IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 03 2022 08:55 AM
Elizabeth A. Brown
Clerk of Supreme Court

ERIN DESHAUN WARE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310099-1

Docket No: 85345

RECORD ON APPEAL
VOLUME
3

ATTORNEY FOR APPELLANT
ERIN WARE # 1017483,
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

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

C-15-310099-1 State of Nevada vs Erin Ware

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vs
Erin Ware

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C-15-310099-1 State of Nevada
vs
Erin Ware

I N D E X

C-15-310099-1 State of Nevada
vs
Erin Ware

I N D E X

C-15-310099-1 State of Nevada
vs
Erin Ware

I N D E X

ORIGINAL

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ELIZABETH MERCER
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200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 0 7 2018

BY: A. Trujillo
ATHENA TRUJILLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-15-310099-1
GPA
Guilty Plea Agreement
4718890

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); and, SOLICITATION TO COMMIT MURDER (Category B Felony - NRS 199.500.2 - NOC 50037), 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:

As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of corrections. As to the charge of Attempt Murder with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven

(7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly Weapon count. As to the charge of Solicitation to Commit Murder, the State agrees to make no recommendation and agrees to run the sentence on that count concurrently. Additionally, the State agrees to dismiss Case No. C317264 after sentencing in this case. Defendant agrees to pay restitution as to all counts and cases, including those being dismissed.

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.

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

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

CONSEQUENCES OF THE PLEA

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

I understand that as a consequence of my plea of guilty to the charge of Robbery with Use of a Deadly Weapon, I must be sentenced to a minimum term of imprisonment of two (2) years and up to a maximum term of fifteen (15) years, plus a consecutive one (1) to fifteen (15) years as to the deadly weapon enhancement. The minimum sentence may not exceed forty percent (40%) of the maximum sentence.

I further understand that as to the charge of Attempt Murder with Use of a Deadly Weapon, the Court must sentence me to a minimum term of imprisonment of two (2) years and a maximum term of imprisonment of twenty (20) years, plus a consecutive term of imprisonment of one (1) to twenty (20) years for the use of a deadly weapon. The minimum sentence must not exceed forty percent (40%) of the maximum sentence.

I further understand that as to the charge of Solicitation to Commit Murder, the Court must sentence me to a minimum term of imprisonment of two (2) years and a maximum term of imprisonment of fifteen (15). The minimum sentence must not exceed forty percent (40%) of the maximum sentence.

I understand that the law requires me to pay an Administrative Assessment Fee.

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

I understand that as to **Count 1 (Robbery with Use of a Deadly Weapon)**, I am NOT eligible for probation.

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

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

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

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

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

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

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

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

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

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right 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.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which 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.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

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

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 8th day of February, 2018.

ERIN WARE
Defendant

AGREED TO BY:

ELIZABETH MERCER
Chief Deputy District Attorney
Nevada Bar #10681

CERTIFICATE OF COUNSEL:

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

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

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

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

   a. The removal from the United States through deportation;

   b. An inability to reenter the United States;

   c. The inability to gain United States citizenship or legal residency;

   d. An inability to renew and/or retain any legal residency status; and/or

   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

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

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

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

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 7 day of February, 2018.

ATTORNEY FOR DEFENDANT

em/GCU

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

FOURTH AMENDED

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That ERIN DESHAUN WARE, the Defendant(s) above named, having committed the crimes of **ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); and SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2 – NOC 50037)**, on or between the 10th day of June, 2015, and the 14th day of December, 2015, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

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EXHIBIT "1"

EXHI 1

W:\2015\2015F\108\49\15F10849-4THAINF-(WARE_ERIN)-002.DOCX

COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON

did, on or about the 10th day of June, 2015, willfully, unlawfully, and feloniously take personal property, to-wit: a handgun, from the person of RUTH GARN and/or JAIMIE NOURIE and/or SHERRI FOLEY and/or BURDETT JONES, or in her or his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of RUTH GARN and/or JAIMIE NOURIE and/or SHERRI FOLEY and/or BURDETT JONES, with use of a deadly weapon, to-wit: a handgun.

COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did, on or about the 10th day of June, 2015, willfully, unlawfully, feloniously and with malice aforethought attempt to kill RUTH GARN, a human being, with use of a deadly weapon, to-wit: a handgun, by shooting at and into the body of the said RUTH GARN.

COUNT 3 – SOLICITATION TO COMMIT MURDER

did, on or between the 9th day of December, 2015, and the 14th day of December, 2015, wilfully, unlawfully, and feloniously counsel, hire, command or otherwise solicit another, to-wit: an UNDERCOVER OFFICER, to commit the murder of JAMIE NOURIE.

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

BY _____
ELIZABETH MERCER
Chief Deputy District Attorney
Nevada Bar #010681

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LVMPD EV#1506102629
(TK2)

THIS SEALED DOCUMENT, NUMBERED PAGE(S) 494 - 506 WILL FOLLOW VIA U.S. MAIL

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

STATE OF NEVADA	CASE NO.: C-15-310099-1
VS	DEPARTMENT 9
ERIN WARE	

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 11th day of April, 2018.

Jennifer P. Togliatti

JENNIFER TOGLIATTI
DISTRICT COURT JUDGE

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN WARE
#2652033

Defendant.

CASE NO. C-15-310099-1
Cons w/ C-16-311782-1
DEPT. NO. IX

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and COUNT 3 – SOLICITATION TO COMMIT MURDER (Category B Felony) in violation of NRS 199.500.2; thereafter, on the 10th day April, 2018, the Defendant was present in court for sentencing with counsel JOSHUA L. TOMSHECK, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment and $49,823.79 Restitution to Victims of Crime, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: **COUNT 1**

- a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (`120) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS for the Use of a Deadly Weapon; **COUNT 2** – a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 1; and **COUNT 3** – a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS, CONCURRENT with COUNTS 1 and 2; with NINE HUNDRED SEVENTY-ONE (971) DAYS credit for time served. The AGGREGATE TOTAL sentence is FIFTY (50) YEARS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF SEVENTEEN (17) YEARS. Defendant is given credit for time served as to the DNA Analysis Fee previously collected on 05/10/08.

FINDINGS AND CORRECTIONS TO THE PRESENTENCE INVESTIGATION REPORT (PSI): The COURT FINDS the PSI inaccurate as to page 6, under Institutional/Supervision Adjustment, Case C274352 is to be amended to reflect Attempt Burglary not Attempt Robbery; under Offense Synopsis, redact "punched" and replace with "shot at least three times" not four times; and "fled with $400" to be redacted and replaced with "only fled the business with a revolver."

DATED this 18th day of April, 2018.

JENNIFER P. TOGLIATTI
DISTRICT COURT JUDGE

ANT

Erin Ware
(Name)
1017483
(I.D. No.)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

FILED
MAR 2 2 2021
CLERK OF COURT

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DA

District Court
Clark County Nevada

April 13, 2021
1:30 PM

Erin Ware #1017483,
Plaintiff/Movant

vs.

The State OF Nevada,
Defendant/Respondent

Case No.: C-15-310099-1

Department NO. 21

COMES NOW, Erin Ware #1017483, in proper person and herein above respectfully moves this Honorable Court for a(n) modification of Sentence and/or correct illegal Sentence

The instant motion is made and based upon all papers and pleadings on file herein as well as the following Memorandum of Points and Authorities and attached exhibits (where applicable).

RECEIVED
MAR 2 2 2021
CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant respectfully brings this motion to correct illegal sentence under N.R.S. 171.555 and persuant to documents on file.

Standards To Review

Referring to the guilty plea agreement on count I, the defendant was sentenced to 7-25 years. The N.R.S. 193.330 states maximum term of 20 years and the minimum term of 2 years. On count I the defendant was sentenced outside of the N.R.S. guidelines. On count II, the defendant was sentenced to 10-25 years. The N.R.S. 200.380 states maximum term of 15 years and the minimum term of 2 years. The defendant was also sentenced outside of the N.R.S. guidelines in which was aggregated to a maximum of 50 years and a minimum of 17 years which is wholly an illegal sentence.

Standards to Review For Modification of Sentence:

Defendant prays that the judge will examine the evidence and correct the illegal sentence. The defendant prays that the judge modify his sentence and agree for the defendant to finish his sentence structure on residential Confinement. The defendant has been on dialysis for 12 years

and has been in and out of the hospital due to many infections that has ruined the defendants heart function. while being incarsarated. The defendants health has dwindled enormously since incarsaration and the defendant has not been recieving adequate medical care while being under the Care of the N.D.O.C. The defendant and expert witnesses state that Renal Failure patients averagely have a life span of 10 years. Defendant is on his 12th years. The defendant has a kidney donor but can not recieve a Kidney transplant while incarsarated. The defendant prays that the judge has the compassion and understand the facts of this disease and agree that this is a life or death situation. The defendant respectfully asks the honorable judge to commute his sentence and release him on residential confinement for the entirety of his sentence so the defendant can obtain adequate medical care. Please Consider this request.

Dated this 15th day of March, 2021.

By: Erin Ware #1077483

CERTIFICATE OF SERVICE

I, Erin Ware certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Clerk of Court

200 Lewis Avenue
Las Vegas NV 89155

AND

Steven B. Wolfson

200 Lewis Avenue
Las Vegas NV 89155

Dated this 15th day of March, 2021.

By Erin Ware #1017483
Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any Persons.

3/15th/2021
(Date)

Erin Ware
(Signature)

Erin Ware #1017483
N.N.C.C.
P.O BOX #7000
Carson City NV 89702

RENO NV 895
15 MAR 2021 PM 2 T

FOREVER USA

Clark County District Court
Clerk OF The Court
200 Lewis Avenue
Las Vegas NV 89155

514

MAR 15 2021

OPPS
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Nevada Bar #001565
JOHN NIMAN
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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: XX1

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE AND/OR CORRECT ILLEGAL SENTENCE

DATE OF HEARING: APRIL 13, 2021
TIME OF HEARING: 1:30 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Modification of Sentence and/or Correct Illegal Sentence.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 16, 2015, Erin Ware (hereinafter "Defendant") was charged by Information with having committed the crimes of: Burglary While In Possession of a Deadly Weapon (Category B Felony- NRS 205.060- NOC 50426); Battery With Intent to Commit a Crime (Category B Felony- NRS 200.400.2- NOC 50151); Robbery With Use of a Deadly Weapon (Category B Felony- NRS 200.380, 193.165- NOC 50138); Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony- NRS 200.481- NOC 50226); Assault With a Deadly Weapon (Category B Felony-NRS 200.471- NOC 50201); Attempt Murder With Use of a Deadly Weapon (Category B Felony- NRS 200.010, 200.030, 193.330, 193.165- NOC 50031); Discharge of Firearm From or Withing a Structure or Vehicle (Category B Felony- NRS 202.287- NOC 51445); and Ownership or Possession of Firearm by Prohibited Person (Category B Felony- NRS 202.360- NOC 51460). An Amended Information was filed on October 20, 2015, with the abovementioned charges.

On October 27, 2015, at Initial Arraignment Defendant pled not guilty and invoked the 60-day rule. On October 27, 2015, a Second Amended Information was filed to address a clerical error.

Following the filing of multiple pre-trial pleadings, the State filed a Third Amended Information adding the charge Solicitation to Commit Murder (Category B Felony- NRS 199.500.2- NOC 50037).

On February 7, 2018, Defendant pled guilty to: Count 1-Attempt Murder With Use of a Deadly Weapon; Count 2-Robbery With Use of a Deadly Weapon; and, Count 3-Solicitation to Commit Murder. The Guilty Plea Agreement was filed the same day in open court along with a Fourth Amended Information reflecting Defendant's plea.

On April 10, 2018, Defendant was sentenced as follows: Count 1- to a minimum of seventy-two (72) months and a maximum of one hundred eighty (180) months in the Nevada Department of Corrections (NDC) plus a consecutive term of a minimum of twelve (12) months and a maximum of one hundred twenty (120) months in the NDC for the use of a

deadly weapon; Count 2- to a minimum of seventy-two (72) months and a maximum of one hundred eighty (180) months in the NDC plus a consecutive term of a minimum of twelve (12) months and a maximum of one hundred twenty (120) months in the NDC for the use of a deadly weapon, Count 2 to run consecutive to Count 1; and Count 3- to a minimum of forty-eight (48) months and a maximum of one hundred eighty (180) months in the NDC, Count 3 to run concurrent with Counts 1 and 2; for a total aggregate sentence of a minimum of seventeen (17) years and a maximum of fifty (50) years in the NDC with nine hundred seventy one (971) days credit for time served. The Judgment of Conviction was filed on April 19, 2018.

On March 22, 2021, Defendant filed the instant Motion for Modification of Sentence and/or Correct Illegal Sentence ("Motion"). The State's response now follows.

ARGUMENT

I. DEFENDANT'S SENTENCE IS LEGAL

Defendant argues that his sentence is illegal. Motion at 2. NRS 176.555 states that "[t]he court may correct an illegal sentence at anytime." See also Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992). However, the grounds to correct an illegal sentence are interpreted narrowly under a limited scope. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Haney v. State, 124 Nev. 408, 411, 185 P.3d 350, 352 (2008). "A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing." Edwards, 112 Nev. at 708, 918 P.2d at 324.

"Motions to correct illegal sentences address only the facial legality of a sentence." Id. Motions to correct illegal sentences evaluate whether the sentence imposed on the defendant is "'at variance with the controlling statute, or illegal in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)). Other claims attacking the conviction or sentence must be raised by a timely filed direct appeal

or a timely filed Petition for a Post-Conviction Writ of Habeas Corpus per NRS 34.720-34.830, or other appropriate motion. See id.

Here, Defendant argues that his sentence as to Counts 1 and 2 are both outside the relevant statutory guidelines, and thereby illegal. Motion at 3. Defendant's claim is meritless. Defendant pled guilty to: Count 1- Attempt Murder With Use of a Deadly Weapon; Count 2- Robbery With Use of a Deadly Weapon; and Count 3- Solicitation to Commit Murder. Guilty Plea Agreement, at 1. As to Count 1, NRS 200.010 and 200.030 provides the definition and degrees for murder. "Murder" on its own is a Category A Felony. See NRS 200.030. However, the "Attempt" statute knocks down the severity of the underlying crime, because *Attempt* Murder, is a Category B Felony. NRS 193.330(1)(a)(1) provides the range of punishment for Attempt Murder as "a minimum term of not less than 2 years and a maximum term of not more than 20 years;" while the deadly weapon enhancement adds a term of "1 year and a maximum term of not more than 20 years." NRS 193.165. Defendant was sentenced to 6-15 years plus a consecutive term of 1-10 years for the use of the deadly weapon. Judgment of Conviction, at 2. Defendant's sentence falls squarely within the statutory guidelines as to Count 1.

For Count 2, NRS 200.380. states in relevant part:

> 2. A person who commits robbery is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

Further, deadly weapons enhancement provides an additional sentence of 1-20 years. NRS 193.165. Defendant was sentenced to 6-15 years with a consecutive sentence of 1-10 years for the use of a deadly weapon. Again, his sentence falls within the statutory parameters.

As to Count 3, NRS 199.500.2 provides the sentencing range of "a minimum term of not less than 2 years and a maximum term of not more than 15 years." Defendant was sentenced to a term of 4-15 years. This sentence too is within the statutory parameters. Because Defendant's sentence for each charge complies with the relevant statute, his claims should be denied.

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

Not every mistake or error during sentencing gives rise to a due process violation. State v. Eighth Judicial Dist. Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). A district court has jurisdiction to modify a defendant's sentence "only if (1) the district court actually sentenced appellant based on a materially false assumption of fact that worked to appellant's extreme detriment, and (2) the particular mistake at issue was of the type that would rise to the level of a violation of due process." Passanisi, 108 Nev. at 322-23, 831 P.2d at 1373-74.

Here, Defendant requests the modification of his sentence because he has been on dialysis for 12 years and is in poor health. Motion at 2-3. Defendant's issues are outside the scope of a motion to modify sentence. He has not alleged that his sentence violated his due process rights, nor does he allege that his sentence is based upon a materially untrue assumption or mistake of fact about his criminal record that has worked to his extreme detriment. Defendant's claims regarding his health goes beyond what is cognizable in a motion for sentence modification because Defendant received a legal sentenced, as discussed *supra*, which was not imposed based on any mistaken assumptions. Thus, Defendant has failed to make the threshold allegations required to support a claim of sentence medication pursuant to Edwards, and Defendant's Motion for Modification Sentence and/or Correct Illegal Sentence should be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Motion for Modification Sentence and/or Correct Illegal Sentence be DENIED.

DATED this 6th day of April, 2021.

Respectfully submitted,

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

BY */s/ JOHN NIMAN*
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 6th day of April, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ERIN WARE, #1017483
NORTHERN NEVADA CORRECTIONAL CNTR
PO BOX 7000
CARSON CITY, NV 89702

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

JM/ed/GCU

Erin Ware
#1017483
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Petitioner, In Proper Person

District Court
Clark County Nevada

Hearing: 5/13/2021
Time: 1:30 PM

Erin Ware #1017483 Plaintiff VS. The State of Nevada Defendant	Case No.. C-15-310099-1 Department No. 21 Motion for mercy/compassionate release

Comes Now, Erin Ware #1017483, in proper person and herein above respectfully moves this Honorable Court for a(n) mercy/compassionate release.

The instant motion is made and based upon all papers and pleadings on file herein as well as the following memorandum of points and authorities and attached exhibits (where applicable)

Memorandum Of Points And Authorities

Defendant respectfully brings this motion for compassionate/ mercy release persuant to documents on file

Standards To Review

Defendant took a plea deal on 3 counts and was sentenced to 17-50 years. The defendant is in End Stage Renal Failure and has been on dialysis for 12 years. The average lifespan for a dialysis patient is 10 years.

Standards To Review for Mercy/Compassionate Release

Defendant prays that the judge will examine the evidence and grant the defendant with the mercy/compassionate release and agree for the defendant to serve the remainder of his sentence structure on residential confinement 298 program. The defendant has currently been on dialysis for 12 years. The average lifespan for a dialysis patient is 10 years. Over the past few years there has been several occurrences that are unethical and not within the scope of practice for nurses and or Doctors which has led to medical neglect. With the defendant being under the care of the N.D.O.C, his life is significantly in danger due to the defendant not recieving adequate medical care. The defendant has been hospitalized several of times, as of recently in September, 2020 the defendant was hospitalized for over 30 days due to an blood infection from his dialysis port. This infection traveled to the defendants heart and ruined his heart valve due to the procrastination of the medical Staff. The defendant complained to medical staff on 9-18-20 that he was experiencing severe chest

pain and shortness of breath. Medical staff did not send the defendant to the hospital until 9-21-20. During this hospitalization the defendant had multiple test and surgeries and had to take 3 different IV antibiotics 4 times a day until November 26, 2020. Over 2 months of IV medications. The infectous disease Dr. reccommended that the defendant continues to take 2 oral antibiotics for the rest of his life. The defendant has also went through numerous of other surgeries that has his health in critical condition. An outside provider which is an Kidney specialist has wrote letters recommending that the defendant recieve an compassionate release due to his medical condition. The defendant has a kidney donor but unfortunately the defendant can not be an recipient of a kidney while being incarcerated in state prison. Based on all events that has occurred, N.D.O.C. has not and/or isn't capable of providing quality care or being professional and humane. Not recieving the proper medications, not recieving medical care in a timely manner is not adequate medical care nor is it being treated humanely. The defendant has expert witnesses who can attest that the average lifespan for a dialysis patient is 10 years. The defendant is on his 12th year. The defendants biggest fear is dying in prison and as of now the defendants days are numbered. The defendant suffers from the following symptoms and side effects of dialysis: Extreme Fatigueness, severe head aches, vomiting, Nausea, diarreah, muscle cramps, Angio-Edema,

heart attacks, strokes, intense swelling, anemia, dehydration, sleep paralysis, shortness of breath, and death. The defendants End Stage Kidney Failure, according to CDC and Merck Standards qualifies him as being Immuno-comprimised due to the fact that the defendant is at a significantly higher risk of both contracting and dying from viral infections such as Neumonia, Influenza, Covid-19 and other respiratory infections. The defendants health has deteriorated and dwindled enormously since his incarceration. The defendant is now dependant on 3 hemodialysis treatments a week which last about 4 hours. The N.D.O.C. does not adhere to the strict Renal diet for dialysis patients which is detrimentally increasing the probability of the defendants death. This creates harsh conditions of confinement. With all above said, the defendant prays that the judge has the compassion and mercy, and understand the facts of this disease and agrees that this is a life or death matter. The defendant is not a current or future threat to society. The defendant respectfully and humbly asks the honorable judge to commute his sentence and release him on the 298 program Compassionate release residential confinement for the entirety of his sentence, so that the defendant can obtain adequate medical care and/or recieve a kidney transplant. Please consider this request. The defendant is willing to accept all stiff stipulations while being under residential confinement.

Dated this 12th day of April 2021

Respectfully Submitted
Erin Ware #1017483
Erin Ware

Certificate of Service

I, Erin Ware certify that on this date I did serve a true and Correct copy of the foregoing motion upon respondent(s), via mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid and addressed to:

Clerk Of Court
200 Lewis Avenue
Las Vegas NV 89155

Dated this 12th day of April 2021

BY Erin Ware #1017483
Petitioner, In Proper Person

Affirmation Persuant to NRS 239B.030

I Certify that the foregoing document Does Not contain the social security number of any persons.

4/12/2021

Erin Ware
Erin Ware

Erin Ware #1017483
N.N.C.C.
PO BOX #7000
Carson City NV 89702

3717

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*LEGAL

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Clark County District Court
Clerk OF The Court
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Las Vegas NV 89155

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RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: XXI

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

DATE OF HEARING: May 13, 2021
TIME OF HEARING: 1:30 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion for Mercy/Compassionate Release.

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

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 16, 2015, ERIN DESHAUN WARE (hereinafter "Defendant"), was charged by way of Information with BURGLARY WHILE IN POSSESSION OF A DEADLY

WEAPON (Category B Felony – NRS 205.060); BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400.2); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony – NRS 202.287); and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360) for his actions on or about June 10, 2015. On July 6, 2016, the State filed a Third Amended Information, adding one (1) count of SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2), and amending the date of Defendant's alleged crimes to on or between June 10, 2015 and December 14, 2015.

On February 7, 2018, pursuant to plea negotiations, the State filed a Fourth Amended Information, charging Defendant with only the Robbery with Use of a Deadly Weapon, Attempt Murder with Use of a Deadly Weapon, and Solicitation to Commit Murder counts. A Guilty Plea Agreement ("GPA") was also filed on February 7, 2018, memorializing Defendant's agreement to plead guilty in exchange for the following terms:

> As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of [C]orrections. As to the charge of Attempt Murder with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven (7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly Weapon count. As to the charge of Solicitation to Commit Murder, the State agrees to make no recommendation and agrees to run the sentence on that count concurrently.

GPA at 1-2.

On April 10, 2018, Defendant was adjudicated guilty of the crimes to which he pled guilty, and was sentenced, as follows: Count 1 – seventy-two (72) to one hundred eighty (180) months in the Nevada Department of Corrections, with a consecutive twelve (12) to one

hundred twenty (120) months for the use of a deadly weapon; Count 2 – seventy-two (72) to one hundred eighty (180) months, with a consecutive forty-eight (48) to one hundred twenty (120) months tor the use of a deadly weapon, consecutive to Count 1; and Count 3 – forty-eight (48) to one hundred eighty (180) months, concurrent with Counts 1 and 2. Defendant was credited with nine hundred seventy-one (971) days of presentence time served. Defendant's Judgment of Conviction was filed on April 19, 2018.

On March 22, 2021, Defendant filed a Motion for Modification of Sentence. The State filed its Opposition to that Motion on April 6, 2021. As of the filing of the instant Response, no disposition has been announced regarding that Motion.

On April 21, 2021, Defendant filed the instant Motion for Mercy/Compassionate Release. The State's Response now follows:

STATEMENT OF FACTS

The Court relied on the following factual synopsis when sentencing Petitioner:

> On June 10, 2015, officers responded to victim business Subway in reference to a robbery. Upon arrival, officers were advised that a male, later identified as the defendant, Erin Deshaun Ware, entered the business, purchased a cup of water from victim #2, and then left. Moments later, Mr. Ware returned asking to use the restroom. Soon after, pointing a gun, he approached victim #3 and demanded money. Victim #3 retrieved a revolver from her purse and pointed it at Mr. Ware. Mr. Ware then punched her and shot her four times. He ordered victim #2 to the ground and had her crawl to the safe. Mr. Ware then fled the business with $400 and victim #3's revolver. Victim #3 was transported to a local hospital for treatment as she was shot in the left check [sic], left forearm, and twice in the chest.
>
> . . .
>
> On November 30, 2015, a detective received information regarding a male inmate, later identified as the defendant, Erin Deshaun Ware, soliciting to commit the murder of victim #2. Further investigation revealed that Mr. Ware met with an individual, wherein Mr. Ware discussed the individual's payment amount as well as detailed information about victim #2. The second meeting held between Mr. Ware and the individual was to confirm that Mr. Ware still wanted victim #2 killed.

Presentence Investigation Report at 6-7.

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ARGUMENT

I. DEFENDANT'S REQUEST FOR A COMPASSIONATE RELEASE SHOULD BE SERVED ON THE NEVADA OFFICE OF THE ATTORNEY GENERAL

As a preliminary issue, the State submits that the instant Motion should be served upon – and responded to by – the Nevada Office of the Attorney General. A review of the instant Motion reveals that it involves a challenge to the conditions of Defendant's confinement, rather than any challenge to the validity of Defendant's Judgment of Conviction. See, e.g., Motion at 2 (alleging "medical neglect"); as such, the substance of the instant Motion is more appropriate for the Attorney General's consideration, rather than the District Attorney's consideration.

A review of the instant Motion also appears to show that it was not properly served on any party, much less the Attorney General. As such, the State submits that the instant Motion should be denied without prejudice so that Defendant may re-file and appropriately serve these contentions on the appropriate party – the Attorney General.

II. DEFENDANT IS NOT ENTITLED TO COMPASSIONATE RELEASE

In the event this Court deems appropriate to substantively review Defendant's instant Motion, Defendant is not entitled to relief. Defendant requests a compassionate release based on his health concerns. See generally, Instant Motion. However, Defendant fails to provide a legal basis for any such release. See id. To the extent that Defendant is seeking a modification of his sentence, Defendant is not entitled to any such modification. In the alternative, the only statute that provides for the type of relief Defendant seeks specifically excludes prisoners such as Defendant.

A. Defendant is Not Entitled to a Sentence Modification

In general, a district court lacks jurisdiction to modify or vacate a sentence once the defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other grounds by Harris v. State, 130 Nev. 435, 447, 329 P.3d 619, 627 (2014). The Nevada Supreme Court has specified that a defendant starts serving his sentence of imprisonment once the judgment of conviction is "signed by the judge and entered by the

clerk." Miller v. Hayes, 95. Nev. 927, 929, 604 P.2d 117, 118 (1979) (citing NRS 176.105). A motion to correct or modify an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

However, a district court does have inherent authority to correct, vacate or modify a sentence where the defendant can demonstrate the sentence violates due process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards, 112 Nev. at 707, 918 P.2d at 324. Not every mistake or error during sentencing, though, gives rise to a due process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). The Nevada Supreme Court has expressly held, "a motion to modify a sentence is limited in scope to sentences based on mistaken assumptions *about a defendant's criminal record* which work to the defendant's extreme detriment." Edwards, 112 Nev. at 708, 918 P.2d at 324. Motions to modify sentences cannot "be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing." Id. Such issues "must be raised in habeas proceedings." Id.

Defendant began serving his sentence on the date his Judgment of Conviction was filed by the clerk – April 19, 2018. Therefore, absent a showing that this Court lacked jurisdiction to sentence Defendant, or that Defendant's sentence fell outside the statutory limits, this Court now lacks jurisdiction to entertain any request for a modification of Defendant's sentence. Edwards, 112 Nev. at 708, 918 P.2d at 324.

Defendant's instant Motion does not include the standard for obtaining a modification of his sentence, much less argue to meet such a standard. See generally Instant Motion. Instead, Defendant entreats this Court to "show mercy" based on his failing health, and based on allegations of improper or inadequate treatment. Id. at 2-4. Neither of these entreaties grant this Court jurisdiction to modify Defendant's sentence. Edwards, 112 Nev. at 708, 918 P.2d at 324.

B. The Most Similar Statute to What Defendant Requests Specifically Excludes Prisoners such as Defendant

A review of Nevada Statutes reveals no relevant legal authority providing for the type of relief Appellant now requests. Indeed, the most similar statute to what Defendant requests would be NRS 213.12155, which provides for *geriatric* parole in very limited circumstances. That statute allows for a prisoner "65 years of age or older" that has "served at least a majority of the maximum term or maximum aggregate term…of his or her sentence" to be permissively granted parole *if* that prisoner "[h]as not been convicted of…[a] crime of violence," among other restrictions. NRS 213.12155(1)(a).

Defendant was convicted of not only using a firearm to attempt robbery, but also of shooting a woman four (4) times in an attempt of murder. Defendant then, from jail, attempted to hire someone to murder one of his robbery victims. Therefore, even the statute most similar to what Defendant now requests would expressly exclude Defendant from eligibility based upon the sheer violence of Defendant's crimes. NRS 213.12155.

Because there is no relevant legal basis for the relief Defendant now requests, the State submits that Defendant's instant Motion must be denied.

CONCLUSION

Because Defendant's instant Motion appears to raise claims against his conditions of confinement, the State respectfully requests that this Court DENY the instant Motion without prejudice, with instructions that Defendant re-file and properly serve the Nevada Office of the Attorney General. In the alternative, this Court is without jurisdiction to entertain Defendant's

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request for a sentence modification, and there is no statutory authority for the specific relief Defendant now requests; as such, the State requests that this Court DENY Defendant's instant Motion.

DATED this 10th day of May, 2021.

Respectfully submitted,

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

BY /s/JOHN NIMAN
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 10th day of May, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ERIN WARE #1017483
NORTHERN NEVADA CORRECTION CENTER
PO Box 7000
Carson City, NV 89702

BY /s/D. Daniels
Secretary for the District Attorney's Office

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #11002
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-

ERIN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: XXI

ORDER DENYING DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE AND/OR CORRECT ILLEGAL SENTENCE

DATE OF HEARING: April 20, 2021
TIME OF HEARING: 03:00 P.M.

THIS MATTER having come on for hearing before the above entitled Court on the 20th day of April, 2021, the Defendant not being present, REPRESENTED BY JOSHUA L. TOMSHECK, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, and the Court having heard the arguments of counsel, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Motion for Modification of Sentence and/or Correct Illegal Sentence, shall be, and it is DENIED. Mr. Tomsheck's oral Motion to Withdaw is GRANTED.

COURT NOTED as to the Motion to Modify Sentence, the Court adopted the reasons of the State on page five. As to the health issues the Court did not have the jurisdiction, it was not properly brought, and it may be a civil matter.

Dated this 24th day of May, 2021

1BA F70 2BAA 571D
Tara Clark Newberry
District Court Judge

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

BY /s/ MEGAN THOMSON
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #11002

15F10849X/jh/GCU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-15-310099-1
vs	DEPT. NO. Department 21
Erin Ware	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 5/24/2021

Dept 21 Law Clerk	dept21lc@clarkcountycourts.us
Kristina Rhoades	Kristina.Rhoades@clarkcountyda.com
Elizabeth Mercer	Elizabeth.Mercer@clarkcountyda.com
Adrienne Theeck	adrienneT@hoflandlaw.com
Department Law Clerk	dept09lc@clarkcountycourts.us
Joshua Tomsheck	josht@hoflandlaw.com

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIN DESHAUN WARE,
#2652033,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-842235-W
C-15-310099-1

DEPT NO: XXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: December 21, 2021
TIME OF HEARING: 1:30 PM

THIS CAUSE having come on for hearing before the Honorable BITA YEAGER, District Judge, on the 21st day of December, 2021, the Petitioner being not present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through WILLIAM J. MERBACK, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 16, 2015, Erin Deshaun Ware ("Petitioner") was charged via Information with Count One: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Category B Felony – NRS 205.060); Count Two: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Three: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Four: BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400.2); Count Five: BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); Count Six: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count Seven: ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); Count Eight: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Nine: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Ten: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); and Count Eleven: OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360).

This Information was amended on October 20, 2015, and again on October 27, 2015. On July 6, 2016, the Information was again amended, this time adding Count Twelve: SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2).

Petitioner's jury trial began February 7, 2018. After voir dire, he pled guilty to Count One: Attempt Murder with Use of a Deadly Weapon; Count Two: Robbery with Use of a Deadly Weapon; and Count Three: Solicitation to Commit Murder. The Guilty Plea Agreement ("GPA") described the deal as follows:

> As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of corrections. As to the charge of Attempt Murder with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven (7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly

> Weapon count. As to the charge of Solicitation to Commit Murder, the State agrees to make no recommendation and agrees to run the sentence on that count concurrently. Additionally, the State agrees to dismiss Case No. C317264 after sentencing in this case.

GPA at 1-2. In Case No. C317264, Petitioner faced five counts, including robbery, battery, and burglary.

Petitioner was sentenced on April 10, 2018. For Count One, he was sentenced to a minimum of seventy-two (72) months to a maximum of one hundred eighty (180) months in the Nevada Department of Corrections plus a consecutive term of twelve (12) to one hundred twenty (120) months for the Use of a Deadly Weapon. For Count Two, he was sentenced to a minimum of seventy-two (72) months to a maximum of one hundred eighty months (180) in the Nevada Department of Corrections plus a consecutive term of forty-eight (48) to one hundred twenty (120) months for the Use of a Deadly Weapon, to run consecutive to Count One. For Count Three, he was sentenced to a minimum of forty-eight (48) months to a maximum of one hundred eighty (180) months in the Nevada Department of Corrections, to run concurrent with Counts One and Two. He received an aggregate total sentence of seventeen (17) to fifty (50) years, with 971 days credit for time served.

The Judgment of Conviction was filed April 19, 2018. This Petition for Writ of Habeas Corpus was filed October 6, 2021. The State filed its response on November 02, 2021. Following a hearing on December 21, 2021, this Court finds and concludes as follows:

ANALYSIS

I. THIS PETITION IS PROCEDURALLY-BARRED

A. The Petition is time-barred.

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

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the 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:

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

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

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas petition filed two (2) days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the petition within the one-year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the postal system. Id. at 595, 53 P.3d at 903.

This is not a case in which the Judgment of Conviction was not final. See, e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant's conviction was not final until the district court entered a new Judgment of Conviction on counts the district court had vacated; Whitehead v. State, 128 Nev. 259, 285 P.3d 1053 (2012) (holding that a judgment of conviction imposing restitution in an unspecified amount is not final and therefore does not trigger the one-year period for filing a habeas petition).

Here, Petitioner's Judgment of Conviction was filed on April 19, 2018. He had until April 19, 2019, to file a timely petition. Petitioner did not file this Petition until October 6, 2021, more than two years too late. Because Petitioner has not shown good cause and actual prejudice to overcome the procedural bars under NRS 34.726(1), this Petition and Supplement must be denied.

B. Application of the procedural bars is mandatory.

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

> Habeas corpus petitions that are filed many years after conviction are an 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.

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

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

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

To avoid procedural default under NRS 34.726, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

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

The Nevada Supreme Court has clarified that a defendant cannot attempt to manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 251, 71 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel to forward a copy of the file to a petitioner have been found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

A petitioner raising good cause to excuse procedural bars must do so within a reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34

P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably available to the petitioner during the statutory time period did not constitute good cause to excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

Petitioner asserts no good cause to delay his filing of this Petition. When asked if he were filing outside the procedural time frame, Petitioner said, "Yes. I had no knowledge that I had a time limit to do any appeals."[1] Petition at 6. He then asserts, "I didn't know that I could appeal the court's decision. My counsel never informed me that I could appeal." Petition at 4.

Counsel has no constitutional obligation to inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). Rather, the duty arises "only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.'" Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)). When a defendant who pled guilty claims he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000).

Here, Petitioner expressly waived his appeal rights and his counsel was fully aware of this waiver. GPA at 4-5, 7. He affirmed:

> By entering my plea of guilty, I understand that I am waving and forever giving up the following rights and privileges:
>
> . . .
>
> The right to appeal the conviction with the assistance of an attorney either appointed or retained, unless specifically reserved in writing and agreed upon as

[1] Petitioner appears to conflate direct appeals and habeas.

> provided in NRS 174.035(3). I understand this means *I am unconditionally waiving my right to a direct appeal of this conviction*, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

GPA at 5 (emphasis added).

Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Petitioner shows no impediment external to the defense that excuses his sitting on his appellate rights for years.

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

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

Petitioner's claim that his attorney coerced him into pleading guilty was available during the statutory time period for the filing of a habeas petition, so it cannot constitute good cause for failing to file an appeal on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Petition is procedurally barred.

II. COUNSEL WAS NOT INEFFECTIVE UNDER STRICKLAND

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,

104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

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

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

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

The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does

not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

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

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

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and

would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

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

Further, the Nevada Supreme Court has explained:

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

Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)).

Indeed, entry of a guilty plea "waive[s] all constitutional claims based on events occurring prior to the entry of the plea[], except those involving voluntariness of the plea[] [itself]." Lyons, 100 Nev. at 431, 683 P.2d 505; see also, Kirksey, 112 Nev. at 999, 923 P.2d at 1114 ("Where the defendant has pleaded guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself and the effectiveness of counsel.").

To establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel, and the burden is on a defendant to show that the plea was not

voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

A. Coercion to accept plea bargain

Petitioner alleges his attorney coerced him into pleading guilty. Petition at 8. It must be noted that Petitioner *had* a trial. The State was ready to present its case, its witnesses were under subpoena, and the jury had endured voir dire. Then, at the very precipice of trial, Petitioner pled guilty. He had the option of facing trial on his original twelve felony charges and chose *not* to proceed. He chose instead to plead guilty to three felonies, thereby reducing his sentence exposure significantly. It is disingenuous for Petitioner to now lament the lack of trial in his case, when all preparations for trial had already occurred.

At his trial before voir dire, while the prospective jurors were outside the room, the State made an offer to Petitioner on the record. This offer called for a stipulated 20-50 year sentence for the three felonies, as well as dismissal of the other five felonies and Case No. C240973. Petitioner rejected this offer in open court. Petitioner's counsel pointed out to him that he faced habitual criminal treatment, which carried a possible sentence of life without the possibility of parole. After voir dire, Petitioner accepted the State's offer.

Petitioner's cases are to no avail. In the first, United States v. Sanchez, 2013 WL 8291618, (C.D. Cal. Nov. 7, 2013), Petitioner states the inmate was pressured to plead guilty by his lawyer. Petition at 8. However, the court did *not* find the defense lawyer applied undue pressure on the defendant to plead guilty and the court did not grant him relief. Id. "If the Court credited this declaration, it would tend to show, at most, that Sanchez felt harried, anxious, frightened, upset, and perceived that his lawyer was pressuring him too much to take the plea, not that his lawyer acted incompetently in persistently urging Sanchez to do so." Id. at *7. The defendant, like Petitioner here, benefited from a reduced sentence based on reduced charges. "In light of this substantial sentence 'savings' which the plea achieved relative to potential

convictions at trial, and the colorable evidence against Sanchez, the Court cannot say it was irrational for counsel to recommend and Sanchez to take the plea." Id. at *16.

The second cited case, Key v. United States, 2017 WL 6884120, (E.D. Tex. Nov. 20, 2017), is included as one showing promises made but not kept. Petition at 8. There, the defendant alleged his attorney failed to keep his promises, but the court found no merit to this claim. Id. "Movant has failed to meet his burden of proving that his guilty plea was based on an unkept promise, or that counsel provided ineffective assistance by failing to raise this issue." Id. at *2.

The third case is included as an example of a "lawyer [who] advises the victim to take the plea deal."[2] Petition at 8. Woodard v. Collins, 898 F.2d 1027 (5th Cir. 1990), explores an attorney's failure to investigate before advising his client to plead guilty. The attorney investigated one crime but allowed his client to plead to another, so the court remanded the case. Id. "On remand, the district court must make findings to determine whether Woodard suffered prejudice." Id. at 1029.

Petitioner's final case is Eldridge v. Atkins, 665 F.2d 228, 236 (8th Cir. 1981). There, Eldridge's attorney did not interview alibi witnesses or subpoena them for trial, and the court found this to be ineffective. Id. "Trial counsel did none of these things and petitioner was materially prejudiced by counsel's failure." Id.

These cases are not directly relevant to Petitioner's situation. The Sanchez defendant was not in fact pressured to plead guilty. The Key defendant failed to show he pled based on any unfulfilled promises. The Woodard attorney failed to investigate the evidence before advising his client to plead. The Eldridge attorney did not interview alibi witnesses before trial. Petitioner here fails to show he was pressured to plead guilty or that his plea was based on any unfulfilled promises. He does not show what a better investigation would have revealed or what any witnesses may have testified to if he went to trial.

[2] Petitioner may have intended to say the lawyer in the cited case advised the "defendant," not the victim. There is no assertion here that an attorney advised any of the victims Petitioner held at gunpoint or shot.

Petitioner admits he turned down a more favorable deal from the State long before his case proceeded to trial. Petition at 7. He then states that "[i]f I had it my way I would of kept Amanda Gregory as my lawyer and went to trial or accepted the 8-20 year deal." Petition at 7.5.[3] Petitioner makes no showing that if he had turned down the State's offer on the day of trial, the State would have renewed the offer he had rejected before. By preparing its case for trial, the State had the opportunity to evaluate the strength of its case and choose what, if any, offer it was willing to make once the jury venire had gathered. Further, Attorney Gregory was not an option, as she had recused herself due to a conflict of interest.

Petitioner claims he "would of never accepted the deal if Josh Tomsheck wouldn't of persuaded me and my family in to taking this deal." Petition at 7-7.5. It is not ineffective for an attorney to recommend a favorable plea deal, particularly when the State is ready to present its case to the jury that day. Petitioner, rather than having succumbed to the wily persuasions of his attorney, may have accepted the deal because pleading to three felonies is categorically better than being found guilty of twelve felonies as a habitual offender.

B. Failure to investigate

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

"[D]efense counsel has a duty 'to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.

[3] This page occurs between pages 7 and 8.

Moreover, a defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. Id.

Petitioner states his attorney "never hired an private investigator nor any expert witnesses to help my defense." Petition at 7. He does not, however, allege what circumstances an investigator could have discovered that would have aided his defense, or what expert witnesses could have contributed. See Love, 109 Nev. at 1138, 865 P.2d at 323. Since this case did not go to trial, Petitioner's claim that his attorney was not ready for trial is a bare and naked allegation, suitable for summary dismissal under Hargrove, 100 Nev. at 502, 686 P.2d at 225; NRS 34.735(6).

C. Broken promises

Next, Petitioner asserts his attorney made promises that were not adhered to. Petition at 7. He does not name any promise made but broken. A party seeking review bears the responsibility "to cogently argue, and present relevant authority" to support his assertions. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). The closest Petitioner comes to his burden is to state his attorney claimed to have a good rapport with the judge and predicted that his sentence would be less than 17-50 years. Petition at 7. A prediction is not a promise.

As proof this "promise" was broken, Petitioner says he was "maxxed out and none of them promises ever benefited me." Petition at 7. He was not, in fact, sentenced to the maximum he could receive for the three Category "B" felonies he pled guilty to. Each had a potential sentence of 1-20 years, and each could have run consecutively. NRS 193.130. Additionally, the deadly weapons enhancement for two of his crimes entailed an additional 1-20 year penalty each, consecutive to the underlying offense. NRS 193.165. Any of these could be consecutive to the others, so that he faced a potential 100 years for these crimes. Petitioner only received an aggregate sentence of 17-50 years, significantly better than he could have done, and better than his plea deal contemplated.

Under the Strickland standard, Petitioner must show his attorney's representation fell below an objective standard of reasonableness and that but for counsel's errors, there was a reasonable probability that the results of the proceedings would have been different. Petitioner has failed to meet this high burden.

Petitioner pled guilty because he was convinced doing so was in his best interests. He may not now exhibit buyer's remorse after having received the benefit of his bargain. This Petition is time-barred, with no good cause or prejudice shown to permit it to evade the procedural bars.

ORDER

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

Dated this 4th day of January, 2022

Bita Yeager

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Bita Yeager
District Court Judge

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

BY ***/s/ John Afshar***
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #14408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this ____ day of January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ERIN WARE, 1017483
N.N.C.C.
PO BOX 7000
CARSON CITY, NV 89701

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

ed/GCU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Erin Ware, Plaintiff(s)	CASE NO: A-21-842235-W
vs.	DEPT. NO. Department 21
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIN WARE,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-15-310099-1
Consolidated with C-16-311782-1
Dept No: XXI

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

PLEASE TAKE NOTICE that on January 4, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on January 6, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 6 day of January 2022, I served a copy of this Notice of Entry on the following:

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

☑ The United States mail addressed as follows:
Erin Ware # 1017483
P.O. Box 7000
Carson City, NV 89702

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

FCL
STEVEN B. WOLFSON
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Nevada Bar #001565
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIN DESHAUN WARE,
#2652033,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-842235-W
C-15-310099-1

DEPT NO: XXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: December 21, 2021
TIME OF HEARING: 1:30 PM

THIS CAUSE having come on for hearing before the Honorable BITA YEAGER, District Judge, on the 21st day of December, 2021, the Petitioner being not present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through WILLIAM J. MERBACK, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 16, 2015, Erin Deshaun Ware ("Petitioner") was charged via Information with Count One: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Category B Felony – NRS 205.060); Count Two: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Three: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Four: BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400.2); Count Five: BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); Count Six: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count Seven: ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); Count Eight: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Nine: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Ten: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); and Count Eleven: OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360).

This Information was amended on October 20, 2015, and again on October 27, 2015. On July 6, 2016, the Information was again amended, this time adding Count Twelve: SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2).

Petitioner's jury trial began February 7, 2018. After voir dire, he pled guilty to Count One: Attempt Murder with Use of a Deadly Weapon; Count Two: Robbery with Use of a Deadly Weapon; and Count Three: Solicitation to Commit Murder. The Guilty Plea Agreement ("GPA") described the deal as follows:

> As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of corrections. As to the charge of Attempt Murder with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven (7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly

> Weapon count. As to the charge of Solicitation to Commit Murder, the State agrees to make no recommendation and agrees to run the sentence on that count concurrently. Additionally, the State agrees to dismiss Case No. C317264 after sentencing in this case.

GPA at 1-2. In Case No. C317264, Petitioner faced five counts, including robbery, battery, and burglary.

Petitioner was sentenced on April 10, 2018. For Count One, he was sentenced to a minimum of seventy-two (72) months to a maximum of one hundred eighty (180) months in the Nevada Department of Corrections plus a consecutive term of twelve (12) to one hundred twenty (120) months for the Use of a Deadly Weapon. For Count Two, he was sentenced to a minimum of seventy-two (72) months to a maximum of one hundred eighty months (180) in the Nevada Department of Corrections plus a consecutive term of forty-eight (48) to one hundred twenty (120) months for the Use of a Deadly Weapon, to run consecutive to Count One. For Count Three, he was sentenced to a minimum of forty-eight (48) months to a maximum of one hundred eighty (180) months in the Nevada Department of Corrections, to run concurrent with Counts One and Two. He received an aggregate total sentence of seventeen (17) to fifty (50) years, with 971 days credit for time served.

The Judgment of Conviction was filed April 19, 2018. This Petition for Writ of Habeas Corpus was filed October 6, 2021. The State filed its response on November 02, 2021. Following a hearing on December 21, 2021, this Court finds and concludes as follows:

ANALYSIS

I. THIS PETITION IS PROCEDURALLY-BARRED

A. The Petition is time-barred.

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

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the 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:

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

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

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas petition filed two (2) days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the petition within the one-year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the postal system. Id. at 595, 53 P.3d at 903.

This is not a case in which the Judgment of Conviction was not final. See, e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant's conviction was not final until the district court entered a new Judgment of Conviction on counts the district court had vacated; Whitehead v. State, 128 Nev. 259, 285 P.3d 1053 (2012) (holding that a judgment of conviction imposing restitution in an unspecified amount is not final and therefore does not trigger the one-year period for filing a habeas petition).

Here, Petitioner's Judgment of Conviction was filed on April 19, 2018. He had until April 19, 2019, to file a timely petition. Petitioner did not file this Petition until October 6, 2021, more than two years too late. Because Petitioner has not shown good cause and actual prejudice to overcome the procedural bars under NRS 34.726(1), this Petition and Supplement must be denied.

B. Application of the procedural bars is mandatory.

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

> Habeas corpus petitions that are filed many years after conviction are an 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.

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

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

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

To avoid procedural default under NRS 34.726, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

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

The Nevada Supreme Court has clarified that a defendant cannot attempt to manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 251, 71 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel to forward a copy of the file to a petitioner have been found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

A petitioner raising good cause to excuse procedural bars must do so within a reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34

P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably available to the petitioner during the statutory time period did not constitute good cause to excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

Petitioner asserts no good cause to delay his filing of this Petition. When asked if he were filing outside the procedural time frame, Petitioner said, "Yes. I had no knowledge that I had a time limit to do any appeals."[1] Petition at 6. He then asserts, "I didn't know that I could appeal the court's decision. My counsel never informed me that I could appeal." Petition at 4.

Counsel has no constitutional obligation to inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). Rather, the duty arises "only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.'" Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)). When a defendant who pled guilty claims he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000).

Here, Petitioner expressly waived his appeal rights and his counsel was fully aware of this waiver. GPA at 4-5, 7. He affirmed:

> By entering my plea of guilty, I understand that I am waving and forever giving up the following rights and privileges:
>
> . . .
>
> The right to appeal the conviction with the assistance of an attorney either appointed or retained, unless specifically reserved in writing and agreed upon as

[1] Petitioner appears to conflate direct appeals and habeas.

> provided in NRS 174.035(3). I understand this means *I am unconditionally waiving my right to a direct appeal of this conviction*, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

GPA at 5 (emphasis added).

Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Petitioner shows no impediment external to the defense that excuses his sitting on his appellate rights for years.

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

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

Petitioner's claim that his attorney coerced him into pleading guilty was available during the statutory time period for the filing of a habeas petition, so it cannot constitute good cause for failing to file an appeal on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Petition is procedurally barred.

II. COUNSEL WAS NOT INEFFECTIVE UNDER STRICKLAND

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,

104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

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

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

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

The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does

not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

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

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

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and

would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

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

Further, the Nevada Supreme Court has explained:

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

Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)).

Indeed, entry of a guilty plea "waive[s] all constitutional claims based on events occurring prior to the entry of the plea[], except those involving voluntariness of the plea[] [itself]." Lyons, 100 Nev. at 431, 683 P.2d 505; see also, Kirksey, 112 Nev. at 999, 923 P.2d at 1114 ("Where the defendant has pleaded guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself and the effectiveness of counsel.").

To establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel, and the burden is on a defendant to show that the plea was not

voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

A. Coercion to accept plea bargain

Petitioner alleges his attorney coerced him into pleading guilty. Petition at 8. It must be noted that Petitioner *had* a trial. The State was ready to present its case, its witnesses were under subpoena, and the jury had endured voir dire. Then, at the very precipice of trial, Petitioner pled guilty. He had the option of facing trial on his original twelve felony charges and chose *not* to proceed. He chose instead to plead guilty to three felonies, thereby reducing his sentence exposure significantly. It is disingenuous for Petitioner to now lament the lack of trial in his case, when all preparations for trial had already occurred.

At his trial before voir dire, while the prospective jurors were outside the room, the State made an offer to Petitioner on the record. This offer called for a stipulated 20-50 year sentence for the three felonies, as well as dismissal of the other five felonies and Case No. C240973. Petitioner rejected this offer in open court. Petitioner's counsel pointed out to him that he faced habitual criminal treatment, which carried a possible sentence of life without the possibility of parole. After voir dire, Petitioner accepted the State's offer.

Petitioner's cases are to no avail. In the first, United States v. Sanchez, 2013 WL 8291618, (C.D. Cal. Nov. 7, 2013), Petitioner states the inmate was pressured to plead guilty by his lawyer. Petition at 8. However, the court did *not* find the defense lawyer applied undue pressure on the defendant to plead guilty and the court did not grant him relief. Id. "If the Court credited this declaration, it would tend to show, at most, that Sanchez felt harried, anxious, frightened, upset, and perceived that his lawyer was pressuring him too much to take the plea, not that his lawyer acted incompetently in persistently urging Sanchez to do so." Id. at *7. The defendant, like Petitioner here, benefited from a reduced sentence based on reduced charges. "In light of this substantial sentence 'savings' which the plea achieved relative to potential

convictions at trial, and the colorable evidence against Sanchez, the Court cannot say it was irrational for counsel to recommend and Sanchez to take the plea." Id. at *16.

The second cited case, Key v. United States, 2017 WL 6884120, (E.D. Tex. Nov. 20, 2017), is included as one showing promises made but not kept. Petition at 8. There, the defendant alleged his attorney failed to keep his promises, but the court found no merit to this claim. Id. "Movant has failed to meet his burden of proving that his guilty plea was based on an unkept promise, or that counsel provided ineffective assistance by failing to raise this issue." Id. at *2.

The third case is included as an example of a "lawyer [who] advises the victim to take the plea deal."[2] Petition at 8. Woodard v. Collins, 898 F.2d 1027 (5th Cir. 1990), explores an attorney's failure to investigate before advising his client to plead guilty. The attorney investigated one crime but allowed his client to plead to another, so the court remanded the case. Id. "On remand, the district court must make findings to determine whether Woodard suffered prejudice." Id. at 1029.

Petitioner's final case is Eldridge v. Atkins, 665 F.2d 228, 236 (8th Cir. 1981). There, Eldridge's attorney did not interview alibi witnesses or subpoena them for trial, and the court found this to be ineffective. Id. "Trial counsel did none of these things and petitioner was materially prejudiced by counsel's failure." Id.

These cases are not directly relevant to Petitioner's situation. The Sanchez defendant was not in fact pressured to plead guilty. The Key defendant failed to show he pled based on any unfulfilled promises. The Woodard attorney failed to investigate the evidence before advising his client to plead. The Eldridge attorney did not interview alibi witnesses before trial. Petitioner here fails to show he was pressured to plead guilty or that his plea was based on any unfulfilled promises. He does not show what a better investigation would have revealed or what any witnesses may have testified to if he went to trial.

[2] Petitioner may have intended to say the lawyer in the cited case advised the "defendant," not the victim. There is no assertion here that an attorney advised any of the victims Petitioner held at gunpoint or shot.

Petitioner admits he turned down a more favorable deal from the State long before his case proceeded to trial. Petition at 7. He then states that "[i]f I had it my way I would of kept Amanda Gregory as my lawyer and went to trial or accepted the 8-20 year deal." Petition at 7.5.[3] Petitioner makes no showing that if he had turned down the State's offer on the day of trial, the State would have renewed the offer he had rejected before. By preparing its case for trial, the State had the opportunity to evaluate the strength of its case and choose what, if any, offer it was willing to make once the jury venire had gathered. Further, Attorney Gregory was not an option, as she had recused herself due to a conflict of interest.

Petitioner claims he "would of never accepted the deal if Josh Tomsheck wouldn't of persuaded me and my family in to taking this deal." Petition at 7-7.5. It is not ineffective for an attorney to recommend a favorable plea deal, particularly when the State is ready to present its case to the jury that day. Petitioner, rather than having succumbed to the wily persuasions of his attorney, may have accepted the deal because pleading to three felonies is categorically better than being found guilty of twelve felonies as a habitual offender.

B. Failure to investigate

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

"[D]efense counsel has a duty 'to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.

[3] This page occurs between pages 7 and 8.

Moreover, a defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. Id.

Petitioner states his attorney "never hired an private investigator nor any expert witnesses to help my defense." Petition at 7. He does not, however, allege what circumstances an investigator could have discovered that would have aided his defense, or what expert witnesses could have contributed. See Love, 109 Nev. at 1138, 865 P.2d at 323. Since this case did not go to trial, Petitioner's claim that his attorney was not ready for trial is a bare and naked allegation, suitable for summary dismissal under Hargrove, 100 Nev. at 502, 686 P.2d at 225; NRS 34.735(6).

C. Broken promises

Next, Petitioner asserts his attorney made promises that were not adhered to. Petition at 7. He does not name any promise made but broken. A party seeking review bears the responsibility "to cogently argue, and present relevant authority" to support his assertions. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). The closest Petitioner comes to his burden is to state his attorney claimed to have a good rapport with the judge and predicted that his sentence would be less than 17-50 years. Petition at 7. A prediction is not a promise.

As proof this "promise" was broken, Petitioner says he was "maxxed out and none of them promises ever benefited me." Petition at 7. He was not, in fact, sentenced to the maximum he could receive for the three Category "B" felonies he pled guilty to. Each had a potential sentence of 1-20 years, and each could have run consecutively. NRS 193.130. Additionally, the deadly weapons enhancement for two of his crimes entailed an additional 1-20 year penalty each, consecutive to the underlying offense. NRS 193.165. Any of these could be consecutive to the others, so that he faced a potential 100 years for these crimes. Petitioner only received an aggregate sentence of 17-50 years, significantly better than he could have done, and better than his plea deal contemplated.

Under the Strickland standard, Petitioner must show his attorney's representation fell below an objective standard of reasonableness and that but for counsel's errors, there was a reasonable probability that the results of the proceedings would have been different. Petitioner has failed to meet this high burden.

Petitioner pled guilty because he was convinced doing so was in his best interests. He may not now exhibit buyer's remorse after having received the benefit of his bargain. This Petition is time-barred, with no good cause or prejudice shown to permit it to evade the procedural bars.

ORDER

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

Dated this 4th day of January, 2022

Bita Yeager

0EA 7B3 847F FC84
Bita Yeager
District Court Judge

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

BY */s/ John Afshar*
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #14408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this ____ day of January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ERIN WARE, 1017483
N.N.C.C.
PO BOX 7000
CARSON CITY, NV 89701

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

ed/GCU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Erin Ware, Plaintiff(s)	CASE NO: A-21-842235-W
vs.	DEPT. NO. Department 21
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

Erin Ware
#1017483
PO BOX 7000
Carson City NV 89702

Supreme Court of Nevada
District of Nevada

Erin Ware Petitioner, VS. The State of Nevada Respondent,	case NO: C-15-310099-1 consolidated with C-16-311782-1 Motion for appeal of findings and facts, Conclusions of Law and order (Habeus Corpus)

Plaintiff, Erin Ware comes before the honorable judge as a pro se litigant to appeal the findings of the Habeus Corpus motion.

Points and authorities

On April 10, 2018 I was sentenced to 17-50 years of imprisonment. I was represented by Josh Tomsheck. This particular lawyer was ineffective during the period of my case. During my trial I was offered a deal 20-50 years which I turned down. All counsel left to quarters and came back to court with a new deal of 17-50 years. I turned that deal down as well. My

lawyer stated in court that he knows this judge and she would not give me 17 years on the back end, he stated the most I would recieve is 13 years on the back end. I did not want to take the plea deal. My lawyer contacted my mother explaining the situation and was continually reccommending I enter the plea deal. During the case, I asked for a private investigator and an expert witness to help defend my case and I was never granted the opportunity. I rarely had a chance to visit with this lawyer due to him stating "He is busy", "and doesn't have time". I did not have a fair opportunity to fight my case and prove my innocence. The State claims that I entered the plea to avoid life in prison. This statement is false due to I am a dialysis patient which has been on dialysis presently over 12 years. The average lifespan of an dialysis patient is 10 years. At this time I had been on dialysis for 8 years so I already had it set that I would die in prison due to health reasons so it wouldnt of mattered if I was sentenced to life. I wanted to defend myself and prove my innocence but My lawyer refused to go on with my trial and blately refused to effectively

assist my defense. If the counsel would of effectively defended me I would of insisted on continuing my trial. Counsel displayed many errors. Many motions were presented to counsel and the counsel refused to serve the court the motions. Motions of violations of my 1st, 4th, and 14th amendmant. Lead detective Lance Spiotto was often showing up to the Hospital continually questioning me about this current case while I was ~~under~~ sedated with heavy medication on several occassions. I let the watch Commander of Clark County Jail Know of this and I informed my counsel of this and to no avail no action was taken. This current detective would sit a full 12 hours at a time consistently trying to question me after I was incarcerated on this case. ~~Then~~ Lance Spiotto was released from LVMPD due to unknown reasons. He blately tampered with a witness by harrassing me and questioning me several times while I was sedated with medication and the case was still open. My counsel Josh Tomsheck failed to investigate my case. If I would of obtained an expert witness would of proved several instances of why I am not the perp. There was several blood samples and none matched me. There were several

finger prints and none matched me but as you can see on video footage the perp touched several things. The victem Ruth Garn picked out another person in photo line-up and she states she shot the person who robbed her. I was not shot. 2 days after Ruth Garn was interviewed, Jaime Nourie was interviewed and picked me out of the photo line up after she was coherced. Detectives had insight that I was the person of interest from an informant Corey Nolen. Once detectives interviewed Ruth Garn and she picked someone else out of the photo lineup detectives felt like ~~the~~ their case was going down hill so when they interviewed Jaime Nourie they coherced her into picking me out of photo lineup. During her interview (Jaime Nourie) she was asked did she know what type of gun was used, she didnt know. But on her 2nd interview she turned into a gun expert and she knew exactly what type of gun was used but the day of the crime during her interview she admitted she had no clue what type of gun the purpertrater had - She just knew the gun was black. Once I was sentenced Jaime Nourie stopped my girlfriend at ~~the~~ time and told her if

there is anything she can do to help she can. Ms. Nurie Knows that detectives coherced her and she felt guilty. The state claims there was a cup in the trash can that had my DNA on it but a motion was filed to surpress evidence because the cup nor the trash were put in the evidence vault. This is only evidence that state claims can put me at the scene of the crime. It could have been plenty of cups in the trash that could of proved someone else did the crime but the trash was disposed of. This hindered me from defending myself in this case. With all of the points abored proved prejudiced and hindered my ability at a chance of a fair trial.

Conclusions

Plaintiff begs the court to please overturn the present case and give the plaintiff a fair chance of a new trial. Please Consider his request.

Erin Ware
#1017483
PO BOX 7000
Carson City NV

C

Certificate Of mailing

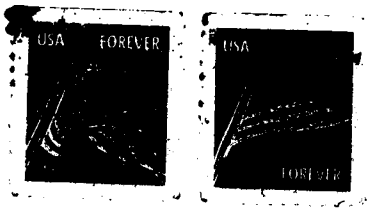
I hearby certify that service of the above and foregoing was made this 1st day of february, 2022 by depositing in the U.S. mail, postage prepaid, addressed to

Clerk of Court
201 South Carson Street suite 201
Carson City NV 89701

Erin Ware
By Erin Ware #1017483.
pro se litigant

Erin Ware #1017483
NNCC
PO BOX 7000
Carson City NV 89702

NORTHERN NEVADA CORRECTIONAL CENTER



FEB 0 3 2022

"LEGAL"

Clerk of Court
Supreme Court of Nevada
201 South Carson Street, suite 201
Carson City NV 89701

580

ASTA

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

STATE OF NEVADA,

Plaintiff(s),

vs.

ERIN DESHAUN WARE,

Defendant(s),

Case No: C-15-310099-1
Consolidated with C-16-311782-1
Dept No: XXI

CASE APPEAL STATEMENT

1. Appellant(s): Erin Ware

2. Judge: Bita Yeager

3. Appellant(s): Erin Ware

Counsel:

Erin Ware #1017483
P.O. Box 7000
Carson City, NV 89702

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: October 15, 2015

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

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

11. Previous Appeal: No

    Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 18 day of February 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Erin Ware

FILED
MAR - 4 2022
CLERK OF COURT

Erin Ware
#1017483
Northern Nevada Correctional Center
Post Office Box 7000
Carson City NV 89702

Petitioner, In proper person

District Court
Clark County Nevada

Hearing: 3/29/2022
Time: 1:30 PM

Erin Ware #1017483 Plaintiff
VS.
The State of Nevada defendant

case No... C-15-310099-1

Department No. 21

Motion for Compassionate/Mercy Release

Comes Now, Erin Ware #1017483, in proper person and herein above respectfully moves this Honorable Court for a(n) compassionate/mercy release. The instant motion is made and based upon all papers and pleadings on file herein as well as the following Memorandum of Points and Authorities and attatched exibits (where applicable)

RECEIVED
FEB 28 2022
CLERK OF THE COURT

Memorandum Of Points And Authorities

Plaintiff respectfully brings this motion for compassionate mercy release persuant to documents on file.

Standards To Review

Plaintiff took a plea deal to 3 counts and was sentenced to 17-50 years of confinement. The plaintiff is in End Stage Renal Failure and has been on dialysis for 12 years. The average lifespan of an dialysis patient is 10 years.

Standards To Review for Compassionate/Mercy Release

The plaintiff prays that the judge will examine the evidence and grant the plaintiff with the compassionate/ mercy release, and agree for the plaintiff to participate in the 298 program and serve the remainder of his sentence structure on residential confinement so the plaintiff can obtain adequate medical care and recieve a Kidney transplant. The plaintiff has currently been on dialysis for 12 years. The average lifespan of an dialysis patient is only 10 years. Over the past couple of years there has been several occurences that are unethical and not within the scope of practice for nurses which has led to medical neglect. With the plaintiff being under the care of N.D.O.C. his life is significantly in danger due to the plaintiff not recieving adequate medical care. The Plaintiff

recently was hospitalized for over 30 days due 3
to an blood infection from his dialysis port. This
infection traveled to the plaintiffs heart and ruined
his right heart valve. During this hospitalization the
plaintiff had to take 3 different IV antibiotics daily
until November 26, 2020. Over 2 months of IV
medications. The infectous disease doctor, Dr.
Swartz recommended that the plaintiff take 2
oral antibiotics for the entirety of his life.
The plaintiff has also went through numerous of
surgeries that has been failures and caused major
health issues. The plaintiffs health is in critical
conditions. All of this is signs of the plaintiff not
recieving adequate medical care while being
confined in state prison. An outside provider
which is an Kidney Specialist [redacted]
and the main physician at Northern Nevada
Correctional Center has wrote letters recommending
that the plaintiff recieve a compassionate release
due to his health deteriorating. The [redacted]
plaintiff has a Kidney donor but unfortunately
Kidney transplants are not done while the patient
is incarcerated in a state institution. The plaintiff
is on his last legs and needs a transplant to
continue living his life. Any day can be the
plaintiffs last. Based on all the events, N.D.O.C
has not been providing quality care or being

professional and humane. Not recieving your medications, being denied medical care in a timely manner is not acceptible. The plaintiff has expert witnesses that can attest that the average lifespan for an dialysis patient is 10 years. The plaintiff is on his 12th year. The plaintiffs biggest fear is dying in prison and right now the plaintiffs days are numbered. The plaintiff suffers from the following symptoms and side effects of dialysis: Extreme fatigueness, severe headaches, Vomiting, Navsea, diarreah, muscle cramps, Angio-Edema, heart attack, Strokes intense swelling, anemia, dehydration, sleep paralysis, and death. The plaintiffs End Stage Kidney failure, according to CDC and Merck Standards qualifies his as being Immuno-Comprimised due to the fact that the plaintiff is at significantly higher risk of both contracting and dying from viral infections such as Covid-19, Neumonia, Influenza, and other respiratory infections. The plaintiffs health is dwindling since his incarceration. The plaintiff is now dependant on 3 Hemodialysis treatments a week which last atleast 4 hours at a time. The N.D.O.C does not adhere to the Strict Renal diet which is detrimentally increasing the Probability of death.

This creates harsh conditions of confinement. With all above said, the plaintiff prays that the judge has mercy and compassion and understand the facts of this disease and agrees that it is a life or death matter. Please review all exhibts. The plaintiff respectfully and humbly asks the honorable judge to commute his sentence and release him on the 298 program residential confinement for the remainder of his sentence so he can obtain a kidney transplant and adequate medical care. Please consider this request, the plaintiff is willing to accept all stiff stipulations while being under residential confinement.

Dated this 15th day of Februar 2021

Respectfully and humbly submitted
Erin Ware #101748
Erin Ware

Certificate Of Service

6

I, Erin Ware certify that on this date I did serve a true and correct copy of the foregoing Motion upon respondant(s), via mail, by placing same in the united states Postal Service (Prison Mail System), postage fully prepaid and addressed to

Clerk of The Court
200 Lewis Avenue
Las Vegas NV 89155

Dated this 15th day of February 2022

#101748
By Erin Ware
petitioner, In proper pers.

Affirmation Persuant to NRS 239B.030

I certify that the foregoing document Does Not contain the social security number of any persons.

[redacted]
2-15-22

Erin Ware

Steve Sisolak
Governor

Charles Daniels
Director

Brian E. Williams Sr.
Deputy Director
Programs

STATE OF NEVADA
Department of Corrections

Northern Administration
5500 Snyder Ave.
Carson City, NV 89701
(775) 977-5500

Southern Administration
3955 W. Russell Rd.
Las Vegas, NV 89118
(725) 216-6000

April 20, 2021

Compassionate Release (298 Program)

Medical Department

Per NRS 209.3925: The following may submit a request for an offender to be reviewed for the compassionate release program:

1. Any prison official or employee
2. An offender
3. An attorney or representative of an offender
4. A family member of an offender; or
5. A medical or mental health professional

Criteria for consideration for the 298 Program:

1. The offender is physically incapacitated or in ill health to such degree that he or she does not presently, and likely will not in future, pose a threat to public safety, and written verification that the offender is physically incapacitated or in ill health has been provided by at least two (2) licensed physicians as required under NRS 209.3925 (1) (b) (1).
2. At least two (2) license physicians (NRS 630,632 or 633),as applicable, one of whom is not employed by the Department, verify, in writing that the offender is:
    1. Physically incapacitated or in ill health; or
    2. In ill health and expected to die within 18 months
3. The offender is not serving a sentence of life without the possibility of parole
4. The offender is not sentenced to death or has not previously served a sentence of death.

Exhibit #1

Erin Ware #1017483
NNCC
PO Box #7000
Carson City NV
89702

LEGAL MAIL
CONFIDENTIAL

Clerk of Court
200 Lewis Avenue
Las Vegas NV 89155

"LEGAL"

RECEIVED
FEB 28 2022
CLERK OF THE COURT

RECEIVED
FEB 22 2022

Comm

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RONALD J. EVANS
Deputy District Attorney
Nevada Bar #15218
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-

ERIN DESHAUN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: XXI

ORDER DENYING DEFENDANT'S PRO SE MOTION FOR COMPASSIONATE/MERCY RELEASE

DATE OF HEARING: March 29, 2022
TIME OF HEARING: 01:30 P.M.

THIS MATTER having come on for hearing before the above entitled Court on the 29th day of March, 2022, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through RONALD J. EVANS, Deputy District Attorney, and the Court without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Pro Se Motion for Compassionate/Mercy Release, shall be, and it is DENIED.

Court noted the Deft. was in the custody of the Nevada Department of Corrections (NDC). Court Advised it had reviewed the Motion and the NDC Compassionate Release (298 Program) provisions dated April 20, 2021, pursuant to NRS 209.3925. Court Clarified it had previously denied the Deft's Motion for Mercy/Compassionate Release on May 13, 2021. Upon Court's inquiry, Mr. Evans stated if the Court wanted the District Attorney's Office to handle this matter, they would be requesting some additional time to file a response, however, the State's position was that the Motion should be served on the Attorney General.

COURT FINDS the Deft. failed to submit the supporting physician statement of health prognosis for the Deft., moreover, it was not properly served. Therefore, COURT FINDS it did not have jurisdiction to hear the Motion.

Dated this 13th day of April, 2022

E79 068 A3C9 5FC8
Tara Clark Newberry
District Court Judge

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

BY /s/ RONALD J. EVANS
RONALD J. EVANS
Deputy District Attorney
Nevada Bar #15218

///

///

CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2022, I mailed a copy of the foregoing Order to:

WARE, BAC #1017483

ERIN DESHAUN

NORTHERN NEVADA CORRECTIONAL CENTER
P. O. BOX 7000
CARSON CITY, NEVADA 89702

BY /s/ J. HAYES
Secretary for the District Attorney's Office

15F10849X/jh/GCU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-15-310099-1
vs	DEPT. NO. Department 21
Erin Ware	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/13/2022

Dept 02 Law Clerk	dept0lc@clarkcountycourts.us
Kristina Rhoades	Kristina.Rhoades@clarkcountyda.com
Elizabeth Mercer	Elizabeth.Mercer@clarkcountyda.com
Adrienne Theeck	adrienneT@hoflandlaw.com
Department Law Clerk	dept09lc@clarkcountycourts.us
Joshua Tomsheck	josht@hoflandlaw.com
D A	motions@clarkcountyda.com

Erin Ware #1017483
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

FILED
JUN 29 2022
CLERK OF COURT

Plaintiff, In Proper Person

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

IN AND FOR THE COUNTY OF Clark

PD Erin Ware,

Petitioner,

vs.

State of Nevada,

Respondent(s),

Case No: C-15-310099-1

Dept. No. 21

July 21, 2022
9:30 AM

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, Petitioner, Erin Ware, in his proper person, and respectfully requests this Honorable Court to appoint Counsel, to further litigate his pending Petition for Writ of Habeas Corpus (Post Conviction).

The Motion is made and based on Nevada Revised Statute 34.750, all papers and pleadings on file herein as well as the following:

1. Petitioner is indigent and not able to afford counsel. See accompanying Motion for Leave to Proceed In Forma Pauperis.
2. The issues involved in this matter are very complex.
3. The issues involved in this case will require further investigation that Petitioner cannot complete due to his incarceration
4. Petitioner has very limited knowledge of the applicable laws and procedures in this matter.

Dated this 2 day of June, 2022.

By: _____
Petitioner, In Proper Person

RECEIVED
JUN 28 2022
CLERK OF COURT

Erin Ware # 1017483
NNCC
PO BOX # 7000
Carson City NV 89702

3717

LEGAL MAIL

Attn:
LEGAL

Clerk of the Court
200 Lewis Avenue
Las Vegas NV 89155

89101$6300 C075

THIS SEALED DOCUMENT, NUMBERED PAGE(S) 597 - 599 WILL FOLLOW VIA U.S. MAIL

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #014408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: XXI

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL

DATE OF HEARING: JULY 21, 2022
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN AFSHAR, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Appointment of Attorney.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 16, 2015, Erin Deshaun Ware ("Defendant") was charged via Information with Count One: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony – NRS 205.060); Count Two: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Three: ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); Count Four: BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400.2); Count Five: BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); Count Six: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count Seven: ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); Count Eight: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Nine: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); Count Ten: DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287); and Count Eleven: OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360).

This Information was amended on October 20, 2015, and again on October 27, 2015. On July 6, 2016, the Information was again amended, to add Count Twelve: SOLICITATION TO COMMIT MURDER (Category B Felony – NRS 199.500.2).

Defendant's jury trial began on February 7, 2018. After voir dire, he pled guilty to Count One: Attempt Murder with Use of a Deadly Weapon; Count Two: Robbery with Use of a Deadly Weapon; and Count Three: Solicitation to Commit Murder. The Guilty Plea Agreement ("GPA") described the deal as follows:

> As to the charge of Robbery with Use of a Deadly Weapon, the parties stipulate to a term of imprisonment of ten (10) to twenty-five (25) years in the Nevada Department of corrections. As to the charge of Attempt Murder

> with Use of a Deadly Weapon, the parties stipulate that the sentence on that count will run consecutively to the Robbery with Use of a Deadly Weapon Count. The parties retain the right to argue for between three (3) and seven (7) years on the bottom end. The parties stipulate to a total of twenty-five (25) years on the back end of the Attempt Murder with Use of a Deadly Weapon count. As to the charge of Solicitation to Commit Murder, the State agrees to make no recommendation and agrees to run the sentence on that count concurrently. Additionally, the State agrees to dismiss Case No. C317264 after sentencing in this case.

GPA at 1-2. In Case No. C317264, Defendant faced five counts, including robbery, battery, and burglary.

Defendant was sentenced on April 10, 2018. On Count One, Defendant was sentenced to a minimum of seventy-two (72) months to a maximum of one hundred eighty (180) months in the Nevada Department of Corrections plus a consecutive term of twelve (12) to one hundred twenty (120) months for the Use of a Deadly Weapon. On Count Two, Defendant was sentenced to a minimum of seventy-two (72) months to a maximum of one hundred eighty months (180) in the Nevada Department of Corrections plus a consecutive term of forty-eight (48) to one hundred twenty (120) months for the Use of a Deadly Weapon, to run consecutive to Count One. On Count Three, Defendant was sentenced to a minimum of forty-eight (48) months to a maximum of one hundred eighty (180) months in the Nevada Department of Corrections, to run concurrent with Counts One and Two. Defendant received an aggregate total sentence of seventeen (17) to fifty (50) years, with 971 days credit for time served.

The Judgment of Conviction was filed April 19, 2018.

On April 15, 2019, Defendant filed a Petition for Writ of Habeas Corpus in Case No. A-19-793346-W. The Attorney General's Office filed a Partial Response and Request to Transfer Petition for Writ of Habeas Corpus. On February 7, 2020, this Court granted Respondent's request and transferred the Petition to the First Judicial District Court.

On March 22, 2021, Defendant filed a Motion to Modify Sentence and/or Correct Illegal Sentence. The State filed an Opposition to Defendant's Motion for Modification of Sentence and/or Correct Illegal Sentence on April 6, 2021. The District Court denied Defendant's Motion on April 20, 2021.

On April 21, 2021, Defendant filed Motion for Mercy/Compassionate Release. The State filed a Response to Defendant's Motion for Compassionate Release on May 10, 2021. The District Court denied Defendant's Motion on May 13, 2021. An Order Denying Defendant's Motion for Modification of Sentence and/or Correct Illegal Sentence was filed on May 24, 2021.

On October 6, 2021, Defendant filed his first Petition for Writ of Habeas Corpus in Case No. A-21-842235-W. The State filed its Response on November 2, 2021. The District Court denied Defendant's Petition for Writ of Habeas Corpus on December 21, 2021. The Findings of Fact, Conclusions of Law and Order was filed on January 4, 2022. Defendant filed a Motion for Appeal of Findings and Facts, Conclusions of Law and Order on February 7, 2022.

On March 4, 2022, Defendant filed a Motion for Compassionate/Mercy Release. On March 29, 2022, the District Court denied Defendant's Motion. The Order Denying Defendant's Pro Se Motion for Compassionate/Mercy Release was filed on April 13, 2022.

On June 10, 2022, Defendant filed a second Petition for Writ of Habeas Corpus (Post Conviction) in Case A-21-842235-W. On June 11, 2022, this Court ordered the State to respond by July 26, 2022, and set the matter to be heard on August 16, 2022.

On June 17, 2022, Defendant filed a third Petition for Writ of Habeas Corpus (Post Conviction) in Case No. A-21-842235-W. This Petition is also set to be heard on August 16, 2022. The State will file one Response for Defendant's second and third Petitions.

On June 29, 2022, Defendant filed a Motion for Appointment of Counsel in Case No. C-15-310099-1. The State's Opposition follows.

ARGUMENT

DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF COUNSEL

As a preliminary matter, it should be noted that the instant Motion for Appointment of Counsel was filed in Case No. C-15-310099-1 on June 29, 2022. The State presumes this Motion relates to the two Petitions for Writ of Habeas Corpus (Post-Conviction) Defendant filed on June 10, 2022 ("Second Petition), and June 17, 2022 (Third Petition), in Case No. A-

21-842235-W. The State's Responses to both Petitions – which are procedurally barred – are due to this Court on July 26, 2022.

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

However, the Nevada Legislature has given courts the discretion to appoint post-conviction counsel so long as "the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily." NRS 34.750. NRS 34.750 reads:

> A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of 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:
>
> (a) The issues are difficult;
> (b) The Defendant is unable to comprehend the proceedings; or
> (c) Counsel is necessary to proceed with discovery.

(emphasis added). Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint counsel.

Here, Defendant filed a one-page form of a Motion for Appointment of Counsel without any details. Nonetheless, Defendant is not entitled to appointment of counsel for either of his pending Petitions, both of which raise the same substantive issues and are procedurally barred.

Defendant raises two ineffective assistance of trial counsel claims in his Petitions. One, trial counsel failed to investigate and introduce Defendant's mental and chronic health issues

at sentencing. Second Petition at 2; Third Petition at 2. Second, trial counsel failed to object to Defendant's sentence, which is longer than the lifespan of a dialysis patient, and that his sentence was longer than what trial counsel allegedly said it would be. Second Petition at 3; Third Petition at 3. Defendant raises one claim of ineffective assistance of appellate counsel whereby he claims appellate counsel "failed to investigate the record beyond sentencing to bring up the issue of plain error review in context of the plea colloquy, negotiations and constitutional violations." Second Petition at 4; Third Petition at 4. Defendant also claims his "conviction and/or sentence are unconstitutional" without providing a reason. Second Petition at 4; Third Petition at 4.

The NRS 34.750 factors do not warrant Defendant an appointment of counsel. First, the issues Defendant raises are not difficult as they are procedurally barred. Defendant filed his first Petition on October 6, 2021, which this Court denied for being time-barred. Consequently, Defendant's Second and Third Petitions are equally time-barred. The claims Defendant raises in his Second and Third Petitions relate to trial counsel, appellate counsel, and sentencing – all of which were available to be raised in a timely fashion but were not. Moreover, the claims raised in the Second and Third Petitions are also an abuse of the writ under NRS 34.810(1)(b)(3) as they are new claims that are raised in subsequent Petitions when Defendant could have asserted them in Defendant's first Petition. Additionally, Defendant's claim that appellate counsel failed to assert a certain issue is not difficult because a direct appeal was not filed in the instant case.

Second, the record reflects that Defendant does understand the proceedings but is adamant about being released early from incarceration. The issues Defendant raises focus on sentencing as he claims that he "was denied potential leniency due to mental health and chronic disease issues not presented by trial counsel...." Second Petition at 3; Third Petition at 3. On April 15, 2019, Defendant filed a Petition claiming he did not receive the appropriate credits for time served. See Petition filed April 15, 2019 (Petition was filed in the First Judicial District). Then, on March 22, 2021, Defendant filed a Motion to Modify Sentence and/or Correct Illegal Sentence, which this Court denied on April 20, 2021. Defendant, then filed

Motion for Mercy/Compassionate Release on April 21, 202, and again on March 4, 2022. Defendant does understand the proceedings but refuses to accept his sentence and take responsibility for his actions that led to his imprisonment.

Lastly, counsel is not necessary for discovery as there is no discovery to review or obtained, especially in light that Defendant's issues are procedurally barred.

Therefore, Defendant's request for appointment of counsel should be denied.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court deny Defendant's Motion for Appointment of Counsel in its entirety.

DATED this 20th day of July, 2022.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #014408

BY */s/ JOHN AFSHAR*
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #05734

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 20th day of July, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ERIN WARE, BAC#1017483
NORTHERN NEVADA CORRECTIONAL CENTER
P.O. BOX 7000
CARSON CITY, NEVADA 89702

BY */s/ D.S.*
Secretary for the District Attorney's Office

JA/ds/GCU

Electronically Filed
07/28/2022 4:34 PM
CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TYRUS COBB
Deputy District Attorney
Nevada Bar #008031
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-

ERIN DESHAUN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: XXI

ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL

DATE OF HEARING: July 21, 2022
TIME OF HEARING: 09:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 21st day of July, 2022, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through TYRUS COBB, Deputy District Attorney, and the Court without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

///

IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of Counsel, shall be, and it is DENIED based on the Defendant's failure to properly comply with NRS 34.750.

Dated this 28th day of July, 2022

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

2CA BF8 F7FA AD9B
Tara Clark Newberry
District Court Judge

BY /s/ TYRUS COBB
TYRUS COBB
Deputy District Attorney
Nevada Bar #008031

CERTIFICATE OF SERVICE

I certify that on the 28th day of July, 2022, I mailed a copy of the foregoing Order to:

ERIN WARE, BAC #1017483
NORTHERN NEVADA CORRECTIONAL CENTER
P. O. BOX 7000
CARSON CITY, NEVADA 89702

BY */s/ Janet Hayes*
Secretary for the District Attorney's Office

15F10849X/jh/GCU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-15-310099-1
vs	DEPT. NO. Department 21
Erin Ware	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/28/2022

Kristina Rhoades	Kristina.Rhoades@clarkcountyda.com
Elizabeth Mercer	Elizabeth.Mercer@clarkcountyda.com
Adrienne Theeck	adrienneT@hoflandlaw.com
Department Law Clerk	dept09lc@clarkcountycourts.us
Joshua Tomsheck	josht@hoflandlaw.com
D A	motions@clarkcountyda.com
Dept 9 LC	dept9lc@clarkcountynv.us
dept 21 LC	dept21lc@clarkcountycourts.us

Erin Ware
(Name)
1017483
(I.D. No.)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, Nevada 89702

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

Erin Ware,
Petitioner/Plaintiff,

vs.

The State of Nevada,
Respondent/Defendant

Case No.: C-15-310099-1
Dept. No. 21

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I, Erin Ware appeal the Judgment / Order entered on the 8/16 day of August, 2022 by this court.

Dated this 23 day of August, 2022.

(Signature)

Erin Ware #1017483
NNCC
PO Box 7000
Carson City NV 89702

LEGAL MAIL
CONFIDENTIAL

"LEGAL"

Clerk of the Court
200 Lewis Ave
Las Vegas NV 89155

AUG 2 3 2022
NORTHERN NEVADA CORRECTIONAL CENTER
LAW LIBRARY

Erin Ware, 1017483
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702
Appellant, In Proper Person

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

IN AND FOR THE COUNTY OF Clark

Erin Ware

Appellant,

Vs.

State of Nevada

Respondent.

CASE No. C-15-310099-1

DEPT. No. 21

Dkt. No. 1

DESIGNATION OF RECORD ON APPEAL

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

DATED this 23 day of August, 2022

RESPECTFULLY SUBMITTED,

Appellant, In Propria Persona

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I hereby certify that I am the Defendant named herein and that on this 23 day of August, 2022 I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the following:

Clark County District Attorney

[redacted]

Clerk of the Court

(Signature)

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any persons.

8/23/2022
(Date)

(Signature)

ASTA

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

STATE OF NEVADA,

Plaintiff(s),

vs.

ERIN DESHAUN WARE,

Defendant(s),

Case No: C-15-310099-1

Dept No: XXI

CASE APPEAL STATEMENT

1. Appellant(s): Erin Ware

2. Judge: Tara Clark Newberry

3. Appellant(s): Erin Ware

Counsel:

Erin Ware #1017483
P.O. Box 7000
Carson City, NV 89702

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

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

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

9. Date Commenced in District Court: October 15, 2015

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

    Type of Judgment or Order Being Appealed: Unknown

11. Previous Appeal: Yes

    Supreme Court Docket Number(s): 84262

12. Child Custody or Visitation: N/A

Dated This 9 day of September 2022.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Erin Ware

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIN DESHAUN WARE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84262
District Court Case No.
~~A842235~~;C310099;~~C311782~~

FILED

SEP 21 2022

CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 26th day of August, 2022.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this September 20, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young
Deputy Clerk

C-15-310099-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
5006736

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIN DESHAUN WARE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84262-COA

FILED

AUG 26 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Erin Deshaun Ware appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

Ware filed his petition on October 6, 2021, more than three years after entry of the judgment of conviction on April 19, 2018.[1] Thus, Ware's petition was untimely filed. *See* NRS 34.726(1). Ware's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Ware appeared to claim that he had good cause because he was unaware of the procedural time bar. However, that issue did not constitute an impediment external to the defense that prevented Ware from timely filing his petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Therefore, Ware was not entitled to relief based upon this good-cause claim.

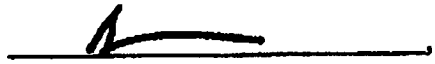
[1]Ware did not pursue a direct appeal.

Accordingly, we conclude that the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. Bita Yeager, District Judge
Erin Deshaun Ware
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIN DESHAUN WARE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84262
District Court Case No.
~~A842235~~;C310099;C311782

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: September 20, 2022

Elizabeth A. Brown, Clerk of Court

By: Sandy Young
Deputy Clerk

cc (without enclosures):
Hon. Bita Yeager, District Judge
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District Attorney
Erin Deshaun Ware

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on SEP 21 2022.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
SEP 21 2022
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	October 19, 2015

C-15-310099-1 State of Nevada
vs
Erin Ware

October 19, 2015 **10:00 AM** **Initial Arraignment**

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES PRESENT:

Laurent, Christopher J		Attorney
State of Nevada		Plaintiff
Waldo, Jennifer M.		Attorney

JOURNAL ENTRIES

- Court noted the lack of appearance made by the defendant today. Attorney Waldo states the defendant was taken to the hospital today. Therefore, COURT ORDERED, matter CONTINUED as requested by defense. There was no opposition made by the state.

CUSTODY

10/27/15 10:00 A.M. ARRAIGNMENT CONTINUED (LLA)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	October 27, 2015

C-15-310099-1 State of Nevada
vs
Erin Ware

October 27, 2015 **10:00 AM** **Arraignment Continued**

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES PRESENT:

Gregory, Amanda S., ESQ	Attorney
State of Nevada	Plaintiff
Ware, Erin Deshaun	Defendant
Wiborg, Erika L.	Attorney

JOURNAL ENTRIES

- DEFT. WARE ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. As the available trial dates within the 60-day limit will not allow his/her attorney adequate preparation time, Deft. WAIVED ELEVEN (11) DAYS to the next criminal trial stack. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

12/17/15 9:00 AM CALENDAR CALL (DEPT. 9)

1/04/16 10:30 AM JURY TRIAL (DEPT. 9)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	December 17, 2015

C-15-310099-1 State of Nevada
vs
Erin Ware

December 17, 2015 **9:00 AM** **Calendar Call**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Ms. Waldo advised she is not ready for trial and made an oral request to continue, noting the Defendant is willing to waive her speedy trial rights. Further, Ms. Waldo advised there is a lot of discovery, additional investigation must be done, and she will need to retain an expert. Upon Court's inquiry, Defendant WAIVED her speedy trial rights. State advised it was ready for trial and noted all forensic testing was done before the preliminary hearing. Further, State advised a detective file review has been completed and all discovery has been provided. State requested a quick trial setting and advised it is not opposed to the continuance. COURT ORDERED, oral request to continue GRANTED; trial date VACATED and RESET.

CUSTODY

03/17/16 9:00 AM CALENDAR CALL

03/28/16 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	February 25, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

February 25, 2016 **9:00 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo
Skye Endresen

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Gregory, Amanda S., ESQ	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) ... STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

CONFERENCE AT THE BENCH. COURT advised that based on it's schedule it has not had enough time to review the motions and ORDERED, matter CONTINUED. Further, COURT noted Ms. Gregory advised at the bench she does not anticipate being ready for trial and at her request ORDERED, calendar call and trial date VACATED and matter SET for status check. Upon Court's inquiry, Defendant advised he understands. State objected to resetting the trial noting all discovery, including the DNA testing, has been provided and they are ready for trial. Ms. Gregory argued it takes time to review the DNA. COURT ORDERED, oral request to vacate the trial date GRANTED; matter SET for status check. COURT FURTHER ORDERED, motions CONTINUED.

CUSTODY (COC)

3/1/16 9:00 AM STATUS CHECK: RESET TRIAL DATE / STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) / STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 01, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

March 01, 2016 **9:00 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Gregory, Amanda S., ESQ	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL DATE ... STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) ... STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2)
Argument in support of the motion by State, noting the evidence is cross admissible. Argument against the motion by Ms. Gregory, noting they are separate case and not relevant to identity or cross admissibility. COURT ORDERED, matter CONTINUED to the Court's chamber calendar for decision.

STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT
Argument in support of their respective positions by counsel. COURT ORDERED, matter

CONTINUED to the Court's chamber calendar for decision.

STATUS CHECK: RESET TRIAL DATE
Colloquy regarding trial date. COURT ORDERED, matter SET for trial.

CUSTODY (COC)

3/9/16 (CHAMBERS) STATE'S MOTION TO CONSOLIDATE, OR IN THE ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT TO NRS 48.045(2) / STATE'S MOTION TO PERMIT THE STATE TO INTRODUCE RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT

8/11/16 9:00 AM CALENDAR CALL

8/22/16 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 09, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

March 09, 2016 **3:00 AM** **Motion to Consolidate**

HEARD BY: Togliatti, Jennifer **COURTROOM:** No Location

COURT CLERK: Athena Trujillo

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- See written decision filed 5/11/16.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 09, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

March 09, 2016 **3:00 AM** **Motion**

HEARD BY: Togliatti, Jennifer **COURTROOM:** No Location

COURT CLERK: Athena Trujillo

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- See written decision filed 5/11/16.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	June 30, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

June 30, 2016 **9:00 AM** **Motion to Reduce**

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Upon Court's inquiry, counsel advised this case has already been consolidated. Ms. Waldo provided a letter from the Defendant to the Court. Argument in support of the motion by Ms. Waldo. Statement by Defendant. COURT ORDERED, motion DENIED.

CUSTODY (COC)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 11, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

August 11, 2016 **9:00 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Jennifer Kimmel

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Gregory, Amanda S.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- CALENDAR CALL...DEFT'S MOTION TO CONTINUE TRIAL

COURT noted, the Deft. has a pending Motion to Continue Trial set for next week. COURT suggested it be addressed today. Ms. Gregory, Esq. advised there is new information just received that causes the Defense to need to do more investigation. Ms. Rhoades, Esq. advised the new cases have nothing to do with these charges and the State opposes a continuance. COURT FINDS, good cause shown on the consolidated case for additional discovery and because a part of this case is much older than the other part, and ORDERED, GRANTED the Deft's request to Continue over the State's opposition.

BENCH CONFERENCE. Pursuant to the conference at the bench, counsel were not sure about their respective trial schedules, therefore the COURT ORDERED, Calendar Call is CONTINUED and the Trial will be reset next date.

CUSTODY (COC)

CONTINUED TO: 8/16/16 9:00 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 16, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

August 16, 2016 **9:00 AM** **Calendar Call**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Skye Endresen

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- COURT STATED it already GRANTED the Defense Motion to Continue, however, continued the Calendar Call for resetting of the Trial. CONFERENCE AT BENCH. COURT ORDERED, Trial VACATED and RESET to the dates selected at the bench.

CUSTODY (COC)

11/8/16 9:00 AM STATUS CHECK: TRIAL READINESS

1/12/17 9:00 AM CALENDAR CALL

1/23/17 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 23, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

August 23, 2016 **9:00 AM** **Motion for Discovery**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keri Cromer
Olivia Black

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Arguments by counsel regarding the merits of the motion. COURT ORDERED, Motion GRANTED IN PART/DENIED IN PART as follows:

1. As to A through H, DENIED, with the exception of all case detective notes, expert notes, including fingerprint and DNA filed. DA to inquiry as to patrol officers and notes.

2. As to audio, State advised audio has been provided.

3. As to compensation beyond witness fees, Ms. Mercer advised she is not aware of any. In camera production for victim and witness assistance, GRANTED. As to criminal history of all state witnesses court directed State to run NCIC, Court noted it does not require police personal and advised State to provide at status check trial readiness.

4. RESOLVED.

5. Request for detective secret witness or otherwise, GRANTED.

6. As to Statements, GRANTED; State required to provide known inconsistent statements.

7. Updated witness contact information, GRANTED as required by statue.

8. Search warrant report, DENIED WITHOUT PREJUDICE.

9. GRANTED IN PART; Granted for in-camera review - GPA and discovery required in any case Defendant has/DENIED IN PART as to PSI.

10. Motion GRANTED.

Ms. Waldo to prepare the order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	November 08, 2016

C-15-310099-1 State of Nevada
vs
Erin Ware

November 08, 2016 **9:00 AM** **Status Check**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Ms. Waldo advised the State provided the detective's notes. State provided the Court with NCIC for review. Court noted Trudy Presutti has no discoverable convictions and Jaime Nourie, Rafeal Perez, and Ruth Garn have a date of birth and social security number and no other entry. Ms. Waldo advised there are additional motions to file but anticipates being ready for trial. State advised the police reports and underlying data for the fingerprint analysis have been requested. Further, State advised there are no victim payouts.

CUSTODY(COC)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 03, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

January 03, 2017 **9:00 AM** **Motion to Dismiss**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Patti Slattery

REPORTER:

PARTIES PRESENT:

Gregory, Amanda S.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Ms. Gregory argued in support of the motion. State argued against the motion. Further argument by Ms. Gregory. COURT FINDS that there was no bad faith or gross negligence and ORDERED, motion DENIED. State to prepare the order.

CUSTODY (COC)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 10, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

January 10, 2017 **9:00 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Gregory, Amanda S.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Waldo, Jennifer M.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS DUE TO CONTINUED STATE MISCONDUCT AND VIOLATIONS OF DEFENDANT'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS, OR IN THE ALTERNATIVE, MOTION TO SUPPRESS ... JENNIFER M. WALDO, ESQ. AND AMANDA S. GREGORY, ESQ.'S MOTION TO WITHDRAW DUE TO CONFLICT

COURT ORDERED, hearing conducted UNDER SEAL. COURT ORDERED, no CD s or transcripts are to be released without a Court s order. Ms. Gregory advised there are several potential conflicts. Further, Ms. Gregory advised that a detective spoke to the Defendant while he was at the hospital about her and that she filed a report with internal affairs. Ms. Gregory advised the Defendant is not a witness in the internal affairs investigation. State advised its understanding was that the conversation was personal in nature and not about the case. Ms. Gregory advised the Defendant was interviewed by internal affairs after the meeting in chambers and he advised the case was discussed. COURT ORDERED, Motion to Withdraw GRANTED, Motion to Dismiss OFF CALENDAR. Statement by Defendant. Matter TRAILED. Matter RECALLED. COURT advised it spoke to the

Office of Indigent Defense and ORDERED, matter SET for Status Check. COURT FURTHER ORDERED, calendar call VACATED and RESET. Court noted the trial date STANDS, however, it realizes the trial will not go forward. Ms. Gregory advised the Defendant gave his permission for her to speak to his new counsel. State advised Mr. Paulson of the Public Defender's office cannot accept the appointment due to conflict.

CUSTODY (COC)

1/17/17 9:00 AM CALENDAR CALL / STATUS CHECK: APPOINTMENT OF COUNSEL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 17, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

January 17, 2017 **9:00 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Natalie Ortega

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL

CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED.

MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting.

CUSTODY (COC)

2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING
- CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL

CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED.

MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he

would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting.

CUSTODY (COC)

2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 17, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

January 17, 2017 **9:00 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Natalie Ortega

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- CALENDAR CALL...STATUS CHECK: APPOINTMENT OF NEW COUNSEL

CONFERENCE AT BENCH. COURT ORDERED, matter TRAILED.

MATTER RECALLED. All parties present as before. Upon Court's inquiry, Mr. Tomsheck advised he would confirm as counsel. Mr. Tomsheck stated he was in trial, and discovery (in this case) was voluminous, therefore, he would not be ready for trial next week. COURT ORDERED, trial VACATED. COURT FURTHER ORDERED, Josh Tomsheck, Esq. CONFIRMED as counsel. COURT ADDITIONALLY ORDERED, Status Check SET regarding trial setting.

CUSTODY (COC)

2/7/17 9:00 AM STATUS CHECK: TRIAL SETTING

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	February 07, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

February 07, 2017 **9:00 AM** **Status Check**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck advised he met with the Defendant and requested a trial date be set. COURT ORDERED, matter SET for trial.

CUSTODY (COC)

8/17/17 9:00 AM CALENDAR CALL

8/28/17 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 01, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

August 01, 2017 **9:00 AM** **Motion**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Also present: Martina Geinzer, Esq. on behalf of LVMPD.

Court noted the Office of Indigent Defense is normally responsible for approving these types of things. Court advised counsel to have Mr. Christensen approve it and to submit an order. Ms. Geinzer advised she will e-mail the order that must be used to counsel. Upon Court's inquiry, State advised it will be ready for trial. Mr. Tomsheck advised he will not be ready for trial and will file a motion.

CUSTODY (COC)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 17, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

August 17, 2017 **9:00 AM** **Calendar Call**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Colloquy regarding Motion to Continue. State advised it would have been prepared for trial. COURT ORDERED, Motion to Continue GRANTED; trial date VACATED and RESET.

CUSTODY (COC)

11/14/17 9:00 AM STATUS CHECK: TRIAL READINESS

1/25/18 9:00 AM CALENDAR CALL

2/5/18 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	November 14, 2017

C-15-310099-1 State of Nevada
vs
Erin Ware

November 14, 2017 **9:00 AM** **Status Check: Trial Readiness**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Tena Jolley

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Albritton, Alicia A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck stated that barring some unforeseen circumstance, he anticipates being ready for the current trial setting in February. Court stated if something comes up, counsel is to file a written motion, otherwise it will count on the case being a significant priority on the Stack. Accordingly, COURT ORDERED, Trial Date STANDS.

CUSTODY (COC)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 25, 2018

C-15-310099-1 State of Nevada
vs
Erin Ware

January 25, 2018 **9:00 AM** **Calendar Call**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck announced ready for trial, however; Mr. Tomsheck advised the State extended an offer yesterday and indicated it would request the trial date stand with a status check next week on possible negotiations. COURT ORDERED, matter CONTINUED, noting it will make a record of the offer next week.

CUSTODY (COC)

CONTINUED TO: 1/30/18 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 30, 2018

C-15-310099-1 State of Nevada
vs
Erin Ware

January 30, 2018 **9:00 AM** **Calendar Call**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- CONFERENCE AT THE BENCH. Court noted parties have advised there will be 15 - 20 witnesses and the Defense has reserved the right to call anyone on the State's witness list. Further, Court advised parties state trial will take 1 1/2 - 2 weeks. COURT ORDERED, matter SET for trial. Colloquy regarding schedule. Court noted a record of the offer will be made on the first day of trial.

CUSTODY (COC)

2/7/18 9:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	February 07, 2018

C-15-310099-1 State of Nevada
vs
Erin Ware

February 07, 2018 **9:30 AM** **All Pending Motions**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- JURY TRIAL ... DEFENDANT'S MOTION TO DISMISS DUE TO CONTINUED STATE MISCONDUCT AND VIOLATIONS OF DEFENDANT'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS, OR IN THE ALTERNATIVE, MOTION TO SUPPRESS

Fourth Amended Information FILED IN OPEN COURT.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL.
Mr. Tomsheck advised he received approval from the Office of Indigent Defense for co - counsel. Further, Mr. Tomsheck advised Dan Hill will be co - counsel, but will not likely be here today. Court noted it will read an instruction. State made a record of the offer to the Defendant: plead to one count of attempt murder with use, robbery with use, and solicitation to commit murder with a stipulated 20 - 50 years and another case will be dismissed. Defendant canvassed as to offer and confirmed he rejected it. Mr. Tomsheck advised the State presented what it indicated would be their best and final offer. Additionally, Mr. Tomsheck advised the Defendant has a felony conviction in C240973 and if

convicted he would be a mandatory habitual criminal with a possible sentence of life without the possibility of parole. Mr. Tomsheck advised he did make a counter offer which the State has rejected. Colloquy regarding motion. Counsel submitted. COURT stated its findings and ORDERED, motion DENIED; State to prepare the order. Colloquy regarding schedule and jury selection.

PROSPECTIVE JURY PANEL PRESENT.
Voir dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL.
NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. WARE ARRAIGNED AND PLED GUILTY TO COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 3 - SOLICITATION TO COMMIT MURDER (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing.

PROSPECTIVE JURY PANEL PRESENT.
Defendant not present. Prospective jury panel thanked and excused.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL.
Colloquy regarding sentencing date. COURT ORDERED, sentencing date VACATED and RESET; Mr. Tomsheck to notify Defendant of the new sentencing date.

CUSTODY

4/10/18 9:00 AM SENTENCING

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 10, 2018

C-15-310099-1 State of Nevada
vs
Erin Ware

April 10, 2018 **9:00 AM** **Sentencing**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff
Tomsheck, Joshua L.	Attorney
Ware, Erin Deshaun	Defendant

JOURNAL ENTRIES

- Mr. Tomsheck advised there are errors in the PSI and detailed the errors for the Court. Court noted the District Attorney has records with respect the juvenile entry. Matter TRAILED.

Matter RECALLED. COURT ORDERED, PSI AMENDED in the Judgment of Conviction (JOC) as follows: At page 6 under Institution / Supervision Adjustment, case C274352 is to be amended to reflect Attempt Burglary, not Attempt Robbery; at page 6 under Offense Synopsis redact "punched" and replace with "shot at least three times" not four times; and "fled with $400.00" is to be redacted and replaced with "only fled the business with revolver". DEFT WARE ADJUDGED GUILTY of COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 3 - SOLICITATION TO COMMIT MURDER (F). Argument by State. Statement by Defendant. Argument by Mr. Tomsheck. Ruth Garn and Jamie Nourie sworn and testified. COURT ORDERED, in addition to the $25.00 Administrative Assessment fee, credit for time served for DNA test and DNA fee taken 5/10/08, and $49,823.79 in RESTITUTION to Victim's of Crime, Defendant SENTENCED as to

COUNT 1 - to a MINIMUM of SEVENTY TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon;

COUNT 2 - to a MINIMUM of SEVENTY TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon, Count 2 to run CONSECUTIVE to Count 1;

COUNT 3 - to a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC), Count 3 to run CONCURRENT with Counts 1 and 2;

for a TOTAL AGGREGATE SENTENCE OF to a MINIMUM of SEVENTEEN (17) YEARS and a MAXIMUM of FIFTY (50) YEARS in the Nevada Department of Corrections (NDC) with NINE HUNDRED SEVENTY ONE (971) DAYS credit for time served. CASE CLOSED.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 13, 2021

C-15-310099-1 State of Nevada
vs
Erin Ware

April 13, 2021 **1:30 PM** **Motion to Modify Sentence**

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Natalie Ortega

RECORDER: Robin Page

REPORTER:

PARTIES PRESENT:

State of Nevada	Plaintiff
Thomas, Morgan B.A.	Attorney

JOURNAL ENTRIES

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDOC). Joshua L. Tomsheck, Esq. also not present.

Matter submitted by Ms. Thomas. COURT NOTED this matter may need to be continued for Mr. Tomsheck's presence so that he may withdraw in order for the Court to consider the motion. COURT ORDERED, matter CONTINUED. Ms. Thomas advised she would reach out to Mr. Tomsheck to file a motion to withdraw.

CUSTODY (COC)

CONTINUED TO: 04/20/21 3:00 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 20, 2021

C-15-310099-1 State of Nevada
vs
Erin Ware

April 20, 2021 **3:00 PM** **Motion to Modify Sentence**

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Natalie Ortega

RECORDER: Robin Page

REPORTER:

PARTIES PRESENT:

State of Nevada	Plaintiff
Thomson, Megan	Attorney
Tomsheck, Joshua L.	Attorney

JOURNAL ENTRIES

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDC).

Mr. Tomsheck advised Defendant filed a motion. Mr. Tomsheck made an oral motion to withdraw. No objection from Ms. Thomson. COURT NOTED as to the Motion to Modify Sentence, the Court adopted the reasons of the State on page five. As to the health issues the Court did not have the jurisdiction, it was not properly brought, and it may be a civil matter. Therefore, COURT ORDERED, Motion to Modify Sentence DENIED it was not an illegal sentence. State to prepare the Order. COURT ADDITIONALLY ORDERED, Joshua L. Tomsheck's oral Motion to Withdraw GRANTED.

CUSTODY (COC)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	May 13, 2021

C-15-310099-1 State of Nevada
vs
Erin Ware

May 13, 2021	1:30 PM	Motion	Defendant's Motion for Mercy/Compassionate Release

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Toshiana Pierson

REPORTER:

PARTIES PRESENT:

Mercer, Elizabeth A.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Deft. is already in custody and serving his sentence. Court stated Mr. Tomsheck was not present and had not withdrawn. Court FINDS Deft. is represented by counsel and did not serve motion on the Attorney General's office, therefore, ORDERED motion DENIED; Deft. may file for dismissal of counsel or counsel must withdraw. Court will prepare an order.

CUSTODY (COC)

CLERK'S NOTE: Subsequent to the May 13, 2021 Hearing, the Court having reviewed the April 20, 2021 minutes FINDS the Court had previously granted Mr. Tomsheck s Oral Motion to Withdraw as Counsel of Record for Defendant Erin Ware. COURT ORDERED the ruling as to Defendant s Motion for Mercy/Compassionate Release STANDS; State to prepare the Order. A copy of this minute order was distributed to all registered parties via Odyssey File and Serve and mailed to: Erin Ware, #1017483, Northern Nevada Correctional center, P.O. Box 7000, Carson City, Nevada 89702, 1721 E. Snyder Ave., Carson City, Nevada 89701. // cbm 06-28-2021

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 29, 2022

C-15-310099-1 State of Nevada
vs
Erin Ware

March 29, 2022	1:30 PM	Motion	Defendant's Pro Se Motion for Compassionate/Merc y Release

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 05B

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Robin Page

REPORTER:

PARTIES PRESENT:

Evans, Ronald James	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted the Deft. was in the custody of the Nevada Department of Corrections (NDC). Court Advised it had reviewed the Motion and the NDC Compassionate Release (298 Program) provisions dated April 20, 2021 pursuant to NRS 209.3925. Court Clarified it had previously denied the Deft's Motion for Mercy/Compassionate Release on May 13, 2021. Upon Court's inquiry, Mr. Evans stated if the Court wanted the District Attorney's Office to handle this matter they would be requesting some additional time to file a response, however, the State's position was that the Motion should be served on the Attorney General. COURT FINDS the Deft. failed to submit the supporting physician statement of health prognosis for the Deft., moreover, it was not properly served. Therefore, COURT FINDS it did not have jurisdiction to hear the Motion, and ORDERED, motion DENIED. state DIRECTED to prepare the order.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	July 21, 2022

C-15-310099-1 State of Nevada
vs
Erin Ware

July 21, 2022	9:30 AM	Motion for Appointment of Attorney	Motion for Appointment of Attorney

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Robin Page

REPORTER:

PARTIES PRESENT:

Cobb, Tyrus	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Cobb submitted on the filed response. Court Advised no oral arguments would be received this at time as the Deft. was not transported. COURT STATED FINDINGS and ORDERED motion DENIED based on the Defendant's failure to properly comply with NRS 34.750. State DIRECTED to prepare the order.

CUSTODY (COC)

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } **SS:**

Pursuant to the Supreme Court order dated October 18, 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 three volumes with pages numbered 1 through 658.

STATE OF NEVADA,

Plaintiff(s),

vs.

ERIN DESHAUN WARE,

Defendant(s),

Case No: C-15-310099-1

Dept. No: XXI

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 3 day of November 2022.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk