

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

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Elizabeth A. Brown
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CHARLES JOSEPH MAKI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Sup. Ct. Case No. 84485

Case No. CR94-0345

Dept. 8

RECORD ON APPEAL

VOLUME 5 OF 10

DOCUMENTS

APPELLANT

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IN THE 2ND JUDICIAL DIST. COURT OF NEVADA,
IN AND FOR WASHOE COUNTY.

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK
BY [Signature] DEPUTY CLERKCHARLES J. MAKI
PETITIONER

CASE NO: CR94-0345

VS.

DEPT. NO. 8

STEVEN KOSACH

IN AND FOR WASHOE COUNTY
RESPONDENT, ECT.

AFFIDAVIT IN SUPPORT OF MOTION
FOR APPOINTMENT OF COUNSEL / WRIT OF
PROHIBITION / WRIT OF MANDAMUS.

I, CHARLES J. MAKI, PETITIONER FIRST BEING DULY SWORN,
DEPOSE AND SAY THAT I AM THE PETITIONER IN THE ABOVE
INTITLED PLEADING, THAT IN SUPPORT OF MY MOTION TO PROCEED
WITHOUT BEING REQUIRED TO PRE-PAY THE COSTS OF SAID PLEADING
OR TO GIVE SECURITY THEREFORE; THAT I AM INTITLED TO RELIEF.

1.) PETITIONER AT THIS TIME IS REQUESTING THIS HONORABLE COURT
TO APPOINT LEGAL COUNSEL TO ASSIST HIM AND THIS COURT IN THIS
VERY COMPLEXED AND COMPLICATED WRIT OF PROHIBITION / WRIT OF
MANDAMUS AGAINST THE HEREIN ABOVE-NAMED RESPONDENTS FOR
VIOLATING PETITIONER'S (HEREIN AFTER IS AFFIANT) DUE PROCESS
RIGHTS UNDER THE N.R.S. SENTENCING STATUTES; N.R.S. 34.160;
N.R.S. 34.170 AND N.R.S. 34.190..

2) PETITIONER ONLY HAS A VERY LIMITED EDUCATION - 6TH GRADE EDUCATION WHEN PETITIONER WAS ARRESTED. FURTHER MORE DOES NOT HAVE ANY LEGAL BACKGROUND OR ANY LEGAL KNOWLEDGE OR EDUCATION IN LEGAL PROCEEDINGS. PETITIONER FULLY RELIED ON STATE APPOINTED COUNSEL TO HELP IN ALL LEGAL MATTERS. ON OCCASION PETITIONER HAD TO RELY ON OTHER INMATES TO HELP HIM PROCEED IN COURT.

3) WHEREFORE, PETITIONER IS NOW LEFT WITHOUT ANY TYPE OF LEGAL ASSISTANCE TO FURTHER, ASSIST HIM OR AFFIANT IS UNABLE TO FURTHER PROSECUTE THIS CASE IN THIS HONORABLE COURT, APPOINTING LEGAL COUNSEL PURSUANT TO N.R.S. 34.750

4) ON JANUARY 19TH 1994, "I WAS ARRESTED AT 1345 PM BY DET. STEIGHMIER (JAMES) DURING A CUSTODIAL INTERROGATION AT THE RENO POLICE DEPT. YET DURING THE INTERROGATION DETECTIVES NEW I WAS DRINKING PRIOR TO THEM PICKING ME UP AT MY PLACE OF RESIDENCE, WITH OTHER PEOPLE WHILE WORKING ON MY TRUCK, SEE AFFIDAVIT (SWORN) OF MR. PAUL GRUBBS. " I HAD ALSO INVOKED MY RIGHT TO LEGAL COUNSEL - YET WAS DENIED. CASE # 16248-94

5) ON JANUARY 24TH 1994, I WENT TO MY ARRAINGMENT - 6 DAYS AFTER BEING ARRESTED. THIS IS A CLEAR VIOLATION OF MY DUE PROCESS RIGHTS. SEE POWELL V. STATE OF NEVADA 114 S. CT. 1280 (1994) I WAS BEING HELD IN TAIL WITHOUT BEING FORMALLY CHARGED WITH ANY TYPE OF CRIME AT ALL. ONCE I DID FINALLY GO TO MY ARRAINGMENT IT WAS WITHOUT ANY TYPE OF LEGAL COUNSEL. [FACT-IS] PETITIONER WAS WITHOUT LEGAL COUNSEL FROM THE TIME HE WAS ARRESTED UP TILL ABOUT 15 MINUTES BEFORE HIS PRELIMINARY TRIAL, EVEN THOUGH PETITIONER ASKED FOR COUNSEL DURING INTERROGATION ON JAN 19-1994.

6.) FEBRUARY 03-1994, PETITIONER HAD HIS PRELIMINARY TRIAL (HEARING), HE ALSO JUST MET HIS COURT-APPOINTED COUNSEL 15 MINUTES PRIOR, FOR THE FIRST TIME, A MRS. JANET COBB SMUCK, SHE DIDN'T EVEN WHO PETITIONER WAS ECT. DURING THE PRELIM. HEARING IT WAS ESTABLISHED NO-D.N.A. NO-MEDICAL EVIDENCE NO-physical EVIDENCE, SUMMER (ONE OF THE ALLEGED VICTIMS) ALSO TESTIFIED THAT PETITIONER DID NOT SEXUALLY ASSAULT HER. SUMMER WAS UNSURE WHETHER PETITIONER HAD IN FACT EVEN HAD COMMITTED A LEWD ACT WITH HER, ALL DURING THE D.A.'S QUESTIONING AFTER WHICH TIME A.D.A. MR. DAN GRECO TOLD THE COURT SHE WAS MISTAKEN, AND ADDRESSED SUMMER AGAIN STATING TO HER "QUOTE" - DON'T YOU REMEMBER TALKING TO DET. STEIGHMEIR A COUPLE DAYS AGO - SHE ANSWER'D YES, D.A. SAYS REMEMBER TALKING TO HIM BEFORE COMING HERE, SHE SAID YES, D.A. GRECO SAYS OK NOW LET'S TRY IT AGAIN UN-QUOTE". THIS WAS AFTER THE COURT REFUSED TO STRIKE HER FIRST ANSWER, PER D.A. GRECO. BOTH ALLEGED VICTIMS AND DET. STEIGHMEIR WERE ASKED ON THE STAND IF PETITIONER HAD ANY (SCARS-MOLES-TATTOES-OR ANY OTHER I.D. MARKS) ALL THREE STATED "NO" NOT IN THE PELVIC AREA, DET. STEIGHMEIR EVEN STATED HE ASKED THAT QUESTION REPEATEDLY, SAME ANSWER "NO". NOT ANY TATTOES ECT. IN PELVIC AREA, THIS WAS ASKED BY D.A. DAN GRECO. AFTER THE HEARING I TOLD my P.D. JANET C. SMUCK TO GET A CAMERA AS I WANT PHOTOS TAKEN IMMEDIATELY, AS I CAN 100% PROVE I'VE GOT A VERY LARGE VERY COLORFUL TATTOE THAT'S 15-16 YRS OLD FROM my BELLY BUTTON TO my SCROTUM...

7) MARCH 11-1994. MY P.D. MRS. JANET C. SMUCK HAS MADE ORAL/WITTEN ARGUEMENTS TO THE COURT, FOR ALL DISCOVERY EVIDENCE FROM THE STATE. STILL MY P.D. MRS. SMUCK AND MYSELF ARE STILL CONSTANTLY ARGUEING, AS I'M TELLING HER TO GO TO SEE AND SPEAK TO NUMEROUS PEOPLE WHO WILL SPEAK IN MY DEFENCE AND KNOW SOMETHING OF THE 2 ALLEGED VICTIMS AND THEIR LIVES. SHE REFUSES TO DO SO, STATING ITS A WASTE OF HER TIME, SO I WROTE A LETTER TO THE COURT TRYING TO EXPLAIN THE CONFLICT OF INTEREST BETWEEN MY P.D. AND MYSELF AND I ASKED FOR NEW COUNSEL..

8) APRIL 1ST 1994. SUPPRESSION HEARING; WHILE (I) WAS IN JAIL MY P.D. JANET C. SMUCK TOLD ME THAT (I) DIDNT HAVE TO ATTEND THIS HEARING, I) CHOSE TO DO SO ANYWAY. AT THIS HEARING, MRS. SMUCK TELLS THE COURT, HOW I WISH TO CHANGE MY PLEA FROM "NOT-GUILTY" TO GUILTY, (THIS WAS NOT ONLY NOT TRUE) BUT WAS ALMOST DONE BEHIND MY BACK IN CAHOOTZ WITH THE A.D.A. DAN GRECO, IF I WOULDVE LISTENED TO HER- SHE WOULDVE HAD ME FOUND GUILTY WITHOUT MY KNOWLEDGE OR PERMISSION, AGAIN I ASKED THE COURT FOR A NEW ATTORNEY, AGAIN DENIED...

9) APRIL 4th 1994. MOTION'S HEARING; THE COURT ERRED IN NOT REMOVING HIMSELF FROM THE PETITIONERS CASE, BECAUSE OF BIAS AND PREJUDICE REMARKS AGAINST THE PETITIONER.

A) THE COURT SHOWED BIAS/PREJUDICE BY TELLING THE PETITIONER THE COURT HAS READ THIS CASE AND "QUOTE- IF YOU THINK YOUR NOT GUILTY YOUR IN NEVER-NEVER LAND- UN-QUOTE!.....

B) THE COURT ERRED BY ADMITTING THE VIDEO TAPED INTERVIEW'S OF THE ALLEGED VICTIMS AT THE TIME OF TRIAL, AS THIS WAS CUMULATIVE AND ONLY PREJUDICIAL TO THE PETITIONER, AS THE

STATE WOULD HAVE (3) WITNESSES STATEING/TESTIFYING CONCERNING THERE TESTIMONIE/EVIDENCE.

C.) THE COURT ERRED IN NOT MAKING A FACTUAL DETERMINATION AS TO THE REASONS THAT PETITIONER WANTED TO DISMISS HIS ATTORNEY PRIOR TO TRIAL....

D.) THE COURT ERRED BY ALLOWING ALL OF THE TAPED INTERVIEW OF THE PETITIONER EVEN AFTER PETITIONER HAD ENVOCKED HIS RIGHTS TO REMAIN SILENT.

E.) THE COURT ERRED IN [NOT RULEING] THAT PETITIONER HAS RIGHTS TO LEGAL COUNSEL AT ALL CRITICAL STAGES OF THE CRIMINAL PROCEEDINGS, AS THE PETITIONER WAS NOT APPOINTED/OR DID NOT SEE ANY LEGAL COUNSEL AT ALL UNTIL ABOUT (15) DAYS AFTER HIS ARREST, EVEN THOUGH PETITIONER ENVOCKED HIS RIGHTS DURING HIS INTERROGATION AT POLICE STATION.....

(10) TRIAL DATE - APRIL 11th - 12th 1994. PETITIONER'S TRIAL STARTS AT [2:20 pm TO 2:45 p.m ON MONDAY APRIL 11th 1994] STOP...

ON TUES APRIL 12th 1994, TRIAL STARTS AGAIN AT [10AM TO 11:30 AM] STOP... TRIAL STARTS AGAIN AT [1:30 PM - 2 PM] STOP...

TRIAL STARTS AGAIN AT [3⁰⁰ PM AND IS DONE AT 4 PM] FINISHED... TOTAL 3 1/2 HR...

A.) BEFORE THE TRIAL STARTS PETITIONER'S LEGAL COUNSEL ADDRESSES THE COURT - "THE STATE STILL HAS NOT PROVIDED DISCOVERY EVIDENCE TO THE DEFENSE.

B.) THE STATE GIVES UP SOME DISCOVERY EVIDENCE 10 MINUTES BEFORE THE TRIAL STARTS, PHOTOS OF THE ALLEGED VICTIMS, ALONG WITH THE STATES EXPERT WITNESS (MRS. CATHY C. PEELE) FROM SAINTS PROGRAM.

C.) THE DEFENSE ASKED THE COURT FOR A CONTINUANCE TO ALSO

GET AN EXPERT TO EXAMINE THE STATES EVIDENCE AND TO ALSO HAVE ITS OWN EXPERT TESTIFY IN BEHALF OF THE DEFENDENT. THE COURT DENIED THE DEFENCE'S REQUEST. BUT STATED ON RECORD THAT YES, [THE STATE CAN HAVE AN EXPERT TO TESTIFY.] THATS CLEARLY PREJUDICIAL TO THE PETITIONER....

D.) MS. CATHY PEELE, THE STATES EXPERT WITNESS TELLS THE JURY THAT EVEN THOUGH "SHE CANT" FIND ANY EVIDENCE OF SEXUAL ASSAULT, THAT A HYMEN GROWS BACK.

E.) SEE: PRELIMINARY TRANSCRIPTS AND THEN TRIAL TRANSCRIPTS, COMEPARE THE TWO; YOU'LL SEE A HUGE DIFFERENCE IN TESTIMONIES!

(1) AFTER THE ALLEGED VICTIMS AND DETECTIVE STEISHMIER TESTIFIED ON THE WITNESS STAND DURING PETITIONERS TRIAL - "AGAIN ALL (3) STATED "NO TATTOES - SCARS - MOLES ECT. IN PETITIONERS PELVIC AREA."

F.) I TOLD MY P.D. MS. SMUCK TO SHOW THE JURY THE PHOTOS I HAD TAKEN AFTER PRELIMINARY TO SHOW MY INNOCENTS, (SHE TRIED TO REFUSE), AFTER SHE ADDRESSED THE COURT, D.A. GRECO ASKED THE COURT TO SEE THEM, AFTER LOOKING AND FINDING THE ONE PHOTO THAT WOULDVE PROVEN MY INNOCENTS, (THE PHOTO OF THE VERY LARGE TATTOE IN MY PELVIC AREA), WENT AND GAVE IT TO DET. STEISHMIER WHO IN TURN TOOK IT OUT TO THE HALLWAY TO THE ALLEGED VICTIMS; AND MY ATTORNEY REFUSED TO OBJECT TO THIS BEHAVIORE,...

G) NOW THE STATE RECALLS BOTH THE ALLEGED VICTIMS BACK IN ON RE-BUTTAL IN REGARDS TO MY TATTOE IN MY PELVIC AREA. AND NOW THEY REMEMBER IT, (I) TRIED TO WRITE SOMETHING TO MY P.D. AS I HAD MY MOUTH SUCK TAPED BY JUDGE AND WAS GIVE DIRECT ORDERS NOT TO SPEAK ONLY TO ADDRESS ANY AND ALL THRU MY ATTORNEY. ITS CLEAR PROSECUTIONAL MISCONDUCT. INNEVECTIVE ASSISTANCE OF COUNSEL...

10-H) IN REGARDS TO WANTING TO TESTIFY AT MY TRIAL, (I) TOLD MY P.D. SMUCK SINCE DAY ONE THAT I WANTED TO TESTIFY IN MY OWN BEHALF, BUT SINCE MY MOUTH WAS TAPED SHUT AND THE COURT TOLD ME I HAD TO MAKE NOTES TO MY ATTORNEY ONLY, [I WAS NOT GIVEN AN OPPORTUNITY NOT ONLY TO TESTIFY BUT WASN'T EVEN GIVEN THE CHANCE TO ADDRESS THE COURT IN REGARDS TO MY TO MY TESTIFYING IN MY OWN BEHALF.] YET IN POST CONVICTION TRANSCRIPTS P.D. SMUCK STATES CLEARLY HOW PETITIONER WANTED TO TESTIFY, SINCE DAY ONE... "THIS IS A CLEAR VIOLATION OF PETITIONER DUE PROCESS RIGHTS. PUBLIC DEFENDER JANET C. SMUCK TOOK FULL ADVANTAGE OF THE COURT TAPEING PETITIONER'S MOUTH UP IN FRONT OF THE JURY FOR TALKING TO TO PETITIONER'S P.D. WHILE THE D.A. WAS ADDRESSING HIS WITNESS. I) P.D. SMUCK REFUSED TO EVEN ASK THE COURT FOR PSYCHIATRIC EVALUATION, ALONG WITH THE "VERY INCONSISTANT TESTIMONIE" OF THE ALLEGED VICTIMS, AS SHE NEW FIRST HAND, FROM PRELIM. TO THE TRIAL. [THIS CONSTITUTES INAFFECTIVE ASSISTANCE OF COUNSEL]...

J.) EVEN THOUGH PETITIONER HAD (6) PEOPLE IN HALLWAY AWAITING TO TESTIFY IN PETITIONER'S BEHALF - P.D. SMUCK REFUSED TO ALLOW E'M, STATING THAT THE STATE WONT ALLOW IT, THIS WAS UNACCEPTABLE TO PETITIONER, ONLY MRS. DANIEL JOHNSON TESTIFIED FOR PETITIONER - THOUGH THEY DIDN'T SEE EACH OTHER FOR 6 YRS, WHERE THE OTHER WITNESSES WERE FAMILY FRIENDS AND GIRL FRIEND OF RECENT.

11.) MAY 17-1994, DAY OF SENTENCING.

WHEN PETITIONER GOT TO THE COURTROOM, HIS COUNSEL - P.D. SMUCK HANDED HIM SOME PAPERS WHICH TURNED OUT TO BE A P.A.W.P. REPORT AFTER LOOKING AT IT PETITIONER INFORMED HIS ATTORNEY (IT WAS GROSSLY INCORRECT) TO INCLUDE BUT NOT LIMITED TO (MRS JOSLYNN COOMBS)

PETITIONER HAD HIS F.B.I. RECORDS, SCHOOL RECORDS, Job Corps RECORDS, SHOWING IN REGARDS TO MRS. COOMBS TESTIMONY HE CANT BE IN TWO PLACES AT ONCE.

A) MRS COOMBS SAID PETITIONER ASSAULTED HER 20 YRS PRIOR IN A DIFFERENT STATE, THIS IS NOT TRUE, F.B.I RECORDS PROVED PETITIONER WAS IN JAIL & STATES AWAY AT HER TIME FRAME FOR (2 YRS).

B) PETITIONER HAS "NEVER-EVER" EVEN BEEN ACCUSED OF SEXUAL ASSAULT!

C) ATTORNEY SMUCK, DID ADDRESS THE COURT STATING THAT THERE WERE DISCREPANCIES IN PETITIONERS P. AND P. REPORT, THAT SHE WOULD ADDRESS THEM AT A LATER DATE.

D.) THAT WAS A [BOLD FACE LIE TO THE COURT] AS ATTORNEY SMUCK NEW AFTER PETITIONER IS SENTENCED HE WOULD NEVER SEE HIS ATTORNEY AGAIN - IN FACT THE PETITIONER EVEN FILED HIS OWN DIRECT APPEAL TO THE COURTS FROM PRISON/ WITH HELP FROM OTHER INMATES, AS HIS PREVIOUS ATTORNEY JANET C. SMUCK DID NOT!!

E) COUNSEL ALSO REFUSED TO ADDRESS THE COURT IN REGARDS TO COUNT II BEING DISMISSED - "AS THE JURY COULDN'T REACH A VERDICT" ON IT.

F) ALL PETITIONERS COUNSEL DID FROM [DAY ONE TO SENTENCING PHASE] WAS GO THRU THE MOTIONS, LOOKING LIKE SHE WAS DOING SOMETHING, TO THE UNTRAINED EYE, WHEN ALL SHE DID IS HELP IN FLAME THE COURT EVEN MORE, [AS I WAS TOLD MR. MAKI - 3-10 TO LIVES PLUS 5-10 YRS SEANCES ALL RUNNING CONSECUTIVE] [COURT STATES I HOPE YOU NEVER GET OUT!]....

12) MS. ROBIN WRIGHT, A COURT APPOINTED PRIVATE ATTORNEY, WAS APPOINTED TO REPRESENT PETITIONER ON HIS DIRECT APPEAL TO NEVADA SUPREME COURT FROM THE JUDGEMENT OF CONVICTION MAY 17th 1994 CASE # CR 94-0345 / APPEAL CASE # 26049 WAS DISMISSED ON OCT-02 1995.

12 A.) PETITIONER ASKED MS. WRIGHT MANY TIMES TO ADDRESS MANY COLORFUL ISSUES, BUT ALL SHE TOLD PETITIONER WAS "QUOTE YOUR NOT A PAYING CLIENT - OR - RAISE E'M ON A POST CONVICTION PETITION..."

B) ATTORNEY WRIGHT REFUSED TO RAISE THE ISSUE [THAT PETITIONER WAS ENTITLED TO HAVE BOTH PHYSICAL AND PSYCHOLOGICAL] EXAMINATIONS OF THE ALLEGED VICTIMS IN HIS CASE, PRIOR TO TRIAL TO DETERMINE IF THEY WERE LYING OR NOT...

13) TRIAL COUNSEL, DID NOT FILE A MOTION REQUESTING TO HAVE THE ALLEGED VICTIMS SUBMIT TO A PSYCHIATRIC OR PHYSICAL EXAMINATION BY A DEFENSE EXPERT. IN MAKI'S (PETITIONER'S) CASE, WITHOUT ANY PHYSICAL EVIDENCE, COUPLED WITH THE CONFLICTING TESTIMONY OF SUMMER AND DESIREE, THE EVIDENCE AND TESTIMONY PRESENTED AMOUNTS TO NOTHING MORE THAN AN OATH AGAINST AN OATH AND HEARSAY AGAINST HEARSAY.....

A) STATES SHE did NOT motion for physical or psychological examinations because the PROSECUTION (STATE) WAS NOT PRESENTING ANY EXPERTS IN BEHALF OF THE STATES TESTIMONY.....

B) FURTHER CONTENDS THAT EXAMINATIONS OF THE MINORS WAS NOT WARRANTED BECAUSE THE STATEMENTS OF THE MINORS ABOUT THE CRIMES WERE MERELY AMBIGUOUS.....

C) INITIALLY, SUMMER WAS UNSURE WHETHER MAKI HAD COMMITTED A LEWD ACT WITH HER.

D) LATER, SHE DENIED THAT MAKI COMMITTED A LEWD ACT AT ALL. (APP 98)

E) SUMMER ALSO TESTIFIED AT PRELIMINARY HEARING THAT MAKI "DID NOT" SEXUALLY ASSAULT HER. DESIREE ALSO DENIED THAT (MAKI) PETITIONER SEXUALLY ASSAULTED HER IN AN INTERVIEW WITH THE SAME OFFICER.

THEY CLEARLY PROCLAIMED (PETITIONER'S) INNOCENCE.....

13-F) PETITIONERS COUNSEL SHOULD HAVE REQUESTED A PHYSICAL AND/OR PSYCHOLOGICAL EXAMINATIONS OF THE MINORS.

G) BUT THE ALLEGED COMPETENT/EFFECTIVE COUNSEL OF RECORD, REFUSED. WHICH ONLY AMOUNTS TO INEFFECTIVE ASSISTANCE OF COUNSEL BEFORE, DURING, AND AFTER TRIAL.

H) THE PHYSICAL EXAMINATION OF DESIREE, [INDICATED HER HYMEN] WAS "NORMAL" AND DID NOT SUPPORT A PHYSICAL FINDING OF SEXUAL PENETRATION.....

I) DEFENSE COUNSEL SHOULD HAVE, AND HAD A LEGAL RIGHT TO HAVE THE TWO ALLEGED MINOR VICTIMS EXAMINED BY AN EXPERT IN BEHALF OF THE DEFENSE.....

14) THIS CASE, [THE STATE DID CALL AN EXPERT] TO TESTIFY AND DID PLACE PSYCHOLOGICAL PROBLEMS OF ALLEGED VICTIM SUMMER BEFORE THE JURY VIA THE TESTIMONY OF KATHY PEELE. ADDITIONALLY THE STATE DID PLACE EXTENSIVE EVIDENCE OF PHYSICAL ISSUES BEFORE THE JURY WITH THE TESTIMONY OF KATHY PEELE. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO REBUT THIS EVIDENCE WITH EXPERT TESTIMONY. DEFENSE COUNSEL SHOULD HAVE BEEN GRANTED A CONTINUANCE TO PROVIDE EXPERT TESTIMONY TO REBUT THE EXPERT TESTIMONY. THE DISTRICT COURT ERRED WHEN IT DENIED THE CONTINUANCE REQUEST OF PETITIONER.....

15) "THIS COURT," SHOULD FIND THAT MAKI'S COUNSEL OF RECORD WERE INEFFECTIVE FOR FAILING TO REPRESENT MAKI AT ALL INDIVIDUAL CRITICAL STAGES.....



16) THE physical EVIDENCE THAT SUMMER HAD BEEN SUBJECTED TO MORE physical ABUSE THAN SHE WAS REPORTING WAS EXCULPATORY. IT GAVE PETITIONER THE GROUNDS TO LOOK FOR ANOTHER PERPETRATOR. "THIS EVIDENCE SUPPORTED MAKI'S INNOCENCE." FAILURE OF THE STATE TO REVEAL THIS EVIDENCE IN A TIMELY MANNER SO THAT MAKI COULD DEFEND AGAINST IT WAS IMPROPER. THIS EVIDENCE SHOULD HAVE BEEN DISCLOSED TO THE PETITIONER.....

17) THE DISTRICT COURT ERRED IN ALLOWING SAID EVIDENCE TO BE PRODUCED AT THE TRIAL WITHOUT ALLOWING MAKI AN OPPORTUNITY TO HAVE THE EVIDENCE REVIEWED BY A DEFENSE EXPERT IN PREPARATION FOR TRIAL.....

18) PETITIONER SHOULD RECEIVE A NEW TRIAL COMPLETE WITH THE ABILITY TO SECURE DEFENSE EXPERTS TO EVALUATE AND DEFEND AGAINST THE physical CLAIMS IN THIS CASE. IN THIS MATTER THERE IS A TRUE QUESTION OF (LAW AND FACTS), AS TO WHETHER THERE WAS "SUFFICIENT EVIDENCE" TO SUPPORT THE CHARGES MAKI WAS CONVICTED OF. THE EVIDENCE DEMONSTRATES THAT THERE WAS NOTHING TO PROVE AND SUBSTANTIATE THAT A CRIME ACTUALLY OCCURED, BECAUSE IT WAS BASED UPON "AN OATH AGAINST AN OATH AND HEARSAY AGAINST HEARSAY."

19) PETITIONER'S CONVICTION REQUIRED SOME PROOF, SUCH AS VERIFICATION BY physical EVIDENCE THAT A CRIME ACTUALLY OCCURED. "THIS FACT SETTING WAS NEVER DONE." THUS, "THE CONVICTION WAS ILLEGAL AND SHOULD BE REVERSED AND REMANDED FOR A NEW TRIAL..."

20) PETITIONER AT THIS TIME IS REQUESTING THIS HONORABLE COURT TO APPOINT COUNSEL TO ASSIST HIM IN THIS COURT IN THIS VERY COMPLEX AND COMPLICATED WRIT OF PROHIBITION/WRIT OF MANDAMUS AGAINST THE HERIN ABOVE NAME RESPONDENT FOR VIOLATING PETITIONERS (HERIN AFTER IS AFFIANT) DUE PROCESS RIGHTS UNDER THE N.R.S. CHAPTER #34 BY NOT ALLOWING HIS INEFFECTIVE ATTORNEY TO PRESENT EVIDENCE, TESTIMONY AND D.N.A. TESTING PLUS NO RAPE KIT WAS EVER PRESENTED TO ESTABLISH IF AFFIANT WAS EVER GUILTY OF THE CRIME "SEXUAL ASSAULT AND LEWONESS" OR WAS EVER ALLOWED TO PROVE HIS ACTUAL INNOCENCE. HOWEVER, AS THIS HONORABLE COURT CAN CLEARLY REVIEW THIS PROCEEDING AND THE INTERIOR COURT RECORD OF CASE NO. CR94-0345 WILL CLEARLY SHOW BEYOND A REASONABLE DOUBT THAT THE ABOVE NAMED DEFENDANT DID IN FACT CREATE A VERY FUNDAMENTAL MISSCARRIAGE OF JUSTICE AFTER 18 YRS OF AFFIANT TRYING TO PROVE HIS ACTUAL INNOCENCE IN THIS CASE....

21) AFFIANT DID HAVE THE ASSISTANCE OF AN INMATE LIVING IN THE SAME UNIT AS AFFIANT WITH LEGAL KNOWLEDGE IN PREPARING THIS INTERIOR PLEADINGS WHICH IS NOW ON APPEAL PURSUANT TO N.R.S. 34.160; N.R.S. 34.170 AND 34.190 NOW BEFORE THIS HONORABLE COURT TO REVIEW AND MAKE A RULING AND ORDER THE DEFENDENT SUPRA, TO CONDUCT A FULL HEARING AND INVESTIGATION OF THE ISSUE THAT AFFIANT HAS RAISED AND PRESENTED IN HIS "WRIT OF PROHIBITION/WRIT OF MANDAMUS" SHOWING FACTUAL, PHYSICAL SPECIFIC EVIDENCE SHOWING THAT THERE IS ENOUGH EVIDENCE SHOWING THAT THERE WAS A GRAVE FUNDAMENTAL MISSCARRIAGE OF JUSTICE AND THEREFORE, THIS HONORABLE COURT IS CONVINCED AFFIANT

IS ACTUALLY INNOCENT OF THIS CRIME OF SEXUAL ASSAULT AND LEWDNESS.

22) HOWEVER THE INMATE THAT WAS ASSISTING AFFIANT IN PREPARING THIS INTIRE PLEADING WAS MOVED OUT OF AFFIANT'S UNIT PER INSTITUTION ADMINISTRATION AND LEGAL COUNSEL, (ATTORNEY GENERAL'S OFFICE RECOMMENDED THAT THE INMATE WHO WAS ASSISTING AFFIANT BE MOVED).

23) WHEREFORE, AFFIANT IS NOW LEFT WITHOUT ANY TYPE OF LEGAL ASSISTANCE TO FURTHER ASSIST HIM IN FURTHERING HIM TO PROSECUTE THIS WRIT OF PROHIBITION/WRIT OF MANDAMUS WHICH IS BEFORE THIS HONORABLE COURT, AND WITHOUT THIS HONORABLE COURT APPOINTING LEGAL COUNSEL PURSUANT TO N.R.S. 34.750 TO ASSIST AFFIANT OR THIS COURT TO BETTER UNDERSTAND THE COMPLEX AND COMPLICATED ISSUES NOW PENDING...

24) AFFIANT ONLY HAS LIMITED EDUCATION, DOES NOT "HAVE LEGAL KNOWLEDGE OR EDUCATION IN REGARDS TO ANY LEGAL KNOWLEDGE TO PREPARE OR PROSECUTE THIS PROCEEDING WITHOUT HAVING APPOINTMENT OF COUNSEL TO ASSIST AFFIANT.

25) AFFIANT CERTIFYS AND DECLARES UNDER PENALTY OF PERJURY, PURSUANT TO N.R.S. 208.165 THAT AFFIANT SAT WITH THE INMATE THAT ASSISTED HIM IN PREPARING ALL THESE PLEADINGS OF AFFIANT IS TRUE AND CORRECT TO SUPPORT AFFIANT'S MOTION FOR APPOINTMENT OF COUNSEL AND WRIT OF PROHIBITION/WRIT OF MANDAMUS BEING PRESENTED BEFORE THIS HONORABLE COURT IS TRUE AND CORRECT AS WRITTEN

DATED THIS 01 DAY OF AUG, 2013

P. THIRTEEN

RESPECTFULLY SUBMITTED

CHARLES JOSEPH MAKI

Charles J. Maki

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK

By: DEPUTY CLERK

CASE NO: CR94-0345

DEPT NO: 8

CHARLES JOSEPH MAKI
PETITIONER

V.

STEVEN KOSACH HONORABLE Judge ect.

2ND JUDICIAL DIST. COURT DEPT. 8

IN AND FOR THE COUNTY OF WASHOE
RESPONDENT

WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS

COMES NOW, CHARLES J. MAKI PETITIONER IN FORMA
PAUPERIS, WITH THE ASSISTANCE OF INMATE WITH LEGAL KNOWLEDGE
IN WRITING AND PREPARING THIS CAUSE OF ACTION COMPLAINS OF
RESPONDENT SUPRA, OF CONTINUING IRREPARABLY INJURED BY THE
CONDUCT OF THE RESPONDENT SUPRA UNLESS THIS HONORABLE NEVADA
SUPREME COURT ORDERS THE 2ND JUDICIAL DIST. COURT TO PREPARE
CERTIFIED COPY'S OF CASE # CR94-0345 IN ITS ENTIRETY FOR THIS HONORABLE
NV. SUPREME COURT TO REVIEW AND ISSUE PROPER ORDER FOR THE 2ND
JUDICIAL DIST. COURT FOR THE PURPOSE OF FURTHER PROCEEDINGS.

JURISDICTION

THIS WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS ALLEGED
PETITIONER'S DUE PROCESS AND EQUAL PROTECTION OF HIS RIGHTS
UNDER NEV. LAW AND THE UNITED STATES CONSTITUTION OF THE
FIRST, FOURTH, FIFTH, SIXTH, EIGHTH, NINTH AND THE 14TH AMENDMENTS

(P. 1)

V5: 706

DC-9900048467-022
CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
NVC

RECEIVED

AUG 09 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

WERE VIOLATED BY THE ACTIONS OF HERIN - A BOLE NAMED DEFENDENT SUPRA, BY NOT ALLOWING PETITIONER WITH EFFECTIVE COUNSEL OVER THE PAST 18 YRS. TO PROVE "HIS ACTUAL INNOCENCE OF THE CRIME SEXUAL ASSAULT/LEWDNESS THAT HE NEVER COMMITTED."

JURISDICTION IN THIS WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS IS HEARD BY INVOKED PURSUANT TO N.R.S. 34.160; N.R.S. 34.170; N.R.S. 34.190; N.R.S. 34.570; NEVADA RULES OF CIVIL PROCEDURE; NEVADA CONSTITUTION, ARTICLE #6, SUB. SECTION 6 ALSO BARNES V. EIGHTH JUDICIAL DIST. CT. FOR THE STATE OF NV., IN AND FOR CLARK COUNTY, 103 NV. 679, 748 P.2d. 483 (1987); MONTGOMERY V. PINCHAK, 294 F.3d 492, AT 499 (3RD CIR. 2002); FARMER V. HAAS, 990 F.2d 319, AT 322 (7TH CIR. 1993); PARHAN V. JOHNSON, 126 3d 454, AT 461 (3RD CIR. 1997); HAINES V. KERNER, 404 U.S. 519, AT 520-21, 92 S. CT. 594 (1972)..

LEGAL AUTHORITY IN SUPPORT OF THIS PROCEEDING.

PLEADING FOR WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS IS THE RIGHT PROCEEDING TO BRING INTO THIS HONORABLE NV. S. CT.; FOR FURTHER BRIEFING, SHOWCAUSE HEARING WITH THE APPOINTMENT OF LEGAL COUNSEL PURSUANT TO N.R.S. 34.750 AND HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDYS AT LAW TO RE-ADDRESS THE GRAVE FUNDAMENTAL MISCARriage OF JUSTICE PURSUANT TO STATE V. MITCHELL, 122 NV. 1269, 149 P.3d 33 (2006).

PETITIONER REALLEGE AND INCORPORATES BY REFERENCE PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT TO SUPPORT OF THIS MOTION FOR APPOINTMENT OF COUNSEL SHOWING SUFFICIENT ENOUGH FACTUAL EVIDENCE TO OVERCOME ANY PROCEDURAL BARR TO ANY UNTIMELY OR SUCCESSIVE PETITION BY PETITIONER;

SHOWING HIS "ACTUAL INNOCENCE" OF THE CRIME SEXUAL ASSAULT/LEWDNESS AND ILLEGAL CONVICTION OF OVER 18 YRS AGO MUST BE REVERSED AND RETURNED BACK TO THE 2ND JUDICIAL DIST. CT. WITH INSTRUCTIONS FROM THIS HONORABLE NEVADA SUPREME COURT TO ALLOW WITH EFFECTIVE COUNSEL TO PROVE HIS ACTUAL INNOCENCE OF THE CRIME SEXUAL ASSAULT/LEWDNESS FOR WHICH HE WAS ARRESTED AND CONVICTED OVER 18 YRS AGO... MATTER'S OUTSIDE THE RECORD...

- ① my ATTORNEY REFUSED TO SEE OR DO ANY THING I ASKED FROM DAY ①.
- ② I FIRST MET my P.D. JANET C. SMUCK 15 MINUTES OR SO BEFORE my PRELIMINARY HEARING, THE 1ST THING SHE SAID WAS ~~QUOTE~~ "QUOTE" I'm your LAWYER EVERYTHING WILL BE DONE my way PERIOD!
- ③ DURING OUR 10 MINUTES OF GETTING TO KNOW YOU I TRIED TO EXPLAIN WHAT I THOUGHT WAS THE REASON I WAS BROUGHT IN TO BE ARRESTED GARY MANESEE, THE ALLEGED VICTIM'S *STEPDAD DIDN'T LIKE ME, AS IN NOV. 93 HIS GIRL FRIEND BROKE UP WITH HIM AND MOVED IN WITH ME, UNTIL SHE COULD GET HER OWN PLACE - (SHE WAS A 21 DEALER FROM OUT OF STATE,) SHE BOUGHT ME CLOTHES ECT. ANYWAY HE MADE SO MUCH TROUBLE WITH HER SHE LEFT A LITTLE EARLIER THAN SHE EXPECTED, ON JAN 1ST / DEC. 31ST 93 NEW YRS EVE, my SISTER CAME OVER TO my APT. I LIVED IN A 4 PLEX TOP FLOOR, SHE WAS SAD AS SHE AND HER BOYFRIEND DENNIS RUBLE BROKE UP A COUPLE OF HOURS PRIOR, SO SHE CAME TO my PLACE, SHE SEEN GARY THE GIRL'S *DAD SHE'S MET HIM A FEW TIMES AS I'VE LIVED IN THIS APT. 9 MONTHS [NOW AWAITING A VERY LARGE SDIS SETTLEMENT FROM AN ON THE JOB INJURY WHERE I FELL 45^{FT} TO CONCRETE - AND WAS IN THE HOSPITAL 3 MONTHS - INCLUDING A BODY CAST 8 MONTHS, ECT] ANYWAY my SISTER

Simply ASK GARY IF HE WANTED TO HAVE SEX - (TO BE POLITE HERE,
 AS I GUESS SHE WAS FEELING SHE NEEDED TO FEEL LIKE A WOMAN,
 ON NEW YRS EVE, she spent alot of money on HERSELF, GARY SAID
 YES BUT ONLY AFTER HE HAD A DRINK! I TOLD HIM LOOK USE MY BED
 JUST CHANGE THE SHEETS. AGAIN HE SAID HE NEEDED A DRINK.
 ABOUT 1 HR. GOES BY MY SISTER AND I ARE GETTING A LITTLE BUZZ ON
 OURSELVES, GARY COMES FROM NEXT DOOR WHERE HE LIVES AGAIN MY
 SISTER HITS ON HIM, TELLING HIM, NO STRANGERS JUST SEX! NOW HE SAYS
 HE NEEDS SOMEONE TO WATCH HIS GIRLS - I ~~WANTED~~ SAID I WOULD
 IF NEEDED BE, AGAIN HE SAID HE NEEDS ANOTHER DRINK. AWHILE LATER
 MY SISTER IS NOW SLEEPING ON MY COUCH - GARY COME BACK, STATING
 HE NOW WANTS SEX FROM MY SISTER - I HIT HIM IN THE "FACE HARD"
 TELLING HIM TO LEAVE - I WASN'T GOING TO LET HIM DISRESPECT MY
 SISTER NO MORE PERIOD! SO HE STARTS YELLING HOW FIRST IT WAS
 HIS EX-GIRL FRIEND - NOW HE'S BLAMING ME FOR THIS SITUATION
 SAYING PAY BACK IS A BITCH - 2 WEEKS OR SO GO BY I WORKING
 ON MY TRUCK DRINKING BEER FOR ABOUT 8-9 HOURS WITH A FEW GUYS
 AND 2 COPS COME BY AND TAKE ME AWAY. SEE! PAUL GRUBB'S
 AFFIDAVIT EXHIBIT #3.

④ MY LAWYER TOLD ME RIGHT OFF I WAS LYING!

⑤ WE GOTO PRELIM - I TOLD HER TO ASK SPECIFIC QUESTIONS, SHE
 REFUSED. I ASKED HER WHERE WAS D.N.A. - RAPE KIT - ANY PHYSICAL
 EVIDENCE AT ALL - SHE SAID IT WASN'T NECESSARY IN NEVADA!

⑥ I TOLD HER I WAS HELD 6 DAYS WITHOUT GOING TO ARRANGEMENT
 SHE SAID IN NV. ITS LEGAL!

⑦ AFTER THE ALLEGED VICTIMS SAID I DID NOTHING TO EM AND
 DET. STEGHMIER STATED I HAD "NO TATTOES" ECT IN PELLIC AREA

AS DID ALLEGED VICTIMS - (I) WANTED PHOTOS TAKEN TO SHOW I HAD ①

(A VERY LARGE COLOR FULL ONE) FROM MY BELLY BUTTON TO MY SCROTUM.
AFTER HER SAYING I DIDN'T; BECAUSE NOBODY NEW I HAD IT IN THERE
TESTIMONY I SHOWED HER - (PART OF IT); FINALLY SHE SAID OK! IT WAS
"MY ACE IN HOLE".

(8.) I HAD TO CALL HER OFFICE (SMUCKS) SHE HARDLY EVER SEEN ME
I TOLD HER TO GO TO SEE SOME PEOPLE I KNEW WOULD SPEAK IN MY BEHALF

A CARLA - I HELPED RAISE HER SON, NO HER 20 YRS.

B GALE THOMAS - EX GIRL FRIEND 2 YRS - 2 KIDS 1 BOY 1 GIRL

C LINDA STALING - NURSE I DATED FROM HOSPITAL - WASHOE MED 2 BOYS

D KEN DANIELS - GOOD FRIEND FOR YRS FAMILY MAN 5 KIDS BOYS/GIRLS

E PAUL GRUBBS LIVED IN APT. BELOW ME. WITH STEPSON JOHN

F SISTER - ESTHER CHONG.

A) CARLA TOLD ME THAT MRS. SMUCK AND HER INVESTIGATOR DID GO TO
HER HOUSE, BUT SAT OUTSIDE - ACROSS THE STREET FOR ABOUT 20 MIN.
THEN LEFT. (I ASKED MRS. SMUCK ABOUT THIS, SHE SAID SHE WENT TO SEE
CARLA AND CARLA WAS DRUNK - AND SHE DIDN'T WANT HER COMING TO COURT.
I TOLD MRS. SMUCK SHE'S A DAM LIAR AS CARLA DON'T, NOR EVER DRANK
IN 20 YRS I KNEW HER!

B) GAIL THOMAS IS A KENO RUNNER AT KARL'S SILVER CLUB IN SPARKS NV.
MRS. SMUCK TOLD ME SHE DIDN'T HAVE TIME TO GO SEE HER AT WORK
IN THE DAYTIME, THAT IF GAIL WANTED TO TALK TO HER, TO CALL HER OFFICE
GAIL TOLD ME SHE TRIED 2-3 TIMES AND SAID NO MORE.

C) LINDA STALING WAS MY NURSE AT WASHOE MEDICAL IN RENO NV,
FOR ABOUT 45 DAYS. WE DATED ABOUT 6 MONTHS AFTER I GOT OUT OF HOSPITAL.
I SPOKE WITH LINDA ON THE PHONE - MRS. SMUCK DID SEE LINDA "BUT"
ACCORDING TO LINDA SPOKE MAINLY ABOUT HER JOB AS A P.O. VERY
LITTLE ABOUT ME. LINDA SAID SHE CAME TO COURT - BUT SMUCK TOLD
HER IT WASN'T REALLY NECESSARY AND LEFT. LINDA WAS UPSET AT HER.

D) KEN DANIELS, SAID SHE CAME AND LEFT A CARD ON HIS DOOR
HE CALLED 4-5 TIMES HE FINALLY WENT TO SEE HER, SHE TOLD HIM
HIS TESTIMONY WAS NOT NEEDED, KEN TOLD ME HE WAS GOING TO
SHOW UP ANYWAY, AND HE DID!

E) PAUL GROBB SEE EXHIBIT #3 ITS SELF EXPLANATORY.

F) MY SISTER SPOKE TO MRS. SMUCK A COUPLE OF TIMES - DID NOT
LIKE HER AT ALL, MY SISTER BROUGHT MY CLOTHES FOR TRIAL AND
P.D. SMUCK REFUSED TO LET HER GIVE E'M TO ME - SO MRS SMUCK
DRESSED ME IN PANTS 2" TO SHORT, NO BELT AND SOME 1970 BRIGHT
PURPLE BALLOON SLEEVE SHIRT I LOOKED LIKE A DAM RETARDED DOWN
FOR COURT. / / / / / / / / / /

9) FOR THE NEXT COUPLE OF MONTHS MRS. SMUCK SEEM ME I
THINK TWICE IN JAIL - I SPOKE TO HER ON PHONE 2 MAY BE 3 TIMES
HER INVESTIGATOR TOOK 12 PHOTOS OF ME TOP - BOTTOM NAKED -
WE ARGUED ALOT SHE ALWAYS LIED TO ME - BUT SHE SAID SHE DID
GO TALK TO THE ALLEGED VICTIMS AND THEY WOULD NOT LIE! NOW
SHE WONT TALK TO ANYONE WHO TALK GOOD ABOUT ME, WHO KNOW I
WOULDN'T DO ANY CRAP LIKE THE STATE SAID I DID. AS I GOT 2 DAUGHTERS
MY SELF - YET SHE'LL GO AND HELP THE ALLEGED VICTIMS OUT.
SOMETHING JUST DON'T SEEM RIGHT HERE!!

10) ONE DAY MRS. SMUCK COMES TO JAIL, AND TELLS ME SHE IS GOING
TO COURT IN MY BEHALF I DON'T NEED TO GO - BUT I DECIDED I'M GOING
MY WAY - ONCE THERE I HEAR HER TELL THE JUDGE HOW I WISH TO
CHANGE MY PLEA TO "GUILTY" - "NO-WAY" I TELL THE JUDGE!
I WANT A TRIAL, SO MRS. SMUCK YELLS AT ME HOW SHE GOT THE BEST
DEAL SHE COULD GET ME, I YELL BACK AT HER - [I DON'T WANT A DEAL].
AND TELL THE JUDGE I WANT A DIFFERENT ATTORNEY AGAIN -
JUDGE TELLS ME NO SHE'S DOING PROPER WORK CORRECTLY -

TELLS ME NOW I'M STUCK WITH HER PERIOD. SHE DON'T WANT TO GO TO TRIAL - AND THE HELL WITH ME.

(11) TRUE TO HER WORDS SHE DID AS LITTLE AS POSSIBLE, I ASKED HER TO DO D.N.A. - NO - FIND AN EXPERT FOR ME NO - IS ANYONE GOING TO COME TO COURT FOR ME [SHE SAID NO] BUT I KNOW EVERYONE IS COMING - ALL SHE DID IS GO THRU THE LEAST OF MOTIONS POSSIBLE.

(12) DAY OF TRIAL EVERYONE IS IN THE HALLWAY - I TOLD HER I NEW THEY WOULD SHOW UP - SHE SAID TOUGH SHIT - THEIR NOT COMING IN BECAUSE THE D.A. REFUSES TO LET E'M COME IN. I TOLD HER B.S: THERE^x MY WITNESSES NOT HIS, SHE TELLS ME TOUGH SHE DIDNT WANT TO GO TO TRIAL.

(13) AS TRIAL TRANSCRIPTS WILL SHOW P.D. SMUCK DID NOTHING FOR ME AT ALL IN MY 3 1/2 HR TRIAL, WHEN I MADE A COMMENT TO HER IN REGARDS TO A WITNESS LYING THE JUDGE ORDERED MY MOUTH DUCK TYPED IN FRONT OF JURY PR. D.A. SAYING I WAS INTERRUPTING HIS QUESTIONING - P.D. SMUCK JUST SAT THERE PERIOD - I WAS TOLD BY JUDGE TO SHUT UP AND JUST WRITE NOTES TO HER, YET EVERY TIME I WROTE TO HER SHE'D PUSH IT AWAY - SHE REFUSED TO ASK ANY RELEVANT QUESTIONS - TRIED NOT TO SHOW THE PHOTO OF MY TATTOO - MATTER OF FACT, THE D.A. TOOK MY PHOTO FROM HER, GAVE IT TO DET. STECHMIER WHO SHOWED THE GIRL'S IN HALLWAY WHO IN TURN CAME BACK IN ON REBUTAL AND AFTER STATING IN PRELIM. / AT TRIAL NO TATTOOS ALL THE SUDDEN NO ABT IT, SHE NEVER ~~OBJ~~ OBJECTS OULE. I'M CONVICTED...

(14) AT SENTENCING SAME THING DOES NOTHING - I GOT RECORDS ECT. SHE WOULDN'T USE WON'T CALL REBUTAL WITNESS TELLS JUDGE I'VE GOT MANY ~~ERRORS~~ ERRORS IN MY P.T.P. REPORT BUT WILL ADDRESS THEM LATER - WHICH IS UNTRUE. SHE LIED TO COURT, AS WHEN I'M SENTENCED I'LL NEVER SEE HER AGAIN - SHE NEVER EVEN TOLD JUDGE TO DISMISS COURT AS JURY COULDN'T DECIDE ON IT, THEREFOR COUNSEL FOR PETITIONER

REFUSED TO OBJECT THE D.A. AND THE JUDGES DECISION TO DISMISS THE COUNT THE JURY COULD NOT FIND ME GUILTY ON, NOR DID COUNSEL FOR PETITIONER MOVE FOR A MISTRIAL OR RAISE ANY OF THESE ISSUES WHICH ARE FACTUAL MATTERS OUTSIDE OF THE PETITIONERS APPEAL TO SHOW ACTUAL INNOCENCE THAT PETITIONERS NEVER COMMITTED THIS CRIME SEXUAL ASSAULT/LEWDNESS.

CONCLUSION

THEREFORE PETITIONER RESPECTFULLY SUBMITTS THIS INTIRE WRIT OF PROHIBITION/WRIT OF MANDAMUS, MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT IN SUPPORT AND ATTACHED EXHIBITS WITH THE ASSISTANCE OF FIRMATE OF LEGAL KNOWLEDGE IN PREPARING THIS INTIRE PLEADING TO BE REVIEWED BY THE NEVADA SUPREME COURT AND TO ORDER THE 2ND JUDICIAL DISTRICT COURT TO PREPARE PETITIONERS ENTIRE CASE[#] CR94-0345 AND TO HAVE IT FORWARDED TO NEVADA SUPREME COURT SO THAT THIS HONORABLE COURT CAN MAKE THIS RULING PURSUANT TO N.R.S. 34.160; N.R.S. 34.170 AND N.R.S. 34.190 WHICH GIVES THE NEVADA SUPREME COURT JURISDICTION TO ENTERTAIN PETITIONERS WRIT OF PROHIBITION/WRIT OF MANDAMUS ON APPEAL FROM THE DEFENDANT 2ND JUDICIAL DIST. COURT FOR A RULING.

DATED THIS 101 OF AUG, 2003

RESPECTFULLY SUBMITTED

CHARLES J. MAKI

charl J. make

VERIFICATION

" PETITIONER HAS READ COMPLETELY THE FOREGOING
 MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT
 OF MOTION APPOINTING COUNSEL, WRIT OF PROHIBITION/WRIT
 OF HABEAS CORPUS, NOTICE OF APPEAL, DESIGNATION OF RECORD
 ON APPEAL" AND HEREBY VERIFY THAT THE MATTER AND
 ALLEGATIONS OF ALLEGED HEREIN BY PETITIONER WITH THE
 ASSISTANCE OF INMATE WHO HAS LEGAL KNOWLEDGE,
 ARE TRUE AND CORRECT EXCEPT TO THOSE MATTER AND ALLEGATIONS
 ON INFORMATION AND BELIEF, PETITIONER BELIEVES THOSE
 MATTERS AND ALLEGATIONS THAT ARE OUTSIDE OF THE OFFICIAL
 COURT RECORD CASE # CR 94-0345 TO BE TRUE AND CORRECT..

PETITIONER FURTHER, CERTIFIES UNDER THE
 PENALTY OF PERJURY, PURSUANT TO N.R.S. 208.165 THAT
 ALL THE FOREGOING ABOVE HEREIN MENTIONED TO THE BEST
 OF PETITIONER'S MEMORY AFTER 18 PLUS YEARS IS TRUE
 AND CORRECT..

EXECUTED IN CARSON CITY, NV, ON THIS 01
 DAY OF AUG, 2003.

RESPECTFULLY, SUBMITTED

CHARLES J. MAKI

Charles J. Maki

CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO N.R.C.P. RULE 5 (B), PETITIONER HEREBY

CERTIFY'S THAT HE IS THE ABOVE NAMED PETITIONER
THAT HEREIN AND THAT ON THIS 01 DAY OF AUG 20013
PETITIONER DEPOSITED INTO THE U.S. MAIL ROOM AT
NORTHERN NEVADA CORR. CENTER. CARSON CITY NV. 89702-7000
A TRUE AND CORRECT COPY'S OF THE FOREGOING (MOTION'S, FOR
APPOINTMENT OF COUNSEL, AFFIDAVIT TO SUPPORT OF APPOINTMENT
OF COUNSEL, WRIT OF PROHIBITION/WRIT OF MANDAMUS, NOTICE
OF APPEAL, DESIGNATION OF RECORD ON APPEAL, ALL THE FOREGOING
IN CASE # CR 94-0345 ARE BEING APPEALED TO THE NEVADA
SUPREME COURT.), ADDRESSED TO THE FOLLOWING:

CLERK OF THE COURT FOR
THE 2ND JUDICIAL DIST. COURT IN
AND FOR WASHOE COUNTY, 75 COURT ST.
RENO, NV. 89501

DICK SAMICK, DISTRICT ATTORNEY
FOR THE 2ND JUDICIAL DIST. COURT
IN AND FOR WASHOE COUNTY, 75 COURT ST.
RENO, NV. 89501

Charles J. Maki

CHARLES J. MAKI

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, WRIT OF

PROHIBITION / WRIT OF MANDAMUS, APPOINTMENT OF COUNSEL, AFFIDAVIT OF SUPPORT,

DESIGNATION OF RECORD ON APPEAL AND NOTICE OF APPEAL

(Title of Document)

filed in case number: CR94-0345



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: ~~2007~~ AUG 15TH 2013

Charles Joseph Maki
(Signature)

CHARLES Joseph Maki
(Print Name)

N/A
(Attorney for)

EXHIBITS

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 1

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 30904

Consolidated with:

Counsel

Karla K. Butko, Verdi, NV, as counsel for Appellant

Attorney General Frankie Sue Del Papa/Carson City, Carson City, NV, as counsel for Respondent

Washoe County District Attorney Richard A. Gammick, Reno, NV \ Gary H. Hatlestad, Deputy District Attorney,
Terrence P. McCarthy, Deputy District Attorney, as counsel for Respondent

Case Information

Panel: NNP00A

Panel Members: Shearing/Agosti/Leavitt

Disqualifications:

Case Status: Closed

Category: Criminal Appeal

Type: Post-Conviction

Submitted: On Briefs

Date Submitted: 05/28/98

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Supreme Court Cases:

District Court Case Information

Case Number: CR940345

Case Title: STATE VS. MAKI

Judicial District: Second

Division:

County: Washoe Co.

Sitting Judge: Steven R. Kosach

Replaced By:

Notice of Appeal Filed: 08/18/97

Appeal

Judgment Appealed From Filed: 07/24/97

Docket Entries

Date	Docket Entries
08/20/97	Filing Fee waived: Criminal.
08/20/97	Filed Certified Copy of Notice of Appeal. Appeal docketed in the Supreme Court this day.
08/25/97	Received document from district court clerk. Copy of the district court order filed January 29, 1997. Mr. Hardy's motion to withdraw as counsel for petitioner is granted. Petitioner's motion for new counsel is also granted. Mr. Joseph Plater, Esq., is appointed to represent petitioner.
08/28/97	Filed Certified Copy of Notice of Appeal (Second notice filed by proper person appellant from same judgment.)
08/29/97	Filed Certified Copy of Notice of Appeal. Filed on August 26, 1997 by attorney Joseph Plater.
10/03/97	Receipted for 8/28/97 entry and mailed docketing statement to counsel for appellant.

Thursday, October 22, 2009 12:07 PM

②

EXHIBIT-1-

V5. 718

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE
Page 2

- | | |
|------------|--|
| * 10/08/97 | Filed Order. Appellant shall within 10 days of the date of this order file and serve a docketing statement and a transcript request form or certificate of no transcript request, or show cause why sanctions should not be imposed upon counsel. Appellant shall have 100 days from the date of this order to file and serve an opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31 (a)(1). We caution attorney Plater that failure to comply with this order in a timely manner may result in the imposition of sanctions against counsel. |
| 10/21/97 | Filed Docketing Statement. |
| * 10/27/97 | Filed Request for Transcripts of Proceedings. Court reporter: Isolde Zihn. * |
| 01/22/98 | Filed Motion and Order. That appellant shall have to and including February 17, 1998, to file the opening brief. |
| 02/19/98 | Filed Motion to Extend Time. To file opening brief. |
| 02/25/98 | Filed Clerk's Order. Granting the motion filed February 19, 1998. The opening brief shall be served and filed on or before March 3, 1998. |
| 03/05/98 | Filed Motion to Extend Time. To file opening brief. |
| 03/09/98 | Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief shall be served and filed on or before March 12, 1998. |
| 03/16/98 | Received Brief. Appellant's opening brief. (Mailed on: 3/12/98.) |
| 03/16/98 | Received Appendix. Appellant's appendix I and II. (Mailed on: 3/12/98.) |
| 03/25/98 | Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief and appendix provisionally submitted on March 16, 1998, shall be filed, forthwith. |
| 03/25/98 | Filed Brief. Appellant's opening brief |
| 03/25/98 | Filed Appendix. Appellant's appendix, Volume I and II. |
| * 03/27/98 | Filed Order. Court reporter Zihn shall have 20 days from the date of this order to complete the requested transcript and to provide the clerk of this court with a certificate acknowledging delivery of the completed transcript and a certified copy of the transcript, or show cause why sanctions should not be imposed in accordance with NRAP 13(b). |
| * 04/09/98 | Received Letter. From court reporter Isolde Zihn. She was not the reporter in this matter. |
| 04/23/98 | Filed Brief. Respondent's answering brief. (Mailed on: 4/22/98.) |
| * 05/05/98 | Filed Order. <u>Court reporter Zihn has responded to our March 27, 1998, order by way of letter. It appears that the transcript requested by appellant was completed on February 10, 1998, by court reporter Stephanie Koetting; however, a copy of the transcript was not filed in this court. Furthermore, it appears that appellant has improperly included the transcript in appellant's appendix. We decline to strike appellant's nonconforming appendix at this time, as it does not appear that appellant's error will hinder this court's review of this matter. We admonish appellant's counsel to be more mindful in the future to the procedures for prosecuting appeals as contained in the Nevada Rules of Appellate Procedure</u> |
| 05/28/98 | Filed Brief. Appellant's reply brief. (Mailed on: 5/27/98.) |
| 05/28/98 | Case submitted on briefs this day. |
| 02/02/00 | Filed Motion. To be relieved as counsel of record. |

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE
Page 3

03/07/00	Filed Order. Of remand for designation of counsel. Appellant's counsel of record Joseph R. Plater has filed a motion to be relieved as counsel of record in this appeal. We grant the motion. We remand this matter to the district court for the limited purpose of securing new appellant counsel. If indigent, the district court shall have 30 days to appoint counsel for appellant. Otherwise, the district court shall order that, within 30 days appellant must retain counsel and counsel must enter an appearance in the district court. Within 5 days from the appointment or appearance of counsel, the district court clerk shall: (1) transmit to this court a copy of the district court's written or minute order; and (2) serve a copy of this order of remand on appellant's counsel. Thereafter, counsel shall have 10 days to enter an appearance with the clerk of this court. Within 15 days from the date on which counsel is required to enter an appearance in this court, counsel shall file a motion requesting permission to file a supplemental brief, if counsel deems supplemental briefing necessary.	
04/13/00	Filed Notice. Of appearance of counsel. Karla K. Butko appointed as counsel for appellant.	
04/17/00	Filed Notice. Amended notice of appearance of counsel. Karla K. Butko appointed as counsel for appellant. (Copy of order appointing counsel filed in district court on 3/20/00 attached.)	
06/14/00	Filed Motion to Extend Time. to File Appellant's Supplemental Opening Brief.	00-10134
06/14/00	Received Supplemental Brief.	00-10135
07/07/00	Filed Order Granting Motion We grant appellant's June 14, 2000, motion. The clerk of this court shall file the supplemental brief provisionally submitted with the motion on June 14, 2000. The State shall have 30 days from the date of this order within which to file a supplemental answering brief.	00-11584
07/07/00	Filed Supplemental Brief. Appellant's Supplemental Opening Brief.	00-10135
07/27/00	Filed Supplemental Brief. Respondent's Supplemental Answering Brief.	00-13069
10/10/00	Filed Order of Affirmance. Having concluded that Maki has not demonstrated error, ... we affirm the judgment of the district court." NNP00A-MS/DA/ML	00-17847
11/07/00	Issued Remittitur.	00-17948
11/07/00	Processing status update: Remittitur Issued/Case Closed.	
11/29/00	Filed Remittitur. Received by County Clerk on November 9, 2000.	00-17948

NOTE:
FINAL PAGE
OF ORDER

NOV -9 A9:29

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,

No. 30904

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 10 2000

J. Richards

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On May 17, 1994, appellant Charles Joseph Maki was convicted, pursuant to a jury verdict, of three counts of sexual assault of a child under age fourteen and five counts of lewdness with a child under age fourteen. Maki was sentenced to serve consecutive terms of life imprisonment with the possibility of parole, along with lesser terms of imprisonment. This court dismissed Maki's direct appeal. [See Maki v. State, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995)].

On May 9, 1996, Maki filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and counsel filed supplemental points and authorities in support of the petition. After holding an evidentiary hearing, the district court denied Maki's petition. This appeal followed.

Maki claims that he demonstrated that he received ineffective assistance of counsel and that the district court erred in denying him relief. To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense. See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102

EXHIBIT 2-2

(1996). We conclude that Maki has not shown that the district court erred in denying him relief on his claims. We will address each claim in turn.

Maki first argues that his trial counsel was ineffective for failing to request independent physical and psychological/psychiatric examinations of the two victims. However, the evidence adduced at the post-conviction hearing demonstrates that counsel acted reasonably in deciding not to request independent examinations.¹ Trial counsel testified that she did not request independent physical examinations of the victims, in part because she was satisfied with the examinations that had been performed and reported to the defense. Trial counsel cited several reasons why she did not request independent psychological or psychiatric examinations. Having reviewed the documents before this court, we conclude that the reasons cited by counsel are legitimate.

For example, one reason counsel cited was that she was informed that the State would not call an expert witness in psychiatry or psychology. Counsel also explained that she had not received any information that the victims had received counseling or been seen by a psychiatrist. These facts are relevant both to the reasonableness of counsel's decision and to the question of whether Maki would have been entitled to an examination upon request. See *Keeney v. State*, 109 Nev. 220, 224-26, 850 P.2d 311, 314-15 (1993). Maki has not shown that the State employed an expert witness in psychology or

¹We note that the district court found trial counsel's testimony at the evidentiary hearing to be "more credible" than Maki's testimony, which the court characterized as "in large part incredible and unworthy of belief." We defer to these factual findings. See *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (indicating that a district court's factual findings regarding claims of ineffective assistance of counsel are generally entitled to deference).

psychiatry.²

In ruling that counsel acted reasonably, we are cognizant of Maki's claims that the victims expressed uncertainty and made inconsistent statements about the relevant events prior to trial. However, we emphasize that the victims' allegations were at least partially corroborated by Maki's own incriminating admissions that he had engaged in sexual misconduct with the victims. An important factor in determining the need for independent psychological or psychiatric examinations is whether there is "little or no" corroborative evidence. See Keeney, 109 Nev. at 226, 850 P.2d at 315.

Accordingly, we conclude that Maki failed to overcome the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." See Strickland, 466 U.S. at 689. Maki has not demonstrated that counsel acted unreasonably, let alone that he would have been entitled to independent examinations of the victims had counsel requested such examinations. See Keeney, 109 Nev. at 224, 850 P.2d at 314 ("Generally, a psychological examination of a sexual assault victim should be permitted if the defendant has presented a compelling reason therefor.").

Additionally, Maki has another hurdle to overcome. To properly demonstrate prejudice he must show a reasonable probability that counsel's deficient performance affected the outcome of the proceedings. Maki argues, without citation to supporting authority, that prejudice should be presumed. given the amount of time that has passed and the difficulty of showing what independent examinations would have yielded. We reject

²Maki notes that a nurse testified about behavioral problems that one of the victims was experiencing and the possible source of those problems. It also appears that the nurse concluded that this victim was sexually abused, although that finding appears to be primarily based on the physical examination. Maki has not shown that the nurse was qualified as an expert in psychology or psychiatry; nor could her testimony be reasonably viewed in this light.

this argument. Maki was required to show that such evaluations had a reasonable probability of affecting the outcome of the proceedings. He failed to do so.

Maki next claims that his counsel was ineffective, at trial, for failing to more effectively cross-examine the victims to reveal allegedly inconsistent and exculpatory prior statements. We question whether this issue was properly presented in the district court.³ In post-conviction cases, this court will generally decline to review issues not properly raised in the district court. See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995); Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Further, Maki has not included a complete copy of the trial transcript in the documents submitted to this court, or even the full portion of the transcript detailing the trial testimony of the victims. Accordingly, it is impossible to properly evaluate Maki's claim. Under these circumstances, the deficiency should be resolved against Maki. It is his responsibility to provide the materials necessary for appellate review. See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

Maki also argues that his counsel was ineffective for failing to properly cross-examine the victims on tattoos in Maki's genital area, which apparently extended downward from Maki's lower abdomen. It is similarly impossible to properly evaluate this claim because of Maki's failure to include all relevant portions of the trial transcript. We further note that the documents before this court, particularly the post-conviction evidentiary hearing transcript, reflect that trial

³The issue of the victims' prior statements was discussed, and testimony adduced on this point, at the post-conviction evidentiary hearing. However, the discussion and testimony appear to have been related to Maki's claim that counsel should have requested independent examinations of the victims. At one point the State asked to "exclude everything [regarding the victims' inconsistencies] that was raised at trial, because by that point it was far too late to seek examination." Post-conviction counsel responded, "That's fine."

counsel did present pictures to the jury showing Maki's tattoos and that counsel argued this issue to the jury. Counsel indicated that an important point of the defense was that the victims would have mentioned the tattoos, on their own, had they observed Maki's genital area.

Maki also claims that his prior counsel was ineffective for failing to more effectively argue that certain statements made by Maki to police were erroneously admitted pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Because the *Miranda* issue was fully litigated in the district court and on direct appeal, Maki's claim is barred by the doctrine of the law of the case. *See Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975). Although Maki attempts to reformulate his argument in terms of ineffective assistance of counsel, this court has fully considered issues pursuant to *Miranda*, and this court reviewed the complete transcript of the police interview in resolving these issues.⁴ Maki may not avoid the doctrine of the law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *See Hall*, 91 Nev. at 316, 535 P.2d at 799.

Maki next claims that trial and appellate counsel were ineffective for failing to raise issues of duplicative and redundant charges and sufficiency of the evidence. Maki specifically notes that at the preliminary hearing one of the victims testified that an incident involving digital penetration occurred at the same time as one of the incidents in which Maki placed his penis in her vagina. He contends that this constituted only one sexual assault and therefore counsel should have sought dismissal of the digital penetration charge.

⁴This court held that Maki "was not 'in custody' before he was read his *Miranda* warnings" and that, after Maki was read the warnings and invoked his rights, police failed to scrupulously honor Maki's invocation of his right to remain silent. This court noted, however, that only one incriminating statement made after Maki invoked his rights was admitted at trial, and concluded that admission of this statement was harmless error.

[The trial transcript and analysis of all the evidence in relation to all the charges are necessary to properly resolve this and Maki's even less specific contentions of insufficient evidence and other duplicative charges.⁵] Again, it was Maki's responsibility to provide the materials necessary for our review as well as relevant authority and cogent argument.⁶ See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); *Jacobs*, 91 Nev. at 158, 532 P.2d at 1036.

Maki next claims that appellate counsel was ineffective for failing to argue that the district court erred in failing to sanction the State or grant Maki a continuance, after the State disclosed evidence, shortly before trial, concerning physical examinations of the victims. Again, Maki has failed to include pertinent documents in the appendix on appeal. Maki has not included transcripts of the proceedings concerning the State's disclosure of the report and Maki's motion for the continuance. Thus, it is impossible to determine whether the district court acted improperly.

For the reasons cited above, and after further review

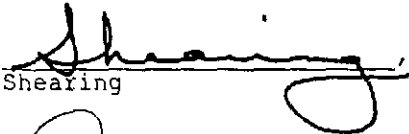
⁵We are not persuaded by Maki's specific contention that counsel was ineffective for failing to challenge the charge of digital penetration prior to trial. A victim did testify that the incident of digital penetration occurred "[w]hen he was doing the same thing in our room," meaning "[w]hen he was putting his penis inside" of her. However, a reasonable reading of this victim's testimony does not necessarily suggest that the digital penetration occurred simultaneously with the other charged offense, but simply that the two incidents were part of the same molestation episode. We emphasize that the trial transcript could clarify the relationship between the act of digital penetration and the other offenses. We also note that the jury did not return guilty verdicts on each of the charges of sexual assault, and thus the question of prejudice is also speculative.

⁶We also note that Maki has failed to include specific citation to the appendix indicating how these claims were raised in the district court in the post-conviction proceedings. Indeed, Maki's argument on these claims in the supplemental opening brief is quite general and arguably insufficient to even state a valid claim.

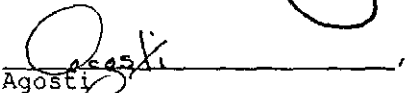
of the briefs and appendix, we conclude that Maki has not shown that he is entitled to relief. In closing, however, we admonish Maki's former appellate counsel, Joseph R. Plater, and his current counsel, Karla K. Butko. On several occasions, counsel failed to cite to relevant portions of the appendix and discuss how issues were raised in the district court, discussed at the post-conviction evidentiary hearing (if applicable), and resolved by the district court. The critical issue to be resolved in a post-conviction appeal is whether the district court erred in denying the post-conviction petition. Counsel should not relegate to this court the task of parsing the record to resolve appellate claims. See NRAP 28.

Having concluded that Maki has not demonstrated error, we affirm the judgment of the district court.

It is so ORDERED.


Shearing

J.


Agosti

J.


Leavitt

J.

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Joseph R. Plater
Karla K. Butko
Washoe County Clerk

PAUL GRUBBS
AFFIDAVIT

PAGE #1

First being duly sworn and under the penalty do hereby despose and state as follows:

1. That I am over the age of (21) twenty one years of age and am fully competent to testify to the matters set forth herein, and that all statements are made of my own personal knowledge and belief.
2. That on January 19, 1994. and prior to that date I lived at 1015 Nevada street #5 Reno NV. 89504.
3. That I personally knew Charles Maki as he lived in the same appartment complex that I live in, and he lived in apartment Number 8.
4. That Mr. Maki and I worked on his truck on january 18 & 19 1994 that on January 19 1994 mr. Maki and I were drinking beer and two (2) plain clothes police men came up and arrested Mr. Maki, At least I believed that Mr. Maki was under arrest as the officers took him away Mr. Maki in my opinion was intoxicated as he and my self had been drinking beer all that day.
5. My step son John knows both of the girls that Mr. Maki is alleged to have sexually assaulted, as they were his playmates.
6. Mr. Maki contacted me after he had been arrested and asked me if I would be willing to come to court for him and testify in his behalf; I told Mr. Maki that I would be willing to testify in his behalf.
7. I could have offered testimony of Mr. Maki's caricature and how he acted around the alleged victims, as well as testamony concerning the girls, as well as there father and how he treated them.
8. I could of also offered testimony concerning the fact that the (2) two alleged victims were always left alone by there father.
9. That a Ms. Smuck left a card on my door and I attempted to contact her at the phonr number that she left but she never did return my calls, until right before Mr. Maki's trial.
10. I left messages for Ms. Smuck on several occasions that I was willing to testify for Mr. Maki and that I had vital information that would assist Mr. Maki and his defence.
11. I could of also testified that the alleged victims were baby sitted by a single male friend of there fathers and that it is my believe that he is the person that may have assulted the two victims the friend of the fathers was named francis, at least that is what I believe his name to be.
12. I finally contacted Ms. Smuck and she told me that Mr. Maki did not want nor need me to testify for him, as the state did

EXHIBIT-3

V5. 728

not have a case and that Mr. Maki would be found innocent..

13. To my personal knowledge Mr. Meneese has been investigated by the child welfare dept. and the Reno police dept. in 1992 for allegations of child abuse, Lewdness with a minor and possible sexual assault of his own children; This was due to Mr. Meneeses habbit of getting drunk and telling others of his habbit of taking showers with the girls and running around the house nude in front of the children.

14. Mr. Maki did watch Mr. Meneeses girls on occasion, as Mr. Meneeses would leave his girls with anybody that would watch them for him when he wanted to go out drinking and gambling.

15. on many occassions when I would go up-stairs to Chucks (Mr. Maki's) Apartment and I would notice that Mr. Meneeses girls were at home alone and this would be until late at night.

16. It was not uncommon for Mr Meneese to leave his girls at home alone and the girls would have boys over while there father was gone, either at work or drinking and gambling at the Gold dust west casino in Reno.

17. Mr. Meneese told me he would get back at Mr. Maki Because Mr. Meneeses ex-girl friend left him and moved in with chuck (Mr. Maki) next door, she stayed there from Nov. 1993 to Dec. 1993 until Mr. Meneese made to much trouble for her.

18. Mr. Meneese bragged a few times when he was drinking how he had beat the system and would never have to go to jail for the acts he did with his girls; I understand there was testimony by the girls of lewd acts by the father during Chucks (Mr. Maki's) preliminary hearing.

19. In December of 1993 Chuch and the down stairs tenant that lived in theApts. caught the younger of the alleged victims with a boy in the girls bed room doing a sexual act.

20. Mr. Maki and the tenant both told Mr. Meneese about the above stated incident and Mr. Meneese stated that is was no big deal that it has happend in the past.

21. I told Ms. Smuck of this too, and she stated that this information was not needed. I also gave her the names of the people next door that had personal knowledge of the incident stated in paragraph #19.

22. Mr. Maki told me to go out and find the people that had lived in the apartment complex because Ms. Smuck had told him (Mr. Maki) that nobody wanted to come and testify for him; I told chuck that this was not true, as I had given Ms. Smuck the names as well as information but Ms. Smuck stated that this information was not needed because the state did not have a case.

23. I don't understand Ms. Smucks Judgment, when she could have called many witnesses that lived in the same apartment complex

and know the people and fact of this case.

DATED THIS 29th DAY OF September, 1995

STATE OF NEVADA
County of White Pine

Paul Grubb
Signature

SUBSCRIBED and SWORN to before me
this 29th day of September, 1995

John Huth
NOTARY PUBLIC



STAMP

JOHN HUTH

NOTARY PUBLIC - STATE OF NEVADA
White Pine County - Nevada
APPL. EXP. Dec. 3, 1995

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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

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12 CHARLES J. MAKI,

13 *Petitioner,*

14 vs.

15 GEORGE GRIGAS, *et al.*

16 *Respondents.*
17

2:01-cv-0268-RLH-PAL

ORDER

18 This habeas matter under 28 U.S.C. § 2254 comes before the Court on respondents'
19 motion (#72) to dismiss on the basis of lack of complete exhaustion as to all claims.

20 ***Background***

21 Petitioner Charles Maki seeks to set aside his 1994 conviction, following a jury verdict,
22 for three counts of sexual assault on a child under the age of fourteen years and five counts
23 of lewdness with a child under the age of fourteen years. He was sentenced to three life
24 sentences with the possibility of parole and five ten year terms, with all such sentences and
25 terms to run consecutively. #25, Ex. 1.

26 ***Governing Law***

27 Under 28 U.S.C. § 2254(b)(1)(A), a habeas petitioner first must exhaust his state court
28 remedies on a claim before presenting that claim to the federal courts. To satisfy this

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EXHIBIT 4- 45

EXHIBIT V5. 731

1 exhaustion requirement, the claim must have been fairly presented to the state courts
2 completely through to the highest court available, in this case the Supreme Court of Nevada.
3 *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329
4 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific
5 federal constitutional guarantee and must also state the facts that entitle the petitioner to relief
6 on the federal constitutional claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir.
7 2000). That is, fair presentation requires that the petitioner present the state courts with both
8 the operative facts and the federal legal theory upon which his claim is based. *E.g., Kelly v.*
9 *Small*, 315 F.3d 1063, 1066 (9th Cir. 2003). The exhaustion requirement accordingly insures
10 that the state courts, as a matter of federal-state comity, will have the first opportunity to pass
11 upon and correct alleged violations of federal constitutional guarantees. *See, e.g., Coleman*
12 *v. Thompson*, 501 U.S. 722, 731, 111 S.Ct. 2546, 2554-55, 115 L.Ed.2d 640 (1991).

13 **Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g)**

14 Respondents contend that a number of ineffective assistance claims were not
15 exhausted because petitioner failed to present the claims to the Supreme Court of Nevada
16 on a counseled appeal from the denial of state post-conviction relief. Respondents contend
17 that, *inter alia*, the following claims were not exhausted:

18 1. That he was denied effective assistance of counsel because:

19

20 b.) His trial counsel failed to allow him to testify;

21 c.) His trial counsel had a conflict of interest because she had a prior
22 experience with sexual assault, with counsel telling him that she
23 therefore did not want to represent him but would "go through the
24 motions;"

25

26 e.) At sentencing, his counsel failed to discredit the testimony of a
27 State witness and failed to present effective mitigating evidence;

28 ////

1 f.) His appellate counsel failed to raise specified errors on direct
2 appeal, including:

3 (1) a claim of error based on the trial court's decision
4 denying his request for a new attorney, based on
5 an alleged conflict of interest destroying their ability
6 to communicate;

7

8 (3) a claimed violation of N.R.S. 171.178.

9 g.) He was not arraigned within 72 hours of his arrest.

10 Petitioner responds that "there were many habeas corpus briefs filed by different
11 attorneys in Maki's behalf along with his own habeas corpus" and "[t]he present grounds have
12 all been before the Nevada Supreme Court and were taken from the briefs them selves [sic]." #74, at 2. However, petitioner does not provide any specific record citations showing that any
13 of these claims were presented to the Supreme Court of Nevada in the briefs filed on appeal
14 from the denial of post-conviction relief. The Court has independently reviewed the appellate
15 briefs, and they do not contain any of the foregoing claims. See #54, Exhs. 57, 59 & 63.
16 Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g) therefore are not exhausted.

17 **Ground 1(d)**

18 In Ground 1(d), petitioner alleges that his trial counsel failed to exploit, during direct
19 examination, the victims' alleged ignorance of a large multi-colored tattoo in Maki's pubic
20 area. Argument regarding this allegation was set forth within another claim in petitioner's
21 supplemental opening brief on appeal from the denial of post-conviction relief. See #53, Ex.
22 63, at 3. The Supreme Court of Nevada further treated the claim as one included within the
23 claims on appeal. See #53, Ex. 65, at 4. However, significantly, the state high court held on
24 the counseled appeal that "[i]t is . . . impossible to properly evaluate this claim because of
25 Maki's failure to include all relevant portions of the trial transcript." *Id.* Ground 1(d) therefore
26 was not fairly presented to the Supreme Court of Nevada on appeal from the denial of post-
27 conviction relief and the claim thus is not exhausted.
28

1 **Grounds 2(a) and 2(b)**

2 In its prior order (#71), the Court *sua sponte* questioned whether Grounds 2(a) and 2(b)
3 were completely exhausted. In these claims, petitioner alleges:

4

5 2. That he was denied effective assistance of appellate counsel because
6 his appellate counsel failed to raise on direct appeal:

7 a.) A claim of error based upon the state trial court's failure to
8 sanction the State or grant a continuance to allow the defense to
9 obtain expert psychological and psychiatric evidence to rebut late-
10 breaking physical examination evidence by the State;

11 b.) Substantially the same claim of error based on the trial court's
12 failure to sanction the State or grant a continuance to allow the
13 defense to have an expert review evidence revealed shortly
14 before trial that one of the victims had been subjected to more
15 physical abuse than she had reported against petitioner.

16 Respondents do not include Grounds 2(a) and 2(b) in the present motion to dismiss.
17 However, similar to its holding on Ground 1(d), the Supreme Court of Nevada held as follows
18 as to Grounds 2(a) and 2(b) on the counseled post-conviction appeal:

19 Again, Maki has failed to include pertinent documents in
20 the appendix on appeal. Maki has not included transcripts of the
21 proceedings concerning the State's disclosure of the report and
22 Maki's motion for the continuance. Thus, it is impossible to
23 determine whether the district court acted improperly.

24 #53, Ex. 65, at 6. It would appear to this Court that if claims were presented to the state high
25 court in such a defective manner that it was impossible for that court to review the claims, the
26 claims were not fairly presented. Petitioner therefore will be required to show cause why
27 Grounds 2(a) and 2(b) should not be found to be unexhausted.

28 **Ground 3**

 Respondents include Ground 3 in the present motion to dismiss, but the Court
 dismissed this claim in its prior order as noncognizable in federal habeas. #71, at 12 & 13.

1 IT THEREFORE IS ORDERED that respondents' motion (#72) to dismiss is GRANTED
2 such that the Court finds that Grounds 1(b), 1(c), 1(d), 1(e), 1(f)(1), 1(f)(3) & 1(g) are not
3 exhausted. After completion of the *sua sponte* exhaustion inquiry as to Grounds 2(a) and
4 2(b), petitioner will be required to either dismiss the unexhausted claims, dismiss the entire
5 petition, or seek other appropriate relief.

6 IT FURTHER IS ORDERED that, within twenty (20) days of entry of this order,
7 petitioner shall SHOW CAUSE in writing why Grounds 2(a) and 2(b) should not be found to
8 be unexhausted.

9 DATED this 12th day of June, 2006.

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13 ROGER L. HUNT
14 United States District Judge
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IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK
By [Signature]
DEPUTY CLERKCHARLES JOSEPH MAKI
PETITIONER

V.

CASE # CR94-0345

STEVEN KOSACH HON. JUDGE ECT.

DEPT. 8

2ND JUDICIAL DIST. COURT DIST. 8IN AND FOR THE COURT OF WASHOE
RESPONDERREQUEST FOR SUBMISSION

COMES NOW PETITIONER, CHARLES JOSEPH MAKI,
APPEARING IN PROPER PERSONA, AND FILES THIS REQUEST FOR
SUBMISSION, IN THE ABOVE CASE NO: CR94-0345.

THIS REQUEST IS MADE PURSUANT TO N.R.S. 34.160,
N.R.S. 34.170, N.R.S. 34.190, WHERE AS, PETITIONER RESPECTFULLY
REQUEST THAT HIS MOTION FOR APPOINTMENT OF COUNSEL,
AFFIDAVIT IN SUPPORT OF THE MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO N.R.S. 34.750 (A)(B)(C), BE SUBMITTED TO THE
APPROPRIATE HONORABLE JUDGE FOR REVIEW AND DECISION, ALSO PETITIONER
WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS WITH ATTACHED EXHIBITS,
NOTICE OF APPEAL, DESIGNATION OF RECORDS ON APPEAL ALSO PURSUANT
TO N.R.S. 34.160, N.R.S. 34.170, N.R.S. 34.190, FOR REVIEW AND DECISION
AND TO BE FORWARDED TO THE NEVADA SUPREME COURT.

DATED THIS 01 DAY OF AUG 20013

Charles J. Maki

CHARLES J. MAKI

1 **Code 1310**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

Case No. CR94-0345

Dept. No. 8

11 **CHARLES JOSEPH MAKI,**

12 **Defendant.**

13 _____ /

14

15 **CASE APPEAL STATEMENT**

16 This case appeal statement is filed pursuant to N.R.A.C.P. 3(2).

17 1. This appeal is from an order entered by the Honorable Steven Kosach .

18 2. Appellant is Charles Joseph Maki. Appellant is representing himself in Proper
19 Person on appeal:

20 3. Appellant's address is:

21 Charles Joseph Maki #42820
22 Warm Springs Correctional Center
23 P O BOX 7000
24 Carson City, Nevada 89702

25 4. Respondent is the State of Nevada. Respondent is represented by: the Washoe
26 County District Attorney's Office

27 Terrance McCarthy, Esq.
28 P.O. Box 30083
Reno, NV 89520

5. Respondent's attorney is licensed to practice law in Nevada

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed 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 Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant's Notice of Appeal does not designate the Judgment, order or part thereof being appealed as required by N.R.A.C.P. 3 (C)(1)(B). It appears that Appellant is appealing the Judgment filed on April 12, 1994..
11. The case has been been the subject of a previous appeal to the Supreme Court Supreme Court No. 26049.
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 20th day of August 2013.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Annie Smith
Annie Smith
Deputy Clerk

1 **Code 1350**
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56 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**7 **IN AND FOR THE COUNTY OF WASHOE**8 **THE STATE OF NEVADA,**9 **Plaintiff,**10 **vs.****Case No. CR94-0345**11 **CHARLES JOSEPH MAKI,****Dept. No. 8**12 **Defendant.**
13 _____/14
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
17 Nevada, County of Washoe; that on the 20th day of August, 2013, I electronically filed the
18 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.21 Dated this 20th day of August, 2013
2223 JOEY ORDUNA HASTINGS
24 CLERK OF THE COURT25 By /s/ Annie Smith
26 Annie Smith
27 Deputy Clerk
28

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

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 08-20-2013:09:30:12
Clerk Accepted: 08-20-2013:09:30:45
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Case Appeal Statement
Certificate of Clerk
Filed By: Deputy Clerk ASmith
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TERRENCE MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63845
District Court Case No. CR940345

CR94-0345
D8

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney
Joey Orduna Hastings, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

08/21/2013 Appeal Filing fee waived. Criminal.

08/21/2013 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: August 21, 2013

Tracie Lindeman, Clerk of Court
sw

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

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 08-26-2013:09:30:10
Clerk Accepted: 08-26-2013:09:34:40
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Deputy Clerk ASmith

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The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

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CHARLES MAKI

CHARLES MAKI

FILED

Electronically

10-01-2013:03:38:28 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4035340

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63845

FILED

SEP 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

CR94-0345
D8

ORDER DISMISSING APPEAL

This is a proper person appeal from a purported order denying a petition for a writ of mandamus/prohibition. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

No decision, oral or written, had been made on the petition when appellant filed his appeal on August 2, 2013. Because appellant failed to designate an appealable order, we lack jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Saitta, J.
Saitta

cc: Hon. Lidia Stiglich
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

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

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 10-01-2013:15:38:28
Clerk Accepted: 10-01-2013:15:39:25
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Supreme Ct Ord Dismis Appeal
Filed By: Deputy Clerk ASmith

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

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

-

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

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63845
District Court Case No. CR940345

CR 94 - 0345

p8

REMITTITUR

TO: Joey Orduna Hastings, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 22, 2013

Tracie Lindeman, Clerk of Court

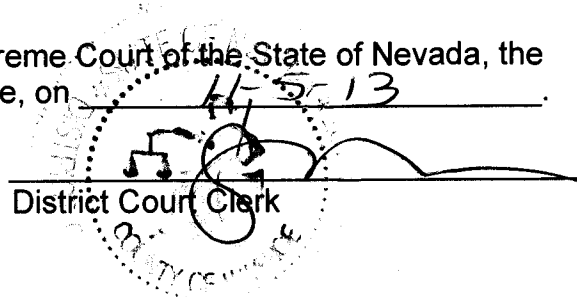
By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Lindi Stiglich
Charles Joseph Maki
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on 11-5-13.


District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63845
District Court Case No. CR940345

CR94-0345

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 25th day of September, 2013.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
October 22, 2013.

Tracie Lindeman, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk



FILED

Electronically

11-05-2013:11:47:30 AM

Joey Orduna Hastings

Nevada State Court

Transaction # 4115061

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63845

FILED

CR94-0345
D8

SEP 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a purported order denying a petition for a writ of mandamus/prohibition. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

No decision, oral or written, had been made on the petition when appellant filed his appeal on August 2, 2013. Because appellant failed to designate an appealable order, we lack jurisdiction over this appeal, and we

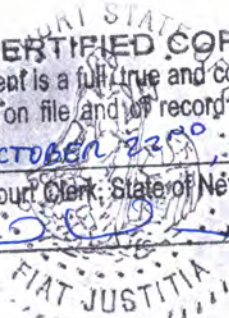
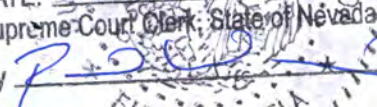
ORDER this appeal DISMISSED.

L. Gibbons, J.
Gibbons

D. Douglas, J.
Douglas

S. Saitta, J.
Saitta

cc: Hon. Lidia Stiglich
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

The seal of the State of Nevada is visible in the background of the stamp. It features a mountain, a river, and a ship, with the words "THE GREAT BASIN" and "STATE OF NEVADA" around it.
CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: OCTOBER 22ND, 2013
Supreme Court Clerk, State of Nevada
By  Deputy
FIAT JUSTITIA

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

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 11-05-2013:11:47:30
Clerk Accepted: 11-05-2013:11:48:46
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Supreme Court Remittitur
Supreme Ct Clk's Cert &Judg
Supreme Ct Ord Dismis Appeal
Filed By: Deputy Clerk SHambright
You may review this filing by clicking on the following link to take you to your cases.

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

-

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

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

1219

1 CHARLES MAKI # 42820

2 Warm Springs Correctional Center

3 3301 East Fifth Street- PO Box 7007

4 Carson City, Nevada, 89702

6 DEFENDANT, In Propria Persona

10 IN THE SECOND JUDICIAL DISTRICT COURT OF
 11 THE STATE OF NEVADA IN AND OF THE
 12 COUNTY OF WASHOE

13 CHARLES MAKI
 14 PETITIONER

15 Vs.

16 STATE OF NEVADA17 RESPONDENT18 WARDEN SMITHCASE No. CR94-0345DEPT. No. - 8 -

Dkt. No. _____

21 MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO N.R.S. 34.750

25 Petitioner CHARLES MAKI, pursuant to NRS 34.750 (1) (2), request this Court
 26 to appoint counsel to represent him in this habeas petition for the following reasons:

- 27 1. Plaintiff if not able to afford counsel, see the motion to proceed in forma pauperis and
 28 affidavit in support filed with this Court.

FILED

2013 DEC 30 PM 2:30

JOEY BRADLEY HASTINGS
CLERK OF THE COURTBY: [Signature]

CR94-0345
 STATE VS CHARLES JOSEPH MAKI 5 Pages
 District Court 12/30/2013 02:30 PM
 Washoe County
 JWC

WARM SPRINGS1 and 1 there are No 12

- 1 2. The issues involved in this case are complex.
- 2 3. The issues involved in this case will require investigation, which the petitioner cannot do
- 3 while, confined in prison.
- 4 4. Petitioner has a very limited knowledge of the law.
- 5

6 DATED this 13th day of DECEMBER, 20 13.

Charles Mah

Sign Your Name Here

CHARLES MAH 92820

Print Your Name Here

NDOC#

P.O. Box 7007

Warm Springs Correctional Center

Carson City, Nevada 89702

WARM SPRINGS Law Library No. 12

COUNT
COPY

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

C. CHARLES MAKI
PETITIONER

V.S.

STATE OF NEVADA
WARDEN SMITH
RESPONDENT

CASE NO: CR 94-0345

DEPT No: 8

MOTION FOR APPOINTMENT
OF COUNSEL...

COMES NOW, CHARLES MAKI, PETITIONER IN PRO, SE AND WITH
THE ASSISTANCE OF AN INMATE LIVING IN THE SAME UNIT,
TILL HE IS BEING TRANSFERRED OFF YARD, FOR HELPING INMATES
PER, THE ATTORNEY GENERAL'S OFFICE OF NEVADA.

THE PETITIONER HAS LITTLE KNOWLEDGE IN PREPARING THESE
PROCEEDINGS FOR THIS HONORABLE COURT. PETITIONER HAS -
COMPLETELY NO KNOWLEDGE OR UNDERSTANDING OF HOW TO
WRITE OR PREPARE ANY OF THESE PROCEEDINGS AND PLEADING
(WRIT OF HABEUS CORPUS) THAT HE IS NOW SUBMITTING BEFORE
BEFORE THIS HONORABLE COURT, PURSUANT TO N.R.S. 34.160; N.R.S.
34.170; NRS. 34.190; NRS 34.750 RULES OF CIVIL PROCEDURE
OF THE STATE OF NEVADA, NV.S. CT. BUT ASKS THIS HONORABLE
COURT TO GRANT APPOINTMENT OF COUNSEL, SO AS TO HOLD A -
COMPLETE INVESTIGATION AND HEARING TO DETERMINE WITH
EVIDENCE, TESTIMONY, D.N.A. TESTING, TO SHOW HOW INEFFECTIVE
ALL PREVIOUS ATTORNEYS WERE WHEN REPRESENTING HE

PETITIONER IN CASE NO: CR94-0345.. TO FIND OUT IF IN FACT THERE HAS BEEN A FUNDAMENTAL MISCARriage OF JUSTICE OVER THE PAST 19 YRS BY NOT ALLOWING ~~any~~ COMPETENT ATTORNEYS TO REPRESENT PETITIONER TO PROVE HIS "FACTUAL-INNOCENCE" OF THE CRIME OF SEXUAL ASSAULT AND LEWDNESS, THAT PETITIONER WAS CHARGED WITH AND CONVICTED

THIS MOTION FOR APPOINTMENT OF COUNSEL IS BASED UPON THE FOLLOWING FACTS..

PETITIONER RESPECTFULLY SUBMITTS THAT UPON REVIEW OF THE ENTIRE CASE # CR94-0345 THIS HONORABLE COURT CAN/WILL SEE THE MANY PROBLEMS IN THIS CASE SUPRA, AND IS LEGALLY AT THIS PARTICULAR JUNCTURE IS SO CONVOLUTED BY ALL OF THE LITIGATION BY PREVIOUS ATTORNEYS. PETITIONER STILL HAS AFTER 19 YEARS TO DATE STILL MAINTAINS THAT HE'S "FACTUALLY INNOCENT," OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS AS RECORD CAN PROVE. PETITIONER HAS NO OTHER PLAIN OR SPEEDY REMEDIES OTHER THAN TO BRING THIS HA'BEUS CORPUS INTO THIS HONORABLE COURT OF THE 2ND JUDICIAL DISTRICT PURSUANT TO N.R.S. 34.160; N.R.S. 34.170; NRS 34.190; NRS 34.750 TO PRESENT FACTS AND ISSUES OF FACTUAL INNOCENCE, AS THERE IS A CONSTITUTIONAL VIOLATION THAT HAS AND WILL CONTINUE TO - RESULT IN PETITIONERS, NOT BEING ABLE TO SHOW OR PRESENT EVIDENCE, TESTIMONY, WITNESSES, D.N.A. TESTING, RAPE KITS TO SHOW THAT PETITIONER IS FACTUALLY INNOCENT OF THE CRIME SHOWING THAT PETITIONER NEVER COMMITTED THIS CRIME OVER 19 YRS AGO SEE I.E., STATE VS. MITCHELL, 122 N.W.1269, 149 P.3RD 33 (2006)...

PETITIONER FURTHER SUBMITS TO THIS HONORABLE COURT THAT [THIS MOTION FOR APPOINTMENT OF COUNSEL] IS NOT ONLY TO ASSIST THE PETITIONER, BUT ALSO TO HELP ASSIST THIS - HONORABLE COURT IN BETTER UNDERSTANDING OF THIS - CONVOLUTED, COMPLEX, COMPLICATED CASE, PURSUANT TO N.R.S. 34.750(A)(B)(C); SEE C.F. MONTGOMERY V. PINCHAK, 249 F3d 492, AT 499 (3rd CIR 2002); FARMER V. HAAS, 990 F.2d 319, AT 322 (7th CIR. 1993); BARNES V. EIGHTH JUDICIAL DISTRICT COURT OF STATE OF NEVADA, IN AND FOR CLARK COUNTY, 103 NU. 679, 748 P.2d 483 (1987); HAINES V. KERNER, 404 U.S. 519, AT 520-21, 92 SUPREME COURT 594 (1972). THIS MOTION FOR APPOINTMENT OF COUNSEL MUST BE REVIEWED AND IF POSSIBLE RULED IN PETITIONER'S FAVOR. . . . AFTER 19 YRS OF LITIGATING WITH AND THRU INEFFECTIVE - ASSISTANCE OF COUNSEL AT (TRIAL) AND (ON DIRECT APPEAL) AND (POST CONVICTION) PROCEEDINGS TO NU.S.CT. ALONG WITH NO TYPE OF PHYSICAL EVIDENCE - FACTUAL EVIDENCE, NO RAPE KIT, NO D.N.A. TESTING, NO ONLY ONE WITNESS FROM OUT OF STATE TO TESTIFY IN BEHALF OF PETITIONER, NOT ANY OF THE MANY WHO WANTED TO COME TO COURT IN PETITIONER'S DEFENSE, TO PROVE HIS FACTUAL INNOCENCE OF SEXUAL ASSAULT/LEWDNESS, THIS IS A GRAVE FUNDAMENTAL MIS-CARRIAGE OF JUSTICE OVER THE LAST 19 YRS, BY NOT ALLOWING THE PETITIONER TO PROPERLY PRESENT HIS CASE, DO TO PRIOR (JAL). PETITIONER SUBMITS THAT WITH THIS MOTION FOR APPOINTMENT OF COUNSEL THERE'S MORE THAN SUFFICIENT FACTUAL EVIDENCE PER TO STATE V. MITCHELL, SUPRA. SHOWING PETITIONER'S FACTUAL INNOCENCE OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS.

DATE DECEMBER / DAY 13 / YEAR 2013

NAME CHARLES MAKI NDOC # 4282-756

SIGN CHARLES MAKI - #42820

COURT - ORIGINAL

39669

FILED

2013 DEC 30 PM 2:30

JOEY BIRCHALL-MARTINEZ
CLERK OF THE COURTBY: *[Signature]*1 CHARLES MAKI # 92820

2 Warm Springs Correction Center

3 PO Box 7007

4 Carson City, Nevada, 89702

5 DEFENDANT, In Propria Persona

6

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8

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10

11

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

12

IN AND FOR THE COUNTY OF WASHOE

13

CHARLES MAKI

14

Petitioner,

15

vs. STATE OF NEV.Case No.: CR 94-0345

16

WARDEN SMITHDept. No.: -8-

17

Respondent /

18

PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION

19

INSTRUCTIONS:

20

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

21

22

(2) Additional pages are not permitted except where noted or with respect to the facts, which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of separate memorandum.

23

24

25

26

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison

27

28

CR94-0345
STATE VS CHARLES JOSEPH MAKI 49 Pages
District Court 12/30/2013 02:30 PM
Washoe County
hnc

complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.
- (5) You must include all grounds or claims for relief, which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific fact supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege ineffective.
- (7) If your petition challenges the validity of your conviction or sentence, the original and one copy must be filed with the clerk of the district court for the county in which the conviction occurred. Petitions raising any other claims must be filed the clerk of the district court for the county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: WARM SPRINGS CORR. CENTER, CARLON CITY NV. 89702
2. Name and location of court which entered the judgment of conviction under attack: 2ND JUDICIAL COURT DIST. 8 [JUDGE STEVEN KOSACH]
3. Date of judgment of conviction: 5-17-1994

4. Case Number: CR94-0345

5. (a) Length of sentence: THREE-TEN TO LIFE'S plus 5x10 yrs ^{possibility of PAROLE}

(b) If sentence is death, state any date upon which execution is scheduled: /

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion: Yes / No X

If "yes," list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: THREE SEXUAL ASSAULTS
with CHILD UNDER 14 - LEWDNESS 5 COUNTS with CHILD UNDER 14 yr OF AGE.

8. What was your plea? (Check One)

(a) Not Guilty X

(b) Guilty /

(c) Guilty but mentally ill /

(d) Nolo Contendere /

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (Check One)

(a) Jury X

(b) Judge without jury: /

11. Did you testify at the trial? Yes / No X

12. Did you appeal from the judgment of conviction? Yes X No /

13. If you did appeal, answer the following:

(a) Name of court: NEVADA SUPREME COURT - DIRECT APPEAL

(b) Case Number or Citation: CR94-0345

(c) Result: DENIED

(d) Date of Result: 5-09-1996

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes X No _____

16. If your answer to Number "15" was "yes," give the following information:

(a) (1) Name of Court: NEVADA SUPREME COURT - U.S. DIST. COURT NV.

(2) Nature of proceeding: FIGHTING JUDGMENT OF CONVICTION

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes X No _____

(5) Result: _____

(6) Date of Result: 1997

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: _____

(b) As to any second petition, application or motion, give the same information:

- 1 (1) Name of Court: _____
- 2 (2) Nature of proceeding: N/A
- 3 (3) Grounds raised: _____
- 4 (4) Did you receive an evidentiary hearing on your petition, application or motion?
- 5 Yes _____ No _____
- 6 (5) Result: _____
- 7 (6) Date of Result: _____
- 8 (7) If known, citations of any written opinion or date of orders entered pursuant to
- 9 each result: _____

10 (c) As to any third or subsequent additional applications of motions, give the same

11 information as above, list them on a separate sheet and attach.

12 (d) Did you appeal to the highest state or federal court having jurisdiction, the result

13 or action taken on any petition, application or motion?

14 (1) First petition, application or motion?

15 Yes X No _____

16 Citation or date of decision: 10-10-2000

17 (2) Second petition, application or motion?

18 Yes _____ No _____

19 Citation or date of decision: _____

20 (3) Third or subsequent petitions, applications or motions?

21 Yes _____ No _____

22 Citation or date of decision: _____

23 (e) If you did not appeal from the adverse action on any petition, application or motion, explain

24 briefly why you did not. (You must relate specific facts in response to this question. Your response may

25 be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed

26 five handwritten or typewritten pages in length.) N/A

27 _____

28 _____

17. Has any ground being raised in this or any other court by way of petition for habeas corpus, motion or application or any other post-conviction proceeding? If so, identify:

a. Which of the grounds is the same: N/A

b. The proceedings in which these grounds were raised: N/A

c. Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in Numbers 23 (a), (b), (c) and (d), or listed on any additional pages you attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) (E)

ATTORNEY NEVER ADDRESS GROUNDS OR FACTS (IAC) SUPREME COURT OF NV. NEVER MADE
DIVISION ON

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. You must relate specific facts in response to this question. Your response may be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) (YES) THIS IS MY 2ND PETITION FOR WRIT OF HABEAS CORPUS, POST CONVICTION

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No X

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: JANET C. SMUCK, ROBIN WRIGHT, DAVID HARDY,

JOSEPH PLATIER, KARLA BUTKO..

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No X

If yes, specify where and when it is to be served, if you know: _____

N/A

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: PURSUANT TO 48 HR RULE: VIOLATION OF 4TH U.S.C.A. 48 HR CONSTITUTIONAL LAW SET BY THE UNITED STATES SUPREME COURT (1992-1994) IAC. IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

(b) Ground Two: APPELLATE ATTORNEY (ROBIN WRIGHT) DIRECT APPEAL REFUSED TO ARGUE PHYSICAL/PSYCHOLOGICAL EXAMINATION. (IAC). DIRECT APPEAL, IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

(c) Ground Three: RIGHT TO TESTIFY IN TRIAL (IAC). (JURISDICTIONAL ERROR) FAIR TRIAL/DUE PROCESS, DUE PROCESS/EQUAL PROTECTION. IN VIOLATION OF THE DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

(d) Ground Four: VERY LARGE COLOR FULL TATTOO IN PUBIC AREA THAT ALLEGED VICTIM (SUMMER MENEZES) COULDN'T (I.D.) IN VIDEO TAPE WITH DETECTIVE, OR PREL. HEARING, YET DID I.D. TATTOO ON REBUTAL IN TRIAL BY D.A. (IAC). TRIAL, NO DIRECT APPEAL IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH U.S.C.A. (E) GROUND FIVE DIRECT APPEAL (IAC) COUNSEL REFUSED TO RAISE SERIOUS ISSUES ON DIRECT APPEAL. ~~ROBIN WRIGHT~~ (ROBIN WRIGHT) IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS..

23. (a) GROUND ONE: PURSUANT TO 48 HR RULE: VIOLATION OF 4TH USCA.

48 HR - CONSTITUTIONAL LAW, SET BY THE UNITED STATES SUPREME COURT (1992-1994)

IAC. IN VIOLATION OF DEFENDENT'S 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law)

PLEASE SEE: ATTACHED, GROUNDS AND FACTS

OF MEMORANDUM OF POINTS AND AUTHORITIES

J. H. H. H. H.

23. (b) GROUND TWO: Appellate - Direct Appeal Attorney (Robin Wright)
REFUSED TO ARGUE, physical/psychological examination of ALLEGED
VICTIMS. IAC. IN VIOLATION OF DEFENDENTS 5th, 6th, 14th CONSTITUTIONAL
RIGHTS. / / / /

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law)

PLEASE SEE: ATTACHED, GROUNDS AND FACTS

OF MEMORANDUM OF POINTS AND AUTHORITIES

T. Harkins

23. (c) GROUND THREE: THE RIGHT TO TESTIFY IN TRIAL JAC.

(JURISDICTIONAL ERROR) FAIR TRIAL/DUE PROCESS, DUE PROCESS/EQUAL
PROTECTION.. IN VIOLATION OF DEFENDERS 5TH 6TH AND 14TH USLA.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law)

PLEASE SEE: ATTACHED GRAND AND

FACTS OF MEMORANDUM OF POINTS AND AUTHORITIES

THANK YOU

23. (d) GROUND FOUR: DEFENDERS, "VERY LARGE," COLORFUL TATTOO IN PUBLIC AREA THAT ALLEGED VICTIM (SUMMER MENESS) COULD NOT T.O. IN VIDEO TAPING WITH DETECTIVE, OR IN PRELIM. HEARING, BUT DID IN TRIAL ON REBUTAL BY THE D.A. IAC. BY DIRECT APPEAL AND TRIAL CONSIDER VIOLATION OF 5-6-14 USLA.

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law)

PLEASE SEE: ATTACHED GROUNDS AND

FACTS OF MEMORANDUM OF POINTS AND

AUTHORITIES.

Thakyan

23.(E) GROUND FIVE: DIRECT APPEAL JAC COUNSEL
(ROBIN WRIGHT) REFUSED TO RAISE SERIOUS ISSUES ON DIRECT APPEAL.
IN VIOLATION OF DEFENDENT 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

23.(E) SUPPORTING FACTS.

PLEASE SEE: ATTACHED GROUND AND
FACTS OR MEMORANDUM OF POINT AND
AUTHORITIES.

THANK YOU.

CONCLUSION

WHEREFORE, Petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at WARM SPRINGS CORR. CENTER on the 13th day of

DECEMBER, 20 13.

Charles Maki
Sign Your Name Here

CHARLES MAKI
Print Your Name Here
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

Signature of Attorney (if any)

Attorney for Petitioner

Address Here

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Charles Maki 42820
Signature of Petitioner NDOC#

Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, CHARLEY MALE, hereby certify, pursuant to NRCP 5(b), that on this _____ day of DECEMBER, 20113, I mailed a true and correct copy of the foregoing "WRIT OF HABEAS CORPUS post CONVICTION
RELIEF, APPOINTMENT OF COUNSEL" by placing it in the hands of the warm springs correctional center law library supervisor, First-class Postage, fully paid, and addressed as follows:

CLERK OF COURT
THE 2ND JUDICIAL DIST. CT.
IN AND FOR WASHOE COUNTY
75 COURT ST.
RENO NV 89501

DICK GAMICK DIST. ATTORNEY
2ND JUDICIAL DIST. CT.
75 COURT ST.
RENO NV. 89501

DATED THIS 13TH DAY OF DEC., 20113.

charley male

Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding WRIT OF

HABEAS CORPUS - POST CONVICTION / APPOINTMENT OF COUNSEL via DIST CT (ORDER)
(Title of Document) TO EXHAUST ALL CLAIMS, POINTS AND AUTHORITIES.

filed in District Court Case number CR99-0345

☒ 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.

Charles Maki
Signature

12-13-2013
Date

Charles Maki
Print Name

IN PRO SE
Title

COURT ORIGINAL

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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 CHARLES JOSEPH MAKI,

10 *Petitioner,*

11 vs.

12 GEORGE GRIGAS, *et al.*

13 *Respondents.*
14

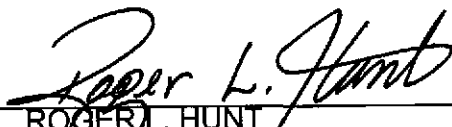
2:01-cv-00268-RLH-PAL

ORDER

15 Court mail has been returned from the last address given by petitioner with a notation
16 that petitioner no longer is at the institution. As petitioner has failed to comply with Local Rule
17 LSR 2-2, which requires him to immediately file a written notification of any change in
18 address, this action will be dismissed without prejudice.

19 IT THEREFORE IS ORDERED that this action is DISMISSED without prejudice. The
20 Clerk of Court shall enter final judgment accordingly.

21 DATED this 30th day of June, 2006.
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25 ROGER L. HUNT
26 United States District Judge
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHARLES J. MAKI,

Petitioner,

vs.

GEORGE GRIGAS, *et al.*

Respondents.

2:01-cv-0268-RLH-PAL

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on respondents' motion (#72) to dismiss on the basis of lack of complete exhaustion as to all claims.

Background

Petitioner Charles Maki seeks to set aside his 1994 conviction, following a jury verdict, for three counts of sexual assault on a child under the age of fourteen years and five counts of lewdness with a child under the age of fourteen years. He was sentenced to three life sentences with the possibility of parole and five ten year terms, with all such sentences and terms to run consecutively. #25, Ex. 1.

Governing Law

Under 28 U.S.C. § 2254(b)(1)(A), a habeas petitioner first must exhaust his state court remedies on a claim before presenting that claim to the federal courts. To satisfy this

42

1 exhaustion requirement, the claim must have been fairly presented to the state courts
 2 completely through to the highest court available, in this case the Supreme Court of Nevada.
 3 *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329
 4 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific
 5 federal constitutional guarantee and must also state the facts that entitle the petitioner to relief
 6 on the federal constitutional claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir.
 7 2000). That is, fair presentation requires that the petitioner present the state courts with both
 8 the operative facts and the federal legal theory upon which his claim is based. *E.g., Kelly v.*
 9 *Small*, 315 F.3d 1063, 1066 (9th Cir. 2003). The exhaustion requirement accordingly insures
 10 that the state courts, as a matter of federal-state comity, will have the first opportunity to pass
 11 upon and correct alleged violations of federal constitutional guarantees. *See, e.g., Coleman*
 12 *v. Thompson*, 501 U.S. 722, 731, 111 S.Ct. 2546, 2554-55, 115 L.Ed.2d 640 (1991).

13 **Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g)**

14 Respondents contend that a number of ineffective assistance claims were not
 15 exhausted because petitioner failed to present the claims to the Supreme Court of Nevada
 16 on a counseled appeal from the denial of state post-conviction relief. Respondents contend
 17 that, *inter alia*, the following claims were not exhausted:

18 1. That he was denied effective assistance of counsel because:

19

20 b.) His trial counsel failed to allow him to testify;

21 c.) His trial counsel had a conflict of interest because she had a prior
 22 experience with sexual assault, with counsel telling him that she
 23 therefore did not want to represent him but would "go through the
 24 motions;"

25

26 e.) At sentencing, his counsel failed to discredit the testimony of a
 27 State witness and failed to present effective mitigating evidence;

28 ////

1 f.) His appellate counsel failed to raise specified errors on direct
2 appeal, including:

3 (1) a claim of error based on the trial court's decision
4 denying his request for a new attorney, based on
5 an alleged conflict of interest destroying their ability
6 to communicate;

7

8 (3) a claimed violation of N.R.S. 171.178.

9 g.) He was not arraigned within 72 hours of his arrest.

10 Petitioner responds that "there were many habeas corpus briefs filed by different
11 attorneys in Maki's behalf along with his own habeas corpus" and "[t]he present grounds have
12 all been before the Nevada Supreme Court and were taken from the briefs them selves [sic]."
13 #74, at 2. However, petitioner does not provide any specific record citations showing that any
14 of these claims were presented to the Supreme Court of Nevada in the briefs filed on appeal
15 from the denial of post-conviction relief. The Court has independently reviewed the appellate
16 briefs, and they do not contain any of the foregoing claims. See #54, Exhs. 57, 59 & 63.
17 Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g) therefore are not exhausted.

18 **Ground 1(d)**

19 In Ground 1(d), petitioner alleges that his trial counsel failed to exploit, during direct
20 examination, the victims' alleged ignorance of a large multi-colored tattoo in Maki's pubic
21 area. Argument regarding this allegation was set forth within another claim in petitioner's
22 supplemental opening brief on appeal from the denial of post-conviction relief. See #53, Ex.
23 63, at 3. The Supreme Court of Nevada further treated the claim as one included within the
24 claims on appeal. See #53, Ex. 65, at 4. However, significantly, the state high court held on
25 the counseled appeal that "[i]t is . . . impossible to properly evaluate this claim because of
26 Maki's failure to include all relevant portions of the trial transcript." *Id.* Ground 1(d) therefore
27 was not fairly presented to the Supreme Court of Nevada on appeal from the denial of post-
28 conviction relief and the claim thus is not exhausted.

1 **Grounds 2(a) and 2(b)**

2 In its prior order (#71), the Court *sua sponte* questioned whether Grounds 2(a) and 2(b)
3 were completely exhausted. In these claims, petitioner alleges:

4

5 2. That he was denied effective assistance of appellate counsel because
6 his appellate counsel failed to raise on direct appeal:

7 a.) A claim of error based upon the state trial court's failure to
8 sanction the State or grant a continuance to allow the defense to
9 obtain expert psychological and psychiatric evidence to rebut late-
10 breaking physical examination evidence by the State;

11 b.) Substantially the same claim of error based on the trial court's
12 failure to sanction the State or grant a continuance to allow the
13 defense to have an expert review evidence revealed shortly
14 before trial that one of the victims had been subjected to more
15 physical abuse than she had reported against petitioner.

16 Respondents do not include Grounds 2(a) and 2(b) in the present motion to dismiss.
17 However, similar to its holding on Ground 1(d), the Supreme Court of Nevada held as follows
18 as to Grounds 2(a) and 2(b) on the counseled post-conviction appeal:

19 Again, Maki has failed to include pertinent documents in
20 the appendix on appeal. Maki has not included transcripts of the
21 proceedings concerning the State's disclosure of the report and
Maki's motion for the continuance. Thus, it is impossible to
determine whether the district court acted improperly.

22 #53, Ex. 65, at 6. It would appear to this Court that if claims were presented to the state high
23 court in such a defective manner that it was impossible for that court to review the claims, the
24 claims were not fairly presented. Petitioner therefore will be required to show cause why
25 Grounds 2(a) and 2(b) should not be found to be unexhausted.

26 **Ground 3**

27 Respondents include Ground 3 in the present motion to dismiss, but the Court
28 dismissed this claim in its prior order as noncognizable in federal habeas. #71, at 12 & 13.

1 IT THEREFORE IS ORDERED that respondents' motion (#72) to dismiss is GRANTED
2 such that the Court finds that Grounds 1(b), 1(c), 1(d), 1(e), 1(f)(1), 1(f)(3) & 1(g) are not
3 exhausted. After completion of the *sua sponte* exhaustion inquiry as to Grounds 2(a) and
4 2(b), petitioner will be required to either dismiss the unexhausted claims, dismiss the entire
5 petition, or seek other appropriate relief.

6 IT FURTHER IS ORDERED that, within twenty (20) days of entry of this order,
7 petitioner shall SHOW CAUSE in writing why Grounds 2(a) and 2(b) should not be found to
8 be unexhausted.

9 DATED this 12th day of June, 2006.

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13 ROGER L. HUNT
14 United States District Judge
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① [POINTS AND AUTHORITIES]

PURSUANT TO 48 HR RULE

VIOLATION OF 4TH U.S.C.I.A., 48 HR LAW SET BY THE
U.S.S.E.T. (1992-94) (IAC) IN VIOLATION OF THE
DEFENDENTS 5TH-6TH- AND 14TH CONSTITUTIONAL RIGHTS.

HEABEUS-CORPUS

CASE # CR 94-0345

CHARLES J. MAKI - 42820

DEC. 13. 2013

*①

PURSUANT TO 48 HR RULE; VIOLATION OF 4TH U.S.C.A.

48 HR. CONSTITUTIONAL LAW, SET BY THE U.S. S. CT. (1994)

(IAC) IN VIOLATION OF DEFENDENTS 5TH - 6TH - 14TH CONST. RIGHTS.

- ① DEFENDENT WAS HELD IN CUSTODY IN COUNTY JAIL FROM [JAN 19-1994 TO JAN 24-1994] (5) FIVE DAYS, BEFORE HE WAS ALLOWED TO GO TO SEE A MAGISTRATE IN (PERSON) FOR HIS ARRANGEMENT (WITHOUT-COUNSEL) EVEN THOUGH HE HAD ENVOCKED HIS RIGHT TO COUNSEL DURING HIS INTEROGATION WITH POLICE, THIS VIOLATES THE 48 HR CONSTITUTIONAL LAW SET BY — [THE UNITED STATES SUPREME COURT], SEE: POWELL V. STATE, 338 P.2d 921 (1972). COUNSEL (ROBIN WRIGHT ON DIRECT APPEAL) "REFUSED" TO ARGUE THIS SERIOUS ISSUE AND VIOLATION OF DEFENDENTS CONSTITUTIONAL RIGHT, TELLING HIM NV. SUPREME COURT, DON'T RECOGNIZE THIS CONSTITUTIONAL RIGHT TO ANYONE IN CUSTODY. THIS CONSTITUTES (IAC).. / / / /
- ② THE UNITED STATES SUPREME COURT STATES: BASED ON MCLAUGHLIN, WE HOLD THAT A (SUSPECT) MUST COME BEFORE A MAGISTRATE, WITHIN 48 HRS, INCLUDING NON JUDICIAL DAYS, FOR A PROBABLE — CAUSE DETERMINATION, CITED NRS 171.178, 171.178(3), 171.186: — POWELL V. NEVADA, 114 S. CT. (1994). THIS (CLEARLY MEANS DEFENDENT WAS TO STAND IN FRONT OF A MAGISTRATE IN PERSON WITHIN 48 HRS OF HIS ARREST,) NOT 5 DAYS LATER! / / / / / / /
- ③ THIS IS A CLEAR VIOLATION OF DEFENDENTS CONSTITUTIONAL RIGHTS..
- ③ IN GERSTEIN V. PUGH 95 S. CT. 854 (1975) STATES: WHATEVER — PROCEDURE A STATE MAY ADOPT FOR MAKING A PRETRIAL DETERMINATION OF THE PROBABLE CAUSE FOR DETAINING AN ARRESTED PERSON PENDING FURTHER PROCEEDING'S IT MUST PROVIDE A FAIR AND RELIABLE DETERMINATION OF PROBABLE CAUSE AS A CONDITION FOR ANY (SIGNIFICANT) PRETRIAL RESTRAINT OF LIBERTY; SUCH A DETERMINATION MUST BE MADE BY A (JUDICIAL OFFICER)

- CONTINUED- ③ EITHER BEFORE OR PROMPTLY AFTER ARREST, U.S.C.A. #4. / /
- ④ IN GRIFFITH V. KENTUCKY, 107 S. CT. 708 (1987), STATES; CONSOLIDATION OF CASE'S, THE U.S. SUPREME COURT HELD [JUSTICE BLACKMAN HELD:] (1) NEW RULE FOR CONDUCT OF CRIMINAL PROSECUTION IS TO BE APPLIED "RETROACTIVELY" TO ALL CASES, (STATE) OR (FEDERAL), PENDING ON DIRECT REVIEW OR NOT YET FINAL. / / / / / /
- ⑤ IN COUNTY OF RIVERSIDE V. MCLAUGHLIN, 111 S. CT. 1661 (1991) THE U.S. SUPREME COURT, [JUSTICE O'CONNOR] HELD THAT, A JURISDICTION THAT CHOOSES TO COMBINE A PROBABLE CAUSE DETERMINATION WITH OTHER PRETRIAL PROCEEDINGS MUST DO SO AS SOON AS IT IS - REASONABLY FEESABLE, [BUT IN-NO EVENT LATER THAN 48 HRS AFTER ARREST].... DEFENDENT WAS HELD FOR FIVE (5) DAYS. / / /
- ⑥ THE STATE BEARS THE BURDEN OF PROVING, ANY PRETRIAL DELAY, WAS NOT UN-REASONABLE: POWELL V. NEVADA 114 S. CT. 1280 (1994), MCLAUGHLIN... / / / / / / /
- ⑦ THE NEVADA SUPREME COURT RECOGNIZED AND MADE SPECIFIC THE PROBABLE CAUSE PROMPTNESS REQUIREMENT OF GERSTEN V. PUGH, MCLAUGHLIN INSTRUCTED THAT ("A DELAY EXCEEDING 48 HRS") - [PRESUMPTIVELY VIOLATES] THE (4th) FOURTH AMENDMENT. /
- ⑧ IN THE DEFENDENT'S CASE (AS THE RECORD CAN/WILL CLEARLY SHOW) HE DID NOT HAVE HIS ARRANGMENT HEARING IN PERSON, BEFORE - - - A MAGISTRATE TILL (5) FIVE DAYS AFTER HIS ARREST (WITHOUT COUNSEL) THIS IS A CLEAR VIOLATION OF DEFENDENTS 4th, 5th, 6th AND 14th - CONSTITUTIONAL RIGHTS, AS NOT ONLY DID ATTORNEY OF RECORD REFUSE TO ARGUE THIS VIOLATION BUT DEFENDENTS DIRECT APPEAL ALSO REFUSED TO ARGUE THIS 48 RULE- SET BY THE UNITED STATES SUPREME COURT.... DEFENDENT IS ENTITLED TO RELIEF.....

② [POINTS AND AUTHORITIES]

APPELATE - DIRECT APPEAL ATTORNEY REFUSED TO ARGUE,
PHYSICAL/PSYCHOLOGICAL EXAMINATION,
(IAC) IN VIOLATION OF THE DEFENDENTS 5TH-6TH-14TH U.S.C.A RIGHTS.

HEABEUS-CORPUS

CASE # CR94-0345

CHARLES J. MAKI-42820

DEC. 13-2013

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APPELATE - DIRECT APPEAL ATTORNEY REFUSED
TO ARGUE, PHYSICAL/PSYCHOLOGICAL EXAMINATION.
(IAC) IN VIOLATION OF DEFENDENTS 5TH - 6TH - 14TH U.S.C.A.

- ① THE DEFENDENT, IN THIS CASE, THRU ARGUMENTS TO THE COURT MAKING RECORD AND GIVING RISE TO COURT APPOINTED (PUBLIC DEFENDER) COUNSEL - MS. JANET COBB SMUCK'S FAILER TO GAIN ANY MEDICAL, PHOTOS, REPORTS, OR EXAMINATIONS, NO D.N.A. TESTING OR EXAMINATIONS OF ALLEGED VICTIMS OF SEXUAL ASSAULT FROM THE PROSECUTION; BE IT PHYSICAL OR DOCUMENTED EVIDENCE SAID TO BE IN THE PROSECUTION'S POSSESSION NOT DISCLOSED TO THE DEFENSE FOR DISCOVERY, THE BURDEN OF SHOWING SUCH — MATERIALITY AND EXCULPATORY NATURE OF EVIDENCE WHICH IS NOT PROPERLY (I-D) OR PRESENTED BY THE PROSECUTION — [RESTS ON THE DEFENSE] AS STATED IN STATE V. HAUAS, SUPRA. 601 P.2d 1197 (1979) AND IN SPARKS V. STATE, 759, P.2d 180 (NV. 1988).
- ② THE GOVERNMENT'S FAILER TO ASSIST DEFENSE BY DISCLOSING ANY INFORMATION THAT MIGHT HAVE BEEN HELPFULL IN CONDUCTING CROSS EXAMINATION AMOUNTS TO A [CONSTITUTIONAL - VIOLATION], IF IT DEPRIVES THE DEFENDENT A FAIR TRIAL...
- ③ HAYES V. FARWELL, U.S. DIST. CT. 482 F.2d 1180 (2007) STATES: COUNSEL FOR DEFENDENT DID NOT PETITION THE COURT TO HAVE THESE ALLEGED VICTIMS UNDER GO AN INDEPENDENT PHYSICAL/PSYCHOLOGICAL EXAMINATION, WHICH WOULDVE BEEN VERY IMPORTANT TO DEFENSE, CONSTITUTES [INEFFECTIVE ASSISTANCE OF COUNSEL].....
- ④ UNLESS COMPETENT EVIDENCE PRESENTS A COMPELLING REASON TO PROTECT THE ALLEGED VICTIM'S ITS (ERROR) TO DENY A DEFENDENT THE ASSISTANCE OF A DEFENSE..

- ⑤ THE COURT [DENIED] THE DEFENDENT THE RIGHT TO EXPERT TESTIMONY, TO REFUTE THE STATES EXPERT (MRS. KATHY C. PEEL) A SAINTS EXAMINER. SEE TT. P. 5 LINES 22-24, P. 8 LINES 18-19, PAGE 8 LINE 24. YET THE COURT ON PAGE 9 TT. LINE 1 STATES HOW IT WILL WANT TO HEAR WHAT THE STATES EXPERT WILL SAY... / / ALL READY THE DEFENDENT IS BEING PREJUDICED BY THE COURT... ..FOR PSYCHOLOGICAL EXAMINATION..
- ⑥ IN PRELIMINARY HEARING TRANSCRIPTS PAGE 33 LINES 22-24, THE ALLEGED VICTIM [DESIREE MENESE] WAS ASKED, HAVE YOU EVER SEEN A [MAN WITHOUT HIS CLOTHES ON (A) YES, MY DAD!] — DESIREE, ALSO GOES ON TO STATE, HOW SHE TOOK SHOWERS WITH HER DAD!! IN TT. P. 71 LINES 9-15 WHEN QUESTION'D IN TRIAL ON WITNESS STAND, (Q.) HAVE YOU EVER SEEN A MAN'S PENIS? (A.) YES, "MY DAD'S." / [SHE NEVER SAYS THE DEFENDENT'S] / /
- ⑦ IN PRELIMINARY HEARING PAGE 30 LINES 14-15 COUNSEL SMUCK ASKS DESIREE, IF THE DEFENDENT EVER MADE HER TOUCH HIS PENIS (A) NO.. YET IN TRIAL, SHE TELLS A.D.A. DAN GRECO THAT THE DEFENDENT DID..
- ⑧ IN REGARDS TO [SUMMER MENESE] QUESTION'D BY A.D.A. DAN GRECO SEC.: PRELIM. TRANS. PAGE 42 LINES 12-17, ON LINE 15; DISTRICT ATTORNEY GRECO, (SUMMER DID HIS PRIVATE EVER GO INSIDE YOUR PRIVATE (A) NO!) THIS CLEARLY SHOWS SUMMER STATING THE DEFENDENT NEVER SEXUALLY ASSAULTED SUMMER, (YET IN TRIAL, SHE TELLS D.A. GRECO DIFFERENTLY.) IN PRELIM. HEARING: D.A. GRECO ASKS SUMMER, DID HE EVER TOUCH HIS PRIVATE TO THE OUTSIDE OF YOUR PRIVATE, (A) NO! AGAIN SUMMER STATES DEFENDENT DID NOT COMMIT A LEWDNESS ACT WITH HER.... THESE ON THERE OWN SHOW HOW DEFENSE COUNSEL, SHOULDVE ASKED THE COURT FOR A PSYCHOLOGICAL EXAMINATION OF THE ALLEGED VICTIMS.. THIS CONSTITUTES (IHC) V5. 783/

⑨ THE STATES EXPERT [KATHY C. PEELE] TESTIFIED IN REGARDS TO THE BEHAVIORAL PATTERNS OF THE ALLEGED VICTIMS ALONG WITH THE RESPONSES ASSOCIATED WITH THE ALLEGED VICTIMS OF CHILD SEXUAL ABUSE. / / / / / / / / /

⑩ THE COURTS HAVE RECOGNIZED THAT THIS TYPE OF TESTIMONY PUT THE CHILD BEHAVIORAL AND PSYCHOLOGICAL CHARACTERISTICS AT ISSUE, THUS REQUIRING THE DEFENSE TO HAVE ACCESS TO A PSYCHOLOGICAL EVALUATION, THE DEFENDENT, WAS DEPRIVED OF THIS RIGHT TO HAVE ACCESS TO THIS EVALUATION... / / / / /

...PHYSICAL - EXAMINATION...

⑪ THE STATES EXPERT [MS. PEELE, TESTIFIED IN TRIAL] [FOR THE STATE] IN REGARDS TO ALL THE PHYSICAL EXAMINATIONS, PHOTOS, TAKEN OF THE ALLEGED VICTIM'S ECT. ALTHOUGH NO D.N.A., NO RAPE KITS, NO REAL "PHYSICAL EVIDENCE" WAS PRODUCED AT TRIAL. NO EVIDENCE EXISTED TO CORROBORATE THE ALLEGED VICTIMS ALLEGATIONS....

⑫ MS. PEELE, THE STATES EXPERT, (HEAD OF THE STATES EXAMINATION DIVISION FOR THE STATES CHILD SEXUAL ASSAULT DIVISION) SEE: TT. P. 109 LINES 6-14, P. 110 LINES 11-12, P. 111-112... SHE TESTIFIED IN TRIAL THAT, (DESIREE - MENESS), SHE SAW "NO SIGNS OF SEXUAL ABUSE AT ALL," BUT THAT HER (DESIREE'S) HYMEN GREW BACK! SEE TT. P. 144 LINES 9-12, YET DESIREE IS NORMAL TT. PAGE 143 LINES 16-19.. THIS IS CONTRADICTORY TO WHAT DESIREE IS CLAIMING THE DEFENDENT SUPPOSEDLY DID...

⑬ IN (SUMMER MENESS) CASE, THE EXPERT FOR THE STATE OF NEVADA SAID, "QUOTE" - SUMMER'S PHYSICAL EVIDENCE IS INCONSISTENT WITH HER ORAL TESTIMONY, SHE GAVE; (AGAIN THIS PROVES "NO EVIDENCE" AGAINST THE DEFENDENT! SEE: TT. PAGE 126 LINES 4-6, P. 127 LINES 7-15, PAGE 129 LINES 8-13, PAGE 143 LINES 16-19, PAGE 144 LINES 9-12, P. 144-145 AND PAGE 150 LINES 9-23. / / / / / V5. 784

(14) COUNSEL OF RECORD (P.D.) JANET COBB SMUCK, STATED THE REASON SHE DIDNT MOTION THE COURT FOR A PHYSICAL OR PSYCHOLOGICAL EXAMINATION OF THE ALLEGED VICTIMS IS BECAUSE THE STATE WASNT GOING TO EMPLOY ONE, [THIS IS COMPLETELY FALSE]. / / / / /

(15) IN THE DEFENDENTS CASE, THE STATE DID EMPLOY AN EXPERT, ONE - (MS. KATHY C. PEELE). SEE: EVIDENTIARY MOTIONS TRANSCRIPTS OF THE PROCEEDINGS ON MARCH 11-1994 RENO NV. COUNSEL FOR THE DEFENSE ["MS. JANET-COBB-SMUCK"], ON PAGE 25 LINES 16 THRU 21 ASSISTANT DISTRICT ATTORNEY DHU GRECO; "QUOTE" —

YES YOUR HONOR, I THINK I MAY HAVE
AN ANSWER FOR YOU IN ONE SECOND.

YOUR HONOR, (I) HAVE AN ANSWER TO THAT,
SHE DID APPARENTLY SEE A [SAINTS -
- EXAMINER] WHICH IS THE NURSE
PRACTITIONER THAT EXAMINES CHILD

SEXUAL ASSAULT VICTIMS.....

"THEY ARE EXPERTS..."

(16) THE STATE CLEARLY ADMITS THE USE OF EXPERT TESTIMONY AND EXPERT EXAMINATION; EVEN THOUGH THE JUDGE IN DEFENDENTS CASE DENIED THE DEFENDED HIS RIGHT TO REFUTE THE STATES EXPERT TESTIMONY, SEE TT. P. 5 LINES 22-24, P. 8 LINES 18-19, PAGE 9 LINE 1. — THE COURT STATES ON RECORD HOW IT WANTS TO HEAR FROM THE STATES EXPERT THOUGH (KATHY C. PEELE)... (THIS IS PREJUDICIAL TO DEFENDED.)

(17) IT WAS "CLEAR ERROR" BY THE COURT TO DENY THE DEFENSE THE SAME PRIVILEGE AND EXCESS TO HAVE AN EXPERT TO TESTIFY OR TO EXAMINE THE STATES PHOTOS, OR ANY PHYSICAL EVIDENCE THAT THE STATE "REFUSED TO TURN OVER TILL (3) DAYS BEFORE TRIAL," SO AS TO

CONTINUED - (7) REFUTE THE STATES EXPERT TESTIMONY IN TRIAL... / / /

.....CONCLUSION OF FACTS.....

IT WAS "CLEAR ERROR" TO HAVE DENIED THE DEFENDENT AN EXPERT
TO REFUTE THE STATES EXPERT (KATHY C. PEELE)'S TESTIMONY IN TRIAL,
IT WAS CLEARLY PREJUDICIAL AGAINST THE DEFENDENT WHO COULD
GET A FAIR TRIAL; ALONG WITH THE FACT THAT DEFENDENT'S OWN
COUNSEL OF RECORD (JANET COBB SMITH) REFUSED TO ASK FOR
A (PSYCHIATRIC EVALUATION) BASED ON THE MANY SERIOUS INCONSISTANT
STATEMENTS MADE BY THE (2) ALLEGED VICTIMS, ALONG WITH "NO"
PHYSICAL EVIDENCE, AS THE WHOLE RECORD WILL SHOW AND PROVE
CLEARLY, ALL TOGETHER, THIS CONSTITUTES A VIOLATION OF DEFENDENT

5TH - 6TH - 14TH CONSTITUTIONAL RIGHTS.

ALONG WITH A CLEAR GUT (IAC).....

.....DEFENDENT IS ENTITLED TO A NEW TRIAL.....

④

[POINTS AND AUTHORITIES]

THE RIGHT TO TESTIFY IN TRIAL - (JAC)(JURISDICTIONAL ERROR) FAIR TRIAL/DUE PROCESS,DUE PROCESS/EQUAL PROTECTION, IN VIOLATION OF THE
DEFENDENTS 5TH-6TH AND 14TH U.S.C.A. RIGHTS.HEABEUS-CORPUSCASE # CR94-0345CHARLES J. MAKI42820

DEC. 13-2013

* ③

RIGHT TO TESTIFY IN TRIAL (J-K-C)(JURISDICTIONAL ERROR) FAIR TRIAL / DUE PROCESSDUE PROCESS / EQUAL PROTECTION. IN VIOLATION,
OF THE 5TH-6TH AND 14TH U.S.C.A.

- ① THE DEFENDENT IN THIS CASE, HAD DEMONSTRATED HIS TRUE DESIRE TO TESTIFY ABOUT 1 1/2 - ONE AND A HALF MONTHS BEFORE HIS TRIAL, EVEN TO THE POINT OF WRITING TO THE JUDGE (HONORABLE STEVEN KOSACH) OF THE SITUATION (Opp. PAGE 6 - LINES 5-7). / / / / /
- ② A HEATED COMMOTION ENSUED BETWEEN THE DEFENDENT AND HIS TRIAL COUNSEL IN COURT DURING TRIAL, AND THE D.A. DAN GRELO, THEN ASKED THE JUDGE TO TO ASK DEFENDENT TO BE QUIET AND TO JUST WRITE NOTES.. (DEFENDENT) THEN ABIDED AS BEST HE COULD WITH THE JUDGE'S STERN INSTRUCTIONS, (EVEN THOUGH COUNSEL TOLD DEFENDENT THAT HIS CASE WAS GOING WELL) (DEFENDENT STILL HAD WANTED TO TESTIFY, AS WAS HIS RIGHT)! WHEN COUNSEL RESTED FOR THE DEFENSE, DEFENDENT SAID NOTHING, AS DEFENDENT THOUGHT THAT DEFENSE COUNSEL WOULD HAVE SAID SOMETHING TO THE COURT, AS TO HIM WISHING TO TESTIFY (J-K-C). / / / /
- ③ IN ROCK V. ARKANSAS, 483 U.S. 44, 107 S. CT. 2704, 97 L. ED 37 (1987) THE SUPREME COURT, DESCRIBED THE RIGHT OF A CRIMINAL DEFENDENT TO TESTIFY AT HIS OWN TRIAL AS BEING FUNDAMENTAL AND PERSONAL TO THE DEFENDENT. THE COURT ALSO STATES: EVEN MORE FUNDAMENTAL TO A PERSONAL DEFENSE OR THAN THE RIGHT OF SELF REPRESENTATION, WHICH WAS FOUND TO BE "NECESSARILY" IMPLIED BY THE STRUCTURE OF THE (6TH AMENDMENT)... IS AN ACCUSED'S RIGHT TO PRESENT HIS OWN VERSION OF THE EVENTS IN HIS OWN WORDS.
- ④ A DEFENDENT'S OPPORTUNITY TO CONDUCT HIS OWN DEFENSE BY CALLING A WITNESS IS INCOMPLETE IF HE DOESN'T PRESENT

- CONTINUED ④ HIMSELF AS A WITNESS (I.D.) / / / / /
- ⑤ IN UNITED STATES V. TEAQUE, 908 F.2d 761 (1990). THE COURT HELD: WE HOLD ONLY THAT WHEN, DESPITE ANY EFFORTS BY DEFENSE COUNSEL TO CONVINCE THE DEFENDENT THAT THE BEST STRATEGY IS TO REMAIN SILENT, THE DEFENDENT [DOES NOT PERSONALLY WAIVE THE RIGHT TO TESTIFY] AND IF DEFENSE COUNSEL FAILS TO ALLOW THE DEFENDENT TO TAKE THE STAND, THE DEFENDENT'S RIGHT TO TESTIFY HAS BEEN VIOLATED. (DEFENDENT'S COUNSEL, NEVER ADDRESSED THE COURT) IN ORDER TO ALLOW THE DEFENDENT TO STATE HIS DESIRE TO TESTIFY, WHICH CONSTITUTES A CLEAR VIOLATION (I-A-C) AND HIS FUNDAMENTAL RIGHT TO TESTIFY... / / / / /
- ⑥ THE RIGHT TO TESTIFY, IS A RIGHT THAT CAN NOT BE FORFEITED BY — DEFENDENT'S COUNSEL, BUT ONLY BY A KNOWING, VOLUNTARY, AND INTELLIGENT WAIVER BY THE DEFENDENT HIMSELF. THE RESULT IN DEFENDENT'S CASE IS DICTATED BY TEAQUE, AND UNITED STATES V. SCOTT, 909 F.2d 488 (1990). THE DEFENDENT'S CASE PRESENTS A CLEARER EXAMPLE OF A VIOLATION OF DEFENDENT'S RIGHT TO TESTIFY, THAN THAT PRESENTED IN TEAQUE.. DEFENDENT'S TRIAL ATTORNEY HAD RESTED WITHOUT CALLING HIM, BY DOING SO [DEFENSE COUNSEL ACTIVELY AND FORCEFULLY PREVENTED THE DEFENDENT FROM — TESTIFYING,] DESPITE HIS CLEARLY AND EXPRESSED DESIRE TO DO SO....
- ⑦ BY PREVIOUS THREATS FROM DEFENDENT'S COUNSEL, "STATEING THAT SHE WOULD NOT LET HIM TESTIFY" (OFF-RECORD) AND BEING ALREADY INSTRUCTED BY THE COURT (STERNLY) TO REMAIN SILENT, THIS LEFT THE DEFENDENT IN A POSITION WHERE HE FELT HE HAD NO CHOICE, WITH THE UNDERSTANDING TO REMAIN SILENT, YET ASSUMED HIS COUNSEL WOULD OR AT LEAST ADDRESSED THE COURT (I-A-C.) IN HIS DEFENSE... /

- ⑧ THE DEFENDENT WAS DENIED A FAIR TRIAL, WHEN NOT PERMITTED TO TESTIFY ON HIS OWN BEHALF. DEFENDENT ASSERTS THAT HE NEVER WAIVED HIS RIGHT TO TESTIFY AND NEVER CONSENTED OR WAIVED A COUNSELL AS TO WHETHER HE WISHED TO TESTIFY.. / / / / / / /
- ⑨ DEFENDENT ASSERTS A [JURISDICTIONAL-- ERROR] WHEN THE JUDGE DENIED GIVING THE DEFENDENT AN OPPORTUNITY TO TESTIFY ON HIS OWN BEHALF.. DEFENDENT ASSERTS THAT NOWHERE IN TRIAL TRANSCRIPTS, WILL THE COURT FIND A KNOWING, INTELLIGENTLY, OR WAIVER OF THIS -- CONSTITUTIONAL RIGHT TO TESTIFY. THIS LACK OF WAIVER TO TESTIFY VIOLATED DEFENDENTS 5TH U.S.C.A. RIGHT TO DUE PROCESS/ EQUAL PROTECTION, WHEN THE DEFENDENT TRULY DID WISH TO TESTIFY. [THIS "STRUCTURAL ERROR"], OR NOT COUNSELLING THE DEFENDENT CAN BE TOTALLY CONFIRMED BY REVIEW OF THE RECORD. / /
- ⑩ DEFENDENT WAS CLEARLY PREJUDICED, BY NOT BEING ABLE TO TESTIFY ON HIS OWN BEHALF, AND THE COURT (NEVER) KNOWINGLY AND -- INTELLIGENTLY ADVISING OF CONSTITUTIONALLY ADHERED RIGHT, OR ANY VOLUNTARY WAIVERING BY DEFENDENT.. / / / / / / /
- ⑪ DEFENDENTS RIGHT TO TESTIFY WAS VIOLATED BY HIS ATTORNEY (I.A.C) AND ARGUEABLY BY THE JUDGE, AND THAT THIS VIOLATION WAS NOT HARMLESS; THIS WRIT OF HABEUS CORPUS PRESENTED BY THE DEFEND MUST ISSUE.. DEFENDENTS CONSTITUTIONAL RIGHT TO TESTIFY WAS IN VIOLATION OF HIS 5TH- 6TH- 14TH CONSTITUTIONAL RIGHTS INCLUDING -- INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, ~~_____~~ ~~_____~~ / / / / /

... DEFENDENT-REQUESTS

A NEW TRIAL - - - -

②4

POINTS AND AUTHORITIES

VERY LARGE COLOR FULL TATOO IN DEFENDENTS PUBIC
AREA THAT ALLEGED VICTIM (SUMMER MENESS) COULD-
NOT (I.D.) IN VIDEO TAPING WITH DETECTIVE, OR IN PRELIMINARY
HEARING, BUT DID ON RE-BUTAL IN TRIAL BY A.D.A. DAN GRECO.
(IAC) BY TRIAL AND DIRECT APPEAL. IN VIOLATION OF DEFENDENTS
5TH-6TH-14TH CONSTITUTIONAL RIGHTS.

HEABEUS-CORPUSCASE # CR94-0345CHARLES J. MAKI42820

DEC. 13-2013

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VERY LARGE COLORFULL TATOO IN PUBIC AREA THAT
 ALLEGED VICTIM (SUMMER MENESS) COULD NOT (I.D.)
 IN VIDEO TAPING WITH DETECTIVE, OR PREL. HEARING TRIAL/
 BT DID ON REBUTAL IN TRIAL BY D.A. GRECO. (IAC) DIRECT APPEAL.
 VIOLATION OF 5-6-14 USCA.

- ① COUNSEL OF RECORD (JANET COBB SMUCK) WHO WAS MR. MAKI'S
 COUNSEL, STATED: MR. MAKI TOLD ME ABOUT THE TATTOOS, ESPECIALLY
 THE TATTOO AROUND HIS PUBIC AREA, IN PRELIM. HEARING. SEE P.C.T. P. 9461-2.
- ② DEFENDENT HAS A "VERY-LARGE" MULTI COLORED TATTOO IN HIS PUBIC
 AREA, THIS TATTOO IS UN-MISTAKABLE. DEFENDENT HAD PHOTOS TAKEN
 OF THIS TATTOO IMMEDIATELY AFTER HIS ARREST BECAUSE HE KNEW THE
 GIRLS WOULD NOT BE ABLE TO (I.D.) IT. WHEN DEFENDENT'S ATTORNEY CROSS
 EXAMINED THE GIRLS (IN TRIAL), SHE (ATTORNEY) "REFUSED TO SOLICIT"
 ANY TESTIMONY ABOUT THE TATTOO, IN DEED COUNSEL EVEN REFUSED TO ASK
 ABOUT DEFENDENT'S TATTOOS (SEE TT. PAGE 55-68, AND PAGE 87-93).....
- ③ THIS IS IMPORTANT BECAUSE BOTH OF THE ALLEGED VICTIMS (ESPECIALLY) -
 (SUMMER) FAILED TO MENTION THE TATTOO AT THE PRELIMINARY HEARING ~~AND~~
 EVEN [DETECTIVE STEIGHMIER] STATED IN THE PRELIMINARY HEARING ON
 THE WITNESS STAND; QUOTE: (I) DID ASK THE GIRLS DURING MY INTERVIEW
 WITH E'M AND (SUMMER) SAID MAKI HAD NO TATTOOS IN HIS PELVIC AREA.
 SEE: PRELIMINARY TRANSCRIPTS, PAGE 73 LINES 23-25, AND PAGE 74 LINES 1-10,
 ON PAGE 73. (Q) DETECTIVE, YOU ASKED A QUESTION ABOUT TATTOOS (A) P. 74
 WHEN I ASKED (SUMMER) ON THE TAPE ABOUT THE TATTOOS, I ASKED THAT
 QUESTION BECAUSE WHERE ONE OF THE MOST DISTINGUISHING THINGS THAT
 A GIRL COULD REMEMBER WAS SOMETHING THAT WAS VERY UNUSUAL
 IN THE PENIS AREA, AND SOMETIMES IT'S A (TATTOO) IN HIS PELVIC AREA..

- (4) (SUMMER) STATED IN THE TAPED INTERVIEW WITH DET. STEIGHOMIER THAT DEFENDENT HAD "NO-TATOO IN HIS PELVIC AREA," YET IN TRIAL ON REBUTAL BY D.A. DAN GRECO, SUMMER ALL THE SUDDEN CLAIMS DEFENDENT HAS A TATOO IN HIS PELVIC AREA... THIS WAS DONE AFTER DEFENSE ATTORNEY (JANET C. SMUCK)'S INVESTIGATOR WHO TOOK THE PHOTOS OF THE DEFENDENT, TESTIFIED ABOUT PHOTOGRAPHING THE TATTOOS. / / / /
- (5) DEFENDENT'S COUNSEL OF RECORD REFUSED TO EXPLOIT THE GIRL'S IGNORANCE OF THAT (ONE TATOO) IN DEFENDENT'S PELVIC AREA DURING THEIR DIRECT TESTIMONY OR ON REBUTAL; ACCORDINGLY DEFENDENT LOST HIS ONE GOOD OPPORTUNITY TO SHOW THE GIRLS WERE FABRICATING THEIR STORIES...
- (6) IN TRIAL (DESIREE) STATED SHE SEEN DEFENDENT NAKED (SEE TT. PAGE 66 LINES 1-4,) YET ON (TT. PAGE 191 LINES 1-8) D.A. DAN GRECO ASKS DESIREE, ABOUT TATTOOS ON DEFENDENT'S BODY, SHE STATES: SHE ONLY SEEN ONE (1) ON DEFENDENT'S STOMACH AND 1/2-HALF OF ONE ON HIS BACK (I.F) YOU LOOK AT DEFENSE EXHIBITS D-E-F, ALL PHOTOS TAKEN BY [MR. MICHAEL W. O. BRIAN, INVESTIGATOR FOR THE PUBLIC DEFENDER'S OFFICE] IN COUNTY JAIL, ON FEB-07-1994 TOOK NUMEROUS PHOTOS OF THE DEFENDENT, IT WILL SHOW A VERY-LARGE-VERY-COLOR FULL-VERY BRITE, TATOO IN DEFENDENT'S PELVIC AREA! ("WHICH CLEARLY") SHOWS THAT DESIREE WAS LYING, SHE NEVER SEEN THE DEFENDENT NAKED! -
- (7) DESIREE) SAID SHE HAD SEEN THE DEFENDENT NAKED IN TRIAL SEE: PAGE 61 LINES 1-4: IF THE DEFENDENT HAD BEEN THE PERSON WHO COMMITTED THESE OFFENSES, IT WOULD'VE BEEN "EXTREMELY" HARD FOR THE TATOO TO BE MISSED, [SEE DETECTIVE'S STATEMENT IN PRELIMINARY HEARING] PAGE 73 (Q) YOU ASKED A QUESTION ABOUT TATTOOS, SEE PAGE 74 LINES 1-10, FOR ANSWER; (A). I ASKED THAT QUESTION BECAUSE WHERE ONE OF THE MOST DISTINGUISHING THINGS THAT A GIRL COULD REMEMBER WAS SOMETHING THAT WAS VERY UN-USUAL IN THE PELVIC AREA, SOMETIMES IT'S A TATOO.

CONTINUED - ⑦ [AND I LOOK SPECIFICALLY IN THAT AREA]... / / / /

- ⑧ THE DEFENDENTS TATOO IS VERY LARGE, VERY COLORFULL, AND VERY APPARENT AND THIS IS SOMETHING THE GIRLS WOULD'VE ZERO'D IN ON!!

...CONCLUSION OF FACTS...

DEFENDENTS COUNSLE IN TRIAL, "FAILED OR REFUSED" TO EXPLOIT THE GIRLS IGNORANCE ABOUT THE DEFENDENTS TATOO DURING HIS TRIAL, AND COUNSLE IS THE ONE WHO HAD THE PHOTOS TAKEN AT DEFENDENTS REQUEST TO SHOW/ PROVE HIS INNOCENTS, AFTER IT WAS PROVEN DURING THE PRELIMINARY TRIAL, NO ONE KNEW OF THIS TATOO; DEFENDENTS COUNSLE SHOULD'VE KNOWN IT WOULD'VE PROVEN DEFENDENTS INNOCENTS IN TRIAL, YET DID NOTHING TO HELP DEFEDENT, THIS CONSTITUTES (IAC). IF - COUNSLE WOULD'VE ARGUED OR EXPLOITED THE IGNORANCE OF THE GIRLS KNOWLEDGE OF THE TATOO, [THE JURY'S VERDICT WOULD'VE BEEN DIFFERENT]... / / / / / / / / / /

- (A) AS TO THE COUNSLE ON DIRECT APPEAL (MS. ROBIN WRIGHT); WHO (IF) SHE WOULD'VE TAKEN THE PROPER TIME AND LOOKED AT THE RECORD LIKE A COMPETENT ATTORNEY WOULD, SHE WOULD'VE SEEN THIS SERIOUS ISSUE AND COULD'VE/ SHOULD'VE RAISED IT ON DIRECT APPEAL! DEFENDENT DID NOT GET A FAIR TRIAL NOR DID HE GET A FAIR DIRECT APPEAL, BOTH HIS COUNSLE OF RECORD (JANET SMUCK) AND DIRECT APPEAL COUNSLE (ROBIN WRIGHT) WERE TOTALLY - INEFFECTIVE IN THERE JOBS AS ATTORNEYS TO REPRESENT THE DEFENDENTS CONSTITUTIONAL RIGHTS. IN VIOLATION OF DEFENDENTS 5TH 6TH 14TH USCA RIGHTS.

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POINTS AND AUTHORITIES

DIRECT APPEAL (JAL) COUNSEL, REFUSED TO RAISE
SERIOUS ISSUES ON DIRECT APPEAL. (ROBIN WRIGHT),
IN VIOLATION OF DEFENDERS, 5TH - 6TH / 14TH U.S.C.A. RIGHTS.

HEAB'EUS - CORPUS

CASE # CR 94-0345

CHARLES J. MAKI

DEC. 13-2013

42820

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* (5)

DIRECT APPEAL (IAC) COUNSEL
REFUSED TO RAISE SERIOUS ISSUES
ON DIRECT APPEAL. (ROBIN WRIGHT),
IN VIOLATION OF DEFENDENTS, ^{THH TH} 5, 6, 14 USCA RIGHTS.

APPELLATE COUNSEL) WAS INEFFECTIVE FOR FAILING TO RAISE
THE DENIAL OF THE DEFENSE AND/OR FAILING TO SANCTION THE
STATE FOR FAILING TO PROVIDE EXCULPATORY EVIDENCE TO THE
DEFENDENT IN A TIMELY MANNER... / / / /

- ① THE ACTIONS OF THE DISTRICT COURT AMOUNT TO A MANIFEST
ABUSE OF DISCRETION [SEE: SCOTT, A MINOR V. STATE] 113 NEU.
234, 931 P.2d 1370 (1997), [JOSEPH JOHN H, A MINOR V. STATE], 113
NEU. 621, 939 P.2d 1056 (1997) [SHERIFF V. ROY LAUCE, 110 NEU.]
334, 871 P.2d 359 (1994) [SHERIFF V. TERPSTRA, 111 NEU.] 860, 899
P.2d 548 (1995) (THE DISTRICT COURT HAD GOOD CAUSE TO CONTINUE
THE TRIAL IN ORDER TO LET DEFENDENTS TRIAL COUNSEL HAVE AN
OPPORTUNITY TO REBUT RECENTLY DISCLOSED EVIDENCE). THE
DENIAL OF THE MOTION TO CONTINUE WAS AN ABUSE OF DISCRETION
(TT. PAGE 8 LINES 18-19) (TT. PAGE 5 LINES 22-24) (TT. PAGE 6 LINES 1-12).
- ② APPELLATE COUNSEL] REFUSED TO RAISE ISSUE, THAT THE COURT
DENIED THE DEFENSE AN EXPERT, GIVEN THE FACT THAT DEFENSE
EVEN MADE ORAL MOTIONS, INCLUDING A MOTION TO COMPEL
DISCOVERY. (SEE: EVIDENTIARY HEARING TRANSCRIPTS MARCH-03-1999)
- ③ APPELLATE COUNSEL] REFUSED TO RAISE THIS ISSUE, (SEE: EVIDENTIARY
HEARING MOTIONS TRANSCRIPTS OF THE PROCEEDINGS (MARCH 11-1999;
RENO, NV. JANET COBB SMUCK, COUNSEL FOR THE DEFENDENT, -
ASSISTANT DISTRICT ATTORNEY DAN GRECO: WHO [CLEARLY
STATES] QUOTE: ON PAGE 25 LINES 16-21, YOUR HONOR,

CONTINUED - ③

HAVE AN ANSWER FOR YOU, (SHE) DID SEE A SAINTS EXAMINER, WHICH IS THE NURSE PRACTITIONER THAT EXAMINES CHILD SEXUAL ASSAULT VICTIMS AND [THEY ARE EXPERTS.] THE STATE - CLEARLY ADMITS THE USE OF EXPERT TESTIMONY AND EXAMINATION (SEE TP P. 108 LINE 15 THRU TP LINE 24) TO SEE MS. KATHY C. PELLE QUALIFICATIONS AS NOT ONLY THE HEAD OF SAINTS, BUT MUCH MORE, AND AGAIN THE DEFENSE HAD [NO-ONE] TO DEFEND ITS CASE. ... CLEARLY PREJUDICIAL]. / / / / /

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APPELATE COUNSEL] REFUSED TO RAISE THE ISSUE, THAT THE TRIAL ATTORNEY AND ARGUABLY THE COURT, REFUSING TO ASK FOR A — PSYCHIATRIC EVALUATION OF (DESIREE MENESE), PRIOR TO OR DURING TRIAL TO DETERMINE (IF) THE FATHER (GARY MENESE) HAD PRIOR SEXUAL CONTACT WITH DESIREE. (SEE PRELIM. TRANSCRIPTS P. 334.22-29) (Q). DESIREE HAVE YOU EVER SEEN A "MAN" WITHOUT HIS CLOTHES ON, — (A). YES. "MY DAD"! DESIREE ALSO STATES HOW SHE TOOK SHOWERS WITH HER DAD, (ON TP PAGE 71 LINES 9-15) AGAIN DESIREE STATES, (Q). HAVE YOU EVER SEEN A MAN'S PENIS (A.) YES. "MY DADS"! AGAIN NEVER ABOUT THE DEFENDENT!! THESE ARE HARD FACTS, THAT APPELATE COUNSEL SHOULD HAVE RAISED ON DIRECT APPEAL.

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APPELATE COUNSEL] (REFUSED) TO RAISE THE ISSUE OF, HOW THE STATE PROSECUTION REFUSED OR FAILED TO TURN OVER EVIDENCE (PHOTOS OF ALLEGED VICTIMS UAGINAS) THAT WAS USED BY STATE'S EXPERT, AND WAS IN POSSESSION OF THE PROSECUTION TILL (3) DAYS BEFORE DEFENDENT'S TRIAL, (THIS IS A CLEAR BRADY VIOLATION).. THE DEFENDENT'S 5TH AMENDMENT RIGHT TO DISCOVERY WAS VIOLATED WHEN PROSECUTOR'S PHOTOS OF ENLARGED HYMEN FROM COLOSCOPY WERE NOT GIVEN TO THE DEFENSE UNTIL A COUPLE DAYS BEFORE TRIAL; / / / / /

(5-A) THE DEFENDENTS] 5th U.S.C.A. RIGHTS TO DUE PROCESS AND HIS 14th U.S.C.A. RIGHTS TO DUE PROCESS/EQUAL PROTECTION WERE VIOLATED WHEN PROSECUTION did NOT ADHERE TO PROPERLY MADE REQUEST by the DEFENSE PER N.R.S. 174.235(1) AND N.R.S. 174.285 AS TO THE REQUESTED DISCOVERY AND TIME LIMIT ATTACHED...

(B) THE DEFENDENT] WAS PREJUDICED BY PROSECUTION'S DISCLOSURE OF EVIDENCE (PHOTO'S) A COUPLE OF DAYS BEFORE TRIAL AND WAS "DENIED" THE LEGAL OPPORTUNITY TO HAVE AN EXPERT TO ^{REVIEW} ~~REVIEW~~ THE EVIDENCE, AND "DENIED" AN OPPORTUNITY TO CALL ITS EXPERT TO IMPEACH THE (SAINTS) NURSE AS TO HER EXAMINATION AND FINDINGS [THIS ALL SHOULD'VE BEEN RAISED ON DIRECT APPEAL BY APPEAL COUNSEL.] DISCOVERY ISSUES ARE REVIEWED "DE NOVO".

(BRADY VIOLATION) SEE BRADY V. MARYLAND, 373 U.S. 83, 83 S. CT. 1199 (1963).

⑥ DIRECT APPEAL] COUNSEL, (ROBIN WRIGHT) REFUSED TO RAISE THE (ISSUE OF FACT), THAT THERE WAS ACTUAL AND PREJUDICIAL PERJURY BY THE STATES EXPERT WITNESS, KATHY C. PEELE - NURSE FOR SAINTS, WHO IN TRIAL TOLD THE JURY THAT THERE WAS NO SIGNS OF SEXUAL TRAUMA OR ABUSE ON DESIREE, SEE TT. P. 144 L. 3-4 TT. P. 144 LINES 9-12, PAGE 145-146. BUT TELLING THE JURY THAT A HYMEN WILL GROW BACK.. THIS IS TOTALLY FALSE, YET IT WAS ALLOWED EVEN BY THE COURT, (WHO SHOULD'VE KNOWN IT IS FALSE)...

⑦ DIRECT APPEAL] COUNSEL REFUSED TO RAISE A PROSECUTORIAL MISCONDUCT CLAIM, IN THAT DURING THE DEFENDENTS TRIAL A.D.A. DAN GRECO, (ON TT. P. 53 LINES 10-14,) IS ASKING DESIREE IF THE DEFENDENT EVER ASKED HER TO PUT HIS PENIS IN HER MOUTH, SHE (A.) YES. NOW THE QUESTION IS "HIGHLY-PREJUDICIAL" TO DEFENDENT, AS NOWHERE IN THE RECORD HAS THIS QUESTION EVER BEEN ADDRESSED!

(7-A) BUT, IF YOU LOOK IN THE [INTERROGATION-TRANSCRIPTS PAGE 14, LINES 31-33] DETECTIVE STEIGHMIER ASKS DEFENDER (Q). DID YOU PUT YOUR PENIS IN HER MOUTH (SPEAKING OF DESIRE) (A.) NO! AND ON PAGE 15 LINE 11, DETECTIVE STATES, I BELIEVE YOU, I KNOW WHAT HAPPENED AND THAT'S NOT ONE OF THEM... THIS CLEARLY SHOWS DEFENDENTS INNOCENTS OF THIS FALSE ALLEGATION MADE BY THE DISTRICT ATTORNEY DAN GRECO, WHO JUST INFLAMED THE JURY AND HAD HIS OWN WITNESS COMMIT PERJURY ON THE WITNESS STAND IN TRIAL, ALONG WITH PROSECUTORIAL MISCONDUCT, ALSO (IAC.) AS DEFENSE COUNSEL (JANET C. SMUCK) NEVER OBJECTED, TO THIS LINE OF QUESTIONING AND THIS SHOWS A CLEAR VIOLATION OF DEFENDENTS RIGHTS AND HIS RIGHT TO A FAIR TRIAL... / /

⑧ [DIRECT APPEAL] COUNSEL REFUSED TO RAISE THE ISSUE THAT (SUMMER MENESS) STATED THAT DEFENDENT [NEVER SEXUALLY ASSAULTED HER.] SEE: PRELIM. TRANS. PAGE 42 LINES 12-17, ON LINE 15, IT SAYS "QUOTE", SUMMER DID HIS PRIVATE EVER GO INSIDE YOUR PRIVATE IN DEC. (A.) NO! THIS QUESTION WAS ASKED BY D.A. GRECO...

⑨ [DIRECT APPEAL] COUNSEL REFUSED TO RAISE THE ISSUE THAT SUMMER ALSO STATED THAT THE DEFENDENT NEVER COMMITTED A LEWDNESS ACT WITH HER, SEE: PRELIMINARY HEARING TRANS. PAGE 46 LINE 3. ON PAGE 46 LINES 1-6, LINE 4 [D.A. GRECO ASKS SUMMER (Q) DID HE EVER TOUCH HIS PRIVATE TO THE OUTSIDE OF YOUR PRIVATE (A.) NO ON LINE 6.] [AGAIN CLAIMING THE DEFENDENTS INNOCENTS] / / / / /

(A) YET NEITHER TRIAL COUNSEL (JANET SMUCK) BROUGHT THIS UP DURING THE TRIAL PROCEEDINGS/ NOR DID APPELLATE COUNSEL (ROBIN WRIGHT) EVER BRING THESE SERIOUS ISSUES UP ON DIRECT APPEAL. THIS CLEARLY CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE DEFENDENTS CONSTITUTIONAL RIGHT TO COMPETENT COUNSEL.

CONTINUED (9A) BOTH ATTORNEYS WERE DEFICIENT IN THERE PERFORMANCE AND PREJUDICED THE DEFENDENT'S CASE, SEE: STRICKLAND V. WASHINGTON 466 U.S. 668 (1984)

(10) APPELLATE COUNSEL] REFUSED TO RAISE THE ISSUE, THAT (LEGAL COUNSEL) WAS NOT APPOINTED TO THE DEFENDENT IN A TIMELY MANNER IN THAT, (A) THE COURT ERROR'D IN NOT RULING THAT DEFENDENT'S RIGHT TO COUNSEL WERE VIOLATED AT ALL CRITICAL STAGES OF THE CRIMINAL PROCEEDINGS, AS DEFENDENT WAS NOT APPOINTED COUNSEL UNTILL (15) DAYS AFTER HIS ARREST, [EVEN THOUGH HE ASKED FOR COUNSEL] AT/DURING HIS TIME OF INTERROGATION, [MAKI THEN ENVOCKED HIS RIGHT FOR AN ATTORNEY, [APP 312] (B). APPELLATE COUNSEL REFUSED TO RAISE, THE FACT OF THE (INCOMPLETE RENDITION OF RIGHTS) WHICH OCCURED BY THE OFFICERS (APP 312) DEFENDENT WAS NOT ADVISED THAT ANY STATEMENT HE MADE COULD BE USED AGAINST HIM, "PUR NIRMUDA." [SEE: CARTER V. STATE, 299 P.3d, 967, (2013) NEVADA.]

(11) DIRECT APPEAL] COUNSEL FAILED TO RAISE THE ISSUE'S, THAT THERE WAS ACTUAL CONFLICT OF INTEREST BETWEEN THE DEFENDENT AND HIS TRIAL ATTORNEY (JANET C. SMUCK), THE DEFENDENT AND HIS ATTORNEY OF RECORD WERE IN CONFLICT ON A NUMBER OF ISSUES, HER NOT GETTING WITNESSES TO TESTIFY FOR HIM [SEE: PAUL GRUBBS AFFIDAVIT] EXHIBIT ATTACHED, - INCLUDING HER CONSTANTLY TELLING DEFENDENT HE'S GUILTY PERIOD, FOR WEEKS PRIOR TO HIS TRIAL AND MORE. THESE ISSUES CUMULATOLEY RESULTED IN UN-FAIR REPRESENTATION DURING ALL PROCEEDINGS..

(A) IT GOT SO BAD THE DEFENDENT, WROTE A LETTER TO [MR. MIKE SPECIO] PUBLIC DEFENDERS, HEAD MAN TO WASHOE LEGAL SERVICES, THE NEVADA STATE BAR ASSOC., AND EVEN FILED A REQUEST TO HAVE (ATTORNEY REMOVED FROM HIS CASE TO THE COURT, BUT WAS DENIED BY THE (SIC) COURT ON (4-03-1994).

- (11-B) IT WENT DOWN HILL FAST IN LEGAL REPRESENTATION FOR THE DEFENDENT.
- (12) COUNSEL FOR DIRECT APPEAL) REFUSED TO RAISE THE ISSUE THAT TRIAL COUNSEL (P.D. JANET C. SMUCK) OFFERED BASICALLY NO - DEFENSE AT ALL, SEE: TRIAL TRANSCRIPTS/ SENTENCING TRANSCRIPTS
- (13) DIRECT APPEAL COUNSEL) REFUSED TO RAISE THE ISSUE, THAT TRIAL COUNSEL REFUSED TO PROPERLY INVESTIGATE ANY OF THE FACTS THAT PETITIONER GAVE TO COUNSEL PRIOR TO TRIAL, SUCH AS THAT PETITIONER NEVER CALLED [GARY MENESS], WHICH COULD BE VERIFIED BY PHONE BILLS/ RECORDS, OR THAT [GARY MENESS] HAD BEEN INVESTIGATED BY CHILD SERVICES (2) YEARS PRIOR TO DEFENDENT'S COMING TO NEVADA OR HIS ARREST, FOR ALLEGED LEWD ACTS WITH HIS (2) DAUGHTERS, - SEE: PLT, PAGE 33 LINE 22-24 AND TT. PAGE 71 LINES 9-15 ALONG WITH AFFIDAVIT OF MR. PAUL GRUBBS...
- (14) DIRECT APPEAL COUNSEL) REFUSED TO RAISE THE ISSUE, HOW COUNSEL OR THE COURT ERROR'D IN ALLOWING [MRS. COOMBS] TO TESTIFY THAT DEFENDENT SEXUALLY ABUSED HER 20 YRS PRIOR IN ANOTHER STATE, -
- (A) AND NEVER BROUGHT UP THE FACTS THAT COUNSEL HAD DEFENDENT'S F.B.I. RECORDS AND COULD PROVE [THE DEFENDENT WAS IN JAIL (8) STATES AWAY FOR (2) YEARS, PLUS WAS IN SERVICE (ARMY) AND IN JOB CORPS IN CHEROKEE N.C., INCLUDING A BOY'S SCHOOL IN TX.] ALL TOTAL 11 YRS STRAIGHT.
- (B) DEFENDENT NEVER SEEN J. COOMBS OR THAT FAMILY FROM 12 YRS OLD TO 22 YRS OLD, AND DEFENDENT'S ATTORNEY HAD ALL RECORDS - YET REFUSED TO USE THEM.
- (15) DIRECT APPEAL COUNSEL) REFUSED TO RAISE THE FACT THAT DEFENDENT WAS "NOT" ARRANGED [IN PERSON] WITHIN THE 48 HR. RULE OF POWELL V. STATE, 338 P.2D 921 (1992), POWELL V. NEVADA, 114 S. CT (1994), PROBABLE CAUSE DETERMINATION CITED N.R.S. 171.178, 171.178(3), ~~171.186~~ 171.186; CONSTITUTIONAL LAW SET BY THE UNITED STATES -

(15-A) WHERE THE UNITED STATES SUPREME COURT STATES, QUOTE:
WE HOLD [A SUSPECT MUST COME IN PERSON
BEFORE A MAGISTRATE WITHIN 48 HRS
INCLUDING NON-JUDICIAL HOLIDAYS FOR
A PROBABLE CAUSE DETERMINATION..]

(16) THE DEFENDENT SUBMITTS THAT THE HONORABLE
NEVADA SUPREME COURT, WOULD HAVE RULED IN HIS
FAVOR ^{IF} THESE ISSUES OF FACT ^{HAD} BEEN PRESENTED
ON DIRECT APPEAL. [DEFENDANT ASKS FOR RETRIAL.]

First being duly sworn and under the penalty do hereby despose and state as follows:

1. That I am over the age of (21) twenty one years of age and am fully compentent to testify to the matters set forth herein, and that all statements are made of my own personal knowledge and belief.
2. That on January 19, 1994. and prior to that date I lived at 1015 Nevada street #5 Reno NV. 89504.
3. That I personally knew Charles Maki as he lived in the same appartment complex that I live in, and he lived in apartment Number 8.
4. That Mr. Maki and I worked on his truck on january 18 & 19 1994 that on January 19 1994 mr. Maki and I were drinking beer and two (2) plain clothes police men came up and arrested Mr. Maki, At least I believed that Mr. Maki was under arrest as the officers took him away Mr. Maki in my opinion was intoxicated as he and my self had been drinking beer all that day.
5. My step son John knows both of the girls that Mr. Maki is alleged to have sexually assaulted, as they were his playmates.
6. Mr. Maki contacted me after he had been arrested and asked me if I would be willing to come to court for him and testify in his behalf; I told Mr. Maki that I would be willing to testify in his behalf.
7. I could have offered testimony of Mr. Maki's caricture and how he acted around the alleged victims, as well as testamony concerning the girls, as well as there father and how he treated them.
8. I could of also offered testimony concerning the fact that the (2) two alleged victims were always left alone by there father.
9. That a Ms. Smuck left a card on my door and I attempted to contact her at the phonr number that she left but she never did return my calls, until right before Mr. Maki's trial.
10. I left messages for Ms. Smuck on several occasions that I was willing to testify for Mr. Maki and that I had vital information that would assist Mr. Maki and his defence.
11. I could of also testified that the alleged victims were baby sitted by a single male friend of there fathers and that it is my believe that he is the person that may have assulted the two victims the friend of the fathers was named francis, at least that is what I believe his name to be.
12. I finally contacted Ms. Smuck and she told me that Mr. Maki did not want nor need me to testify for him, as the state did

not have a case and that Mr. Maki would be found innocent..

13. To my personal knowledge Mr. Meneese has been investigated by the child welfare dept. and the Reno police dept. in 1992 for allegations of child abuse, Lewdness with a minor and possible sexual assault of his own children; This was due to Mr. Meneeses habbit of getting drunk and telling others of his habbit of taking showers with the girls and running around the house nude in front of the children.

14. Mr. Maki did watch Mr. Meneeses girls on occasion, as Mr. Meneeses would leave his girls with anybody that would watch them for him when he wanted to go out drinking and gambling.

15. on many occassions when I would go up-stairs to Chucks (Mr. Maki's) Apartment and I would notice that Mr. Meneeses girls were at home alone and this would be until late at night.

16. It was not uncommon for Mr Meneese to leave his girls at home alone and the girls would have boys over while there father was gone, either at work or drinking and gambling at the Gold dust west casino in Reno.

17. Mr. Meneese told me he would get back at Mr. Maki Because Mr. Meneeses ex-girl friend left him and moved in with chuck (Mr. Maki) next door, she stayed there from Nov. 1993 to Dec. 1993 until Mr. Meneese made to much trouble for her.

18. Mr. Meneese bragged a few times when he was drinking how he had beat the system and would never have to go to jail for the acts he did with his girls; I understand there was testimony by the girls of lewd acts by the father during Chucks (Mr. Maki's) preliminary hearing.

19. In December of 1993 Chuch and the down stairs tenant that lived in theApts. caught the younger of the alleged victims with a boy in the girls bed room doing a sexual act.

20. Mr. Maki and the tenant both told Mr. Meneese about the above stated incident and Mr. Meneese stated that is was no big deal that it has happend in the past.

21. I told Ms. Smuck of this too, and she stated that this information was not needed. I also gave her the names of the people next door that had personal knowledge of the incident stated in paragraph #19.

22. Mr. Maki told me to go out and find the people that had lived in the apartment complex because Ms. Smuck had told him (Mr. Maki) that nobody wanted to come and testify for him; I told chuck that this was not true, as I had given Ms. Smuck the names as well as information but Ms. Smuck stated that this information was not needed because the state did not have a case.

23. I don't understand Ms. Smucks Judgment, when she could have called many witnesses that lived in the same apartment complex

and know the people and fact of this case.

DATED THIS 29th DAY OF September, 1995

STATE OF NEVADA
County of White Pine

Paul Grubbs
Signature

SUBSCRIBED and SWORN to before me
this 29th day of September, 1995

John Huth

NOTARY PUBLIC



JOHN HUTH

NOTARY PUBLIC - STATE OF NEVADA
White Pine County - Nevada
APPT. EXP. Dec. 3, 1995

STAMP

1 CODE: 3335
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5

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

9 CHARLES MAKI,

10 Petitioner,

Case No. CR94-0345

11 vs.

Dept. No. 8

12 STATE OF NEVADA,
13

14 Respondent.
15 _____/

16 ORDER GRANTING IN *FORMA PAUPERIS*

17 Petitioner is currently serving a sentence in a correctional institution.
18 Pursuant to Nevada Supreme Court's Order ADKT No. 411, a person will be deemed
19 indigent, who is unable, without substantial hardship to himself or his dependents, to
20 obtain competent qualified legal counsel on his own. Under this standard, a
21 presumption of substantial hardship attaches to those persons currently serving a
22 sentence in a correctional institution or housed in a mental health facility.

23 The Court further finds that pursuant to NRS 171.188, petitioner has
24 insufficient assets and/or income to proceed absent a grant of *forma pauperis* status.

25 IT IS HEREBY ORDERED, pursuant to NRS 171.188 petitioner is granted
26 leave to proceed in *forma pauperis*.

27 IT IS HEREBY FURTHER ORDERED that the Court allow petitioner to bring
28 such action without costs and file or issue any necessary writ, process, pleading or
paper without charge, with the exception of jury fees.

1 IT IS HEREBY FURTHER ORDERED that the Sheriff or any other appropriate
2 officer within the state make personal service of any necessary writ, process, pleading
3 or paper without charge for petitioner.

4 IT IS SO ORDERED.

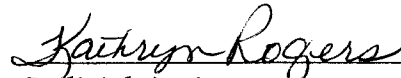
5 Dated: January 7th, 2014.

6 
7 _____
8 District Court Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the 7th day of January, 2014, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

Charles Maki, 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702


Judicial Assistant

1 CODE 2715

2

3

4

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8

9 CHARLES MAKI,

10 Petitioner,

11 vs.

Case No. CR94-0345

12 STATE OF NEVADA,

Dept. No. 8

13 Respondents.

14 _____/

15

16 ORDER GRANTING APPOINTMENT OF COUNSEL

17 This matter comes before the Court after Petitioner was found indigent.

18 Pursuant to NRS 34.750, the Court finds good cause to appoint counsel to represent

19 the Petitioner.

20 Therefore, IT IS HEREBY ORDERED that the above-entitled matter is referred

21 to Robert Bell, Esq., Administrator of the Court Appointed Counsel, for the selection of

22 counsel to represent Petitioner in his pursuit of post-conviction relief.

23 Dated this 7th day of January, 2014.

24

25

26 
DISTRICT JUDGE

27

28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; and that on this date I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Terrence P. McCarthy, Esq.

Robert C. Bell, Esq.

Further, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

**Charles Maki, 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702**

Robert C. Bell, Esq.
20 Winter Street
Reno, NV 89503

DATED this 7th day of January, 2014.

Kathryn Rogers
KATHRYN ROGERS
Judicial Assistant

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

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 01-07-2014:16:56:07
Clerk Accepted: 01-07-2014:16:56:25
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Ord Proceed Forma Pauperis
Filed By: Judicial Asst. KRogers

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

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

-

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

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

ROBERT BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

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

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 01-07-2014:16:57:04
Clerk Accepted: 01-07-2014:16:58:13
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Ord Appointing Counsel
Filed By: Judicial Asst. KRogers

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

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

-

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

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

ROBERT BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

1 **Code : 2715**

2
3 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
4 **IN AND FOR THE COUNTY OF WASHOE**

5 * * *

6 CHARLES MAKI,

7 Petitioner,

Case No. : CR94-0345

8 vs.

Dept No. : 8

9 STATE OF NEVADA,

10 Respondent.
11 _____/

12 **RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL**
13 **(POST CONVICTION)**

14 The Petitioner having been granted Forma Pauperis Status, and District Court
15 Judge Stiglich having determined that there is a basis for the appointment of
16 counsel and having referred the matter to the Administrator of the Court Appointed
17 Counsel for selection of counsel for the Petitioner, the Administrator of the Court
Appointed Counsel makes the following recommendation:

18 IT IS HEREBY RECOMMENDED that Robert Story, Esq., be appointed to
19 represent Petitioner on this Petition For Writ Of Habeas Corpus. Said Counsel is to be
20 paid pursuant to NRS 7.115 through NRS 7.165 by the State Public Defender in an
21 amount recommended by the Administrator and approved by the Court.

22 IT IS HEREBY FURTHER RECOMMENDED that Petitioner's counsel have ten (10)
23 days from the date of the Court's Order to designate what portions of the Court file
24 counsel requests be provided to him by the Clerk of the Court;

25 IT IS HEREBY FURTHER RECOMMENDED that, if the newly appointed attorney
26 is not an electronic filer with the Second Judicial District Court, the Clerk of the
27 Court shall provide a CD of all designations made by Petitioner's counsel within five
28 (5) days of the designation. If the newly appointed attorney is an electronic filer


1 with the Second Judicial District Court, the newly appointed attorney shall be
2 placed as the attorney of record in case number CR94-0345.

3 IT IS HEREBY FURTHER RECOMMENDED that Counsel have forty-five (45) days
4 from the date of the receipt of the record within which to supplement the Petition
5 For Writ Of Habeas Corpus or file a Notice indicating that the original Petition For
6 Writ Of Habeas Corpus shall stand as filed;

7 IT IS HEREBY FURTHER RECOMMENDED that the State of Nevada be ordered
8 to respond within forty-five (45) days from the date of filing and service by the
9 Petitioner of the Petition to Supplement or Notice Of Nonsupplementation;

10 IT IS HEREBY FURTHER RECOMMENDED that Counsel for Petitioner and the
11 State of Nevada be ordered to appear within fifteen (15) days of the final briefing
12 before the Administrative Assistant in Department 8, of the Second Judicial District
13 Court for the purpose of setting this case for hearing.

14 DATED this 28 day of Jan., 2014.

15 
16 ROBERT C. BELL, ESQ., ADMINISTRATOR,
COURT APPOINTED COUNSEL

17 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
18 Judicial District Court's Model Plan to address ADKT 411, good cause appearing
19 and in the interest of justice,

20 IT IS HEREBY ORDERED that the recommendations of the Administrator are
21 hereby confirmed, approved and adopted. Robert Story, Esq., shall be appointed
22 to represent Petitioner on his Petition For Writ Of Habeas Corpus.

23
24 DATED this 29th day of Jan., 2014.

25 
26 CHIEF DISTRICT JUDGE

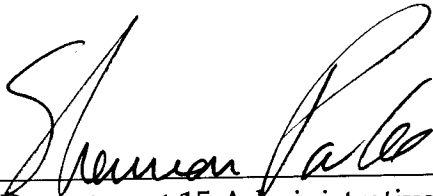
27 Signed without review pursuant to ADKT 411
28 Second Judicial District Court Indigency Report,
Dated May 1, 2008

CERTIFICATE OF SERVICE

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 29 day of January, 2014, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Bob Bell
Via interoffice mail

Robert Story, Esq.
2450 Vassar St., #3b
Reno, NV 89509


Department 15 Administrative Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-01-29 10:51:45.86.

LIDIA STIGLICH - Notification received on 2014-01-29 10:51:45.813.

ROBERT BELL, ESQ. - Notification received on 2014-01-29 10:51:45.782.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

01-29-2014:10:49:44

Clerk Accepted:

01-29-2014:10:50:56

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Appointing Counsel

Filed By:

Judicial Asst. SParke

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT C. BELL, ESQ.

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

CHARLES (D8) MAKI

CHARLES MAKI

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-10 12:43:28.243.

ROBERT STORY, ESQ. - Notification received on 2014-03-10 12:43:28.15.

ROBERT BELL, ESQ. - Notification received on 2014-03-10 12:43:28.181.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-10-2014:11:09:43

Clerk Accepted:

03-10-2014:12:42:45

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ex-Parte Application

- **Continuation

- **Continuation

Filed By:

Robert W. Story

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-26 08:30:03.007.

ROBERT STORY, ESQ. - Notification received on 2014-03-26 08:30:02.897.

ROBERT BELL, ESQ. - Notification received on 2014-03-26 08:30:02.944.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-26-2014:08:29:04

Clerk Accepted:

03-26-2014:08:29:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Sealed Order

Filed By:

Judicial Asst. SParke

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Code: 2075
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
Telephone: (775) 284-5510
Facsimile: (775) 996-4103

Attorneys for Petitioner Charles Maki

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

CHARLES MAKI,

Petitioner,

Case No. CR 94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

MOTION FOR ENLARGEMENT OF TIME
IN WHICH TO PREPARE AND FILE THE SUPPLEMENTAL PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner Charles Maki by and through his appointed counsel, applies to this Court for an order enlarging time within which to file the Supplemental Petition for Writ of Habeas Corpus by 90 days through June 30, 2014, for the following reasons: This is a 20 year old case with an extensive file – in both the state and federal courts – and with multiple prior attorneys. Indeed, appointed counsel has yet to obtain the entire file. Counsel then needs to meet with Petitioner in Warm Springs to discuss the case with Petitioner. If necessary, counsel will do other investigation, and then supplement petitioner's pro se petition for writ of habeas corpus.

Counsel does not bring this request to unnecessarily delay the proceedings in this case, but to address petitioner's claims of ineffective assistance of counsel and other claims.

AFFIRMATION
Pursuant to NRS 239B.030

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

Respectfully Submitted.

March 31, 2014.

STORY LAW GROUP

By: /s/ Robert W. Story
ROBERT W. STORY, ESQ.

Attorneys for Petitioner Charles Maki

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on March 31, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy
Chief Appellate Deputy
Washoe County District Attorney's Office
Attorneys for Respondents

I declare under penalty of perjury that the foregoing is true and correct.

Dated on June 3, 2013, at Reno, Nevada

/s/ Barbara A. Ancina
BARBARA A. ANCINA

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-31 12:15:34.86.

ROBERT STORY, ESQ. - Notification received on 2014-03-31 12:15:34.767.

ROBERT BELL, ESQ. - Notification received on 2014-03-31 12:15:34.798.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-31-2014:11:34:01

Clerk Accepted:

03-31-2014:12:15:04

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Mtn for Extension of Time

Filed By:

Robert W. Story

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Code: 3860
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
Telephone: (775) 284-5510
Facsimile: (775) 996-4103

Attorneys for Petitioner Charles Maki

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

CHARLES MAKI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. CR94-0345

Dept. No. 8

REQUEST FOR SUBMISSION

Petitioner Charles Maki, by and through his appointed counsel, hereby moves to submit his Motion for Enlargement of Time in Which to Prepare and File The Supplemental Petition for Writ of Habeas Corpus, filed March 31, 2014, be submitted to the Court for decision.

Affirmation Pursuant to NRS 239B.030

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

April 7, 2014.

STORY LAW GROUP

By: /s/ Robert W. Story .

Attorneys for Petitioner Charles Maki

PROOF OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on April 7, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows;

Terrance P. McCarthy
Washoe County District Attorney's Office
One South Sierra Street
P.O. Box 30083
Reno, Nevada 89520 – 3083
STORY LAW GROUP

By: /s/ Robert W. Story .

Attorneys for Petitioner

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-07 14:27:34.831.

ROBERT STORY, ESQ. - Notification received on 2014-04-07 14:27:34.721.

ROBERT BELL, ESQ. - Notification received on 2014-04-07 14:27:34.768.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-07-2014:13:49:10

Clerk Accepted:

04-07-2014:14:26:58

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Request for Submission

Filed By:

Robert W. Story

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-14 11:49:28.13.

ROBERT STORY, ESQ. - Notification received on 2014-04-14 11:49:28.036.

ROBERT BELL, ESQ. - Notification received on 2014-04-14 11:49:28.068.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-14-2014:11:04:51

Clerk Accepted:

04-14-2014:11:48:54

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ex-Parte Application

- **Continuation

- **Continuation

Filed By:

Robert W. Story

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

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

CHARLES MAKI, Case No. CR94-0345
Petitioner, Dept. No. 8
vs.
THE STATE OF NEVADA,
Respondent.

ORDER

Currently before the Court is Petitioner CHARLES MAKI's ("Petitioner")
Motion for Enlargement of Time in Which to Prepare and File the Supplemental
Petition for Writ of Habeas Corpus, filed March 31, 2014. No opposition was filed.
Petitioner requests more time to review the 20 year old file and meet with
Petitioner. The Court has reviewed the record in its entirety and finds no dilatory
motive on the part of Petitioner.

///

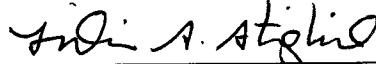
///

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1 Accordingly, and good cause appearing, the Petitioner CHARLES MAKI's
2 *Motion for Enlargement of Time in Which to Prepare and file the Supplemental*
3 *Petition for Writ of Habeas Corpus* is **GRANTED**. Petitioner shall have until June
4 30, 2014 to file the Supplemental Petition for Writ of Habeas Corpus.

5 **IT IS SO ORDERED.**

6 **DATED** this 17th day of April, 2014.

7
8 
9 LIDIA S. STIGLICH
10 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 17th day of April, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Terrence McCarthy, Esq.

Robert Story, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


KATHRYN ROGERS
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-17 16:29:03.438.

ROBERT STORY, ESQ. - Notification received on 2014-04-17 16:29:03.344.

ROBERT BELL, ESQ. - Notification received on 2014-04-17 16:29:03.376.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-17-2014:16:28:01

Clerk Accepted:

04-17-2014:16:28:33

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Granting Mtn

Filed By:

Judicial Asst. KRogers

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-29 10:04:01.714.

ROBERT STORY, ESQ. - Notification received on 2014-04-29 10:04:01.183.

ROBERT BELL, ESQ. - Notification received on 2014-04-29 10:04:01.277.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-29-2014:10:00:20

Clerk Accepted:

04-29-2014:10:03:01

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Sealed Order

Filed By:

Judicial Asst. SParke

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Code: 2610
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
Telephone: (775) 284-5510
Facsimile: (775) 996-4103

Attorneys for Petitioner Charles Maki

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

CHARLES MAKI,

Petitioner,

Case No. CR 94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

NOTICE TO COURT OF NO SUPPLEMENT

Petitioner Charles Maki, by and through his appointed counsel, provides notice to the Court and the Respondent that, upon thorough review of the records of the criminal proceedings together with legal research and other investigation, the Petition currently on file with the Court shall stand as filed and no supplement to that Petition shall be presented

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social

///

///

///

///

security number of any person.

Respectfully Submitted.

June 30, 2014.

STORY LAW GROUP

By: /s/ Robert W. Story
ROBERT W. STORY, ESQ.

Attorneys for Petitioner Charles Maki

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on June 30, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy
Chief Appellate Deputy
Washoe County District Attorney's Office
Attorneys for Respondents

I further certify that some of the participants in the case are not registered e-Flex users. I have mailed the foregoing document by First Class Mail, postage prepaid to the following non-e-Flex participant:

Charles Maki
#42820
Warm Springs Correctional Center
P.O. Box 707
Carson City, NV 89702

I declare under penalty of perjury that the foregoing is true and correct.

Dated on June 3, 2013, at Reno, Nevada

/s/ Barbara A. Ancina
BARBARA A. ANCINA

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-06-30 12:14:06.221.

ROBERT STORY, ESQ. - Notification received on 2014-06-30 12:14:06.127.

ROBERT BELL, ESQ. - Notification received on 2014-06-30 12:14:06.158.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

06-30-2014:11:33:28

Clerk Accepted:

06-30-2014:12:13:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Notice

Filed By:

Robert W. Story

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

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

CHARLES MAKI, Case No. CR94-0345
Petitioner, Dept. No. 8
vs.
THE STATE OF NEVADA,
Respondent.

ORDER

Currently before the Court is Petitioner CHARLES MAKI's ("Maki") *Petition for Writ of Habeas Corpus Post-Conviction*, filed December 30, 2013.

BACKGROUND

On April 12, 1994, Maki was found guilty of multiple counts of the crimes of sexual assault on a child under the age of fourteen years and lewdness with a child under the age of fourteen years. Maki's appeal to the Nevada Supreme Court was dismissed after the court concluded it lacked merit. On July 18, 1997, the Court heard Maki's initial petition for post conviction relief and denied it. Maki filed a writ of mandamus on August 2, 2013, and appealed the Court's purported dismissal of the writ to the Nevada Supreme Court. The court determined no decision had been made on the petition and dismissed the appeal.

Maki subsequently filed the *Petition* now before the Court and requested that counsel be appointed. The Court granted that request: Maki was appointed counsel

1 who requested extra time to review the 20 year old file and meet with Petitioner.
2 On June 30, 2014, Maki's counsel filed notice with the Court that no supplement
3 would be filed.

4 LEGAL STANDARD

5 A petition for writ of habeas corpus for post-conviction relief must be filed
6 within 1 year from the entry of judgment. NRS 34.726(1). In order for a court to
7 accept an untimely petition, it must find good cause for delay, such as that delay is
8 not the petitioner's fault and dismissal would cause undue prejudice. *Id.* "In terms
9 of a procedural time-bar, an adequate allegation of good cause would sufficiently
10 explain why a petition was filed beyond the statutory time period." *Hathaway v.*
11 *Stat*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (per curiam).

12 If the petition is a second or successive petition challenging the validity
13 of a judgment of conviction or sentence and if it plainly appears from
14 the face of the petition . . . that the petitioner is not entitled to relief
15 based on any of the grounds set forth in subsection 2 of NRS 34.819,
the judge or justice shall enter an order for its summary dismissal

16 Nev. Rev. Stat. § 34.745(4).

17 NRS 34.810(2) states, "A second or successive petition must be dismissed . . .
18 if new and different grounds are alleged, [and] the judge or justice finds that the
19 failure of the petitioner to assert those grounds in a prior petition constituted an
20 abuse of the writ." Nev. Rev. Stat. § 34.810(2). Further, if a petition challenges a
21 judgment based on a jury verdict, any claim that could have been raised in a prior
22 proceeding is waived. Nev. Rev. Stat. § 34.810(1)(b).

23 DISCUSSION

24 Maki has not provided any explanation for the delay in his filing, let alone
25 provided an explanation that would amount to good cause for the delay. Maki was
26 convicted over twenty years ago. He timely appealed and the appeal was denied.
27 He was given counsel and a hearing to determine the merits of his petition for writ
28 of habeas corpus post conviction relief in 1997 and that petition was denied. The

1 Court finds Maki's failure to assert the grounds in the instant *Petition* in his
2 original petition constitutes an abuse of the writ. Maki bears the burden of
3 pleading and proving specific facts to demonstrate good cause for his failure to
4 previously present the claims in his *Petition* as well as actual prejudice. Nev. Rev.
5 Stat. § 34.810(3). He has failed to satisfy this burden. The Court will not now
6 revisit Maki's twenty year old conviction absent any explanation for the delay in his
7 filing.

8 CONCLUSION

9 Accordingly, and good cause appearing, Petitioner CHARLES MAKI's
10 *Petition for Writ of Habeas Corpus Post-Conviction* is **DENIED**.

11 **IT IS SO ORDERED.**

12 **DATED** this 7th day of July, 2014.

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15 LIDIA S. STIGLICH
16 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 7th day of July, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Terrence McCarthy, Esq.

Robert Story, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Charles Maki
#42820
Warm Springs Correctional Center
P.O. Box 707
Carson City, NV 89702


KATHRYN ROGERS
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-07 15:28:04.624.

ROBERT STORY, ESQ. - Notification received on 2014-07-07 15:28:04.53.

ROBERT BELL, ESQ. - Notification received on 2014-07-07 15:28:04.562.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-07-2014:15:26:55

Clerk Accepted:

07-07-2014:15:27:34

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Dismiss Post Conviction

Filed By:

Judicial Asst. KRogers

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

JUL 18 2014

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

C. H. A. R. L. E. S. M. A. K. I., # 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Petitioner, In Proper Person

IN THE 2ND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WARDEN SMITH, ETC.

Plaintiff,

Vs.

Defendant,

C. H. A. R. L. E. S. M. A. K. I.

Case No.: CR94-0345

NOTICE APPEAL

Please take notice that C. H. A. R. L. E. S. M. A. K. I., Defendant, and in his proper person, hereby appeals to the Nevada State Supreme Court, the judgment(s) in the above- entitled action(s) entered in this Honorable Court on or about the 7th day of JULY, 2014. This notice of Appeal is timely filed pursuant to NRAP4(b).

DATED this 15 day of JULY, 2014.

Respectfully Submitted,

C. H. A. R. L. E. S. M. A. K. I.
DEFENDANT, In Propria Persona

COURT
copy

CERTIFICATE OF MAILING

I, CHARLES MARK, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

WASHOE COUNTY D.A. OFFICE
District Attorney
P.O. Box 11170 RENO NV.
89570

(Copy to)

CLERK OF COURT
75 COURT ST.
RENO, NV. 89501

(Copy to)

ROBERT STACY JR
2450 JASPER ST 3D
RENO NV. 89502

DATED this 15 day of July, 20 14

BY: Charles Mark
 Appellant, In Proper Person

FILED

JUL 18 2014

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

CHARLES MAKI, # 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Appellant, In Proper Person

IN THE 2ND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

<u>CHARLES MAKI</u>)	Case No. <u>CR94-0345</u>
Appellant,)	
)	Dept. No. <u>8</u>
Vs.)	
)	Dkt. No. <u>UNKNOWN</u>
<u>WARDEN SMITH ECT.</u>)	
Respondant,)	
)	

DESIGNATION OF RECORD ON APPEAL

Please take notice that CHARLES MAKI, Appellant,
and in his proper person, hereby files this Designation of Record
on Appeal in the above entitled action, pursuant to NRAP 10(b); and
respectfully herein asks this Honorable Court to designate the
record on appeal, to be certified by the Clerk of the District
Court and transcribed to the Clerk of the Nevada State Supreme
Court: All motions, pleadings, judgments, and transcripts.

DATED this 15th day of JULY, 20 14.

Respectfully Submitted,

CHARLES MAKI
APPELLANT, In Propria Persona

CERTIFICATE OF MAILING

I, Charles mma, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

WASHOE COUNTY P.A.

District Attorney

P.O. Box 11130 Reno NV

89520

(Copy to)

CLERK OF COURT

75 COURT ST

RENO NV. 89501

(Copy to)

ROBERT STOMESA

2450 WASSAR ST. 3B

RENO NV. 89502

DATED this 15th day of July, 20 14

BY: Charles mma
Appellant, In Proper Person

V5. 855
DC-09900058110-003
STATE VS CHARLES JOSEPH MAKI 24 Pages
District Court 07/18/2014 08:00 AM
Washoe County
VUT: RSTC
CR94-0345

ORIGINAL
TO THE COURT

DATE...

CHARLES MAKI - 42820

JULY 08 2014

WARM SPRINGS CORR. CENTER

P.O. Box 7007

CARSON CITY, NV. 89702

FILED

JUL 18 2014

JOEY HASTINGS, CLERK
DEPT. 8 BY: [Signature]
DEPUTY CLERK

CASE # CR94-0345

PETITIONER - IN PRO SE,

THOUGH DOES HAVE COURT

FED. CASE NO: CV-00201-RLH/PAC

APPOINTED COUNSEL, ROBERT STORP.

IN THE 2ND JUDICIAL DISTRICT COURT
OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI
PETITIONER
VS.
GREG, SMITH ET AL.
RESPONDENTS.

NOTICE TO COURT...

①

TO THE HONORABLE COURT, PLEASE TAKE NOTICE
IN REGARDS TO ALL THE PETITIONERS [PLEADING TO REVERSE
[ALLEGED TIME BARR] ALONG WITH ARGUMENT PART 1 AND 2.] ALSO
INCLOSED IS (EXHIBITS A-F-G-K), FOR THE COURT TO SEE, 12 PAGES
TOTAL, WITH CERTIFICATE OF SERVICE. ALL THE ABOVE STATED IS TO
SHOW AND PROVE TO THIS HONORABLE COURT HOW N.D.O.C. - NEVADA
DEPT. OF CORRECTIONS (LOVE LOCK CORR. CENTER) MAIL ROOM STAFF
HAD REFUSED TO SEND THE PETITIONER HIS LEGAL MAIL FROM
THE COURTS, SEE EXHIBIT A AND K... PETITIONER HAD KNOWN WAY
OF KNOWING THE COURTS WERE CORRESPONDING WITH HIM FOR
2 YRS, TILL PETITIONER FINALLY WROTE TO THE COURTS ASKING

V5. 855

CONTINUED

From page - 1.

ABOUT HIS CASE, ONLY TO FINALLY FIND OUT THAT PETITIONER WAS TOLD BY COURTS TO GO BACK DOWN TO LOWER COURTS (STATE) AND EXHAUST CERTAIN CLAIMS, AND THAT PETITIONER'S CASE WAS ALSO DISMISSED WITHOUT PREJUDICE. IN FEDERAL COURT (DISTRICT).

②

IN REGARD TO PETITIONER'S COURT APPOINTED ATTORNEY (ROBERT STORY) IN THE LETTER [FROM SAID ATTORNEY - TO THE PETITIONER] MR. STORY STATES HIS REFUSAL TO DO A SUPPLEMENTAL BRIEF IN PETITIONER'S BEHALF AND QUESTIONS THE COURT'S DECISION, OVER THIS ALLEGED TIME BARR SITUATION. AGAIN THIS HONORABLE SHOULD LOOK AT EXHIBITS A-F-G-K. SEE: ROE V. FLORES-ORTEGA, 528 U.S. 470, 145, L.Ed 2d 985 (2000) WHICH STATES: AN ATTORNEY'S FAILURE TO FILE A APPEAL IN SPITE OF BEING INSTRUCTED TO DO SO, IS PER-SE INEFFECTIVE ASSISTANCE OF COUNSEL. ALSO IN: UNITED STATES V. SNITZ, 342 F.3d 1154, 1155-56 (10th CIR. 2003) STATES: A LAWYER WHO DISREGARDS SPECIFIC INSTRUCTIONS TO PERFECT A CRIMINAL APPEAL ACTS IN A MANNER THAT IS BOTH PROFESSIONALLY UN-REASONABLE AND PRESUMPTIVELY PREJUDICIAL.

- CONCLUSION -

PETITIONER ARGUES THAT HE SHOULD BE EXCUSED FROM THIS TIME BARR (PROCEDURAL DEFAULT) THAT HE CAN SHOW CAUSE FOR THE ACTUAL PREJUDICE ARISING FROM THE DEFAULT. PETITIONER WAS UN-ABLE TO KNOW WHAT THE COURT HAD ORDERED IN THIS MATTER AT HAND, ROBBING HIM OF THE ABILITY TO COMPLY WITH PROCEDURE, TERMS OR ANY SPECIFIC ORDER CONTAINED WITH THE ORDER, THE COURT'S ORDER DISMISSING [WITHOUT-PREJUDICE] AND BEING PAST THE TIME LIMIT TO FILE WAS BASED ON PETITIONER'S FAILURE TO RESPOND TO AN ORDER HE NEVER RECEIVED FROM THE COURTS... THIS WAS DUE COMPLETELY ON N.D.O.C. NOT COMPLYING WITH V5.856 HERE

OWN AR⁵ RULE 750. (SEE EXHIBIT A INCOMING LEGAL MAIL.)
 LINES 1 AND 2. SEE EXHIBITS A-F-G-K. / / /
 PETITIONER IS SHOWING POSITIVE PROOF THRU THESE EXHIBITS, AND
 ALONG WITH THE [PLEADING AND ARGUMENT ATTACHED] THAT
 THE PRISON EMPLOYEES IN THE MAIL ROOM AT LOU LOCK CORR. CENTER
 PREJUDICALLY INTERFERED, WITH PETITIONER LEGAL ACCESS TO THE
 COURTS. THE PETITIONERS BACK # 42820 CAN TELL PRISON OFFICIALS
 WHERE PRISONER IS ANY WHERE ANY PLACE IN THE U.S.A.
 [SUCH A SHOWING OF INTERFERENCE BY PRISON OFFICIALS IS ONE OF THE
 WAYS IN WHICH A TIME BAR MAY BE EXCUSED FOR A PROCEDURAL
 DEFAULT. SEE: RONALD R. FRANCIS V. WARDEN 894 F.2d 353; (1990)
 9th CIR. T. ALSO, MURRAY V. CARRIER, 477 U.S. 478, 488, 91 L. Ed
 2d 397, 106 S. CT 2639 (1986); ORLEN EX REL. - AND SHERWOOD V. GLADDEN,
 240 F.2d 910, 911-12 (9th CIR. 1957).

sign - charles mafi

sign - CHARLES MAFI - 42820

DATE July of 2014

PAGE 1-3

CHARLES MAKI - 42820

DATE JULY 08 2014

WARM SPRINGS CORR. CENTER

P.O. Box 7007

CARSON CITY, NV. 89702

DEPT. NO. 8

PETITIONER IN PRO-SE,

CASE NO. CR94-0345

THOUGH DOES HAVE COUNT

FED. CASE NO. CV-00201 RLH/pal

APPOINTED COUNSEL, MR. ROBERT STORJ.

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI

(APPEAL)

"ALLEGED"

PETITIONER

PLEADING, TO REVERSE TIME BAR,

VS.

AS CASE WAS DISMISSED (WITHOUT) PREJUDICE.

GREG SMITH ET AL

BUT DUE TO LOVELOCK CORR. CENTER'S MAIL ROOM

RESPONDENTS

STAFF "NOT" SENDING/FORWARDING INMATES LEGAL MAIL

FROM COURT TO HIM, CREATED THE ALLEGED TIME BAR.

...INTRODUCTION...

(1) MR. MAKI HAS NEVER BEEN GIVEN A FULL AND FAIR CHANCE TO LITIGATE HIS CLAIMS, MAKI REMAINS ADAMANT THAT HE IS [FACTUALLY - INNOCENT] OF THE CHARGES AGAINST HIM.

A) A CLAIM CANNOT BE BARRED ON THE GROUNDS THAT IT IS SUCCESSIVE IF THE LITIGENT WAS NEVER GIVEN A FULL AND FAIR CHANCE TO LITIGATE HIS CLAIMS. SEE: LIEBMAN V. HERTZ, [FEDERAL HE'DERS CORPUS PRACTICE AND PROCEDURE], VOL. 2 P. 897 (2d ED. 1994), SANDERS V. U.S., 373 U.S. 1 (1963) AT 7-8; ALSO FRANK V. MAGNUM, 237 U.S. 307 (1915).

V5. 858

(2) PETITIONERS TIME BARR SHOULD BE RECONSIDERED BY THIS HONORABLE COURT, AS IT WAS ORDERED BY FEDERAL COURT TO GO DOWN TO THE LOWER COURTS TO RESOLVE CERTAIN CLAIMS AS THIS HONORABLE COURT IS ALREADY AWARE OF. PETITIONERS CASE WAS DISMISSED WITHOUT PREJUDICE. EVEN THOUGH THIS HONORABLE COURT HAS GRANTED PETITIONERS HE'BEUS CORPUS AND HAS GRANTED HIM A COURT APPOINTED ATTORNEY, (A MR. ROBERT W. STORY) OF STORY LAW GROUP RENO, NV. PETITIONER'S ATTORNEY STATES THE COURT HAS MADE AN ERROR IN JUDGMENT GRANTING PETITIONERS HE'BEUS CORPUS, AND WILL NOT FILE A SUPPLEMENT BRIEF IN PETITIONERS BEHALF, AND HAS FILED SUCH WITH SAID COURT ON 6-30-2019...

A) "COUNSEL'S NON-STRATEGIC OR INADVERTENT FAILURE TO LITIGATE A CLAIM IN THE STATE OR FEDERAL COURTS VITIATES ANY OPPORTUNITIES THAT MAY OTHERWISE HAVE EXISTED FOR FULL AND FAIR LITIGATION".
Id AT 887 (CITING O'BERRY V. WAINWRIGHT, 546 F.2d 1204, 1213-14 (5th CIR.)...

B) THE FULL AND FAIR HEARING REQUIREMENT IS DESIGNED TO ASSURE THAT WHEN "STATE ORGANS" HAVE NOT FUNCTIONED CORRECTLY, "GRAVE CONSTITUTIONAL ERRORS [DO-NOT] GO FOREVER UN-CORRECTED".
TOWNSEND V. SAIN, 372 U.S. 293, 319 (1963)...

C) A PETITIONER WHO CANNOT SHOW CAUSE AND PREJUDICE MAY YET PRESENT HIS PROCEDURALLY DEFAULTED CLAIMS, IF HE CAN DEMONSTRATE A FUNDAMENTAL MISCARriage OF JUSTICE. SEE: WAINWRIGHT V. SYKES, 433 U.S. 72, 97 S. CT. 2497, 53 L. ED 2d 594 (1997).
MURRY V. CARRIER ~~in part~~ POLAND V. STEWARD 92 F.2d 881 (1996).
 ALSO SEE: HOGAN V. WARDEN, 109 NEUMOR 952, 860 P.2d 710 (1993),
 AND MCCLESKEY V. ZANT, 499 U.S. 467 (1991).

3) THE LACK OF AND POOR QUALITY OF EVIDENCE UTILIZED IN THE PETITIONER [3 1/2 HOUR TRIAL] (ALONG WITH INADEQUATE TRIAL COUNSEL,) THAT CONVICTED PETITIONER (NO D.N.A. NO ~~PHYSICAL~~ PHYSICAL EVIDENCE, NO MEDICAL EVIDENCE AT ALL) CAN-NOT / SHOULD-NOT BE ALLOWED TO UP HOLD HIS CONVICTION.

A) PETITIONER FEELS NOT ONLY THE STATE DISTRICT COURT, HONORABLE STEVEN KOSACK WHO DISMISSED THE 1ST HABEAS CORPUS WAS AN ABUSE OF DISCRETION AS RECORDS WOULD SHOW, BUT MORE SO HOW THE HONORABLE NEVADA SUPREME COURT UP HELD THE LOWER COURTS DECISION, WHEN THE COURT ADMITS IT [DID-NOT HAVE ALL OF THE PETITIONER'S RECORDS, TRIAL TRANSCRIPTS, OR POST CONVICTION, OR MOTIONS SUBMITTED BY PETITIONER'S COUNSEL,] EVEN THOUGH PETITIONER HAD 2 ATTORNEYS APPOINTED BY COURTS, AND IT WAS CLEARLY COURT CLERKS MISTAKES, COURT BLAMES IT ALL ON PETITIONER. SEE: ORDER OF AFFIRMANCE OCT-10-2000 PAGE 4 PARAGRAPH 2 AND 4, PAGE 6 BOTTOM PARAGRAPH AND PAGE 7 WHERE THE NEVADA SUPREME COURT CLEARLY STATES HOW BOTH OF PETITIONER'S ATTORNEYS WERE ON [SEVERAL OCCASIONS, COUNSEL FAILED TO CITE OR TO RELEVANT PORTIONS OF THE APPENDIX AND DISCUSS HOW ISSUES WERE IN THE DISTRICT COURT, ETC.] IN OTHER WORDS BOTH OF PETITIONER'S ATTORNEYS WERE INEFFECTIVE ASSISTANCE OF COUNSEL, BY THE COURTS OWN ADMISSION. PETITIONER THEN FILED APPEAL IN FEDERAL DISTRICT COURT. WHERE AS TOWARDS 4 1/2 YRS OF LITIGATING HIS CASE IT WAS FINALLY DISMISSED WITHOUT PREJUDICE AND WAS TO GO BACK DOWN TO LOWER COURTS TO RE-ARGUE UNFINISHED CLAIMS, BUT N.D.C. SENT PETITIONER'S LEGAL MAIL BACK TO COURTS 2 TIMES CLAIMING THEY DIDN'T KNOW WHERE HE WAS, AFTER 2 YRS PETITIONER FOUND OUT HE WAS TIME BARRED.

Sign Charles M. V5. 860
DATE July 08, 2014

DATE

JULY-08-2019

(PETITIONER'S)

CASE WAS DISMISSED (WITHOUT) PREJUDICE, (IN 2006)

DUE TO LOVELOCK CORR. CENTER'S MAIL ROOM

FREE STAFF, "NOT" SENDING/FORWARDING INMATE

C. MAKI - 42820 LEGAL MAIL FROM COURT TO HIM...

STATE CR94-0345/ DEPT
8

I. ARGUMENT... FED. CASE # CK5-01-0268 RLH-PAL

NAME CHARLES MAKI - 42820

AT THE TIME PETITION WAS FILED, IN 2001 IN FED. CT. MAKI WAS INCARCERATED AT [HIGH DESERT - MAXIMUM] SECURITY PRISON, IN NV. BEFORE THE FED. COURT (DIST.) RENDERED ITS JUDGMENT, MAKI WAS TRANSFERRED TO LOVELOCK CORR. CENTER, IN 2004, A MEDIUM/MAX PRISON; IN JAN 2006, INMATE MAKI WAS THEN TRANSFERRED TO INDIAN-SPRINGS MEDIUM PRISON. (FROM 3-30-2006 TO (5-23-2006) INMATE MAKI WAS STILL ARGUING HIS CASE FROM INDIAN SPRINGS PRISON, SEE: CIVIL DOCKET SHEET PAGE #6-7.... THAT ON 6-13-2006 THE CLERK OF COURT, SENT A SHOW CAUSE ORDER #75 TO LOVELOCK CORR. CENTER, EVEN THOUGH MAKI WAS AT INDIAN SPRINGS, AND ARGUING HIS CASE FROM INDIAN SPRINGS; THAT THERE WAS AN IMPEDIEMENT EXTERNAL TO THE DEFENSE THAT DEMONSTRATE BY SHOWING THE FACTUAL AND LEGAL BASIS FOR MAKI'S CLAIM WAS NOT REASONABLY AVAILABLE THAT INTERFERENCE BY THE N.D.O.C. MAIL ROOM OFFICIALS MADE COMPLIANCE IN PRACTICABLE, SITE; PELLEGRINI V. STATE 34 p. 3d 519, 537 (2001) MAKI WAS AGAIN TRANSFERRED BACK TO LOVELOCK CORR. CENTER IN SEPT. 2006 AND NEVER HEARD FROM ANY COURT/FEDERAL DIST. NOR RECEIVED ANY SUCH ORDER TO COMPLY - NOTHING AT ALL, AS N.D.O.C. NEVER FORWARDED HIS LEGAL MAIL TO HIM. PR. AR 750 SEE V5. 861A.

UNTIL ~~MAKIS~~ [FEB. 2008] SEE DOCKET SHEET PAGE 7 ^H 79-80
 I NEVER GOT ANY MAIL FROM THE FEDERAL COURT AND
 DID NOT RECIEVE ANY ORDER DISMISSING my CASE
 WITHOUT PREJUDICE. THE FEDERAL DISTRICT COURT
 MAINTAINS (ITS) FEDERAL JURISDICTION, AND BECAUSE THE
 JURISDICTION ATTACHES ON THE INITIAL FILING FOR HA'DEUS
 CORPUS RELIEF, IT IS NOT DESTROYED BY A TRANSFER
 OF THE PETITIONER, AND THE ACCOMPANYING OF CUSTODIAL
 CHANGE. SEE; SANTILLANES V. U.S. PAROLE COMMISSION, 754
 F.2d 887-88 (10th CIR. 1985); ACCORD SMITH V. CAMPBELL,
 450 F.2d 829, 834 (9th CIR. 1971) INSERT FRANCIS V. RISON
 894 F.2d 353 (9th CIR. 1990). MAKI ARGUES THAT HE
 SHOULD BE EXCUSED FROM THE ALLEGED PROCEDURAL
 DEFAULT. HE CONTENTS THAT HE CAN SHOW CAUSE FOR
 THE ALLEGED BY PASS OF PROCEDURES AND ACTUAL PREJUDICE
 ARISING FROM THE DEFAULT. MAKI FURTHER ARGUES, THAT
 PRISON EMPLOYEES AT [LOVELOCK CORRECTIONAL CENTER]
 INTERFERED WITH HIS ACCESS TO ADMINISTRATIVE [LEGAL]
 REMEDIES. SUCH A SHOWING OF INTERFERENCE BY OFFICIALS,
 [THE MIS HANDLING OF MAKI'S LEGAL MAIL], AS PER
 AR 750, DESIGNATION/ FORWARDING OF LEGAL MAIL AND
 AR 722; IS ONE OF THE WAYS IN WHICH A HA'DEUS PETITIONER
 MAY BE EXCUSED FOR A PROCEDURAL DEFAULT. SEE:
 OREGON EX REL SHERWOOD V. GLADDEN 240 F.2d 910,
 911-12 (9th CIR. 1957); ALSO SEE MURRY V. CARRIER 106 S. CT.
 2639 (1986) ALSO, PELLEGRINI V. STATE, 117 NEU. 860, 886,
 34 P.3d 519, 537 (2001).

MAKI FURTHER STATES IT SHOULD BE NOTED THAT THE COURT HAS NOT PREVIOUSLY APPLIED A CAUSE AND PREJUDICE STANDARD TO A PROCEDURAL DEFAULT OF LEGAL REMEDIES. THE STANDARD HAS BEEN APPLIED, HOWEVER, TO A WIDE RANGE OF STATE PROCEDURAL DEFAULT. SEE: HUGHES V. IDAHO BOARD OF CORRECTIONS 800 F.2d 903, 908 (9th CIR 1986), CITED CASES; ALSO SEE SANCHEZ, 792 F.2d AT 697-99 (1986) (CAUSE AND PREJUDICE IN ADMINISTRATIVE PROCESS); FURTHER SEE FRANCIS V. RISON, WARDEN 894 F.2d 353 (1990).....

MAKI FURTHER ARGUES THAT [THE PRISON OFFICIALS HAVE A TIMELY OBLIGATION TO DELIVER INMATES LEGAL MAIL, AS PER AR 750 IN A TIMELY MANNER]. [THE MISHANDLING OF MAKI'S LEGAL MAIL], CAUSED MAKI TO LOSE HIS APPEAL OF RIGHT, WHICH VIOLATES HIS 14th AMENDMENT. THERE [NEVER SHOULD BEEN A TIME WHERE N.D.O.C.] "DID-NOT" KNOW WHERE MR. MAKI WAS, YET THAT'S WHAT N.D.O.C. USED AS AN EXCUSE TO SEND MAKI'S LEGAL MAIL BACK TO THE FEDERAL DISTRICT COURT, (TWICE)..

MAKI'S RIGHT TO ACCESS TO THE COURTS WAS VIOLATED BECAUSE OF THE LOVELOCK CORRECTIONAL CENTER PRISON OFFICIALS "FAILURE" TO DELIVER AND FORWARD HIS LEGAL MAIL TO HIM. EVEN THOUGH THE PRISON OFFICIALS WILL STATE THAT THEY DID-NOT INTENTIONALLY MISHANDLE DELIVERY OF MAKI'S LEGAL MAIL, THE RIGHT OF HIS APPEAL WAS UNJUSTLY AFFECTED JUST THE SAME, IN THAT MR. MAKI WAS PRECLUDED FROM THE CONTINUATION OF PURSUING HIS STATUTORY RIGHT OF APPEAL. THE RIGHT OF ACCESS TO ANY COURT IS FUNDAMENTAL, IT IS WELL ESTABLISHED THAT ALL PRISONERS HAVE A CONSTITUTIONAL RIGHT TO ACCESS TO THE COURTS.....

THE UNITED STATES SUPREME COURT HAS FOUND A 14TH AMENDMENT VIOLATION, WHERE A PRISON OFFICIAL DID NOT SEND PAPERS (LEGAL) TO THE INMATE, WHICH RESULTED IN A PETITIONERS DISMISSAL OF HIS APPEAL OF RIGHT, BECAUSE HE COULD NOT FILE HIS APPEAL DOCUMENTS BEFORE THE FILING DEADLINE... STATES; HAVE AFFIRMATIVE OBLIGATIONS TO ASSURE THAT ALL PRISONERS HAVE A MEANINGFUL ACCESS TO THE COURTS, CONSISTANT WITH THEIR OTHER AFFIRMATIVE OBLIGATIONS, PRISON'S HAVE AN OBLIGATION [TO TIMELY MAIL/FORWARD COURT DOCUMENTS] WHEN THE PRISONER HAS BEEN DILIGENT AND PUNCTUAL IN SUBMITTING THEM TO PRISON OFFICIALS; MAKI HAS DONE THIS FROM DAY ONE, UN-TILL THE PRISON OFFICIALS REFUSED TO SEND/FORWARD HIM HIS LEGAL MAIL FROM THE FED. DIST. CT., THAT CAUSED HIS PROCEDURAL DEFAULT AND PREJUDICE TO HIM, SEE JOHN DORN V. BLAIN LAFLE WARDEN, 601 F.3d 439 (6TH CIR) 2010... AS PURSUANT TO FRANCIS V. RISON, 894 F.2d 353 (9TH CIR 1990), * STANDS FOR THE PROPOSITION THAT THE INDIVIDUAL TRANSFER FROM ONE INSTITUTION TO ANOTHER WILL ENTAIL THE U.S. DISTRICT COURT TO HAVE AND MAINTAIN SUBJECT MATTER JURISDICTION AS WELL AS FOR THE PURPOSES OF EXHAUSTION OF ADMINISTRATIVE/LEGAL REMEDIES. SEE THE APPLICABLE STANDARDS BELOW UPDATING FRANCIS V. RISON, SUPRA - 61 DBS V. THOMAS, 2010 U.S. DIST. LEXIS 122152 (2010); HERNANDEZ V. LAPPIN 2010 U.S. DIST. LEXIS 130752 (2010); MORALES V. DE BOO 2010 U.S. DIST. LEXIS 133346 (2010); SHADABADI V. APKER 2010 U.S. DIST. LEXIS 139604 (2010); NAPOLEON V. YUES 2011 U.S. DIST. LEXIS 44355 (2011); ABPLANALP V. ADLER 2011 U.S. DIST. LEXIS 49195 (2011); VASQUEZ-MARIN V. BENO V, 2011 U.S. DIST. LEXIS 65754 (2011)

II.

CASE # CV-5-01-0268 RLK

MARK ALLEN PINNELL V. BRIAN BELLEQUE, U.S. DIST. CT.
OF OREGON 638 F. Supp. 2d 1231; (2009)

* [CRIMINAL LAW AND PROCEDURE] [HABEUS CORPUS] [PROCEDURE]

[APPOINTMENT OF COUNSEL]... IN PART STATES; THE
U.S. DISTRICT COURT HAS GIVEN AS ONE EXAMPLE OF CAUSE
SOME INTERFERENCE BY OFFICIALS THAT MADE COMPLIANCE
WITH PROCEDURAL RULES IMPRACTICABLE. PRISON OFFICIALS
INTERFERENCE WITH A PETITIONER'S ACCESS TO ADMINISTRATIVE-
LEGAL REMEDIES CAN BE CAUSE FOR A PROCEDURAL DEFAULT.

"CONSTITUTIONALLY" INEFFECTIVE ASSISTANCE OF COUNSEL, HAS
ALSO BEEN CONSIDERED CAUSE FOR PROCEDURAL DEFAULT. (MAKI
FIRED HIS FED. PUBLIC DEFENDER) (FOR NOT DOING HER JOB
ALONG WITH SERIOUS CONFLICT OF INTEREST) SEE DOCKET # 59.

THE U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT HAS CONCLUDED
THAT AN OMISSION COMMITTED BY AN ATTORNEY ACTING UNDER
A CONFLICT OF INTEREST MAY CONSTITUTE CAUSE TO EXCUSE
PROCEDURAL DEFAULT EVEN IN THE ABSENCE OF A 6TH AMEND.

VIOLATION. FINALLY, MAKI CONTENDS THAT - THAT NOT ONLY
IF HIS (FEDERAL PUBLIC DEFENDER) DID HER JOB MORE PROFESSIONAL
AND BY THE STANDARDS OF LAW - SEE; STRICKLAND V. WASHINGTON 466
U.S. 668, 690, 80 L Ed 2d 674, 104 S. CT. 2052 (1984), THAT HE WOULD
NOT HAVE FIRED HER, [AND THAT THE COURT SHOULD STILL REPLEAD SAID
COUNSEL WITH "CONFLICT FREE" NEW COUNSEL AS MAKI REQUESTED]
AND THE COURT DENIED; SEE DOCKET # 59-60-61-63, MR. MAKI
FEELS THIS WHOLE TIME BARR COULD BEEN COMPLETELY AVOIDED

FROM THE START.

SIGN CHAN V5. 865

DATE JULY 08 14 CHAN MAKI

AFFIDAVIT OF CHARLES MAKI # 42820

STATE OF NEVADA }
COUNTY OF CARSON CITY }

TO WHOM IT MAY CONCERN:

I) CHARLES MAKI THE UNDER SIGN DO HEARBY SWEAR THAT ALL OF THE FOLLOWING STATEMENTS AND DESCRIPTIONS OF EVENTS ARE TRUE, AND CORRECT OF MY OWN KNOWLEDGE, INFORMATION AND BELIEF AND TO THOSE I BELIEVE TO BE TRUE AND CORRECT...

(1) THAT CHARLES MAKI AFFIANT IN THIS AFFIDAVIT IS CURRENTLY INCARCERATED AT WARM SPRINGS CORRECTIONAL CENTER JULY 2014...

(2) I) CHARLES MAKI HAVE BEEN INCARCERATED SINCE MAY 1994 IN THE NEVADA DEPT. OF PRISONS.

(3) I) CHARLES MAKI WAS FROM 2004 TO JAN 2006 AT LOVELOCK CORR. CENTER.

(4) I) CHARLES MAKI WAS AT INDIAN SPRINGS PRISON (SDCC) FROM JAN 2006 TILL SEPT 2006.

* (5) I) CHARLES MAKI HAVE EXHIBIT A TO SHOW THE COURT, IN REGARDS TO PRISONS AR 722/750. PAGE 13 THAT WILL POSITIVELY PROVE THAT N.D.O.C NEVADA DEPT. OF CORRECTIONS/ LOVELOCK CORR. CENTER'S MAIL ROOM STAFF SHOULDVE SENT/ FORWARDED PETITIONERS LEGAL MAIL TO HIM INSTEAD OF SENDING IT BACK TO COURT [NOT ONCE, BUT TWICE], AS EXHIBIT K WILL PROVE. SEE EXHIBITS F-G TO BACK UP (PARAGRAPH 5) OF THIS AFFIDAVIT. ALL EXHIBITS ARE ATTACHED TO PLEADINGS AND ARGUMENT.

(6) I) CHARLES MAKI FEEL N.D.O.C./ LOVELOCK PRISON STAFF, IS AT FAULT FOR NOT ALLOWING ME TO HAVE EXCESS/ TO COMUNICATE WITH THE COURT AND BY DOING SO GOT ME IN THE CURRENT SITUATION I'M IN...

NEXT PAGE

AFFIDAVIT OF [CHARLES MAKI] CONT.

- (7) I) CHARLES MAKI FEEL THAT BECAUSE N.D.O.C / LOVELOCK PRISON'S STAFF REFUSED TO FOLLOW AR 7.22/750. PAGE 13 [EXHIBIT A] PROCEDURE OR POLICY (I) SHOULD NOT BE HELD ACCOUNTABLE FOR THE ALLEGED TIME BAR ECT.
- (8) I) CHARLES MAKI FEEL THAT AS AN INMATE WITH A BACK NUMBER 42820 THERE IS NO EXCUSE FOR LOVELOCK MAIL RM. STAFF TO NOT TO JUST PUNCH my NUMBER UP ON Any COMPUTER IN A MATTER OF SECONDS, TO FIND OUT my CURRENT LOCATION, AS ITS DONE 100'S OF TIMES EVERY DAY THROUGH OUT THE PRISON SYSTEM... INSTEAD OF CREATING A SERIOUS LEGAL FATALITY BY JUST SENDING BACK my LEGAL MAIL TO COURTS STATING RE-TURN TO SENDER / ADDRESS UN-KNOWN SEE EXHIBIT K...
- (9) I) CHARLES MAKI HAVE NEVER RECIEVED A PROCEDURAL DEFAULT / YOUR TIME BARR'D FROM COURT, AS REQUIRED BY LAW...

DECLARATION UNDER PENALTY OF PERJURY.

I, THE UNDERSIGNED UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTION IN THIS DECLARATION WILL SUBJECT ME TO PENALTIES OF PERJURY. (I) DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE ABOVE INFORMATION IS ACCURATE, CORRECT AND TRUE TO THE BEST OF my KNOWLEDGE EXECUTED WITHIN THE TERMS OF N.R.S. 208.165 SEE 28 USC 1746 AND 18 USC 1621...

DAY MONTH YR
DATED THIS 08 OF JULY 2014

SIGN NAME Charles Maki # 42820

PRINT NAME CHARLES MAKI

[INDEX OF EXHIBITS]

EXHIBIT A

OF PAGES 1

EXHIBIT DESCRIPTION STHNS N.D.O.C. LEGAL MAIL policy 722.02/AR 750

EXHIBIT F

OF PAGES 1

EXHIBIT DESCRIPTION LETTER TO PRISON MAIL ROOM / RESPONSE TO AR 750

EXHIBIT G

OF PAGES 1

EXHIBIT DESCRIPTION LETTER TO LAW LIBRARY / RESPONSE TO AR 750

EXHIBIT K

OF PAGES 1

EXHIBIT DESCRIPTION PETITIONERS RETURN LETTER TO COURTS / BY PRISON OFFICIALS

SIGN CHARLES MAKI-42820

SIGN CHARLES MAKI

DATE JULY 08-2014

EXHIBIT A-

EXHIBIT A

- A. The word "confidential" must be included on the face of the envelope or the mail will be processed as general correspondence.
 - B. Indigent or indigent at the moment legal mail may be scanned, but not read, prior to sealing the envelope.
 - C. If the mail is not legal in nature the mail will not be processed.
- 8. Mail addressed to the Governor, Attorney General, or Secretary of State will be inspected before the envelope is sealed, then initialed by the staff.
 - 9. Legal mail will not be held in the institution longer than 24 hours before transmittal, excluding weekends and holidays.
 - 10. All legal mail must be sent via the U.S. Postal Service unless ordered otherwise by the Court.
 - 11. There is no limit to the amount of legal postage an indigent inmate or indigent at the moment inmate may accumulate for legal postage.
 - A. This policy should extend only to the pursuit of civil rights, habeas corpus, or post-conviction litigation actions.
 - B. This policy shall extend only to first-class mail for all legal mail unless the Court requires certification.
 - C. Both indigent and indigent at the moment inmates must sign a brass slip to ensure the State is reimbursed once the funds are available.
 - 12. Locations served by the State Mailroom are to separate legal mail with a note that the legal mail is to be charged full rate and not pre-sort rate.

722.09 INCOMING LEGAL MAIL

- 1. Incoming legal mail must meet the address requirements of AR 750.
- 2. Legal mail received for inmates housed in other institution or facilities should be forwarded by way of the U.S. mail to the inmate.
 - A. Inter Departmental mail will not be used for this purpose.
- 3. Legal mail received for inmates who are no longer supervised by the Department will be immediately returned to sender or forwarded, provided an address is available.

Exhibit "A" Page 1 of 1

EXHIBIT - E

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
C Huck maki	42820	1A-8A	11-14-11

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER ☐ MEDICAL ☐ MENTAL HEALTH ☐ CANTEEN
☐ EDUCATION ☐ VISITING ☐ LAW LIBRARY ☐ DENTAL
☐ LAUNDRY ☐ PROPERTY ROOM ☒ OTHER Love/lock mail Room..

5.) NAME OF INDIVIDUAL TO CONTACT: MAIL Room 9/6 OR FREE STAFF AT L.L.C.C.

6.) REQUEST: (PRINT BELOW) I WOULD LIKE TO KNOW WHATS YOUR, -
N.D.O.C. policy AND PROCEDURE FOR FORWARDING MY (LEGAL
MAIL) IF I GOT TO ANOTHER PRISON IN STATE OF NEVADA. -
- WHILE UNDER STATE JURISDICTION, OF N.D.O.C.!! AS PER AR 750,
AND AR 722...

Thadgou

7.) INMATE SIGNATURE C Huck maki DOC # 42820

8.) RECEIVING STAFF SIGNATURE S/O WALKER DATE 11-14-11

9.) RESPONSE TO INMATE

All 1st Class mail is forwarded to you through the U.S. Post Office

10.) RESPONDING STAFF SIGNATURE S/O Chant DATE 11/17/11

Exhibit-F

EXHIBIT-6

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Chuck maki	42820	1A8A	11-23-2011

4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input checked="" type="checkbox"/> LAW LIBRARY	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> SHIFT COMMAND	<input type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input type="checkbox"/> OTHER	

5.) NAME OF INDIVIDUAL TO CONTACT: Mrs. Fick, Law-Library Supervisor / Lovelock CORR. CEN.

6.) REQUEST: (PRINT BELOW) I would like to know IF (I) GET TRANSFERRED ANY TIME TO ANOTHER PRISON IN THE STATE OF NEVADA WHILE STILL UNDER NDOC-JURISDICTION, WHATS THE POLICIE/PROCEDURE UNDER [AR 250] [LEGAL MAIL] How do you [FORWARD] my LEGAL-MAIL TO ME BEING FROM my ATTORNEY OR COURTS, IF OR WHEN (I) GET TRANSFERRED TO ANOTHER STATE INSTITUTION - Including Jail...

Thank you! For your Time..

7.) INMATE SIGNATURE Chuck maki DOC # 42820

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

Your mail is forward via USPS.

10.) RESPONDING STAFF SIGNATURE [Signature] DATE 11-28-11

Exhibit-G

EXIBIT-1C

COURT'S
COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ALL SAID DOCUMENTS, INCLUDING
NOTICE TO THE COURT, - PLEADING TO REVERSE ALLEGED,
TIME BAR, ARGUMENT, - AFFIDAVIT OF CHARLES
MAKI, ALONG WITH EXHIBITS A-F-G-K.
ARE TRUE AND CORRECT, UNDER PENALTY OF PERJURY.

[COPY'S SENT TO:]

COUNT 75 COUNT 51

RENO, NV. 87501

TO:

ROBERT STONG

2450 VASSAR ST. 35

RENO, NV. 87502

DATED JULY 08-2014

CHARLES MAKI 42820

CHARLES MAKI

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, NOTICE TO
(APPEAL) (PETITIONERS)
COUNT, PLEADING TO REVERSE TIME BARR, ARGUMENT, PETITIONERS
AFFIDAVIT, EXHIBITS A-F-G-K, CERTIFICATE OF SERVICE.
(Title of Document)

filed in case number: DEPT. 8 / CR 94-0345

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 08 2014

Charles Maki
(Signature)

CHARLES MAKI
(Print Name)

ROBERT STORRY
(Attorney for)

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-22 08:11:37.995.

ROBERT STORY, ESQ. - Notification received on 2014-07-22 08:11:37.901.

ROBERT BELL, ESQ. - Notification received on 2014-07-22 08:11:37.933.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-21-2014:15:50:34

Clerk Accepted:

07-22-2014:08:11:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ex-Parte Application

- **Continuation

- **Continuation

Filed By:

Robert W. Story

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Code 1310

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

CHARLES MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(2).

1. This appeal is from an order entered by the Honorable Judge Lidia Stiglich.
2. Appellant is Charles Maki. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:
Charles Maki #42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:
Terrance McCarthy, Esq.
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is licensed to practice law in Nevada.

6. Appellant was represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed January 7, 2014 in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order filed July 7, 2014.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845
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 24th day of July, 2014.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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

CHARLES MAKI,

Petitioner,

vs.

Case No. CR94-0345

THE STATE OF NEVADA,

Dept. No. 8

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 24th day of July, 2014, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 24th day of July, 2014

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-24 08:39:41.669.

ROBERT STORY, ESQ. - Notification received on 2014-07-24 08:39:41.17.

ROBERT BELL, ESQ. - Notification received on 2014-07-24 08:39:41.591.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-24-2014:08:38:35

Clerk Accepted:

07-24-2014:08:39:10

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

CHARLES MAKI - #42820

WARM SPRINGS CORR. CENTER
P.O. Box 7002
CARSON CITY, NEVADA 89702

FILED

AUG 06 2014

JOEY HASTINGS, CLERK

By: DEPUTY CLERK

PETITIONER IN PROPER PERSON,

Wh. Th. COURT APPOINTED ATTY.

ROBERT W. STORY.

IN the 2ND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI
PETITIONER

CASE NO: CR 94-0345

V.

DEPT NO: 8

WARDEN SMITH ET AL,
RESPONDENT

DESIGNATION OF RECORD ON APPEAL

SUPPLEMENTAL - BRIEF.

PLEASE TAKE NOTICE THAT CHARLES MAKI - #42820 PETITIONER, AND
IN HIS PROPER PERSON, WITH THE ASSISTANCE OF HIS COURT APPOINTED
(ATTORNEY ROBERT W. STORY) HERE BY FILES THIS SUPPLEMENTED
BRIEF, TO BE FILED WITH, FILED RECORD OF APPEAL DATED JULY 18-2014.
TO THE NEVADA SUPREME COURT. AS MY COURT APPOINTED ATTORNEY
MR. ROBERT W. STORY OF STORY LAW GROUP, RENO NV. WILL ARGUE
THIS COMPLETE APPEAL IN PETITIONERS BEHALF, AS ATTORNEY STATED
TO PETITIONER IN A LETTER, (ATTORNEY WILL TAKE AND ARGUE CASE
UP TO AND THRU SUPREME COURT OF NEVADA): STATED FEB 03-2014/6-30-2014
BY LETTERS...

DATED 03 AUG 2014

RESPECTFULLY SUBMITTED

SIGN. CHARLES MAKI
PETITIONER IN PROPER PERSON.

V5-886

CR94-0345
STATE VS CHARLES JOSEPH MAKI 19 Pages
District Court 08/06/2014 02:44 PM
Washoe County
DOC
1600
ASMITH

SUPPLEMENTAL - BRIEFARGUMENT AGAINST TIME BAR.DATED AUG 4TH 2014

CASE NO: GR 94-0845

DIST NO: 8

COMES NOW THE PETITIONER CHARLES MAKI who WAS DENIED
HIS 1ST-6TH AND 14TH AMENDMENT CLAUSE TO DUE PROCESS AND
TO ACCESS TO THE COURTS, BY AN EXTERNAL IMPEDEMENT BEYOND
HIS CONTROL AND DUE TO THIS IMPEDEMENT THE PETITIONER,
SHOULD NOT BE TIME BARRED.

STATE CREATED IMPEDEMENT.

CLAUSE CAN BE SHOWN IF THE STATE CREATES AN IMPEDEMENT,
[OBSTRUCTION OR BLOCKAGE] IN VIOLATION OF THE CONSTITUTION OR "LAWS
OF THE UNITED STATES" THAT PREVENTS YOU FROM FILING THE APPLICATION
OR MOTION. THE UNCONSTITUTIONAL OR ILLEGAL IMPEDEMENT MUST
BE CREATED BY THE STATE. 28 U.S.C. § 2241 (d)(1)(B) (2006).
IN JANUARY OF 2006, THE PETITIONER WAS INSTRUCTED BY THE
STATE OF NEVADA'S ATTORNEY GENERAL'S OFFICE THAT PETITIONER
WOULD BE TRANSPORTED IMMEDIATELY [WITHIN 24 HRS] TO SOUTHERN
DESERT CORR. CENTER [INDIAN SPRINGS] UPON SUPENA, TO TESTIFY AGAINST
OTHERS PART^Y TO AN ASSAULT.
ON MAY 23, 2006, PAGE SIX (6) OF SEVEN (7) ENTRY #74 OF DOCKET FOR
THE U.S. DISTRICT COURT, DISTRICT OF NEVADA LAS-VEGAS, CASE #2:01
CV-00268 RLH-PAL, DEMONSTRATES THAT PETITIONER SUBMITTED

AN OPPOSITION TO #72 motion to Dismiss petition for writ of HABEAS-CORPUS EXHAUSTION: FILED by the PETITIONER CHARLES JOSEPH MAKI, ENTERED 9/25/2006. THIS CLEARLY DEMONSTRATES THAT THE COURT AND THE COURT CLERK WAS FULLY-AWARE OF THE PETITIONERS CURRENT ADDRESS.

A. THE MOST CONCERNING PART OF THE IMPEDIMENT IS HOW THE PETITIONERS LEGAL MAIL WAS "NOT" FORWARDED TO HIM, AS IS THE POLICY OF N.D.C.C./ NEVADA DEPT. OF CORRECTIONS, SEE: AR 722/ AR 750; WHICH STATES ALL MAIL WILL BE FORWARDED TO INMATE BY U.S.P.S./UNITED STATES POSTAL SERVICE. SEE EXHIBIT* A WHICH IS FILED WITH STATE COURT CLERK, WASHOE COUNTY, RENO NV. - [JULY 18-2014]...

A-1 ON 6-14-2006, THE FEDERAL COURT SENT THE PETITIONER A "SHOW-CAUSE" ORDER; POST-MARK DATED LETTER, SEE: EXHIBIT* K, [ALSO FILED WITH STATE COURT CLERK WASHOE COUNTY, RENO, NV.] LETTER DATED JUNE 15-2006, AND WAS SENT TO THE PETITIONER TO L.L.C./LOVE LOCK CORRECTIONAL CENTER. MOST EXTRAORDINARY, IS THERE IS NO LOVE LOCK CORRECTIONAL CENTER STAMP ON IT FROM THE MAIL ROOM, STATING RECEIVED OR OTHERWISE AND SINCE THE [INMATES/ PETITIONERS #42820] IS A LOCATOR FOR ALL INMATES MAIL, WHY WAS THE PETITIONERS LEGAL MAIL NOT FORWARDED TO HIM; by the STATE CREATED IMPEDIMENT, THE LOVE LOCK MAIL ROOM TO THE MAIL ROOM AT S.D.C.C./ SOUTHERN DESERT CORRECTIONAL CENTER (INDIAN-SPRINGS) LAS-VEGAS NV. AS IS THE POLICY OF NEVADA - DEPARTMENT OF CORRECTIONS, P.R. AR 722 AND AR 750 (AGAIN) SEE: EXHIBIT* A.

B. THE PREJUDICE BY THE LOVE LOCK CORRECTIONAL CENTER IS FULLY APPARENT WHEN THE HONORABLE COURT LOOKS AT EXHIBIT* K.

THE PETITIONER IS A PRISONER... PRISON OFFICIALS, OR IN THIS PARTICULAR [THE PRISON'S MAIL ROOM OFFICIALS CAN EASILY ENTER ANY OF THE PRISONERS/INMATES BACK NUMBER] INTO THEIR N.D.C. COMPUTER AND FIND OUT EVERYTHING ABOUT ANY INMATE IN A MATTER OF SECONDS/MINUTES, HIS LOCATION, TO THE CRIME HE CAME TO PRISON FOR, TO ANYTHING IMPORTANT AS INFORMATION THAT IS PERTINENT TO THEIR QUERY...

B1. THE U.S. COURT OF APPEALS UPHELD: THE DUE PROCESS CLAIM, HOLDING THAT THE PROCEDURAL REQUIREMENTS SHOULD BE FOLLOWED IN PRISON... THERE IS NO IRON CURTAIN DRAWN BETWEEN THE CONSTITUTION AND THE PRISON'S OF THIS GREAT COUNTRY. (PRISONERS) RETAIN THE RIGHT OF ACCESS TO THE COURTS, TOO... SITE: YOUNGER V. GILMORE, 404 U.S. 15, 92 S.Ct. 250, 30 LEd 2d 142 (1971); GILMORE V. LINCH, 319 F.Supp 105 (N.D.CAL. 1970); JOHNSON V. AUERY, 393 U.S. 483, 89 S.Ct. 747, 21 LEd 2d 718 (1969). "ALL PRISONERS/INMATES ARE PROTECTED UNDER THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT..."

C. PETITIONER REQUESTS THAT THIS HONORABLE COURT TAKE INTO FULL CONSIDERATION THAT IF N.D.C./LOU LOCK'S MAIL ROOM STAFF WOULD'VE DONE THEIR JOB CORRECTLY AND FORWARDED THE PETITIONER'S LEGAL MAIL TO HIM AS N.D.C. POLICY AR 722/AR 750 STATES AND SHOULD'VE BEEN DONE, IT WOULD'VE TAKEN A MAXIMUM OF (7) SEVEN DAYS TO GET TO HIM, WHERE AS THE SHOW CAUSE ORDER GAVE THE PETITIONER (20) TWENTY DAYS TO RESPOND....

C.1. AGAIN, HAD THE PETITIONER'S LEGAL-MAIL BEEN RE-ROUTED OR FORWARDED (AS N.D.C. AR 722/AR 750 STATES) TO PETITIONER THEN EVEN WITH THE LOSS OF (7) DAYS, IT STILL WOULD'VE LEFT PETITIONER (13) THIRTEEN DAYS TO REQUEST AN ENLARGEMENT OF TIME

D. "HAD THE PETITIONER NOT BEEN INTENTIONALLY PREJUDICED,"
 BY THE DELIBERATE DENIAL OF RE-ROUTING OR FORWARDING
 HIS LEGAL MAIL, PETITIONER WOULD BE SHOWN GROSS ON HIS FIRST
 POST-CONVICTION PETITION, SAVED HIS GROUNDS AND WOULD HAVE
 BEEN SHOWN THE FUNDAMENTAL FAIRNESS OF A DECISION UPON THE
 MERITS OF HIS CLAIM..

*E. IF THE HONORABLE COURT WOULD LOOK AT ALL THE EXHIBITS FILED
 [A-F-G-K] BY STATE COURT CLERK, WASHOE COUNTY, RENO NV, ON
 JULY 18-2014; BUT LOOK AT EXHIBIT *F. DATED 11-14-2011, ITS ADDRESSED
 TO L.L.C.C. MAIL ROOM STAFF, MORE OVER SEE THEIR RESPONSE
 AT THE BOTTOM.

E1. ALSO PLEASE LOOK AT EXHIBIT *G, DATED 11-23-2011, THIS ONE IS DIRECTED
 TO L.L.C.C. LAW-LIBRARY'S SUPERVISOR, AGAIN SEE THE RESPONSE
 AT BOTTOM, AS BOTH ARE IN REGARDS TO N.D.O.C. MAIL POLICY, SEE;
 AR722/AR750..

E2. THE FOLLOWING IS STATED BY (MR. JUSTICE DOUGLAS) QUOTE: IT IS
 A FIRST (1ST) AMENDMENT RIGHT THAT PRISONERS SEND/RECEIVE
 LEGAL MAIL; U.S. SUPREME COURT, MR. JUSTICE DOUGLAS (1974)
 SITE: WOLF V. DAWWELL 8212, 679, 48 U.S. 539, 99 SET 2963 41 L Ed
 2d 935 (1974).

DENIAL OF ACCESS TO THE COURT..

IN THE LATE PART OF 2006, THE LOVELOCK CORRECTIONAL CENTER
 LAW-LIBRARY INSTITUTED A POLICY OF "NO-PHYSICAL-ACCESS" INTO
 THE LAW LIBRARY, AND STARTED A PAGER OR RUNNER SYSTEM, WHICH
 REQUIRED THE INMATE TO KNOW IN ADVANCE WHAT HE WISHED
 TO ORDER, AND THE CASE NAME AND CITE, IN ORDER TO RECEIVE A

COMPUTER PRINTOUT OF THE CASE..

A. THE INMATES WHO WORK/WORKED IN THE LAW-LIBRARY, PHYSICALLY WERE ONLY REQUIRED TO HAVE A (9TH) NINTH GRADE LEVEL EDUCATION [PETITIONER] IS [LESS EDUCATED] 12 MONTHS DISPLINARY FREE AND ABLE TO WORK WITH STAFF AND INMATES ALIKE. AS FOR ACTUAL-TRAINING IN THE LAW LIBRARY, THE MAJORITY WERE/ARE SELF-TAUGHT NO-SCHOOLING -- NO LAW COURSES OR CLASSES, AND THEY KNOW VERY LITTLE ABOUT CRIMINAL LAW... SEE: JOHNSON V. AVERY, 393, U.S. 483-89 SET. 747, 21 L ED 2d 718 (1969)...

B. WHILE IT IS TRUE THAT ONLY IN HABEAS ACTIONS, MAY RELIEF BE GRANTED WHICH WILL SHORTEN THE TERM OF CONFINEMENT, THE RIGHT OF ACCESS TO THE COURTS UPON WHICH [AVERY] WAS PREMISED IS FOUNDED IN THE DUE PROCESS CLAUSE AND ASSURES THAT NO PERSON WILL BE DENIED THE OPPORTUNITY TO PRESENT TO THE JUDICIARY ALLEGATIONS CONCERNING VIOLATIONS OF FUNDAMENTAL RIGHTS OF THE U.S. CONSTITUTION.

B-1. IT IS FUTILE TO CONTEND THAT THE CIVIL RIGHTS ACT OF 1871, HAS LESS IMPORTANCE IN OUR CONSTITUTIONAL SCHEME THAN DOES THE GREAT WRIT. THE RECOGNITION BY THE UNITED STATES SUPREME COURT [BY MR. JUSTICE MARSHAL] STATES: THAT ALL PRISONERS HAVE CERTAIN CONSTITUTIONAL RIGHTS WHICH CAN BE PROTECTED BY CIVIL RIGHTS ACTIONS WOULD BE DILUTED (IF) INMATES, (OFTEN TOTALLY OR FUNCTIONALLY ILLITERATE) WERE UNABLE TO ARTICULATE THEIR COMPLAINTS TO THE COURTS...

C. BECAUSE PETITIONER RETURNED TO LOVELOCK CORRECTIONAL CENTER AT THE TIME OF THE PAGER OR RUNNER SYSTEM, WHICH HAS ALREADY

BEEN IMPLEMENTED - PETITIONER HAD NO ACCESS TO THE COURTS AND WAS BEING DENIED THE ASSISTANCE TO PRESENT AND FILE MEANINGFUL LEGAL PAPERS, BECAUSE THERE WAS [NO ASSISTANCE FROM PRISON OFFICIALS, INMATES OR ANY OTHER PERSON/PERSONS TRAINED IN THE LAW.] SEE: KOERSCHNER V. WARDEN, 508 F. Supp 2d 899 (2007).

D. HENCE IN KOERSCHNER V. WARDEN; THE COURT EXPLAINS IN LIGHT OF THE SERIOUSNESS AND POTENTIALLY, CONSTITUTIONALLY SUSPECT LIMITATIONS PLACED ON THE INMATES ACCESS TO THE COURTS THE PRESENCE OF NON-FRIVOLOUS CLAIMS, AND THE OVERALL COMPLEXITY OF THE CASE...

E. SINCE THE RULING IN KOERSCHNER; TO THIS DATE/ YR 2014, THE PRISON OFFICIALS HAVE DONE NOTHING TO REMEDY THE ISSUE OF LACK OF ACCESS TO THE COURTS, BY EITHER RE-OPENING THE LAW LIBRARY TO PHYSICAL ACCESS, OR HIRING PERSONS TRAINED IN THE LAW TO ASSIST [ILLITERATE INMATES]. PETITIONER WOULD ALSO LIKE TO BRING TO THIS HONORABLE COURTS ATTENTION, THAT (HE) HAS BEEN TRANSFERRED MANY TIMES OVER THE LAST FEW YEARS FROM ONE PRISON TO ANOTHER, WHICH MAKES IT EVEN MORE DIFFICULT TO FIND HELP OR TO TRY. [JANUARY 2006 PETITIONER WAS SENT TO S.D.C.C./ INDIAN SPRINGS TILL SEPT. 2006], THEN WAS SENT BACK TO LOVELOCK PRISON TILL [JUNE 2008 AND WAS SENT TO N.N.C.C.] AND WENT TO THE HOLE AFTER (4) MONTHS. (IN 2009) PETITIONER WAS SENT BACK TO LOVELOCK PRISON TO HOLE FOR 12 MONTHS WITH LEVEL REDUCTION. [IN 2010 WAS SENT BACK TO N.N.C.C., THIS TIME FOR MEDICAL REASONS], 90 DAYS LATER, PETITIONER WAS SENT BACK TO LOVELOCK PRISON. [IN 2011 PETITIONER AGAIN WENT TO N.N.C.C./ NORTHERN NEVADA CORRECTIONAL CENTER FOR A PRISON INDUSTRY JOB, WITH THE REST OF PRISON INDUSTRY WORKERS - YET CAME BACK 90 DAYS LATER - DIDNT GET HIRED.] IN APRIL 2013 AGAIN WAS SENT BACK TO N.N.C.C. FOR MEDICAL REASONS; AFTER APPROX. 90 DAYS

1 THE PETITIONER WAS THEN SENT TO W.S.C.C./WARM SPRINGS CORRECTIONAL
 2 CENTER, [AUG 31ST 2013] PETITIONER WAS THEN SENT TO N.I.C.C. AGAIN
 3 TO DO 4 MONTH IN THE HOLE, AND THEN WAS RETURNED BACK TO W.S.C.C.
 4 WHERE PETITIONER RESIDES TODAY.

5 F. ALL THE LAW-LIBRARY'S IN EACH PRISON IN NEVADA FOLLOW THE
 6 EXACT SAME PROTOCOL..

7 F1. ALL INMATES HAVE THE RIGHT TO COUNSEL AND FULL ACCESS TO
 8 THE COURTS, WHETHER SAID COUNSEL IS COURT APPOINTED, PAID FOR
 9 BY THE INMATE OR HELP FROM A COMPETENT INMATE TRAINED IN
 10 THE LAW, BOTH CIVIL/CRIMINAL OR EITHER ONE, ALONG WITH FULL
 11 ACCESS TO A LEGAL LAW LIBRARY AT SAID PRISON. YET, [NEVADA'S -
 12 PRISON SYSTEM] REFUSES TO RECOGNIZE [THE FEDERAL LAWS; STATES],
 13 ALL PRISONERS MUST HAVE ACCESS TO THE COURT AND ACCESSABILITY TO
 14 A LAW LIBRARY AND WHO MUST PROVIDE ADEQUATE HELP TO CERTAIN
 15 'FUNCTIONALLY, ILLITERATE', INMATES.

16 F2. AS THE U.S. SUPREME COURT [MR. JUSTICE MARSHAL] STATED: QUOTE,
 17 THAT ALL PRISONERS HAVE CERTAIN CONSTITUTIONAL RIGHTS WHICH CAN BE
 18 PROTECTED BY CIVIL RIGHTS ACTIONS WOULD BE DILUTED IF INMATES,
 19 OFTEN, TOTALLY OR FUNCTIONALLY ILLITERATE WERE UNABLE TO ARTICULATE
 20 THEIR COMPLAINTS TO THE COURTS. ALSO SEE: AUERY 393, U.S. 483, 89
 21 SCT (1969). THE DENIAL OF LAW LIBRARY ACCESS ALONG WITH COMPETENT
 22 AID IN LAW FROM AN INMATE SHOULD NOT BE LEFT UP TO THE DISCRETION
 23 OF N.D.C.C./NEVADA DEPT. OF CORRECTIONS, BY DOING SO IT IS A CLEAR
 24 VIOLATION OF ALL PRISONERS DUE PROCESS RIGHTS..

25 G. IN THE ALTERNATIVE SINCE [PETITIONER IS UN-EDUCATED HIMSELF]
 26 AND NOT TRAINED IN THE LAW, HE COUNTED ON BOTH THE RUNNER'S
 27 AND THE LAW CLERKS ADVICE AT EACH PRISON. PETITIONER HERE
 28 AGAIN INCORPORATES JOHNSON V. AUERY, 393 U.S. 483, 489, 89 SCT.

747, 750, 21 LED 2d 718 (1969). IN PART STATES: [THAT PRISONS
INCLUDE AMONG THEIR INMATE POPULATION A HIGH PERCENTAGE OF
PERSONS WHO ARE TOTALLY OR FUNCTIONALLY ILLITERATE, WHOSE EDUCATIONAL
ATTAINMENTS ARE SLIGHT AND WHOSE INTELLIGENCE IS LIMITED]....

G-1. UNFORTUNATELY AS 100³/HUNDREDS IF NOT MORE IN THE N.D.O.C./
NEVADA DEPT. OF CORRECTIONS SYSTEM FALL INTO THIS CATEGORY, THE
PETITIONER ALSO UNFORTUNATELY FALLS IN THE SAME CATEGORY AS JUST
STATED.. PETITIONER HAS TRIED NUMEROUS TIMES TO RECEIVE HELP
THRU THE DIFFERENT LAW LIBRARIES IN N.D.O.C., (BUT ALL) HAVE JUST
PAGE RUNNERS, ONE FOR EACH UNIT, ALOT OF THEM HAVE LESS THAN A
12TH GRADE EDUCATION [AFTER ALL HOW SMART DOES A PERSON HAVE TO BE
TO PICK UP OR TO DELIVER A REQUEST FOR SUPPLY'S ETC..

G-2. MANY TIMES EVEN THOUGH THE PETITIONER HAS/HAD NO IDEA WHAT
HE IS/WAS DOING, HE'S TRIED THRU (DUE DILIGENCE) TO KEEP HIS CASE
AFLOAT IN THE COURT, TILL HE COULD FIND SOME ONE COMPETENT TO HELP HIM.

H. PETITIONER HAS/HAD NO ACCESS TO THE U.S. DISTRICT COURT DOCKET
TEXT FOR A COUPLE OF REASONS.

FIRST, THERE IS NO COMPUTER ACCESS TO CHECK TO SEE STATUS OF A
CASE WHEN NEEDED. YET THE ATTORNEY GENERALS OFFICE AND THE
PUBLIC DEFENDERS OFFICE BOTH WOULD HAVE ACCESS AT THEIR FINGER
TIPS, BUT NOT THE PETITIONER, WHO IS AT SOME WHAT OF A DISADVANTAGE

H.1. SECONDLY, USUALLY ALL LEGAL MAIL MAKES IT TO ITS DESTINATION,
WHETHER FORWARDED OR NOT, ITS NOT UNCOMMON FOR A DECISION TO
TAKE (12-18) MONTHS SINCE IT WOULD SEEM THE WHEELS OF JUSTICE
TURN SLOWLY, DEPENDING ON THE BACKLOGGED CASES AND THE COMPLEXITY
OF THEIR DECISION..

I. IN SHORT AND IN EXACERBATING THE DENIAL OF ACCESS TO THE COURT
[WHEN THE ATTORNEY GENERAL RESPONDED TO PETITIONER'S

1 WRIT,] REQUESTING THAT THE CASE BE DISMISSED, N.D.O.C.
 2 INTERVIEWED w/ THE RESPONSE AS "RETURN TO SENDER". SEE:
 3 EXHIBIT *K (FILED JULY 18, 2014, WITH COURT, STATE COURT WASHOE
 4 COUNTY RENO NV.) PROCLAIMING THAT N.D.O.C. DID NOT KNOW WHERE
 5 THE INMATE WAS, INCARCERATED AT. [THIS HAPPEND NOT ONCE
 6 BUT TWICE].

7 J. FINALLY THE PETITIONER BEING FRUSTRATED w/ NOT HEARING FROM
 8 THE COURT FOR SOME (20) TWENTY MONTHS WROTE TO THE COURT.
 9 "MIRACULOUSLY" NOW SINCE THE PETITIONER'S CASE WAS DISMISSED
 10 [WITHOUT- PREJUDICE] N.D.O.C. NEW EXACTLY WHERE HE IS NOW
 11 INCARCERATED SO AS TO SERVE HIM THE ORDER FROM THE COURT,
 12 ...WHICH IN TURN GOT THE PETITIONER TIME BARRED....

13 K. PETITIONER HAS NEVER HAD HIS LEGAL MAIL FROM ANY COURT FAIL
 14 TO MAKE IT TO HIM BEFORE, YET IT IS MOST ODD THAT AT A MOST
 15 CRUCIAL AXIS OF THE PROCEEDING, THAT OUT OF THE BLUE, THAT A
 16 PRISON MAIL ROOM OFFICAL WOULD FAIL TO FOLLOW N.D.O.C. policy ...
 17 AR 722/ AR 750, AGAIN SEE EXHIBIT A. [THATS BEEN FILED WITH THE COURT,]
 18 AND LOSE OR NOT TO BE ABLE TO LOCATE THE INMATE (PETITIONER)
 19 WITH A LARGE SENTENCE STRUCTURE, THIS SEEMS TO BE A LITTLE
 20 ABSURD, OR MAY BE ACTUALLY INTENTIONAL BY N.D.O.C. LOVELL
 21 PRISON'S MAIL ROOM STAFF, BY NOT FORWARDING HIS LEGAL MAIL
 22 TO HIM....

23 L. PETITIONER ASSERTS THAT THE STATE CREATED IMPEDIMENT
 24 WAS THE LOVELL PRISON MAIL ROOM'S STAFF WHO DID PREJUDICE
 25 THE PETITIONER FROM CONTINUING TO LITAGATE HIS CASE BY FAILING
 26 TO SEND/ FORWARD OR FOLLOW N.D.O.C. FORWARDING LEGAL MAIL
 27 POLICY; ALONG WITH NO PHYSICAL ACCESS TO ANY PRISON LAW
 28 LIBRARY IN THE SYSTEM THAT PETITIONER WAS AT, AND V5. 895

1 HELP FROM ANY INMATE IN ANY LAW LIBRARY WHO WAS TRAINED
2 IN LAW, AS PREVIOUSLY STATED IN THIS BRIEF...

3 L1. SO THE PETITIONER DID THE BEST HE COULD, TO TRY AND KEEP HIS CASE
4 [THRU DUE DILIGENCE] AFOAT IN COURT, EVEN THOUGH HE IS UN-TRAINED
5 AN UNDER-EDUCATED, AND HAD NO ATTORNEY TO HELP ASSIST HIM WITH
6 HIS CASE. SITE: MARTINIZE V. RYAN, 132 S.Ct 1309; 182 L.Ed 2d 272;
7 (2012) U.S. LEXIS 2317, 80 U.S L.W. 4216; 23 FLA. L. WEEKLY FEDS 175(2012).

8 M. THE PETITIONER WAS PREJUDICED FROM THE START OF WHEN N.D.O.C.
9 MAIL ROOM AT LOUELOCK PRISON HAD REFUSED TO FORWARD HIS MAIL TO HIM,
10 (INTERN) IT CAUSED THE FUNDAMENTAL-UNFAIRNESS IN THE DENIAL
11 OF THE PETITIONER'S RIGHT TO REDRESS ALL HIS GRIEVANCES THRU THE
12 HABEAS CORPUS/POST CONVICTION PROCESS,
13 ...PETITIONER GOT TIME BARR'D...

14 CONCLUSION OF BRIEF.

15 1. THE PETITIONER IS A STATE PRISONER, HE HAS ZERO CONTROL OVER HIS
16 LEGAL MAIL GOING OUT/OR COMING IN, HE HAS NO KNOWLEDGE OF
17 WHEN IT WILL BE SENT FROM THE COURTS OR WAS IT SENT FROM THE COURTS
18 OR ATTORNEYS ECT. UNTIL HE RECEIVES IT IN PERSON, BY PRISON OFFICIALS.
19 HE HAS NO KNOWLEDGE OF THE STATEMENT SAID HEREIN, SO HOW IS HE TO
20 KNOW IF/OR WHEN HIS LEGAL MAIL IS/WAS FORWARDED TO HIM, OR SENT
21 BACK TO SENDER, SEE EXHIBIT K...

22 2. THE TIME BARR SHOULD BE LIFTED, AND THE PETITIONER SHOULD BE ABLE
23 TO PROCEED WITH HIS HABEAS-CORPUS AS DISTRICT COURT #8 RENO, NEVADA
24 FIRST ALLOWED HIM TO DO, AS PETITIONER WAS FOLLOWING THE FEDERAL
25 DISTRICT COURT'S ORDERS TO GO BACK DOWN TO THE LOWER COURTS TO EXHAUST
26

HIS CLAIMS; AS THE CASE WAS INITIALLY DISMISSED WITHOUT-PREJUDICE
HAD THE STATES N.D.O.C./ NEVADA DEPT. OF CORRECTIONS FOLLOWED
THEIR OWN POLICY IN THE FIRST PLACE BY FORWARDING THE PETITIONER'S
LEGAL MAIL, HE WOULD'VE HAD HIS POST-CONVICTION PETITION DECIDED
ON THE MERITS...

3. THE DIFFICULTIES WITH NO-COMPUTERS OR INTERNET ACCESS, AND
COMBINED WITH NO ASSISTANCE FROM ANY PERSON AT ANY PRISON, WHO'S
TRAINED IN THE LAW, [N.D.O.C. POLICY ALSO STATES] [NO INMATE CAN HELP
ANOTHER INMATE OR BE IN POSSESSION OF ANOTHER INMATES LEGAL MATERIAL]
[I.E/ WHEN CAUGHT THEIR WROTE UP FOR DISCIPLINARY REASONS JUST STATED] [OR]
[THE MORE SERIOUS INMATES WHO STILL TRY TO HELP ARE SENT OFF THE YARD.]
KIND OF LEAVES THE PETITIONER AT A GREAT DISADVANTAGE AND ALL
FUNDAMENTAL FAIRNESS GOES STRAIGHT OUT THE WINDOW...

4. PETITIONER PRAYS THIS HONORABLE COURT SEES
HOW HIS RIGHTS WERE VIOLATED BY N.D.O.C./ THE
STATE OF NEVADA, LOVELOCK PRISON'S MAIL ROOM
STAFF, AND LIFTS THE SAID TIME BARR THAT HAS
BY THIS, VIOLATION OF DUE PROCESS, SO THAT HE
MAY PROCEED FORWARD...

SIGN CHARLES MAKI # 72820

SIGN CHARLES MAKI

DATE AUG 03 2014

ADDRESS: PO BOX 7007 - W. S. CC.

WARM SPRINGS CORR. CENTER

CARSON CITY, NV V5. 897

INDEX OF EXHIBITS

EXHIBIT # B

NUMBER OF PAGES ONE

EXHIBIT DESCRIPTION, shows INMATE REQUESTING THE ASSISTANCE
OF AN EXPERIENCED INMATE, (IN LAW) TO HELP PETITIONER

EXHIBIT # C

NUMBER OF PAGES ONE

EXHIBIT DESCRIPTION ANSWER FROM N.D.O.C./ W.S.C.C. LAW LIBRARY
DENYING ASSISTANCE TO INMATE, (AS WHAT PETITIONER
IS TRYING TO SHOW IN HIS APPEAL.

DATE 8-04-2014

SIGN CHARLES MAKI 42820

SIGN CHARL MAKI

EXHIBIT
B

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Chuck Maki	42820	4B 8/A	AUG-01-14

4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input checked="" type="checkbox"/> LAW LIBRARY	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> SHIFT COMMAND	<input type="checkbox"/> DENTAL	<input type="checkbox"/> WARM SPRINGS CORR. CENTER
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input type="checkbox"/> OTHER		

5.) NAME OF INDIVIDUAL TO CONTACT: To: LAW-LIBRARY SUPERVISOR / NOT INMATE

6.) REQUEST: (PRINT BELOW) I NEED [THE ASSISTANCE] OF AN EXPERIENCED, INMATE LAW CLERK, WHO IS TRAINED/ OR TOOK CLASSES IN CRIMINAL LAW PROCEDURES, ONE WHO HAS FULL ACCESS TO THE LIBRARY (AS I DO), ONE WHO KNOWS HOW TO LOOK UP CASE LAW, HOW TO SHEPHERDIZE CASES, TO DO MOTIONS TO THE COURTS, ANSWER BRIEFS, I NEED HELP AS I DON'T KNOW HOW TO DO SUCH; MY CASE # CR 94-0345 PENO-NU. DIST. 8 I NEED TO OVER COME TIME-BARR, PLUS HELP ON A HABEAS CORPUS, INMATE MUST KNOW ALL THAT, ONE THAT TOOK [A PARALEGAL COURSE.] THANK YOU.

7.) INMATE SIGNATURE Chuck Maki DOC # 42820

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

10.) RESPONDING STAFF SIGNATURE _____ DATE _____

EXIT-B

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION

PUR SUANT TO NRS 239 B.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE
PRECEDING DOCUMENT APPEAL / SUPPLEMENT BRIEF / EXHIBITS B-C
TO NEVADA SUPREME COURT
TO BE FILED AND COPY'S SENT TO NEVADA SUPREME COURT
AND 1 COPY TO JUDGE (FILED RETURN).

TITLE OF DOCUMENT.

FILED IN CASE NO: CR 94-0345
DEPT. NO: 8

☒ DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY #
OF ANY PERSON.

DATED AUG 28 2019

SIGN CHARLES MAKI 92820

SIGN CHARLES MAKI PROPER PERSON

THAT
ATTORNEY ROBERT W. STORY
RENO NV.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ALL SAID DOCUMENTS
 INCLUDING APPENDIX / SUPPLEMENT BRIEF / EXHIBIT C-B
TO BE FILED AND SENT TO NU S. CT.
 IS TRUE AND CORRECT, UNDER PENALTY
 OF PERJURY.

COPIES SENT TO: COURT CLERK TO FILE AND SEND COPY AHEAD
TO NU S. CT. AS SUPPLEMENT TO HIS CASE, THAT
HAS BEEN FILED ALL READY. CR-94-0395 CASE.
 75 COURT ST.
 RENO NV, 87501

TO: ROBERT STORY - who is COURT APPOINTED ATTORNEY
 2450 VASSAR who is TO ARGUE SAID CASE FOR
 STREET, 35 PETITIONER IF/WHEN NEEDED.
 RENO, NV, 87502 IN COURT.

DATED AUG-08-2014

SIGN CHARLES MAKI 42820

SIGN CHARLIE MAKI PROPER PERSON

ADDRESS P.O. Box 7007 - W SEC
 WARM SPRINGS COMM. CENTER
 CARSON CITY NV 89202

EXHIBIT

C

**NEVADA DEPARTMENT OF CORRECTIONS
Warm Springs LAW LIBRARY**

Memorandum

Date: 8/4/2014

To: Inmate Name	Inmate Number	Unit
MAKI, C	42820	4B 81A

Re: ASSISTANCE

PER OP 722.04(2)(d) INMATE LAW CLERKS(LAW LIBRARY ASSISTANT'S) MAY ALSO PROVIDE ASSISTANCE IN THE FOLLOWING AREAS ONLY WHEN QAN INMATE'S ACCESS TO THE COURTS WOULD BE EFFECTIVELY DENIED IF NOT FOR THE LAW CLESRKS ASSISTENCE. THE NEVADA DEPARTMENT OF CORRECTION (NDOC) DOES NOT PROVIDE LEGAL TRAINING TO ITS LAW CLERKS; THEREFORE, INMATES WHO ASK FOR THE ASSISTANCE OF LAW CLERKS IN THE FOLLOWING AREAS DO SO AT THEIR OWN RISK. THE NDOC CANNOT BE HELD RESPONSIBLE FOR THE QUALITY OF SERVICES PROVIDED BY INMATE LAW CLERKS.

EXHIBIT 10C

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-08-14 15:56:38.706.

ROBERT STORY, ESQ. - Notification received on 2014-08-14 15:56:38.612.

ROBERT BELL, ESQ. - Notification received on 2014-08-14 15:56:38.643.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

08-14-2014:15:55:37

Clerk Accepted:

08-14-2014:15:56:08

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Sealed Order

Filed By:

Judicial Asst. SParke

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66144

FILED

CR94-0345

AUG 13 2014

D8

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Maki
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

It is so ORDERED.

, C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-08-20 09:25:22.096.

ROBERT STORY, ESQ. - Notification received on 2014-08-20 09:25:21.956.

ROBERT BELL, ESQ. - Notification received on 2014-08-20 09:25:22.018.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

08-20-2014:09:24:11

Clerk Accepted:

08-20-2014:09:24:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk ASmith

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

1 CODE: 2540
2
3
4
5

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

8 ***

9 CHARLES MAKI,

Petitioner,

CASE NO: CR94-0345

11 vs.

DEPT. NO: 8

12 THE STATE OF NEVADA,

13 Respondents.
14 _____/

15 **NOTICE OF ENTRY OF ORDER**

16 PLEASE TAKE NOTICE that on the 7th day of July, 2014 the Court entered a
17 decision or order in this matter, a true and correct copy of which is attached hereto.

18 You may appeal to the Supreme Court from the decision or order of the Court. If
19 you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-
20 three (33) days, after the date this notice is mailed to you. This notice was mailed on the
21 10th day of September, 2014.
22

23 JOEY ORDUNA HASTINGS

24 Clerk of the Court

25 By /s/ Ludivina Barragan

26 Deputy Clerk
27
28

1
2 **CERTIFICATE OF SERVICE**

3 CASE NO. CR94-0345

4 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial
5 District Court of the State of Nevada, County of Washoe; and that on the 10th day of
6 September 10, 2014, I electronically filed the Notice of Entry of Order with the Clerk of the
7 Court by using the ECF system which will send a notice of electronic filing to:8 Robert Bell, Esq.
9 Terrence McCarthy, Esq.
10 Robert Story, Esq.11 I further certify that on the 10th day of September, 2014, I deposited in the Washoe County
12 mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a
13 true and correct copy of the Notice of Entry of Order, addressed to:14 Attorney General's Office
15 100 N. Carson St.
16 Carson City, NV 89701-471717 Charles Maki #42820
18 Warm Springs Correctional Center
19 P.O. Box 707
20 Carson City, NV 8970221 /s/ Ludivina Barragan
22 Ludivina Barragan
23
24
25
26
27
28

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-09-10 12:19:09.719.

ROBERT STORY, ESQ. - Notification received on 2014-09-10 12:19:09.625.

ROBERT BELL, ESQ. - Notification received on 2014-09-10 12:19:09.672.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

09-10-2014:12:18:00

Clerk Accepted:

09-10-2014:12:18:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Notice of Entry ...

Filed By:

Deputy Clerk LBarragan

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI,

Petitioner,

vs.

Case No. CR94-0345

THE STATE OF NEVADA,

Dept. No. 8

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 22nd day of September, 2014, I electronically filed Volumes 1 through 6 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 7 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court in accordance NRAP 11(2)(b).

Dated this 22nd day of September, 2014.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-09-22 14:03:09.536.

ROBERT STORY, ESQ. - Notification received on 2014-09-22 14:03:09.458.

ROBERT BELL, ESQ. - Notification received on 2014-09-22 14:03:09.489.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

09-22-2014:14:01:54

Clerk Accepted:

09-22-2014:14:02:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66144

CR94-0345
DB

FILED

DEC 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant filed his petition on December 30, 2013, 18 years after issuance of the remittitur on direct appeal on October 24, 1995. *See Maki v. State*, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995). Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

To the extent appellant suggested that his procedural bars should be excused because he needed to exhaust his claims for federal review, his claim lacked merit. Filing a procedurally barred petition for exhaustion purposes is not good cause because appellant's claims were reasonably available to be raised in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

To the extent that appellant claimed that the ineffective assistance of counsel provided good cause to excuse his procedural defects, this claim similarly lacked merit. A claim of ineffective assistance of trial or appellate counsel that is itself procedurally barred cannot constitute good cause to excuse a procedural defect. See *Hathaway*, 119 Nev. at 252, 71 P.3d at 506, and "noncapital petitioners have no right to the effective assistance of counsel in post-conviction proceedings," *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871 (2014).

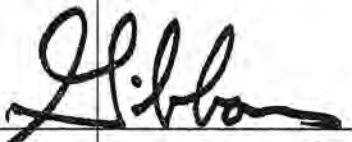
Finally, to the extent appellant suggested that the State's violation of *Brady v. Maryland*, 373 U.S. 83 (1963), provided good cause to excuse the procedural bars, his claim lacked merit. Demonstrating a

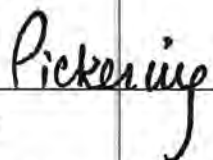
²*Maki v. State*, Docket No 30904 (Order of Affirmance, October 10, 2000).



meritorious *Brady* claim may also demonstrate good cause. *See State v. Huebler*, 128 Nev. ___, ___ & n.3, 275 P.3d 91, 95 & n.3 (2012). However, appellant's *Brady* claim was a bare allegation devoid of specific facts and thus could not have allowed for relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

For the foregoing reasons, we conclude that the district court did not err in denying appellant's petition as procedurally barred, and we ORDER the judgment of the district court AFFIRMED.³


Gibbons, C.J.


Pickering, J.


Saitta, J.

cc: Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-12-18 10:02:36.173.

ROBERT STORY, ESQ. - Notification received on 2014-12-18 10:02:35.315.

ROBERT BELL, ESQ. - Notification received on 2014-12-18 10:02:36.095.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

12-18-2014:09:58:34

Clerk Accepted:

12-18-2014:10:01:41

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Order Affirming

Filed By:

Deputy Clerk ASmith

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 66144
District Court Case No. CR940345

DO

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 06, 2015

Tracie Lindeman, Clerk of Court

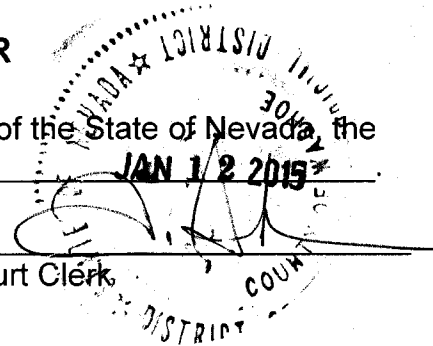
By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____

District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 66144
District Court Case No. CR940345

JCO

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 11th day of December, 2014.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 06, 2015.

Tracie Lindeman, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66144

CR94-0345
FILED

DEC 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK**ORDER OF AFFIRMANCE**

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant filed his petition on December 30, 2013, 18 years after issuance of the remittitur on direct appeal on October 24, 1995. *See Maki v. State*, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995). Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

To the extent appellant suggested that his procedural bars should be excused because he needed to exhaust his claims for federal review, his claim lacked merit. Filing a procedurally barred petition for exhaustion purposes is not good cause because appellant's claims were reasonably available to be raised in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

To the extent that appellant claimed that the ineffective assistance of counsel provided good cause to excuse his procedural defects, this claim similarly lacked merit. A claim of ineffective assistance of trial or appellate counsel that is itself procedurally barred cannot constitute good cause to excuse a procedural defect. See *Hathaway*, 119 Nev. at 252, 71 P.3d at 506, and "noncapital petitioners have no right to the effective assistance of counsel in post-conviction proceedings," *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871 (2014).

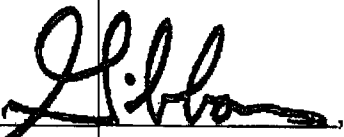
Finally, to the extent appellant suggested that the State's violation of *Brady v. Maryland*, 373 U.S. 83 (1963), provided good cause to excuse the procedural bars, his claim lacked merit. Demonstrating a

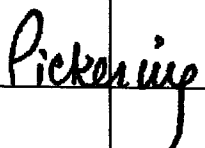
²*Maki v. State*, Docket No 30904 (Order of Affirmance, October 10, 2000).


meritorious *Brady* claim may also demonstrate good cause. *See State v. Huebler*, 128 Nev. ___, ___ & n.3, 275 P.3d 91, 95 & n.3 (2012). However, appellant's *Brady* claim was a bare allegation devoid of specific facts and thus could not have allowed for relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

For the foregoing reasons, we conclude that the district court did not err in denying appellant's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.³


Gibbons, C.J.


Pickering, J.


Saitta, J.

cc: Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

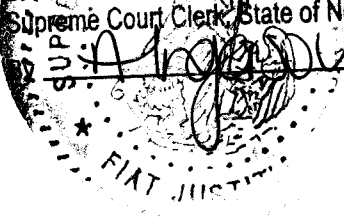
CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: Jan 12, 2015

Supreme Court Clerk, State of Nevada

[Signature] Deputy



Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-01-12 09:27:35.656.

ROBERT STORY, ESQ. - Notification received on 2015-01-12 09:27:35.563.

ROBERT BELL, ESQ. - Notification received on 2015-01-12 09:27:35.594.

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

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

01-12-2015:09:26:24

Clerk Accepted:

01-12-2015:09:27:04

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Court Order Affirming

Filed By:

Deputy Clerk ASmith

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

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

-

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

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.
ROBERT STORY, ESQ. for CHARLES (D8)
MAKI
ROBERT C. BELL, ESQ.

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

CHARLES MAKI

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA.

IN AND FOR THE COUNTY OF WASHOE.

CR94-0345
DC-09900063952-015
STATE VS CHARLES JOSEPH MAKI, 6 Pages
District Court 02/17/2015 09:01 AM
Washoe County 2450
JAMES J. JUDIC

CHARLES MAKI
DEFENDENT

V.

CASE NO: CR94-0345

STEVEN KOSACH, Hon Judge.

2ND JUDICIAL DIST. COURT, DIST. 8.

IN AND FOR THE COUNTY OF WASHOE

DEPT. NO. 8
JACQUELYNNE BRYANT
CLERK OF THE COURT
20 FEB 17 AM 9:01

FILED

MOTION FOR APPOINTMENT OF COUNSEL.

COMES NOW, CHARLES MAKI DEFENDENT, IN PROPER PERSONA
AND WITH THE ASSISTANCE OF INMATE THATS LIVING IN THE SAME UNIT
AS THE DEFENDENT, WHO HAS LITTLE KNOWLEDGE IN THE PREPARING
OF THESE PROCEEDINGS FOR THIS HONORABLE COURT.
DEFENDENT NOT ONLY SUBMITTS TO THIS HONORABLE COURT, THAT
THE DEFENDENT HAS COMPLETELY NO KNOWLEDGE OR UNDERSTANDING
OF HOW TO WRITE OR PREPARE ANY OF THESE PROCEEDINGS AND
PLEADINGS THAT HE IS NOW SUBMITTING BEFORE THIS HONORABLE
COURT, PURSUANT TO NRS 34.160; NRS 34.170; NRS 34.190; NRS 34.750;
RULES OF CIVIL PROCEDURE OF THE STATE OF NEVADA, NEVADA
CONSTITUTION ARTICLE 6 § SIX (6). FOR THE DISTRICT COURT
TO REVIEW AND TO HOLD A COMPLETE INVESTIGATION AND HEARING
TO DETERMIN WITH EVIDENCE, MEDICAL TESTIMONEY, TESTIMONEY,
D.N.A. TESTING ECT. AND TO DETERMIN HOW INEFFECTIVE DEFENDENT'S
TRIAL ATTORNEY WAS, AS WELL AS ALL OTHER ATTORNEYS WHO
REPRESENTED THE DEFENDENT. IN CASE NO: CR94-0345

1 TO FIND OUT IF IN FACT THERE HAS BEEN OVER THE PAST 21 YEARS
2 A FUNDAMENTAL MISARRIAGE OF JUSTICE BY NOT ALLOWING THE
3 DEFENDENT (WITH) COMPETENT ATTORNEYS TO PROVE HIS "FACTUAL-
4 INNOCENCE" OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS THAT
5 HE WAS CHARGED AND CONVICTED OF.
6 THIS MOTION FOR APPOINTMENT OF COUNSEL IS BASED UPON THE FOLLOWING
7 FACTS WITH POINTS AND AUTHORITY'S,
8 DEFENDENT RESPECTFULLY SUBMITS THAT UPON REVIEW OF THIS
9 ENTIRE CASE NO: CR94-0345 THIS HONORABLE COURT CAN SEE THE
10 MANY PROBLEMS IN THIS CASE SUPRA, IT IS LEGALLY AT THIS PARTIC-
11 ULLAR JUNCTURE SO CONVOLUTED BY ALL THE PREVIOUS LITIGATION.
12 (AND) IT IS INTERESTING TO NOTE THAT THE ATTACHED DEFENDENT'S
13 EXHIBITS, " EXHIBIT (1), EXHIBIT (2), EXHIBIT (3) AND EXHIBIT (4); DEFENDENT'S
14 TRIAL, DIRECT APPEAL, DOCKET NO: 26049 [ORDER DISMISSING DIRECT
15 APPEAL, OCT. 04-1995], AND HIS INITIAL POST-CONVICTION PLEADINGS
16 AND APPEAL DOCKET NO: 30904 WHICH EXHIBIT NO. (2) SUPRA, AT PAGE
17 NO. (6) FIRST PARAGRAPH WITH FOOT NOTE NO: 5-6 STATING THAT IT
18 IS "DEFENDENT'S SOLE RESPONSIBILITY" TO ENSURE THAT THE ENTIRE
19 SET OF COURT RECORDS FROM HIS POST-CONVICTION PROCEEDINGS OF
20 MAY 09 1997 ARE PROPERLY PUT BEFORE THE NEVADA SUPREME COURT FOR
21 REVIEWING AND RULING. HOWEVER THE DEFENDENT DID HAVE LEGAL
22 COUNSEL (COURT-APPOINTED) REPRESENTING HIM ON HIS POST-CONVICTION
23 PROCEEDINGS, BUT THE HONORABLE NEVADA SUPREME COURT STILL
24 INADVERTENTLY PUTS THE BURDEN OF PAGE NO. (6) OF EXHIBIT NO: (2)
25 SUPRA CLEARLY ON THE SHOULDERS OF THE DEFENDENT, WHEN IN FACT
26 IT WAS DEFENDENT'S LEGAL COUNSEL'S DUTY, EVEN BEING SO [INEFFECTIVE]
27 DELIBERATELY, INTENTIONALLY, FAILED TO NOT ONLY PREPARE THE
28 PROPER APPEAL FROM THE DEFENDENT'S POST-CONVICTION HEARINGS

1 ALSO FAILED TO HAVE THE 2ND JUDICIAL DISTRICT COURT TO PROPERLY
2 PREPARE AND PROVIDE THE HONORABLE NV SUPREME COURT THE MATERIALS
3 WITH ALL, [EVIDENCE, TESTIMONY, AND ANY OTHER MATERIAL NECESSARY]
4 FOR THE HONORABLE COURT AND AS WELL AS RELEVANT AUTHORITY
5 COGENT ARGUMENT, TO PROVE DEFENDENTS "FACTUAL-INNOGENCE"
6 OF THIS CRIME OF SEXUAL ASSAULT/LEWDNESS SHOWING A VERY
7 SERIOUS, CONSTITUTIONAL VIOLATIONS INCLUDING BUT NOT LIMITED TOO;
8 (1ST)(4)(5)(6)(8) AND (14TH) U.S.C.A. RIGHTS. INCLUDING A BRADY VIOLATION AND
9 STRUCTURAL - CLEAR ERROR BY THE COURT, MIRANDA VIOLATION, AND
10 ABUSE OF DISCRETION BY THE COURT, WITH PROSECUTORIAL MISCONDUCT,
11 IT ALL AMOUNTS TO A VERY SERIOUS FUNDAMENTAL MISCARRIAGE OF
12 JUSTICE, OVER THESE PAST 21 YRS.

13 DEFENDENT THEN PROCEEDED ON HIS OWN WITHOUT ANY TYPE
14 OF LEGAL ASSISTANCE AND PREPARED TO THE BEST OF HIS LIMITED
15 KNOWLEDGE TO PRESENT THE UNITED STATES DISTRICT COURT - FOR
16 THE DISTRICT OF NEVADA A28 U.S.C. § 2254 OF THE ISSUES THAT WERE
17 DENIED IN THE HONORABLE NV SUPREME COURT BY EXHIBIT NO. (2) INTO
18 EXHIBIT NO. (4) WITH ATTACHED EXHIBIT NO. (1) AND EXHIBIT NO. (3);
19 HOWEVER IN EXHIBIT NO. (4) PAGE NO. (5) THAT THE COURT RULED THAT
20 THE DEFENDENT HAD SUA SPONTE MIXED EXHAUSTION AND UN-EXHAU-
21 STION OF ISSUES THEREFORE EXHIBIT NO. (2) WAS DISMISSED WITHOUT
22 PREJUDICE [TO GO BACK TO THE 2ND JUDICIAL DISTRICT COURT] AND TO
23 EXHAUST ALL ISSUES BEFORE COMING BACK INTO THE FEDERAL COURT.
24 DEFENDENT FURTHER SUBMITS TO THIS HONORABLE COURT THAT WHEN HE
25 WENT BACK TO THE 2ND JUDICIAL DISTRICT COURT TO TRY AND RAISE
26 THESE ISSUES, THE COURT (DENIED) THE DEFENDENT HIS 2ND POST-
27 CONVICTION PROCEEDINGS AS BEING PROCEEDURALLY BARRED AND TIME
28 BARRED FOR RAISING THESE ISSUES AFTER 18 YRS, STILL THE

1 DEFENDENT HAS AND PRESENTLY STILL MAINTAINED HIS "FACTUAL-INNOCENCE",
 2 OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS FOR THE PAST 21 YEARS--
 3 WHEREFORE, AT THIS TIME DEFENDENT IS PRESENTING THIS CASE AND
 4 PLEADINGS OF "WRIT OF PROHIBITION/WRIT OF MANDAMUS" IN THE
 5 2ND JUDICIAL DISTRICT COURT AND FURTHER, SUBMITS HE HAS NO OTHER
 6 PLAIN OR SPEEDY REMEDIES OTHER THAN TO BRING THIS WRIT OF PROHIBITION
 7 /WRIT OF MANDAMUS INTO THE 2ND JUDICIAL DISTRICT COURT PURSUANT TO
 8 NRS 34.160; NRS. 34.170; NRS 34.190; NRS 34.750, TO PRESENT THE ISSUES
 9 OF FACTUAL-INNOCENCE, AS THERE ARE MANY CONSTITUTIONAL VIOLATIONS
 10 INCLUDING BUT NOT LIMITED TOO DUE PROCESS/EQUAL PROTECTION UNDER
 11 THE (14TH) AMENDMENT OF THE U.S.C.A. THAT THESE VIOLATIONS HAS AND
 12 WILL CONTINUE TO RESULT IN DEFENDENTS NOT BEING ABLE TO SHOW OR TO
 13 PRESENT EVIDENCE, MEDICAL TESTIMONY, AGAINST THE STATE'S EXPERT
 14 TESTIMONY, WITNESSES, D.N.A. TESTING, RAPE KITS ECT. TO SHOW THE
 15 DEFENDENT IS FACTUALLY INNOCENT OF THE CRIME SHOWING THAT DEFENDENT
 16 NEVER COMMITTED THIS CRIME OVER 21 YEARS AGO. SEE I.E., STATE V.
 17 MITCHELL, 122 NV. 1269, 149 P.3 PD 33 (2006).
 18 DEFENDENT FURTHER, SUBMITS TO THIS HONORABLE COURT THAT THE
 19 INFORMATION IN THIS "MOTION FOR APPOINTMENT OF COUNSEL AND THE
 20 AFFIDAVIT IN SUPPORT OF THIS MOTION AND IS WRIT OF PROHIBITION/WRIT
 21 OF MANDAMUS" WARRANTS THE APPOINTMENT OF COUNSEL, NOT ONLY TO
 22 ASSIST THE DEFENDENT, BUT TO ALSO ASSIST THIS HONORABLE COURT
 23 IN BETTER (ING) UNDERSTANDING OF THIS CONVOLUTED, COMPLEX,
 24 COMPLICATED CASE PURSUANT TO NRS. 34.750 (A)(B)(C); SEE, C-F,
 25 MONTGOMERY V. PINCHAK, 249 F.3d 492, AT 499 (3RD CIR. 2002); FARMER V.
 26 HAAS, 990 F.2d 319, AT 322 (7TH CIR. 1993); BARNES V. EIGHTH JUDICIAL
 27 DISTRICT COURT, OF STATE OF NEV., IN AND FOR CLARK COUNTY, 103 NV.
 28 679, 748 P2d 483 (1987); HAINES V. KERNER, 404 U.S. 519, AT 520-21,

92 SUPREME COURT 594 (1972).

AS THE DEFENDENT IS HELD TO A MUCH LOWER STRINGENT STANDARD
THAN A QUALIFIED EXPERIENCED ATTORNEY OF THE NEVADA - BARR., AND
FURTHER, THIS MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT
AND THE WRIT OF PROHIBITION/WRIT OF MANDAMUS BY THE DEFENDENT,
MUST, BE REVIEWED AND IF POSSIBLE RULED IN THE DEFENDENT'S FAVOR
AS BEING [TRUE AND CORRECT.]

THEREFORE AFTER MORE THAN 21 YRS OF LITIGATING WITH AND [THRU -
THE INEFFECTIVE ASSISTANCE OF ATTORNEYS] AT DEFENDENT'S TRIAL,
ON HIS DIRECT APPEAL, AND HIS POST-CONVICTION PROCEEDINGS "WITHOUT
ANY TYPE OF PHYSICAL SPECIFIC FACTUAL EVIDENCE, INCONSISTENCIES
IN TESTIMONY OF/ FROM STATES WITNESSES, NO RAPE KIT, OR DNA TESTING
OR WITNESSES TESTIFYING ON BEHALF OF THE DEFENDENT TO PROVE
HIS FACTUAL-INNOCENCE OF SEXUAL ASSAULT/LEWDNESS [IS A GRAVE
FUNDAMENTAL MISCARRIAGE OF JUSTICE] WHICH OVER THE PAST 21 YRS
BY NOT ALLOWING THE DEFENDENT TO PROPERLY PRESENT THIS PROCEEDING
PROPERLY IN THE 2ND JUDICIAL DIST. COURT WITHOUT HAVING TO CONTINUALLY
ARGUE(LING) PROCEEDURAL BARR AND UN-TIMELY SUCCESSIVE PETITIONS
BY DEFENDENT AND ALL OF HIS [IN-EFFECTIVE ASSISTANCE OF COUNSEL].
SEE I.E., EXHIBIT NO (1) SUPRA.

DEFENDENT SUBMITS THAT WITH THIS MOTION FOR APPOINTMENT OF
COUNSEL, AFFIDAVIT IN SUPPORT OF THIS MOTION AND THE WRIT OF
PROHIBITION/WRIT OF MANDAMUS SHOWS MORE THAN SUFFICIENT, ENOUGH,
FACTUAL EVIDENCE, PURSUANT TO STATE V. MITCHELL, SUPRA, SHOWING
HIS FACTUAL INNOCENCE THAT HE WAS NEVER INVOLVED WITH THE CRIME
OF SEXUAL ASSAULT/LEWDNESS TO BE REVERSED OR GIVEN A NEW TRIAL.
DEFENDENT, RE-ALLEGES AND INCORPORATES AN AFFIDAVIT IN SUPPORT OF
HIS MOTION OF APPOINTMENT OF COUNSEL SHOWING ALL SUCH EVIDENCE

1 TESTIMONY, RAPE KITS, D.N.A. TESTING, LACK OF PHYSICAL EVIDENCE ECT.
2 WHICH WAS NEVER PRESENTED IN THE LAST 21 YRS OF CASE NO. CR94-0345
3 SHOWING THE DEFENDENTS FACTUAL INNOCENCE, ALSO ATTACHED TO
4 THESE PROCEEDINGS NOW BEFORE THIS COURT, EXHIBITS [#] NO. 1 THRU 4. SUPRA
5 AND EXIBITS A-B-C IN SUPPORT OF AFFIDAVIT.

6
7
8 DATED THIS DAY 12 OF FEB 2015

9
10 RESPECTFULLY, SUBMITTED

11 CHARLES MAKI 42820

12 Charles Maki
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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI
DEFENDENT

v.

STEVEN KOSACH

IN AND FOR THE COUNTY
OF WASHOE.

RESPONDENT

CASE No: CR94-0345

DEPOSED BY
JACQUELINE BRYANT
CLERK OF THE COURT

2015 FEB 17 AM 9:01

FILED

AFFIDAVIT IN SUPPORT OF MOTION

FOR THE APPOINTMENT OF COUNSEL/ WRIT

OF PROHIBITION/ WRIT OF MANDAMUS.

I, CHARLES MAKI DEFENDENT FIRST BEING DULY SWORN, DEPOSE AND SAY
 THAT I AM THE DEFENDENT IN THE ABOVE INTITLED PLEADING, THAT IN SUPPORT
 OF MY MOTION TO PROCEED WITHOUT BEING REQUIRED TO PRE-PAY THE COSTS
 OF SAID PLEADING OR TO GIVE SECURITY THEREFORE, THAT I AM INTITLED RELIEF.

1. DEFENDENT AT THIS TIME IS REQUESTING THIS HONORABLE COURT TO
 APPOINT LEGAL COUNSEL, TO ASSIST HIM AND THIS COURT IN THIS VERY COMPLEXED
 AND COMPLICATED WRIT OF PROHIBITION/ WRIT OF MANDAMUS AGAINST
 THE HERIN ABOVE, NAMED RESPONDENT(S) FOR VIOLATING THE DEFENDENTS

[REDACTED] HEREIN AFTER IS AFFIANT] DUE PROCESS RIGHTS UNDER THE
 N.R.S. SENTENCING STATUES; NRS 34.160; NRS 34.170 AND NRS 34.190....

2. DEFENDENT, HAS A VERY LIMITED EDUCATION, A 6TH GRADE EDUCATION WHEN
 DEFENDENT WAS ARRESTED. FURTHER MORE [DOES NOT HAVE ANY LEGAL
 BACK GROUND OR ANY LEGAL KNOWLEDGE OR EDUCATION IN LEGAL PROCEEDINGS]
 DEFENDENT FULLY RELIED ON STATE APPOINTED ATTORNEYS TO HELP HIM

- 1 ALL LEGAL MATTERS. ON OCCASION DEFENDENT HAD TO RELY ON OTHER
 2 INMATES (AS NOW) TO HELP HIM PROCEED IN COURT.
- 3 3) WHEREFORE, DEFENDENT IS NOW LEFT WITHOUT ANY TYPE OF LEGAL
 4 ASSISTANCE TO FURTHER, ASSIST HIM OR AFFIANT IS UN-ABLE TO FURTHER
 5 PROSECUTE THIS CASE IN THIS HONORABLE COURT, APPOINTING LEGAL COUNSEL
 6 PURSUANT TO N.R.S. 34.750...
- (A) 7 A). THE COURT ERRED IN [NOT RULING] THAT DEFENDENT HAS RIGHTS TO
 8 LEGAL COUNSEL AT ALL CRITICAL STAGES OF THE CRIMINAL PROCEEDINGS,
 9 AS THE DEFENDENT WAS NOT APPOINTED/ OR DID NOT SEE ANY COUNSEL (LEGAL)
 10 AT ALL UNTILL ABOUT 15 DAYS AFTER HIS ARREST, EVEN THOUGH DEFENDENT
 11 ENVOCKED HIS RIGHTS DURING HIS INTERROGATION AT POLICE DEPT.
- (B) 12 B) MS. CATHY MURPHY; THE STATE'S EXPERT IN PHYSICAL EVIDENCE TELLS
 13 THE JURY, EVEN THOUGH "SHE-CAN-NOT" FIND ANY EVIDENCE OF SEXUAL
 14 ASSAULT ON DESIREE [THAT A HYMEN GROWS BACK].
- (C) 15 C) DEFENDENT, WAS NOT ALLOWED TO TESTIFY AT HIS TRIAL EVEN THOUGH HE
 16 WANTED TO. WHICH IS A CLEAR VIOLATION OF THE DEFENDENT'S U.S.C.A. RIGHTS.
- (D) 17 D) DEFENDENT'S (P.D.) PUBLIC DEFENDER JANET COBB SMUCK REFUSED TO ASK/
 18 OR PETITION THE COURT FOR A PSYCHIATRIC EVALUATION AS BOTH ALLEGED
 19 VICTIM'S HAD MANY SERIOUS INCONSISTANCIES IN THERE TESTIMONIES FROM THE
 20 POLICE INTERVIEW WITH DET. BALEW TO DET. STEINMEIER, TO PRELIM HEARING
 21 TO TRIAL. THIS CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL... SEE RECORDS.
- (E) 22 E) THE DEFENDENT HAD TO FILE HIS OWN DIRECT APPEAL IN PRISON WITH THE
 23 HELP OF OTHER INMATES (AS FORMER COUNSEL OF RECORD REFUSED TO DO SO!)
- (F) 24 F). MS. ROBIN WRIGHT, A COURT APPOINTED PRIVATE ATTORNEY WAS APPOINTED
 25 TO REPRESENT THE DEFENDENT ON HIS DIRECT APPEAL TO N.D.S. CT. FROM THE
 26 JUDGMENT OF CONVICTION MAY 17-1994 CASE CR 94-0345/ APPEAL CASE
 27 NO: 26049 WAS DISMISSED ON OCT-02-1995.

(G) 1 G) THE DEFENDENT HAD ASKED MRS WRIGHT MANY TIMES TO ADDRESS MANY
2 COLORFUL ISSUES, BUT ALL SHE TOLD DEFENDENT WAS "QUOTE", YOUR NOT A PAYING
3 CLIENT, OR RAISE E'M ON POST-CONVICTION.

(H) 4 H) ATTORNEY WRIGHT] REFUSED TO RAISE THE FACT/ISSUE THAT DEFENDENT
5 WAS ENTITLED TO HAVE AN EXPERT IN PHYSICAL EVIDENCE, TO DISPUTE THE STATES
6 EXPERT KATHY M. PEELE THE SAINTS DIR. . . [AS THE COURT DENIED SUCH.]
7 MS. WRIGHT ALSO REFUSED TO RAISE THE FACT/ISSUE THAT DEFENSE ATTORNEY
8 SMUCK SHOULDVE MOTIONED THE COURT FOR A PSYCHIATRIC EVALUATION, DO TO
9 MANY MAJOR INCONSISTANCIES IN BOTH ALLEGED VICTIMS TESTIMONY'S, ALONG
10 WITH NO PHYSICAL EVIDENCE, AND THE FACT COUNSEL SMUCK CONTENDS THAT
11 THE EXAMINATIONS OF THE MINORS WAS NOT WARRENTED BECAUSE THE
12 STATEMENTS OF THE MINORS ABOUT THE CRIMES WERE MERELY AMBIGUOUS.

(I) 13 I) BUT THE ALLEGED - COMPETENT/EFFECTIVE ATTORNEY OF RECORD REFUSED!
14 WHICH ONLY AMOUNTS TO INEFFECTIVE ASSISTANCE OF COUNSEL, BEFORE - DURING,
15 AND AFTER DEFENDENT TRIAL.

(J) 16 J) THE PHYSICAL EVIDENCE THAT SUMMER MENESS HAD BEEN SUBJECTED TO MORE
17 PHYSICAL ABUSE THAN SHE WAS REPORTING WAS EXULPATORY. [ITS EVIDENCE THAT
18 SUPPORTED DEFENDENTS FACTUAL-INNOCENCE.] [THE COURT ERRORED BY ALLOWING
19 SAID EVIDENCE TO BE PRODUCED AT TRIAL WITHOUT ALLOWING DEFENDENT AN
20 OPPORTUNITY TO HAVE THE EVIDENCE REVIEWED BY A DEFENSE EXPERT IN PREPARATION
21 FOR TRIAL.

(K) 22 K) DEFENDENT SHOULD RECEIVE A NEW TRIAL! IN THIS MATTER THERE IS A TRUE
23 QUESTION OF [LAW AND FACTS] AS TO WHETHER THERE WAS ACTUALLY "SUFFICIENT
24 EVIDENCE" TO SUPPORT THE CHARGES DEFENDENT WAS CONVICTED OF. THE EVIDENCE
25 DEMONSTRATES THERE WAS NOTHING TO PROVE AND SUBSTANTIATE THAT A CRIME
26 ACTUALLY OCCURED, BECAUSE IT WAS BASED UPON "AN OATH AGAINST AN OATH" AND
27 "HEARSAY AGAINST HEARSAY".

(L) 28 L) DEFENDENTS, CONVICTION REQUIRED SOME PROOF SUCH AS A VERIFICATION BY
29

PHYSICAL EVIDENCE THAT A CRIME ACTUALLY OCCURED, THIS WAS
NEVER DONE. THUS THE CONVICTION WAS ILLEGAL AND SHOULD BE REVERSED,
AND REMAND FOR A NEW TRIAL.

(M) THE INMATE THAT WAS ASSISTING DEFENDED/ AFFIANT IN
PREPARE(ING) THIS ENTIRE PLEADING (WAS MOVED OUT OF AFFIANTS) UNIT
PER INSTITUTIONAL ADMIN. AND LEGAL COUNSEL, (ATTORNEY GENERAL'S) OFFICE
RECOMENDED THAT THE (INMATE) WHO WAS HELPING/ ASSISTING AFFIANT
BE-MOVED).

AFFIANT CERTIFYS AND DECLARES UNDER PENALTY OF PERJURY, & PURSUANT
TO N.R.S. 208.165 THAT AFFIANT SAT WITH THE INMATE THAT ASSISTED HIM
IN PREPARING ALL THESE PLEADINGS OF AFFIANT, IS TRUE AND CORRECT TO SUPPORT
AFFIANT'S MOTION FOR APPOINTMENT OF COUNSEL AND WRIT OF PROHIBITION/
WRIT OF MANDAMUS. BEING PRESENTED BEFORE THIS HONORABLE COURT, IS TRUE
AND CORRECT AS WRITTEN, THUS INCLUDING THE SWORN AFFIDAVIT OF MR.
CHARLES MAKI #42820 IN FULL SUPPORT OF HIS WRIT OF PROHIBITION/ WRIT
OF MANDAMUS/ AND APPOINT OF COUNSEL THAT GOES WITH THIS MOTION
FOR APPOINTMENT OF COUNSEL.

DATED THIS DAY 12 OF FEB 2015

RESPECTFULLY SUBMITTED,

SIGN. CHARLES MAKI

charl mak