

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 22 2022 02:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

HYKEEM TYRESE WELSON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-17-321763-1
Related Case A-20-821331-C
Docket No: 84354

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
HYKEEM WELSON # 1104578,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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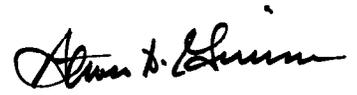
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**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
1 - 55
WILL FOLLOW VIA
U.S. MAIL**


CLERK OF THE COURT

1 **INFM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 BINU G. PALAL
6 Deputy District Attorney
7 Nevada Bar #010178
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 I.A. 3/8/17
8 10:00 AM
9 SPD

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-17-321763-1

11 -vs-

DEPT NO: XX

12 HYKEEM WELDON,
13 aka Hykeem Tyrese Weldon, #2750525

14 Defendant.

INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That HYKEEM WELDON, aka Hykeem Tyrese Weldon, the Defendant(s) above
20 named, having committed the crime of **ROBBERY (Category B Felony - NRS 200.380 -**
21 **NOC 50137)**, on or about the 8th day of November, 2016, within the County of Clark, State
22 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
23 and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and
24 feloniously take personal property, to wit: U.S. Currency, a voucher, a laptop computer, an
25 iPod, cellular telephones, and debit cards, from the person of RAYMOND DOBBS and/or

26 //

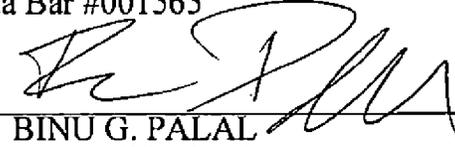
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1 LAURIE DOBBS, or in their presence, by means of force or violence, or fear of injury to, and
2 without the consent and against the will of RAYMOND DOBBS and/or LAURIE DOBBS.

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY



7 BINU G. PALAL
8 Deputy District Attorney
9 Nevada Bar #010178

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27 16F21196X/llm/GANG
28 LVMPD EV#1611080652
(TKI)

ORIGINAL

47

1 **GPA**
 2 **STEVEN B. WOLFSON**
 3 **Clark County District Attorney**
 4 **Nevada Bar #001565**
 5 **BINU G. PALAL**
 6 **Deputy District Attorney**
 7 **Nevada Bar #010178**
 8 **200 Lewis Avenue**
 9 **Las Vegas, NV 89155-2212**
 10 **(702) 671-2500**
 11 **Attorney for Plaintiff**

FILED IN OPEN COURT

3/8/17

STEVEN D. GRIERSON
CLERK OF THE COURT

BY *Haly Pannullo* DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-17-321763-1

HYKEEM WELDON,
aka Hykeem Tyrese Weldon, #2750525

DEPT NO: XX

Defendant.

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **ROBBERY (Category B Felony - NRS 200.380 - NOC 50137)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State retains the right to argue at rendition of sentence. Further, the State will not oppose Defendant's own recognizance release after entry of plea in District Court. If Defendant is arrested for new felony charges, or fails to appear for his Pre-Sentence Interview or any future court dates, Defendant stipulates to six (6) to fifteen (15) years in the Nevada Department of Corrections.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

// C-17-321763-1
GPA
Guilty Plea Agreement
4630162



8

1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
3 by affidavit review, confirms probable cause against me for new criminal charges including
4 reckless driving or DUI, but excluding minor traffic violations, the State will have the
5 unqualified right to argue for any legal sentence and term of confinement allowable for the
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
8 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense(s) to which I now plead as set forth in Exhibit "1".

15 I understand that as a consequence of my plea of guilty the Court must sentence me to
16 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
17 two (2) years and a maximum term of not more than fifteen (15) years. The minimum term of
18 imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I
19 understand that the law requires me to pay an Administrative Assessment Fee.

20 I understand that, if appropriate, I will be ordered to make restitution to the victim of
21 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
22 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
23 reimburse the State of Nevada for any expenses related to my extradition, if any.

24 I understand that I am eligible for probation for the offense to which I am pleading
25 guilty. I understand that, except as otherwise provided by statute, the question of whether I
26 receive probation is in the discretion of the sentencing judge.

27 I understand that I must submit to blood and/or saliva tests under the Direction of the
28 Division of Parole and Probation to determine genetic markers and/or secretor status.

1 I understand that I must submit to blood and/or saliva tests under the Direction of the
2 Division of Parole and Probation to determine genetic markers and/or secretor status.

3 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
4 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
5 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
6 and may receive a higher sentencing range.

7 I understand that if more than one sentence of imprisonment is imposed and I am
8 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
9 the sentences served concurrently or consecutively.

10 I understand that information regarding charges not filed, dismissed charges, or charges
11 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

12 I have not been promised or guaranteed any particular sentence by anyone. I know that
13 my sentence is to be determined by the Court within the limits prescribed by statute.

14 I understand that if my attorney or the State of Nevada or both recommend any specific
15 punishment to the Court, the Court is not obligated to accept the recommendation.

16 I understand that if the offense(s) to which I am pleading guilty was committed while I
17 was incarcerated on another charge or while I was on probation or parole that I am not eligible
18 for credit for time served toward the instant offense(s).

19 I understand that if I am not a United States citizen, any criminal conviction will likely
20 result in serious negative immigration consequences including but not limited to:

- 21 1. The removal from the United States through deportation;
- 22 2. An inability to reenter the United States;
- 23 3. The inability to gain United States citizenship or legal residency;
- 24 4. An inability to renew and/or retain any legal residency status; and/or
- 25 5. An indeterminate term of confinement, with the United States Federal
26 Government based on my conviction and immigration status.

26 //

27 //

28 //

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

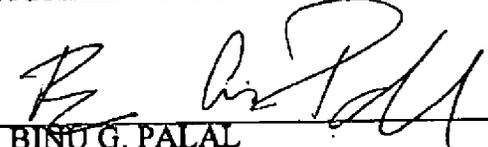
I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

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

DATED this 8 day of March, 2017.


HYKEEM WELDON,
aka Hykeem Tyrese Weldon
Defendant

AGREED TO BY:


BINU G. PALAL
Deputy District Attorney
Nevada Bar #010178

1 CERTIFICATE OF COUNSEL:

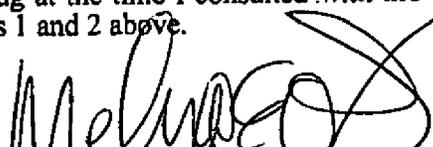
2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
hereby certify that:

- 3 1. I have fully explained to the Defendant the allegations contained in the
4 charge(s) to which guilty pleas are being entered.
- 5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.
- 7 3. I have inquired of Defendant facts concerning Defendant's immigration status
8 and explained to Defendant that if Defendant is not a United States citizen any
9 criminal conviction will most likely result in serious negative immigration
10 consequences including but not limited to:
- 11 a. The removal from the United States through deportation;
 - 12 b. An inability to reenter the United States;
 - 13 c. The inability to gain United States citizenship or legal residency;
 - 14 d. An inability to renew and/or retain any legal residency status; and/or
 - 15 e. An indeterminate term of confinement, by with United States Federal
Government based on the conviction and immigration status.

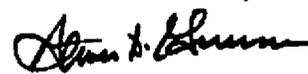
16 Moreover, I have explained that regardless of what Defendant may have been
17 told by any attorney, no one can promise Defendant that this conviction will not
18 result in negative immigration consequences and/or impact Defendant's ability
19 to become a United States citizen and/or legal resident.

- 20 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
21 consistent with the facts known to me and are made with my advice to the
22 Defendant.
- 23 5. To the best of my knowledge and belief, the Defendant:
- 24 a. Is competent and understands the charges and the consequences of
pleading guilty as provided in this agreement,
 - 25 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
 - 26 c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
27 certified in paragraphs 1 and 2 above.

28 Dated: This 8th day of March, 2017.


ATTORNEY FOR DEFENDANT

llm/GANG


CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 BINU G. PALAL
6 Deputy District Attorney
7 Nevada Bar #010178
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 I.A. 3/8/17
8 10:00 AM
9 SPD

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 HYKEEM WELDON,
13 aka Hykeem Tyrese Weldon, #2750525
14 Defendant.

CASE NO: C-17-321763-1
DEPT NO: XX

INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

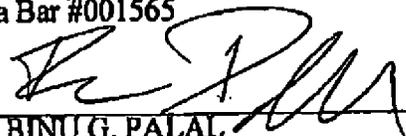
19 That HYKEEM WELDON, aka Hykeem Tyrese Weldon, the Defendant(s) above
20 named, having committed the crime of ROBBERY (Category B Felony - NRS 200.380 -
21 NOC 50137), on or about the 8th day of November, 2016, within the County of Clark, State
22 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
23 and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and
24 feloniously take personal property, to wit: U.S. Currency, a voucher, a laptop computer, an
25 iPod, cellular telephones, and debit cards, from the person of RAYMOND DOBBS and/or

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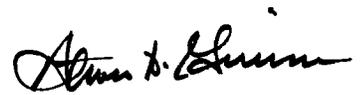
LAURIE DOBBS, or in their presence, by means of force or violence, or fear of injury to, and without the consent and against the will of RAYMOND DOBBS and/or LAURIE DOBBS.

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

BY 

BINU G. PALAL
Deputy District Attorney
Nevada Bar #010178

16F21196X/llm/GANG
LVMPD EV#1611080652
(TKI)



CLERK OF THE COURT

1 **MOT**
 2 DAVID M. SCHIECK
 3 SPECIAL PUBLIC DEFENDER
 Nevada Bar No. 824
 4 MELISSA E. OLIVER
 Chief Deputy Special Public Defender
 Nevada Bar No. 11232
 5 330 South Third Street, 8th Floor
 Las Vegas, NV 89155-2316
 (702) 455-6266
 6 OliverM@clarkcountynv.gov
 Attorneys for Defendant

7
 8 DISTRICT COURT
 9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
 11 Plaintiff,
 12 vs.
 13 HYKEEM WELDON,
 ID#2750525,
 14 Defendant.

CASE NO. C-17-321763-1
 DEPT. NO. XX

DATE OF HEARING: _____
 TIME OF HEARING: _____

15
 16 **MOTION TO PLACE ON CALENDAR FOR IMMEDIATE O.R. RELEASE**

17 Upon the application of MELISSA E. OLIVER, Chief Deputy Special Public
 18 Defender, attorney for Defendant, HYKEEM WELDON, it is hereby requested that the
 19 above-entitled matter be placed on calendar for the purpose of releasing Defendant on his
 20 own recognizance pursuant to the Guilty Plea Agreement filed in Open Court on March 8,
 21 2017, attached hereto as Exhibit A.

22 DATED this 13th day of March, 2017.

23 DAVID M. SCHIECK
 SPECIAL PUBLIC DEFENDER

24
 25 By: 
 26 MELISSA E. OLIVER
 Chief Deputy Special Public Defender
 State Bar No. 11232
 27 333 S. Third Street, Suite 800
 Las Vegas, NV 89155
 28 Attorney for Defendant

1 **NOTICE OF MOTION**

2 TO: STATE OF NEVADA, Plaintiff; and

3 TO: STEVEN B. WOLFSON, District Attorney, Attorney for Plaintiff

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above
5 and foregoing *MOTION TO PLACE ON CALENDAR FOR IMMEDIATE O.R. RELEASE* on
6 the 28 day of March 2017 at 8:30AM a.m. in Department No. XX of the above-entitled
7 Court, or as soon thereafter as counsel may be heard.

8 DATED this 13th day of March, 2017.

9 DAVID M. SCHIECK
10 SPECIAL PUBLIC DEFENDER

11 By 
12 MELISSA E. OLIVER
13 Chief Deputy Special Public Defender
14 State Bar No. 11232
15 333 S. Third Street, Suite 800
16 Las Vegas, NV 89155
17 Attorney for Defendant

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that service of the Motion to Place on Calendar for Immediate O.R.
20 Release was made pursuant to EDCR 7.26 on the attorney for the named parties by
21 means of electronic mail to the email address provided to the court's electronic filing
22 system for this case. Proof of Service is the date service is made by the court's electronic
23 filing system by email to the parties and contains a link to the file stamped document.

24 PARTY

EMAIL

25 STATE OF NEVADA
26 motions@clarkcountyda.com

DISTRICT ATTORNEY'S OFFICE email:

27 /s/ DANIA F. BATISTE

28

Dania F. Batiste
Employee of Special Public Defender

EXHIBIT A

3/8/17

STEVEN D. ANDERSON
CLERK OF THE COURT

1 **GPA**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **BINU G. PALAL**
6 **Deputy District Attorney**
7 **Nevada Bar #010178**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

BY *Haly Pannullo* DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 **HYKEEM WELDON,**
13 **aka Hykeem Tyrese Weldon, #2750525**
14 Defendant.

CASE NO: C-17-321763-1

DEPT NO: XX

GUILTY PLEA AGREEMENT

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17 **NOC 50137)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

18 My decision to plead guilty is based upon the plea agreement in this case which is as
19 follows:

20 The State retains the right to argue at rendition of sentence. Further, the State will not
21 oppose Defendant's own recognizance release after entry of plea in District Court. If
22 Defendant is arrested for new felony charges, or fails to appear for his Pre-Sentence Interview
23 or any future court dates, Defendant stipulates to six (6) to fifteen (15) years in the Nevada
24 Department of Corrections.

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2 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
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4 reckless driving or DUI, but excluding minor traffic violations, the State will have the
5 unqualified right to argue for any legal sentence and term of confinement allowable for the
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
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8 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

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11 plea agreement.

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14 the offense(s) to which I now plead as set forth in Exhibit "1".

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18 imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I
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21 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
22 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
23 reimburse the State of Nevada for any expenses related to my extradition, if any.

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11 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

12 I have not been promised or guaranteed any particular sentence by anyone. I know that
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15 punishment to the Court, the Court is not obligated to accept the recommendation.

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18 for credit for time served toward the instant offense(s).

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- 25 5. An indeterminate term of confinement, with the United States Federal
26 Government based on my conviction and immigration status.

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28 //

1 VOLUNTARINESS OF PLEA

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

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

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7 circumstances which might be in my favor.

8 All of the foregoing elements, consequences, rights, and waiver of rights have been
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10 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
11 that a trial would be contrary to my best interest.

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

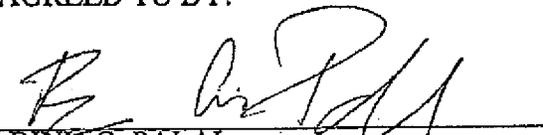
15 I am not now under the influence of any intoxicating liquor, a controlled substance or
16 other drug which would in any manner impair my ability to comprehend or understand this
17 agreement or the proceedings surrounding my entry of this plea.

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

20 DATED this 8 day of March, 2017.

21
22 
23 _____
24 HYKEEM WELDON,
25 aka Hykeem Tyrese Weldon
26 Defendant

24 AGREED TO BY:

25 
26 _____
27 BINU G. PALAL
28 Deputy District Attorney
Nevada Bar #010178

1 CERTIFICATE OF COUNSEL:

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

- 3 1. I have fully explained to the Defendant the allegations contained in the
4 charge(s) to which guilty pleas are being entered.
- 5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.
- 7 3. I have inquired of Defendant facts concerning Defendant's immigration status
8 and explained to Defendant that if Defendant is not a United States citizen any
9 criminal conviction will most likely result in serious negative immigration
10 consequences including but not limited to:
- 11 a. The removal from the United States through deportation;
 - 12 b. An inability to reenter the United States;
 - 13 c. The inability to gain United States citizenship or legal residency;
 - 14 d. An inability to renew and/or retain any legal residency status; and/or
 - 15 e. An indeterminate term of confinement, by with United States Federal
16 Government based on the conviction and immigration status.

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

- 21 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
22 consistent with the facts known to me and are made with my advice to the
23 Defendant.
- 24 5. To the best of my knowledge and belief, the Defendant:
- 25 a. Is competent and understands the charges and the consequences of
26 pleading guilty as provided in this agreement,
 - 27 b. Executed this agreement and will enter all guilty pleas pursuant hereto
28 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.

Dated: This 27th day of March, 2017.


ATTORNEY FOR DEFENDANT

llm/GANG

Alvin D. ...
CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 BINU G. PALAL
6 Deputy District Attorney
7 Nevada Bar #010178
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 I.A. 3/8/17
8 10:00 AM
9 SPD

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 HYKEEM WELDON,
13 aka Hykeem Tyrese Weldon, #2750525
14 Defendant.

CASE NO: C-17-321763-1
DEPT NO: XX

INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

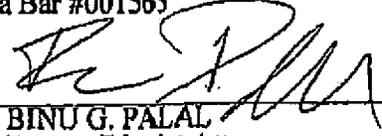
19 That HYKEEM WELDON, aka Hykeem Tyrese Weldon, the Defendant(s) above
20 named, having committed the crime of ROBBERY (Category B Felony - NRS 200.380 -
21 NOC 50137), on or about the 8th day of November, 2016, within the County of Clark, State
22 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
23 and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and
24 feloniously take personal property, to wit: U.S. Currency, a voucher, a laptop computer, an
25 iPod, cellular telephones, and debit cards, from the person of RAYMOND DOBBS and/or

26 //
27 //
28 //

EXHIBIT "1"

1 LAURIE DOBBS, or in their presence, by means of force or violence, or fear of injury to, and
2 without the consent and against the will of RAYMOND DOBBS and/or LAURIE DOBBS.

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY 

7 BINU G. PALAL
8 Deputy District Attorney
9 Nevada Bar #010178

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16F21196X/Ilm/GANG
LVMPD EV#1611080652
(TK1)

CLERK OF THE COURT

1 **CONS**
 2 DAVID M. SCHIECK
 3 Special Public Defender
 4 NSB 0824
 5 MELISSA E. OLIVER
 6 Chief Deputy Special Public Defender
 7 NSB 11232
 8 330 S. Third Street Ste. 800
 9 Las Vegas, NV 89155
 10 702-455-6266
 11 Fax 702-455-6273
 12 OliverM@clarkcountynv.gov
 13 Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 HYKEEM WELDON,

16 Defendant,

CASE NO. C-17-321763-1
DEPT NO. 20

CONSENT TO SERVICE BY ELECTRONIC MEANS

The undersigned hereby consents to service of documents by electronic means through the Court's e-filing program on behalf of Defendant HYKEEM WELDON.

Documents served by electronic means must be transmitted to the following persons at the e-mail addresses listed:

Melissa E. Oliver, Esq., OliverM@clarkcountynv.gov

Dania Batiste, Legal Secretary, dania.batiste@clarkcountynv.gov

It is my understanding that the pleadings and attachments must be transmitted in PDF format before service is effected.

1 The undersigned also acknowledges that this Consent does not require service by
2 electronic means unless the serving party elects to do so.

3 DATED: March 13, 2017.

4
5 RESPECTFULLY SUBMITTED

6
7
8 BY 
9 MELISSA E. OLIVER
10 Attorney for WELDON

11
12 RECEIPT OF COPY

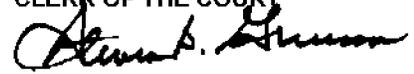
13
14 RECEIPT of a copy of the foregoing Consent to Service by Electronic Means is hereby
15 acknowledged.

16 DATED: MAR 15, 2017

17 DISTRICT ATTORNEY'S OFFICE

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21 200 Lewis Ave., 3rd Floor
22 Las Vegas NV 89155
23
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28

**THIS SEALED
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NUMBERED PAGE(S)
79 - 87
WILL FOLLOW VIA
U.S. MAIL**



BNCH

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff,

-vs-

HYKEEM WELDON,
aka Hykeem Tyrese Weldon,
#2750525

Defendant.

CASE NO: C-17-321763-1

DEPT NO: XX

BENCH WARRANT

THE STATE OF NEVADA,

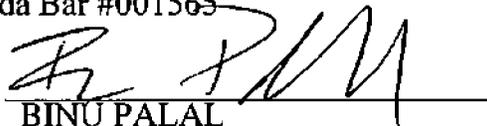
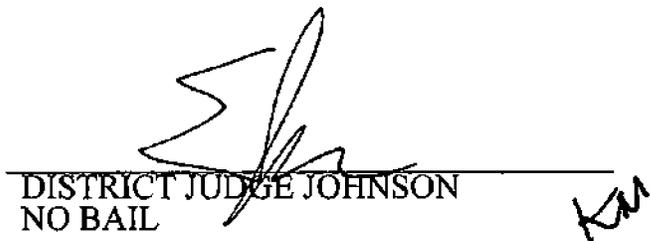
TO: Any Sheriff, Constable, Marshal, Policeman, or Peace Officer in this State:

IT APPEARING to the Court that HYKEEM WELDON, aka Hykeem Tyrese Weldon was heretofore ordered to appear before the above entitled Court on the 6th day of July, 2017, on the charge of ROBBERY (Category B Felony - NRS 200.380 - NOC 50137), and having failed to appear at said time, NOW, THEREFORE, YOU ARE COMMANDED to arrest and bring the said person before the Court, or, if the Court has adjourned, to deliver said person into the custody of the Sheriff of Clark County. The Warrant may be served at any hour day or night.

GIVEN under my hand this 14 day of July, 2017.

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

BY


BINU PALAL
Chief Deputy District Attorney
Nevada Bar #010178
DISTRICT JUDGE JOHNSON
NO BAIL KM

DA#16F21196X/jlh/GANG
LVMPD EV#1611080652; SANTOS #8910
07221990; BFA; 168-72-3538
(TK1)

BNCH
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BINU PALAL
Chief Deputy District Attorney
Nevada Bar #010178
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HYKEEM WELDON,
aka Hykeem Tyrese Weldon,
ID#2750525

Defendant.

CASE NO: C-17-321763-1

DEPT NO: XX

BENCH WARRANT RETURN

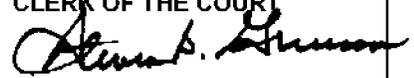
HYKEEM WELDON, aka Hykeem Tyrese Weldon, the Defendant above named, was heretofore ordered to appear before the above entitled Court on the 6th day of July, 2017, on the charge of ROBBERY (Category B Felony - NRS 200.380 - NOC 50137), and having failed to appear at said time the Court issued a Bench Warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Bench Warrant and served the same by arresting the within Defendant on the ____ day of _____, 2017.

JOSEPH LOMBARDO
Sheriff, Clark County, Nevada

BY:

Deputy



1 **MOT**
2 RANDALL H. PIKE
3 ASSISTANT SPECIAL PUBLIC DEFENDER
4 Nevada Bar No. 1940
5 MELISSA E. OLIVER
6 Chief Deputy Special Public Defender
7 Nevada Bar No. 11232
8 330 South Third Street, 8th Floor
9 Las Vegas, NV 89155-2316
10 (702) 455-6266
11 OliverM@clarkcountynv.gov
12 Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)
10 Plaintiff,) CASE NO. C-17-321763-1
11 vs.) DEPT. NO. XX
12 HYKEEM WELDON,)
13 ID#2750525,) DATE OF HEARING: _____
14 Defendant.) TIME OF HEARING: _____

MOTION TO PLACE ON CALENDAR TO QUASH BENCH WARRANT

16 COMES NOW, MELISSA E. OLIVER, Chief Deputy Special Public Defender, attorney for
17 Defendant, HYKEEM WELDON, and requests this matter be placed on the Court's calendar to quash
18 the bench warrant.

NOTICE OF MOTION

20 TO: STATE OF NEVADA, Plaintiff; and
21 TO: STEVEN B. WOLFSON, District Attorney, Attorney for Plaintiff

22 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
23 foregoing *MOTION* on for hearing on 7-25-17, 2017, at the hour of
24 11:30 AM a.m.

25 Dated: 7/19/17

26 /s/ MELISSA E. OLIVER

27 _____
28 MELISSA E. OLIVER
Attorney for Weldon

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CERTIFICATE OF SERVICE

I hereby certify that service of the Motion to Place on Calendar to Quash Warrant, was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

PARTY	EMAIL
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE email: motions@clarkcountyda.com

Dated: 7/19/17

/s/ Kathleen Fitzgerald

Legal Executive Assistant for
Special Public Defender

**THIS SEALED
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NUMBERED PAGE(S)
92 - 94
WILL FOLLOW VIA
U.S. MAIL**

Thomas J. Smith
CLERK OF THE COURT

BNCH
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BINU PALAL
Chief Deputy District Attorney
Nevada Bar #010178
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

HYKEEM WELDON,
aka Hykeem Tyrese Weldon,
ID#2750525

Defendant.

CASE NO: C-17-321763-1

DEPT NO: XX

BENCH WARRANT RETURN

HYKEEM WELDON, aka Hykeem Tyrese Weldon, the Defendant above named, was heretofore ordered to appear before the above entitled Court on the 6th day of July, 2017, on the charge of ROBBERY (Category B Felony - NRS 200.380 - NOC 50137), and having failed to appear at said time the Court issued a Bench Warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Bench Warrant and served the same by arresting the within Defendant on the 23rd day of July, 2017.

JOSEPH LOMBARDO
Sheriff, Clark County, Nevada

BY:

96306C
Deputy

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

Event #: LV170723-1186

True Name: WELDON, HYKEEM TYREASE

I.D. #: 2750525

Date of Arrest: 07/23/17 Time of Arrest: 0622

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department), Clerk County, Nevada, being so employed for a period of 1 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or

was committing) the offense of WARRANTS at the location of CHEYENNE/US95, LV, NV 89128 (ADDRESS / CITY / STATE / ZIP) and that the offense occurred at approximately 0622 hours on the 23RD day of JULY, 2017 in the county of Clark City of Las Vegas, NV.

DETAILS FOR PROBABLE CAUSE:

ON THE 23RD DAY OF JULY, 2017 AT APPROXIMATELY 0613 HOURS, I, OFFICER D. SPIVEY P#15328, OPERATING AS MARKED PATROL UNIT 1001, CONDUCTED A VEHICLE STOP ON AN UNREGISTERED WHITE 2002 HYUNDAI XG350 TRAVELING WEST ON CHEYENNE AVE AT RAINBOW. THERE WAS A TEMPORARY MOVING PERMIT IMPROPERLY DISPLAYED. (ON THE DRIVERS SIDE REAR WINDOW)

I MADE CONTACT WITH THE DRIVER OF THE VEHICLE WHO WAS IDENTIFIED AS WELDON, HYKEEM DOB [REDACTED] (ID# 2750525) THROUGH HIS NEVADA STATE IDENTIFICATION CARD (CN# 1603781225). A RECORDS CHECK WAS CONDUCTED WHICH REVEALED THAT WELDON HAD A WARRANT OUT OF EIGHTH JUDICIAL DISTRICT COURT FOR ROBBERY (FELONY) NRS 200.380. WELDON ALSO HAD A WARRANT OUT OF HENDERSON MUNICIPAL COURT FOR DRIVING WITH SUSPENDED DRIVERS LICENSE NRS 266.570.

BASED ON THE ABOVE FACTS AND CIRCUMSTANCES, WELDON WAS PLACED UNDER ARREST FOR HIS WARRANT FOR ROBBERY, TRANSPORTED TO CCDC AND WAS BOOKED ACCORDINGLY.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.


Declarant's Signature

D. SPIVEY
Print Declarant's Name

15328
P #

DATE OF ARREST: 07/23/17 TIME OF ARREST: 0622 ID ESTAB. BY: SCDP

INTAKE NAME (AKA, ALIAS, ETC.): WELDON Last Middle First
WELDON HYKEM TERESE

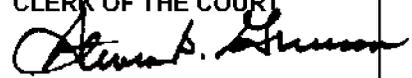
ADDRESS: 3125 N BUFFALO BLDG/APT: 2104 CITY: LAS VEGAS STATE: NV ZIP: 89128 PLACE OF BIRTH: PHILADELPHIA, PA

DATE OF BIRTH: [REDACTED] RACE: B SEX: M HEIGHT: 6'01" WEIGHT: 173 HAIR: BLK EYES: BRO SOCIAL SECURITY #: [REDACTED] Speak English? Yes No

LOCATION OF CRIME (# - Street - City - State - Zip): WARRANTS CC: LV NV Citizen Arrest: Y N LOCATION OF ARREST: AS, W, NV 89128 Sector/Beat: W1 PGN #: 306814810

BKG. CODE: 5037 CHARGE: ROBBERY NRS 200.350 NO. Bail M: GM: F: APR. TYPE: BW EVENT NUMBER: 064 WARR. / NCIC NUMBER: C-17-321763-1 LV JC DC OTHER:

ARREST TYPE	PC - PROBABLE CAUSE	BS - BONDSMAN SURRENDER	BW - BENCH WARRANT	WA - WARRANT	RM - REMAND	GJI - GRAND JURY IND.	OTHER COURT:
*HENDERSON WARRANT	<input type="checkbox"/>						
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1 CASE NO: C321763

2 DEPARTMENT NO. 1

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6

* * *

7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

CASE NO.: 16F21196X

10 vs.)

11 HYKEEM WELDON,)

12 Defendant.)

13

14 REPORTER'S TRANSCRIPT
15 OF
16 WAIVER OF PRELIMINARY HEARING

17 BEFORE THE HONORABLE DEBORAH LIPPIS,
18 JUSTICE OF THE PEACE
19 Taken on Monday, March 6th, 2017

20 APPEARANCES:

21 FOR THE STATE: MICHAEL SCHWARTZER, ESQ.
22 Deputy District Attorney

23 FOR THE DEFENDANT: MELISSA OLIVER, ESQ.
24 Deputy Public Defender

25 REPORTED BY: JOANIE E. GRIME, RPR, CCR NO. 288

JOANIE E. GRIME, RPR, CCR NO. 288
702) 671.3464

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 MONDAY, MARCH 6TH, 2017
3 9:00 A.M.

4 * * *

5 P R O C E E D I N G S

6 THE COURT: Ms. Oliver, good morning.

7 MS. OLIVER: Good morning, Your Honor.

8 THE COURT: 16F21196X, Hykeem Weldon.

9 Good morning, sir.

10 THE DEFENDANT: Good morning.

11 THE COURT: Good morning, Mr. Schwartz.

12 MR. SCHWARTZ: Good morning, Your Honor.

13 Michael Schwartz for the State, Your Honor.

14 I believe this has been resolved.

15 THE COURT: Yes?

16 MS. OLIVER: Yes, Your Honor, that's correct.

17 With the Court's permission, the matter has
18 been negotiated.

19 My client will be entering a plea of guilty to
20 one count of robbery.

21 THE COURT: Let's start over.

22 Are we doing an unconditional waiver of the
23 preliminary hearing?

24 MS. OLIVER: Yes. Yes, Your Honor.

25 THE COURT: All right. So we're starting with

1 an unconditional waiver of the preliminary hearing to plead
2 guilty to what?

3 MS. OLIVER: One count of robbery. Um, the
4 State retains the right to argue at sentencing, the State
5 agrees to OR release at entry of plea, um, and my client
6 stipulates that if he picks up any new case while he's out or
7 if he fails to appear for his P & P interview or for his
8 sentencing, he stipulates to 6 to 15 in NDOC.

9 MR. SCHWARTZER: That's all correct,
10 Your Honor.

11 THE COURT: Do you understand, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you accept this agreement?

14 THE DEFENDANT: Yes.

15 THE COURT: I'm going to send you, then, to
16 District Court, sir, where you may enter your plea as
17 outlined by your attorney. If for some reason when you get
18 to District Court you decide that you would rather go to
19 trial on all of the original charges, you may to that.

20 What you cannot do is come back to this Court
21 for preliminary hearing.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: Here's your date.

25 COURT CLERK: March 8th, 10:00 a.m., lower

1 level District Court arraignment.

2 THE COURT: Thank you, counsel.

3 MR. SCHWARTZER: Thank you, Your Honor.

4 MS. OLIVER: Thank you.

5

6

7

8 (Proceedings concluded.)

9

* * *

10

11

12 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF
13 PROCEEDINGS.

13

14

/s/ Joanie E. Grime

15

JOANIE E. GRIME, RPR, CCR NO. 288

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IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
HYKEEM WELDON,)
)
Defendant.)

CASE NO: 16F21196X
ATTEST RE: NRS 239B.030

STATE OF NEVADA }
 } SS
COUNTY OF CLARK }

I, Joanie Grime, a Certified Shorthand Reporter
within and for the County of Clark and the State of Nevada,
do hereby certify:

That REPORTER'S TRANSCRIPT OF PROCEEDINGS was
reported in open court pursuant to NRS 3.360 regarding the
above proceedings in Las Vegas Justice Court, 200 Lewis
Avenue, Las Vegas, Nevada.

That said TRANSCRIPT:
X
_____ Does not contain the Social Security number of
any person.
_____ Contains the Social Security number of a
person.

-oOo-

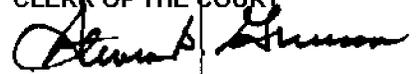
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ATTEST: I further certify that I am not interested in the events of this action.

/s/ Joanie E. Grime

JOANIE E. GRIME, RPR, CCR NO. 288



1 COSCC
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4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 *****

8 STATE OF NEVADA

CASE NO.: C-17-321763-1

9 VS

DEPARTMENT 20

10 HYKEEM WELDON

11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

12 Upon review of this matter and good cause appearing,

13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
14 statistically close this case for the following reason:

15 **DISPOSITIONS:**

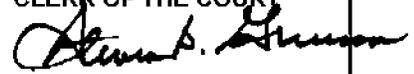
- 16 Nolle Prosequi (before trial)
- 17 Dismissed (after diversion)
- 18 Dismissed (before trial)
- 19 Guilty Plea with Sentence (before trial)
- 20 Transferred (before/during trial)
- 21 Bench (Non-Jury) Trial
 - 22 Dismissed (during trial)
 - 23 Acquittal
 - 24 Guilty Plea with Sentence (during trial)
 - 25 Conviction
- 26 Jury Trial
 - 27 Dismissed (during trial)
 - 28 Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction
- Other Manner of Disposition

DATED this 3rd day of November, 2017.



ERIC JOHNSON
DISTRICT COURT JUDGE

KM



1 **JOC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

CASE NO: C-17-321763-1

11 HYKEEM WELDON,
12 aka Hykeem Tyrese Weldon, #2750525

DEPT NO: XX

13 Defendant.

14 **JUDGMENT OF CONVICTION**
15 **(PLEA OF GUILTY)**

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of ROBBERY (Category B Felony), in violation of NRS 200.380 -
18 NOC 50137; thereafter, on the 2nd day of November, 2017, the Defendant was present in court
19 for sentencing with his counsel, MONIQUE A. MCNEILL, Esquire, and good cause
20 appearing,

21 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
22 addition to the \$25 Administrative Assessment fee and \$3.00 DNA Collection fee with the
23 \$150 DNA Analysis fee being WAIVED as previously imposed, the Defendant is sentenced
24 as follows: to the Nevada Department of Corrections for a MINIMUM term of SEVENTY-
25 TWO (72) MONTHS with a MAXIMUM term of ONE HUNDRED EIGHTY (180)

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1 MONTHS and PAY \$500 RESTITUTION; SUSPENDED; placed on PROBATION for an
2 indeterminate period not to exceed FIVE (5) YEARS.

3 STANDARD CONDITIONS:

4 1. REPORTING: You are to report in person to the Division of Parole and
5 Probation as instructed by the Division or its agent. You are required to submit
6 a written report each month on forms supplied by the Division. This report shall
7 be true and correct in all respects.

8 2. RESIDENCE: You shall not change your place of residence without first
9 obtaining permission from the Division of Parole and Probation, in each
10 instance.

11 3. INTOXICANTS: You shall not consume or possess any alcoholic beverages
12 WHATSOEVER or recreational marijuana in Nevada or any other State where
13 such possession is considered legal. Upon order of the Division of Parole and
14 Probation or its agent, you shall submit to a medically recognized test for either
15 breath, blood or urine, to determine blood, breath or urine for alcohol, marijuana
16 or THC content.

17 4. CONTROLLED SUBSTANCES: You shall not use, purchase or possess any
18 illegal drugs, or any prescription drugs, unless first prescribed by a licensed
19 medical professional. You shall immediately notify the Division of Parole and
20 Probation of any prescription received. You shall submit to drug testing as
21 required by the Division or its agent. A prescription does not include medical
22 marijuana.

23 5. WEAPONS: You shall not possess, have access to, or have under your control,
24 any firearm, explosive device or other dangerous weapon as defined by Federal,
25 State or local law.

26 6. SEARCH: You shall submit your person, property, place of residence,
27 vehicle, or areas under your control to search including electronic surveillance
28 or monitoring of your location, at any time, with or without a search warrant or

1 warrant of arrest, for evidence of a crime or violation of probation by the
2 Division of Parole and Probation or its agent. The Defendant shall inform any
3 other occupant of the premises where you reside or area under your control, that
4 the premises or area may be subject to a search pursuant to this condition.

5 7. ASSOCIATES: You must have prior approval by the Division of Parole and
6 Probation to associate with any person convicted of a felony, or any person on
7 probation or parole supervision. You shall not have any contact with persons
8 confined in a correctional institution unless specific written permission has been
9 granted by the Division and the correctional institution.

10 8. DIRECTIVES AND CONDUCT: You shall follow the directives of the
11 Division of Parole and Probation.

12 9. LAWS: You shall comply with all Municipal, County, State, and Federal laws
13 and ordinances.

14 10. OUT-OF-STATE TRAVEL: You shall not leave the state without first
15 obtaining written permission from the Division of Parole and Probation.

16 11. EMPLOYMENT/PROGRAM: You shall seek and maintain legal
17 employment, or maintain a vocational or educational program approved by the
18 Division of Parole and Probation and not change such employment or program
19 without first obtaining permission. All terminations of employment or program
20 shall be immediately reported to the Division. During any period of time which
21 you are not employed or participating in an approved program full time, the
22 Division of Parole and Probation may require you to participate in up to 60 hours
23 of community service work each month.

24 12. FINANCIAL OBLIGATION: You shall pay fees, fines, and restitution on a
25 schedule approved by the Division of Parole and Probation. Any excess monies
26 paid will be applied to any other outstanding fees, fines, and/or restitution, even
27 if it is discovered after your discharge.

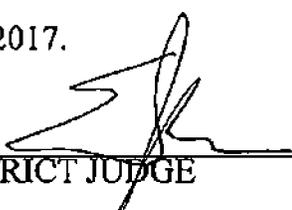
28 //

1 SPECIAL CONDITIONS:

- 2 1. Submit to substance abuse and alcohol evaluations as deemed necessary by
3 Parole and Probation and complete any recommended care plan, treatment or
4 counseling program based on those evaluations.
5 2. Comply with an imposed curfew as deemed necessary by Parole and
6 Probation.
7 3. Provide the Probation Officer access to any requested financial information,
8 including personal income tax returns, authorization for release of credit
9 information and any other business financial information in which you have a
10 control or interest.
11 4. Pay \$500 restitution to Raymond Dobbs and Laurie Dobbs in monthly
12 payments as determined by Parole and Probation based on income verified by
13 the Division.

14 Defendant was advised the above conditions are immediately in effect upon his leaving
15 the Courtroom and not contingent upon the filing of the Judgment of Conviction nor meeting
16 with his Probation Officer. Further, Defendant was directed to report to Parole and Probation
17 within 48 hours of this proceeding. BOND, if any, EXONERATED.

18 DATED this 20 day of November, 2017.

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DISTRICT JUDGE

ERIC JOHNSON

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28 llm/GANG

State of Nevada
DEPARTMENT OF PUBLIC SAFETY
Division of Parole and Probation
Carson City, NV 89706

Electronically Filed
12/14/2017 1:18 PM
File #: V18-1397
Steven D. Grierson

CLERK OF THE COURT
Required to pay \$25 Administrative Assessment Fee
and all other Court-Ordered Fees to the County Clerk's
Office, 200 Lewis Center, Las Vegas, NV, 89155.

Criminal Case No. C-17-321763-1

PROBATION AGREEMENT AND RULES
ORDER ADMITTING DEFENDANT TO PROBATION
AND FIXING THE TERMS THEREOF

THE STATE OF NEVADA Plaintiff,
vs.
WELDON, Hykeem ,
aka: Hykeem Tyrese Weldon
Defendant

DEFENDANT is guilty of the Crime of **Robbery, a Category B Felony.**

DEFENDANT is sentenced to a term of imprisonment in Nevada Department of Corrections for **72-180 months + pay \$500.00 Restitution.** Execution of that sentence is suspended and the DEFENDANT is hereby admitted to probation for an indeterminate period not to exceed **5 years** under the following conditions:

- Reporting:** You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
- Residence:** You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
- Intoxicants:** You shall not consume any alcoholic beverages **whatsoever.** Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood:breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
- Controlled Substances:** You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
- Weapons:** You shall not possess, have access to, or have under your control, any type of weapon.
- Search:** You shall submit your person, place of residence, vehicle or areas under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
- Associates:** You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
- Directives and Conduct:** You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
- Laws:** You shall comply with all municipal, county, state, and federal laws and ordinances.
- Out-of-State Travel:** You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
- Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
- Financial Obligation:** You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.
- Special Conditions: SEE ATTACHED**

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this 11 day of December 2017, in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

District Judge: Eric Johnson

Date

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union, and I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the forgoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

Probationer: Hykeem Weldon Date

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

APPROVED

PROBATION AGREEMENT SPECIAL CONDITIONS ADDENDUM

File # V18-1397

Criminal Case No. C-17-321763-1

WELDON, Hykeem
aka: Hykeem Tyrese Weldon

Defendant

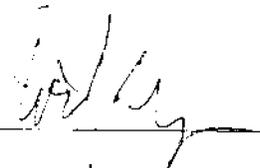
Special Conditions of your probation:

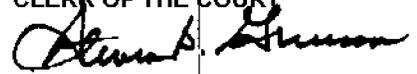
1. Standard Condition #3 to include: INTOXICANTS: You shall not consume or possess any alcoholic beverages whatsoever or any recreational marijuana in Nevada or any other State where such possession is considered legal. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood:breath alcohol content, marijuana content or THC content;
2. Standard Condition #4 to include: CONTROLLED SUBSTANCES: A prescription does not include medical marijuana;
3. Standard Condition #5 to include: WEAPONS: You shall not possess, have access to, or have under your control, any firearm, explosive device or other dangerous weapon as defined by Federal, State or local law;
4. Standard Condition #6 to include: SEARCH: The Defendant shall inform any other occupant of the premises where you reside or area under your control, that the premises or area may be subject to a search pursuant to this condition;
5. Standard Condition #11 to include: EMPLOYMENT PROGRAM: During any period of time which you are not employed or participating in an approved program full time, the Division of Parole and Probation may require you to participate in up to 60 hours of community service work each month;
6. Submit to substance abuse and alcohol evaluations as deemed necessary by Parole and Probation and complete any recommended care plan, treatment or counseling program based on those evaluations;
7. Comply with an imposed curfew as deemed necessary by Parole and Probation;
8. Provide the Probation Officer access to any requested financial information, including personal income tax returns, authorization for release of credit information and any other business financial information in which you have a control or interest;
9. Pay \$500.00 restitution to Raymond Dobbs and Laurie Dobbs in monthly payments as determined by Parole and Probation based on income verified by the Division.

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.


Probationer: Hykeem Weldon/Date

APPROVED: 



1 COSCC
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * *

8 STATE OF NEVADA

CASE NO.: C-17-321763-1

9 VS

DEPARTMENT 20

10 HYKEEM WELDON

11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

12 Upon review of this matter and good cause appearing,

13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
14 statistically close this case for the following reason:

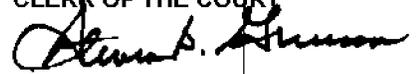
15 **DISPOSITIONS:**

- 16 Nolle Prosequi (before trial)
- 17 Dismissed (after diversion)
- 18 Dismissed (before trial)
- 19 Guilty Plea with Sentence (before trial)
- 20 Transferred (before/during trial)
- 21 Bench (Non-Jury) Trial
 - 22 Dismissed (during trial)
 - 23 Acquittal
 - 24 Guilty Plea with Sentence (during trial)
 - 25 Conviction
- 26 Jury Trial
 - 27 Dismissed (during trial)
 - 28 Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction
- 29 Other Manner of Disposition

DATED this 28th day of March, 2018.

ERIC JOHNSON
DISTRICT COURT JUDGE





1 COSCC
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA

CASE NO.: C-17-321763-1

9 VS

DEPARTMENT 20

10 HYKEEM WELDON

11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

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13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
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- 16 Nolle Prosequi (before trial)
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 - 22 Dismissed (during trial)
 - 23 Acquittal
 - 24 Guilty Plea with Sentence (during trial)
 - 25 Conviction
- 26 Jury Trial
 - 27 Dismissed (during trial)
 - 28 Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction
- 29 Other Manner of Disposition

DATED this 26th day of April, 2019.

ERIC JOHNSON
DISTRICT COURT JUDGE



Atwood Shinn

CLERK OF THE COURT

1 COSCC

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA
VS
HYKEEM WELDON

CASE NO.: C-17-321763-1
DEPARTMENT 20

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to statistically close this case for the following reason:

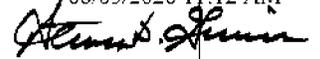
DISPOSITIONS:

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- Guilty Plea with Sentence (before trial)
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- Bench (Non-Jury) Trial
 - Dismissed (during trial)
 - Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction
- Jury Trial
 - Dismissed (during trial)
 - Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction
- Other Manner of Disposition Dated this 3rd day of August, 2020

DATED this 31st day of July, 2020.

Eric Johnson

ERIC JOHNSON
DISTRICT COURT JUDGE
EA9 437 4F9B 11B0
Eric Johnson
District Court Judge



CLERK OF THE COURT

1 AJOC

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 -vs-

10 HYKEEM WELDON aka
11 Hykeem Tyrese Weldon
12 #2750525

13 Defendant.

CASE NO. C-17-321763-1

DEPT. NO. XX

14
15 ORDER FOR REVOCATION OF PROBATION AND
16 AMENDED JUDGMENT OF CONVICTION

17
18 The Defendant previously appeared before the Court with counsel and entered a plea of
19 guilty to the crime of ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter,
20 on the 2nd day of November, 2017, the Defendant was present in court for sentencing with
21 counsel, wherein the Court did adjudge the Defendant guilty thereof by reason of the plea of
22 guilty, suspended the execution of the sentence imposed and granted probation to the
23 Defendant.
24

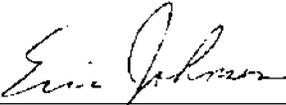
25 THEREAFTER, a parole and probation officer provided the Court with a written
26 statement setting forth that the Defendant has, in the judgment of the parole and probation
27 officer, violated the conditions of probation; and on the 30th day of July, 2020, the Defendant
28

1 appeared in court with counsel MELISSA E. OLIVER, Chief Deputy Special Public Defender,
2 and pursuant to a probation violation hearing/proceeding and good cause appearing to amend
3 the Judgment of Conviction,
4

5 IT IS HEREBY ORDERED that the probation previously granted to the Defendant is
6 REVOKED; in addition to the original fees, fines and assessments, IT IS FURTHER
7 ORDERED that the original sentence is imposed as follows: a MAXIMUM of ONE
8 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SEVENTY-
9 TWO (72) MONTHS in the Nevada Department of Corrections (NDC); with ONE HUNDRED
10 FIFTY (150) DAYS credit for time served.
11

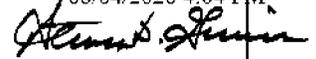
12 DATED this _____ day of July, 2020.

Dated this 3rd day of August, 2020

13
14 

15 ERIC JOHNSON
16 DISTRICT COURT JUDGE

17 A38 8F0 7452 9DE6
18 Eric Johnson
19 District Court Judge
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CLERK OF THE COURT

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 State of Nevada

CASE NO: C-17-321763-1

7 vs

DEPT. NO. Department 20

8 Hykeem Weldon

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The attached Criminal Order to Statistically Close Case was served via the court's
13 electronic eFile system to all recipients registered for e-Service on the above entitled case as
14 listed below:

14 Service Date: 8/4/2020

15 DA Motions .

motions@clarkcountyda.com

Atwood

CLERK OF THE COURT

1 COSCC

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA
VS
HYKEEM WELDON

CASE NO.: C-17-321763-1
DEPARTMENT 20

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to statistically close this case for the following reason:

DISPOSITIONS:

- Nolle Prosequi (before trial)
- Dismissed (after diversion)
- Dismissed (before trial)
- Guilty Plea with Sentence (before trial)
- Transferred (before/during trial)
- Bench (Non-Jury) Trial
 - Dismissed (during trial)
 - Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction
- Jury Trial
 - Dismissed (during trial)
 - Acquittal
 - Guilty Plea with Sentence (during trial)
 - Conviction

Other Manner of Disposition Dated this 3rd day of August, 2020

DATED this 31st day of July, 2020.

Eric Johnson

ERIC JOHNSON
DISTRICT COURT JUDGE
EA9 437 4F9B 11B0
Eric Johnson
District Court Judge

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 State of Nevada

CASE NO: C-17-321763-1

7 vs

DEPT. NO. Department 20

8 Hykeem Weldon

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The attached Amended Judgment of Conviction was served via the court's electronic
13 eFile system to all recipients registered for e-Service on the above entitled case as listed
14 below:

14 Service Date: 8/4/2020

15 DA Motions .

motions@clarkcountyda.com

1 AJOC

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 THE STATE OF NEVADA,
7

8 Plaintiff,

9 -vs-

10 HYKEEM WELDON aka
11 Hykeem Tyrese Weldon
12 #2750525

13 Defendant.

CASE NO. C-17-321763-1

DEPT. NO. XX

14
15 ORDER FOR REVOCATION OF PROBATION AND
16 AMENDED JUDGMENT OF CONVICTION
17

18 The Defendant previously appeared before the Court with counsel and entered a plea of
19 guilty to the crime of ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter,
20 on the 2nd day of November, 2017, the Defendant was present in court for sentencing with
21 counsel, wherein the Court did adjudge the Defendant guilty thereof by reason of the plea of
22 guilty, suspended the execution of the sentence imposed and granted probation to the
23 Defendant.
24

25 THEREAFTER, a parole and probation officer provided the Court with a written
26 statement setting forth that the Defendant has, in the judgment of the parole and probation
27 officer, violated the conditions of probation; and on the 30th day of July, 2020, the Defendant
28

1 appeared in court with counsel MELISSA E. OLIVER, Chief Deputy Special Public Defender,
2 and pursuant to a probation violation hearing/proceeding and good cause appearing to amend
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4

5 IT IS HEREBY ORDERED that the probation previously granted to the Defendant is
6 REVOKED; in addition to the original fees, fines and assessments, IT IS FURTHER
7 ORDERED that the original sentence is imposed as follows: a MAXIMUM of ONE
8 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SEVENTY-
9 TWO (72) MONTHS in the Nevada Department of Corrections (NDC); with ONE HUNDRED
10 FIFTY (150) DAYS credit for time served.
11

12 DATED this _____ day of July, 2020.

Dated this 3rd day of August, 2020

13
14 
15 _____
16 ERIC JOHNSON
17 DISTRICT COURT JUDGE
18 A38 8F0 7452 9DE6
19 Eric Johnson
20 District Court Judge
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**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

August 17, 2020

Attorney: Special Public Defender **Case Number:** C-17-321763-1
Department: Department 20

Defendant: Hykeem Weldon

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion For Modification Of Sentence**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

1 MR. HyKeem Weldon #2750525
2 CLARK County Detention Center
3 330 S. CASINO Center Blvd
4 LAS VEGAS, Nevada 89101

5 Eighth Judicial District Court
6 CLARK County, Nevada

7 State of Nevada

8 Plaintiff,

9 vs.

10 HyKeem Weldon

11 Defendant

Case No.: C-17-321736-1

Dept. No.: 20

Docket No.: _____

Eric Johnson

Presiding Judge

12
13 Motion For Modification of Sentence

14
15 Now come defendant, MR. HyKeem T. Weldon, coming
16 PRO PER PURSUANT to NRS 176A.450 and Article 1, section 8
17 of NEVADA Constitution moving this court to modify his
18 sentence. And in support, Defendant states the following:

19 1) On November 02, 2017 Defendant HyKeem Weldon
20 was sentenced by Judge Eric Johnson to a minimum of 72
21 months and a maximum of 180 months to be served in the
22 Nevada Department of Correction, which is the maximum.

23 2) Defendant HyKeem Weldon only been to prison once,
24 which was for "Attempt Possession for Stolen Property". He
25 was sentenced to 12 to 30 months. And he was released on
26 parole and received an honorable discharge. This would be
27 defendant only time ever going to prison.

28 3) When Judge Eric Johnson got a hold to defendant's
case he gave defendant the maximum sentence as a
suspended sentence just because he was giving defendant
a probation not to exceed 5-years.

Pg. 1

4) The Facts in defendants case never developed because Defendant had accepted responsibility for what he done by Pleading Guilty, But when the Judge sentenced defendant he gave him the MAXIMUM 180 months And A Minimum of 72 months AS A suspended sentence, And defendant criminal History Back ground show only one Felony conviction. And All his PRIOR CASES ARE NON-VIOLENT offenses.

5.) Defendant feels that the Judge didn't take his prior CRIMINAL Background into consideration before he maxed him out AS A suspended sentence And respectfully REQUEST that his sentence be Modified to A Minimum of 24 months And A MAXIMUM of 60 months to be served in the NEVADA Department of Corrections.

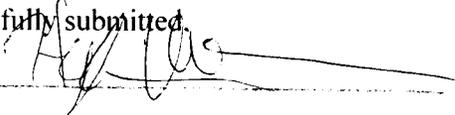
6.) The MAXIMUM Penalty was disproportionate to defendants criminal History Background in violation of the Eighth Amendment of the United States Constitution. Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637.

DATED THIS 24 day of July, 2020.

I Hykeem Weldon do

solemnly swear, under the penalty of perjury, that the above Motion For Modification is accurate, correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,


Defendant

NRS 208.165 A prisoner may execute any instrument by signing his name immediately following a declaration "under penalty of perjury" with the same legal effect as if he had acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in this section, "prisoner" means a person confined in any jail or prison, or any facility for the detention of juvenile offenders in this state.


Defendant

July 30 2020
DATE

MR. HyKeem Weldon #2750525
CLARK County Detention Center
330 S. Casino Center Blvd
LAS VEGAS, Nevada 89101

To: Steven D. GRIERSON
CLERK of COURT

Eighth Judicial District Court
200 LEWIS AVENUE / 3RD FLOOR
LAS VEGAS, NEVADA 89155
(702) 671-4554

~~19-321736-4~~

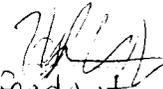
ERIC JOHNSON
Presiding Judge
Dept. 20

Notice of Filing

DEAR CLERK OF COURT

~~PLEASE~~ PLEASE find the ORIGINAL Motion for Sentence Modification
for Filing. Your consideration in this matter will be appreciated.

Respectfully Submitted


Defendant

Certificate of Service

I, HyKeem Weldon, do depose and that I have served a copy
of the attached Motion for sentence Modification to the following:

Steven Wolfson
District Attorney
200 LEWIS AVENUE
LAS VEGAS, NV 89155

ERIC JOHNSON
Judge
Eighth Judicial District Court
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155
Dept. #20

Melissa Oliver
Attorney of Record
330 S. 3rd Street
LAS VEGAS, NV 89101
(Suite 800)

By depositing a copy in the mailbox at July 30 2020

Respectfully Submitted


Defendant

Hykeem Weldon # 2950505
Clark County Detention Center
330 S. Casino Center Blvd
LAS VEGAS, Nevada 89101
(NVE Unit 4H cell 4)

Clerk of Court

To: Steven D. Grierson
Eighth Judicial District Court
280 Lewis Avenue / 3rd Floor
LAS VEGAS, Nevada 89155

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CLERK OF THE COURT



1 NOW
2 JONELL THOMAS
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #4771
5 MELISSA E. OLIVER ESQ.
6 Chief Deputy Special Public Defender
7 Nevada Bar #11232
8 330 So. Third Street, Suite #800
9 Las Vegas, Nevada 89155
10 (702) 455-6265
11 FAX: (702) 455-6273
12 EMAIL: melissa.oliver@clarkcountynv.gov
13 Attorneys for Hykeem Tyrese Weldon

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff

CASE NO. C-17-321763-1
DEPT. NO. 20

12 vs.

13 HYKEEM TYRESE WELDON,
14 Defendant.

15
16 NOTICE OF WITHDRAWAL OF COUNSEL

17 Pursuant to Nevada Supreme Court Rule 46, the Clark County Special Public
18 Defender's Office, by and through JoNell Thomas, Special Public Defender, and MELISSA E.
19 OLIVER ESQ., Chief Deputy Special Public Defender, hereby withdraws as attorneys of record
20 for HYKEEM TYRESE WELDON, the final determination or judgment having been made in
21 this matter. Judgment of Conviction amended on August 3, 2020 and the case closed.

22 DATED this 17th day of August, 2020.

23
24 Respectfully submitted by:

25 JoNELL THOMAS
26 SPECIAL PUBLIC DEFENDER
27 /s/ Melissa E. Oliver

28 By _____
MELISSA E. OLIVER ESQ.
Chief Deputy Special Public Defender
Attorneys for Hykeem Tyrese Weldon

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CERTIFICATE OF SERVICE

I hereby certify that service of the Notice of Withdrawal as Attorney of Record, was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

STATE OF NEVADA

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountyda.com

A copy was sent by U.S. mail, first class postage affixed to:

Hykeem Tyrese Weldon #2750525
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101

Dated: August 17, 2020

/s/ Shadonna Scurry

Employee of the Office of the Special Public Defender

FILED
JAN 05 2022

[Signature]
CLERK OF COURT

Hakeem Weldon ID NO. 1104578

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SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89010

District Court
CLARK County, Nevada

Hakeem Weldon
Petitioner
v.
THE STATE of NEVADA

CASE NO.: A-20-821331-C/C-17-321763-1
DEPT. NO.: XXIV
DOCKET: _____

Petitioner's Reply to States Response To Petition for
Post Conviction Relief And Motion for Appointment
of Counsel

COMES NOW, Weldon Hakeem (Petitioner), herein above respectfully
moves this Honorable Court for an Order That Grants the instant
Petition for Post Conviction Relief And Motion for
Appointment of Counsel

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities,

DATED: this 27 day of December, 2021

BY: *[Signature]*
Hakeem Weldon # 1104578
Defendant In Proper Personam

RECEIVED
JAN 03 2022
CLERK OF THE COURT

1

ADDITIONAL FACTS OF THE CASE:

1 April 28, 2020 Petitioner WAS in fact Arrested
2 for A number of charges. Also Petitioner's Probation WAS
3 Revoked on May 6 2020, Because of These charges
4 Petitioner WAS Never convicted of Any of the charges
5 on the Arrest Report. Petitioner's Probation WAS Revoked
6 Before he WAS found Guilty of Any charge violating his Due
7 Process.

8
9 State Mentioned on Pg 12 Line 13: "The Judge's Deviation
10 WAS in Petitioner's favor. Petitioner Does Not Believe This for
11 two reasons: ① if he WAS sentence correctly in 2017 petitioner
12 would have Never been charged of Any crime That may or
13 May not have occurred on April 26, 2020. ② Also if
14 Petitioner WAS sentenced correctly There would not be Any
15 Grounds to file "Post conviction Relief."

16 At Pg 13 line 15-17 petitioner WAS not ~~convicted of~~ ^{convicted of} Any
17 of the charges the state Mentioned.
18

19 Also the state Admits The Judge's Deviation from Petitioner's
20 GPA And Ask that his "Post conviction" be Granted Solely
21 Because The state Admitted the Judge's Deviation from original
22 GPA, And Petitioner's Counsel Never notified Petitioner
23 That he WAS inhibited to A Appeal Due to this Deviation.
24

25 Also Judge Never said he WAS going to Deviate from
26 Petitioner GPA. Had Petitioner Been informed of this
27

1 Deviation Petitioner would have pulled his GPA And
2 Proceeded to trial.

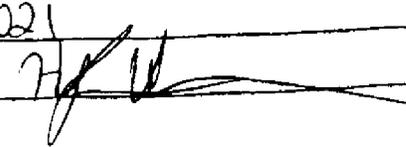
3
4 Ineffective Assistance of Counsel is Proved when Judge
5 Deviated from original Plea Agreement And Petitioner's
6 Counsel ~~was~~^{had} did nothing nor did she notify
7 Petitioner he was intitled to An Appeal Because of this
8 Deviation.

9 *
10 At Page 16 Line 25-28 It state mention: "Petitioner's
11 Counsel is only obligated to file A notice of Appeal or to
12 Consult with A Defendent Regarding filing A notice of Appeal
13 in certain Circumstances". When the Judge Deviated from
14 original GPA Petitioner's Counsel should have notified
15 Petitioner of Any legal action (Appeal) And Did not
16 Therefore Proves Ineffective Assistance of Counsel.

17
18 Conclusion - Remedy
19 Requested

20
21 For the foregoing Reasons Petitioner Respectfully Request
22 That the Instant Petition for writ of Habeas Corpus
23 Be summarily Granted. Petitioner further Request that
24 Motion for Appointment of counsel and Request for Evidentiary
25 Hearing Also Be GRANTED.

26 Dated: This 27 Day of December 2021

27 

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CERTIFICATE OF SERVICE BY MAILING

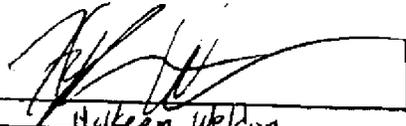
I, Hykeem Weldon, hereby certify, pursuant to NRCP 5(b), that on this 27
day of December, 2021, I mailed a true and correct copy of the foregoing "Petitioner's
Reply to State's Response to Petition for Post Conviction Relief
and motion for Appointment of Counsel"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Steve D. Griceison
Clerk of the Court
200 Lewis Ave 3rd floor
Las Vegas NV 89105-1100

CC:FILE

DATED: this 27 day of December, 2021.


Hykeem Weldon # 1109578
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petitioner's
Reply to State's Response to Petition for Post
Conviction Relief And Motion for Appointment of Counsel
(Title of Document)

filed in District Court Case number A-20-4821331-C/C-17-321763-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

[Signature]
Signature

12/27/22
Date

Muhammad W. Khan
Print Name

Petitioner
Title

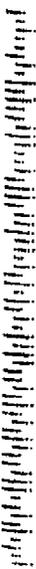
Hilkeem Weldon 11041574
SDCC
PO Box 208
Indian Springs NV 89070

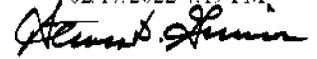
LAS VEGAS NV 890
28 DEC 2021 PM 4 L



Steven D Grierson
Clerk of Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155-1160

89101-630000





CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **KAREN MISHLER**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #013730**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **HYKEEM WELDON, aka,**
10 **Hykeem Tyrese Weldon, #2750525,**

11 **Petitioner,**

CASE NO: A-20-821331-C

12 **-vs-**

C-17-321763-1

13 **THE STATE OF NEVADA,**

DEPT NO: XXIV

14 **Respondent.**

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

17 **DATE OF HEARING: January 4, 2022**

TIME OF HEARING: 9:00 AM

18 **THIS CAUSE** having come on for hearing before the Honorable Erika Ballou, District
19 **Judge**, on the 4th day of January, 2022, the Petitioner being not present, not represented by
20 **counsel**, the Respondent being represented by STEVEN B. WOLFSON, Clark County District
21 **Attorney**, being not present, and the Court having considered the matter, including briefs,
22 **transcripts**, and documents on file herein, now therefore, the Court makes the following
23 **findings of fact and conclusions of law:**

24 **//**

25 **//**

26 **//**

27 **//**

28 **//**

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On December 27, 2016, The State charged Hykeem Weldon, aka Hykeem Tyrese
4 Weldon, (hereinafter "Petitioner"), with Count One – Burglary While in Possession of a
5 Firearm (Category B Felony – NRS 205.060); Count Two – Robbery With Use of a Deadly
6 Weapon, Victim 60 Years of Age or Older (Category B Felony – NRS 200.380, 193.165,
7 193.167); Count Three – Robbery With Use of a Deadly Weapon (Category B Felony – NRS
8 200.380, 193.165); Count Four – First Degree Kidnapping With Use of a Deadly Weapon,
9 Victim 60 Years of Age or Older (Category A Felony – NRS 200.310, 200.320, 193.165,
10 193.167); Count Five – First Degree Kidnapping With Use of a Deadly Weapon (Category A
11 Felony – NRS 200.310, 200.320, 193.165); Count Six – Ownership or Possession of Firearm
12 by Prohibited Person (Category B Felony – NRS 202.360).

13 On March 7, 2017, pursuant to negotiations, the State filed an Information charging
14 Petitioner with one count of Robbery (Category B felony – NRS 200.380).

15 On March 8, 2017, Petitioner pled guilty to the charge contained in the Information,
16 and a signed Guilty Plea Agreement ("GPA") was filed in open court. Pursuant to the GPA,
17 the State retained the right to argue. Petitioner stipulated to a sentence of six to fifteen years
18 in the Nevada Department of Corrections ("NDOC") if he were arrested for new felony
19 charges or failed to appear for his presentence interview or any court dates. He was released
20 on his own recognizance pending sentencing. See GPA, filed March 8, 2017, at 1.

21 On July 6, 2017, Petitioner failed to appear at his sentencing hearing and the Court
22 issued a bench warrant. He appeared pursuant to the warrant on July 25, 2017, and a new
23 sentencing date was set. On November 2, 2017, the District Court sentenced him to a minimum
24 of seventy-two months and a maximum of one hundred eighty months in the NDOC, in
25 accordance with the terms of the GPA. This sentence was suspended and Petitioner was placed
26 on probation for a period not to exceed five years. No direct appeal was taken.

27 The Division of Parole and Probation ("P&P") prepared a violation report on April 30,
28 2020, recommending Petitioner's probation be revoked based on a number of violations, most

1 notably his arrest on April 28, 2020, in Case No. 20F08394X. The charges included assault,
2 discharging a gun, and child abuse. See Violation Report, filed May 6, 2020, at 1-3. The Court
3 revoked his probation on July 30, 2020 and imposed the original sentence. Petitioner was given
4 one hundred fifty days credit for time served.

5 On August 3, 2020, an Order for Revocation of Probation and Amended Judgment of
6 Conviction was filed. On September 16, 2020, Petitioner filed the instant Petition for Post-
7 Conviction Relief, Motion for Appointment of Counsel, and Memorandum of Law in Support
8 of Petition for Post-Conviction Relief.

9 On January 4, 2022, this Court finds and concludes as follows:

10 ANALYSIS

11 This petition is time-barred, with no good cause or sufficient prejudice shown to evade
12 the mandatory procedural bars. Petitioner entered his plea intelligently, freely, and voluntarily.
13 Petitioner received the effective assistance of counsel.

14 **I. THE PETITION IS PROCEDURALLY BARRED**

15 **I. Application of the procedural bars is mandatory.**

16 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
17 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
18 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
19 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
20 is mandatory," noting:

21 Habeas corpus petitions that are filed many years after conviction are an
22 unreasonable burden on the criminal justice system. The necessity for a
workable system dictates that there must exist a time when a criminal
conviction is final.

23 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
24 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
25 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
26 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
27 apply the statutory procedural bars; the rules *must* be applied.
28

1 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
2 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of
3 the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
4 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
5 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322-23. The
6 procedural bars are so fundamental to the post-conviction process that they must be applied
7 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
8 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.
9 173, 180-81, 69 P.3d 676, 681-82 (2003).

10 **B. The Petition is time-barred.**

11 The Petition is time-barred pursuant to NRS 34.726(1):

12 Unless there is good cause shown for delay, a petition that challenges the
13 validity of a judgment or sentence must be filed within 1 year of the entry
14 of the judgment of conviction or, if an appeal has been taken from the
15 judgment, within 1 year after the Supreme Court issues its remittitur. For
the purposes of this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and
17 (b) That dismissal of the petition as untimely will unduly prejudice
the petitioner.

18 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
19 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
20 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
25 petition filed two (2) days late despite evidence presented by the defendant that he purchased
26 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
27 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
28 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no

1 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
2 postal system. Id. at 595, 53 P.3d at 903.

3 Petitioner's Judgment of Conviction was filed on November 21, 2017. The restitution
4 amount of \$500 was fixed in the Judgment of Conviction and the Judgment of Conviction was
5 final. Petitioner had until November 21, 2018, to file a timely writ. Petitioner did not file until
6 September 16, 2020, almost two years too late.

7 To explain his delay in filing, Petitioner simply states his petition is *not* filed more than
8 a year after his Judgment of Conviction. Petition at 3. This is belied by the record, as his
9 Judgment of Conviction was filed on November 21, 2017, and his petition was filed almost
10 three years later, on September 16, 2020. Allegations that are belied and repelled by the record
11 do not suffice to entitle a Petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
12 222, 225 (1984).

13 Petitioner points to the filing date of his Amended Judgment of Conviction, as if it
14 controls the necessary timing of his habeas petition:

15 [A] ruling was made on this case 3 years ago entering probation with a
16 suspended sentence of imprisonment of 6 to 15 years. The 6 to 15 year
17 imprisonment was entered on July 30, 2020.

18 Petition at 3. Petitioner himself recognizes that the sentence of three years ago is the same as
19 that in the Amended Judgment of Conviction, though it is no longer suspended.

20 The filing date of the Amended Judgment of Conviction does not control the timing of
21 his habeas petition, because Petitioner's claims of error do not relate to the amended portion
22 of the Judgment of Conviction. The Amended Judgment of Conviction merely parrots the
23 terms of the original Judgment of Conviction while acknowledging the sentence is no longer
24 suspended. Where a defendant is not challenging the proceedings related to an Amended
25 Judgment of Conviction, the one-year time bar runs from the date remittitur issued from the
26 affirmance of his Judgment of Conviction, or one year from entry of his original Judgment of
27 Conviction. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

28 //

1 Absent a showing of good cause to excuse this two-year delay, this Court must deny
2 Defendant's Petition.

3 **C. Only good cause and actual prejudice can overcome the procedural bars**

4 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
5 and proving specific facts that demonstrate good cause for his failure to present his claim in
6 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
7 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
8 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev.
9 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents
10 claims that either were or could have been presented in an earlier proceeding, unless the court
11 finds both cause for failing to present the claims earlier or for raising them again and actual
12 prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001)
13 (emphasis added).

14 “To establish good cause, appellants must show that an impediment external to the
15 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
16 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
17 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
18 impediment could be “that the factual or legal basis for a claim was not reasonably available
19 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
20 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
21 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
22 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
23 must not be the fault of the petitioner. NRS 34.726(1)(a).

24 The Nevada Supreme Court has clarified that a defendant cannot attempt to
25 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
26 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
27 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
28 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel

1 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
2 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
3 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
4 111 Nev. 335, 890 P.2d 797 (1995).

5 A petitioner raising good cause to excuse procedural bars must do so within a
6 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
7 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
8 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
9 available to the petitioner during the statutory time period did not constitute good cause to
10 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
11 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
12 453 120 S. Ct. 1587, 1592 (2000).

13 To demonstrate prejudice to overcome the procedural bars, a defendant must show “not
14 merely that the errors of [the proceeding] created possibility of prejudice, but that they worked
15 to his actual and substantial disadvantage, in affecting the state proceedings with error of
16 constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
17 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

18 Claims that Petitioner’s counsel was ineffective or that Petitioner did not plead
19 voluntarily were reasonably available during the statutory time period for the filing of a habeas
20 petition. The Amended Judgment of Conviction cannot constitute good cause for failing to file
21 a petition on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Court finds
22 Petitioner fails to demonstrate good cause.

23 **D. Petitioner fails to meet his burden to overcome the procedural bars**

24 Petitioner claims his counsel failed to ask if he wanted to file an appeal, his sentence
25 was not as he expected, his counsel was ineffective for failing to object to the sentence, and he
26 pled guilty without understanding the consequences. Petition at 2, 3-4, 6-8. Because Petitioner
27 entered his plea knowingly and voluntarily, and because he can show no good cause for his

28 //

1 delay in filing nor constitutional errors working to his actual disadvantage, his claims are
2 procedurally barred.

3 **II. PETITIONER ENTERED HIS PLEA KNOWINGLY AND VOLUNTARILY**

4 The law in Nevada establishes that a plea of guilty is presumptively valid, and the
5 burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev.
6 at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295
7 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal v.
8 State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

9 To determine whether a guilty plea was voluntarily entered, the Court will review the
10 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
11 P.2d at 367. A proper plea canvass should reflect that:

12 [T]he defendant knowingly waived his privilege against self-incrimination,
13 the right to trial by jury, and the right to confront his accusers; (2) the plea
14 was voluntary, was not coerced, and was not the result of a promise of
15 leniency; (3) the defendant understood the consequences of his plea and the
range of punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

16 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
17 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
18 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
19 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.
20 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

21 This standard requires the court accepting the plea to personally address the defendant
22 at the time he enters his plea in order to determine whether he understands the nature of the
23 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
24 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
25 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
26 formal setting, such as that occurring between an official sitting in judgment of an accused at
27 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
28

1 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
2 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
3 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
4 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
5 1463, 1470 (1970).

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 Further, the Nevada Supreme Court has explained:

15 [A] guilty plea represents a break in the chain of events which has preceded
16 it in the criminal process. When a criminal defendant has solemnly admitted
17 in open court that he is in fact guilty of the offense with which he is charged,
18 he 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 Here, the record demonstrates Petitioner entered his plea knowingly and voluntarily.
27 His GPA contained the following language:

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VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

21 GPA at 5.

22 By signing his GPA, Petitioner affirmed he knew the State would have to prove each
23 element of each crime. GPA at 5. His attorney informed him of his rights, his options, and the
24 best course of action. GPA at 5. Petitioner did not believe going to trial was in his best interest.
25 GPA at 5. His attorney did not coerce him into signing the GPA. GPA at 5. Petitioner affirmed
26 his counsel answered all his questions and he was satisfied with his attorney. GPA at 5.

27 Petitioner also made these assertions in court during the plea canvass the district court
28 inevitably conducts when accepting a plea. The canvass requires the defendant to assert that
no one could promise him "probation, leniency or any special treatment" and that the defendant
understood the written plea agreement he signed. The court asks if the defendant has questions
about the rights he gave up or the negotiations he undertook. The purpose of the plea canvass
by the district court was to underscore Petitioner's knowledge and volition.

1 Petitioner decided, with the advice of counsel, that entering a plea was in his best
2 interest. Patton, 91 Nev. at 2, 530 P.2d at 107. He understood the nature of the charges to
3 which he pled. Bryant, 102 Nev. at 271, 721 P.2d at 367. That his plea in hindsight appears
4 unwise does not mean his counsel was ineffective at the time the plea was entered. Larson,
5 104 Nev. at 694, 766 P.2d at 263. The decision to accept the plea, knowing the potential
6 penalties that could be levied against him, belonged to Petitioner alone. Rhyne, 118 Nev. at 8,
7 38 P.3d at 163.

8 Petitioner alleges his agreed-upon sentence was for a probationable 2 to 15 years
9 sentence. Petition at 2, 3, 6. This claim is belied by the record. At his preliminary hearing,
10 Petitioner unconditionally waived his hearing so he could plead guilty in District Court. See
11 Reporter's Transcript of Waiver of Preliminary Hearing, filed November 9, 2017. Petitioner's
12 attorney outlined the deal for the court:

13 Um, the State retains the right to argue at sentencing, the State agrees to OR
14 release at entry of plea, um, and my client stipulates that if he picks up any
15 new case while he's out or if he fails to appear for his P & P interview or for
his sentencing, he stipulates to 6 to 15 in NDOC.

16 Id. at 3. This same 6-15 year stipulation was in the GPA. GPA at 1. This language was in the
17 original Judgment of Conviction, which sentenced Petitioner to a suspended sentence of
18 seventy-two to one hundred eighty months in the NDOC. This language was in the Amended
19 Judgment of Conviction, which sentenced Petitioner to seventy-two to one hundred eighty
20 months in the NDOC.

21 Petitioner's asserted 2-15 year sentence is nowhere articulated and was never
22 contemplated by the parties. Petitioner's claim that his plea is unknowing because he agreed
23 to a 2-15 year sentence is belied by the record and must be dismissed pursuant to Hargrove,
24 100 Nev. at 502, 686 P.2d at 225.

25 Petitioner claims the judge "deviated" from the agreed-upon sentence. Petition at 4. He
26 asserts the judge gave him a sentence of 6-15 years "just because" he suspended the sentence,
27 "as a consequence for granting probation." Petition at 3. The judge did deviate from the agreed-
28 upon terms of the GPA, but the deviation was in Petitioner's favor. Because Petitioner failed

1 to show up for sentencing, the plain language of the GPA stated he would *immediately* be
2 sentenced to 6-15 years in the NDOC. GPA at 1. Instead, the judge suspended this sentence
3 and allowed Petitioner to enter probation. Judgment of Conviction at 1. This deviation did not
4 prejudice Petitioner.

5 Petitioner states that if he had known the judge could impose a sentence of 6-15 years,
6 he would not have pled guilty. Petition at 4. This is belied by the record, as Petitioner signed
7 the GPA which specifically called for a sentence of 6-15 years and chose to plead guilty
8 anyway. Further, the GPA states probation is up to the discretion of the sentencing judge and
9 that Petitioner had not been promised any particular sentence. GPA at 2-3. He affirmed, "I
10 know that my sentence is to be determined by the Court within the limits prescribed by statute."
11 GPA at 3.

12 Even if Petitioner had appeared for sentencing, the State had the right to argue for any
13 legal sentence. GPA at 1. Under NRS 200.380(2), a sentence of 6-15 years is within the
14 statutory range for robbery. Since sentencing was left to the discretion of the sentencing court,
15 Petitioner could have received the sentence of 6-15 years without probation from the very
16 beginning. Instead, the court gave Petitioner probation. Judgment of Conviction at 1.

17 Petitioner violated probation only two weeks after his Judgment of Conviction was
18 filed. See Violation Report, prepared on April 30, 2020, at 2. Petitioner reported to his
19 probation officer with cocaine in his urine on December 7, 2017. Id. A couple months later,
20 he showed up with a knife. Id. at 1. The following month, he arrived at the probation office
21 with a blood alcohol level of .101. Id. In July 2018, Petitioner was cited by the police for
22 obstructing a sidewalk. Id. The following month, he was cited for driving without a license
23 and without insurance, resulting in an arrest warrant. Id. In November 2019, arrest warrants
24 were issued charging Petitioner with reckless driving, driving without a license, and driving
25 with an open container of alcohol. Id. at 2. In January 2020, the probation office cited Petitioner
26 for not living at his registered address. Id. For each violation, the probation officer chose to
27 work with Petitioner to encourage him to follow probation's rules, as well as the laws of
28 Nevada.

1 Despite these opportunities to learn from his mistakes, Petitioner was arrested on April
2 28, 2020, for six counts of assault with a deadly weapon, three counts of felony child
3 endangerment, discharging a gun, and possession of a gun by a prohibited person:

4 According to a police report of the incident, on April 26, 2020, at about 2111
5 hours, LVMPD officers responded to a residence where Mr. Weldon was
6 accused of starting an argument, pointing a firearm at people, and eventually
7 firing the gun into a wall inside the residence in close proximity to a male
8 adult and three juveniles; the youngest of which is three years old; two other
9 adults were also in the residence. According to the report, before leaving the
10 residence, Mr. Weldon stated that he would return to the residence and shoot
everybody. The report also indicates that Mr. Weldon sent a text message to
the victims advising he would be back and things would be worse.

11 Id. at 2. Petitioner has no one but himself to blame for not being on probation right now.

12 Petitioner alleges his sentence is “illegal,” but this claim is not cogent. “The sentence
13 is also illegal because the max sentence on a 2-15 year sentence is 66 to 180 months, category
14 B felony.” Petition at 4. Disregarding the fact that the parties never agreed to a 2-15 year
15 sentence, the maximum sentence for a 2-15 year term is 15 years. A party seeking review bears
16 the responsibility “to cogently argue, and present relevant authority” to support his assertions.
17 Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38
18 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
19 80, 83 (1991) (defendant’s failure to present legal authority resulted in no reason for the district
20 court to consider defendant’s claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)
21 (an arguing party must support his arguments with relevant authority and cogent argument;
22 “issues not so presented need not be addressed”); Randall v. Salvation Army, 100 Nev. 466,
23 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation
24 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d
25 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the
26 merits).

27 Finally, Petitioner asserts his plea was unintelligent because he did not know his
28 attorney was not going to file an appeal on her own initiative. Petition at 6. He appears to claim

1 that if he had known he would be held accountable for the agreement he entered into with the
2 State, he would not have made it. A plea agreement is a contract between parties, not a
3 placeholder to be discarded once the threat of trial has diminished. Whether Petitioner thought
4 his attorney would appeal *after* sentencing does not factor into whether his plea was knowing
5 or voluntary at the time, he entered the agreement.

6 Petitioner cites to NRS 178.556 for the proposition that he is entitled to withdraw his
7 plea and proceed to trial; however, this statute only concerns the speedy trial rights of a
8 defendant who has not pled guilty. Based on the totality of the circumstances, Petitioner's plea
9 was knowingly and voluntarily made at the time he entered it. He is not entitled to withdraw
10 his plea now just because he has to serve his agreed-upon sentence.

11 **II. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF**
12 **COUNSEL**

13 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
14 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
15 defense.” The United States Supreme Court has long recognized that “the right to counsel is
16 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
17 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
18 (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 the Strickland test, a defendant must show first that his counsel's
23 representation fell below an objective standard of reasonableness, and second, that but for
24 counsel's errors, there is a reasonable probability that the result of the proceedings would have
25 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
26 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

27 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the

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1 inquiry in the same order or even to address both components of the inquiry if the defendant
2 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

9 Counsel cannot be ineffective for failing to make futile objections or arguments. See
10 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
11 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
12 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
13 (2002).

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

25 “There are countless ways to provide effective assistance in any given case. Even the
26 best criminal defense attorneys would not defend a particular client in the same way.”
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel’s representation fell below an
6 objective standard of reasonableness, he must still demonstrate prejudice and show a
7 reasonable probability that, but for counsel’s errors, the result of the trial would have been
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
11 694, 104 S. Ct. at 2064-65, 2068).

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 Ineffective assistance of counsel does not exist where a defense attorney makes “a
18 reasoned plea recommendation which hindsight reveals to be unwise” or where an attorney
19 relies “on an ultimately unsuccessful defense tactic.” Larson v. State, 104 Nev. 691, 694, 766
20 P.2d 261, 263 (1988).

21 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
22 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
23 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
24 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
25 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
26 that a defendant lacked standing to challenge the validity of a plea agreement because he had
27 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
28 468, 477, 958 P.2d 91, 96 (1998).

1 Further, the Nevada Supreme Court has explained:

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

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

15 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
16 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
17 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered
18 into on the advice of counsel, and the burden is on a defendant to show that the plea was not
19 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
20 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jeziarski v. State, 107
21 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly
22 advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer
23 is the defendant’s. Rhync, 118 Nev. at 8, 38 P.3d at 163.

24 A “habeas corpus petitioner must prove the disputed factual allegations underlying his
25 ineffective-assistance claim by a preponderance of the evidence.” Means, 120 Nev. at 1012,
26 103 P.3d at 33. Claims of ineffective assistance of counsel asserted in a petition for post-
27 conviction relief must be supported with specific factual allegations, which if true, would
28 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
allegations are not sufficient, nor are those belied and repelled by the record. Id. “[Petitioner]

1 must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific
2 facts rather than just conclusions may cause your petition to be dismissed.” NRS 34.735(6).

3 Petitioner alleges his counsel was ineffective for allowing him to accept an illegal
4 sentence. As his sentence was not only legal, but agreed-upon, counsel cannot be deemed
5 ineffective for failing to object to it. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

6 Petitioner also alleges his counsel was ineffective for failing to file an appeal without
7 being asked. Petition at 2. He complains his “attorney never asked Petitioner if he wanted to
8 appeal and the attorney denied Petitioner effective assistance of counsel by not filing a notice
9 of appeal.” Id.

10 “The burden is on the client to indicate to his attorney that he wishes to pursue an
11 appeal.” Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). Counsel is only obligated
12 to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in
13 certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). “[T]rial counsel
14 has a constitutional duty to file a direct appeal in two circumstances: when requested to do so
15 and when the defendant expresses dissatisfaction with his conviction, and that the failure to do
16 so in those circumstances is deficient for purposes of proving ineffective assistance of
17 counsel.” Id. at 977, 267 P.3d at 800

18 Counsel has no constitutional obligation to inform or consult with a defendant regarding
19 his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,
20 the duty arises “only when the defendant inquires about the right to appeal or in circumstances
21 where the defendant may benefit from receiving advice about the right to a direct appeal, ‘such
22 as the existence of a direct appeal claim that has reasonable likelihood of success.’ Id. (quoting
23 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

24 Courts should consider “all the information counsel knew or should have known” and
25 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
26 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
27 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
28 appealable issues and because such a plea may indicate that the defendant seeks an end to

1 judicial proceedings.” Id. Thus, when a defendant who pled guilty claims, he was deprived of
2 the right to appeal, “the court must consider such factors as whether the defendant received
3 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
4 some or all appeal rights.” Id.

5 The United States Supreme Court requires courts to review three factors when
6 determining whether a defendant was deprived of his right to an appeal: whether the defendant
7 asked counsel to file an appeal; whether the conviction was the result of a trial or a guilty plea;
8 and whether the defendant had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528
9 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000).

10 The GPA expressly waived appellate rights. In signing the Guilty Plea Agreement
11 (“GPA”), Petitioner confirmed he understood the rights he waived:

12 WAIVER OF RIGHTS

13 By entering my plea of guilty, I understand that I am waiving and *forever*
14 *giving up* the following rights and privileges:

- 15 1. The constitutional privilege against self-incrimination, including the right
16 to refuse to testify at trial, in which event the prosecution would not be
17 allowed to comment to the jury about my refusal to testify.
- 18 2. The constitutional *right to a speedy and public trial* by an impartial jury,
19 free of excessive pretrial publicity prejudicial to the defense, at which
20 trial I would be entitled to the assistance of an attorney, either appointed
21 or retained. At trial *the State would bear the burden* of proving beyond a
22 reasonable doubt each element of the offense(s) charged.
- 23 3. The constitutional right to confront and cross-examine any witnesses who
24 would testify against me.
- 25 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 26 5. The constitutional right to testify in my own defense.

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1 6. *The right to appeal the conviction* with the assistance of an attorney,
2 either appointed or retained, *unless specifically reserved in writing* and
3 agreed upon as provided in NRS 174.035(3). I understand this means *I*
4 *am unconditionally waiving my right to a direct appeal* of this conviction,
5 including any challenge based upon reasonable constitutional,
6 jurisdictional, or other grounds that challenge the legality of the
7 proceedings as stated in NRS 177.015(4). However, I remain free to
8 challenge my conviction through other post-conviction remedies
9 including a habeas corpus petition pursuant to NRS Chapter 34.

10 GPA at 4 (emphasis added). Petitioner expressly waived his appeal rights and his counsel was
11 fully aware of this waiver.

12 Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v.
13 Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with
14 the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his
15 claim is a bare allegation suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686
16 P.2d at 225.

17 Petitioner received the benefit he bargained for. Despite the State having the right to
18 argue sentence, despite failing to appear for sentencing, and despite his numerous probation
19 violations, Petitioner is only serving 6-15 years, just as outlined in his GPA.

20 Petitioner has sat on his appellate rights for years. Since his Judgment of Conviction
21 was filed in 2017, it should have been obvious before now that his attorney did not appeal. His
22 habeas petition, let alone a direct appeal, is time-barred with no good cause shown for the
23 delay. Petitioner did not raise any issue in the Petition until after his probation was revoked
24 and he had to begin serving his sentence. Moreover, Petitioner cannot demonstrate prejudice,
25 as his individual contentions are without merit. His counsel was not ineffective for failing to
26 appeal when Petitioner received a legal, asked-for sentence.

27 **V. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

28 Petitioner asks for appointed counsel, not to assist him with his habeas claims, but to
represent him at the speedy jury trial within sixty days he demands this Court award him. See

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1 Motion for Appointment of Counsel. He further claims counsel is needed as he is serving an
2 illegal sentence. Id.

3 Under the United States Constitution, the Sixth Amendment provides no right to
4 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.
5 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
6 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a
7 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right
8 to counsel provision as being coextensive with the Sixth Amendment to the United States
9 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)
10 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
11 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
12 164, 912 P.2d at 258.

13 The Nevada Legislature has, however, given courts discretion to appoint post-
14 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
15 the petition is not dismissed summarily.” NRS 34.750

16 The Court has discretion in determining whether to appoint counsel. NRS 34.750 reads:

17 A petition may allege that the Defendant is unable to pay the costs of the
18 proceedings or employ counsel. If the court is satisfied that the allegation of
19 indigency is true and the petition is not dismissed summarily, the court may
appoint counsel at the time the court orders the filing of an answer and a return.
In making its determination, the court may consider whether:

- 20 (a) The issues are difficult;
21 (b) The Defendant is unable to comprehend the proceedings; or
22 (c) Counsel is necessary to proceed with discovery.

23 Recently, the Nevada Supreme Court examined whether a district court appropriately
24 denied a defendant’s request for appointment of counsel based upon the factors listed in NRS
25 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the
26 petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d
27 at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a
28 pro se habeas corpus petition and requested counsel be appointed. Id. The district court
ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing

1 the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
2 concluded the district court's decision should be reversed and remanded. Id. The Court
3 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
4 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
5 the Court concluded that because petitioner represented, he had issues with understanding the
6 English language—which was corroborated by his use of an interpreter at his trial—that was
7 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
8 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
9 sentence—were severe and his petition may have been the only vehicle for which he could
10 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance
11 of counsel claims may have required additional discovery and investigation beyond the record.
12 Id.

13 Petitioner has not demonstrated counsel should be appointed, as he fails to meet *any* of
14 the additional statutory factors under NRS 34.750. The issues raised by Petitioner are not
15 difficult: he simply wants a better deal than the one he negotiated. NRS 34.750(a). Petitioner
16 is able to comprehend the proceedings. NRS 34.750(b). He has not argued he has difficulties
17 with the English language, unlike the petitioner in Renteria-Novoa. 133 Nev. at 76, 391 P.3d
18 at 760-61. Petitioner has not alleged further discovery is necessary. NRS 34.750(c). Since
19 habeas relief is procedurally barred, there is no need for additional discovery, let alone
20 counsel's assistance to conduct such investigation.

21 Appointing counsel to represent Petitioner at a trial within sixty days is premature. This
22 can wait until a court determines Petitioner is actually privileged to cast his plea bargain aside
23 now that he has had to start serving his sentence. Further, this is not the type of legal assistance
24 authorized under NRS 34.750. Because the statutory factors and the Renteria-Novoa analysis
25 weigh *against* the discretionary appointment of counsel, Petitioner is not entitled to the
26 appointment of counsel.

27 //
28 //

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
3 shall be, and it is, hereby denied,

4 FURTHER, IT IS HEREBY ORDERED that the Motion for Appointment of Counsel
5 shall be, and it is, hereby denied.

6 DATED this ____ day of February, 2022.

7 Dated this 17th day of February, 2022

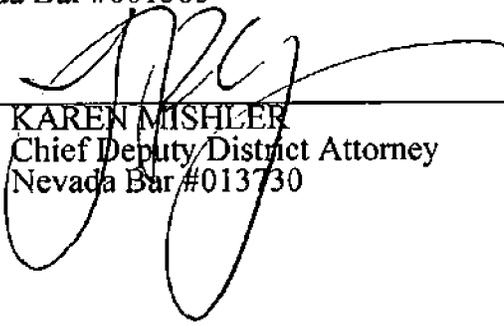
8 

9 DISTRICT JUDGE

F89 352 EF9F 4E45
Erika Ballou
District Court Judge

10 STEVEN B. WOLFSON
11 Clark County District Attorney
Nevada Bar #001565

12 BY


13 KAREN MISHLER
14 Chief Deputy District Attorney
Nevada Bar #013730

15
16
17 **CERTIFICATE OF SERVICE**

18 I certify that on the 16th day of February, 2022, I mailed a copy of the foregoing
19 proposed Findings of Fact, Conclusions of Law, and Order to:

20 HYKEEM TYRESE WELDON, BAC #1104578
21 LOVELOCK CORRECTIONAL CENTER
22 1200 PRISON ROAD
LOVELOCK, NV 89419

23
24 BY


25 Secretary for the District Attorney's Office

26
27
28 16F21196X/sr/KM/ckb/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Hykeem Weldon, Plaintiff(s) | CASE NO: A-20-821331-C
7 vs. | DEPT. NO. Department 24
8 Nevada State of, 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 Finding of Fact and Conclusions of Law was served via the court's
13 electronic eFile system to all recipients registered for e-Service on the above entitled case as
listed below:

14 Service Date: 2/17/2022

15 D A motions@clarkcountyda.com
16 AG 1 rgarate@ag.nv.gov
17 AG 2 aherr@ag.nv.gov
18 AG AG wiznetfilings@ag.nv.gov
19
20
21
22
23
24
25
26
27
28

Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

FILED

MAR - 7 2022

Sharon A. Hoffman
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

Hakeem Wolden

Plaintiff,

vs.

The State of Nevada,

Defendant.

C-17321763-1

CASE No. A-20-421331-C

DEPT.No. XXIV

DESIGNATION OF RECORD ON APPEAL

TO: Steven D. Grierson

Clerk of Court
20 Lewis Ave 3rd + 4th
Las Vegas NV 89155

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 28 Feb day of 28, 2022.

RESPECTFULLY SUBMITTED BY:

Hakeem Wolden
1124578
Plaintiff/In Propria Persona

Hykeem Weldon # 1104578

In Propria Personam

Post Office Box 20875 DDC
Indian Springs, Nevada 89419

1200 Persim Rd
Love Lock NV 89419

FILED

MAR - 7 2022

Steven A. Blinn
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

Hykeem Weldon 1104578

Plaintiff,

vs.

The State of Nevada

Defendant.

C-17-321763-1

Case No. A20821531-C

Dept. No. XXIV

Docket _____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
Hykeem Weldon, in and through his proper person, hereby
appeals to the Supreme Court of Nevada from the ORDER denying and/or
dismissing the

Petition for Post Conviction Relief

ruled on the 4 day of Jan, 2022.

Dated this 28 day of Feb, 2022

Respectfully Submitted,

Hykeem Weldon

RECEIVED

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Hykeem Weldon, hereby certify, pursuant to NRCP 5(b), that on this 28 day of feb, 2022, I mailed a true and correct copy of the foregoing, "Notice of Appeal/Petition for Post Conviction Relief"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D Grierson
200 Lewis Ave 3rd Floor
Las Vegas NV 89105

CC:FILE

DATED: this 28 day of feb, 2022

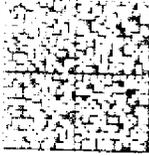

Hykeem Weldon #11041575

/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

RETURN SERVICE REQUESTED

FIRST CLASS



US POSTAGE
PAID
PERMIT NO. 1000
LAS VEGAS, NV
POSTAGE WILL BE PAID BY ADDRESSEE
\$000.49⁴

Hykeen Weldon #1104578
PO Box 208

Indian Springs, NV 89970

149 4 89070

The reason my Appeal was delayed
is because I Didn't ~~know~~ know
the results of my hearing dated Jan 4, 2022
till feb 8, 2022 see Doc. 115-~~117~~ 117
After I received said responds I
was transferred to LLCC. once I
was out of Quarantine I made copies
of the papers I needed and filed ASAP


Hykeem Walton #
feb 28, 2022

116

MAIL
FEB 08 2022
Correctional Center
Southern Desert

NEVADA DEPARTMENT OF CORRECTIONS

LEGAL MAIL

NAME: NEUDON, H. DOC#: 1104578 UNIT: 4C9

REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

LEGAL MAIL: S. CARPSON

CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: _____ OFFICER: Rejan

INMATE SIGNATURE: [Signature] DOC#: 1104578 DATE: 1-8-02

DOC - 3020 (REV. 7/01)

117

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Matters

COURT MINUTES

January 04, 2022

A-20-821331-C Hykeem Weldon, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

January 04, 2022 09:00 AM Petition for Writ of Habeas Corpus

HEARD BY: Ballou, Erika **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Mason, Jessica

RECORDER: Schofield, Susan

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Court noted no parties are present today and Deft. is in NDC. Court noted this request was time barred as well as the petition provide good cause or prejudice in the Court. Court gave further findings. Court ORDERED the Petition for Writ of Habeas Corpus is DENIED. Colloquy regarding if the State filed an opposition.
-State to prepare the Order.

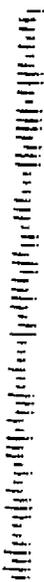
CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jessica Mason, to all registered parties for Odyssey File & Serve.//jm

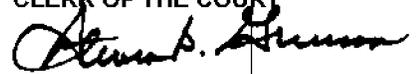
Heikeman Weldon 11844578
1200 Pearson Rd
WV
Love Locke NV 89419

RETRD NV 895
01 MAR 2022 PM 3 T

Steven D. Grierson
Clerk of Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155

8910198900





1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 HYKEEM WELDON,

6 Petitioner,

Case No: C-17-321763-1

Dept No: XXXII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on February 17, 2022, 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
15 to you. This notice was mailed on March 8, 2022.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Heather Ungermann

18 Heather Ungermann, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

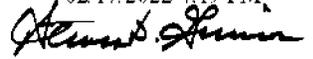
20 I hereby certify that on this 8 day of March 2022, I served a copy of this Notice of Entry on the following:

21 By e-mail:
22 Clark County District Attorney's Office
23 Attorney General's Office – Appellate Division-

24 The United States mail addressed as follows:
25 Hykeem Weldon # 1104578
26 1200 Prison Rd.
27 Lovelock, NV 89419

28 /s/ Heather Ungermann

Heather Ungermann, Deputy Clerk



CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **KAREN MISHLER**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #013730**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **HYKEEM WELDON, aka,**
10 **Hykeem Tyrese Weldon, #2750525,**

11 **Petitioner,**

CASE NO: A-20-821331-C

12 **-vs-**

C-17-321763-1

13 **THE STATE OF NEVADA,**

DEPT NO: XXIV

14 **Respondent.**

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

17 **DATE OF HEARING: January 4, 2022**

TIME OF HEARING: 9:00 AM

18 **THIS CAUSE** having come on for hearing before the Honorable Erika Ballou, District
19 **Judge**, on the 4th day of January, 2022, the Petitioner being not present, not represented by
20 **counsel**, the Respondent being represented by STEVEN B. WOLFSON, Clark County District
21 **Attorney**, being not present, and the Court having considered the matter, including briefs,
22 **transcripts**, and documents on file herein, now therefore, the Court makes the following
23 **findings of fact and conclusions of law:**

24 **//**

25 **//**

26 **//**

27 **//**

28 **//**

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On December 27, 2016, The State charged Hykeem Weldon, aka Hykeem Tyrese
4 Weldon, (hereinafter "Petitioner"), with Count One – Burglary While in Possession of a
5 Firearm (Category B Felony – NRS 205.060); Count Two – Robbery With Use of a Deadly
6 Weapon, Victim 60 Years of Age or Older (Category B Felony – NRS 200.380, 193.165,
7 193.167); Count Three – Robbery With Use of a Deadly Weapon (Category B Felony – NRS
8 200.380, 193.165); Count Four – First Degree Kidnapping With Use of a Deadly Weapon,
9 Victim 60 Years of Age or Older (Category A Felony – NRS 200.310, 200.320, 193.165,
10 193.167); Count Five – First Degree Kidnapping With Use of a Deadly Weapon (Category A
11 Felony – NRS 200.310, 200.320, 193.165); Count Six – Ownership or Possession of Firearm
12 by Prohibited Person (Category B Felony – NRS 202.360).

13 On March 7, 2017, pursuant to negotiations, the State filed an Information charging
14 Petitioner with one count of Robbery (Category B felony – NRS 200.380).

15 On March 8, 2017, Petitioner pled guilty to the charge contained in the Information,
16 and a signed Guilty Plea Agreement ("GPA") was filed in open court. Pursuant to the GPA,
17 the State retained the right to argue. Petitioner stipulated to a sentence of six to fifteen years
18 in the Nevada Department of Corrections ("NDOC") if he were arrested for new felony
19 charges or failed to appear for his presentence interview or any court dates. He was released
20 on his own recognizance pending sentencing. See GPA, filed March 8, 2017, at 1.

21 On July 6, 2017, Petitioner failed to appear at his sentencing hearing and the Court
22 issued a bench warrant. He appeared pursuant to the warrant on July 25, 2017, and a new
23 sentencing date was set. On November 2, 2017, the District Court sentenced him to a minimum
24 of seventy-two months and a maximum of one hundred eighty months in the NDOC, in
25 accordance with the terms of the GPA. This sentence was suspended and Petitioner was placed
26 on probation for a period not to exceed five years. No direct appeal was taken.

27 The Division of Parole and Probation ("P&P") prepared a violation report on April 30,
28 2020, recommending Petitioner's probation be revoked based on a number of violations, most

1 notably his arrest on April 28, 2020, in Case No. 20F08394X. The charges included assault,
2 discharging a gun, and child abuse. See Violation Report, filed May 6, 2020, at 1-3. The Court
3 revoked his probation on July 30, 2020 and imposed the original sentence. Petitioner was given
4 one hundred fifty days credit for time served.

5 On August 3, 2020, an Order for Revocation of Probation and Amended Judgment of
6 Conviction was filed. On September 16, 2020, Petitioner filed the instant Petition for Post-
7 Conviction Relief, Motion for Appointment of Counsel, and Memorandum of Law in Support
8 of Petition for Post-Conviction Relief.

9 On January 4, 2022, this Court finds and concludes as follows:

10 ANALYSIS

11 This petition is time-barred, with no good cause or sufficient prejudice shown to evade
12 the mandatory procedural bars. Petitioner entered his plea intelligently, freely, and voluntarily.
13 Petitioner received the effective assistance of counsel.

14 **I. THE PETITION IS PROCEDURALLY BARRED**

15 **I. Application of the procedural bars is mandatory.**

16 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
17 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
18 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
19 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
20 is mandatory," noting:

21 Habeas corpus petitions that are filed many years after conviction are an
22 unreasonable burden on the criminal justice system. The necessity for a
workable system dictates that there must exist a time when a criminal
conviction is final.

23 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
24 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
25 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
26 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
27 apply the statutory procedural bars; the rules *must* be applied.
28

1 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
2 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of
3 the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
4 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
5 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322-23. The
6 procedural bars are so fundamental to the post-conviction process that they must be applied
7 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
8 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.
9 173, 180-81, 69 P.3d 676, 681-82 (2003).

10 **B. The Petition is time-barred.**

11 The Petition is time-barred pursuant to NRS 34.726(1):

12 Unless there is good cause shown for delay, a petition that challenges the
13 validity of a judgment or sentence must be filed within 1 year of the entry
14 of the judgment of conviction or, if an appeal has been taken from the
15 judgment, within 1 year after the Supreme Court issues its remittitur. For
the purposes of this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and
17 (b) That dismissal of the petition as untimely will unduly prejudice
the petitioner.

18 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
19 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
20 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
25 petition filed two (2) days late despite evidence presented by the defendant that he purchased
26 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
27 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
28 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no

1 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
2 postal system. Id. at 595, 53 P.3d at 903.

3 Petitioner's Judgment of Conviction was filed on November 21, 2017. The restitution
4 amount of \$500 was fixed in the Judgment of Conviction and the Judgment of Conviction was
5 final. Petitioner had until November 21, 2018, to file a timely writ. Petitioner did not file until
6 September 16, 2020, almost two years too late.

7 To explain his delay in filing, Petitioner simply states his petition is *not* filed more than
8 a year after his Judgment of Conviction. Petition at 3. This is belied by the record, as his
9 Judgment of Conviction was filed on November 21, 2017, and his petition was filed almost
10 three years later, on September 16, 2020. Allegations that are belied and repelled by the record
11 do not suffice to entitle a Petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
12 222, 225 (1984).

13 Petitioner points to the filing date of his Amended Judgment of Conviction, as if it
14 controls the necessary timing of his habeas petition:

15 [A] ruling was made on this case 3 years ago entering probation with a
16 suspended sentence of imprisonment of 6 to 15 years. The 6 to 15 year
17 imprisonment was entered on July 30, 2020.

18 Petition at 3. Petitioner himself recognizes that the sentence of three years ago is the same as
19 that in the Amended Judgment of Conviction, though it is no longer suspended.

20 The filing date of the Amended Judgment of Conviction does not control the timing of
21 his habeas petition, because Petitioner's claims of error do not relate to the amended portion
22 of the Judgment of Conviction. The Amended Judgment of Conviction merely parrots the
23 terms of the original Judgment of Conviction while acknowledging the sentence is no longer
24 suspended. Where a defendant is not challenging the proceedings related to an Amended
25 Judgment of Conviction, the one-year time bar runs from the date remittitur issued from the
26 affirmance of his Judgment of Conviction, or one year from entry of his original Judgment of
27 Conviction. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

28 //

1 Absent a showing of good cause to excuse this two-year delay, this Court must deny
2 Defendant's Petition.

3 **C. Only good cause and actual prejudice can overcome the procedural bars**

4 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
5 and proving specific facts that demonstrate good cause for his failure to present his claim in
6 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
7 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
8 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev.
9 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents
10 claims that either were or could have been presented in an earlier proceeding, unless the court
11 finds both cause for failing to present the claims earlier or for raising them again and actual
12 prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001)
13 (emphasis added).

14 "To establish good cause, appellants must show that an impediment external to the
15 defense prevented their compliance with the applicable procedural rule." Clem v. State, 119
16 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
17 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
18 impediment could be "that the factual or legal basis for a claim was not reasonably available
19 to counsel, or that 'some interference by officials' made compliance impracticable."
20 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
21 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
22 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
23 must not be the fault of the petitioner. NRS 34.726(1)(a).

24 The Nevada Supreme Court has clarified that a defendant cannot attempt to
25 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
26 must be a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 251, 71
27 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
28 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel

1 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
2 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
3 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
4 111 Nev. 335, 890 P.2d 797 (1995).

5 A petitioner raising good cause to excuse procedural bars must do so within a
6 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
7 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
8 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
9 available to the petitioner during the statutory time period did not constitute good cause to
10 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
11 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
12 453 120 S. Ct. 1587, 1592 (2000).

13 To demonstrate prejudice to overcome the procedural bars, a defendant must show “not
14 merely that the errors of [the proceeding] created possibility of prejudice, but that they worked
15 to his actual and substantial disadvantage, in affecting the state proceedings with error of
16 constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
17 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

18 Claims that Petitioner’s counsel was ineffective or that Petitioner did not plead
19 voluntarily were reasonably available during the statutory time period for the filing of a habeas
20 petition. The Amended Judgment of Conviction cannot constitute good cause for failing to file
21 a petition on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Court finds
22 Petitioner fails to demonstrate good cause.

23 **D. Petitioner fails to meet his burden to overcome the procedural bars**

24 Petitioner claims his counsel failed to ask if he wanted to file an appeal, his sentence
25 was not as he expected, his counsel was ineffective for failing to object to the sentence, and he
26 pled guilty without understanding the consequences. Petition at 2, 3-4, 6-8. Because Petitioner
27 entered his plea knowingly and voluntarily, and because he can show no good cause for his
28 //

1 delay in filing nor constitutional errors working to his actual disadvantage, his claims are
2 procedurally barred.

3 **II. PETITIONER ENTERED HIS PLEA KNOWINGLY AND VOLUNTARILY**

4 The law in Nevada establishes that a plea of guilty is presumptively valid, and the
5 burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev.
6 at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295
7 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal v.
8 State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

9 To determine whether a guilty plea was voluntarily entered, the Court will review the
10 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
11 P.2d at 367. A proper plea canvass should reflect that:

12 [T]he defendant knowingly waived his privilege against self-incrimination,
13 the right to trial by jury, and the right to confront his accusers; (2) the plea
14 was voluntary, was not coerced, and was not the result of a promise of
15 leniency; (3) the defendant understood the consequences of his plea and the
range of punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

16 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
17 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
18 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
19 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.
20 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

21 This standard requires the court accepting the plea to personally address the defendant
22 at the time he enters his plea in order to determine whether he understands the nature of the
23 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
24 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
25 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
26 formal setting, such as that occurring between an official sitting in judgment of an accused at
27 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
28

1 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
2 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
3 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
4 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
5 1463, 1470 (1970).

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 Further, the Nevada Supreme Court has explained:

15 [A] guilty plea represents a break in the chain of events which has preceded
16 it in the criminal process. When a criminal defendant has solemnly admitted
17 in open court that he is in fact guilty of the offense with which he is charged,
18 he 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 Here, the record demonstrates Petitioner entered his plea knowingly and voluntarily.
27 His GPA contained the following language:

28 //

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

21 GPA at 5.

22 By signing his GPA, Petitioner affirmed he knew the State would have to prove each
23 element of each crime. GPA at 5. His attorney informed him of his rights, his options, and the
24 best course of action. GPA at 5. Petitioner did not believe going to trial was in his best interest.
25 GPA at 5. His attorney did not coerce him into signing the GPA. GPA at 5. Petitioner affirmed
26 his counsel answered all his questions and he was satisfied with his attorney. GPA at 5.

27 Petitioner also made these assertions in court during the plea canvass the district court
28 inevitably conducts when accepting a plea. The canvass requires the defendant to assert that
no one could promise him "probation, leniency or any special treatment" and that the defendant
understood the written plea agreement he signed. The court asks if the defendant has questions
about the rights he gave up or the negotiations he undertook. The purpose of the plea canvass
by the district court was to underscore Petitioner's knowledge and volition.

1 Petitioner decided, with the advice of counsel, that entering a plea was in his best
2 interest. Patton, 91 Nev. at 2, 530 P.2d at 107. He understood the nature of the charges to
3 which he pled. Bryant, 102 Nev. at 271, 721 P.2d at 367. That his plea in hindsight appears
4 unwise does not mean his counsel was ineffective at the time the plea was entered. Larson,
5 104 Nev. at 694, 766 P.2d at 263. The decision to accept the plea, knowing the potential
6 penalties that could be levied against him, belonged to Petitioner alone. Rhyne, 118 Nev. at 8,
7 38 P.3d at 163.

8 Petitioner alleges his agreed-upon sentence was for a probationable 2 to 15 years
9 sentence. Petition at 2, 3, 6. This claim is belied by the record. At his preliminary hearing,
10 Petitioner unconditionally waived his hearing so he could plead guilty in District Court. See
11 Reporter's Transcript of Waiver of Preliminary Hearing, filed November 9, 2017. Petitioner's
12 attorney outlined the deal for the court:

13 Um, the State retains the right to argue at sentencing, the State agrees to OR
14 release at entry of plea, um, and my client stipulates that if he picks up any
15 new case while he's out or if he fails to appear for his P & P interview or for
his sentencing, he stipulates to 6 to 15 in NDOC.

16 Id. at 3. This same 6-15 year stipulation was in the GPA. GPA at 1. This language was in the
17 original Judgment of Conviction, which sentenced Petitioner to a suspended sentence of
18 seventy-two to one hundred eighty months in the NDOC. This language was in the Amended
19 Judgment of Conviction, which sentenced Petitioner to seventy-two to one hundred eighty
20 months in the NDOC.

21 Petitioner's asserted 2-15 year sentence is nowhere articulated and was never
22 contemplated by the parties. Petitioner's claim that his plea is unknowing because he agreed
23 to a 2-15 year sentence is belied by the record and must be dismissed pursuant to Hargrove,
24 100 Nev. at 502, 686 P.2d at 225.

25 Petitioner claims the judge "deviated" from the agreed-upon sentence. Petition at 4. He
26 asserts the judge gave him a sentence of 6-15 years "just because" he suspended the sentence,
27 "as a consequence for granting probation." Petition at 3. The judge did deviate from the agreed-
28 upon terms of the GPA, but the deviation was in Petitioner's favor. Because Petitioner failed

1 to show up for sentencing, the plain language of the GPA stated he would *immediately* be
2 sentenced to 6-15 years in the NDOC. GPA at 1. Instead, the judge suspended this sentence
3 and allowed Petitioner to enter probation. Judgment of Conviction at 1. This deviation did not
4 prejudice Petitioner.

5 Petitioner states that if he had known the judge could impose a sentence of 6-15 years,
6 he would not have pled guilty. Petition at 4. This is belied by the record, as Petitioner signed
7 the GPA which specifically called for a sentence of 6-15 years and chose to plead guilty
8 anyway. Further, the GPA states probation is up to the discretion of the sentencing judge and
9 that Petitioner had not been promised any particular sentence. GPA at 2-3. He affirmed, "I
10 know that my sentence is to be determined by the Court within the limits prescribed by statute."
11 GPA at 3.

12 Even if Petitioner had appeared for sentencing, the State had the right to argue for any
13 legal sentence. GPA at 1. Under NRS 200.380(2), a sentence of 6-15 years is within the
14 statutory range for robbery. Since sentencing was left to the discretion of the sentencing court,
15 Petitioner could have received the sentence of 6-15 years without probation from the very
16 beginning. Instead, the court gave Petitioner probation. Judgment of Conviction at 1.

17 Petitioner violated probation only two weeks after his Judgment of Conviction was
18 filed. See Violation Report, prepared on April 30, 2020, at 2. Petitioner reported to his
19 probation officer with cocaine in his urine on December 7, 2017. Id. A couple months later,
20 he showed up with a knife. Id. at 1. The following month, he arrived at the probation office
21 with a blood alcohol level of .101. Id. In July 2018, Petitioner was cited by the police for
22 obstructing a sidewalk. Id. The following month, he was cited for driving without a license
23 and without insurance, resulting in an arrest warrant. Id. In November 2019, arrest warrants
24 were issued charging Petitioner with reckless driving, driving without a license, and driving
25 with an open container of alcohol. Id. at 2. In January 2020, the probation office cited Petitioner
26 for not living at his registered address. Id. For each violation, the probation officer chose to
27 work with Petitioner to encourage him to follow probation's rules, as well as the laws of
28 Nevada.

1 Despite these opportunities to learn from his mistakes, Petitioner was arrested on April
2 28, 2020, for six counts of assault with a deadly weapon, three counts of felony child
3 endangerment, discharging a gun, and possession of a gun by a prohibited person:

4 According to a police report of the incident, on April 26, 2020, at about 2111
5 hours, LVMPD officers responded to a residence where Mr. Weldon was
6 accused of starting an argument, pointing a firearm at people, and eventually
7 firing the gun into a wall inside the residence in close proximity to a male
8 adult and three juveniles; the youngest of which is three years old; two other
9 adults were also in the residence. According to the report, before leaving the
10 residence, Mr. Weldon stated that he would return to the residence and shoot
everybody. The report also indicates that Mr. Weldon sent a text message to
the victims advising he would be back and things would be worse.

11 Id. at 2. Petitioner has no one but himself to blame for not being on probation right now.

12 Petitioner alleges his sentence is “illegal,” but this claim is not cogent. “The sentence
13 is also illegal because the max sentence on a 2-15 year sentence is 66 to 180 months, category
14 B felony.” Petition at 4. Disregarding the fact that the parties never agreed to a 2-15 year
15 sentence, the maximum sentence for a 2-15 year term is 15 years. A party seeking review bears
16 the responsibility “to cogently argue, and present relevant authority” to support his assertions.
17 Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38
18 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
19 80, 83 (1991) (defendant’s failure to present legal authority resulted in no reason for the district
20 court to consider defendant’s claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)
21 (an arguing party must support his arguments with relevant authority and cogent argument;
22 “issues not so presented need not be addressed”); Randall v. Salvation Army, 100 Nev. 466,
23 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation
24 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d
25 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the
26 merits).

27 Finally, Petitioner asserts his plea was unintelligent because he did not know his
28 attorney was not going to file an appeal on her own initiative. Petition at 6. He appears to claim

1 that if he had known he would be held accountable for the agreement he entered into with the
2 State, he would not have made it. A plea agreement is a contract between parties, not a
3 placeholder to be discarded once the threat of trial has diminished. Whether Petitioner thought
4 his attorney would appeal *after* sentencing does not factor into whether his plea was knowing
5 or voluntary at the time, he entered the agreement.

6 Petitioner cites to NRS 178.556 for the proposition that he is entitled to withdraw his
7 plea and proceed to trial; however, this statute only concerns the speedy trial rights of a
8 defendant who has not pled guilty. Based on the totality of the circumstances, Petitioner's plea
9 was knowingly and voluntarily made at the time he entered it. He is not entitled to withdraw
10 his plea now just because he has to serve his agreed-upon sentence.

11 **II. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF**
12 **COUNSEL**

13 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
14 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
15 defense.” The United States Supreme Court has long recognized that “the right to counsel is
16 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
17 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
18 (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 the Strickland test, a defendant must show first that his counsel's
23 representation fell below an objective standard of reasonableness, and second, that but for
24 counsel's errors, there is a reasonable probability that the result of the proceedings would have
25 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
26 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

27 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the

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1 inquiry in the same order or even to address both components of the inquiry if the defendant
2 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

9 Counsel cannot be ineffective for failing to make futile objections or arguments. See
10 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
11 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
12 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
13 (2002).

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

25 “There are countless ways to provide effective assistance in any given case. Even the
26 best criminal defense attorneys would not defend a particular client in the same way.”
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel’s representation fell below an
6 objective standard of reasonableness, he must still demonstrate prejudice and show a
7 reasonable probability that, but for counsel’s errors, the result of the trial would have been
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
11 694, 104 S. Ct. at 2064-65, 2068).

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 Ineffective assistance of counsel does not exist where a defense attorney makes “a
18 reasoned plea recommendation which hindsight reveals to be unwise” or where an attorney
19 relies “on an ultimately unsuccessful defense tactic.” Larson v. State, 104 Nev. 691, 694, 766
20 P.2d 261, 263 (1988).

21 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
22 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
23 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
24 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
25 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
26 that a defendant lacked standing to challenge the validity of a plea agreement because he had
27 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
28 468, 477, 958 P.2d 91, 96 (1998).

1 Further, the Nevada Supreme Court has explained:

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

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

15 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
16 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
17 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered
18 into on the advice of counsel, and the burden is on a defendant to show that the plea was not
19 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
20 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jeziarski v. State, 107
21 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly
22 advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer
23 is the defendant’s. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

24 A “habeas corpus petitioner must prove the disputed factual allegations underlying his
25 ineffective-assistance claim by a preponderance of the evidence.” Means, 120 Nev. at 1012,
26 103 P.3d at 33. Claims of ineffective assistance of counsel asserted in a petition for post-
27 conviction relief must be supported with specific factual allegations, which if true, would
28 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
allegations are not sufficient, nor are those belied and repelled by the record. Id. “[Petitioner]

1 must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific
2 facts rather than just conclusions may cause your petition to be dismissed.” NRS 34.735(6).

3 Petitioner alleges his counsel was ineffective for allowing him to accept an illegal
4 sentence. As his sentence was not only legal, but agreed-upon, counsel cannot be deemed
5 ineffective for failing to object to it. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

6 Petitioner also alleges his counsel was ineffective for failing to file an appeal without
7 being asked. Petition at 2. He complains his “attorney never asked Petitioner if he wanted to
8 appeal and the attorney denied Petitioner effective assistance of counsel by not filing a notice
9 of appeal.” Id.

10 “The burden is on the client to indicate to his attorney that he wishes to pursue an
11 appeal.” Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). Counsel is only obligated
12 to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in
13 certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). “[T]rial counsel
14 has a constitutional duty to file a direct appeal in two circumstances: when requested to do so
15 and when the defendant expresses dissatisfaction with his conviction, and that the failure to do
16 so in those circumstances is deficient for purposes of proving ineffective assistance of
17 counsel.” Id. at 977, 267 P.3d at 800

18 Counsel has no constitutional obligation to inform or consult with a defendant regarding
19 his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,
20 the duty arises “only when the defendant inquires about the right to appeal or in circumstances
21 where the defendant may benefit from receiving advice about the right to a direct appeal, ‘such
22 as the existence of a direct appeal claim that has reasonable likelihood of success.’ Id. (quoting
23 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

24 Courts should consider “all the information counsel knew or should have known” and
25 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
26 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
27 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
28 appealable issues and because such a plea may indicate that the defendant seeks an end to

1 judicial proceedings.” Id. Thus, when a defendant who pled guilty claims, he was deprived of
2 the right to appeal, “the court must consider such factors as whether the defendant received
3 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
4 some or all appeal rights.” Id.

5 The United States Supreme Court requires courts to review three factors when
6 determining whether a defendant was deprived of his right to an appeal: whether the defendant
7 asked counsel to file an appeal; whether the conviction was the result of a trial or a guilty plea;
8 and whether the defendant had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528
9 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000).

10 The GPA expressly waived appellate rights. In signing the Guilty Plea Agreement
11 (“GPA”), Petitioner confirmed he understood the rights he waived:

12 WAIVER OF RIGHTS

13 By entering my plea of guilty, I understand that I am waiving and *forever*
14 *giving up* the following rights and privileges:

- 15 1. The constitutional privilege against self-incrimination, including the right
16 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 17 2. The constitutional *right to a speedy and public trial* by an impartial jury,
18 free of excessive pretrial publicity prejudicial to the defense, at which
19 trial I would be entitled to the assistance of an attorney, either appointed
or retained. At trial *the State would bear the burden* of proving beyond a
reasonable doubt each element of the offense(s) charged.
- 20 3. The constitutional right to confront and cross-examine any witnesses who
21 would testify against me.
- 22 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 23 5. The constitutional right to testify in my own defense.

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1 6. *The right to appeal the conviction* with the assistance of an attorney,
2 either appointed or retained, *unless specifically reserved in writing* and
3 agreed upon as provided in NRS 174.035(3). I understand this means *I*
4 *am unconditionally waiving my right to a direct appeal* of this conviction,
5 including any challenge based upon reasonable constitutional,
6 jurisdictional, or other grounds that challenge the legality of the
7 proceedings as stated in NRS 177.015(4). However, I remain free to
8 challenge my conviction through other post-conviction remedies
9 including a habeas corpus petition pursuant to NRS Chapter 34.

10 GPA at 4 (emphasis added). Petitioner expressly waived his appeal rights and his counsel was
11 fully aware of this waiver.

12 Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v.
13 Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with
14 the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his
15 claim is a bare allegation suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686
16 P.2d at 225.

17 Petitioner received the benefit he bargained for. Despite the State having the right to
18 argue sentence, despite failing to appear for sentencing, and despite his numerous probation
19 violations, Petitioner is only serving 6-15 years, just as outlined in his GPA.

20 Petitioner has sat on his appellate rights for years. Since his Judgment of Conviction
21 was filed in 2017, it should have been obvious before now that his attorney did not appeal. His
22 habeas petition, let alone a direct appeal, is time-barred with no good cause shown for the
23 delay. Petitioner did not raise any issue in the Petition until after his probation was revoked
24 and he had to begin serving his sentence. Moreover, Petitioner cannot demonstrate prejudice,
25 as his individual contentions are without merit. His counsel was not ineffective for failing to
26 appeal when Petitioner received a legal, asked-for sentence.

27 **V. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

28 Petitioner asks for appointed counsel, not to assist him with his habeas claims, but to
represent him at the speedy jury trial within sixty days he demands this Court award him. See

//

1 Motion for Appointment of Counsel. He further claims counsel is needed as he is serving an
2 illegal sentence. Id.

3 Under the United States Constitution, the Sixth Amendment provides no right to
4 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.
5 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
6 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a
7 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right
8 to counsel provision as being coextensive with the Sixth Amendment to the United States
9 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)
10 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
11 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
12 164, 912 P.2d at 258.

13 The Nevada Legislature has, however, given courts discretion to appoint post-
14 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
15 the petition is not dismissed summarily.” NRS 34.750

16 The Court has discretion in determining whether to appoint counsel. NRS 34.750 reads:

17 A petition may allege that the Defendant is unable to pay the costs of the
18 proceedings or employ counsel. If the court is satisfied that the allegation of
19 indigency is true and the petition is not dismissed summarily, the court may
appoint counsel at the time the court orders the filing of an answer and a return.
In making its determination, the court may consider whether:

- 20 (a) The issues are difficult;
21 (b) The Defendant is unable to comprehend the proceedings; or
22 (c) Counsel is necessary to proceed with discovery.

23 Recently, the Nevada Supreme Court examined whether a district court appropriately
24 denied a defendant’s request for appointment of counsel based upon the factors listed in NRS
25 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the
26 petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d
27 at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a
28 pro se habeas corpus petition and requested counsel be appointed. Id. The district court
ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing

1 the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
2 concluded the district court's decision should be reversed and remanded. Id. The Court
3 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
4 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
5 the Court concluded that because petitioner represented, he had issues with understanding the
6 English language—which was corroborated by his use of an interpreter at his trial—that was
7 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
8 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
9 sentence—were severe and his petition may have been the only vehicle for which he could
10 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance
11 of counsel claims may have required additional discovery and investigation beyond the record.
12 Id.

13 Petitioner has not demonstrated counsel should be appointed, as he fails to meet *any* of
14 the additional statutory factors under NRS 34.750. The issues raised by Petitioner are not
15 difficult: he simply wants a better deal than the one he negotiated. NRS 34.750(a). Petitioner
16 is able to comprehend the proceedings. NRS 34.750(b). He has not argued he has difficulties
17 with the English language, unlike the petitioner in Renteria-Novoa. 133 Nev. at 76, 391 P.3d
18 at 760-61. Petitioner has not alleged further discovery is necessary. NRS 34.750(c). Since
19 habeas relief is procedurally barred, there is no need for additional discovery, let alone
20 counsel's assistance to conduct such investigation.

21 Appointing counsel to represent Petitioner at a trial within sixty days is premature. This
22 can wait until a court determines Petitioner is actually privileged to cast his plea bargain aside
23 now that he has had to start serving his sentence. Further, this is not the type of legal assistance
24 authorized under NRS 34.750. Because the statutory factors and the Renteria-Novoa analysis
25 weigh *against* the discretionary appointment of counsel, Petitioner is not entitled to the
26 appointment of counsel.

27 //

28 //

ORDER

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

FURTHER, IT IS HEREBY ORDERED that the Motion for Appointment of Counsel shall be, and it is, hereby denied.

DATED this ____ day of February, 2022.

Dated this 17th day of February, 2022

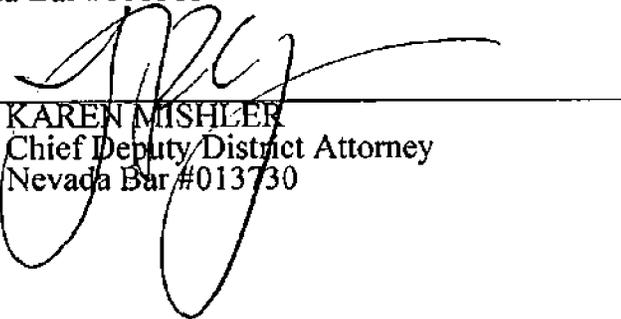


DISTRICT JUDGE

F89 352 EF9F 4E45
Erika Ballou
District Court Judge

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

BY


KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

CERTIFICATE OF SERVICE

I certify that on the 16th day of February, 2022, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

HYKEEM TYRESE WELDON, BAC #1104578
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

BY


Secretary for the District Attorney's Office

16F21196X/sr/KM/ckb/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Hykeem Weldon, Plaintiff(s)

CASE NO: A-20-821331-C

7 vs.

DEPT. NO. Department 24

8 Nevada State of, 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 Finding of Fact and Conclusions of Law was served via the court's
13 electronic eFile system to all recipients registered for e-Service on the above entitled case as
listed below:

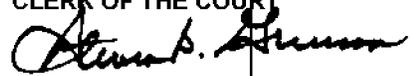
14 Service Date: 2/17/2022

15 D A motions@clarkcountyda.com

16 AG 1 rgarate@ag.nv.gov

17 AG 2 aherr@ag.nv.gov

18 AG AG wiznetfilings@ag.nv.gov



1 ASTA
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3
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6

7 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
8 **STATE OF NEVADA IN AND FOR**
9 **THE COUNTY OF CLARK**

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 HYKEEM WELDON
14 aka HYKEEM TYRESE WELDON,

15 Defendant(s),

Case No: C-17-321763-1

Dept No: XXXII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Hykeem Weldon

20 2. Judge: Erika Ballou

21 3. Appellant(s): Hykeem Weldon

22 Counsel:

23 Hykeem Weldon #1104578
24 1200 Prison Rd.
25 Lovelock, NV 89419

26 4. Respondent: The State of Nevada

27 Counsel:

28 Steven B. Wolfson, District Attorney
200 Lewis Ave.

1 Las Vegas, NV 89101
2 (702) 671-2700

3 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
4 Permission Granted: N/A

5 Respondent(s)'s Attorney Licensed in Nevada: Yes
6 Permission Granted: N/A

7 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

8 7. Appellant Represented by Appointed Counsel On Appeal: N/A

9 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

10 9. Date Commenced in District Court: March 6, 2017

11 10. Brief Description of the Nature of the Action: Criminal

12 Type of Judgment or Order Being Appealed: Post-Conviction Relief

13 11. Previous Appeal: No

14 Supreme Court Docket Number(s): N/A

15 12. Child Custody or Visitation: N/A

16 Dated This 8 day of March 2022.

17 Steven D. Grierson, Clerk of the Court

18
19 /s/ Heather Ungermann

20 Heather Ungermann, Deputy Clerk
21 200 Lewis Ave
22 PO Box 551601
23 Las Vegas, Nevada 89155-1601
24 (702) 671-0512

25 cc: Hykeem Weldon
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 08, 2017

C-17-321763-1 State of Nevada
vs
Hykeem Weldon

March 08, 2017 10:00 AM Initial Arraignment

HEARD BY: Henry, Jennifer COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Haly Pannullo

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Oliver, Melissa Attorney
Weldon, Hykeem Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Alexander Vail, present on behalf of the State.

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. WELDON ARRAIGNED AND PLED GUILTY TO ROBBERY (F). Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. Pursuant to stipulation and/or negotiations, COURT FURTHER ORDERED, Deft. GRANTED Own Recognizance (OR) Release and DIRECTED Deft. to report to P & P immediately.

O.R. (COC)

07/06/2017 9:00 AM SENTENCING (DEPT 20)

by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.

2. RESIDENCE: You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.

3. INTOXICANTS: You shall not consume or possess any alcoholic beverages WHATSOEVER or recreational marijuana in Nevada or any other State where such possession is considered legal. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for either breath, blood or urine, to determine blood, breath or urine for alcohol, marijuana or THC content.

4. CONTROLLED SUBSTANCES: You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent. A prescription does not include medical marijuana.

5. WEAPONS: You shall not possess, have access to, or have under your control, any firearm, explosive device or other dangerous weapon as defined by Federal, State or local law.

6. SEARCH: You shall submit your person, property, place of residence, vehicle, or areas under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent. The Defendant shall inform any other occupant of the premises where you reside or area under your control, that the premises or area may be subject to a search pursuant to this condition.

7. ASSOCIATES: You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.

8. DIRECTIVES AND CONDUCT: You shall follow the directives of the Division of Parole and Probation.

9. LAWS: You shall comply with all Municipal, County, State, and Federal laws and ordinances.

10. OUT-OF-STATE TRAVEL: You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.

11. EMPLOYMENT/PROGRAM: You shall seek and maintain legal employment, or maintain a vocational or educational program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division. During any period of time which you are not employed or participating in an approved program full time, the Division of Parole and Probation may require you to participate in up to 60 hours of community service work each month.

12. FINANCIAL OBLIGATION: You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.

SPECIAL CONDITIONS:

1. Submit to substance abuse and alcohol evaluations as deemed necessary by Parole and

Probation and complete any recommended care plan, treatment or counseling program based on those evaluations.

2. Comply with an imposed curfew as deemed necessary by Parole and Probation.

3. Provide the Probation Officer access to any requested financial information, including personal income tax returns, authorization for release of credit information and any other business financial information in which you have a control or interest.

4. Pay \$500 restitution to Raymond Dobbs and Laurie Dobbs in monthly payments as determined by Parole and Probation based on income verified by the Division.

Defendant was advised the above conditions are immediately in effect upon his leaving the Courtroom and not contingent upon the filing of the Judgment of Conviction nor meeting with his Probation Officer. Further, Defendant was directed to report to Parole and Probation within 48 hours of this proceeding.

BOND, if any, EXONERATED.

C-17-321763-1

NDC

PRINT DATE: 03/22/2022

Page 13 of 13

Minutes Date: March 08, 2017

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated March 16, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 206.

STATE OF NEVADA,

Plaintiff(s),

vs.

HYKEEM WELDON
aka HYKEEM TYRESE WELDON,

Defendant(s),

Case No: C-17-321763-1
Related Case A-20-821331-C
Dept. No: XXXII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 22 day of March 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

