

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SHAN JONATHON KITTREDGE, )

#1202642, )

Appellant, )

v. )

STATE OF NEVADA, )

Respondent. )

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Apr 27 2022 03:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.: **83943**

**E-FILE**

D.C. Case No.: A-20-815382-W

Dept.: **XXXII**

**APPELLANT'S APPENDIX VOLUMES 1 - 2**

**Appeal from denial of a Post- Conviction Writ of Habeas Corpus  
Eighth Judicial District Court, Clark County**

TERRENCE M. JACKSON, ESQ.  
Nevada Bar No. 000854  
Law Office of Terrence M. Jackson  
624 South 9th Street  
Las Vegas, Nevada 89101  
(702) 386-0001  
Terry.jackson.esq@gmail.com

STEVEN B. WOLFSON  
Nevada Bar No. 001565  
Clark County District Attorney  
200 E. Lewis Avenue  
Las Vegas, Nevada 89155  
(702) 671-2750  
Steven.Wolfson@clarkcountynvda.com

AARON D. FORD  
Nevada Bar No. 007704  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

...  
Counsel for Appellant

Counsel for Respondent

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## **CERTIFICATE OF SERVICE**

I certify I am an assistant to Terrence M. Jackson, Esquire; a person competent to serve papers, not a party to the above-entitled action and on the 27th day of April, 2022, I served a copy of the foregoing: Appellant Shan Jonathon Kittredge's Opening Brief as well as the Appendix and Index, Volumes 1 through 2 as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and by U. S. mail with first class postage affixed to the Nevada Attorney General and the Petitioner/Appellant as follows:

STEVEN B. WOLFSON

Clark County District Attorney

[steven.wolfson@clarkcountynyda.com](mailto:steven.wolfson@clarkcountynyda.com)

AARON D. FORD

Nevada Attorney General

100 North Carson Street

Carson City, NV 89701

ALEXANDER G. CHEN

Chief Deputy District Attorney - Criminal

[motions@clarkcountynyda.com](mailto:motions@clarkcountynyda.com)

SHAN J. KITTREDGE

ID# 1202642

S. D. C. C. - P. O. Box 208

Indian Springs, NV 89107-0208

By: /s/ Ila C. Wills

Assistant to Terrence M. Jackson, Esq.

# EXHIBIT A

# EXHIBIT A

**DECLARATION OF BOB FAULKNER**

1. I, Bob Faulkner, am over the age of 18 and am otherwise fully competent to testify to the facts contained in this declaration;

2. The statements contained in this declaration, except where otherwise indicated to be upon information and belief, are based on my personal knowledge;

3. I am currently employed by the Nevada Department of Corrections ("NDOC") as the Director of Nursing Services I ("DONS-I") at High Desert State Prison ("HDSP");

4. In connection with the filing of this declaration, I was contacted by Frank Toddre II, Senior Deputy Attorney General who, on information and belief, represents NDOC in the criminal sentencing of inmate Shan Kittredge. The matter is proceeding in the Eighth Judicial District Court, State of Nevada as case number C18-333335-2. It is my understanding that the NDOC is not an interested party to this criminal action. It was requested that I provide truthful and accurate information in regard to a status report for Kittredge's motion for medical care;

5. It was requested that I review inmate Shan Kittredge #1202642 ("Kittredge") medical file to determine his current condition;

6. I first reviewed Kittredge's file on January 8, 2018. He is currently on the waiting list for eye exams. HDSP currently has a significant backlog for exams.

7. Kittredge submitted a kite (inmate request form) on December 15, 2018 claiming that he had a wound on his neck that was "leaking plasma and puss (sic)." He was placed on the list for a medical review in response.

8. Upon review of the file I asked that he be seen as soon as possible so that we can evaluate it.

9. It should also be noted that this inmate has a significant mental health history. He has been taking antipsychotic and antidepressant medications since his arrival from Clark County Detention Center.


10. Shan Kittredge 1202642 was seen in the clinic by Dr. Bryan. The inmate had a draining wound at the site of his gunshot wound.

1 11. The wound was cultured, lab tests were ordered as well as an x-ray of the skull and neck  
2 region.

3 12. HDSP will follow up as necessary based upon the results of the lab tests, which are  
4 performed by an off-site contractor.

5 FURTHER I declare under penalty of perjury pursuant to 28 U.S.C § 1746 that the foregoing is  
6 true and correct.

7 EXECUTED this 22nd day of January 2019.

8   
9 \_\_\_\_\_  
10 Bob Faulkner  
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# **EXHIBIT C**



Aggregate

Active

338	CONSPIRACY, VIOLENT CRIME	Aggregated
458	USE OF DEADLY WEAPON ENHANCEMENT	Aggregated
120	ROBBERY	Aggregated
120	ROBBERY	Aggregated
3458	USE OF DEADLY WEAPON ENHANCEMENT	Aggregated
3458	USE OF DEADLY WEAPON ENHANCEMENT	Aggregated
2161	RESIST PUBLIC OFFICER W/ WPN	Aggregated

Inmate Photo



Offender Book ID

Paro

186054

186054

186054

186054

29 / 63

49.7%

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION REPORT

ID/EVENT #: 1770637

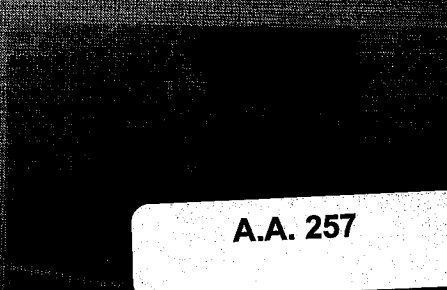
#5/1072. The reports were documented under LVMPD event numbers 171115-3853 and 170820-1261.

Detective Parkett obtained a booking photograph of Shan Kittredge. Kittredge highly resembled the suspect. Kittredge is a Hispanic male, 38 years old, 5'07" and 190 pounds and had a dermal piercing under his left eye. Detective Parkett conducted a records check and learned Shan Kittredge has a felony warrant out for his arrest for robbery.

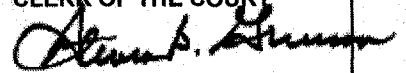


Shan Kittredge

I contacted Detective J. Beckerle from the LVMPD Repeat Offender Program. Based on Kittredge having a felony robbery warrant, I asked Detective Beckerle to locate Kittredge. Through investigation it was learned Kittredge had been at the Hooters Hotel and Casino during the evening on June 9<sup>th</sup>, 2018. Detective Beckerle obtained photographs of Kittredge from the Hooters and provided those to me. It appeared Kittredge was wearing the black shoes with white trim that he wore in all of the robberies. He also appeared to be wearing camouflage pants that were rolled up.







1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 SHAN JONATHON KITTREDGE,  
13 #1779637

14 Defendant.

CASE NO: A-20-815382-W

C-18-333335-2

DEPT NO: XXXII

15 **STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL**  
16 **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**  
17 **AND MOTION FOR DISCOVERY**

18 DATE OF HEARING: OCTOBER 21, 2021  
19 TIME OF HEARING: 11:00 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District  
22 Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's  
23 Petition for Writ of Habeas Corpus (Post-Conviction).

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

27 //

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 1, 2018, the State filed a Superseding Indictment charging Shan Jonathon  
4 Kittridge (hereinafter "Petitioner") with the following: Counts 1-5, 8-10, 12-16, 20-21, 27-28,  
5 33-34, 36-37, 40 – Robbery with Use of a Deadly Weapon; Counts 7, 19, 26, 35; 39 –  
6 Conspiracy to Commit Robbery; Count 17 – Attempt Robbery with Use of a Deadly Weapon;  
7 Counts 6, 11, 18, 25, 31-32, 38, 42 – Burglary while in Possession of a Firearm; Counts 22-  
8 24, 29-30, 41, – Assault with a Deadly Weapon; Count 43 – Grand Larceny Auto; Count 44 –  
9 Possession of Stolen Vehicle; Counts 45-47 – Assault on Protected Person With Use of a  
10 Deadly Weapon; and Count 48 – Resisting Public Officer With Use of a Firearm. Petitioner's  
11 co-defendant was also charged as to Counts 7-11, 19-31, and 35-42. On August 21, 2018,  
12 Petitioner pled not guilty and waived his right to a speedy trial.

13 On December 19, 2018, Petitioner filed a Motion for Medical Treatment. On January  
14 8, 2019, statements were made by defense counsel that Petitioner had sent several kites but  
15 has been unable to receive medical attention. A two (2) week continuance was requested for  
16 Mr. Frank Toddre, from the Attorney General's Office, to speak with medical personnel. On  
17 January 23, 2019, Mr. Toddre filed a Status Report regarding Petitioner's treatment. A  
18 Declaration from the Director or Nursing Bob Faulkner was attached. On January 24, 2019,  
19 this Court noted that Petitioner was being treated and defense counsel concurred. Defense  
20 counsel did note that Petitioner was waiting for an MRI and x-rays. Accordingly, the Court  
21 then denied the motion.

22 On March 11, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual  
23 Criminal.

24 On March 18, 2019, jury trial began, but Petitioner ultimately decided to plead guilty  
25 pursuant to a Guilty Plea Agreement ("GPA"). According to the GPA, "both parties stipulate  
26 to a total term of imprisonment of eighteen (18) to forty-five (45) years in the Nevada  
27 Department of Corrections." The Amended Superseding Indictment was also filed, and  
28 charged Petitioner with: Count 1- Conspiracy to Commit Robbery; Counts 2-4 – Robbery with

1 Use of a Deadly Weapon; and Count 5 – Resisting Public Officer With Use of a Firearm. On  
2 May 8, 2019, defense counsel filed a Sentencing Memorandum.

3 On May 14, 2019, the District Court sentenced Petitioner to the Nevada Department of  
4 Corrections as follows: Count 1 – a minimum of twenty-eight (28) months with a maximum  
5 of seventy-two (72) months; Count 2 – a minimum of forty-eight (48) months and a maximum  
6 of one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)  
7 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,  
8 concurrent with Count 1; Count 3 – a minimum of forty-eight (48) months and a maximum of  
9 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)  
10 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,  
11 consecutive to Count 2; Count 4 – a minimum of forty-eight (48) months and a maximum of  
12 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)  
13 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,  
14 concurrent with Count 3; and Count 5 – a minimum of twenty-four (24) months and a  
15 maximum of sixty (60) months, consecutive to Count 3, with one hundred fifty-six (156) days  
16 credit for time served. Petitioner was further ordered to pay \$4,153.37 in Restitution, with  
17 \$2,802 to be paid jointly and severally with the co-defendant. Restitution was ordered in the  
18 following amounts: \$400 to Panda Express, \$300 to Duncan Donuts; \$331 to Roberto's Taco  
19 Shop; \$100 to Khoury's Mediterranean Restaurant and \$3,022.37 to Albertson's. The aggregate  
20 total sentence was eighteen (18) years to forty-five (45) years. The Judgment of Conviction  
21 was filed on May 16, 2019.

22 On April 5, 2019, Petitioner filed another Motion for Medical Treatment. According to  
23 Petitioner, he had an infection from lesions, and said infection was left untreated with no refills  
24 for antibiotics. On April 16, 2019, counsel for the Clark County Detention Center (“CCDC”)  
25 advised that Petitioner was seen by a doctor, just not as quickly as he would have liked, and  
26 Mr. Margolis, on behalf of Mr. Yampolsky advised that Petitioner was now taking antibiotics.  
27 Additionally, Petitioner had a follow-up appointment for the bullet in his head. The Court then  
28 denied the Motion as Moot.

1 On May 14, 2019, defense counsel filed a Notice of Withdrawal of Attorney.

2 On May 22, 2020, Petitioner filed the instant post-conviction Petition for Writ of  
3 Habeas Corpus and Motion for Appointment of Counsel. The State filed its Response on  
4 November 25, 2020. On January 1, 2021, this Court appointed Allen Lichtenstein, Esq., ("Mr.  
5 Lichtenstein") as counsel.

6 On July 14, 2021, Mr. Lichtenstein filed the instant Supplemental Petition. The State  
7 responds herein.

## 8 ARGUMENT<sup>1</sup>

### 9 **I. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO HABEAS** 10 **RELIEF**

11  
12 Petitioner claims his counsel was ineffective and that his guilty plea was unknowingly  
13 and unintelligently signed. Petition at 7. The Sixth Amendment to the United States  
14 Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to  
15 have the Assistance of Counsel for his defense." The United States Supreme Court has long  
16 recognized that "the right to counsel is the right to the effective assistance of counsel."  
17 Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v.  
18 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

19 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
20 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
21 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
22 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation  
23 fell below an objective standard of reasonableness, and second, that but for counsel's errors,  
24 there is a reasonable probability that the result of the proceedings would have been different.  
25 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100  
26 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is  
27

28 <sup>1</sup> Although this Petition appears to be time-barred, since it was filed on May 22, 2020, and the Judgment of Conviction  
was filed on May 16, 2019, it is not because the Clerk's Office received it on April 19, 2020.

1 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the  
2 same order or even to address both components of the inquiry if the defendant makes an  
3 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

4 The Court begins with the presumption of effectiveness and then must determine  
5 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
6 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
7 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
8 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
9 537 P.2d 473, 474 (1975).

10 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
11 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
12 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
13 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
14 (2002). Further, a defendant who contends his attorney was ineffective because he did not  
15 adequately investigate must show how a better investigation would have rendered a more  
16 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A  
17 defendant is not entitled to a particular “relationship” with his attorney. Morris v. Slappy, 461  
18 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983).

19 Based on the above law, the role of a court in considering allegations of ineffective  
20 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
21 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
22 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
23 (1978). This analysis does not mean that the court should “second guess reasoned choices  
24 between trial tactics nor does it mean that defense counsel, to protect himself against  
25 allegations of inadequacy, must make every conceivable motion no matter how remote the  
26 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
27 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
28

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

3 “There are countless ways to provide effective assistance in any given case. Even the  
4 best criminal defense attorneys would not defend a particular client in the same way.”  
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 Claims for relief devoid of specific factual allegations are “bare” and “naked,” and are  
12 insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove  
13 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “[Petitioner] *must* allege specific facts  
14 supporting the claims in the petition[.]...Failure to allege specific facts rather than just  
15 conclusions may cause [the] petition to be dismissed.” NRS 34.735(6) (emphasis added).

16 When a conviction is the result of a guilty plea, a defendant must show that there is a  
17 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
18 would have *insisted on going to trial*.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
19 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
20 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

21 When considering ineffective-assistance-of-counsel claims where the Petitioner  
22 pleaded guilty, the Nevada Supreme Court has held that:

23  
24 A defendant who pleads guilty upon the advice of counsel may attack the validity  
25 of the guilty plea by showing that he received ineffective assistance of counsel  
26 under the Sixth Amendment to the United States Constitution. However, guilty  
27 pleas are presumptively valid, especially when entered on advice of counsel, and  
28 a defendant has a heavy burden to show the district court that he did not enter  
his plea knowingly, intelligently, or voluntarily. To establish prejudice in the  
context of a challenge to a guilty plea based upon an assertion of ineffective  
assistance of counsel, *a defendant must demonstrate a reasonable probability*



1           *that, but for counsel's errors, he would not have pleaded guilty and would have*  
2           *insisted on going to trial.*

3  
4     Molina, 120 Nev. 185, 190-91, 87 P.3d 533, 537(internal quotations and citations omitted)  
5     (emphasis added). “A reasonable probability is a probability sufficient to undermine  
6     confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is counsel’s  
7     duty to candidly advise a Petitioner regarding whether or not they believe it would be  
8     beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not to  
9     accept a plea offer is the Petitioner’s, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d at  
10    163.

11           Nevada precedent reflects “that where a guilty plea is not coerced and the defendant  
12    [is] competently represented by counsel at the time it [is] entered, the subsequent conviction  
13    is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.  
14    Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83  
15    Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined  
16    that a defendant lacked standing to challenge the validity of a plea agreement because he had  
17    “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.  
18    468, 477, 958 P.2d 91, 96 (1998).

19           Furthermore, the Nevada Supreme Court has explained:

20           “[A] guilty plea represents a break in the chain of events which has preceded it  
21           in the criminal process. When a criminal defendant has solemnly admitted in  
22           open court that he is in fact guilty of the offense with which he is charged, he  
23           may not thereafter raise independent claims relating to the deprivation of  
          constitutional rights that occurred prior to the entry of the guilty plea.”

24     Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411  
25     U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all  
26     constitutional claims based on events occurring prior to the entry of the plea[], except those  
27     involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,  
28     Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only

1 claims that may be raised thereafter are those involving the voluntariness of the plea itself and  
2 the effectiveness of counsel.”).

3 **A. Petitioner’s Claims that Counsel was Ineffective are Nothing More Than Bare**  
4 **and Naked Assertions.**

5 According to Petitioner, he complained to his counsel that because of the injury to his  
6 head, he did not clearly or intelligently understand what counsel was explaining to him  
7 regarding the GPA. Petition at 7, Supplemental Petition at 6-7. Petitioner notes that he sent  
8 several kites regarding medical treatment and states that “someone who was shot not once, but  
9 twice in the head is under great strain mentally physically as well as spiritually.” *Id.* Petitioner  
10 further claims that counsel was also ineffective because counsel failed to explain to the Court  
11 that he needed more time to understand the State’s offer. Petitioner’s claims are nothing more  
12 than bare and naked assertions that are belied by the record and suitable for summary denial  
13 pursuant to Hargrove, 100 Nev. at 502, 686 P.2d at 225.

14 First, by signing the GPA, Petitioner agreed that he understood the consequences of his  
15 plea and that counsel had explained said consequences to him. GPA pp. 2-4. Additionally,  
16 Petitioner acknowledged that his plea was entered into voluntarily and knowingly:

17 I have discussed the elements of all of the original charge(s) against me with my  
18 attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the charge(s)  
20 against me at trial.

21 I have discussed with my attorney any possible defenses, defense strategies and  
22 circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights have  
24 been thoroughly explained to me by my attorney.

25 I believe that pleading guilty and accepting this plea bargain is in my best  
26 interest, and that a trial would be contrary to my best interest.

27 *I am signing this agreement voluntarily, after consultation with my attorney, and*  
28 *I am not acting under duress or coercion or by virtue of any promises of leniency,*  
*except for those set forth in this agreement.*

1 I am not now under the influence of any intoxicating liquor, a controlled  
2 substance or other drug which would in any manner impair my ability to  
3 comprehend or understand this agreement or the proceedings surrounding my  
4 entry of this plea.

5 My attorney has answered all my questions regarding this guilty plea agreement  
6 and its consequences to my satisfaction and I am satisfied with the services  
7 provided by my attorney.

8 GPA pp. 5-6. (emphasis added).

9 Furthermore, Petitioner's claims that his head injury "was extremely serious and the  
10 medication he received was not sufficient to overbear his will to resist the questioning" is  
11 belied by the record. See Petition at 7; Supplemental Petition at 8. During the plea canvass,  
12 the following occurred:

13 THE COURT: Okay. Have you ever been treated for any mental illness or  
14 addiction to narcotic drugs of any kind?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay, what have you been treated for?

17 THE DEFENDANT: Schizophrenic manic, bipolar, anxiety, depression, and  
18 PTSD.

19 THE COURT: And you're not on any medications for those right now?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. Do you feel those are relatively well controlled without  
22 any medication?

23 THE DEFENDANT: After committing these offenses, I'm trying to stay off  
24 drugs, even mental drugs, you know.

25 THE COURT: Okay.

26 THE DEFENDANT: So I'm maintaining.  
27  
28

1 THE COURT: All right, you've mentioned some serious mental health issues.  
2 *Do you feel that any of those issues is impacting on your ability to understand*  
3 *what's going on here today?*

4 THE DEFENDANT: *No, sir. No, sir.*

5 THE COURT: Do you feel they are impacting on your ability at all to understand  
6 what you are charged with and the nature of those charges?

7 THE DEFENDANT: No, not at all.

8 THE COURT: All right. Do you feel they impact upon your ability at all to  
9 understand the plea agreement you're entering into with the State?

10 THE DEFENDANT: No, sir.

11 THE COURT: And they don't affect your ability to read and understand, for  
12 instance: the amended superseding indictment or the plea agreement?

13 THE DEFENDANT: No, not in any way.

14 THE COURT: Okay. Do you feel you understand what's happening here today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Tell me in your own words what's happening here today?

17 THE DEFENDANT: *We resolved a plea and went over my plea agreement;*  
18 *you're just making sure that I understand.*  
19

20 Recorder's Transcript: Jury Trial – Day 1, March 18, 2019 ("RT") pp. 98-99 (emphasis added).

21 Based upon the record, Petitioner understood what was going on at, the time he entered his  
22 plea.

23 Additionally, the Court informed Petitioner that if at any time he needed to discuss  
24 something with counsel, in private, he would be given the opportunity:

25  
26 THE COURT: Okay. Now, before accepting your guilty plea, there are a number  
27 of questions I'm going to have to ask you to ensure myself that you're entering  
28 a valid plea. If you do not understand any of the questions, would you please let  
me know so I can rephrase the question?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. If at any time you wish to take a break in the proceedings  
3 so you can discuss matters in private with your attorney, will you let me know  
4 that so I can give you the opportunity and chance to do so?

5 THE DEFENDANT: Yes.

6 RT p. 97. Moreover, Petitioner informed the Court that he was pleading guilty without any  
7 coercion, that he signed the GPA, and that he discussed the agreement with his attorney. RT  
8 p. 107. Petitioner also responded affirmatively that he felt as though he understood the plea  
9 agreement. RT p. 108. Further, Petitioner acknowledged that he understood the charges and  
10 relevant penalties. RT pp. 102-05.

11 Petitioner's attachment of the Minutes from January 8, 2019, in his pro per Petition, do  
12 not provide any support for his claim. On that day, statements were made that Petitioner had  
13 not received medical attention. However, on January 23, 2019, counsel from the Attorney  
14 General's Office filed a Status Report and Declaration after speaking with medical personnel.  
15 According to the Status Report, Petitioner was treated for his alleged wounds and follow-up  
16 tests, including x-rays, had been ordered. On January 24, 2019, this Court noted that Petitioner  
17 was being treated and defense counsel concurred. Petitioner did not enter into his guilty plea  
18 until March 18, 2019, approximately two (2) months after he was given treatment.  
19 Accordingly, Petitioner was given medical attention prior to entering his plea. Regardless, the  
20 plea canvass evidences that fact that his plea was entered into knowingly and voluntarily.

21 To the extent that the instant Supplemental Petition expands on Petitioner's original  
22 claim that counsel failed to fully investigate Petitioner's injuries and his ability to comprehend  
23 the proceedings are equally bare and naked assertions. Hargrove, 100 Nev. at 502, 686 P.2d at  
24 225. As discussed *supra*, the court minutes on January 23, 2019, reflect that the Attorney  
25 General's Office filed a Status Report and Declaration after speaking with medical personnel  
26 regarding Petitioner's injuries. According to the Status Report, Petitioner was treated for his  
27 alleged wounds and follow-up tests, including x-rays, had been ordered. On January 24, 2019,  
28 this Court noted that Petitioner was being treated and defense counsel concurred. Such

1 treatment was further continued through his plea. On April 16, 2019, counsel for CCDC  
2 advised this Court that Petitioner was being seen by a doctor and taking antibiotics. While  
3 Petitioner alerted the Court to pain caused by the wound, at no point did Petitioner raise issues  
4 regarding his inability to comprehend his current situation. Thus, any claim that counsel failed  
5 to investigate Petitioner's medical concerns is belied by the record pursuant to Hargrove.

6 Regardless, the Supplemental Petition fails to demonstrate what a better investigation  
7 into his mental health would have uncovered. Petitioner merely states that he should have  
8 received a plethora of diagnostic exams such as "MRIs, CAT scans, x-rays of his head/neck  
9 and medical assessments/physicians' impressions/ reports." Supplemental Petition at 7.  
10 However, as previously stated, Petitioner was afforded such treatment. See Court Minutes,  
11 January 23, 2019; January 24, 2019; and April 16, 2019. Yet, Petitioner still fails to show  
12 and/or allege what further testing would have uncovered that was not already included within  
13 the Status Report and Declaration. Thus, Petitioner's claim that counsel failed to investigate  
14 fails under Molina.

15 As to Petitioner's specific claims against counsel, by signing the GPA, counsel certified  
16 that he had fully explained everything to Petitioner prior to his entry of plea:

17  
18 I, the undersigned, as the attorney for the Defendant named herein and as an  
19 officer of the court hereby certify that:

20 1. I have fully explained to the Defendant the allegations contained in the  
21 charge(s) to which guilty pleas are being entered.

22 2. I have advised the Defendant of the penalties for each charge and the  
23 restitution that the Defendant may be ordered to pay.

24 3. I have inquired of Defendant facts concerning Defendant's immigration  
25 status and explained to Defendant that if Defendant is not a United States citizen  
26 any criminal conviction will most likely result in serious negative immigration  
27 consequences including but not limited to:

- 28 a. The removal from the United States through deportation;  
b. An inability to reenter the United States;  
c. The inability to gain United States citizenship or legal residency;

- 1 d. An inability to renew and/or retain any legal residency status;  
2 and/or  
3 e. An indeterminate term of confinement, by with United States  
4 Federal Government based on the conviction and immigration status.

5 Moreover, I have explained that regardless of what Defendant may have been  
6 told by any attorney, no one can promise Defendant that this conviction will not  
7 result in negative immigration consequences and/or impact Defendant's ability  
8 to become a United States citizen and/or legal resident.

9 4. All pleas of guilty offered by the Defendant pursuant to this agreement  
10 are consistent with the facts known to me and are made with my advice to the  
11 Defendant.

12 5. To the best of my knowledge and belief, the Defendant:

- 13 a. Is competent and understands the charges and the consequences of  
14 pleading guilty as provided in this agreement,  
15 b. Executed this agreement and will enter all guilty pleas pursuant  
16 hereto voluntarily, and  
17 c. Was not under the influence of intoxicating liquor, a controlled  
18 substance or other drug at the time I consulted with the Defendant as  
19 certified in paragraphs 1 and 2 above.

20 GPA p. 7. For these reasons, Petitioner failed to show that counsel was ineffective.

21 **B. Petitioner Failed to Establish Prejudice.**

22 Here, Petitioner failed to show that there is a "reasonable probability that, but for  
23 counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."  
24 See Hill, 474 U.S. 52, 59, 106 S.Ct. 366, 370. Instead, Petitioner made another bare and naked  
25 assertion that he was prejudiced because had he been in the right state of mind, he would not  
26 have pled guilty and would have proceeded to trial. Petitioner initially faced forty-eight (48)  
27 charges, with significantly higher penalties. With the possibility of facing a lengthier sentence,  
28 Petitioner cannot now argue that but for the alleged error, he would have gone to trial.  
Moreover, the plea was entered into during the first day of trial, after voir dire had begun. At  
any point Petitioner could have told the Court he did not wish to proceed with the GPA and to  
continue with the trial. Instead, Petitioner was clear that he wanted to enter into this guilty

1 plea. For the reasons stated above, Petitioner's counsel was effective, and his claim should be  
2 denied.

3 **II. NRS 34.780(2) PRECLUDES DISCOVERY AS THE WRIT HAS NOT**  
4 **BEEN GRANTED, A HEARING HAS NOT BEEN SET, AND GOOD**  
5 **CAUSE HAS NOT BEEN SHOWN**

6 Petitioner's request to conduct discovery is suitable only for denial as it is premature  
7 and unsupported by a showing of good cause.

8 NRS 34.780(2) reads:

9 *After the writ has been granted and a date set for the hearing, a party may invoke*  
10 *any method of discovery available under the Nevada Rules of Civil Procedure*  
11 *if, and to the extent that, the judge or justice for good cause shown grants leave*  
12 *to do so.*

13 (Emphasis added). A writ is not "granted" for discovery purposes until this Court determines  
14 that there is a need for an evidentiary hearing. NRS 34.770(3).

15 This Court has yet to grant any petition or set an evidentiary hearing in this matter. As  
16 such, any request to discovery is premature. Therefore, this Court lacks the authority to order  
17 discovery. This Court has no choice but to deny Petitioner's untimely demand for the privilege  
18 of discovery.

19 Even if Petitioner somehow entices this Court into ignoring the conditions precedent to  
20 ordering discovery related to the granting of the petition and setting an evidentiary hearing, he  
21 simply cannot meet the good cause requirement. The Nevada Supreme Court has yet to  
22 address the meaning of good cause in the context of discovery in a post-conviction habeas  
23 proceeding. Under the federal rule, good cause exists to allow discovery only where specific  
24 allegations provide reason to believe that the petitioner may, if the facts are fully developed,  
25 be able to demonstrate that he is entitled to relief. Rule 6 of the Federal Rules Governing §  
26 2254 Cases; McDaniel v. U.S. District Court (Jones), 127 F. 3d 886, 888 (9<sup>th</sup> Cir. 1997).  
27 However, "*courts should not allow prisoners to use federal discovery for fishing expeditions*  
28 *to investigate mere speculation.*" Calderon v. U.S. District Court (Nicolaus), 98 F. 3d 1102,  
1106 (9<sup>th</sup> Cir. 1996) (emphasis added), cert. denied, 520 U.S. 1233, 117 S. Ct. 1830 (1997);



1 see also, Stanford v. Parker, 266 F. 3d 442, 460 (6<sup>th</sup> Cir. 2001); Murphy v. Johnson, 205 F.3d  
2 809, 814 (5<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 957, 121 S. Ct. 380 (2000).

3 The Discovery Motion is silent on the question of good cause. Petitioner's failure to  
4 address this mandatory showing should be "construed as an admission that the motion is not  
5 meritorious and cause for its denial or as a waiver of all grounds not so supported." District  
6 Court Rules (DCR) Rule 13(2). Nor does the outcome change merely because Petitioner's  
7 underlying matter is criminal in nature: "A party filing a motion must also serve and file with  
8 it a memorandum of points and authorities in support of each ground thereof. The absence of  
9 such memorandum may be construed either as an admission that the motion is not meritorious  
10 and, as cause for its denial or as a waiver of all grounds not supported." Eighth Judicial District  
11 Court Rules (EDCR) Rule 3.20(b); see, Polk v. State, 126 Nev. \_\_\_, \_\_\_, 233 P.3d 357, 360-61  
12 (2010). At the very least, Petitioner's failure to address good cause should preclude discussion  
13 of this issue in any reply. Indeed, permitting Petitioner to address good cause in any reply  
14 would be fundamentally unfair as it would prevent the State from responding to any arguments  
15 he might raise.

16 Petitioner's claim boils down to a fishing expedition in the hope of finding something  
17 to withdraw his plea. Petitioner assumes the existence of additional testing and that any  
18 additional testing was not provided to previous defense counsel. Petitioner has done nothing  
19 to substantiate his naked assumptions. Petitioner has not shown good cause because he merely  
20 speculates about possibilities. Until Petitioner can demonstrate more than mere hoped for  
21 conclusions, his request for discovery must be denied as the fishing expedition it is.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 **CONCLUSION**

2 For the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus (Post-  
3 Conviction) and Motion for Discovery must be denied.

4 DATED this 18th day of August, 2021.

5 Respectfully submitted,

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

8  
9 BY /s/ Jonathan E. Vanboskerck  
10 JONATHAN E. VANBOSKERCK  
11 Chief Deputy District Attorney  
Nevada Bar #006528

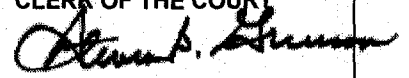
12 **CERTIFICATE OF MAILING**

13 I hereby certify that service of the above and foregoing was made this 18th day of  
14 August, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

15 SHAN KITTREDGE, #1202642  
16 S.D.C.C.  
17 PO BOX 208  
INDIAN SPRINGS, NV 89070

18 BY /s/ E. Del Padre  
19 E. DEL PADRE  
20 Secretary for the District Attorney's Office  
21  
22  
23  
24  
25  
26  
27

28 JV/ed/sw/GCU



1 Allen Lichtenstein  
2 Allen Lichtenstein, Attorney at Law, Ltd.  
3 Nevada Bar No. 3992  
4 3315 Russell Road, No. 222  
5 Las Vegas, Nevada 89120  
6 (702) 433-2666 (phone)  
7 (702) 433-9591 (fax)  
8 allaw@lvcoxmail.com  
9 Attorney for Petitioner

6 IN THE EIGHTH JUDICIAL DISTRICT COURT  
7 IN AND FOR THE COUNTY OF CLARK STATE OF NEVADA

8 SHAN JONATHAN KITTREDGE,

9 Petitioner

10 v.

11 THE STATE OF NEVADA,

12 Respondent

CASE NO: A-20-815382-W  
C-18-33335-2

DEPT: XX  
REPLY TO RESPONSE TO  
PETITIONER'S  
SUPPLEMENTAL PETITION FOR A  
WRIT OF HABEAS CORPUS

Date of Hearing: 10/21/21

Time of Hearing: 11 am

13 Comes now, Petitioner, Shan Kittredge, by and through the undersigned counsel, and  
14  
15 hereby files this Reply to the Response to Petitioner's Supplemental Brief to the Petitioner's  
16  
17  
18  
19 Petition for Habeas Corpus pursuant to NRS 34.280, as set forth in this Court's Minute Order.

20 This Reply is made and supported by the attached Points and Authorities, and is further  
21 supported by all papers, pleadings and documents on file herein, and any future hearing.

22 Dated this 19<sup>th</sup> day of October, 2021

23 Respectfully submitted by:

24 /s/Allen Lichtenstein

25 Allen Lichtenstein

26 Nevada Bar No.: 3992

27 Allen Lichtenstein, Attorney at Law, Ltd.

28 3315 Russell Road, No. 222

Las Vegas, NV 89120

A.A. 274

(702) 433-2666 – phone

(702) 433-9591 – fax

allaw@lvcoxmail.com

Attorney for Petitioner

**I. Introduction**

Mr. Kittredge's petition centers around the fact that prior to his acceptance of the plea deal, no competency exam was performed, nor was one requested by his trial attorney, even though he had been shot in the head and was clearly still suffering from the effects of that shooting. The failure of trial counsel to request such a hearing constitutes ineffective assistance of counsel.

**II. Mr. Kittredge's due process rights were violated by him not being afforded a competency hearing prior to the acceptance of his guilty plea.**

The United States Supreme Court addressed the issue of mental competence in *Indiana v. Edwards*, 554 U.S. 164, 169-170(2008). The Supreme Court set forth hi all, almost certain the standard for mental competency as follows:

The two cases that set forth the Constitution's "mental competence" standard, *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (per curiam), and *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975), specify that the Constitution does not permit trial of an individual who lacks "mental competency." *Dusky* defines the competency standard as including both (1) "whether" the defendant has "a rational as well as factual understanding of the proceedings against him" and (2) whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." 362 U.S., at 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (emphasis added; internal quotation marks omitted). *Drope* repeats that standard, stating that it "has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." 420 U.S. at 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (emphasis added).

*Edwards*, 554 U.S. at 169-170.

Admissibility of a confession must be based on a "reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant." *Boykin v. Alabama*, 395 U.S. 238, 242 (1969), quoting *Jackson v. Denno*, 378 U.S. 368, 387 (1964). A defendant

1 pleading guilty must have "a full understanding of what the plea connotes and of its consequence".  
2 *Boykin* at 244. In addition to determining that a defendant who seeks to plead guilty or waive  
3 counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is  
4 knowing and voluntary. *Godinez v. Moran*, 509 U.S. 389, 400 (1993), citing *Parke v. Raley*, 506  
5 U.S. 20, 28-29 (1992). Competency claims may be based on violations of both procedural and  
6 substantive due process. *Allen v. Mullin*, 368 F.3d 1220 (10th Cir. 2004).

7  
8 "A procedural competency claim is based upon a trial court's alleged failure to hold  
9 a competency hearing, or an adequate competency hearing, while a substantive  
10 competency claim is founded on the allegation that an individual was tried and  
11 convicted while, in fact, incompetent." *McGregor v. Gibson*, 248 F.3d, 946, 952  
12 (10<sup>th</sup> Cir. 2001). The standards of proof for procedural and substantive competency  
13 claims differ. To make out a procedural competency claim, a defendant "must raise  
14 a bona fide doubt regarding his competency to stand trial . . . ." *Id.* This requires a  
15 demonstration that "a reasonable judge should have doubted" the defendant's  
16 competency. *Id.* at 954. It does not require proof of actual incompetency. *Id.* A  
17 substantive competency claim, on the other hand, requires the higher standard of  
18 proof of incompetency by a preponderance of the evidence. *Cooper v.*  
19 *Oklahoma*, 517 U.S. 348, 368-69 (1996); *Walker v. Oklahoma*, 167 F.3d 1399,  
20 1344 (10<sup>th</sup> Cir. 1999).

21 368 F.3d at 1239.

22 Nevada has adopted the federal standard for competency announced in *Dusky v. United*  
23 *States*, 362 U.S. 402 (1960) see also NRS 178.400(2)). *Jones v. State*, 131 Nev. 1304 (2015), see  
24 also, *Calvin v. State*, 122 Nev. 1178, 1182-83, 147 P.3d 1097, 1100 (2006).

25 Despite the variance in language between *Dusky* and the statute, we have in the past  
26 recognized *Dusky* as the governing standard, and we have without comment  
27 interpreted the statute as consistent with that standard. We therefore now  
28 specifically hold that our statutory competency standard conforms to that  
of *Dusky* and thus satisfies constitutional requirements. Thus, consistent  
with *Dusky*, under Nevada statutory law a defendant is incompetent to stand trial if  
he *either* "is not of sufficient mentality to be able to understand the nature of the  
criminal charges against him" *or* he "is not able to aid and assist his counsel in the  
defense interposed upon the trial or against the pronouncement of the judgment  
thereafter."

122 Nev. at 1182-83, 147 P.3d at 1100.

1 The trier of fact must consider "whether [defendant] has sufficient present ability to consult  
2 with his lawyer with a reasonable degree of rational understanding--and whether he has a rational  
3 as well as factual understanding of the proceedings against him." *Dusky*, 362 U.S. 402. "That  
4 defendant can recite the charges against [him], list witnesses, and use legal terminology are  
5 insufficient" to demonstrate that he had a rational, as well as factual, understanding of the  
6 proceedings. *United States v. Williams*, 113 F.3d 1155, 1159 (10th Cir. 1997).

7  
8 Under Nevada law a defendant is incompetent to stand trial if he either is not of sufficient  
9 mentality to be able to understand the nature of the criminal charges against him or he is not able  
10 to aid and assist his counsel. *Jones, supra*. A court is not required to make a competency  
11 determination in every case in which a defendant seeks to plead guilty or to waive his right  
12 to counsel. *Godinez*, 509 U.S. at 401, n 13. However, when there is "substantial evidence that the  
13 defendant may not be competent to stand trial," the district court must hold a formal competency  
14 hearing. *Olivares v. State*, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008); see also, *Scarbo v.*  
15 *Eighth Judicial Dist. Court*, 125 Nev. 118, P.3d 975 (2009).

16  
17 Under Nevada's competency procedure, if any "doubt arises as to the  
18 competence of the defendant, the court shall suspend the proceedings, the trial or  
19 the pronouncing of the judgment, as the case may be, until the question of  
20 competence is determined." NRS 178.405(1). The court shall then "hold a hearing  
21 to fully consider those doubts and to determine whether further competency  
22 proceedings under NRS 178.415 are warranted." 3 *Olivares*, 124 Nev. at , 195  
23 P.3d at 869. In *Olivares*, we recognized that further competency proceedings  
24 under NRS 178.415 are warranted "when there is reasonable doubt regarding a  
25 defendant's competency." *Id.* at , 195 P.3d at 868. Competence shall be measured  
26 by the defendant's ability to understand the nature of the criminal charges and the  
27 nature and purpose of the court proceedings, and by his or her ability to aid and  
28 assist his or her counsel in the defense at any time during the proceedings with a  
reasonable degree of rational understanding. *Calvin v. State*, 122 Nev. 1178, 1182-  
83, 147 P.3d 1097, 1100 (2006); *Dusky v. United States*, 362 U.S. 402, 402, 80 S.  
Ct. 788, 4 L. Ed. 2d 824 (1960); see NRS 178.400(2)(a)-(c).  
125 Nev. at 121-22, 206 P.3d at 977-78.

26 In Nevada, "[a] formal competency hearing is constitutionally compelled any time there is  
27 'substantial evidence' that the defendant may be mentally incompetent to stand trial. *Goad v.*  
28

1 State, 488 P.3d 646, 655 (Nev. App. 2021). In this context, evidence is 'substantial' if it 'raises a  
2 reasonable doubt about the defendant's competency to stand trial.'" *Melchor-Gloria*, 99 Nev. at  
3 180, 660 P.2d at 113 (quoting *Moore v. United States*, 464 F.2d 663, 666 (9th Cir. 1972)).

4 It is uncontroverted that Mr. Kittredge suffered two (2) gunshot wounds to the head (nine  
5 (9) gunshot wounds in total) upon his arrest on June 8, 2018. It is also uncontroverted that Mr.  
6 Kittredge still suffered from the effects of the gunshot wounds during the relevant period, as  
7 evidence by his requests for medical attention on December 19, 2018 and April 4, 2019. The  
8 disputed guilty verdict was on March 11, 2019. There was no record of any psychiatric or other  
9 mental evaluation of Petitioner. This violated Mr. Kittredge's due process right pursuant to Dusky  
10 and its progeny, and constituted ineffective assistance of trial counsel.

12 **III. Prior counsel was ineffective pursuant to *Strickland*.**

13 The State claims that the Petition does not show that Mr. Kittredge has met the *Strickland*  
14 test for ineffective assistance of counsel.

15 "The benchmark for judging any claim of ineffectiveness must be whether Counsel's  
16 conduct so undermined the proper functioning of the adversarial process that the trial cannot be  
17 relied on as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 686 (1984).  
18 Despite the State's assertions to the contrary, *Strickland* did not define any bright line or specific  
19 benchmarks for ineffective assistance.  
20

21 When a convicted defendant complains of the ineffectiveness of counsel's  
22 assistance, the defendant must show that counsel's representation fell below an  
23 objective standard of reasonableness.

24 More specific guidelines are not appropriate. The Sixth Amendment refers simply  
25 to "counsel," not specifying particular requirements of effective assistance. It  
26 relies instead on the legal profession's maintenance of standards sufficient to justify  
27 the law's presumption that counsel will fulfill the role in the adversary process that  
28 the Amendment envisions. See *Michel v. Louisiana*, 350 U.S. 91, 100-101  
(1955). The proper measure of attorney performance remains simply  
reasonableness under prevailing professional norms.

1 *Id.* at 687-688.

2 While the *Strickland* Court used a reasonableness standard, it also mentioned two factors  
3 for ineffective assistance.

4 A convicted defendant's claim that counsel's assistance was so defective as to  
5 require reversal of a conviction or death sentence has two components. First, the  
6 defendant must show that counsel's performance was deficient. This requires  
7 showing that counsel made errors so serious that counsel was not functioning as the  
8 "counsel" guaranteed the defendant by the Sixth Amendment. Second, the  
9 defendant must show that the deficient performance prejudiced the defense. This  
requires showing that counsel's errors were so serious as to deprive the defendant of  
a fair trial, a trial whose result is reliable. Unless a defendant makes both showings,  
it cannot be said that the conviction or death sentence resulted from a breakdown in  
the adversary process that renders the result unreliable.

10 466 U.S. at 687.

11 As noted above, NRS 178.405(1) provides that if any "doubt arises as to the  
12 competence of the defendant, the court shall suspend the proceedings, the trial or the  
13 pronouncing of the judgment, as the case may be, until the question of competence is  
14 determined." *See also, Scarbo, supra.* Here, the fact that Mr. Kittredge suffered multiple gunshot  
15 wounds, including two to the head created sufficient doubt as to call for the requisite competency  
16 hearing prior to the acceptance of any guilty plea. The failure of failure of trial counsel constituted  
17 ineffective assistance pursuant to *Strickland*.  
18

#### 19 IV. Conclusion

20 The failure of Mr. Kittredge's trial attorney to request a competency hearing prior to Mr.  
21 Kittredge's guilty plea constituted a violation of Petitioner's due process rights and ineffective  
22 assistance of counsel.  
23

24 Dated this 19<sup>th</sup> day of October, 2021

25 Respectfully submitted by:

26 /s/Allen Lichtenstein

27 Allen Lichtenstein

Nevada Bar No.: 3992

28 Allen Lichtenstein, Attorney at Law, Ltd.



3315 Russell Road, No. 222  
Las Vegas, NV 89120  
(702) 433-2666 – phone; (702) 433-9591 – fax  
[allaw@lvcoxmail.com](mailto:allaw@lvcoxmail.com)  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, I served all parties through the Court's electronic filing and service system and also the email to the following:

JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
[Jonathan.Vanboskerck@clarkcountyda.com](mailto:Jonathan.Vanboskerck@clarkcountyda.com)

DISTRICT COURT  
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

October 21, 2021

A-20-815382-W      Shan Kittredge, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

October 21, 2021      08:30 AM      Petition for Writ of Habeas Corpus

HEARD BY:      Jones, Tierra      COURTROOM: RJC Courtroom 16D

COURT CLERK: Natali, Andrea

RECORDER:      Berndt, Kaihla

REPORTER:

PARTIES PRESENT:

Allen Lichtenstein

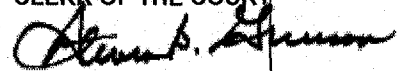
Attorney for Plaintiff

Laura Goodman

Attorney for Defendant

**JOURNAL ENTRIES**

Colloquy regarding Mr. Lichtenstein's recently filed reply. Argument by Mr. Lichtenstein in support of the petition, noting the Deft.'s competency was not raised at the time the Deft. entered the plea. Argument by Ms. Goodman in opposition to the petition, noting the Deft. was canvassed on mental health issues and what was going on; submitted on the response. Mr. Lichtenstein submitted. Statement by Deft. COURT stated its FINDINGS and ORDERED, petition DENIED; DIRECTED, the State to prepare the order.



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 SHAN KITTREDGE,

8 Plaintiff,

9 vs.

10 STATE OF NEVADA,

11 Defendant.

CASE NO: A-20-815382-W

DEPT. XXXII

12  
13 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
14 THURSDAY, OCTOBER 21, 2021

15 **RECORDER'S TRANSCRIPT OF HEARING RE:**  
16 **PETITION FOR WRIT OF HABEAS CORPUS**

17  
18 APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

19 For the Plaintiff(s):

ALLEN LICHTENSTEIN, ESQ.

20 For the Defendant(s):

21 LAURA ROSE GOODMAN, ESQ.  
22 Chief Deputy District Attorney

23  
24  
25 RECORDED BY: KAIHLA BERNDT, COURT RECORDER

A.A. 282

1 Las Vegas, Nevada; Thursday, October 21, 2021

2  
3 [Proceeding commenced at 9:06 a.m.]

4 THE COURT: A815382 Shan Kittredge versus the State of  
5 Nevada. May the record reflect that Mr. Kittredge is not present. Mr.  
6 Lichtenstein is here on his behalf. Ms. Goodman, are you arguing this?

7 THE MARSHAL: He's in custody, Your Honor.

8 MS. ROSE GOODMAN: I was just planning on submitting. I  
9 did receive, however, via email literally just this morning while we were  
10 in court a reply the State had filed.

11 THE COURT: Yes, I got that. I read that. It was filed  
12 yesterday.

13 MS. ROSE GOODMAN: Oh, you received that already?

14 THE COURT: Yeah.

15 MS. ROSE GOODMAN: I was just prepared to submit it to  
16 Your Honor.

17 THE COURT: All right, Mr. Kittredge is present in custody.  
18 Mr. Lichtenstein, did you get the State's reply that was filed yesterday  
19 afternoon? I'm sorry, it was your reply. I apologize, it's your reply, so  
20 you do have it.

21 Mr. Lichtenstein, you're muted.

22 THE COURT RECORDER: He has to do it from his side.

23 THE COURT: Yeah.

24 MR. LICHTENSTEIN: Sorry, Your Honor. Yes, I was -- I've  
25 seen it since.

1 THE COURT: All right, are you prepared to go forward today?

2 MR. LICHTENSTEIN: Yes, Your Honor.

3 THE COURT: All right, Mr. Lichtenstein, these are your  
4 moving papers. I have read the original petition that was filed, the  
5 State's response, your supplement, the State's additional response, and  
6 your reply. Do you have anything you want to add?

7 MR. LICHTENSTEIN: No, Your Honor. Just very briefly, this  
8 is a situation where Mr. Kittredge had been shot several times, at least  
9 two times in the head. Trial was -- had started. The jury had been  
10 selected, then somehow over lunch, he was convinced to plead guilty in  
11 a situation that was really not to his benefit, even though he was still  
12 bleeding, was still suffering from the effects of the gunshot wounds.

13 The issue of whether he was really competent to proceed at  
14 that particular time was never raised. And Mr. Kittredge contends that  
15 he was really not in any condition to make those rather life-altering  
16 decisions at that particular time. And the law's pretty clear, both the  
17 *Dusky* and the Nevada statute that if there's any question about whether  
18 someone is capable of really assisting and understanding that there at  
19 least be an inquiry, a competency hearing, to make that determination.  
20 His lawyer never pursued that or raised it. And that was to Mr.  
21 Kittredge's detriment.

22 So, that is the basis of this petition. And I'll leave it at that and  
23 submit it.

24 THE COURT: Okay. State?

25 MS. ROSE GOODMAN: And Your Honor, it looks as though,

1 this is -- according to the State's response, the Judge as always  
2 canvasses based off of mental health issues, and he was quite  
3 coherent, according to the transcripts that none of his medical issues  
4 were going to have -- impact his ability to understand what's going on.  
5 So, he was canvassed, Your Honor, but I will submit it on the rest of the  
6 response.

7 THE COURT: Anything else you would like to add, Mr.  
8 Lichtenstein?

9 MR. LICHTENSTEIN: No, Your Honor. I think that the fact  
10 that he was answering questions is not the -- quite the same thing as the  
11 actual competency hearing. If that were the case, then the whole issue  
12 of a competency hearing would, in general, be unnecessary. There's a  
13 reason why both the U.S. Supreme Court and Nevada Supreme Court --  
14 and it's all statute, for that matter, requires a specific hearing for that.  
15 So, with that --

16 THE COURT: What --

17 MR. LICHTENSTEIN: -- I'll submit it.

18 THE DEFENDANT: I'm not crazy, right-brained. I'm not  
19 talking -- I'm talking the left side of my brain.

20 THE COURT: All right. Well, I mean, this is the situation that  
21 we're in. When we're dealing with these post-conviction petitions, we  
22 have to rely on the record that was made and the record of what  
23 happened at that time.

24 And the record in this case indicates that when Mr. Kittredge  
25 was questioned, he was questioned about mental health. He was

1 questioned by Judge Johnson very thoroughly as to whether or not he  
2 understood what was happening, whether or not any of his mental  
3 health issues were interfering with his ability to understand, and he  
4 answered that he understood everything and that none of his mental  
5 health issues were interfering with his ability to understand the  
6 proceedings.

7 So, the claim that he did not understand any of the  
8 proceedings that happened in this case is belied by the record. And so,  
9 because of that, neither of the prongs of *Strickland* has been satisfied.  
10 So, I do not find that counsel was ineffective. And the petition is denied.  
11 State, you are to prepare a Finding of Facts, Conclusion of Law with this  
12 Court's order. Thank you. That's the calendar.

13 MR. LICHTENSTEIN: Thank you, Your Honor.

14 [Proceeding concluded at 9:11 a.m.]

15 \* \* \* \* \*

16  
17  
18  
19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24 

25 Kaihla Berndt  
Court Recorder/Transcriber

*Heather L. Smith*  
CLERK OF THE COURT

**FFCO**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

SHAN JONATHON KITTREDGE,  
#1779637

Defendant.

CASE NO: A-20-815382-W

C-18-333335-2

DEPT NO: XXXII

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

DATE OF HEARING: OCTOBER 21, 2021  
TIME OF HEARING: 11:00 AM

THIS MATTER having come on for hearing before the above-entitled Court on the 21<sup>st</sup> day of October 2021, Defendant present and represented by ALLEN LICHTENSTEIN, Esq., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**STATEMENT OF THE CASE**

On August 1, 2018, the State filed a Superseding Indictment charging Shan Jonathon Kittredge (hereinafter "Petitioner") with the following: Counts 1-5, 8-10, 12-16, 20-21, 27-28, 33-34, 36-37, 40 – Robbery with Use of a Deadly Weapon; Counts 7, 19, 26, 35, 39 – Conspiracy to Commit Robbery; Count 17 – Attempt Robbery with Use of a Deadly Weapon;



1 Counts 6, 11, 18, 25, 31-32, 38, 42 – Burglary while in Possession of a Firearm; Counts 22-  
2 24, 29-30, 41, – Assault with a Deadly Weapon; Count 43 – Grand Larceny Auto; Count 44 –  
3 Possession of Stolen Vehicle; Counts 45-47 – Assault on Protected Person With Use of a  
4 Deadly Weapon; and Count 48 – Resisting Public Officer With Use of a Firearm. Petitioner’s  
5 co-defendant was also charged as to Counts 7-11, 19-31, and 35-42. On August 21, 2018,  
6 Petitioner pleaded not guilty and waived his right to a speedy trial.

7 On December 19, 2018, Petitioner filed a Motion for Medical Treatment. On January  
8 8, 2019, statements were made by defense counsel that Petitioner had sent several kites but  
9 had been unable to receive medical attention. A two (2) week continuance was requested for  
10 Mr. Frank Toddre, from the Attorney General’s Office, to speak with medical personnel. On  
11 January 23, 2019, Mr. Toddre filed a Status Report regarding Petitioner’s treatment. A  
12 Declaration from the Director or Nursing Bob Faulkner was attached. On January 24, 2019,  
13 this Court noted that Petitioner was being treated and defense counsel concurred. Defense  
14 counsel did note that Petitioner was waiting for an MRI and x-rays. The Court then denied the  
15 motion.

16 On March 11, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual  
17 Criminal.

18 On March 18, 2019, jury trial began, but Petitioner ultimately decided to plead guilty  
19 pursuant to a Guilty Plea Agreement (“GPA”). According to the GPA, “both parties stipulate  
20 to a total term of imprisonment of eighteen (18) to forty-five (45) years in the Nevada  
21 Department of Corrections.” The Amended Superseding Indictment was also filed and charged  
22 Petitioner with: Count 1 – Conspiracy to Commit Robbery; Counts 2-4 – Robbery with Use of  
23 a Deadly Weapon; and Count 5 – Resisting Public Officer With Use of a Firearm. On May 8,  
24 2019, defense counsel filed a Sentencing Memorandum.

25 On May 14, 2019, the District Court sentenced Petitioner to the Nevada Department of  
26 Corrections as follows: Count 1 – a minimum of twenty-eight (28) months with a maximum  
27 of seventy-two (72) months; Count 2 – a minimum of forty-eight (48) months and a maximum  
28 of one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)

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1 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,  
2 concurrent with Count 1; Count 3 – a minimum of forty-eight (48) months and a maximum of  
3 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)  
4 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,  
5 consecutive to Count 2; Count 4 – a minimum of forty-eight (48) months and a maximum of  
6 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)  
7 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,  
8 concurrent with Count 3; and Count 5 – a minimum of twenty-four (24) months and a  
9 maximum of sixty (60) months, consecutive to Count 3, with one hundred fifty-six (156) days  
10 credit for time served. Petitioner was further ordered to pay \$4,153.37 in Restitution, with  
11 \$2,802 to be paid jointly and severally with the co-defendant. Restitution was ordered in the  
12 following amounts: \$400 to Panda Express, \$300 to Duncan Donuts; \$331 to Roberto's Taco  
13 Shop; \$100 to Khoury's Mediterranean Restaurant and \$3,022.37 to Albertson's. The  
14 aggregate total sentence was eighteen (18) years to forty-five (45) years. The Judgment of  
15 Conviction was filed on May 16, 2019.

16 On April 5, 2019, Petitioner filed another Motion for Medical Treatment. According to  
17 Petitioner, he had an infection from lesions, and said infection was left untreated with no refills  
18 for antibiotics. On April 16, 2019, counsel for the Clark County Detention Center ("CCDC")  
19 advised that Petitioner was seen by a doctor, just not as quickly as he would have liked, and  
20 Mr. Margolis, on behalf of Mr. Yampolsky advised that Petitioner was now taking antibiotics.  
21 Additionally, Petitioner had a follow-up appointment for the bullet in his head. The Court then  
22 denied the Motion as moot.

23 On May 14, 2019, defense counsel filed a Notice of Withdrawal of Attorney.

24 On May 22, 2020, Petitioner filed the instant post-conviction Petition for Writ of  
25 Habeas Corpus and Motion for Appointment of Counsel. The State filed its Response on  
26 November 25, 2020. On January 1, 2021, this Court appointed Allen Lichtenstein, Esq., ("Mr.  
27 Lichtenstein") as counsel.  
28

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1 On July 14, 2021, Mr. Lichtenstein filed the instant Supplemental Petition. On August  
2 18, 2021, the State filed its Response to Defendant's Supplemental Petition. On October 19,  
3 2021, Mr. Lichtenstein filed a Reply. The matter came before this Court on October 21, 2021,  
4 and the Court rules as follows:

5 **ANALYSIS<sup>1</sup>**

6 **I. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO HABEAS**  
7 **RELEIF**  
8

9 Petitioner claims his counsel was ineffective and that his guilty plea was unknowingly  
10 and unintelligently signed. Petition at 7. The Sixth Amendment to the United States  
11 Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to  
12 have the Assistance of Counsel for his defense." The United States Supreme Court has long  
13 recognized that "the right to counsel is the right to the effective assistance of counsel."  
14 Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v.  
15 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

16 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
17 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
18 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
19 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation  
20 fell below an objective standard of reasonableness, and second, that but for counsel's errors,  
21 there is a reasonable probability that the result of the proceedings would have been different.  
22 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100  
23 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is  
24 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the  
25 same order or even to address both components of the inquiry if the defendant makes an  
26 insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

27  
28 <sup>1</sup> Although this Petition appears to be time-barred, since it was filed on May 22, 2020, and the Judgment of Conviction  
was filed on May 16, 2019, it is not because the Clerk's Office received it on April 19, 2020.

1 The Court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975).

7 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
11 (2002). Further, a defendant who contends his attorney was ineffective because he did not  
12 adequately investigate must show how a better investigation would have rendered a more  
13 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A  
14 defendant is not entitled to a particular “relationship” with his attorney. Morris v. Slappy, 461  
15 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983).

16 Based on the above law, the role of a court in considering allegations of ineffective  
17 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
18 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
19 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
20 (1978). This analysis does not mean that the court should “second guess reasoned choices  
21 between trial tactics nor does it mean that defense counsel, to protect himself against  
22 allegations of inadequacy, must make every conceivable motion no matter how remote the  
23 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
24 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
25 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
26 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

27 “There are countless ways to provide effective assistance in any given case. Even the  
28 best criminal defense attorneys would not defend a particular client in the same way.”

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1 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after  
2 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,  
3 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
4 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's  
5 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
6 conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

7 Claims for relief devoid of specific factual allegations are "bare" and "naked," and are  
8 insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove  
9 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "[Petitioner] *must* allege specific facts  
10 supporting the claims in the petition[.]...Failure to allege specific facts rather than just  
11 conclusions may cause [the] petition to be dismissed." NRS 34.735(6) (emphasis added).

12 When a conviction is the result of a guilty plea, a defendant must show that there is a  
13 "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and  
14 would have *insisted on going to trial*." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
15 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
16 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

17 When considering ineffective-assistance-of-counsel claims where the Petitioner  
18 pleaded guilty, the Nevada Supreme Court has held that:

19  
20 A defendant who pleads guilty upon the advice of counsel may attack the validity  
21 of the guilty plea by showing that he received ineffective assistance of counsel  
22 under the Sixth Amendment to the United States Constitution. However, guilty  
23 pleas are presumptively valid, especially when entered on advice of counsel, and  
24 a defendant has a heavy burden to show the district court that he did not enter  
25 his plea knowingly, intelligently, or voluntarily. To establish prejudice in the  
26 context of a challenge to a guilty plea based upon an assertion of ineffective  
27 assistance of counsel, *a defendant must demonstrate a reasonable probability*  
28 *that, but for counsel's errors, he would not have pleaded guilty and would have*  
*insisted on going to trial*.

27 Molina, 120 Nev. 185, 190-91, 87 P.3d 533, 537(internal quotations and citations omitted)  
28 (emphasis added). "A reasonable probability is a probability sufficient to undermine

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1 confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is counsel’s  
2 duty to candidly advise a Petitioner regarding whether or not they believe it would be  
3 beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not to  
4 accept a plea offer is the Petitioner’s, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d at  
5 163.

6 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant  
7 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction  
8 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.  
9 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83  
10 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined  
11 that a defendant lacked standing to challenge the validity of a plea agreement because he had  
12 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.  
13 468, 477, 958 P.2d 91, 96 (1998).

14 Furthermore, the Nevada Supreme Court has explained:

15 “[A] guilty plea represents a break in the chain of events which has preceded it  
16 in the criminal process. When a criminal defendant has solemnly admitted in  
17 open court that he is in fact guilty of the offense with which he is charged, he  
18 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea.”

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411  
20 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all  
21 constitutional claims based on events occurring prior to the entry of the plea[], except those  
22 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,  
23 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only  
24 claims that may be raised thereafter are those involving the voluntariness of the plea itself and  
25 the effectiveness of counsel.”).

26 //

27 //

28 //

**A.A. 293**

1           **A. Petitioner's Claims that Counsel was Ineffective are Nothing More Than Bare**  
2           **and Naked Assertions.**

3           According to Petitioner, he complained to his counsel that because of the injury to his  
4 head, he did not clearly or intelligently understand what counsel was explaining to him  
5 regarding the GPA. Petition at 7, Supplemental Petition at 6-7. Petitioner notes that he sent  
6 several kites regarding medical treatment and states that "someone who was shot not once, but  
7 twice in the head is under great strain mentally physically as well as spiritually." Id. Petitioner  
8 further claims that counsel was also ineffective because counsel failed to explain to the Court  
9 that he needed more time to understand the State's offer. Petitioner's claims are nothing more  
10 than bare and naked assertions that are belied by the record and suitable for summary denial  
11 pursuant to Hargrove. 100 Nev. at 502, 686 P.2d at 225.

12           First, by signing the GPA, Petitioner agreed that he understood the consequences of his  
13 plea and that counsel had explained said consequences to him. GPA pp. 2-4. Additionally,  
14 Petitioner acknowledged that his plea was entered into voluntarily and knowingly:

15           I have discussed the elements of all of the original charge(s) against me with my  
16 attorney and I understand the nature of the charge(s) against me.

17           I understand that the State would have to prove each element of the charge(s)  
18 against me at trial.

19           I have discussed with my attorney any possible defenses, defense strategies and  
20 circumstances which might be in my favor.

21           All of the foregoing elements, consequences, rights, and waiver of rights have  
22 been thoroughly explained to me by my attorney.

23           I believe that pleading guilty and accepting this plea bargain is in my best  
24 interest, and that a trial would be contrary to my best interest.

25           *I am signing this agreement voluntarily, after consultation with my attorney, and*  
26 *I am not acting under duress or coercion or by virtue of any promises of leniency,*  
*except for those set forth in this agreement.*

27           I am not now under the influence of any intoxicating liquor, a controlled  
28 substance or other drug which would in any manner impair my ability to

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1 comprehend or understand this agreement or the proceedings surrounding my  
2 entry of this plea.

3 My attorney has answered all my questions regarding this guilty plea agreement  
4 and its consequences to my satisfaction and I am satisfied with the services  
5 provided by my attorney.

6 GPA pp. 5-6. (emphasis added).

7 Furthermore, Petitioner's claims that his head injury "was extremely serious and the  
8 medication he received was not sufficient to overbear his will to resist the questioning" is  
9 belied by the record. See Petition at 7; Supplemental Petition at 8. During the plea canvass,  
10 the following occurred:

11 THE COURT: Okay. Have you ever been treated for any mental illness or  
12 addiction to narcotic drugs of any kind?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay, what have you been treated for?

15 THE DEFENDANT: Schizophrenic manic, bipolar, anxiety, depression, and  
16 PTSD.

17 THE COURT: And you're not on any medications for those right now?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. Do you feel those are relatively well controlled without  
20 any medication?

21 THE DEFENDANT: After committing these offenses, I'm trying to stay off  
22 drugs, even mental drugs, you know.

23 THE COURT: Okay.

24 THE DEFENDANT: So I'm maintaining.

25 THE COURT: All right, you've mentioned some serious mental health issues.  
26 *Do you feel that any of those issues is impacting on your ability to understand*  
27 *what's going on here today?*

28 THE DEFENDANT: *No, sir. No, sir.*

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1 THE COURT: Do you feel they are impacting on your ability at all to understand  
2 what you are charged with and the nature of those charges?

3 THE DEFENDANT: No, not at all.

4 THE COURT: All right. Do you feel they impact upon your ability at all to  
5 understand the plea agreement you're entering into with the State?

6 THE DEFENDANT: No, sir.

7 THE COURT: And they don't affect your ability to read and understand, for  
8 instance: the amended superseding indictment or the plea agreement?

9 THE DEFENDANT: No, not in any way.

10 THE COURT: Okay. Do you feel you understand what's happening here today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Tell me in your own words what's happening here today?

13 THE DEFENDANT: *We resolved a plea and went over my plea agreement;*  
14 *you're just making sure that I understand.*

15 Recorder's Transcript: Jury Trial – Day 1, March 18, 2019 ("RT") pp. 98-99 (emphasis added).  
16 Based upon the record, Petitioner understood what was going on at the time he entered his  
17 plea.  
18

19 Additionally, the Court informed Petitioner that if at any time he needed to discuss  
20 something with counsel, in private, he would be given the opportunity:  
21

22 THE COURT: Okay. Now, before accepting your guilty plea, there are a number  
23 of questions I'm going to have to ask you to ensure myself that you're entering  
24 a valid plea. If you do not understand any of the questions, would you please let  
me know so I can rephrase the question?

25 THE DEFENDANT: Yes.

26 THE COURT: Okay. If at any time you wish to take a break in the proceedings  
27 so you can discuss matters in private with your attorney, will you let me know  
28 that so I can give you the opportunity and chance to do so?

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1 THE DEFENDANT: Yes.

2 RT p. 97. Moreover, Petitioner informed the Court that he was pleading guilty without any  
3 coercion, that he signed the GPA, and that he discussed the agreement with his attorney. RT  
4 p. 107. Petitioner also responded affirmatively that he felt as though he understood the plea  
5 agreement. RT p. 108. Further, Petitioner acknowledged that he understood the charges and  
6 relevant penalties. RT pp. 102-05.

7 Petitioner's attachment of the Minutes from January 8, 2019, in his pro per Petition, do  
8 not provide any support for his claim. On that day, statements were made that Petitioner had  
9 not received medical attention. However, on January 23, 2019, counsel from the Attorney  
10 General's Office filed a Status Report and Declaration after speaking with medical personnel.  
11 According to the Status Report, Petitioner was treated for his alleged wounds and follow-up  
12 tests, including x-rays, had been ordered. On January 24, 2019, this Court noted that Petitioner  
13 was being treated and defense counsel concurred. Petitioner did not enter into his guilty plea  
14 until March 18, 2019, approximately two (2) months after he was given treatment.  
15 Accordingly, Petitioner was given medical attention prior to entering his plea. Regardless, the  
16 plea canvass evidences that fact that his plea was entered into knowingly and voluntarily.

17 To the extent that the instant Supplemental Petition expands on Petitioner's original  
18 claim that counsel failed to fully investigate Petitioner's injuries and his ability to comprehend  
19 the proceedings are equally bare and naked assertions. See Hargrove, 100 Nev. at 502, 686  
20 P.2d at 225. As discussed *supra*, the court minutes on January 23, 2019, reflect that the  
21 Attorney General's Office filed a Status Report and Declaration after speaking with medical  
22 personnel regarding Petitioner's injuries. According to the Status Report, Petitioner was  
23 treated for his alleged wounds and follow-up tests, including x-rays, had been ordered. On  
24 January 24, 2019, this Court noted that Petitioner was being treated and defense counsel  
25 concurred. Such treatment was further continued through his plea. On April 16, 2019, counsel  
26 for CCDC advised this Court that Petitioner was being seen by a doctor and taking antibiotics.  
27 While Petitioner alerted the Court to pain caused by the wound, at no point did Petitioner raise  
28 issues regarding his inability to comprehend his current situation. Thus, any claim that counsel

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1 failed to investigate Petitioner's medical concerns is belied by the record and subject to  
2 summary dismissal pursuant to Hargrove.

3 Regardless, the Supplemental Petition fails to demonstrate what a better investigation  
4 into his mental health would have uncovered. Petitioner merely states that he should have  
5 received a plethora of diagnostic exams such as "MRIs, CAT scans, x-rays of his head/neck  
6 and medical assessments/physicians' impressions/ reports." Supplemental Petition at 7.  
7 However, as previously stated, Petitioner was afforded such treatment. See Court Minutes,  
8 January 23, 2019; January 24, 2019; and April 16, 2019. Yet, Petitioner still fails to show  
9 and/or allege what further testing would have uncovered that was not already included within  
10 the Status Report and Declaration. Thus, Petitioner's claim that counsel failed to investigate  
11 fails under Molina.

12 As to Petitioner's specific claims against counsel, by signing the GPA, counsel certified  
13 that he had fully explained everything to Petitioner prior to his entry of plea:

14  
15 I, the undersigned, as the attorney for the Defendant named herein and as an  
16 officer of the court hereby certify that:

17 1. I have fully explained to the Defendant the allegations contained in the  
18 charge(s) to which guilty pleas are being entered.

19 2. I have advised the Defendant of the penalties for each charge and the  
20 restitution that the Defendant may be ordered to pay.

21 3. I have inquired of Defendant facts concerning Defendant's immigration  
22 status and explained to Defendant that if Defendant is not a United States citizen  
23 any criminal conviction will most likely result in serious negative immigration  
24 consequences including but not limited to:

- 25 a. The removal from the United States through deportation;  
26 b. An inability to reenter the United States;  
27 c. The inability to gain United States citizenship or legal residency;  
28 d. An inability to renew and/or retain any legal residency status;  
and/or  
e. An indeterminate term of confinement, by with United States  
Federal Government based on the conviction and immigration status.

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Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

- a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,
- b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

GPA p. 7. For these reasons, Petitioner failed to show that counsel was ineffective.

**B. Petitioner Failed to Establish Prejudice.**

Here, Petitioner failed to show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." See Hill, 474 U.S. 52, 59, 106 S.Ct. 366, 370. Instead, Petitioner made another bare and naked assertion that he was prejudiced because had he been in the right state of mind, he would not have pled guilty and would have proceeded to trial. Petitioner initially faced forty-eight (48) charges, with significantly higher penalties. With the possibility of facing a lengthier sentence, Petitioner cannot now argue that but for the alleged error, he would have gone to trial. Moreover, the plea was entered into during the first day of trial, after voir dire had begun. At any point Petitioner could have told the Court he did not wish to proceed with the GPA and to continue with the trial. Instead, Petitioner was clear that he wanted to enter into this guilty plea. For the reasons stated above, Petitioner's counsel was effective, and his claim is denied.

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1       **II.     NRS 34.780(2) PRECLUDES DISCOVERY AS THE WRIT HAS NOT BEEN**  
2       **GRANTED, A HEARING HAS NOT BEEN SET, AND GOOD CAUSE HAS**  
3       **NOT BEEN SHOWN**

4       Petitioner's request to conduct discovery is suitable only for denial as it is premature  
5 and unsupported by a showing of good cause.

6       NRS 34.780(2) reads:

7       *After the writ has been granted and a date set for the hearing, a party may invoke*  
8       *any method of discovery available under the Nevada Rules of Civil Procedure*  
9       *if, and to the extent that, the judge or justice for good cause shown grants leave*  
10       *to do so.*

11       (Emphasis added). A writ is not "granted" for discovery purposes until this Court determines  
12 that there is a need for an evidentiary hearing. NRS 34.770(3).

13       This Court has yet to grant any petition or set an evidentiary hearing in this matter. As  
14 such, any request for discovery is premature. Thus, this Court lacks authority to order  
15 discovery and Petitioner's untimely demand for the privilege of discovery is denied.

16       The Court further finds that Petitioner cannot meet the good cause requirement. The  
17 Nevada Supreme Court has yet to address the meaning of good cause in the context of  
18 discovery in a post-conviction habeas proceeding. Under the federal rule, good cause exists to  
19 allow discovery only where specific allegations provide reason to believe that the petitioner  
20 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief. Rule 6  
21 of the Federal Rules Governing § 2254 Cases; McDaniel v. U.S. District Court (Jones), 127 F.  
22 3d 886, 888 (9<sup>th</sup> Cir. 1997). However, "*courts should not allow prisoners to use federal*  
23 *discovery for fishing expeditions to investigate mere speculation.*" Calderon v. U.S. District  
24 Court (Nicolaus), 98 F. 3d 1102, 1106 (9<sup>th</sup> Cir. 1996) (emphasis added), cert. denied, 520 U.S.  
25 1233, 117 S. Ct. 1830 (1997); see also, Stanford v. Parker, 266 F. 3d 442, 460 (6<sup>th</sup> Cir. 2001);  
26 Murphy v. Johnson, 205 F.3d 809, 814 (5<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 957, 121 S. Ct.  
27 380 (2000).

28       The Discovery Motion is silent on the question of good cause. Thus, Petitioner's failure  
to address this mandatory showing is "construed as an admission that the motion is not

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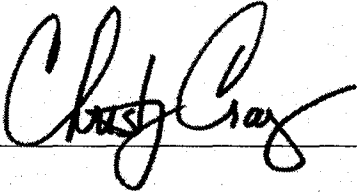
1 meritorious and cause for its denial or as a waiver of all grounds not so supported.” District  
2 Court Rules (DCR) Rule 13(2). Nor does the outcome change merely because Petitioner’s  
3 underlying matter is criminal in nature: “A party filing a motion must also serve and file with  
4 it a memorandum of points and authorities in support of each ground thereof. The absence of  
5 such memorandum may be construed either as an admission that the motion is not meritorious  
6 and, as cause for its denial or as a waiver of all grounds not supported.” Eighth Judicial District  
7 Court Rules (EDCR) Rule 3.20(b); see Polk v. State, 126 Nev. 180, 185, 233 P.3d 357, 360  
8 (2010).

9 Petitioner’s claim boils down to a fishing expedition in the hopes of finding something  
10 to withdraw his plea. Petitioner assumes the existence of additional testing and that any  
11 additional testing was not provided to previous defense counsel. Petitioner has done nothing  
12 to substantiate his naked assumptions. Petitioner has not shown good cause because he merely  
13 speculates about possibilities. Until Petitioner can demonstrate more than mere hoped for  
14 conclusions, his request for discovery must be denied as the fishing expedition it is.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
17 shall be, and it is, hereby DENIED.

Dated this 1st day of December, 2021



21 STEVEN B. WOLFSON  
22 Clark County District Attorney  
Nevada Bar #001565

9D8 E6A 6730 7AF6  
Christy Craig  
District Court Judge

23 BY /s/ Jonathan E. Vanbockerck  
24 JONATHAN E. VANBOSKERCK  
25 Chief Deputy District Attorney  
Nevada Bar #006528

A.A. 301

1                                    CERTIFICATE OF ELECTRONIC TRANSMISSION

2            I hereby certify that service of the above and foregoing was made this 1st day of  
3 December, 2021, by electronic transmission to:

4                                    ALLEN LICHTENSTEIN  
5                                    allaw@lvcoxmail.com

6                                    BY    /s/ E. Del Padre  
7                                    E. DEL PADRE  
8                                    Secretary for the District Attorney's Office

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28    JV/GCU

A.A. 302

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Shan Kittredge, Plaintiff(s)

CASE NO: A-20-815382-W

7 vs.

DEPT. NO. Department 32

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 12/1/2021

15 Dept 20 Law Clerk

Dept20lc@clarkcountycourts.us



*Steven D. Grierson*

1 NEFF

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 SHAN KITTREDGE,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,

Case No: A-20-815382-W

Dept No: XXXII

10 NOTICE OF ENTRY OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

11 PLEASE TAKE NOTICE that on December 1, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
to you. This notice was mailed on December 6, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18  
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 6 day of December 2021, I served a copy of this Notice of Entry on the  
21 following:

22 ☒ By e-mail:

23 Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Shan Kittredge # 1202642  
P.O. Box 208  
26 Indian Springs, NV 89070

Terrence M. Jackson, Esq.  
624 S. Ninth St.  
Las Vegas, NV 89101

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

*Steven D. Grierson*

1 NOASC  
2 TERRENCE M. JACKSON, ESQ.  
3 Nevada Bar No. 00854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 T: 702-386-0001 / F: 702-386-0085  
8 Terry.jackson.esq@gmail.com

9 Counsel for Defendant, *Shan Jonathon Kittredge*

10 IN THE EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 v.

15 SHAN J. KITTREDGE,  
16 ID#1202642,

17 Defendant.

District Case No.: A-20-815382-W

C-18-333335-2

Dept.: XXXII

**NOTICE OF APPEAL**

18 NOTICE is hereby given that the Defendant, SHAN JONATHON KITTREDGE, by and  
19 through his attorney, TERRENCE M. JACKSON, ESQ., hereby appeals to the Nevada Supreme  
20 Court, from the Notice of Entry of Findings of Fact, Conclusions of Law and Order, file-stamped  
21 and dated December 1, 2021, denying his Petition for Post-Conviction Relief.

22 Defendant, SHAN JONATHON KITTREDGE, further states he is indigent and requests that  
23 the filing fees be waived.

24 Respectfully submitted this 13th day of December, 2021.

25 /s/ Terrence M. Jackson  
26 Terrence M. Jackson, Esquire  
27 Nevada Bar No. 00854  
28 Law Office of Terrence M. Jackson  
624 South Ninth Street  
Las Vegas, NV 89101  
T: 702-386-0001 / F: 702-386-0085  
terry.jackson.esq@gmail.com  
*Counsel for Defendant, Shan Jonathon Kittredge*

A.A. 305

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action, and  
3 on the 13th day of December, 2021, I served a true, correct and e-filed stamped copy of the  
4 foregoing: Defendant, Shan J. Kittredge's, NOTICE OF APPEAL as follows:  
5

- 6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;  
7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E.  
8 Clark Avenue in Las Vegas, Nevada;  
9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant as  
10 follows:  
11

12 STEVEN B. WOLFSON  
13 Clark County District Attorney  
14 steven.wolfson@clarkcountyda.com

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Jonathon.vanboskerck@clarkcountyda.com

15 SHAN J. KITTREDGE  
16 ID#1202642,  
17 S.D. C. C.  
18 P. O. Box 208  
19 Indian Springs, NV 89070-0208

AARON D. FORD  
Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89701

20  
21 By: /s/ Ila C. Wills  
22 Assistant to T. M. Jackson, Esq.  
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26  
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