

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL CHARLES COOKE,
Appellant,

v.

CHARLES DANIELS, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondent.

CASE NO. 83578

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Order Denying Petitions for Writ of Habeas
Corpus

Fourth Judicial District Court, County of Elko
The Honorable Mason Simons, District Court Judge, Dept. 3

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1 NRS 178.482 says, "Whenever a party has the right or is required
2 to do an act within a prescribed period after the service of a notice or
3 other paper upon the party and the notice or other paper is served by
4 mail, 3 days shall be added to the prescribed period."

6 Pursuant to NRAP 4(a)(1), a notice of appeal must be filed "no
7 later than 30 days after the date that written notice of entry of the
8 judgment or order appealed from is served" – mirroring the timeline
9 articulated in NRS 34.575(1).

11 From the time the order denying the postconviction conviction for
12 habeas corpus was mailed (August 16, 2021) to the date that Mr. Cooke
13 mailed out his notice of appeal (September 20, 2021) constitutes thirty-
14 five (35) days. However, the thirty-third (33rd) day after the date the
15 said order was mailed was September 18, 2021 – which was a Saturday.
16 As such, Mr. Cooke filed his notice of appeal on the following Monday
17 and he filed this notice in a timely manner.

20 ROUTING STATEMENT

22 Pursuant to NRAP 17(b)(3) and NRAP 17(b)(4), the two classes of
23 postconviction appeals that are presumptively assigned to the Court of
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1 Appeals of the State of Nevada are “appeals that involve a challenge to
2 a judgment of conviction or sentence for offenses that are not category A
3 felonies” and “appeals that involve a challenge to the computation of
4 time served under a judgment of conviction, a motion to correct an
5 illegal sentence, or a motion to modify a sentence.”
6

7 Since the instant matter is an appeal that involves a challenge to
8 a judgment of conviction and sentence that is not a category A felony
9 (namely, Attempted Sexual Assault of a Child Under the Age of 16), this
10 matter is presumptively assigned to the Court of Appeals. Mr. Cooke
11 does not object to a reassignment of the instant matter to the Court of
12 Appeals, accordingly.
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15 STATEMENT OF THE ISSUE

16 Did the district court commit reversible error in denying Daniel
17 Charles Cooke’s postconviction petition for writ of habeas corpus
18 without the benefit of an evidentiary hearing?
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1 Mr. Cooke's filed his "Notice of Appeal" from the order denying
2 postconviction relief on September 24, 2021. *Joint Appendix 143.*

3 This Court issued an "Order of Limited Remand for Appointment
4 of Counsel for the Appellant." *Joint Appendix 145.* As a result of this
5 order, undersigned counsel was appointed to represent Mr. Cooke on
6 the instant appeal. *Joint Appendix 145.*

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9 STATEMENT OF THE FACTS

10 In his postconviction petition for writ of habeas corpus, Mr. Cooke
11 explained that he told his counsel "to appeal the conviction in person
12 and writing." *Joint Appendix 3.* More specifically, Mr. Cooke asked his
13 counsel to appeal on the day of sentencing and told counsel to appeal in
14 writing the very next week – all with no response from counsel. *Joint*
15 *Appendix 5.* Mr. Cooke wrote a letter to Mr. Green that is part of the
16 Joint Appendix. *Joint Appendix 20.*

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19 Later in this petition, Mr. Cooke averred that the plea agreement
20 that was used "was not valid nor was what the petitioner had agreed
21 upon." *Joint Appendix 6.* Mr. Cooke also said that he never agreed to
22 an 8-year minimum sentence. *Joint Appendix 8.* Mr. Cooke proceeded
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1 to say that his counsel provided “false documents all in attempts to
2 force petitioner into his plea and sentence.” *Joint Appendix 12*. Mr.
3 Cooke added that his counsel was “submitting a bogus, wrong, plea
4 agreement at sentencing that petitioner did not and would not agree
5 to.” *Joint Appendix 16*.

7 While complaining about the tactics of the detective who was
8 investigating this matter, Mr. Cooke articulated how he was “drunk and
9 did not remember doing anything to his niece.” *Joint Appendix 10*.

11 Attached to the Nevada Department of Corrections’ “Return to
12 Petition for Writ of Habeas Corpus” was the “Judgment of Conviction”
13 that is the basis for this appeal. *Joint Appendix 36-41*. In this
14 judgment of conviction, the Court stated that Mr. Cooke had pled to
15 “Attempted Sexual Assault of a Child Who is Less Than 16 Years of
16 Age, a Category B Felony.” *Joint Appendix 39*. Mr. Cooke was
17 sentenced to serve ninety-six to two hundred forty (96-240) months in
18 the Nevada Department of Corrections. *Joint Appendix 39*.

19 The State, in its “Opposition to Motion for Bail Pending Review of
20 Petition for Writ of Habeas Corpus (Post-Conviction),” the State accused
21

1 Mr. Cooke of ignoring statements he made during the plea canvass and
2 refuted Mr. Cooke's claim that his sentence was illegal. *Joint Appendix*
3 *44*. Moreover, the State said that the "8 year minimum sentence [for
4 Attempted Sexual Assault of a Child Under the Age of 16] was not
5 mandatory, it was given at the discretion of the Judge and she even
6 explained this to Cooke." *Joint Appendix 44*. The State concluded that
7 Mr. Cooke's "rights were preserved and his claims are belied by the
8 record." *Joint Appendix 45*.

11 Attached to that opposition was a transcription of the change of
12 plea hearing on Mr. Cooke's underlying criminal case. *Joint Appendix*
13 *48-74*. At that hearing, Deputy Elko County District Attorney David
14 Buchler was asked to "explain the elements of the crime, the maximum
15 potential penalties, and whether it is probational?" *Joint Appendix 53*.
16 Mr. Buchler, as to the penalty range, responded that "[t]he maximum
17 penalty is 20 years in the Nevada State Prison. Oh, and I believe that
18 the Defendant is waiving any right that he might otherwise have for
19 probation." *Joint Appendix 54*. When the district court asked defense
20 counsel Brian Green if probation was available for the offense to which
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1 Mr. Cooke was entering a plea, Mr. Green answered in the negative.

2 *Joint Appendix 54.*

3 When the district court canvassed Mr. Cooke as to the plea
4 agreement, Mr. Cooke confirmed that he signed page 11 of that
5 document on February 9, 2017. *Joint Appendix 57.* Mr. Green
6 confirmed that the charge that Mr. Cooke agreed to plead guilty to was
7 “attempted sexual assault of a child who is less than 16 years of age, a
8 category B felony, as defined by NRS 200.366 and NRS 199.330.” *Joint*
9 *Appendix 59.* Pertaining to the penalty range, Mr. Green asserted that
10 “[a]t the time of sentencing, Mr. Cooke will stipulate to a maximum
11 sentence of 20 years imprisonment in NDOC, but both sides remain free
12 to argue for the minimum amount of time the Court would order that he
13 must serve before being eligible for probation.” *Joint Appendix 59.*

14 During this hearing, Mr. Cooke informed the district court that “I
15 did it because I was pretty drunk, and I didn’t really know what I was
16 doing.” *Joint Appendix 66.* When asked if he had discussed the
17 possibility of an intoxication defense with Mr. Cooke, Mr. Green said
18 that he believed that Attempted Sexual Assault was a general intent
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1 crime before the district court corrected him. *Joint Appendix 66.*

2 Eventually, Mr. Green conceded that he did not discuss that defense
3 with Mr. Cooke but the district court moved ahead with the proceedings
4 notwithstanding. *Joint Appendix 66-67.*

5
6 The "Amended Memorandum of Plea Agreement" was filed on
7 February 10, 2017. *Joint Appendix 76.* The sentencing range indicated
8 in the plea agreement for Attempted Sexual Assault of a Child Who is
9 Less than 16 Years of Age was eight to twenty (8-20) years in prison.
10 *Joint Appendix 76-77.* It was articulated that probation was not an
11 option for Mr. Cooke. *Joint Appendix 77.*

12
13
14 The judgment of conviction was filed on May 11, 2017 – fourteen
15 (14) days after the sentencing hearing. *Joint Appendix 89-92.* Then
16 district court judge Nancy Porter sentenced Mr. Cooke to the maximum
17 sentence of eight to twenty (8-20) years in the Nevada Department of
18 Corrections with credit for two hundred forty-four (244) days served.
19 *Joint Appendix 90.*

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22 Also attached to the State's "Opposition" was the transcription of
23 Mr. Cooke's arraignment that was held on October 31, 2016. *Joint*

1 *Appendix 107.* At that hearing, Mr. Cooke was informed that he could
2 face – on the Attempted Sexual Assault charge – eight to twenty (8-20)
3 years in prison. *Joint Appendix 113-114, 116.*
4

5 The district court, through Judge Mason Simons, filed its “Order
6 Denying Post-Conviction Relief” on August 16, 2021. *Joint Appendix*
7 *127-133.* The district court considered four separate claims of Mr.
8 Cooke: (1) that his sentence of eight to twenty (8-20) years in prison was
9 illegal, (2) that he was the subject of an illegal search and an illegal
10 interrogation by law enforcement, (3) that his trial counsel Brian Green
11 was ineffective, and (4) he was denied due process and was denied his
12 right against cruel and unusual punishment. *Joint Appendix 128.*
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15 Later in this order, Judge Simons stated that he would not order
16 an evidentiary hearing because His Honor found Mr. Cooke’s “claims to
17 be lacking in merit, and to be belied by the record.” *Joint Appendix 128.*
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19 As to claim #1, Judge Simons stated that Mr. Cooke’s sentence
20 was within the statutory parameters and, as such, eight to twenty (8-
21 20) years of imprisonment is a proper sentence. *Joint Appendix 128-*
22 *129.*
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1 As to claim #2, the district court denied Mr. Cooke's claim and
2 cited the decision Tollett v. Henderson, 411 U.S. 258, 267 (1973), for the
3 proposition that "a guilty plea represents a break in the chain of events
4 which has preceded it in the criminal process." *Joint Appendix 129*.

6 As to claim #3 (ineffectiveness of defense counsel), the district
7 court dismissed that claim in its entirety. *Joint Appendix 130-132*. The
8 district court cited the plea agreement, which stated that the maximum
9 penalty in prison was twenty (20) years and that the parties could
10 argue as to the minimum sentence. *Joint Appendix 130*. The district
11 court also highlighted the fact that Mr. Cooke waived his right to appeal
12 "unless the appeal was based upon reasonable constitutional,
13 jurisdictional or other grounds that challenge the legality of the
14 proceedings." *Joint Appendix 130*. The Court proclaimed, "Petitioner
15 was also thoroughly advised of the possible penalties at the time of his
16 change of plea" and that the "ultimate sentence given by the trial judge
17 fell within the guidelines articulated in the plea agreement." *Joint*
18 *Appendix 130-131*.

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1 The district court proceeded to say that Mr. Green's performance
2 was not deficient. *Joint Appendix 131*. The lower court ascribed zero
3 fault for Mr. Green failing to file a direct appeal because Mr. Cooke did
4 not articulate any "reasonable constitutional, jurisdictional or other
5 grounds that challenge the legality of the proceedings." *Joint Appendix*
6 *131*.

7
8 As to the issue of prejudice, the district court said that "[t]here is
9 no suggestion within the Petition that the Petitioner was somehow
10 deprived of a fair proceeding" and that this was "a case of buyer's
11 remorse." *Joint Appendix 131*.

12
13 The lower court dismissed the idea "that there is a reasonable
14 probability that, but for counsel's unprofessional errors, the result
15 would have been different." *Joint Appendix 131*.

16
17 As for claim #4, the district court stated pithily that such a claim
18 was a restatement of the prior three claims and, as such, is "belied by
19 the record and are without merit." *Joint Appendix 132*.

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ARGUMENT

(1) The district court committed reversible error in denying Daniel Charles Cooke's postconviction petition for writ of habeas corpus without the benefit of an evidentiary hearing.

NRS 34.724, which defines what a petition for writ of habeas corpus is in this jurisdiction, states:

Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, or who, after exhausting all available administrative remedies, claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served.

The Sixth Amendment to the United States Constitution states the following:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation;

1 to be confronted with the witnesses against him; to have
2 compulsory process for obtaining witnesses in his favor, and
3 to have the assistance of counsel for his defense.

4 In Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166
5 (2005), citing Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107
6 (1996), this Court stated that a “claim of ineffective assistance of
7 counsel presents a mixed question of law and fact that is subject to
8 independent review.” This Court continued on, stating that “a district
9 court’s factual findings will be given deference by this court on appeal,
10 so long as they are supported by substantial evidence and are not
11 clearly wrong.” Id., citing Riley v. State, 110 Nev. 638, 647, 878 P.2d
12 272, 278 (1994).

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15 To prevail on a claim of ineffective assistance of counsel, a
16 petitioner (1) “must demonstrate that his trial or appellate counsel’s
17 performance was deficient, falling below an objective standard of
18 reasonableness,” and (2) “must show prejudice.” Id. at 686, 1166-67,
19 citing Strickland v. Washington, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674,
20 104 S. Ct. 2052 (1984); Kirksey at 987-88, 1107.
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1 Pertaining to trial counsel, “prejudice is demonstrated by showing
2 that, but for trial counsel’s errors, there is a reasonable probability that
3 the result of the proceedings would have been different.” Id., citing
4 Strickland at 694.
5

6 In Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984),
7 citing Grondin v. State, 97 Nev. 454, 634 P.2d 456 (1981), this Court
8 held a “defendant seeking post-conviction relief is not entitled to an
9 evidentiary hearing on factual allegations belied or repelled by the
10 record.”
11

12 In Toston v. State, 127 Nev. 971, 980, 267 P.3d 795, 801-02 (2011),
13 this Court reversed a district court’s decision to deny a postconviction
14 petition for writ of habeas corpus and ordered the district court to
15 conduct an evidentiary hearing on an appeal-deprivation claim. This
16 Court went on to say that “[i]f the district court determines that Toston
17 was deprived of a direct appeal due to ineffectiveness of counsel, the
18 district court shall provide Toston with the remedy set forth in NRAP
19 4(c).” Id.
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1 In Toston, this Court gave clear guidance about trial counsel's
2 "constitutional duty to file a direct appeal in two circumstances: when
3 requested to do so and when the defendant expresses dissatisfaction
4 with his conviction, and that the failure to do so in those circumstances
5 is deficient for purposes of proving ineffective assistance of counsel." Id.
6 at 978, 800 (citations omitted).
7

8
9 There are various factors that must be considered when deciding if
10 defense counsel "knew or should have known that his/her/their client
11 wanted to appeal the conviction" in the context of a guilty plea:
12

13 relevant circumstances may include whether the defendant received
14 the sentence he bargained for as part of the plea (it would be
15 reasonable to conclude that a defendant who received the
16 bargained-for sentence would be satisfied with that sentence),
17 whether the defendant reserved certain issues for appeal (the
18 reservation of an issue for appeal reasonably indicates the
19 defendant's desire to appeal), whether the defendant indicated a
20 desire to challenge his sentence within the period
21 for filing an appeal, and whether the defendant sought relief from
22 the plea before sentencing (the filing of a presentence motion to
23 withdraw a plea reasonably indicates dissatisfaction with the
24 conviction).
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Id. at 979-80, 801.

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1 This Court concluded that it could not affirm the lower court's
2 decision to deny Toston's appeal-deprivation claim when Toston had
3 outbursts at sentencing indicating his clear dissatisfaction with the
4 sentence. Id. at 980, 801.

6 (a) **Failure of trial counsel to file a notice of appeal at the**
7 **district court level**

8 In the instant case, Mr. Cooke did not just tell his attorney Brian
9 Green orally that he wanted to appeal. Mr. Cooke went above and
10 beyond that and made a written demand for Mr. Green to appeal. After
11 Mr. Cooke conveyed his two demands to appeal, Mr. Green did not
12 appeal.
13
14

15 Why did Mr. Green not file the appeal that Mr. Cooke demanded?
16 We do not have the answer in the record and the reason that answer is
17 not in the record is because Judge Simons denied an evidentiary
18 hearing in direct contravention of Toston.
19

20 Did Mr. Green hear Mr. Cooke's oral demand for a direct appeal?
21 Did Mr. Green receive Mr. Cooke's written demand for a direct appeal?
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1 These are crucial questions that need to be answered in an evidentiary
2 hearing before the district court judge.

3 The district court got ahead of itself by saying that it was
4 “unclear what ‘constitutional’ or jurisdictional’ grounds [Mr. Cooke]
5 would have been relying on to [appeal], that would not have been
6 barred by the terms of the plea agreement.” The district court’s lack of
7 clarity was caused by the district court itself. Had the district court
8 ordered an evidentiary hearing and concluded that Mr. Cooke
9 demanded an appeal, the proper procedure would not been for the
10 district court to zero in on the precise ground for the appeal. Rather,
11 the remedy would be for Mr. Cooke to be allowed to proceed to a direct
12 appeal pursuant to NRAP 4(c) – as this Court in Toston ruled.

13 The district court put the onus on Mr. Cooke to articulate
14 “reasonable constitutional, jurisdictional or other grounds that
15 challenge the legality of the proceedings” before it would be proper for
16 the lower court to entertain an appeal-deprivation claim. That is
17 absolutely incorrect. Toston does not require such a preliminary
18 showing. If a criminal defendant demands a direct appeal in the
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1 timeframe for appealing, his/her/their attorney **must** file the appeal –
2 even if the defendant cannot personally articulate “reasonable
3 constitutional, jurisdictional or other grounds.”
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5 Mr. Cooke contends that he did convey that demand and
6 undersigned counsel has every expectation that Mr. Cooke would testify
7 to that fact at an evidentiary hearing. Mr. Green needs to take the
8 witness stand and answer under oath whether he received Mr. Cooke’s
9 oral demand for an appeal at the sentencing hearing and Mr. Cooke’s
10 written demand for an appeal.
11

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13 **(b) Failure of trial counsel to adequately investigate the**
14 **defense of voluntary intoxication**

15 NRS 193.330(1) indicates that an “act done with the intent to
16 commit a crime, and tending but failing to accomplish it, is an attempt
17 to commit that crime.”
18

19 In Sharma v. State, 118 Nev. 648, 653, 56 P.3d 868, 871 (2002)
20 (internal citation omitted), this Court said that “an attempt crime is a
21 specific intent crime; thus, the act constituting [the] attempt must be
22 done with the intent to commit that crime.”
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1 NRS 193.220 states in its entirety:

2 No act committed by a person while in a state of voluntary
3 intoxication shall be deemed less criminal by reason of his or
4 her condition, but whenever the actual existence of any
5 particular purpose, motive or intent is a necessary element
6 to constitute a particular species or degree of crime, the fact
7 of the person's intoxication may be taken into consideration
8 in determining the purpose, motive or intent.

9 This Court has cited NRS 193.220 in confirming that "voluntary
10 intoxication can defeat specific intent." Kassa v. State, 485 P.3d 750,
11 758 (Nev. 2021).

12 For defense counsel to have come into a change of plea hearing on
13 an Attempted Sexual Assault matter not knowing that an attempt is a
14 specific intent crime is astounding. Even worse, defense counsel did not
15 discuss the issue of voluntary intoxication by the time Mr. Cooke
16 entered his guilty plea. Judge Porter should have put an immediate
17 stop to the proceedings when Her Honor discovered that Mr. Cooke was
18 being represented in this manner. Competent counsel should have been
19 substituted in forthwith. Instead, Mr. Green was allowed to remain Mr.
20 Cooke's counsel of record and Mr. Cooke got sentenced to the maximum
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1 allowable punishment – eight to twenty (8-20) years – in the Nevada
2 Department of Corrections.

3 Was Mr. Green's representation ineffective? Mr. Cooke firmly
4 believes that with an evidentiary hearing, the evidence would support
5 such a conclusion. It is hard to fully analyze the Strickland factors as it
6 pertains to whether the lack of investigation as to voluntary
7 intoxication prejudiced Mr. Cooke when the district court refuses to
8 order an evidentiary hearing. At a bare minimum, it is easy to infer
9 that Mr. Green's representation fell well below a reasonable attorney
10 standard when he said (on the record, no less) that Attempted Sexual
11 Assault was a general intent crime.
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15 The State and the lower court reduced Mr. Cooke's claims as being
16 "belied by the record" and meritless. It is hard for either the State or
17 Judge Simons to make such an argument when the lower court is
18 preventing Mr. Cooke for fully making that record. Denying Mr. Cooke
19 an evidentiary hearing that would have allowed him to show prejudice
20 flowing from Mr. Green's less-than-sound advice was reversible error.
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23 Mr. Cooke did not even need to make much of a record to that effect
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1 when it was the State that provided the lower court with the
2 transcription that showed Mr. Green's palpable misstatement of law.

3 **(c) The failure to advise Mr. Cooke as to the minimum**
4 **sentence for Attempted Sexual Assault of a Child**
5 **Under the Age of 16**

6 Under NRS 200.366(3), a defendant convicted of Sexual Assault on
7 a Child Under the Age of 16 is a category A felony punishable by
8 twenty-five (25) years to life in prison.

9 Pursuant to NRS 193.330(a)(1), a defendant who is convicted of an
10 attempt to commit a category A felony shall be punished for a category
11 B felony that entails "imprisonment in the state prison for a minimum
12 term of not less than 2 years and a maximum term of not more than 20
13 years."

14 NRS 176A.100 (1)(a) bars the granting of probation for a person
15 who is convicted of attempted sexual assault of a child who is less than
16 16 years of age.

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1 NRS 176.165 states, “[t]o correct manifest injustice, the court after
2 sentence may set aside the judgment of conviction and permit the
3 defendant to withdraw the plea.”
4

5 This Court said in Rubio v. State, 124 Nev. 1032, 1038, 194 P.3d
6 1224, 1228 (2008), that “[a] guilty plea is knowing and voluntary if the
7 defendant has a full understanding of both the nature of the charges
8 and the direct consequences arising from a plea of guilty.”
9

10 In Harris v. State, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014),
11 that “[h]abeas corpus is the exclusive remedy to challenge the validity of
12 the guilty plea after sentencing.”
13

14 Unfortunately for Mr. Cooke, failing to advise Mr. Cooke of the
15 voluntary intoxication defense was not the only omission that Mr.
16 Green made that could be the basis for a finding of ineffectiveness of
17 counsel. Mr. Green never (on the record, at least) advised Mr. Cooke of
18 the minimum sentence for Attempted Sexual Assault. The court never
19 canvassed Mr. Cooke as to the minimum sentence for Attempted Sexual
20 Assault. The State did not advise Mr. Cooke of the minimum sentence
21 for Attempted Sexual Assault. In sum, there is zero record of Mr. Cooke
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1 having been advised of the minimum punishment for the crime for
2 which he pled guilty. This is not a plea that was entered into
3 “knowingly, intelligently, and voluntarily.”
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5 As such, an evidentiary hearing should be ordered to determine if
6 Mr. Cooke should be able to withdraw his plea of guilty on this ground.
7

8 CONCLUSION

9 The district court committed reversible error by summarily
10 denying Daniel Charles Cooke’s postconviction petition for writ of
11 habeas corpus without the benefit of an evidentiary hearing.
12

13 Such an evidentiary hearing is required when there is an appeal-
14 deprivation claim. Toston v. State permits nothing less than this
15 affordance of due process to Mr. Cooke. The district court’s ruling
16 violates Toston in both letter and spirit.
17

18 Additionally, an evidentiary hearing is necessary to gauge
19 whether the deficient performance of Mr. Cooke’s criminal defense
20 attorney Brian Green prejudiced Mr. Cooke. Mr. Green’s lack of
21 understanding that Attempted Sexual Assault is a specific intent crime
22 falls below a reasonable attorney standard. Mr. Green should have
23
24
25

1 discussed the defense of voluntary intoxication but failed to do so
2 because he mistakenly believed that Attempted Sexual Assault was a
3 general intent crime.
4

5 Finally, an evidentiary hearing is necessary to ascertain Mr.
6 Cooke's knowledge and intelligence as to the penalty range of
7 Attempted Sexual Assault. There is no record that Mr. Green advised
8 Mr. Cooke as to the mandatory minimum prison sentence (to-wit, two
9 years of imprisonment). There is no excuse for the full penalty range to
10 have been omitted from the guilty plea agreement. Once again, Mr.
11 Green fell below a reasonable attorney standard. Mr. Green has some
12 explaining to do in an evidentiary hearing as to why this happened.
13
14

15 DATED this 21st day of March, 2022.
16

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19 By: 
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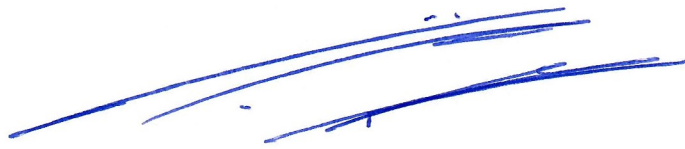
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1 this brief complies with all the applicable Nevada Rules of Appellate
2 Procedure, in particular NRAP 28(e)(1), which requires every assertion
3 in the brief regarding matters in the record to be supported by a
4 reference to the page and volume number, if any, of the transcript or
5 appendix where the matter relied on is found.
6

7 I understand that I may be subject to sanctions in the event that
8 the accompanying brief is not in conformity with the requirements of
9 the Nevada Rules of Appellate Procedure.
10

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12

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DATED this 21st day of March, 2022.

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