17/2010	NEF	Proof of Electronic Service	Transaction 1663765 - Approved By: NOREVIEW : 08-17-2010:15:57:41		
8/17/2010	MIN	***Minutes	8/12/10 - SENTENCING - Transaction 1663762 - Approved By: NOREVIEW : 08-17-2010:15:56:28		
8/18/2010	NEF	Proof of Electronic Service	Transaction 1665292 - Approved By: NOREVIEW : 08-18-2010:13:04:58		
8/18/2010	2490	Motion ...	MOTION TO APPOINT APPELLATE COUNSEL - Transaction 1665169 - Approved By: ASMITH : 08-18-2010:13		
8/18/2010	NEF	Proof of Electronic Service	Transaction 1664057 - Approved By: NOREVIEW : 08-18-2010:07:18:13		
8/18/2010	2515	Notice of Appeal Supreme Court			
8/18/2010	NEF	Proof of Electronic Service	Transaction 1665665 - Approved By: NOREVIEW : 08-18-2010:14:07:18		
8/18/2010	3860	Request for Submission	Transaction 1665510 - Approved By: TPRINCE : 08-18-2010:14:05:49		
8/24/2010	3370	Order ...	DENNIS A. CAMERON IS RELIEVED AS COUNSEL OF RECORD FOR DEFENDANT - Transaction 1676604 -		
8/24/2010	NEF	Proof of Electronic Service	Transaction 1676610 - Approved By: NOREVIEW : 08-24-2010:13:29:02		
8/24/2010	3060	Ord Granting Mtn ...	ORDER GRANTING MOTION FOR APPOINTMENT OF COUNSEL(WASHOE COUNTY PUBLIC DEFENDER'S		
8/24/2010	S200	Request for Submission Complet			
8/24/2010	NEF	Proof of Electronic Service	Transaction 1677178 - Approved By: NOREVIEW : 08-24-2010:16:05:22		
8/30/2010	1350	Certificate of Clerk	Transaction 1686030 - Approved By: NOREVIEW : 08-30-2010:10:05:48		
8/30/2010	1365	Certificate of Transmittal	Transaction 1686030 - Approved By: NOREVIEW : 08-30-2010:10:05:48		
8/30/2010	NEF	Proof of Electronic Service	Transaction 1686044 - Approved By: NOREVIEW : 08-30-2010:10:07:34		
8/30/2010	4109	Supreme Ct Accept - eFile Doc	SUPREME COURT CASE NUMBER 56713 - Transaction 1687335 - Approved By: NOREVIEW : 08-30-2010:14		
8/30/2010	NEF	Proof of Electronic Service	Transaction 1687348 - Approved By: NOREVIEW : 08-30-2010:14:30:30		
8/30/2010	1310E	Case Appeal Statement	Transaction 1686030 - Approved By: NOREVIEW : 08-30-2010:10:05:48		
9/7/2010	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 56713/RECEIPT FOR DOCUMENTS - Transaction 1701742 - Approved By: NO		
9/7/2010	NEF	Proof of Electronic Service	Transaction 1701751 - Approved By: NOREVIEW : 09-07-2010:09:29:26		
9/23/2010	4135	Supreme Court Ord Remanding	SUPREME COURT CASE NO. 56713/ORDER GRANTING MOTION TO WITHDRAW AND REMANDING FOR ,		
9/23/2010	NEF	Proof of Electronic Service	Transaction 1737084 - Approved By: NOREVIEW : 09-23-2010:09:31:09		
10/6/2010	2715	Ord Appointing Counsel	RECOMMENDATION AND ORDER APPOINTING COUNSEL (THOMAS QUALLS, ESQ.) FOR APPEAL PURP(		
10/6/2010	NEF	Proof of Electronic Service	Transaction 1762585 - Approved By: NOREVIEW : 10-06-2010:12:46:10		
10/6/2010	4109	Supreme Ct Accept - eFile Doc	SUPREME COURT CASE NUMBER 56713 - Transaction 1763936 - Approved By: NOREVIEW : 10-06-2010:16		
10/6/2010	NEF	Proof of Electronic Service	Transaction 1763952 - Approved By: NOREVIEW : 10-06-2010:16:12:52		

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

<b>Case ID:</b>	<b>CR09-1604</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>8/12/2009</b>
10/13/2010	3870	Request	REQUEST FOR COURT FILE - Transaction 1777984 - Approved By: AZION : 10-13-2010:11:31:24		
10/13/2010	NEF	Proof of Electronic Service	Transaction 1777990 - Approved By: NOREVIEW : 10-13-2010:11:33:10		
11/23/2010	1670	Ex-Parte Mtn...	EX PARTE MOTION FOR TRIAL TRANSCRIPTS AT PUBLIC EXPENSE FILED UNDER SEAL - Transaction 1862983 - Approved By: NOREVIEW : 11-23-2010:12:53:25		
11/23/2010	NEF	Proof of Electronic Service	Transaction 1862983 - Approved By: NOREVIEW : 11-23-2010:12:53:25		
11/30/2010	2610	Notice ...	NOTICE REGARDING TRANSCRIPT AT PUBLIC EXPENSE - Transaction 1869875 - Approved By: AZION : 11-30-2010:08:58:43		
11/30/2010	NEF	Proof of Electronic Service	Transaction 1870083 - Approved By: NOREVIEW : 11-30-2010:08:58:43		
12/8/2010	4185	Transcript	Sentencing - June 10, 2010 - Transaction 1887915 - Approved By: AZION : 12-08-2010:09:25:59		
12/8/2010	NEF	Proof of Electronic Service	Transaction 1888004 - Approved By: NOREVIEW : 12-08-2010:09:28:57		
12/22/2010	4185	Transcript	1ST DAY CRIMINAL JURY TRIAL 04-05-10 - Transaction 1922236 - Approved By: AZION : 12-22-2010:16:56:06		
12/22/2010	NEF	Proof of Electronic Service	Transaction 1922241 - Approved By: NOREVIEW : 12-22-2010:16:57:23		
12/27/2010	4185	Transcript	CRIMINAL JURY TRIAL - APRIL 6, 2010 - Transaction 1927789 - Approved By: AZION : 12-28-2010:08:06:38		
12/27/2010	4185	Transcript	SENTENCING - AUGUST 12, 2010 - Transaction 1927790 - Approved By: AZION : 12-28-2010:08:06:56		
12/28/2010	NEF	Proof of Electronic Service	Transaction 1927852 - Approved By: NOREVIEW : 12-28-2010:08:07:50		
12/28/2010	NEF	Proof of Electronic Service	Transaction 1927853 - Approved By: NOREVIEW : 12-28-2010:08:08:43		
2/1/2011	1670	Ex-Parte Mtn...	*SEALED* EX PARTE CLAIM FOR ATTORNEY COMPENSATION - Transaction 2005202 - Approved By: MBES		
2/8/2011	2610	Notice ...	SEALED * NOTICE RE: PAYMENT OF ATTORNEY FEES - Transaction 2020177 - Approved By: AZION : 02-08-2011:10:08:39		
2/8/2011	NEF	Proof of Electronic Service	Transaction 2020199 - Approved By: NOREVIEW : 02-08-2011:10:08:39		
3/14/2011	1670	Ex-Parte Mtn...	*SEALED* EXPARTE CLAIM FOR ATTORNEY COMPENSATION - Transaction 2091212 - Approved By: AZION		
3/14/2011	NEF	Proof of Electronic Service	Transaction 2091278 - Approved By: NOREVIEW : 03-14-2011:14:21:24		
3/22/2011	2610	Notice ...	*SEALED* NOTICE RE: PAYMENT OF INTERIM FEES - Transaction 2106103 - Approved By: AZION : 03-22-2011:09:16:05		
3/22/2011	NEF	Proof of Electronic Service	Transaction 2106226 - Approved By: NOREVIEW : 03-22-2011:09:16:05		
5/11/2011	1670	Ex-Parte Mtn...	SEALED - EX PARTE CLAIM FOR ATTORNEY COMPENSATION - Transaction 2219833 - Approved By: JYOS		
5/11/2011	NEF	Proof of Electronic Service	Transaction 2220038 - Approved By: NOREVIEW : 05-11-2011:16:45:40		
5/23/2011	2610	Notice ...	NOTICE REGARDING PAYMENT OF INTERIM FEES - Transaction 2241792 - Approved By: SSTINCHF : 05-23-2011:11:25:41		
5/23/2011	NEF	Proof of Electronic Service	Transaction 2241918 - Approved By: NOREVIEW : 05-23-2011:11:25:41		
7/19/2011	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 56713/ORDER OF AFFIRMANCE AND LIMITED REMAND - Transaction 2354947 - Approved By: NOREVIEW : 07-19-2011:14:12:59		
7/19/2011	NEF	Proof of Electronic Service	Transaction 2354947 - Approved By: NOREVIEW : 07-19-2011:14:12:59		
7/19/2011	3863	**Submit regarding Appeals	DOCUMENT TITLE: SUPREME COURT ORDER OF AFFIRMANCE AND LIMITED REMAND		
8/16/2011	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 56713/567148/SUPREME COURT REMITTITUR - Transaction 2411184 - Approved By: NOREVIEW : 08-16-2011:14:58:17		
8/16/2011	3863	**Submit regarding Appeals	DOCUMENT TITLE: SUPREME COURT ORDER OF AFFIRMANCE AND LIMITED REMAND		
8/16/2011	NEF	Proof of Electronic Service	Transaction 2411210 - Approved By: NOREVIEW : 08-16-2011:14:58:17		
8/16/2011	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 56713/56714/SUPREME COURT ORDER OF AFFIRMANCE AND LIMITED REMAND - Transaction 2411184 - Approved By: NOREVIEW : 08-16-2011:14:58:17		
8/16/2011	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 56713/56714/SUPREME COURT CLERK'S CERTIFICATE - Transaction 2411184 - Approved By: NOREVIEW : 08-16-2011:14:58:17		
8/25/2011	4075	Substitution of Counsel	SUBSTITUTION OF COUNSEL FOR THE STATE - Transaction 2431566 - Approved By: JYOST : 08-25-2011:15:27:34		
8/25/2011	1260	Application Produce Prisoner	Transaction 2431584 - Approved By: JYOST : 08-25-2011:15:27:34		
8/25/2011	NEF	Proof of Electronic Service	Transaction 2431804 - Approved By: NOREVIEW : 08-25-2011:15:30:55		
8/25/2011	NEF	Proof of Electronic Service	Transaction 2431826 - Approved By: NOREVIEW : 08-25-2011:15:32:12		
8/26/2011	3340	Ord to Produce Prisoner	Transaction 2433559 - Approved By: NOREVIEW : 08-26-2011:11:24:30		
8/26/2011	NEF	Proof of Electronic Service	Transaction 2433593 - Approved By: NOREVIEW : 08-26-2011:11:28:07		

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

<b>Case ID:</b>	<b>CR09-1604</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>8/12/2009</b>
10/20/2011	COLL	Sent to Collections		20-OCT-2011	
10/21/2011	NEF	Proof of Electronic Service		Transaction 2545439 - Approved By: NOREVIEW : 10-21-2011:08:44:15	
10/21/2011	1850	Judgment of Conviction		ON REMAND - Transaction 2545426 - Approved By: NOREVIEW : 10-21-2011:08:42:32	
11/1/2011	MIN	***Minutes		10/20/11 - SENTENCING ON REMAND - Transaction 2564012 - Approved By: NOREVIEW : 11-01-2011:13:54:01	
11/1/2011	NEF	Proof of Electronic Service		Transaction 2564043 - Approved By: NOREVIEW : 11-01-2011:13:58:01	
6/14/2017	2260	Mtn to Relieve Counsel		MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORD	
7/5/2017	2490	Motion ...		MOTION FOR RETURN OF SEIZED PROPERTY	
7/7/2017	3860	Request for Submission		DOCUMENT TITLE: MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, F	
7/10/2017	3880	Response...		RESPONSE TO DEFENDANT'S REQUEST FOR SEIZED PROPERTY - Transaction 6186089 - Approved By: Y	
7/10/2017	NEF	Proof of Electronic Service		Transaction 6186138 - Approved By: NOREVIEW : 07-10-2017:11:00:24	
7/10/2017	2385	Mtn Proceed Forma Pauperis		EX PARTE MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	
7/10/2017	2490	Motion ...		MOTION FOR TRANSCRIPTS AT STATE EXPENSE	
7/17/2017	2842	Ord Denying Motion		MTN FOR TRANSCRIPTS AT STATE EXPENSES - Transaction 6199397 - Approved By: NOREVIEW : 07-17-2017:14:36:53	
7/17/2017	S200	Request for Submission Complet			
7/17/2017	NEF	Proof of Electronic Service		Transaction 6199421 - Approved By: NOREVIEW : 07-17-2017:14:36:53	
7/17/2017	3105	Ord Granting ...		WITHDRAWAL OF COUNSEL OF RECORD - Transaction 6199397 - Approved By: NOREVIEW : 07-17-2017:14:36:53	
7/27/2017	2525	Notice of Change of Address			
8/16/2017	T200	Tickle End Code			
11/15/2017	2490	Motion ...		MOTION TO ORDER PARTIES TO PROVIDE USABLE FILES FOR PETITIONER	
11/29/2017	3860	Request for Submission		DOCUMENT TITLE: MOTION FOR ORDER PARTIES...FIL STAMPED 11/15/17	
1/26/2018	3105	Ord Granting ...		DEFENDANT'S MOTION TO ORDER PARTIES TO PROVIDE USEABLE FILES FOR PETITIONER - Transaction 6500946 - Approved By: NOREVIEW : 01-26-2018:11:22:57	
1/26/2018	NEF	Proof of Electronic Service		Transaction 6500946 - Approved By: NOREVIEW : 01-26-2018:11:22:57	
1/26/2018	S200	Request for Submission Complet		MOTION TO ORDER PARTIES TO PROVIDE USABLE FILES FOR PETITIONER - GRANTED 1/26	
2/12/2018	2610	Notice ...		Notice of Compliance - Transaction 6527551 - Approved By: CSULEZIC : 02-12-2018:13:14:31	
2/12/2018	NEF	Proof of Electronic Service		Transaction 6527570 - Approved By: NOREVIEW : 02-12-2018:13:15:33	
11/15/2021	3860	Request for Submission		DOCUMENT TITLE: PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	
11/15/2021	3585	Pet Writ Habeas Corpus			
11/19/2021	NEF	Proof of Electronic Service		Transaction 8758264 - Approved By: NOREVIEW : 11-19-2021:07:26:10	
11/19/2021	S200	Request for Submission Complet		SUBMISSION OF PETITION FOR WRIT OF HABEAS CORPUS VACATED (SEE ORDER ISSUED 11/19/21)	
11/19/2021	2682	Ord Addressing Motions		ORDER ADDRESSING PETITION - Transaction 8758261 - Approved By: NOREVIEW : 11-19-2021:07:25:09	
1/18/2022	2526	Notice of Change of Attorney		NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY: MARILEE CATE DA IN PLACE OF JENNIFER NOBLE	
1/18/2022	2300	Mtn to Dismiss Pet		MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS - Transaction 8847240 - Approved By: YVI	
1/18/2022	NEF	Proof of Electronic Service		Transaction 8847246 - Approved By: NOREVIEW : 01-18-2022:10:38:16	
2/25/2022	3860	Request for Submission		Transaction 8916862 - Approved By: NOREVIEW : 02-25-2022:14:43:11	
2/25/2022	NEF	Proof of Electronic Service		Transaction 8916866 - Approved By: NOREVIEW : 02-25-2022:14:43:49	
4/19/2022	3060	Ord Granting Mtn ...		ORDER (1) GRANTING STATE'S MOTION TO DISMISS AND (2) DENYING PETITION FOR WRIT OF HABEAS	
4/19/2022	S200	Request for Submission Complet		SUBMISSION OF MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS FILED JAN 18, 2022 V/	
4/19/2022	NEF	Proof of Electronic Service		Transaction 9004494 - Approved By: NOREVIEW : 04-19-2022:07:48:20	
4/20/2022	2540	Notice of Entry of Ord		Transaction 9007312 - Approved By: NOREVIEW : 04-20-2022:09:43:28	

**Case Description: STATE VS. DAVID ROY ABBOTT (D1)**

<b>Case ID:</b>	<b>CR09-1604</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>8/12/2009</b>
4/20/2022	NEF	Proof of Electronic Service	Transaction 9007318 - Approved By: NOREVIEW : 04-20-2022:09:44:08		
6/10/2022	2525	Notice of Change of Address			
6/10/2022	2515	Notice of Appeal Supreme Court			
6/10/2022	1600	Designation Record on Appeal			
6/13/2022	1310E	Case Appeal Statement	CASE APPEAL STATEMENT - Transaction 9097919 - Approved By: NOREVIEW : 06-13-2022:16:46:18		
6/13/2022	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9097919 - Approved By: N		
6/13/2022	NEF	Proof of Electronic Service	Transaction 9097923 - Approved By: NOREVIEW : 06-13-2022:16:47:02		
6/13/2022	1350	Certificate of Clerk	CORRECTED CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9097959 - J		

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

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DAVID ROY ABBOTT,

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Petitioner,

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vs.

Case No.: CR09-1603  
CR09-1604

12

THE STATE OF NEVADA,

Dept. No.: 1

13

14

Respondent.

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**ORDER (1) GRANTING STATE’S MOTION TO DISMISS AND  
(2) DENYING PETITION FOR WRIT OF HABEAS CORPUS**

17

Currently before the Court is Petitioner David Roy Abbott’s (“Mr. Abbott” or “Petitioner”) *Petition for Writ of Habeas Corpus (Post Conviction)* (“Petition”) filed November 15, 2021. On January 18, 2022, the State of Nevada filed a *Motion to Dismiss Petition for Writ of Habeas Corpus* (“Motion”). On February 25, 2022, the State of Nevada submitted the matter to the Court for consideration.

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**I. Background**

23

In 2010, Petitioner was convicted by a jury in Case No. CR09-1604 of trafficking in a controlled substance, conspiracy to sell a controlled substance, and ex-felon in possession of a firearm. In Case no. CR09-1603, Petitioner was convicted pursuant to a guilty plea of possession of a controlled substance. Petitioner appealed his judgments and raised four claims of error with the case that went to trial. On July 14, 2011, the Nevada Supreme Court issued an order of affirmance and limited remand in the consolidated appeals. There, the Nevada Supreme Court ordered the district

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1 court to correct the judgment of conviction in Case No. CR09-1604 because it only reflected one  
2 sentence, the sentence of life without the possibility of parole after Petitioner was adjudicated a  
3 habitual offender. On October 21, 2011, the Honorable Janet Berry issued a new Judgment of  
4 Conviction consistent with the order on remand.

## 5 **II. Legal Authority**

6 A petition that challenges a conviction or sentence must be filed within 1 year after entry of  
7 the judgment of conviction or, if a timely appeal was taken from the judgment of conviction, within  
8 1 year after the appellate court issues its remittitur. NRS 34.726(1). The district court must dismiss  
9 an untimely petition under NRS 34.726 unless the petitioner shows good cause for the delay. *See*  
10 *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005)  
11 (“Application of the statutory procedural default rules to post-conviction habeas petitions is  
12 mandatory.”). Good cause exists if the petitioner demonstrates to the court’s “satisfaction,” (1) that  
13 the delay was not the petitioner’s fault and dismissal of the petition as untimely would unduly  
14 prejudice the petitioner, *see* NRS 34.726(1); or (2) that failure to consider the claims would result in  
15 a fundamental miscarriage of justice, *see Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537  
16 (2001).

## 17 **III. Analysis**

18 In the Petition, Mr. Abbott acknowledges his Petition is being filed more than one year after  
19 the filing of the judgment of conviction or remittitur. Pet. 8:16. However, Mr. Abbott claims  
20 “structural error” is never procedurally barred (citing *Manely v. State*, 115 Nev. 114, 979 P.2d 703  
21 (1999)). Pet. at 8:16-17. Mr. Abbott claims there was “structural error” in his trial as the Grand Jury  
22 proceeding held on August 12, 2009, did not comply with NRS 207.016(2)<sup>1</sup>. *Id.* at 10A:(line

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23 <sup>1</sup> NRS 207.016(2) provides:

24 If a count pursuant to NRS 207.010, 207.012 or 207.014 is included in an information charging the  
25 primary offense, each previous conviction must be alleged in the accusatory pleading, but no such  
26 conviction may be alluded to on trial of the primary offense, nor may any allegation of the conviction  
27 be read in the presence of a jury trying the offense or a grand jury considering an indictment for the  
28 offense. A count pursuant to NRS 207.010, 207.012 or 207.014 may be filed separately from the  
indictment or information charging the primary offense, but if it is so filed, the count pursuant to NRS  
207.010, 207.012 or 207.014 must be filed not less than 2 days before the start of the trial on the primary  
offense, unless an agreement of the parties provides otherwise or the court for good cause shown makes  
an order extending the time. For good cause shown, the prosecution may supplement or amend a count

1 numbering stops on page 11). Specifically, Mr. Abbott contends that the charge of “ex-felon in  
2 possession of a firearm” was one of the openly charged counts in the indictment.

3 The State maintains that this Court must dismiss the Petition, claiming that the Petition is time  
4 barred. *See generally* Mot. The State asserts *Manely*, does not suspend NRS 34.726 which would  
5 procedurally bar the Petition. *Id.* at 2:14-19. Further, the State contends Petitioner has not alleged  
6 good cause for the delay in the presentation of his claim, especially considering it concerns the grand  
7 jury proceeding which would have been known within a year of his judgment of conviction and  
8 remittitur (citing *Riker*, 121 Nev. at 231, 112 P.3d at 1074). Mot. at 2:19-22.

9 In consideration of the foregoing arguments, and the operative legal authority, this Court finds  
10 good cause to grant the Motion. As explained by the State, the Petition is procedurally barred, as  
11 Petitioner failed to timely file the Petition within 1 year after entry of the judgment of conviction. *See*  
12 NRS 34.726(1). Furthermore, “structural error” does not permit Petitioner to file an untimely Petition.  
13 *See Riker*, 121 Nev. at 231, 112 P.3d at 1074 (“Application of the statutory procedural default rules  
14 to post-conviction habeas petitions is mandatory.”). This Court is does not find a violation of NRS  
15 207.016(2) would amount to structural error.<sup>2</sup>

16 Also, application of NRS 207.016(2) is limited to NRS 207.010, NRS 207.012 and NRS  
17 207.014, all of which pertain to prosecution of habitual criminals, and not to the charge of a felon (or  
18 ex-felon) in possession of a firearm. Mr. Abbott contends that the alleged “structural error”  
19 “infect[ed] the entirety of the criminal trial and thus result[ed] in a conviction and sentence that are  
20 illegal.” Mot. at 10A. Contrary to this assertion, the record reveals that the State filed a motion to  
21 bifurcate trial on all other charges from the ex-felon in possession of a firearm charge, which the  
22 Court granted. *See* Motion in Limine; Jury Instructions.

23 Based upon the foregoing and good cause appearing,  
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26 pursuant to NRS 207.010, 207.012 or 207.014 at any time before the sentence is imposed, but if such a  
27 supplement or amendment is filed, the sentence must not be imposed, or the hearing required by  
28 subsection 3 held, until 15 days after the separate filing.

<sup>2</sup> The *Manley* Court provided the following as examples of “structural error”: “total deprivation of the right to counsel at trial, a judge who is not impartial, the unlawful exclusion of members of the defendant’s race from a grand jury, deprivation of the right to self-representation at trial, and deprivation of the right to public trial.” *Manely*, 115 Nev. at 122, 979 P.2d at 708.

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IT IS HEREBY ORDERED that the State of Nevada's *Motion to Dismiss Petition for Writ of Habeas Corpus* is GRANTED.

IT IS HEREBY FURTHER ORDERED that Petitioner David Roy Abbott's *Petition for Writ of Habeas Corpus (Post Conviction)* is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED this 19<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
KATHLEEN M. DRAKULICH  
DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CR09-1603 & CR09-1604

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 19<sup>th</sup> day of April, 2022, I electronically  
5 filed the **ORDER (1) GRANTING STATE’S MOTION TO DISMISS AND (2) DENYING**  
6 **PETITION FOR WRIT OF HABEAS CORPUS** with the Clerk of the Court by using the  
7 ECF system.

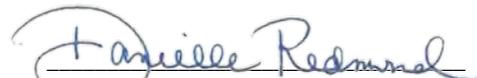
8 I further certify that I transmitted a true and correct copy of the foregoing document by the  
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
11 **of electronic filing to the following:**

12 MARILEE CATE, ESQ.

13 **Deposited in a sealed envelope with postage for mailing using the United States Postal Service**  
14 **in Reno, Nevada:**

15  
16 DAVID ROY ABBOTT (#81673)  
17 WARM SPRINGS CORRECTIONAL CENTER  
18 P.O. BOX 7007  
19 CARSON CITY, NEVADA 89702

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21 Department 1 Judicial Assistant

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**CODE 2540**

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

**STATE OF NEVADA,**

**Plaintiff,**

**Case No: CR09-1603**

**vs.**

**CR09-1604**

**Dept. No: 1**

**DAVID ROY ABBOTT,**

**Defendant.**

\_\_\_\_\_ /

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on April 19, 2022, the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

Dated April 20, 2022.

\_\_\_\_\_  
ALICIA LERUD  
Clerk of the Court

\_\_\_\_\_  
/s/N. Mason  
N. Mason-Deputy Clerk



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

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DAVID ROY ABBOTT,

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Petitioner,

11

vs.

Case No.: CR09-1603  
CR09-1604

12

THE STATE OF NEVADA,

Dept. No.: 1

13

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Respondent.

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**ORDER (1) GRANTING STATE'S MOTION TO DISMISS AND  
(2) DENYING PETITION FOR WRIT OF HABEAS CORPUS**

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Currently before the Court is Petitioner David Roy Abbott's ("Mr. Abbott" or "Petitioner") *Petition for Writ of Habeas Corpus (Post Conviction)* ("Petition") filed November 15, 2021. On January 18, 2022, the State of Nevada filed a *Motion to Dismiss Petition for Writ of Habeas Corpus* ("Motion"). On February 25, 2022, the State of Nevada submitted the matter to the Court for consideration.

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**I. Background**

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In 2010, Petitioner was convicted by a jury in Case No. CR09-1604 of trafficking in a controlled substance, conspiracy to sell a controlled substance, and ex-felon in possession of a firearm. In Case no. CR09-1603, Petitioner was convicted pursuant to a guilty plea of possession of a controlled substance. Petitioner appealed his judgments and raised four claims of error with the case that went to trial. On July 14, 2011, the Nevada Supreme Court issued an order of affirmance and limited remand in the consolidated appeals. There, the Nevada Supreme Court ordered the district

1 court to correct the judgment of conviction in Case No. CR09-1604 because it only reflected one  
2 sentence, the sentence of life without the possibility of parole after Petitioner was adjudicated a  
3 habitual offender. On October 21, 2011, the Honorable Janet Berry issued a new Judgment of  
4 Conviction consistent with the order on remand.

## 5 **II. Legal Authority**

6 A petition that challenges a conviction or sentence must be filed within 1 year after entry of  
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8 1 year after the appellate court issues its remittitur. NRS 34.726(1). The district court must dismiss  
9 an untimely petition under NRS 34.726 unless the petitioner shows good cause for the delay. *See*  
10 *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005)  
11 (“Application of the statutory procedural default rules to post-conviction habeas petitions is  
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14 prejudice the petitioner, *see* NRS 34.726(1); or (2) that failure to consider the claims would result in  
15 a fundamental miscarriage of justice, *see Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537  
16 (2001).

## 17 **III. Analysis**

18 In the Petition, Mr. Abbott acknowledges his Petition is being filed more than one year after  
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21 (1999)). Pet. at 8:16-17. Mr. Abbott claims there was “structural error” in his trial as the Grand Jury  
22 proceeding held on August 12, 2009, did not comply with NRS 207.016(2)<sup>1</sup>. *Id.* at 10A:(line

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23 <sup>1</sup> NRS 207.016(2) provides:

24 If a count pursuant to NRS 207.010, 207.012 or 207.014 is included in an information charging the  
25 primary offense, each previous conviction must be alleged in the accusatory pleading, but no such  
26 conviction may be alluded to on trial of the primary offense, nor may any allegation of the conviction  
27 be read in the presence of a jury trying the offense or a grand jury considering an indictment for the  
28 offense. A count pursuant to NRS 207.010, 207.012 or 207.014 may be filed separately from the  
indictment or information charging the primary offense, but if it is so filed, the count pursuant to NRS  
207.010, 207.012 or 207.014 must be filed not less than 2 days before the start of the trial on the primary  
offense, unless an agreement of the parties provides otherwise or the court for good cause shown makes  
an order extending the time. For good cause shown, the prosecution may supplement or amend a count

1 numbering stops on page 11). Specifically, Mr. Abbott contends that the charge of “ex-felon in  
2 possession of a firearm” was one of the openly charged counts in the indictment.

3 The State maintains that this Court must dismiss the Petition, claiming that the Petition is time  
4 barred. *See generally* Mot. The State asserts *Manely*, does not suspend NRS 34.726 which would  
5 procedurally bar the Petition. *Id.* at 2:14-19. Further, the State contends Petitioner has not alleged  
6 good cause for the delay in the presentation of his claim, especially considering it concerns the grand  
7 jury proceeding which would have been known within a year of his judgment of conviction and  
8 remittitur (citing *Riker*, 121 Nev. at 231, 112 P.3d at 1074). Mot. at 2:19-22.

9 In consideration of the foregoing arguments, and the operative legal authority, this Court finds  
10 good cause to grant the Motion. As explained by the State, the Petition is procedurally barred, as  
11 Petitioner failed to timely file the Petition within 1 year after entry of the judgment of conviction. *See*  
12 NRS 34.726(1). Furthermore, “structural error” does not permit Petitioner to file an untimely Petition.  
13 *See Riker*, 121 Nev. at 231, 112 P.3d at 1074 (“Application of the statutory procedural default rules  
14 to post-conviction habeas petitions is mandatory.”). This Court is does not find a violation of NRS  
15 207.016(2) would amount to structural error.<sup>2</sup>

16 Also, application of NRS 207.016(2) is limited to NRS 207.010, NRS 207.012 and NRS  
17 207.014, all of which pertain to prosecution of habitual criminals, and not to the charge of a felon (or  
18 ex-felon) in possession of a firearm. Mr. Abbott contends that the alleged “structural error”  
19 “infect[ed] the entirety of the criminal trial and thus result[ed] in a conviction and sentence that are  
20 illegal.” Mot. at 10A. Contrary to this assertion, the record reveals that the State filed a motion to  
21 bifurcate trial on all other charges from the ex-felon in possession of a firearm charge, which the  
22 Court granted. *See* Motion in Limine; Jury Instructions.

23 Based upon the foregoing and good cause appearing,  
24

25 \_\_\_\_\_  
26 pursuant to NRS 207.010, 207.012 or 207.014 at any time before the sentence is imposed, but if such a  
27 supplement or amendment is filed, the sentence must not be imposed, or the hearing required by  
28 subsection 3 held, until 15 days after the separate filing.

<sup>2</sup> The *Manley* Court provided the following as examples of “structural error”: “total deprivation of the right to counsel at trial, a judge who is not impartial, the unlawful exclusion of members of the defendant’s race from a grand jury, deprivation of the right to self-representation at trial, and deprivation of the right to public trial.” *Manely*, 115 Nev. at 122, 979 P.2d at 708.

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IT IS HEREBY ORDERED that the State of Nevada's *Motion to Dismiss Petition for Writ of Habeas Corpus* is GRANTED.

IT IS HEREBY FURTHER ORDERED that Petitioner David Roy Abbott's *Petition for Writ of Habeas Corpus (Post Conviction)* is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED this 19<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
KATHLEEN M. DRAKULICH  
DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CR09-1603 & CR09-1604

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 19<sup>th</sup> day of April, 2022, I electronically  
5 filed the **ORDER (1) GRANTING STATE’S MOTION TO DISMISS AND (2) DENYING**  
6 **PETITION FOR WRIT OF HABEAS CORPUS** with the Clerk of the Court by using the  
7 ECF system.

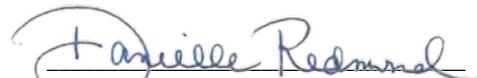
8 I further certify that I transmitted a true and correct copy of the foregoing document by the  
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
11 **of electronic filing to the following:**

12 MARILEE CATE, ESQ.

13 **Deposited in a sealed envelope with postage for mailing using the United States Postal Service**  
14 **in Reno, Nevada:**

15  
16 DAVID ROY ABBOTT (#81673)  
17 WARM SPRINGS CORRECTIONAL CENTER  
18 P.O. BOX 7007  
19 CARSON CITY, NEVADA 89702

20   
21 Department 1 Judicial Assistant

**FILED**

Electronically

10-16-2009:01:13:19 PM

Howard W. Conyers

Clerk of the Court

Transaction # 1103974

CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

10/06/09

HON. JANET J.

BERRY

DEPT. NO. 1

D. Eardley

(Clerk)

G. Willsey

(Reporter)

ARRAIGNMENT

Deputy D.A. **Kelly Ann Partin** represented the State.

Defendant present with counsel, **Dennis Cameron, Esq.**

**TRUE NAME: David Roy Abbott.**

**DEFENDANT SWORN AS TO TRUE NAME.**

Defendant handed copy of the Indictment; waived formal reading; waived time in which to enter a plea and plead Not Guilty to **Count I, Trafficking in a Controlled Substance (2), Count II, Conspiracy to Sell a Controlled Substance and Count III, Being an Ex-Felon in Possession of a Firearm as charged in the Indictment.**

**COURT** canvassed the Defendant regarding his right to a speedy trial.

Defendant waived 60 day rule.

**COURT ORDERED:** Matter continued for trial by jury.

Defendant remanded to the custody of the Washoe County Sheriff.

02/25/10

@ 9:00 a.m.

MTC

04/05/10

@ 9:30 a.m.

Jury Trial

3-Days

**FILED**

Electronically

02-25-2010:04:29:34 PM

Howard W. Conyers

Deputy Clerk of the Court

Transaction # 1344615

CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/25/10

HON. JANET J.

BERRY

DEPT. NO. 1

K. Materasso

(Clerk)

**A. Trevino**

(Reporter)

**MOTION TO CONFIRM TRIAL**

Deputy D.A. **Kelly Ann Kossow** represented the State.

Defendant present with counsel, **Dennis Cameron, Esq.**

Probation Officer, **Laura Pappas**, also present.

Counsel for Defendant confirmed trial.

Counsel for State confirmed trial.

Counsel for State indicated she filed a Motion in Limine regarding the Ex-Felon charge and it being heard by the same jury following the conclusion of the first portion of the case. She noted case authority was attached to the motion.

**COURT** directed Counsel to file said motion forthwith.

**COURT ORDERED** Motion to Confirm Trial **GRANTED**.

**COURT ORDERED** matter continued for motion hearing at which time the Clerk will set the exhibit marking.

Defendant remanded to the custody of the sheriff.

03/18/10

11:00 a.m.

Motion

hearing

**FILED**

Electronically

03-25-2010:04:34:30 PM

Howard W. Conyers

Deputy Clerk of the Court

Transaction # 1396282

CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

03/18/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**C. Brown**  
(Reporter)

**MOTION IN LIMINE HEARING**

Deputy D.A. **Kelly Ann Kossow** represented the State.  
Defendant present with counsel, **Dennis Cameron, Esq.**  
Probation Officer, **Laura Pappas**, also present.  
Counsel for State referenced the Motion in Limine filed by the  
State, noted no opposition had been filed by the State and  
requested to incorporate the gun and drug paraphernalia during the  
trial.  
Counsel for Defendant had no objection.  
Counsel for State indicated if Defendant was to take the stand and  
testify during the trial, that he had prior felony convictions within the  
ten (10) year period that might be used based on his testimony.  
**COURT ORDERED** said motion **GRANTED**.  
**COURT ORDERED** matter continued for exhibit marking and jury  
trial.  
Defendant remanded to the custody of the sheriff.

4/1/10  
2:00 p.m.  
Exhibit  
Marking

4/16/2010

**EXHIBITS**

**PLAINTIFF – STATE OF NEVADA**

Plaintiff’s Counsel –  
**Kelly Ann Kossow, Esq.**

**DEFENDANT – DAVID ROY ABBOTT**

Defendant Counsel –  
**Dennis Cameron, Esq.**

Case No: **CR09-1604** Dept. No: **1** Clerk: **K. Materasso** Date: **April 5, 2010**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	State	GSR room diagram	4/2/10	No Objection	4/5/10
2	State	Photograph of blue bag on bed	4/2/10	No Objection	4/5/10
3	State	Photograph of black zipper case	4/2/10	No Objection	4/5/10
4	State	Photograph of inside of black zipper case	4/2/10	No Objection	4/5/10
5	State	Photograph of small zipper case	4/2/10	No Objection	4/5/10
6	State	Photograph of tin can with needles	4/2/10	No Objection	4/5/10
7	State	Photograph of scale	4/2/10	No Objection	4/5/10
8	State	Photograph of gun	4/2/10	No Objection	4/5/10
9	State	Photograph of gun up close	4/2/10	No Objection	4/5/10
10	State	Photograph of table	4/2/10	No Objection	4/5/10
11	State	Photograph of nightstand with drugs	4/2/10	No Objection	4/5/10
12	State	Photograph of drugs close up	4/2/10	No Objection	4/5/10
13	State	Photograph of bathroom	4/2/10	No Objection	4/5/10
14	State	Photograph of cash	4/2/10	No Objection	4/5/10
15	State	Photograph of purse	4/2/10	No Objection	4/5/10
16	State	Photograph of desk in hotel room	4/2/10	<b>Demonstrative only</b>	
17	State	Photograph of beds in hotel room	4/2/10	<b>Demonstrative only</b>	

4/16/2010

**EXHIBITS**

**PLAINTIFF – STATE OF NEVADA**

Plaintiff’s Counsel –  
**Kelly Ann Kossow, Esq.**

**DEFENDANT – DAVID ROY ABBOTT**

Defendant Counsel –  
**Dennis Cameron, Esq.**

Case No: **CR09-1604** Dept. No: **1** Clerk: **K. Materasso** Date: **April 5, 2010**

Exhibit No.	Party	Description	Marked	Offered	Admitted
18	State	Photograph of table and chairs in hotel room	4/2/10	<b>Demonstrative only</b>	
19	State	CD of Krush with female	4/2/10	No Objection	4/5/10
20	State	Transcript of Krush and female	4/2/10	No Objection	4/5/10
21	State	Guilty Plea Memorandum of Lindsey Bettis	4/2/10	No Objection	4/6/10
22	State	GSR records	4/2/10	Stipulation	4/5/10
23	State	GSR surveillance video	4/2/10	No Objection	4/6/10
24	State	Photograph of check in – still shot	4/2/10	No Objection	4/6/10
25	State	Photograph of backpack – still shot	4/2/10	No Objection	4/6/10
26	State	Photograph of arcade level – still shot	4/2/10	No Objection	4/6/10
27	State	Photograph of arcade level – still shot	4/2/10	No Objection	4/6/10
28	State	CD of jail phone call	4/2/10		
29	State	Gun	4/2/10	No Objection	4/5/10
30	State	Magazine	4/2/10	No Objection	4/5/10
31	State	Blue computer case	4/2/10	No Objection	4/5/10
32	State	Large black case	4/2/10	No Objection	4/5/10
32a	State	Baggies	4/2/10	No Objection	4/5/10
33	State	Scale	4/2/10	No Objection	4/5/10
34	State	Small black case	4/2/10	No Objection	4/5/10

4/16/2010

**EXHIBITS**

**PLAINTIFF – STATE OF NEVADA**

Plaintiff's Counsel –  
**Kelly Ann Kossow, Esq.**

**DEFENDANT – DAVID ROY ABBOTT**

Defendant Counsel –  
**Dennis Cameron, Esq.**

Case No: **CR09-1604** Dept. No: **1** Clerk: **K. Materasso** Date: **April 5, 2010**

Exhibit No.	Party	Description	Marked	Offered	Admitted
34a	State	Master Card	4/2/10	Δ Objection <b>Overruled</b>	4/5/10
34b	State	Peppermill Card	4/2/10	Δ Objection <b>Overruled</b>	4/5/10
35	State	Cardboard box	4/2/10	No Objection	4/5/10
36	State	Drugs	4/2/10	No Objection	4/5/10
37	State	Plastic container	4/2/10	No Objection	4/5/10
38	State	Film canister	4/2/10	No Objection	4/5/10
39	State	Baggies	4/2/10	No Objection	4/5/10
40	State	Baggy with drugs	4/2/10	No Objection	4/5/10
41	State	Baggies with drugs	4/2/10	No Objection	4/5/10
1a	State	Certified copy of the prior conviction in CR04-0931 including Information, Waiver of Rights, Guilty Plea Memorandum and Judgment of Conviction <b>****for ex-felon portion of trial only</b>	4/7/10	Pursuant to stipulation of counsel / for record only / not for jury	4/7/10

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

04/05/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Greco**  
(Reporter)

**JURY TRIAL – DAY 1**

Deputy D.A. **Kelly Ann Kossoq** represented the State.  
Defendant was present with counsel, **Dennis Cameron, Esq.**  
At 9:25 a.m. the Clerk contacted the Jury Commissioner and requested the venire be directed to Department One.  
At 9:36 a.m. Court convened.  
Introductions of Court, counsel, Court personnel and respective parties were made to the prospective jurors.  
At 9:39 a.m. all prospective jurors were sworn by the Clerk to answer questions touching upon their qualifications to serve as jurors in this case.  
At 9:45 a.m. the Court and counsel convened at sidebar.  
At 9:51 a.m. the Court and counsel convened at sidebar.  
General questions of the prospective jurors in the box were conducted by the Court.  
At 10:30 a.m. Counsel Kossoq completed her specific examination of the prospective jurors in the box.  
At 10:41 a.m. Counsel Kossoq passed the panel for cause.  
At 10:42 a.m. Counsel Cameron completed his specific examination of the prospective jurors in the box.  
At 10:46 a.m. Counsel Cameron passed the panel for cause.  
At 10:47 a.m. the Court stood in recess to handle peremptory challenges.  
At 11:00 a.m. counsel convened in-chambers on the record with Defendant present and made their peremptory challenges.  
At 11:13 a.m. the Court, counsel and Defendant convened in the courtroom following peremptory challenges and stipulated to the jurors chosen.  
Following peremptory challenges, the following twelve (12) jurors and one (1) alternate were sworn to try this case:

**FILED UNDER SEAL PER COURT DIRECTIVE**

At 11:14 a.m. the Clerk called the names of the twelve (12) jurors and one (1) alternate.  
At 11:15 a.m. the panel was sworn to the case by the Clerk.  
Upon direction of the Court, the Clerk read the Indictment which was filed in this case and stated the Defendant's plea thereto.  
At 11:34 a.m. Counsel Kossoq presented her opening statement.  
Counsel Cameron reserved his opening statement until the opening of the defense

case.

At 11:41 a.m. the Court stood in recess to reconvene at 1:00 p.m. Jury admonished.

At 1:06 p.m. the jury returned and counsel stipulated to their presence.

**COURT** questioned counsel regarding the rule of exclusion.

Counsel Cameron requested the invocation of said rule. **SO ORDERED.**

**KEVIN KRUSH**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.

At 1:15 p.m. Counsel Cameron objected; narrative and relevance.

Counsel Kossow argues the testimony was relevant, was supportive of how Detective Krush arranged the controlled drug sales and noted this was part and parcel of his training, experience and background.

**COURT ORDERED** Counsel Cameron's objection overruled.

During the testimony of Detective Krush, Counsel Kossow moved for the admittance of the following exhibits having no objection from Counsel Cameron and the **Court ordered said exhibits marked and admitted:**

**State's Exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 19, 20, 29, 31, 32, 32a, 33, 34, 35, 36, 37, 38, 39, 40 and 41**

At 1:31 p.m. Counsel Cameron objected; hearsay. Sustained.

During the testimony of Detective Krush, Counsel Kossow moved for the admittance of **State's Exhibit 22** pursuant to the stipulation of Counsel Cameron.

**COURT ORDERED said exhibit marked and admitted.**

At 1:37 p.m. Counsel Cameron objected; foundation. Sustained.

At 1:38 p.m. Counsel Cameron again objected; foundation. Sustained.

During the testimony of Detective Krush, Counsel Kossow moved for the admittance of **State's Exhibit 34a and 34 b.**

Counsel Cameron objected and requested voir dire of Detective Krush.

Counsel Cameron objected to **State's Exhibit 34 a and 34 b** noting he was not aware of a photograph showing the items referenced in said exhibits, more specifically the credit card and Peppermill card. He further indicated said exhibits could be better addressed by the person who collected them.

**COURT ORDERED** Counsel Cameron's objection noted and overruled.

**COURT ORDERED State's Exhibit 34a and 34b MARKED and ADMITTED.**

At 2:00 p.m. the Court stood in recess for fifteen (15) minutes. Jury admonished.

At 2:30 p.m. the jury returned and counsel stipulated to their presence.

Counsel Kossow continued her direct examination of Detective Krush, previously sworn.

At 3:08 p.m. Counsel Cameron objected; expertise. Sustained.

At 3:09 p.m. Counsel Cameron again objected; expertise. Overruled and the Court noted Counsel Cameron could address this on cross-examination with Detective Krush.

At 3:10 p.m. Counsel Cameron commenced his cross-examination of Detective Krush.

At 3:13 p.m. Counsel Kossow objected; foundation. Sustained.

At 3:16 p.m. Counsel Kossow objected; vague and ambiguous. Sustained.  
**COURT** thanked and excused Detective Krush.  
At 4:02 p.m. the Court stood in recess for ten (10) minutes.  
At 4:20 p.m. the jury returned and counsel stipulated to their presence.  
**STEPHANIE HINES**, called by Counsel Kossow, sworn and testified.  
During the testimony of Witness Hines, the following previously admitted exhibits were referenced:

**State's Exhibit 19 and 20**

At 5:00 p.m. the Court admonished Witness Hines that she was to return on Tuesday, April 6, 2010 at 10:30 a.m. to provide further testimony and further admonished her she was not to discuss the case until the conclusion of trial.  
**COURT** directed the jury to return on Tuesday, April 6, 2010 at 10:30 a.m. and admonished them to not discuss the case until the conclusion of trial.  
Defendant remanded to the custody of the sheriff.  
Matter concluded at 5:18 p.m.

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CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

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4/6/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Cecere**  
(Reporter)

**JURY TRIAL – DAY 2**

Deputy D.A. **Kelly Ann Kossow** represented the State.  
Defendant was present with counsel, **Dennis Cameron, Esq.**  
At 11:14 a.m. the jury returned and counsel stipulated to their presence.  
**STEPHANIE HINES**, returned to the stand and was reminded by the Court that she remained under oath having been previously sworn. Counsel Kossow continued her direct examination of Witness Hines.  
At 11:16 a.m. Counsel Cameron objected; hearsay. **Sustained** as to the extent it calls for hearsay and noted counsel could renew his objection.  
At 11:19 a.m. Counsel Cameron commenced his cross-examination of Witness Hines.  
**COURT** thanked and excused Witness Hines.  
**LINDSAY SHALENE BETTIS**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.  
Counsel Kossow requested the record reflect Witness Bettis' identification of the Defendant. **So noted.**  
During the testimony of Witness Bettis, the following exhibit was ordered marked and admitted by the Court:

**State's Exhibit 21**

During the testimony of Witness Bettis, the following previously admitted exhibits were referenced:

**State's Exhibit 2, 10, 29, 36, 39 and 41**

During the testimony of Witness Bettis, the following exhibits were used for demonstrative purposes only as Counsel Cameron had no objection:

**State's Exhibit 16, 17 and 18**

**COURT** directed Witness Bettis to return at 1:30 p.m. for further testimony and admonished her to not discuss the case until its conclusion.  
At 11:56 a.m. the Court stood in recess to reconvene at 1:30 p.m. Jury admonished.  
At 1:41 p.m. the Court convened with the Defendant and counsel **outside the presence of the jury.**

Counsel Cameron addressed the witnesses he intending on calling and noted one (1) witness had been transported from the Nevada Department of Corrections. He had determined he would not be calling this witness and requested to have him returned to the prison.

**COURT** verified Defendant was in agreement with the decision of his counsel; Defendant agreed.

At 1:42 p.m. the jury returned and counsel stipulated to their presence.

**LINDSAY SHALENE BETTIS**, returned to the stand and was reminded by the Court that she remained under oath having been previously sworn. Counsel Cameron commenced his cross-examination of Witness Bettis.

**COURT** thanked and excused Witness Bettis.

**SHANNON WRIGHT**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.

During the testimony of Witness Wright, the following exhibits were ordered admitted by the Court as Counsel Cameron had no objection:

**State's Exhibit 23, 24, 25, 26 and 27**

**COURT** thanked and excused Witness Wright.

**JERRY BURKEY**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.

During the testimony of Witness Burkey, the following previously admitted exhibits were referenced:

**State's Exhibit 23, 24, 25, 26 and 27**

**COURT** thanked and excused Witness Burkey.

**MARIA FASSETT**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.

During the testimony of Witness Fassett, the following previously admitted exhibits were referenced:

**State's Exhibit 36, 39, 40 and 41**

**COURT** thanked and excused Witness Fassett.

**MICHAEL RAY IVERS**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.

During the testimony of Witness Ivers, the following previously admitted exhibits were referenced:

**State's Exhibits 29, 30, 35, 36, 37, 38, 39 and 41**

At 3:45 p.m. the Court stood in recess for fifteen (15) minutes. Jury admonished.

At 4:06 p.m. the jury returned and counsel stipulated to their presence.

Counsel Kossow completed her re-direct with Witness Ivers.

**COURT** thanked and excused Witness Ivers.

At 4:14 p.m. the Court and counsel convened at sidebar.

**COURT** directed the jury to return on Wednesday, April 7, 2010 at 10:00 a.m. and admonished them to not discuss the case until the conclusion of trial. Counsels remain.

**Outside the presence of the jury**, the Court canvassed the Defendant regarding his right to remain silent and not provide testimony during trial.

Defendant indicated he wanted to remain silent.

**COURT** questioned whether counsel wanted to include the jury instruction regarding a defendant remaining silent; Counsel Cameron indicated he discussed this jury instruction with Defendant and both were in agreement with its inclusion.

**COURT** and counsel settled jury instructions one (1) through and including forty-five (45) along with four (4) verdict forms.

**COURT** addressed the trial schedule.

Defendant remanded to the custody of the sheriff.

Matter concluded at 5:21 p.m.

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CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

---

4/7/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**L. Kay**  
(Reporter)

**JURY TRIAL – DAY 3**

Deputy D.A. **Kelly Ann Kossow** represented the State.  
Defendant was present with counsel, **Dennis Cameron, Esq.**  
At 10:08 a.m. the jury returned and counsel stipulated to their presence.  
**JENNIFER NARANJO**, called by Counsel Kossow, sworn, testified and cross-examined by Counsel Cameron.  
During the testimony of witness Naranjo, the following previously admitted exhibits were referenced:

**State's Exhibit 35, 36, 37, 38, 39 and 41**

**COURT** thanked and excused witness Naranjo.  
Counsel Kossow indicated she had no further witnesses and previously reviewed the exhibit list with the Clerk. Therefore, the State rested their case-in-chief.  
Counsel Cameron indicated the defense rested.  
Counsel Kossow indicated she had no rebuttal evidence.  
**COURT** confirmed with counsel that previously, on April 6, 2010 the Court and counsel met and settled jury instructions 1 through and including 45 along with four (4) verdict forms.  
Counsel Kossow stipulated to the jury instructions and verdict forms.  
Counsel Cameron stipulated to the jury instructions and verdict forms.  
At 11:14 a.m. the Court read the jury instructions out loud to the jury who followed along with their own copy.  
At 11:34 a.m. Counsel Kossow presented her closing statement.  
At 12:15 p.m. the Court stood in recess to reconvene at 1:00 p.m. Jury admonished.  
At 1:07 p.m. the jury returned and counsel stipulated to their presence.  
At 1:08 p.m. Counsel Cameron presented his closing statement.  
At 1:53 p.m. Counsel Kossow presented her final closing statement.  
**COURT** addressed counsel regarding release of the alternate juror to remain on call if necessary; counsels were in agreement.  
**COURT** directed the alternate juror to provide their telephone number to Deputy Malloy and was released after being admonished not to discuss the case until a verdict had been reached.  
At 2:07 p.m. upon the direction of the Court, the Clerk placed Deputy Malloy under oath to take charge of the jury.  
At 2:09 p.m. the jury commenced deliberation.

**Outside the presence of the jury**, Counsel Kossow addressed the prior felony conviction referenced in the Indictment and discussed striking a portion of the language..

Counsel Cameron indicated it was unclear whether you could interlineate an Indictment as it had been found before a Grand Jury.

**COURT** noted Defendant had been provided notice in the Indictment of the prior conviction the State was relying upon for the ex-felon charge and directed the State to converse with her appellate division.

**COURT** and counsel settled jury instructions one (1) through eleven a (11a) related to the ex-felon portion of the trial depending on the jury verdict.

The Court stood in recess subject to the call of the jury.

At 3:04 p.m. the jury notified Deputy Malloy that they reached a verdict. Clerk contacted counsel.

At 4:06 p.m., **outside the presence of the jury**, Court addressed counsel regarding Count III of the Indictment and questioned whether they stipulated to remove a portion of the language in Count III; Counsel stipulated.

Counsel Kossow presented the certified prior conviction of Defendant which was marked as **State's Exhibit a** for identification purposes.

**COURT ORDERED State's Exhibit a MARKED and ADMITTED** for purposes of the stipulation between counsel and would not be provided to the jury during their deliberations.

**COURT** canvassed Defendant regarding his right to remain silent as to the bifurcated portion of the trial; Defendant indicated he wanted to remain silent.

**COURT** verified counsels were in agreement the jury instructions and verdict forms for the bifurcated portion of the trial had been settled.

Counsel Kossow agreed.

Counsel Cameron agreed.

At 4:16 p.m. the jury returned and counsel stipulated to their presence.

**COURT** questioned whether the jury had reached a verdict; Mr. Foreperson indicated they had.

**COURT** directed Mr. Foreperson to provide the verdict forms to Deputy Malloy who provided them to the Court.

**COURT** directed the Clerk to read the following verdicts out loud:

### **VERDICT**

We, the jury in the above-entitled matter, find the Defendant,

DAVID ROY ABBOT, GUILTY of COUNT I, TRAFFICKING IN A CONTROLLED  
SUBSTANCE.

Dated this 7<sup>TH</sup> day of April, 2010.

/S/ Paul Miller  
FOREPERSON

**VERDICT**

We, the jury in the above-entitled matter, find the Defendant,

DAVID ROY ABBOT, GUILTY of COUNT II, CONSPIRACY TO SELL A  
CONTROLLED SUBSTANCE.

Dated this 7<sup>TH</sup> day of April, 2010.

/S/ Paul Miller  
FOREPERSON

**COURT** questioned whether Counsel Ohlson wanted the jury polled; Counsel Ohlson waived the polling of the jury.

**COURT** addressed the jury regarding the second portion of the trial.

Upon the direction of the Court, the Clerk read the second portion of the Indictment out loud.

Counsel Kossow noted she had no witnesses and rested her case regarding the second portion.

Counsel Cameron noted he had no witnesses and rested the defense case regarding the second portion.

**COURT** verified counsel met previously with the Court to settle the jury instructions' Counsel agreed.

At 4:21 p.m. the Court read jury instructions one (1) through and including eleven a (11a) out loud to the jury who followed along with their copy.

At 4:26 p.m. Counsel Kossow presented her closing statement.

At 4:29 p.m. Counsel Cameron presented his closing statement.

At 4:37 p.m. Counsel Kossow presented her final closing statement.

At 4:40 p.m. upon the direction of the Court, the Clerk placed Deputy Malloy under oath to take charge of the jury.

At 4:42 p.m. jury deliberations commenced.

At 5:11 p.m. the jury notified Deputy Malloy that they reached a verdict.

Clerk contacted counsel.

At 5:15 p.m. the jury returned and counsel stipulated to their presence.

**COURT** questioned whether the jury had reached a verdict; Mr. Foreperson indicated they had.

**COURT** directed Mr. Foreperson to provide the verdict forms to Deputy Malloy who provided them to the Court.

**COURT** directed the Clerk to read the following verdicts out loud:

**VERDICT**

We, the jury in the above-entitled matter, find the Defendant,

DAVID ROY ABBOT, GUILTY of COUNT III, BEING AN EX-FELON IN

POSSESSION OF A FIREARM.

Dated this 7<sup>TH</sup> day of April, 2010.

/S/ Paul Miller  
FOREPERSON

**COURT** thanked the jurors for their service and released them from their admonishment.

**COURT ORDERED** matter continued for a sentencing hearing on June 10, 2010 at 2:00 p.m. and directed the Clerk to contact the Division of Parole and Probation to request a presentence investigation report.

Defendant remanded to the custody of the sheriff.

Matter concluded at 5:23 p.m.

Following the completion of the hearing, the Clerk contacted the alternate juror and released him from his admonishment and thanked him for his jury service.

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CASE NO. CR09-1603  
CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT  
STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/10/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**E. Luschar**  
(Reporter)

**SENTENCING - CONTINUED**

Court convened at 2:00 p.m.  
Deputy D.A. **Kelly Ann Kossow** represented the State.  
Defendant present with counsel, **Dennis Cameron, Esq.**  
Probation Officer, **Laura Pappas**, also present.  
Counsel Cameron addressed the habitual status and indicated the Court's determination could affect his argument. He referenced the Information Supplementing Indictment ("ISI") as to CR09-1604 noting the Indictment had been filed after the finding by the Grand Jury. He noted the State needed to appropriately file a Notice of Habitual Criminal and that the Information Supplementing Indictment did not comply with the statute. He referenced NRS 207.010 and made an oral motion to dismiss Count IV of the ISI. Counsel Kossow indicated the ISI provide the necessary notice to Defendant that the State would be seeking the habitual finding at time of sentencing and further that the purpose of the statute was to provide notice. She noted the ISI filed on January 11, 2010 provided notice of the prior felony convictions the State intended to rely upon.  
**COURT** questioned whether Counsel Cameron wanted a continuance of the hearing to file a written motion regarding notice of the habitual criminal status. She recalled there had been discussion prior to trial related to this statute.  
Counsel Cameron noted there was not surprise as to the habitual status however in review of the statute, found the notice had not been appropriate and requested a continuance to file the necessary motion.  
Counsel Kossow referenced the statute and noted no prejudice to the Defendant.  
**COURT** noted Defendant had notice the State sought to have him deemed a habitual criminal and addressed the issues for Defendant relating to strategy and prejudice.  
Counsel Kossow noted the State could file the Notice after the trial and before sentencing.  
At 2:13 p.m. the Court stood in recess.  
At 2:25 p.m. the Court reconvened.

07/16/10  
2:00 p.m.  
Special Set  
Sentencing  
2 hours

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

---

06/10/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**E. Luschar**  
(Reporter)

**SENTENCING - CONTINUED - PAGE 2**

**COURT** referenced Wynn v. State at 96 Nev. 673 regarding the habitual criminal status and said case history. Counsel Cameron indicated he discussed this issue with Counsel Kossow during the recess and would file his motion with points and authorities. Counsel Kossow addressed the basis for the notice and objected to a continuance as any motion would be untimely. **COURT** questioned if the State was seeking the habitual criminal status as to both cases; Counsel Kossow indicated she was and referenced the plea negotiations in CR09-1603 as to concurrent time between the two (2) cases as Defendant entered a plea of guilty in CR09-1603. **COURT** reviewed the Clerk minutes, noted there were no transcripts in either file and as there was a potential for a Life sentence agreed, although the motion would be untimely, a continuance was necessary to allow Counsel Cameron the opportunity to file his motion. **COURT ORDERED** the following briefing schedule: Counsel Cameron to file his motion by Wednesday, June 16, 2010, Counsel Kossow to file her opposition by June 25, 2010 and Counsel Cameron to file his reply and submit no later than June 30, 2010. **COURT ORDERED** matter continued for argument on the motion and for sentencing following argument on July 16, 2010 at 10:00 a.m. Matter set for two (2) hours. Counsel Cameron referenced the numerous police officers present in the gallery and addressed his concern with their presence being coercive. **COURT** noted the presence of officers was not coercive to the Court, noted court rooms were open to the public, the officers were not employees of the Court and if Counsel Cameron deemed it appropriate, he could speak with the officer's supervisor(s). Matter concluded at 2:58 p.m.

8/13/2010

**EXHIBITS****PLAINTIFF: STATE OF NEVADA****Plaintiff's Counsel:  
Kelly Ann Kossow, Esq.****DEFENDANT: DAVID ROY ABBOTT****Defense Counsel:  
Dennis Cameron, Esq.**Case No: **CR09-1603 and CR09-1604** Dept. No: **1** Clerk: **K. Materasso** Date: **August 12, 2010**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	State	Certified copy of the Proceeding sin Case No. 80cF01350 – County of Orange, State of California	8/12/10	No Objection	8/12/10
2	State	Certified copy of the Proceedings, Information, Arraignment transcript, Judgment and Order in CR90-1464	8/12/10	No Objection	8/12/10
3	State	Certified copy of the Proceedings, Information , Guilty Plea Memorandum, Transcript from Arraignment and Sentencing and the Judgment in CR90-0511	8/12/10	No Objection	8/12/10
4	State	Certified copy of the Information, Motion to Dismiss Transcript and Judgment in CR95-2925	8/12/10	No Objection	8/12/10
5	State	Certified copy of the Information, Arraignment Transcript, Motion to Confirm Trial Transcript, Guilty Plea Memorandum, Sentencing Transcript and Judgment, and Motion to Dismiss in CR00-0115	8/12/10	No Objection	8/12/10

8/13/2010

**EXHIBITS**

**PLAINTIFF: STATE OF NEVADA**

**Plaintiff's Counsel:  
Kelly Ann Kossow, Esq.**

**DEFENDANT: DAVID ROY ABBOTT**

**Defense Counsel:  
Dennis Cameron, Esq.**

Case No: **CR09-1603 and CR09-1604** Dept. No: **1** Clerk: **K. Materasso** Date: **August 12, 2010**

<b>Exhibit No.</b>	<b>Party</b>	<b>Description</b>	<b>Marked</b>	<b>Offered</b>	<b>Admitted</b>
6	State	Certified copy of the Information, Guilty Plea Memorandum and Judgment in CR04-0931	8/12/10	No Objection	8/12/10

CASE NO. CR09-1603

STATE OF NEVADA VS. DAVID ROY ABBOTT

CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

08/12/10

HON. JANET J.

BERRY

DEPT. NO. 1

K. Materasso

(Clerk)

**D. Cecere**

(Reporter)

**ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE**

Court convened at 2:10 p.m.

Deputy D.A. **Kelly Ann Kossow** represented the State.

Defendant present with counsel, **Dennis Cameron, Esq.**

Probation Officer, **Cherie Konvicka**, also present.

Prior to the commencement of the hearing, at 1:49 p.m. the Clerk

marked **State's Exhibits 1 through 6** for identification purposes.

**COURT** addressed the previous sentencing hearing at which time

Counsel Cameron objected to the Notice of Habitual Criminality.

The matter had been continued to allow counsel the opportunity to

provide a written motion regarding the issues raised by Counsel

Cameron. She questioned whether counsel wanted to argue the

motion noting all documents provided to the Court had been

reviewed prior to the hearing.

Counsel Cameron submitted the matter on the written motion.

Counsel Kossow submitted the matter on the written motion.

**COURT** indicated she reviewed the motion and found the State

appropriately complied with the statute. Appropriate notice of the

State's intent to seek the habitual criminal status alleged in the

charging document filed on January 11, 2010 in CR09-1604 and on

February 19, 2010 in CR09-1603 satisfied the requirement under

NRS 207.010 (2). She further indicated the Defendant had been

appropriately canvassed by the Court and found although the State

filed a Notice on June 2010 in an abundance of caution, it was not

necessary.

**COURT ORDERED** Defendant's Motion to Strike the Notice of

Habitual Criminality **denied**.

Counsel Cameron indicated he would argue sentencing as to

CR09-1604 first however, requested to defer to the State.

Counsel Kossow agreed and indicated CR09-1604 was the more

significant of the two (2) cases.

Counsel Kossow moved to admit **State's Exhibit 1 through 6**

(previously provided to the Court) for purposes of the habitual

status.

Counsel Cameron had no objection to said exhibits.

**COURT ORDERED State's Exhibit 1 through 6 MARKED and**

**ADMITTED** as constitutionally valid proof of prior felony

convictions.

CASE NO. CR09-1603  
CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT  
STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

08/12/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Cecere**  
(Reporter)

**ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -**  
**PAGE 2**

Counsel Kossow addressed the possible sentences the Court could impose noting the Court had the discretion to adjudge the Defendant a habitual criminal or not. If adjudged a habitual criminal, the Defendant faced a sentence of a definite term of twenty-five (25) years with parole eligibility beginning after a minimum of ten (10) years had been served, a term of Life with the possibility of parole, with parole eligibility beginning after a minimum of ten (10) years had been served or a term of Life without the possibility of parole.

Counsel Kossow presented argument, requested the Court impose a sentence of Life without the possibility of parole on each case. Pursuant to the negotiations, she had no objection to the two (2) cases running concurrently with each other. She addressed her review of the habitual criminal statute and explained she understood the statute had been devised to increase sanctions for recidivism and discourage repeat offenders. She referenced the Defendant's presentence investigation reports (PSI) noting Defendant had an extensive criminal history including charges of theft, drugs and property crimes and on most occasions weapons had been found. She indicated Defendant had six (6) convictions including a firearm or deadly weapon. As to CR09-1603, she indicated Defendant had been arrested on a drug charge and posted the necessary bail. Defendant had been on bail when he committed the crimes in CR09-1604 and later had been found guilty of by a Jury. Again, she requested the Court impose a sentence of Life without the possibility of parole as to each case, and for the two (2) cases to run concurrently with each other.

Counsel Cameron presented argument, addressed Defendant's criminal history, indicated Defendant was a drug addict and he sold drugs to support his drug habit. He addressed the discretion the Court had related to sentencing and referenced the term the State sought noting it was a sentence designed for the most heinous of crimes.

CASE NO. CR09-1603  
CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT  
STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

8/12/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Cecere**  
(Reporter)

**ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -**  
**PAGE 3**

Counsel Cameron addressed the State's argument for the protection of the community. As to sentencing, he requested the Court not adjudge the Defendant a habitual criminal and disagreed with the imposition of a sentence of definite term of twenty-five (25) years with parole eligibility beginning after a minimum of ten (10) years had been served or a term of Life with the possibility of parole, with parole eligibility beginning after a minimum of ten (10) years had been served. He further disagreed to a term of Life without the possibility of parole. Instead, he requested the Court impose a sentence as follows noting portions of it differed from the recommendation by the Division as to CR09-1604:

\*\* As to Count I – Division recommended a term of incarceration of the minimum of seventy-two (72) months to a maximum term of one hundred eighty (180) months. Counsel Cameron agreed with this recommendation.

\*\* As to Count II – Division recommended a term of incarceration of the minimum of twenty-four (24) months to a maximum term of sixty (60) months, to run concurrently with the sentence imposed in Count I. Counsel Cameron requested a term of incarceration of the minimum of twenty-four (24) months to a maximum term of sixty (60) months, to run consecutively to the sentence imposed in Count I.

\*\*As to Count III – Division recommended a term of incarceration of the minimum term of twenty-eight (28) months to a maximum term of seventy-two (72) months, to run consecutively to the sentences imposed in Count I and Count II. Counsel Cameron requested the minimum term of twenty-four (24) months to a maximum term of sixty (60) months, to run consecutively to the sentences imposed in Count I and Count II.

Counsel Cameron indicated the sentence proposed equaled a minimum term of one hundred twenty (120) months to a maximum term of three hundred (300) months which was equivalent to a term of ten (10) to twenty-five (25) years.

CASE NO. CR09-1603  
CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT  
STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

08/12/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Cecere**  
(Reporter)

**ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -**  
**PAGE 4**

Counsel Cameron further requested the Court honor the party's negotiations for the two (2) cases to run concurrently with each other.

**COURT** questioned whether Defendant had any changes to the PSI; Defendant indicated he did not.

**COURT** verified Defendant reviewed the PSI; Defendant indicated he had.

**COURT** questioned whether Defendant wanted to make a statement; Defendant indicated he did not.

**COURT** indicated this would be Defendant's only opportunity for allocution and again, verified Defendant did not want to make a statement; Defendant indicated he did not want to make a statement.

Counsel Kossow again addressed the reason the State sought the habitual criminal status against Defendant and the sentence of Life without the possibility of parole as she believed if Defendant were released from prison he would continue to commit crimes.

Officer Konvicka addressed Defendant's criminal history dating back to 1975, indicated he received increasingly longer terms of incarceration and this had not curtailed Defendant's behavior, therefore she believed the maximum term was appropriate.

**COURT** addressed the Defendant regarding the argument presented by his counsel on the most severe sentences for the most heinous crimes, however referenced habitual offenders and the reasons the habitual criminal statute had been designed. She noted she reviewed **State's Exhibit 1 through 6** having previously found them to be constitutionally valid proof of prior felony convictions, referenced Defendant's twenty (23) convictions, ten (10) of which were felonies and noted Defendant's criminal history began in 1975. Defendant appeared to always be armed and was a danger to officers at times of his arrest. She noted the Court had broad discretion regarding the adjudging of a Defendant to be a habitual criminal and having weighed the circumstances, with the only mitigator being Defendant's age, found the record to show, Defendant continued to commit crime(s).

8/12/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Cecere**  
(Reporter)

**ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -**  
**PAGE 5**

**COURT** referenced the case history of both matters noting Defendant posted bail in CR09-1603 and while on bail, committed the crimes charged in CR09-1604. She indicated Defendant's criminal activity was escalating and found in the totality of the circumstances that it was just and proper for the Defendant to be adjudged a habitual criminal. She found the convictions provided were not trivial, remote or stale; Defendant was not a candidate for probation as he was not supervisable, and for the safety of the community, found a sentence of Life Without the Possibility of Parole appropriate.

Counsel Kossow noted the State sought restitution in the CR09-1604 matter as the officers had to break the door down to gain entry into the hotel room.

Counsel Cameron disputed the figure provided by the State. Counsel Kossow noted the door needed to be replaced.

**COURT ORDERED:** Judgment entered **as to CR09-1603.**

Defendant sentenced to the Nevada Department of Corrections for the minimum term of Life Without the Possibility of Parole.

The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee and a Sixty Dollar (\$60.00) chemical analysis fee.

The Defendant is given credit for four hundred sixty-three (463) days time served.

**COURT ORDERED:** Judgment entered **as to CR09-1604.**

Defendant sentenced to the Nevada Department of Corrections for the term of Life Without the Possibility of Parole, to run concurrently with the sentence imposed in CR09-1603.

The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee, a Sixty Dollar (\$60.00) chemical analysis fee and restitution in the amount of Nine Hundred Seventy-Three Dollars (\$973.00).

The Defendant is given credit for four hundred forty-five (445) days time served.

Counsel Kossow moved to dismiss Count I in CR09-1603.

Counsel Cameron had no objection.

**COURT ORDERED** Count I of CR09-1603 hereby **dismissed.**

CASE NO. CR09-1603  
CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT  
STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

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08/12/10  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**D. Cecere**  
(Reporter)

**ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -**  
**PAGE 6**

Court and counsel convened at sidebar.

**COURT** addressed Defendant regarding an appeal and verified Defendant sought to appeal this conviction; Defendant indicated he would seek to appeal.

Counsel Cameron noted he previously contacted Counsel Karla Butko regarding the appeal.

**COURT** noted Defendant would have thirty (30) days from the entry of the judgment and directed Counsel Cameron to contact the Bell Group regarding representation. She addressed the procedural nuances and understood Counsel Cameron would file a motion to withdraw as counsel, Defendant would need to complete any necessary forma pauperis documentation and directed Counsel Cameron to contact court services to have then interview Defendant regarding his indigence. The necessary motion for counsel would need to be filed along with the motion for forma pauperis. She indicated Counsel Cameron he was not required to file an appeal.

Counsel Cameron indicated he would complete the necessary documents and if needed, would assist Defendant in filing a proper person notice of appeal.

Defendant remanded to the custody of the sheriff.

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CASE NO. CR09-1604

STATE OF NEVADA VS. DAVID ROY ABBOTT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

10/20/11  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**E. Luschar**  
(Reporter)

**SENTENCING ON REMAND**

Deputy D.A. **Kelly Ann Kossow** represented the State.  
Defendant present with counsel, **Dennis Cameron, Esq.**  
Probation Officer, **Shane Lees**, also present.  
Deputy, **Noah Boyer**, also present.  
**COURT** addressed the limited remand from the Nevada Supreme  
Court regarding a sentence being imposed as to each count.  
Counsel Kossow indicated she reviewed the sentencing transcript  
and believed the sentence needed to be imposed at to each of the  
three (3) counts.  
Counsel Cameron addressed a limited remand on a clerical error  
and indicated if the counts were run concurrently it would not  
change the sentence.  
**COURT ORDERED** a new judgment be completed by the Clerk  
and that the Defendant is sentenced to a term of Life Without the  
Possibility of Parole as to Count I, Count II and Count III and each  
count to run concurrently with each other.  
Clerk questioned whether the judgment was to be nunc pro tunc or  
whether new credit for time served needed to be calculated.  
Counsel Cameron addressed Defendant's classification and based  
on the judgment, he is to serve two (2) years in lockdown. He  
questioned if Defendant now would have to serve two (2) years for  
each sentence imposed.  
**COURT** indicated she had no authority regarding classification  
within the Prison however directed the Clerk to contact NDOC and  
further question the issue of credit for time served.  
A recess was taken.  
Upon reconvening, the Clerk indicated she conferred with Ms.  
Shelly Williams at the prison and indicated Ms. Williams stated  
nunc pro tunc was better for the Defendant and that this would give  
him credit from the original date of his conviction therefore he would  
receive all meritorious credits if he had earned any. She noted it  
was not detrimental for a Defendant to return to Court to correct or  
resolve any issue.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

---

10/20/11  
HON. JANET J.  
BERRY  
DEPT. NO. 1  
K. Materasso  
(Clerk)  
**E. Luschar**  
(Reporter)

**SENTENCING ON REMAND - PAGE 2**

Ms. Williams further indicated she conferred with Mr. Jeff Froschaur regarding the time spent in lockdown related to the Defendant's offense and indicated this related to classification based on the Defendant's charge, criminal history and ability to program within NDOC and since each count was running concurrently he would only spend the necessary time related to the initial count. She also referenced AR521, which Counsel Cameron and the Defendant were familiar with.

**COURT ORDERED** the Clerk to prepare a new judgment of conviction, nunc pro tunc to the original judgment (August 12, 2010) to be in compliance with the Nevada Supreme Court's Order. As to each Count, the Defendant was sentenced to a term of Life Without the Possibility of Parole, and each count to run concurrently with each other. Defendant shall be given credit of four hundred forty-five (445) as indicated on his original judgment. Said sentence shall run concurrently with the sentence imposed in CR09-1603. Lastly, the Court indicated the fees were previously imposed.

**COURT** noted the exhibits had been previously admitted. Counsel Kossow had no further issues. Counsel Cameron had no further issues. Defendant remanded to the custody of the Nevada Department of Corrections.

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1 Code 1350

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF WASHOE

7

**DAVID ROY ABBOTT,**

8

**Petitioner,**

9

**vs.**

**Case No. CR09-1604**

10

**CR09-1603**

11

**THE STATE OF NEVADA,**

**Dept. No. 1**

12

**Respondent.**

13

14

**CORRECTED**

15

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 13th day of June, 2022, I electronically filed the Notice of Appeal in the above entitle matter to the Nevada Supreme Court.

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The Notice of Appeal contains sealed documents. I certify that I deposited in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada, a copy of the sealed minutes addressed to the Nevada Supreme Court, 201 S. Carson Street, Suite 201, Carson City, Nevada 89701.

22

23

I further certify that the transmitted documents are true and correct copies of the original pleadings on file with the Second Judicial District Court.

24

25

Dated this 13th day of June, 2022.

26

Alicia L. Lerud  
Clerk of the Court

27

By /s/Y.Viloria

28

Y.Viloria  
Deputy Clerk