THE VEGAS LAWYERS
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IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN WARREN DRYDEN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

SUPREME COURT NO: 83233

DISTRICT COURT NO: C-18-334955-1

MOTION FOR RECONSIDERATION

TONY L. ABBATANGELO, ESQ.
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4030 S. Jones Blvd., Unit 30370
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Attorney for Appellant
Bryan Dryden

STEVE WOLFSON, ESQ.
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200 Lewis Avenue, 3rd Floor
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The State of Nevada

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NOW COMES, the appellant, Bryan Dryden, and moves this Court to re-consider its order of January 19, 2022, requiring appellant's counsel, herein, to pursue an appeal on appellant's behalf. This motion is based on the appellant's insistence that the undersigned pursue an appeal based upon a claim of ineffective assistance of counsel as against your undersigned. *See correspondence of Bryan Dryden in two separate letters addressed to appellant's counsel, dated December 14, 2021 and January 2, 2022, respectively, attached hereto as Exhibit No. 1 and 2.* This proposal/requirement/insistence by the appellant creates an obvious conflict of interest between appellant and the undersigned. Based on the following analysis and argument, appellant's counsel requests that this Court reconsider its Order of August 6, 2021, denying counsel's motion to withdraw from this case.

Your undersigned commenced appellant's court-appointed representation on November 5, 2018, based on an indictment returned on September 19, 2018, charging the appellant with felony Sexual Assault with Use of a Deadly Weapon. From the commencement of your undersigned's appointment, through appellant's change of plea hearing on November 5, 2019 (to attempted sexual assault) until his sentencing on July 8, 2021, your undersigned zealously represented appellant.

At that July 8th sentencing hearing, the Hon. Mary Kay Holthus sentenced the appellant to, amongst other things, a period of 60 to 240 months incarceration; such term of incarceration to run concurrent with a previously imposed life sentence

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(with the possibility of parole after ten years) in a 2009 second-degree murder case docketed as 09-C258241. Your undersigned filed a timely notice of appeal on the appellant's behalf on July 14, 2021, in the instant case.

In the December 14, 2021, letter the appellant acknowledges that your undersigned had filed a timely notice of appeal on the issue of whether Judge Holthus had improperly denied the appellant's motion to receive credit for time served in the instant case. But in that letter the appellant also flatly and emphatically dismisses the sentencing issue as irrelevant. Instead, appellant emphasizes that he wants the appeal to be based on his claim that the undersigned was ineffective in his representation of the appellant during trial court proceedings; collaterally alleging that your undersigned coerced him to accept the plea deal, and that he was otherwise misled into accepting that deal because of alleged false statements by the undersigned.

The undersigned parenthetically notes that during the appellant's sentencing hearing, he was given the opportunity to address the court and never mentioned the fact that he was disappointed in the representation of the undersigned. Similarly, on recollection and belief, your undersigned represents that the appellant never mentioned his dissatisfaction with your undersigned's representation at the change

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of plea hearing.[1] Appellant did mention his displeasure with your undersigned in an ill-fated motion to withdraw his plea that was filed with the district court on March 2, 2020 and denied by District Court Judge Holthus on January 21, 2021.[2]

With his most recent correspondence, referenced in Exhibit Nos. 1 and 2 above, the appellant has cast his criticism of undersigned counsel in sharp relief. He asserts that your undersigned lied to him, misled him, coerced him and was otherwise ineffective in representing him. Moreover, he flatly rejects any other basis for appeal. In other words, the appellant has formally renounced the partnership that typically exists between lawyer and client in the common objective to achieve the most favorable outcome for the client; and has, instead, identified the undersigned as an adversary to his (appellant's) interests.

Moreover, aside from the ethical considerations of requiring a lawyer to press a legal claim against him/herself, a direct appeal to the Supreme Court is not even the proper form or forum, respectively, for a litigant to advance a claim for ineffective assistance of counsel. A claim for ineffective assistance of counsel cannot be raised on direct appeal but must be filed with the sentencing court in a

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[1] This representation is based on your undersigned's memory because a transcript of that hearing is unavailable for review.

[2] It is noteworthy that while the appellant offers a brief criticism of your undersigned in his (appellant's) written motion to withdraw his plea, filed by Attorney Marisa Border, he (appellant) doesn't even mention the undersigned by name at the hearing on the motion, instead transferring his criticisms to his then attorney, Ms. Border, as being the ineffective counsel.

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post-conviction petition. *Pelligrini v. State,* 117 Nev. 860, (2001) ([I]neffective assistance of counsel claims are properly raised for the first time in a timely filed post-conviction petition); *see also Colwell v. State,* 118 Nev. 807, 812 (2002). Similarly, even if the appellant's underlying aim is that he be permitted to withdraw his plea, which motion had been denied him by the District Judge, that, too, is a matter to be initiated by filing a post-conviction petition—not an appeal. *Harris v. State,* 130 Nev. 435, 437 (2014).

Because, moving forward, the appellant has demonstrated his adamant intention to impugn the professional integrity, ability and actions of the undersigned, an irreconcilable gap in interests exists between us. This forms the apotheosis of a conflict of interest and counsel's continued representation of the appellant under these circumstances disserves both. Courts are compelled to intervene when a legal counsel's representation creates a conflict of interests. *Wood v. Georgia,* 450 U.S. 261, 267 (1981); *Noguera v. Davis,* 5 F.4th 1020, 1035 (9th Cir. 2021); *see also Contreras-Armas v. Baker*, 2021 WL 6064271 (D. Nev. Dec. 21, 2021).

Your undersigned had previously filed a motion with this Court, dated July 14, 2021, to withdraw as appellant's counsel on the ground that the appellant "does not want your [undersigned] to represent him." This Court denied that motion on August 06, 2021, stating as its ground that an "appellant's general loss of

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confidence or trust in counsel, alone," is an insufficient basis to justify an appellate counsel's withdrawal from representation. But now the appellant has made a specific legal claim that has professional and ethical implications on the undersigned; more so than would past nebulous suggestions that the counsel and his client are simply out of sync.

Thus, although this Court has previously denied the undersigned's motion to withdraw, the circumstances have since changed making such legal representation ethically dubious at best. We note that the appellant is in accord with the request made in this motion in that:1) he emphasizes his disaffection with the undersigned; and 2) he acknowledges the impractical effect of continued representation by the undersigned because, amongst other reasons, "you can't defend me against yourself." *See Exhibit No.1.* While the appellant's prose may be inelegant, the practical and legal concern that he expresses is legitimate. The appellant's decision to make undersigned counsel's competence and professionalism the focus of his appeal (or his petition for post-conviction relief, as the case may be) constitutes, by any measure, a conflict of interest and, similarly, constitutes good cause for present counsel to be replaced by another advocate, both in the interests of the appellant as well as the interests of the undersigned. It is only through this remedy that the integrity of the legal process can be preserved.

For all the reasons, referenced above, appellant's counsel, on behalf of the appellant and himself, petitions this Court to reconsider its August 6, 2021, and grant the appellant's motion allowing appellant's counsel to withdraw from the above-captioned case.

DATED this 31st day of January 2022.

Respectfully Submitted By:

By: 

TONY L. ABBATANGELO, ESQ.
NEVADA BAR NO. 3897
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103

Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Motion for Reconsideration was sent by first class mail, postage prepaid, to the following parties on the 31st day of January 2022.

AARON FORD, ESQ.
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701

STEVE WOLFSON, ESQ.
District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

An Employee of Paul Padda Law, PLLC

EXHIBIT 1

EXHIBIT 1

Resent Jan. 2nd after being R.T.S. from the Decatur address ... Ooops

THE VEGAS LAWYERS
TONY L. Abbatangelo, Esq.
4560 S. Decatur Blvd. #300
Las Vegas, NV. 89103

Bryan Dryden 1070536
P.O. Box 650
Indian Springs, NV. 89070

Re: State of NV v. Bryan Dryden
District Court Case #: C-18-334955-1
Dept. XXI
Supreme Court Case #: 83233

Carbon Copies on File

Dear Tony, 12-14-21

Seasons greetings

I got your letter yesterday addressing our appeal For credit for time served.

My direct appeal is centered around & Titled: "Defendants Direct Appeal to Withdraw Plea" befor

2/

Sentencing on the grounds of 1) ineffective assistance of Counsel 2) both court appointed Counsel 3) on grounds of Coercion 4) Misleading / False pretenses & many other grounds I will go over in a future (near) letter addressing these matters.

Please file this direct appeal as soon as possible. The clock is ticking on our window to get this done.

Please research this window we have to file our direct appeal to withdraw my plea.

3/

You need to point out that the Court (Dist.) had dismissed you already & appointed a new lawyer & you were ordered to send the new lawyer as Defendant my entire case file.

The lower Court erred in its reappointing you as Counsel! I have the filed & stamped motion to dismiss you as Counsel! For Judge Holthus to reappoint you is ludicrous! You Cant defend me against Yourself.

Holthus is OUT OF LINE!!

4/

So start filing these motions on these issus, Mainly: "Defendants Direct Appeal to withdraw Plea"! befor sentencing on grounds of ineffective assistance of Counsel. Mainly the ... [redacted] fill in attorney for failing to send me the petition & briefs & failing to respond to letters/calls.

Please send this letter back acknowledging you are in receipt of this letter & what our deadlines are. Thank You

B. Ragsdale

EXHIBIT 2

EXHIBIT 2

Tony Abbatangelo, Esq.
THE VEGAS LAWYERS
4030 S. Jones Blvd. Unit 30370
Las Vegas, NV. 89173

Re: Bryan Warren Dryden v. State of NV.
Supreme Court of NV. Case # 83233

Dear Tony, Jan. 2, 2022

Happy New Year! :)

Hey, I've been writing you at the Decatur address & all this mail's been R.T.S.

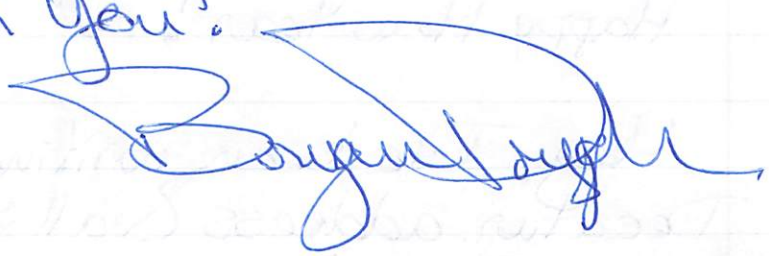
I found the motion granted to withdraw Counsel, filed Jan. 6, 2020 where a hearing on Jan. 30, 2020 granted appointment of Counsel to Marisa Border, pursuant to NRS 7.055 You were terminated & ordered to transfer entire Case File. Signed by me December 30, 2019

Judge Holthus erred by reappointing you as counsel for me when my main grounds

are Coercion & ineffective assistance of Counsel.
This is ridiculous!

Anyways, Hope this letter finally reaches you.
I also wrote the Supreme Court Clerk to make note of my decission to go forward with my direct appeal to withdraw plea deal.

Thank You!



Bryan Dryden # 1070536
P.O. Box 650 (HDSP)
Indian Springs, NV.
89070

HIGH DESERT STATE PRISON
JAN 02 2022
UNIT 10

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FOREVER - USA

Tony L. Abbatangelo, Esq.
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