

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

LEROY ROOSEVELT MACK,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-21-358925-1

Docket No: 84476

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT

LEROY MACK # 46524,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
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LAS VEGAS, NV 89155-2212

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CONCLUSION

Petitioner in good-faith request that this Honorable Court ~~reverse~~ his ruling in Motion to grant Relief or Release based on COVID 19 Hardship Act, Motion For Sentence Reduction or Modification based on Constitution Violation and **grant** in accordance with (EJDC.) Rule 2.20 section (e). And the 14th & 15th Amendment of U.S. and Nevada Constitution.

(Rule 2.20(e))
Ignoring The Law Is No Excuse!

Dated this 22th of March, 2022

Respectfully Submitted
Leroy Mack

0046524

Leroy Mack

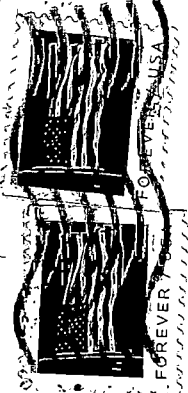
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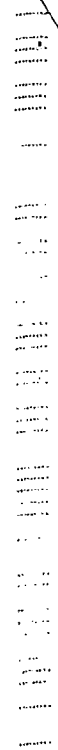
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89101-89000



HIGH DESERT STATE PRISON
MAR 23 2022
UNIT 2A/B

In the name of God The Wise The Truth

 LEROY ROOSEVELT MACK
- vs -

Case No. C-21-358925-1

Dept. XXVIII

FILED

APR - 5 2022

James A. Williams
CLERK OF COURT

STATE OF NEWARK

Petitioners REPLY TO D.D.A. OPPOSITION TO DEFENDANTS
MOTION TO CORRECTION SENTENCE; MOTION FOR SENTENCE
MODIFICATION BASED ON PROSECUTION MICONDUCT;
MOTION FOR SENTENCE MODIFICATION BASED ON
PRESENTENCE INVESTIGATION FINDING; MOTION
FOR ASSISTANCE OF COUNSEL; and MOTION TO RESOLVE.

COMES NOW LEROY ROOSEVELT MACK and hereby submits
the attached Points and Authorities in Reply to D.D.A.
Reply Opposition Motion is made and based upon all
the papers and pleadings on file herein the attached
points and authorities in support hereof, and oral argument
at the time of hearing, DEEMED necessary by this
Honorable Court.

ARGUMENT

Petitioners wasn't to make this clear for the
record. Petitioner NEVER requested that his deal
be withdrawn. Petitioner NEVER Petitioned that
his deal be withdrawn. Petitioner NEVER requested
OR wanted Probation. Petitioner NEVER claimed he
wasn't guilty of alleged crime he pleaded guilty to.

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MAR 31 2022

CLERK OF THE COURT

Petitioner ONLY requested A FAIR + JUST Proceeding guaranteed by U.S. Constitution.

① MOTION FOR SENTENCE

④ Ineffective Assistance of Counsel Claims

The Sixth Amendment to the United States Constitution provides that "IN ALL criminal prosecution, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

The United States Supreme Court has long recognized that "the right to counsel is right for the" **EFFECTIVE ASSISTANCE OF COUNSEL**.
(see page 9 - line 14-17, DDA Opposition Motion)

Its Amazing how Petitioner submits A Motion for Assistance of Counsel, and DDA opposed and requested it be Denied. Yet the above mentioned that Petitioner SHOULD have Assistance of Counsel she agrees. "Amazing" as written or cited on page 9, line 14-17.

Court should grant Motion for Assistance of Counsel, DDA Agrees in her own Motion.

Petitioner ALLEGES Miceli "ABANDON" him by not being present at sentencing. McCoy + Louisiana. DDA PANDUKHT when on a 4 page run from page 9-12 cited Ineffective Assistance of Counsel under STRICKLAND; everybody knows Strickland is a WEAK defense and it only bails you out. We are here for "ABANDONMENT" McCoy + Louisiana. How can Miceli be Ineffective or Effective when "HE WANTED AT SENTENCING"? Miceli (under penalty of perjury) in his Motion to Withdraw state "He ABANDON, Petitioner for another client in a preliminary hearing he had. "Its IMPOSSIBLE FOR TOM BREADY to be EFFECT OR INEFFECTIVE to TAMPA BAY if he retired and is not on the field. ON he out of retirement Now. So Now he can prove by coming back on the field, will determine if he can be INEFFECTIVE or EFFECT. WE KNOW HE EFFECT on the field WE seen him play and APPEAR!!!

Miceli also stated in his Motion to withdraw as Counsel. He talked to Ms. Stone 30 minutes before Petitioner's sentencing. He DIDN'T say they discussed the case before that day.

DDA on page 12 line 13-14.

He fails to show Mr. Stone and Mr. Miceli had not worked together on his case in the past or had not reviewed the file together prior to the sentencing hearing.

DDA is asking Petitioner to engage in LEGAL FICTION to answer her claim. Yet Miceli stated the above "Under the penalty of perjury" of the time and when he talked to Ms. Stone

DECLARATION OF MICELI

- b. The preliminary hearing got started much later than 9:30am, it was closer to 11:30am. When counsel realized that the preliminary hearing was going to conflict with the sentencing hearing for Mr. Maci, counsel met with attorney Kendall Stone who is also an attorney at Pitavot Fumo Child and went over the facts of the case and the pertinent arguments to make at sentencing.

Guessing is NOT sufficient for THE TRUTH.

Petitioner would only be guessing if he said Miceli and Ms. Stone discussed the case prior to the 30 minutes before sentencing

ABANDONMENT!

McCoy + Louisiana

On page 12 line 23-24 of DDA Pandukht opposition Motion

He also fails to demonstrate that the result of the sentencing hearing would have been different if Mr. Miceli had been present instead of Ms. Stone.

State wants Petitioner to indulge in Legal Fiction,
by saying what would have happened different if Mr.
Miceli would have been present. "MERE CONJECTURE"

The Sixth Amendment to the United States Constitution
provides that, [I]n all criminal prosecutions, the accused shall enjoy
the right ... to have the Assistance of Counsel for his defense. (See
Page 9 line 14-16, DDA opposition Motion)

For the sake of argument had Mr. Miceli been present
at sentencing. When DDA Trippiedi, made FALSE STATEMENT
under oath to obtain Maximum sentence, Mr. Miceli would had
been able to provide Honorable Court with case file to OBJECT
to FALSE EVIDENCE presented to Honorable Court. Also to
submit a Motion in open Court requested that Clark County
District Attorney Steven Wolfson had been informed of the
FALSE STATEMENT presented in Honorable Court by SWORN
OFFICER of the Court Trippiedi. Mr. Miceli could have
requested a lower sentence be Imposed and if denied,
it would have been all on record to Proceed to NEVADA
SUPREME COURT. Maybe Ms Stone and was in another
Courtroom that's why she FAILED to OBJECT to FALSE
STATEMENT. Yet Petitioner is not pointing the finger at
Ms Stone or DDA Pandukht. Ms Stone & DDA Pandukht,
both were left holding the bag.

ABANDON by Mr. Miceli, McCoy + Louisiana
DUE PROCESS Violation

Mis Conduct by Ms Trippiedi: Mooney v. Hobbs
DUE PROCESS Violation.

Requesting motion to be granted!

III THE DISTRICT COURT LACKS JURISDICTION TO MODIFY
A SENTENCE BASED ON ALLEGED IN THE PSI,
(see page 19 line 13-14 of DDA opposition Motion)

The Nevada Supreme Court has long recognized that
Courts have the POWER and JURISDICTION to "MODIFY" A
Sentence. see Staley v. State 787 P2d 396, 106 Nev. 75 (1990).

A district court has JURISDICTION to "MODIFY" a
defendant's sentence "only if (1) the district court actually sentenced
appellant based on a materially false assumption of fact that worked
to appellant's extreme detriment, and (2) the particular MISTAKE at
issue was of the type that would rise to the level of a violation
of DUE PROCESS. (see page 14 line 20-24 DDA opposition Motion)

Additionally, if substantial and material MISTAKES of
fact were relied upon in rendering judgment, a judge may RECONSIDER
a sentence. (see page 14 line 25-26 DDA(P) opposition Motion)

Sec. 13. NRS 176.145 is hereby amended to read
as follows 176.145 The report of any presentence investigation
must contain:

(4) ARRESTS DURING the 10 years IMMEDIATELY
preceding the date of the offense for which the report is
being prepared; and.

NRS 176.145(1)(a)(4) states the PSI must contain
information regarding arrests in the past ten years. It nowhere
limits the PSI to only including arrests within ten years.
(see page 20 line 3+4 of DDA(P) opposition Motion)

STATE Alleged that District Court Lacks Jurisdiction To Modify a sentence based on alleged in the PSI. (see page 19 - 13-14 line of States opposition Motion. Being in direct conflict with Nevada Supreme Court. (see below)

{ Nevada Supreme Court has long recognized that Court have the POWER }
{ and JURISDICTION to MODIFY A sentence. see Statey v State 787 P2d 396, 106 Nev. }

State also being in CONFLICT with (page 14 line 20-24 of states opposition Motion) which confirms District Court "HAS" JURISDICTION to Modify States on Motion.

When the sentencing court "makes a mistake in rendering a judgment which works to the extreme detriment of the defendant" the district court has jurisdiction to VACATE or MODIFY the suspect sentence or judgment. (see page 14 line 27-28 + page page 15 line 1 + 2 states opposition Motion)

Again state being in CONFLICT with there own citing stating (District Court Lacks Jurisdiction to Modify)

{ WHEN IMPOSING A SENTENCE ON A DEFENDANT, THE DISTRICT COURT must BASE THEIR SENTENCE OFF OF ACCURATE INFORMATION CONTAINED IN A PSI. (see page 15 line 13-14 of States Opposition Motion) }

NRS 176.145 (4) ARRESTS DURING the 10 years IMMEDIATELY preceding the date of the offense for which the report is being prepared (Assembly Bill No. 236 Committee on Judiciary)

State when way pass the 10 years in PSI, by mention of Petitioners prior Arrest 20-30 years ago, Causing a DUE PROCESS VIOLATION entitling Petitioners to MODIFICATION or VACATE of Sentencing

(2) the particular MISTAKE at issue was of the type that would rise to the level of a violation of DUE PROCESS. (see. page 14 line 23-24 of States opposition)

STATE made a MISTAKE in disregarding NRS 176.145 (4) by submitting Petitioners ARREST WAY Passed the 10 YEARS Immediately preceding the date of the offense for which the report is being prepared,

Sec 13. NRS 176.145⁽⁴⁾ is hereby amended to read as follows 176.145

The report of any presentence investigation must contain.

(4) Arrests During the 10 years Immediately preceding the date of the offense^{see} for which the report is being prepared;

NRS, 801 Nevada Revised Statute

Arrest: (a) to seize or take into custody by authority of the law.

During: (a) In the course of...

Ten: (a) the cardinal number between nine and eleven, 10, X

Years: (a) a period of 365 days, 12 months

Immediately: (a) without delay

Preceding: that precedes; going or coming before

^{see} (Webster's New World Dictionary ^{see}) (3rd College Edition)

Therefore even if Honorable Court would entertain,
interjection of State saying

(It nowhere limits the PSI to only including arrests within)
ten years. (see page 30 line 4, of state oppositions)

Then the Court would be acknowledging that there is
"AMBIGUITY" in the NRS 176.145(4), unless the State lacks
reading comprehension. Either or Petitioner is entitled to the
relief under the sentencing Modification.

Only reply to NRS 176.145 (4) by the State was;
(It nowhere limits the PSI to only including arrests
within ten years.) see page 20 line 4-5 states opposition Motion)
(NERE CONJECTURE)

AMBIGUITY of THE LAW goes to the person
that brings it forth. Therefore for some apparent
reason state declines to uphold NRS 176.145 (4). Therefore
Court is inclined to grant relief to Modify sentence

II THE DISTRICT COURT LACKS JURISDICTION TO MODIFY A SENTENCE BASED ON ALLEGED PROSECUTORIAL MISCONDUCT. (see page 17 line 17-18, states opposition Motion)

Defendant says the prosecutor's statement that he was a
coward and shot his victim in the back "caused prosecution
misconduct and DUE PROCESS violation granted by U.S. Constitution."
(see page 17-line 25-27-states opposition Motion)

STATE NEVER ONCE DENIED Prosecutor Trippiedi presented HONORABLE
COURT "FALSE STATEMENT" (see states opposition Motion)

The Supreme Court has found DUE PROCESS violation
in SEVERAL cases where prosecutors knowingly have introduced
and argued from FALSE TESTIMONY. see Mooney v. Holohan, 294
U.S. 103. 112 (1935)

The prejudice to a defendant's right to a fair trial is even more
palpable when the prosecutor has not only withheld exculpatory evidence,
but has knowingly introduced and argued FALSE EVIDENCE. This
Circuit has acknowledged that "a prosecutor's presentation of tainted
evidence is viewed seriously and its effects are exceedingly carefully
SCRUTINIZED". United States v. Polizzi, 801 F.2d 1549, 1550
(9th Cir. 1986).

STATE BOLDLY STATES,

and even if he could prove the DDA ERRED by saying he shot her in the back, this would still not grant him the relief he seeks. (see page 19 line 8-9 states opposition)

AGAIN! State NEVER DENIES THE FACT THAT DDA Trippich presented FALSE ARGUMENT to Honorable Court.

Yet states even if he could prove as Petitioner logged that Trippich presented FALSE TESTIMONY to Honorable Court. Honorable Court still can't give Petitioner Relief he seeks.

Normally in court setting if a person under oath gives FALSE TESTIMONY under oath The Prosecutor THREATS to CHARGE them with PERJURY and Threatening 5 years in Prison. Yet when A SWORN OFFICER of the Court presents FALSE TESTIMONY, "WE FALL ON DEAF EARS? And it goes Ignored!

Id. 2 The Supreme Court has stated:

It is established that a Conviction obtained through use of FALSE EVIDENCE, known to be such by representatives of the State, must fall under the FOURTEENTH AMENDMENT.

We note again the prosecutor's repeated references in closing argument to the FALSE EVIDENCE. In proprieties in closing arguments can, themselves, violate DUE PROCESS.

CONCLUSION

Because the prosecutor's misconduct was not harmless beyond a reasonable doubt, we reverse. We remand to the district court to GRANT.

BROWN v Borg 951 F.2d 1011 (1991) 9th Circuit

The principle that a State may not knowingly use FALSE EVIDENCE including FALSE TESTIMONY, to obtain a tainted conviction, [is] implicit in any CONCEPT of Ordered LIBERTY. Napue v. Illinois, 360 U.S. at 269

(The proper role of the criminal prosecutor is not simply to obtain a conviction, but to obtain a fair sentencing guaranteed by U.S. Constitution.)

Petitioner under the 14th Amendment Equal Protection of the Law and 15 Amendment Due Process, Request this Honorable Court GRANT relief thereof.

MOTION FOR ASSISTANCE OF COUNSEL (REPLY)

The Sixth Amendment to the United States Constitution provides that, "In all criminal prosecutions, the accused shall enjoy the RIGHT... to have the Assistance of Counsel for his defense."
(See page 9. line 14-16 states opposition motion)

State in above line agrees that Petitioner has a Constitutional Right to Assistance of Counsel. therefore Petitioner request Court to GRANT!

CONCLUSION

Based on the foregoing, Petitioner in good faith requests this Honorable Court GRANT Petitioner's Motion to Correction Sentence, Motion for Sentencing Modification Based on Prosecution Misconduct, Motion for Sentence Modification Based on Presentence Investigation Finding, Motion for Assistance of Counsel, Motion to Resolve.

Ignorance of The Law is No Excuse!

Dated this 23rd day of March, 2022

*Petitioner is denied access to law library at this time.

Respectfully Submitted
Lenny R. Maell

0046524

Heray Mack

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HDP

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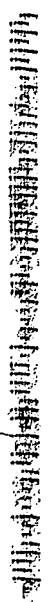
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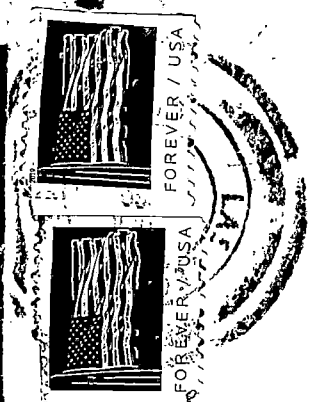
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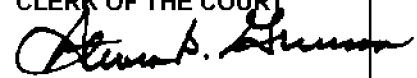
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HIGH DESERT STATE PRISON
MAR 9 8 2022
UNIT 2A/B





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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LEROY MACK,
#1023622,

Defendant.

CASE NO: C-21-358925-1

DEPT NO: XXVIII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MOTION TO
CORRECT DECISION BASED ON RULE 2.20 RULING**

DATE OF HEARING: April 25, 2022
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Correct Decision Based on Rule 2.20 Ruling.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 25, 2021, LEROY MACK (hereinafter "Defendant") was charged by way
4 of Criminal Complaint with the crimes of Battery with Use of a Deadly Weapon Constituting
5 Domestic Violence (Category B Felony - NRS 200.481; 200.485; 33.018 - NOC 57935);
6 Attempt Murder with Use of a Deadly Weapon (Category B Felony - NRS 200.010, 200.030,
7 193.330, 193.165 - NOC 50031) and Invasion of the Home (Category B Felony - NRS 205.067
8 - NOC 50435).

9 On September 13, 2021, the State filed an Information charging Defendant with one
10 count of Battery with Substantial Bodily Harm (Category C Felony - NRS 200.481 - NOC
11 50214). On September 20, 2021, a Guilty Plea Agreement (hereinafter "GPA") was filed in
12 open court and Defendant pled guilty to Battery with Substantial Bodily Harm (Category C
13 Felony - NRS 200.481 - NOC 50214). The terms of the GPA were as follows: "The State
14 retains the right to argue. All remaining counts contained in the Criminal Complaint which
15 were bound over to District Court shall be dismissed when Defendant is adjudged guilty and
16 sentenced."

17 On December 1, 2021 on the date set for sentencing, Ms. Stone appeared on behalf of
18 Mr. Miceli and requested that the matter be continued based on Defendant's request for Mr.
19 Miceli to appear. Ms. Stone stated she had discussed the case with Mr. Miceli and was prepared
20 to go forward. The victim speakers were also present. The Court ordered that the sentencing
21 would proceed. Victim Speakers Rayven Thomas and Regina Pullens both addressed the
22 Court. In addition to the \$25.00 Administrative Assessment fee, Restitution (the amount to be
23 determined), \$150.00 DNA Analysis fee including testing to determine genetic markers, and
24 \$3.00 DNA Collection Fee, Defendant was sentenced to a minimum of twenty-four (24)
25 months and a maximum of sixty (60) months in the Nevada Department of Corrections
26 (hereinafter "NDOC") with eleven (11) days credit for time served. The Court further ordered
27 a status check to determine restitution and remanded Defendant into custody.

28 //

1 On January 12, 2022, Defendant was ordered to pay restitution in the amount of \$22.00
2 payable to Rayven Thomas.

3 The Judgment of Conviction was filed on January 13, 2022. Defendant did not file a
4 Notice of Appeal.

5 On January 19, 2022, Defendant's Proper Person Motion to Withdraw Michael Miceli,
6 Esq. as Counsel of Record for Defendant was granted.

7 On February 3, 2022, Defendant filed a Motion for Sentence Reduction or
8 Modification, and on February 17, 2022, Defendant filed a Motion for Evidentiary Hearing
9 Based on Submitted Sentencing Modification. Defendant failed to properly serve the State
10 with these motions. The State's Opposition was filed on February 25, 2022. Defendant's
11 Motion to Grant Relief or Release Based on Covid 19 Hardship Act and Motion for Minutes
12 and Transcripts do not ordinarily require a written opposition by the State. The hearing on
13 these Motions, originally set for March 2, 2022, was continued to March 7, 2022.

14 On March 1, 2022, Defendant filed the following motions: Motion to Correction
15 Sentence, Motion for Sentence Modification Based on Presentence Investigation Finding,
16 Motion for Sentence Modification Based on Prosecution Misconduct, Motion to Resolve and
17 Motion for Assistance of Counsel. The State filed its joint Opposition on March 10, 2022.

18 On March 7, 2022, the Court advised it would be ruling based on the pleadings. As to
19 Defendant's Motion to Grant Relief or Release Based on Covid 19 Hardship Act, the Court
20 noted that Defendant had asked for some general relief based on Covid but did not give any
21 specific grounds. Defendant was asking for the release of inmates based on Covid and clearly
22 there was no basis for that request. Thus, the Court denied this motion. The Court granted
23 Defendant's Motion for Minutes and Transcripts. As to Defendant's Motion for Sentence
24 Reduction or Modification Based on Constitution Violation, the Court found no reasonable
25 basis to modify the sentence, Defendant did not state what his attorney would have said that
26 would have changed the sentencing hearing or the sentence that was granted, there was nothing
27 to say that the Court did not have jurisdiction to do the sentencing or that it was in excess of
28 the statutory maximum, and Ms. Stone stated she was ready and prepared to go forward with

1 the sentencing. Therefore, the Court found no grounds for an Evidentiary Hearing or a new
2 sentencing and denied Defendant's Motion for Sentence Reduction or Modification and
3 Motion for Evidentiary Hearing Based on Submitted Sentencing Modification.

4 On March 23, 2022, the Court continued the remaining pending motions for a transport
5 order and for all of Defendant's motions to be heard together.

6 On April 2, 2022, Defendant filed the instant Motion to Correct Decision Based on
7 Rule 2.20 Ruling. The State's Opposition now follows.

8 **STATEMENT OF FACTS**

9 At sentencing, the District Court relied on the synopsis of the offense in the Presentence
10 Investigation Report ("PSI"), prepared on October 28, 2021:

11 On August 23, 2021, officers responded to a residence referencing a burglary
12 call. Details of the call stated the defendant, later identified as Leroy Mack,
13 broke down the victim's door. The victim was speaking softly from her
14 bathroom and stated Mr. Mack is known to her and had shot her the previous
15 month. Upon arrival, officers observed noticeable damage to the front door.
16 After knocking on the door, the victim ran out of the apartment; she appeared
17 to be in distress. Officers announced their presence and Mr. Mack came to
18 the door. He was taken into custody without incident. According to the
19 victim, Mr. Mack arrived at her residence and began banging on the door
20 aggressively. She made several attempts to ask him to leave; however, she
then began receiving text messages from Mr. Mack telling her to open the
door. Mr. Mack proceeded to break down the door stating a friend/neighbor
informed him that another male was in the residence. During questioning,
Mr. Mack was very uncooperative and stated, "Whatever the victim says is
what happened." He declined to speak with officers.

21 PSI at 5.

22 **ARGUMENT**

23 **I. THERE IS NO LEGAL BASIS TO RECONSIDER DEFENDANT'S POST-** 24 **CONVICTION MOTIONS**

25 Defendant fails to provide any authority in support of a motion to reconsider the denial
26 of a post-conviction motion. Defendant cites to Eighth Judicial District Court Rule 2.20, but
27 then attempts to attach the good cause requirement from NRS 34.726 and 34.810, which
28 specifically apply to Petitions for Writ of Habeas Corpus, not to motions. Rule 2.20(e) merely

1 states: "Within 14 days after the service of the motion, and 5 days after service of any joinder
2 to the motion, the opposing party must serve and file written notice of nonopposition or
3 opposition thereto, together with a memorandum of points and authorities and supporting
4 affidavits, if any, stating facts showing why the motion and/or joinder should be denied.
5 Failure of the opposing party to serve and file written opposition *may* be construed as an
6 admission that the motion and/or joinder is meritorious and a consent to granting the same."
7 There is no good cause requirement within Rule 2.20 and NRS Chapter 34 is inapplicable.

8 Without being properly or timely served with any of Defendant's motions, upon
9 discovering the motions had been filed, the State nonetheless immediately filed an Opposition
10 on February 25, 2022 to Defendant's Motion for Sentence Reduction or Modification and
11 Motion for Evidentiary Hearing Based on Submitted Sentencing Modification. Defendant's
12 Motion to Grant Relief or Release Based on Covid 19 Hardship Act and Motion for Minutes
13 and Transcripts do not ordinarily require a written opposition by the State. Certain motions
14 that do not affect the Judgment of Conviction do not require a written opposition by the State
15 but are left to the Court's discretion to either grant or deny these types of motions. In this case,
16 the Court properly denied Defendant's motions and there is no legal basis to reconsider the
17 Court's rulings.

18 Nevada Supreme Court Order Adopting Statewide Rules of Criminal Practice was filed
19 on December 29, 2020 (ADKT 0491). Attached to the Order was Exhibit A: Adoption of
20 Nevada Rules of Criminal Practice for the District Courts. Contained in this Order is Rule 8,
21 entitled Pretrial Motions, which includes a provision now allowing a party to seek
22 reconsideration of a ruling of the court upon a showing of changed circumstances:

23 Rule 8. Pretrial Motions

24 7. Rehearing of motions.

25 (A) No motion once heard and disposed of shall be renewed in the
26 same cause, nor shall the same matters therein embraced be
27 reheard, unless by leave of the court granted upon motion therefor,
after notice of such motion to the adverse parties.

28 (B) A party may seek reconsideration of a ruling of the court upon
a showing of changed circumstances.

1 First, the instant motion is not a pretrial motion. Defendant's Judgment of Conviction
2 was filed on December 6, 2021. On March 7, 2022, the Court denied Defendant's Motion for
3 Sentence Reduction or Modification, Motion for Evidentiary Hearing Based on Submitted
4 Sentencing Modification, and Defendant's Motion to Grant Relief or Release Based on Covid
5 19 Hardship Act. Therefore, the aforementioned motions were post-conviction motions, not a
6 pretrial motion. Second, Defendant has failed to show any changed circumstances since the
7 denial of his aforementioned motions. The Court definitively disposed of these motions in its
8 Court Minutes dated March 7, 2022:

9 Court Advised it would be ruling based on the pleadings.
10 DEFENDANT'S PROPER PERSON MOTION TO GRANT
11 RELIEF OR RELEASE BASED ON COVID 19 HARDSHIP
12 ACT Court noted it was not quite clear but the Deft. had asked for
13 some general relief based on Covid, however, Advised he certainly
14 did not give any specific grounds; Court noted the Deft. was asking
15 for the release of inmates based on Covid, therefore, clearly there
16 was no basis for that request; thus, COURT ORDERED motion
17 DENIED. State DIRECTED to prepare the order.
18 DEFENDANT'S PROPER PERSON MOTION FOR MINUTES
19 AND TRANSCRIPTS Court mentioned it believed it had already
20 granted this Motion, however, ORDERED motion GRANTED.
21 Deft. DIRECTED to submit an order requesting the Minutes and
22 Transcripts from December 1, 2021 and December 15, 2021.
23 DEFENDANT'S PROPER PERSON MOTION FOR
24 SENTENCE REDUCTION OR MODIFICATION BASED ON
25 CONSTITUTION VIOLATION COURT FINDS no reasonable
26 basis to modify the sentence; Deft. didn't say what his attorney
27 would say that would change the sentencing hearing or the
28 sentence that was granted; there was nothing to say that the Court
did not have jurisdiction to do the sentencing or that it was in
excess of the statutory maximum. Further, Deft. eluded to the fact
that Ms. Stone did the sentencing instead of Mr. Miceli, however,
Ms. Stone stated she was ready and prepared to go forward.
Therefore, COURT FINDS no grounds for an Evidentiary Hearing
or a new sentencing, thus, ORDERED motion DENIED. State
DIRECTED to prepare the order. NDC CLERK S NOTE: A copy
of this minute order has been mailed to: Leroy Mack, #46524,
High Desert State Prison, 22010 Cold Creek Road, P.O. Box 650,
Indian Springs, Nevada 89070. // cbm 03-10-2022.

25 There is no new information contained in Defendant's motion. Consequently,
26 Defendant cannot demonstrate a showing of changed circumstances. Therefore, there is no
27 legal basis to reconsider Defendant's post-conviction Motion for Sentence Reduction or
28

1 Modification, Motion for Evidentiary Hearing Based on Submitted Sentencing Modification,
2 and Defendant's Motion to Grant Relief or Release Based on Covid 19 Hardship Act.

3 **II. DEFENDANT WAS NOT ENTITLED TO RELEASE BASED ON COVID-19**

4 Defendant's Motion to Grant Relief or Release Based on Covid 19 Hardship Act
5 vaguely argued that this Court should release him from his prison sentence under "the Covid
6 Hardship Act". First, Defendant failed to provide any citations, legal authority or exact
7 quotations in support of said motion.

8 Second, for this Court to release Defendant from his prison sentence would be a
9 violation of the separation of powers doctrine. Like the United States Constitution, the
10 structure of the Nevada Constitution gives rise to the separation of powers doctrine through its
11 "discrete treatment of the three branches of government." Comm'n on Ethics v. Hardy, 125
12 Nev. 285, 292, 212 P.3d 1098, 1103 (2009). However, "[N]evada's Constitution goes one step
13 further; it contains an express provision prohibiting any one branch of government from
14 impinging on the functions of another." Id. at 292, 212 P.3d at 1103-04; *see* Nev. Const. art.
15 3, § 1(1). Prison management is a statutorily created function of the executive branch. Haney
16 v. State, 124 Nev. 408, 185 P.3d 350 (2008). In Haney, the Nevada Supreme Court invalidated
17 the ability of courts to issue "flat time" sentences because such sentences violated the
18 Legislature's intent to allow the jail to award good time credits. Id.

19 When it comes to the health and well-being of inmates, the Legislature has granted such
20 responsibilities to the Executive Branch. The Legislature has enacted NRS 209.101 which
21 calls for the creation of the Board of State Prison Commissioners that is responsible for
22 overseeing the operations of the Nevada Department of Corrections. The Governor is the
23 President of the Board. As the President, the Governor appoints the Director of the Department
24 who is responsible for the supervision, custody, treatment, care and security of all offenders.
25 NRS 209.121, NRS 209.131(4). The Director is also tasked with taking measures to protect
26 the health and safety of offenders. NRS 209.131(7).

27 Similarly, when it comes to the Clark County Detention Center, the Legislature has
28 given these powers to the county of commissioners. NRS 211.020. According to NRS

1 211.020(3), the board of county commissioners “[S]hall take all necessary precautions against
2 escape, sickness, infection, suicide, and death.” The sheriff of the county is the custodian of
3 the jail. NRS 211.030.

4 The Legislature has clearly indicated the parties responsible for managing the safety
5 and well-being of inmates. This includes the decisions on how best to balance public safety
6 as well as the inmate population during the Covid-19 pandemic. Such responsibilities lie with
7 the respective executive agencies, and not with the courts. No matter how well-intentioned, a
8 court that unilaterally releases an inmate from an already imposed sentence based on a concern
9 about Covid-19 violates established case law and the separation of powers.

10 Third, the rise of COVID-19 does not relate to the validity of his confinement. Like
11 other adverse aspects of being incarcerated that are unrelated to a defendant’s sentence (such
12 as an increased risk of experiencing inmate violence), Petitioner’s risk of exposure to COVID-
13 19 is a condition of his confinement. See Farmer v. Brennan, 511 U.S. 825, 833–34, 114 S. Ct.
14 1970, 1976–77 (1994) (discussing inmate violence as a condition of confinement). As such,
15 Defendant’s motion challenged the conditions of his confinement, and not the constitutionality
16 of his sentence.

17 In fact, the Nevada Supreme Court has declined to grant relief to a petitioner alleging
18 that the dangers of COVID-19 required his release from prison. See Kerkorian v. Sisolak, 462
19 P.3d 256 (Nev. 2020) (unpublished disposition). Other courts have similarly held that claims
20 that COVID-19 makes an otherwise constitutional sentence cruel and unusual are actually
21 challenges to the conditions of confinement. See, inter alia, People ex rel. Coleman v. Brann,
22 No. 260252/20, 2020 WL 1941972, at *6 (N.Y. Sup. Ct. Apr. 21, 2020); Foster v. Comm’r of
23 Correction, 484 Mass. 698, 717, 146 N.E.3d 372, 390 (2020).

24 Accordingly, the appropriate vehicle to challenge a condition of confinement would be
25 to file a 42 U.S.C. § 1983 claim and argue that an individual’s lawful incarceration has exposed
26 them to certain harms while incarcerated.¹ Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct.

27
28 ¹ Compare to McConnell v. State, 125 Nev. 243, 249, footnote 5, 212 P.3d 307, 311, footnote
5 (2009) (The correct way to challenge the mode of execution is a separate and independent
42 U.S.C. §1983 action.).

1 1970, 1976, 128 L. Ed. 2d 811 (1994) (“The Constitution ‘does not mandate comfortable
2 prisons,’ Rhodes v. Chapman, 452 U.S. 337, 349, 101 S.Ct. 2392, 2400, 69 L.Ed.2d 59 (1981),
3 but neither does it permit inhumane ones, and it is now settled that ‘the treatment a prisoner
4 receives in prison and the conditions under which she is confined are subject to scrutiny under
5 the Eighth Amendment,’ Helling, 509 U.S. at 31, 113 S.Ct. at 2480.”).

6 A review of both this State’s and the Supreme Court’s jurisprudence shows that issues
7 such as: excessive force used by prison officials (see Farmer v. Brennan, 511 U.S. 825, 832,
8 114 S. Ct. 1970, 1976, 128 L. Ed. 2d 811 (1994)); lack of access to appropriate medical care
9 (Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976)); the use of
10 cruel punishments within a prison (Hope v. Pelzer, 536 U.S. 730, 737–38, 122 S. Ct. 2508,
11 2514, 153 L. Ed. 2d 666 (2002)); the danger of inmate on inmate violence (Butler ex rel. Biller
12 v. Bayer, 123 Nev. 450, 459, 168 P.3d 1055, 1062 (2007)); and the use of punitive segregation
13 (Bowen v. Warden of Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984)), are
14 all addressed under a conditions of confinement analysis (or a similar analysis considering
15 whether the conduct of the prison staff was indifferent).

16 Finally, Defendant could receive a vaccination if he desires to reduce his risk of
17 becoming seriously ill.² Defendant did not reveal whether he is fully vaccinated. NDOC
18 reported on May 4, 2021, that almost half of the offenders in NDOC facilities had received at
19 least their first dose of the vaccine.³

20 Therefore, this Court properly declined Defendant’s invitation to ignore United States
21 Supreme Court and Nevada Supreme Court precedent. Given that the Nevada Supreme Court
22 has clearly stated that this type of claim is not cognizable in post-conviction proceedings, this
23 Court does not have the jurisdiction to address this claim when brought through such a legal
24 vehicle. Accordingly, this Court correctly denied Defendant’s Motion to Grant Relief or
25 Release Based on Covid 19 Hardship Act.

26
27
28 ² CENTERS FOR DISEASE CONTROL AND PREVENTION, *Key things To know About Covid-19 Vaccines*,
<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>

³ STATE OF NEVADA DEPARTMENT OF CORRECTIONS; PRESS RELEASE May 4, 2021, *Vaccinations climb in Nevada Prisons as visitation reopens*, https://doc.nv.gov/About/Press_Release/News/.

1 **III. DEFENDANT WAS NOT ENTITLED TO A MODIFICATION OF HIS**
2 **SENTENCE**

3 Defendant's request to reduce or modify his sentence was based on Mr. Miceli not
4 personally handling his sentencing due to an unforeseen conflict with another one of his
5 cases. On December 1, 2021 on the date set for sentencing, Ms. Stone, who works with
6 Mr. Miceli at the same law firm, appeared on behalf of Mr. Miceli and requested that the
7 matter be continued based on Defendant's request for Mr. Miceli to appear. Ms. Stone
8 stated she had discussed the case with Mr. Miceli and was prepared to go forward. The
9 victim speakers were also present. The Court ordered that the sentencing would proceed.
10 This is not a cognizable basis for sentence modification under Nevada law.

11 A motion to modify a sentence may only challenge the facial legality of the
12 sentence: either the district court was without jurisdiction to impose a sentence, or the
13 sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev.
14 704, 708, 918 P.2d 321, 324 (1996). District courts have "wide discretion" in sentencing
15 decisions, and "[s]o long as the record does not demonstrate prejudice resulting from
16 consideration of information or accusations founded on facts supported only by impalpable
17 or highly suspect evidence," their decisions will not be disturbed. Allred v. State, 120 Nev.
18 410, 420, 92 P.2d 1246, 1253 (2004) (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159,
19 1161 (1976)).

20 "A district judge's pronouncement of judgment and sentence from the bench is not
21 a final judgment and does not, without more, oust the district court of jurisdiction over the
22 defendant. Only after a judgment of conviction is 'signed by the judge and entered by the
23 clerk,' as provided by NRS 176.105, does it become final and does the defendant begin to
24 serve a sentence of imprisonment." Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979);
25 NRS 176A.100.

26 Defendant was sentenced on December 1, 2021. The Judgment of Conviction was
27 filed on December 6, 2021. Accordingly, Defendant began serving his sentence on that
28 date. Defendant did not file the Motion for Sentence Reduction or Modification and Motion

1 for Evidentiary Hearing Based on Submitted Sentencing Modification until February 3,
2 2022 and February 17, 2022. Respectfully, this Court lacked jurisdiction to consider
3 Defendant's motions, and therefore it could have been summarily denied, as it did not fall
4 within the narrow parameters for modifying a sentence under Nevada law.

5 However, this Court considered Defendant's motion on its merits. A sentencing
6 judge retains the power to reconsider a sentence only in certain limited situations. Under
7 the provisions of NRS 176.555, the court may at any time correct an illegal sentence. In
8 addition, NRS 176.565, provides "Clerical mistakes in judgments, orders or other parts of
9 the record and errors in the record arising from oversight or omissions may be corrected
10 by the court at any time and after such notice, if any, as the court orders."

11 In general, a district court lacks jurisdiction to modify a sentence once the defendant
12 has started serving it. Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992).
13 However, a district court has inherent authority to correct, vacate, or modify a sentence
14 that violates due process where the defendant can demonstrate the sentence is based on a
15 materially untrue assumption or mistake of fact about the defendant's criminal record that
16 has worked to the *extreme detriment* of the defendant. Edwards v. State, 112 Nev. 704,
17 707, 918 P.2d 321, 324 (1996) (emphasis added); see also Passanisi, 108 Nev. at 322, 831
18 P.2d at 1373.

19 A district court has jurisdiction to modify a defendant's sentence "only if (1) the
20 district court actually sentenced appellant based on a materially false assumption of fact
21 that worked to appellant's extreme detriment, and (2) the particular mistake at issue was of
22 the type that would rise to the level of a violation of due process." Passanisi, 108 Nev. at
23 322-23, 831 P.2d at 1373-74.

24 The United States Supreme Court has expressly held that where a defendant is
25 sentenced on the basis of materially untrue assumptions concerning his criminal record,
26 "[the] result, whether caused by carelessness or design, is inconsistent with due process of
27 law." Id. at 96, citing Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 1255, 92 L.Ed.
28 1690 (1948). A sentencing judge's misapprehension of a defendant's criminal record may

1 result in a violation of the defendant's right to due process of law. Id. at 96. However, not
2 every mistake or error during sentencing gives rise to a due process violation. State v.
3 Eighth Judicial Dist. Court (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). The
4 cases implicitly recognize this point; a due process violation arises only when the errors
5 result in "materially untrue" assumptions about a defendant's record. Id. at 96, *citing*
6 Townsend v. Burke, 334 U.S. at 741, 68 S.Ct. at 1255.

7 Additionally, if substantial and material mistakes of fact were relied upon in
8 rendering judgment, a judge may reconsider a sentence. Husney, 100 Nev. 90, 677 P.2d
9 1044; Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967). When the sentencing court
10 "makes a mistake in rendering a judgment which works to the extreme detriment of the
11 defendant," the district court has jurisdiction to vacate or modify the suspect sentence or
12 judgment. Id. at 95, *citing* Peters, 83 Nev. 298, 429 P.2d 549. Such material mistakes
13 surrounding a defendant's criminal record can arise, "either as a result of a sentencing
14 judge's *correct* perception of inaccurate or false information, or a sentencing judge's
15 *incorrect* perception or misapprehension of otherwise accurate or true information."
16 Husney, 100 Nev. at 96, 677 P.2d at 1048 (emphasis in original).

17 In this case, there was no legal basis for modifying Defendant's sentence. His
18 sentence was legal and fell within the statutory range for his crime. He did not allege the
19 sentencing court, in determining the length of his sentence, relied on any material mistake
20 of fact or erroneous assumption about his criminal record to his extreme detriment.
21 Therefore, his claim did not fall within the narrow parameters permitted for a motion to
22 modify a sentence. See Passanisi, 108 Nev. at 321-22, 831 P.2d at 1372-73; see also
23 Edwards, 112 Nev. at 707-08, 918 P.2d at 324. Accordingly, Defendant's motion was
24 properly denied.

25 //

26 //

27 //

28 //

1 CONCLUSION

2 Based on the foregoing, the State respectfully requests that this Court deny Defendant's
3 Motion to Correct Decision Based on Rule 2.20 Ruling.

4 DATED this _6th_ day of April, 2022.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY /s/ Taleen Pandukht
10 TALEEN PANDUKHT
11 Chief Deputy District Attorney
12 Nevada Bar #5734

13 CERTIFICATE OF SERVICE

14 I hereby certify that service of Document Name, was made this _6th_ day of April,
15 2022, by Mail via United States Postal Service to:

16 LEROY MACK #46524
17 SOUTHERN DESERT CORRECTIONAL CENTER
18 P.O. BOX 208
19 INDIAN SPRINGS, NV 89070

20 /s/ Kristian Falcon

21 Secretary for the District Attorney's Office

22
23
24
25
26
27 TRP/DVU
28

In the name of God Most Compassionate Most Justice

FILED

APR 18 2022

DA
PP
LEROY ROOSEVELT MACK

Case No. C-21-358925-~~Thomas A. Shinn~~
CLERK OF COURT

Dept. XXVIII

-vs-

STATE OF NEVADA

Hearing: 5/09/2022
Time: 9:00 AM

MOTION FOR PRIVATE INVESTIGATOR

COMBS Now Petitioner Leroy Roosevelt Mack in proper person, request that his Honorable Court grants Motion for Private Investigator.

Petitioner has submitted several proper Motion on his behalf. Attorney of Record Michael Miceli after with drawing as Counsel has REFUSED To apply with NRS 7.055. Courts well GRANTED Motion for Minutes & Transcripts. (Twice) yet has (NOT RECEIVED). Private Investigator is needed in order to have several alleged name in Motions Investigated, to confirm prior bad acts of alleged name persons. For some Apparent reason, NRS's, US. Constitutional Rights, Assembly Bill No(236), Eighth Judicial Court Ruling and Nevada Supreme Court has been (DISREGARDED) alone with 9th Circuit Ruling.

CONCLUSION

Petitioner humbly request this Honorable Court to GRANT Motion for Private Investigator.

Dated: this 20th of March, 2022

Respectfully Submitted
Leroy Mack

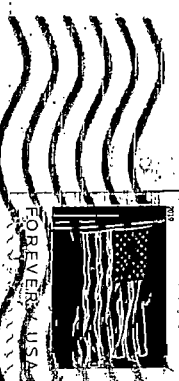
RECEIVED

APR 06 2022

CLERK OF THE COURT

0046524
Henry Black
P.O. Box 650
Indian Springs, Nv. 89070
HDP.

LAS VEGAS NV 890
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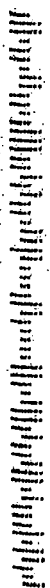
RECEIVED

APR - 5 2022

CLERK OF THE COURT

Clerk of The Court
200 Lewis Ave
Las Vegas, Nv. 89155

89101-530000



HIGH DESERT STATE PRISON
MAR 31 2022
UNIT 2A/B

In the name of God The Justice The Wise

DA
PP
LERON ROOSEVELT MACK

-vs-

STATE OF NEVADA

Case No. C-21-358925-1

FILED

Dept. XXVIII

APR 18 2022

Sharon A. Skinner
CLERK OF COURT

Hearing: 5/09/2022

Time: 9:00 AM

MOTION FOR AUDIO TRANSCRIPTS

COMES NOW Petitioner Leroy ROOSEVELT MACK

in pro-per requesting in good faith this Honorable Court
grant MOTION FOR AUDIO TRANSCRIPTS.

Petitioner has submitted several Motions on his behalf,
though GRANTED petitioner has yet to receive Transcripts that
Court GRANTED (TWICE). Transcripts are needed to
submit and file proper Motions and Appeals to District
Court and Nevada Supreme Court.

CONCLUSION

Petitioner in Good Faith is requesting this
Honorable Court GRANTS Motion for AUDIO TRANSCRIPTS
on sentencing date on Dec. 01, 2022, and any and all
Court hearing and proceeding held under case no. C-21-358925-1

Dated: this 30th of March, 2022

Respectfully Submitted
Leroy Mack

RECEIVED

APR 05 2022

CLERK OF THE COURT

In The Name of God The Justice The Fair

FILED

APR 20 2022

CLERK OF COURT

LEROI ROOSEVELT MACK

Case No. C-21-358925-1

Dept. XXVIII

STATE OF NEVADA

May 11, 2022
9:00 AM

MOTION TO INVESTIGATE

COMES NOW, Petitioner LEROI ROOSEVELT MACK in proper person respectfully moves this Honorable Court to grant submitted Motion to Investigate.

On September 13, 2021, the State filed an Information charging Defendant with one count of Battery with Substantial Bodily Harm (Category C Felony - NRS 200.481 - NDC 50214). On September 20, 2021, a Guilty Plea Agreement (hereinafter GPA) was filed in open court and Defendant pled guilty to Battery with Substantial Bodily Harm (Category C Felony NRS. 200.481 - NDC 50214). The terms of the GPA were as follows: "The State retains the right to argue. All remaining counts contained in the Criminal which were bound over to District Court shall be dismissed when Defendant is adjudged guilty and sentenced."

Petitioner on or around December 01, 2021 in Dept. XXVIII, Honorable Court Ronald J. Israel, sentenced to Maximum sentencing of 24 to 60 months in Nevada Department of Corrections.

RECEIVED

APR 11 2022

CLERK OF THE COURT

ARGUMENT

After sentencing on around Dec - March 2021-2022 Petitioner started filing several motions to Honorable Court. The Motion Petitioner Argues today is submitted Motion For Sentence Modification Based on Prosecution Misconduct. Alleged by D.D.A Haggare Tripperdi. Petitioner received and states Opposition Motion to Motion For Sentence Modification based on Prosecution Misconduct. D.D.A Taleen Pandukht submitted Opposition on States behalf.

On or around December 01, 2021, at sentencing of Petitioner LEROY ROOSEVELT MIKE D.D.A. Haggare Tripperdi. Argued at sentencing that Petitioner had discharged a firearm at shot alleged person in the back, and because of the act, Petitioner should be sentenced to Maximum sentence of 24 to 60 months in prison. Petitioner in his argument, objected to statement made by Tripperdi and explained to Honorable Court what happened. Honorable Court granted D.D.A. Tripperdi request for Maximum sentence, 24 to 60 months.

Petitioner Motions For The Sentence Modification based on Prosecution Misconduct, was based on alleged **FALSE STATEMENT** made on behalf of D.D.A. Tripperdi in sentencing in order to impose Maximum sentence (DUE PROCESS Violation).

Petitioner is requesting that District Attorney **STEVE WOLFSON** Investigate claims of **FALSE EVIDENCE (STATEMENT)** present in open court by D.D.A. Tripperdi, as well as to Investigate D.D.A. Taleen Pandukht Opposition Motion For Sentence Modification based on Prosecution Misconduct.

THE Supreme Court has found "DUE PROCESS" violations in several cases where prosecutors knowingly have introduced and argues from FALSE TESTIMONY. See Mooney v. Holohan, 294 U.S. 103, 112 (1935) (prosecution based on perjured testimony)

Petitioner is alleging that D.D.A Tripperdi gave FALSE TESTIMONY at sentencing, being in violation of 14 & 15 Amendment Constitutional Rights. Audio & Writing Transcripts at sentencing on or around December 01, 2021, WILL confirm alleged FALSE ARGUMENT presented to Honorable Court to receive Maximum sentence of 24 to 60 months (see transcripts & audio)

STATE

{ "A claim is belied" when it is contradicted or PROVEN to be FALSE by the record as it existed at the time the claim was made. }
(See page 7 line 17-18 of States first opposition Motion)

STATE

A district court has jurisdiction to modify a defendant's sentence "only if (1) the district court has jurisdiction to modify a defendant's sentence only if (1) the district court actually sentenced appellant based on a materially FALSE assumption of fact that worked to appellants extreme detriment and (2) the particular MISTAKE at issue was of the type that would rise to the level of a violation of DUE PROCESS, see page 14 line 20-24 of States app. Motion.

FALSE assumption presented by D.D.A Tripperdi at Petitioner's sentencing worked to Petitioner's extreme detriment to impose Maximum sentence.

Even if Tripperdi made a MISTAKE by presenting misleading and FALSE INFORMATION to Honorable Court, as a SWORN OFFICER of the court in order to impose Maximum sentence.

(The MISTAKE at issue was the type that would rise to the level of a violation of DUE PROCESS .

A prosecutor's comments should be considered in context.
(See page 18 line 14 of state opp. Motion)

[The materiality of the **FALSE EVIDENCE** must be judged in context
[951 F.2d 1017] of the entire record.]

The prejudice to a defendant's right to a fair proceeding is even more palpable when the prosecutor has not only withheld exculpatory evidence, but has knowingly introduced and **ARGUE FALSE EVIDENCE**. This circuit has acknowledged that "a prosecutor's presentation of tainted evidence is viewed **SERIOUSLY** and its effects are exceedingly carefully **SCRUTINIZED**." *U.S. v. Polizzi*.

[And even if he could **PROVE** the DDA **ERRED** by saying he shot her in the back, this would still not grant him the relief he seeks.
(see page 19, line 8-9 state opp. Motion)]

DDA Pandukht stated on **BLACK & WHITE**, under penalty of perjury. Even if Petitioner could prove that DDA Trippardi **ERRED**, by giving alleged **FALSE ARGUMENT, FALSE TESTIMONY, FALSE EVIDENCE** under oath to Honorable Court to impose Maximum sentence, Petitioner still shouldn't get the relief he seeks.

DDA Pandukht **NEVER** once in there opposition Motion, despite the **FACT** that DDA Trippardi presented **FALSE TESTIMONY, FALSE ARGUMENT** and **FALSE EVIDENCE** or despite the **FACT** that Petitioner **DUE PROCESS** was violated.

Would David Rogers approve of this type of Prosecutorial Conduct?

Even if you could **PROVE** DDA **ERRED** in making **FALSE ARGUMENT**. There is nothing the Honorable Court could do about it and grant you the relief you seek!

Wow!

the State must demonstrate, beyond a reasonable doubt, the ERROR did not contribute to the verdict. (see page 18, line 6-7, states app. Motion)

Id2 The Supreme Court has stated: It is established that a conviction obtained through use of FALSE EVIDENCE, known to be such by representatives of the State, must fall under the 14th Amendment.

The proper role of the criminal prosecutor is not simply to obtain a conviction, but to obtain a fair conviction.

In Brown case 951 F.2d 1011; (9th Circuit) CONCLUSION

Because the prosecutor's misconduct was not harmless beyond a reasonable doubt, we reverse.

In Brown

We note again the prosecutor's repeated references in closing arguments to FALSE EVIDENCE. Improprieties in closing arguments can, themselves, violate DUE PROCESS.

CONCLUSION

Petitioner in good faith is requesting that Honorable Court GRANT'S submitted Motion to Investigate. Petitioner as well is requesting in good faith that District Attorney Steven B. Wolfson Investigate allegation, and look into this matter with the eyes of an Attorney and the eyes of an HEAD DISTRICT ATTORNEY.

Ignorance of The LAW is no Excuse

Ignoring of The LAW is no Excuse

Dated this 4th day of April, 2022

Respectfully Submitted
Leroy R. Mack

CERTIFICATE OF SERVICE BY MAILING

I, Leroy R. Mack hereby certify, pursuant to NRCP 5(b),
that on this 4th day of April, 2022, I mailed a true and
correct copy of the foregoing: CLERK of The Court
by depositing it in the High Desert State Prison, Legal Library, First-Class
Postage, fully prepaid, address as follows:

Steve B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, NV 89155-2012

Aaron Ford
Attorney General
100 N. Carson St.
Carson City NV 89701

CC. File

Dated: this 4th day of April, 2022

Leroy Roosevelt Mack
Leroy R. Mack #0046524
/ In Propria Persona
Post Office box 650 (HDP)
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

In the name of God The Justice The Fair

LEROY ROOSEVELT MACK }

Case No. C-21-358925-1

-vs-

Dept No. XXIII

STATE OF NEVADA }

FILED

APR 22 2022

John L. Blum
CLERK OF COURT

**PETITIONERS REPLY MOTION TO STATES
OPPOSITION TO MOTION TO CORRECT
DECISION BASED ON RULE 2.20(e) RULING**

COMES NOW Petitioner LEROY MACK in proper persons,
Submits this Reply Motion to States Opposition To Motion To
Correct Decision based on Rule 2.20(e) Ruling

This Reply is made and based upon all the papers and pleadings
on file herein, the attached points and authorities in support
hereof, and oral argument at the time of hearing, if and on date
and time set, Petitioner is requesting to be present for hearing.

POINTS AND AUTHORITIES

NEVADA RULES

The Rules of Practice For The Eighth Judicial District Court

Rule 2.20

(e) Within 10 days after service of the motion, ~~and 5 days~~ and 5 days
after service of any joinder to the motion, the opposing party must
serve and file written notice of nonopposition or opposition thereto,
together with a memorandum of points and authorities and
supporting affidavits, if any, stating facts showing why the motion
and/or joinder should be DENIED.

RECEIVED

APR 18 2022

CLERK OF THE COURT

FAILURE of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

Again State ~~disregarded~~ disregarded Rule 2.20(e) of Eighth Judicial District Court, by not responding to Petitioner's original motions in a timely fashion, being Procedural Time Barred. Therefore Petitioner's Motions should have been GRANTED.

Do you remember citing this in your Opposition Motion?

"the Court noted that procedural bars cannot be ignored [by the district court]....

THE NEVADA SUPREME COURT, has granted no discretion to the district courts regarding whether to APPLY the statutory procedural bars; "the rules **MUST** be applied. (see page 7, line 1-4 of states opposition.

So you are saying that what you cited doesn't apply to you when you are procedural barred. You must think because you are a Assist D.A. you are exempt from Laws and Procedural? You think you have the power to ~~circumvent~~ circumvent the Nevada Supreme Court. You are a Sworn Officer of the Court. You took and OATH to uphold the Law, not to use it to your Advantage.

TO AVOID procedural default under NRS 34.726 and NRS 34.810 (see page 7, line 12, state opposition motion)

Rule 2.20(e) Can't be disregarded to appease Assist D.A. Mot Pleading.

PANDUKHT, have the NEVER's to try and submit
A MOOT Opposition Motion to The Honorable Court, by trying
to NOW reply to a Motion or Motions that they FAILED to
reply within 10 days under Rule 2.20(e), now two months later
have a reply to COVID19 motion an Evidentiary Motion.

Petitioners will NOT reply to the MOOT response, because
you are Procedural Time Barred. Does PANDUKHT think they
can change or make the rules as we go along.

The prosecutor's actions in disregarding Rule 2.20(e)
in this case are INTOLERABLE. The role of the criminal
prosecutor is not simply to obtain a conviction, but to obtain
a FAIR conviction

Judge Ketanji Brown Jackson stated
FREEDOM AND JUSTICE FOR "ALL"

CONCLUSION

PANDUKHT, submitted A MOOT Motion that is
Procedural Barred, therefore Petitioner is requesting this
Honorable Court grants Petitioner the relief he seeks.

IGNORING (Rule 2.20(e) Procedural Barred) is NO EXCUSE!

Dated: this 10th of April, 2022.

Respectfully Submitted
Leroy Mack

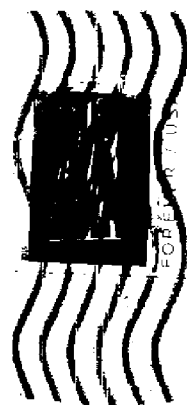
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P.O. 208

Indian Springs, No. 89070

LAS VEGAS NV 890

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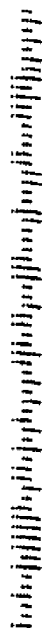


Clerk of the Court

200 Lewis Ave.

Las Vegas, Mo. 89115

0000014044



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 20, 2021**

C-21-358925-1 State of Nevada
vs
Leroy Mack

September 20, 2021 12:00 AM Initial Arraignment

HEARD BY: Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Thomas**RECORDER:** Judy Chappell**REPORTER:****PARTIES**

PRESENT:	Lacher, Ashley A.	Attorney
	Mack, Leroy	Defendant
	Miceli, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. MACK present, not in custody with bond and a no contact order. Mr. Miceli noted the Guilty Plea Agreement (GPA) was filed this afternoon and stated the negotiations. DEFT. MACK ARRAIGNED AND PLED GUILTY TO BATTERY WITH SUBSTANTIAL BODILY HARM (F). Court ACCEPTED plea, and ORDERED, matter referred to the Division of Parole and Probation (P&P) for a Pre-Sentence Investigation (PSI) Report and set for sentencing. Court DIRECTED Deft. to report to P&P within 48 hours and to be present in the courtroom at sentencing. At the request of the State, COURT ORDERED, No Contact Order REMAINS in place. State noted there will be victim speakers and may take additional time for the sentencing.

BOND / NO CONTACT ORDER**11/22/2021 12:00 PM SENTENCING****PRINT DATE:** 04/26/2022**Page 1 of 15****Minutes Date:** September 20, 2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 01, 2021

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

December 01, 2021 12:00 AM Sentencing

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Shelley Boyle
Patia Cunningham

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Mack, Leroy	Defendant
	State of Nevada	Plaintiff
	Stone, Kendall S.	Attorney
	Trippiedi, Hagar L	Attorney

JOURNAL ENTRIES

- Ms. Stone requested the matter continue; Deft. is requesting Mr. Miceli appear. Ms. Stone stated she has discussed the case with Mr. Miceli and is prepared to go forward. Colloquy and argument regarding Mr. Miceli's appearance in Justice Court 10, the Victim Speakers present, and proceeding with the Sentencing. Statement by Deft. COURT ADVISED, Sentencing will proceed.

Arguments by counsel. Victim Speakers Rayven Thomas and Regina Pullens SWORN IN and TESTIFIED. DEFT MACK ADJUDGED GUILTY of BATTERY WITH SUBSTANTIAL BODILY HARM (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Restitution (the amount to be determined), \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection Fee, Deft. SENTENCED to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), with ELEVEN (11) DAYS credit for time served. COURT FURTHER ORDERED a Status

PRINT DATE: 04/26/2022

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Minutes Date: September 20, 2021

C-21-358925-1

Check SET. Deft. REMANDED into CUSTODY. BOND, if any, EXONERATED.

NDC

12.15.21 11:00 A.M. STATUS CHECK: RESTITUTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 15, 2021

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

December 15, 2021 11:00 AM Status Check

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Patia Cunningham

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Noreen Demonte present on behalf of the State. Osvaldo Fumo present on behalf of Michael Miceli for the Defendant. Defendant not present.

Ms. Demonte explained she received victim documents this morning and requested additional time to review the documents. COURT ORDERED, matter CONTINUED.

01/12/2022 STATUS CHECK: RESTITUTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 12, 2022**

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

January 12, 2022 11:00 AM Status Check

HEARD BY: Eller, Crystal **COURTROOM:** RJC Courtroom 05A

COURT CLERK: Cynthia Moleres

RECORDER: Angelica Michaux

REPORTER:

PARTIES

PRESENT: Miceli, Michael J. Attorney
 State of Nevada Plaintiff
 Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Counsel appeared via BlueJeans.

Mr. Zadrowski indicated the amount of restitution owed was \$22.00. Mr. Miceli stated he would submit. COURT ORDERED, Defendant shall pay restitution in the amount of \$22.00 payable to Rayven Thomas.

NDC

CLERK'S NOTE: Subsequent to Court, the person of Rayven Thomas was named a recipient of restitution; therefore, this minute order corrected with recipients name. clm 1/13/22

PRINT DATE: 04/26/2022

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Minutes Date: September 20, 2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor	COURT MINUTES	January 19, 2022
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C-21-358925-1	State of Nevada vs Leroy Mack
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January 19, 2022	11:00 AM	Motion to Withdraw as Counsel
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HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Patia Cunningham

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Miceli, Michael J. Attorney

JOURNAL ENTRIES

- Mr. Miceli advised Deft. filed the motion Pro Per. COURT ORDERED, Motion to Withdraw GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 02, 2022

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

March 02, 2022 11:00 AM All Pending Motions

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Sharyne Suehiro

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Kern, Samuel R. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PROPER PERSON MOTION TO GRANT RELIEF OR RELEASE BASED ON COVID 19 HARDSHIP ACT... DEFENDANT'S PROPER PERSON MOTION FOR MINUTES AND TRANSCRIPTS... DEFENDANT'S PROPER PERSON MOTION FOR SENTENCE REDUCTION OR MODIFICATION BASED ON CONSTITUTION VIOLATION

Deft. was not transported for today's proceedings.

COURT NOTED, Mr. Kern provided the Court with a written objection to Deft's motions in open court. COURT ORDERED, matters CONTINUED for the Court to review Mr. Kern's written objection.

NDC

3/07/2022 11:00 AM DEFENDANT'S PROPER PERSON MOTION TO GRANT RELIEF OR RELEASE BASED ON

PRINT DATE: 04/26/2022

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Minutes Date: September 20, 2021

COVID 19 HARDSHIP ACT... DEFENDANT'S PROPER PERSON MOTION FOR MINUTES AND
TRANSCRIPTS...

DEFENDANT'S PROPER PERSON MOTION FOR SENTENCE REDUCTION OR MODIFICATION
BASED ON

CONSTITUTION VIOLATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 07, 2022

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

March 07, 2022 11:00 AM All Pending Motions

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Kern, Samuel R. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court Advised it would be ruling based on the pleadings.

DEFENDANT'S PROPER PERSON MOTION TO GRANT RELIEF OR RELEASE BASED ON COVID 19 HARDSHIP ACT

Court noted it was not quite clear but the Deft. had asked for some general relief based on Covid, however, Advised he certainly did not give any specific grounds; Court noted the Deft. was asking for the release of inmates based on Covid, therefore, clearly there was no basis for that request; thus, COURT ORDERED motion DENIED. State DIRECTED to prepare the order.

DEFENDANT'S PROPER PERSON MOTION FOR MINUTES AND TRANSCRIPTS

Court mentioned it believed it had already granted this Motion, however, ORDERED motion GRANTED. Deft. DIRECTED to submit an order requesting the Minutes and Transcripts from December 1, 2021 and December 15, 2021.

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Minutes Date: September 20, 2021

DEFENDANT'S PROPER PERSON MOTION FOR SENTENCE REDUCTION OR MODIFICATION
BASED ON CONSTITUTION VIOLATION

COURT FINDS no reasonable basis to modify the sentence; Deft. didn't say what his attorney would say that would change the sentencing hearing or the sentence that was granted; there was nothing to say that the Court did not have jurisdiction to do the sentencing or that it was in excess of the statutory maximum. Further, Deft. eluded to the fact that Ms. Stone did the sentencing instead of Mr. Miceli, however, Ms. Stone stated she was ready and prepared to go forward. Therefore, COURT FINDS no grounds for an Evidentiary Hearing or a new sentencing, thus, ORDERED motion DENIED. State DIRECTED to prepare the order.

NDC

CLERK S NOTE: A copy of this minute order has been mailed to: Leroy Mack, #46524, High Desert State Prison, 22010 Cold Creek Road, P.O. Box 650, Indian Springs, Nevada 89070. // cbm 03-10-2022

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 21, 2022

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

March 21, 2022 11:00 AM All Pending Motions

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Stephanie Squyres

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Trippiedi, Hagar L Attorney

JOURNAL ENTRIES

- DEFENDANT'S PROPER PERSON MOTION TO DISMISS COUNSEL OF RECORD...DEFENDANT'S PROPER PERSON MOTION FOR EVIDENTIARY HEARING BASED ON SUBMITTED SENTENCING MODIFICATION.

DEFENDANT'S PROPER PERSON MOTION TO DISMISS COUNSEL OF RECORD.

COURT NOTED this Motion was already GRANTED some time ago, and this matter will be OFF CALENDAR.

DEFENDANT'S PROPER PERSON MOTION FOR EVIDENTIARY HEARING BASED ON SUBMITTED SENTENCING MODIFICATION.

COURT ORDERED, Motion GRANTED, Mr. Miceli to transfer the file to the Deft, and ADVISED State to contact Mr. Miceli to advise him of Order.

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C-21-358925-1

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 23, 2022

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

March 23, 2022 11:00 AM All Pending Motions

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Patia Cunningham

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Conlin, Elise M Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted motions were filed Pro Per and Deft is not present. COURT ORDERED, matters continued for a transport order and additional motions RESET for all motion to be heard together.

4/13/22 11:00 AM

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 13, 2022**

C-21-358925-1 State of Nevada
 vs
 Leroy Mack

April 13, 2022 11:00 AM All Pending Motions

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Patia Cunningham

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Mack, Leroy	Defendant
	State of Nevada	Plaintiff
	Trippiedi, Hagar L	Attorney

JOURNAL ENTRIES

- Court advised that he has read the motions notified Deft Deft that the State has not been properly served. Argument by Deft. State submitted according to their written oppositions. Court ISSUED decisions for each motion as follows:

DEFENDANT'S PRO SE NOTICE OF MOTION; MOTION TO DISMISS -DENIED
 DEFENDANT'S PRO PER MOTION FOR ASSISTANCE OF COUNSEL -DENIED
 DEFENDANT'S PRO PER MOTION FOR SENTENCE MODIFICATION BASED ON PRESENTENCE INVESTIGATION FINDING- DENIED
 DEFENDANT'S PRO SE MOTION FOR CONTEMPT OF COURT- GRANTED IN PART : Mr. Miceli will not be held in Contempt but will be ordered to provide copies.
 DEFENDANT'S PRO SE MOTION FOR SENTENCE MODIFICATION BASED ON PROSECUTION MISCONDUCT- DENIED
 DEFENDANT'S PRO SE MOTION FOR TRANSCRIPTS -GRANTED
 DEFENDANT'S PRO SE MOTION TO OPPOSE STATE REPLY TO MOTION FOR SENTENCE

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REDUCTION OR MODIFICATION BASED ON CONSTITUTION VIOLATION

DEFENDANT'S PRO SE MOTION TO RESOLVE -DENIED

DEFENDANT'S PRO SE MOTION TO TRANSPORT REFERRED TO CASE C-21-358925-1 -DENIED

DEFENDANT'S PRO SE NOTICE OF MOTION; MOTION TO CORRECTION SENTENCE -DENIED

DEFENDANT'S PRO SE NOTICE OF MOTION; MOTION TO TRANSPORT- DENIED AS MOOT

DEFENDANT'S PRO SE NOTICE OF MOTION; MOTION TO VACATE SENTENCE-DENIED

DEFENDANT'S PRO PERSON MOTION TO CORRECT DECISION BASED ON RULE 2.20 RULING
-DENIED

Court advised Deft to fill out form to request transcripts. COURT ORDERED, Michael Miceli Esq., to provide Deft with a copy of the file.

NDC

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated April 6, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 298.

STATE OF NEVADA,

Plaintiff(s),

vs.

LEROY MACK
aka LEROY ROOSEVELT MACK,

Defendant(s),

Case No: C-21-358925-1

Dept. No: XXVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 26 day of April 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk