

**SUPREME COURT OF NEVADA**

85398

Electronically Filed  
Jan 23 2023 09:22 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Edward Honabach, Appellant,

vs.

The State of Nevada, Respondent.

Appeal of Denial of Post-Conviction Relief  
Eighth Judicial District Court

**Appendix to Appellant's Opening Brief**

Jim Hoffman, Esq.

PO Box 231246

Las Vegas, NV 89105

(702) 483-1816

Attorney for Appellant Edward Honabach

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CLERK OF THE COURT

1 **INFM**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACOB J. VILLANI  
6 Chief Deputy District Attorney  
7 Nevada Bar #011732  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 I.A. 4/14/16  
13 10:00 AM  
14 J. PALLARES, ESQ.

15 THE STATE OF NEVADA,

16 Plaintiff,

CASE NO: C-16-314092 - 1-2-3-4

17 -vs-

DEPT NO: IV

18 LUIS ANGEL CASTRO, #1918366,  
19 **EDWARD HONABACH**  
20 **aka Edward Joseph Honabach, #7029816,**  
21 **FABIOLA JIMENEZ, #1957068,**  
22 **LIONEL KING, #1983132**

INFORMATION

23 Defendant.

24 STATE OF NEVADA }  
25 COUNTY OF CLARK } ss.

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

28 That LUIS ANGEL CASTRO, EDWARD HONABACH aka Edward Joseph  
Honabach, FABIOLA JIMENEZ and LIONEL KING, the Defendant(s) above named, having  
committed the crimes of CONSPIRACY TO COMMIT MURDER (Category B Felony - NRS  
200.010, 200.030, 199.480 - NOC 50038); ATTEMPT MURDER WITH USE OF A  
DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC  
50031); MAYHEM WITH USE OF A DEADLY WEAPON (Category B Felony - NRS  
200.280, 193.165 - NOC 50045); BATTERY WITH USE OF A DEADLY WEAPON  
RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 -

1 NOC 50226); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON  
2 RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310,  
3 200.320, 193.165 - NOC 50056); EXTORTION WITH USE OF A DEADLY WEAPON  
4 (Category B Felony - NRS 205.320, 193.165 - NOC 50620); ROBBERY WITH USE OF A  
5 DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and FIRST  
6 DEGREE ARSON (Category B Felony - NRS 205.010 - NOC 50414), on or about the 7th day  
7 of March, 2016, within the County of Clark, State of Nevada, contrary to the form, force and  
8 effect of statutes in such cases made and provided, and against the peace and dignity of the  
9 State of Nevada,

10 COUNT 1 - CONSPIRACY TO COMMIT MURDER

11 did willfully, unlawfully, and feloniously conspire with each other to commit murder,  
12 by the Defendants committing the acts as set forth in Count 2, said acts being incorporated by  
13 this reference as though fully set forth herein.

14 COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

15 did willfully, unlawfully, feloniously and with malice aforethought attempt to kill  
16 JOSE ORTIZ-SALAZAR, a human being, with use of a deadly weapon, to-wit: a machete  
17 and/or knife, by stabbing the said JOSE ORTIZ-SALAZAR about the body and/or by cutting  
18 the said JOSE ORTIZ-SALAZAR's throat with said a machete and/or knife, the Defendant(s)  
19 being criminally liable under one or more of the following principles of criminal liability, to-  
20 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission  
21 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
22 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
23 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
24 Defendants aiding or abetting and/or conspiring to murder JOSE ORTIZ-SALAZAR,  
25 Defendants acting in concert throughout.

26 COUNT 3 - MAYHEM WITH USE OF A DEADLY WEAPON

27 did willfully, maliciously, and feloniously deprive a person, to-wit: JOSE ORTIZ-  
28 SALAZAR, of a body member and/or did disfigure or render a body member useless, to-wit:



1 a finger and/or fingernails, with use of a deadly weapon, to-wit: a machete and/or knife and/or  
2 wire cutters, by severing the said JOSE ORTIZ-SALAZAR'S finger and/or removing his  
3 fingernails, the Defendants being criminally liable under one or more of the following  
4 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by  
5 aiding or abetting in the commission of this crime, with the intent that this crime be committed,  
6 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the  
7 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the  
8 intent that this crime be committed, Defendants aiding or abetting and/or conspiring,  
9 Defendants acting in concert throughout.

10 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
11 SUBSTANTIAL BODILY HARM

12 did willfully, unlawfully, and feloniously use force or violence upon the person of  
13 another, to-wit: JOSE ORTIZ-SALAZAR, with use of a deadly weapon, to-wit: a machete  
14 and/or knife, by stabbing the said JOSE ORTIZ-SALAZAR about the body with said a  
15 machete and/or knife, resulting in substantial bodily harm to JOSE ORTIZ-SALAZAR, the  
16 Defendants being criminally liable under one or more of the following principles of criminal  
17 liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
18 commission of this crime, with the intent that this crime be committed, by counseling,  
19 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
20 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
21 crime be committed, Defendants aiding or abetting and/or conspiring, Defendants acting in  
22 concert throughout.

23 COUNT 5 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON  
24 RESULTING IN SUBSTANTIAL BODILY HARM

25 did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy,  
26 abduct, conceal, kidnap, or carry away JOSE ORTIZ-SALAZAR, a human being, with the  
27 intent to hold or detain the said JOSE ORTIZ-SALAZAR against his will, and without his  
28 consent, for the purpose of committing murder and/or robbery, with use of a deadly weapon,

1 to-wit: a machete and/or knife and/or wire cutters, resulting in substantial bodily harm to JOSE  
2 ORTIZ-SALAZAR, the Defendants being criminally liable under one or more of the following  
3 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by  
4 aiding or abetting in the commission of this crime, with the intent that this crime be committed,  
5 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the  
6 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the  
7 intent that this crime be committed, Defendants aiding or abetting and/or conspiring,  
8 Defendants acting in concert throughout.

9 COUNT 6 - EXTORTION WITH USE OF A DEADLY WEAPON

10 did then and there willfully, feloniously and unlawfully make a verbal demand  
11 directed to one JOSE ORTIZ-SALAZAR, for payment to Defendants of the sum of \$300.00  
12 lawful money of the United States, which demand was accompanied by threats to do injury to  
13 the person or property of JOSE ORTIZ-SALAZAR, and said threats being made with the intent  
14 to extort and gain the above mentioned sum of money, with use of a deadly weapon, to-wit: a  
15 machete and/or knife and/or wire cutters, the Defendants being criminally liable under one or  
16 more of the following principles of criminal liability, to-wit: (1) by directly committing this  
17 crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this  
18 crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or  
19 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to  
20 commit this crime, with the intent that this crime be committed, Defendants aiding or abetting  
21 and/or conspiring, Defendants acting in concert throughout.

22 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

23 did willfully, unlawfully, and feloniously take personal property, to-wit: cigarettes,  
24 from the person of JOSE ORTIZ-SALAZAR, or in his presence, by means of force or violence,  
25 or fear of injury to, and without the consent and against the will of JOSE ORTIZ-SALAZAR,  
26 with use of a deadly weapon, to-wit: a machete and/or knife, the Defendants being criminally  
27 liable under one or more of the following principles of criminal liability, to-wit: (1) by directly  
28 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with


1 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,  
2 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a  
3 conspiracy to commit this crime, with the intent that this crime be committed, Defendants  
4 aiding or abetting and/or conspiring, Defendants acting in concert throughout.

5 COUNT 8 - FIRST DEGREE ARSON

6 did willfully, unlawfully, maliciously, and feloniously set fire to, burn, and/or cause to  
7 be burned, a certain residence, located at 1901 East Oakey Boulevard, Las Vegas, Clark  
8 County, Nevada, by use of open flame and flammable and/or combustible materials, and/or by  
9 manner and means unknown, the Defendants being criminally liable under one or more of the  
10 following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or  
11 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be  
12 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
13 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this  
14 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or  
15 conspiring, Defendants acting in concert throughout.

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

19 BY

  
20 JACOB J. VILLANI  
21 Chief Deputy District Attorney  
22 Nevada Bar #011732  
23  
24  
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26  
27  
28

Names of witnesses known to the District Attorney's Office at the time of filing this  
Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Dispatch
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records, 400 S. Martin Luther King Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Project Management & Video Bureau
CUSTODIAN OF RECORDS OR DESIGNEE	Las Vegas Fire Department
CUSTODIAN OF RECORDS OR DESIGNEE	Sunrise Hospital, 3186 Maryland Pkwy., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County School District
ALEXANDER, M.	LVMPD P#15223
ALLEN, Z.	Las Vegas Fire Department #204
AUSCHWITZ, J.	LVMPD P#5932
CHOCK, STEFAN M.D.	Sunrise Hospital, 3186 Maryland Pkwy., Las Vegas, NV
COURT INTERPRETER	200 Lewis Ave., Las Vegas, NV
DEVITO, A.	LVMPD P#15274
FASULO, T.	LVMPD P#13459
GRIFFIN, TIM	C/O Clark County District Attorney's Office
GUTIERREZ, AMADA	C/O Clark County District Attorney's Office

1	HALL, D.	Clark County School District Police #256
2	HERRING, N.	LVMPD P#9725
3	HEVEL, R.	Las Vegas Fire Department/Arson Investigation
4	KELVINGTON, A.	LVMPD P#8878
5	KING, C.	LVMPD P#14372
6	KWIATKOWSKI, TERRANCE M.D.	Sunrise Hospital, 3186 Maryland Pkwy., Las Vegas, NV
7	LACAZE, WILLIAM	C/O Clark County District Attorney's Office
8	LANDING, KHALIAH	C/O Clark County District Attorney's Office
9	LARINGTON, D.	LVMPD P#7858
10	LOVEETTE, J.	Las Vegas Fire Department #204
11	MAIORANA, DAVID	C/O Clark County District Attorney's Office
12	MARTINEZ, FRANCISCO	C/O Clark County District Attorney's Office
13	MARTINEZ, ROSIO	C/O Clark County District Attorney's Office
14	MENDEZ, ANTONIO	C/O Clark County District Attorney's Office
15	MENDOZA, A.	LVMPD P#15245
16	MURRAY, T.	LVMPD P#13458
17	NOGLE, K.	LVMPD P#8051
18	ORTEGA, MARCELO	C/O Clark County District Attorney's Office
19	ORTIZ-SALAZAR, JOSE	C/O Clark County District Attorney's Office
20	REZENDIS, YOSELIN	C/O Clark County District Attorney's Office
21	ROSARIO, NELSON	C/O Clark County District Attorney's Office
22	SALAZAR, GUADALUPE	C/O Clark County District Attorney's Office
23	SCHREIBER, P.	LVMPD P#13986
24	SCLIMENTI, M.	LVMPD P#6239
25	SHEPARD, DAVID	C/O Clark County District Attorney's Office
26	SPARKMAN, CHARLES	C/O Clark County District Attorney's Office
27	THEOBALD, R.	LVMPD P#6468
28	TOMASO, B.	LVMPD P#9488

LVMPD P#8396

WATTS, JOSEPH OR DESIGNEE Clark County District Attorney's Office-Investigator

16F03770A/B/C/D /cc/L3  
LVMPD EV#1603072804  
(TK4)



ORIGINAL

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

FEB 04 2019

BY,

*Vanessa Medina*  
VANESSA MEDINA, DEPUTY

AINF  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MEGAN THOMSON  
Chief Deputy District Attorney  
Nevada Bar #011002  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

C-16-314092-2  
AINF  
Amended Information  
4813595



THE STATE OF NEVADA,  
Plaintiff,

-vs-

LUIS ANGEL CASTRO, #1918366,  
**EDWARD HONABACH**  
aka Edward Joseph Honabach, #7029816,  
FABIOLA JIMENEZ, #1957068,  
LIONEL KING, #1983132

Defendant.

CASE NO. C-16-314092-2

DEPT NO. XXX

AMENDED  
INFORMATION

STATE OF NEVADA }  
COUNTY OF CLARK } ss:


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 LUIS ANGEL CASTRO, EDWARD HONABACH aka Edward Joseph Honabach, FABIOLA JIMENEZ, and LIONEL KING, the Defendant(s) above named, having committed the crime of **FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310, 200.320 - NOC 50052)**, on or about the 7th day of March, 2016, 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, did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away JOSE ORTIZ-SALAZAR, a human being, with the intent to hold or detain JOSE ORTIZ-SALAZAR against

1 his will, and without his consent, for the purpose of committing murder and/or robbery,  
2 resulting in substantial bodily harm to JOSE ORTIZ-SALAZAR, the Defendants being  
3 criminally liable under one or more of the following principles of criminal liability, to-wit: (1)  
4 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
5 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
6 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
7 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
8 Defendants aiding or abetting and/or conspiring, Defendants acting in concert throughout.

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

11  
12 BY

  
13 MEGAN THOMSON  
14 Chief Deputy District Attorney  
15 Nevada Bar #011002  
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25  
26

27 DA#16F03770X /cc/L4  
28 LVMPD EV#1603072804  
(TK)



ORIGINAL

GPA

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MEGAN THOMSON  
Chief Deputy District Attorney  
Nevada Bar #011002  
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 04 2019

BY, Vanessa Medina  
VANESSA MEDINA, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-16-314092-2

EDWARD HONABACH  
aka Edward Joseph Honabach,  
#7029816

DEPT NO: XXX

Defendant.

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310, 200.320 - NOC 50052)**, as more fully alleged in the charging document attached hereto as Exhibit "I".

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

This offer is conditional upon all four (4) Defendants accepting their respective negotiations and being sentenced. All Parties agree the State will have the right to argue for Life without the possibility of Parole, and the Defense will argue for Life with the possibility of Parole after fifteen (15) years. All Parties agree that no one will seek the term of years.

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

///

C-16-314092-2  
GPA  
Guilty Plea Agreement  
4813596



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

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

#### 12 CONSEQUENCES OF THE PLEA

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

15 I understand that as a consequence of my plea of guilty The Court must sentence me to  
16 imprisonment in the Nevada Department of Corrections for a minimum term of not less than  
17 FIFTEEN (15) years and a maximum term of not more than FORTY (40) years, OR for a  
18 minimum term of not less than FIFTEEN (15) years and a maximum term of LIFE, OR LIFE  
19 WITHOUT PAROLE. I understand that the law requires me to pay an Administrative  
20 Assessment Fee.

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

25 I understand that I am not eligible for probation for the offense to which I am pleading  
26 guilty.

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

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

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

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

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

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

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

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

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

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

28 ///

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

#### 8 WAIVER OF RIGHTS

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

- 11 1. The constitutional privilege against self-incrimination, including the right  
12 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.
- 13 2. The constitutional right to a speedy and public trial by an impartial jury,  
14 free of excessive pretrial publicity prejudicial to the defense, at which  
trial I would be entitled to the assistance of an attorney, either appointed  
15 or retained. At trial the State would bear the burden of proving beyond  
a reasonable doubt each element of the offense(s) charged.
- 16 3. The constitutional right to confront and cross-examine any witnesses who  
17 would testify against me.
- 18 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 19 5. The constitutional right to testify in my own defense.
- 20 6. The right to appeal the conviction with the assistance of an attorney,  
21 either appointed or retained, unless specifically reserved in writing and  
agreed upon as provided in NRS 174.035(3). I understand this means I  
22 am unconditionally waiving my right to a direct appeal of this conviction,  
including any challenge based upon reasonable constitutional,  
23 jurisdictional or other grounds that challenge the legality of the  
proceedings as stated in NRS 177.015(4). However, I remain free to  
24 challenge my conviction through other post-conviction remedies  
including a habeas corpus petition pursuant to NRS Chapter 34.

#### 25 VOLUNTARINESS OF PLEA

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

28 ///

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

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

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

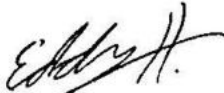
7 I believe that pleading guilty and accepting this plea bargain is in my best interest, and  
8 that a trial would be contrary to my best interest.

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


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

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

17 DATED this 9<sup>th</sup> day of February, 2019.

18  
19   
20 \_\_\_\_\_  
21 EDWARD HONABACH  
22 aka Edward Joseph Honabach  
23 Defendant

24 AGREED TO BY:

25   
26 \_\_\_\_\_  
27 MEGAN THOMSON  
28 Chief Deputy District Attorney  
Nevada Bar #011002



1 CERTIFICATE OF COUNSEL:

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

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

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

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

29 Dated: This 14 day of February, 2019.

  
ROBERT BECKETT, ESQ.

30 cc/L4

AINF  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MEGAN THOMSON  
Chief Deputy District Attorney  
Nevada Bar #011002  
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-

LUIS ANGEL CASTRO, #1918366,  
**EDWARD HONABACH**  
aka Edward Joseph Honabach, #7029816,  
FABIOLA JIMENEZ, #1957068,  
LIONEL KING, #1983132

Defendant.

CASE NO. C-16-314092-2

DEPT NO. XXX

AMENDED  
INFORMATION

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

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:

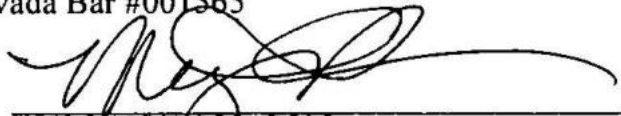
That LUIS ANGEL CASTRO, EDWARD HONABACH aka Edward Joseph Honabach, FABIOLA JIMENEZ, and LIONEL KING, the Defendant(s) above named, having committed the crime of **FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310, 200.320 - NOC 50052)**, on or about the 7th day of March, 2016, 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, did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away JOSE ORTIZ-SALAZAR, a human being, with the intent to hold or detain JOSE ORTIZ-SALAZAR against

**EXHIBIT "1"**

1 his will, and without his consent, for the purpose of committing murder and/or robbery,  
2 resulting in substantial bodily harm to JOSE ORTIZ-SALAZAR, the Defendants being  
3 criminally liable under one or more of the following principles of criminal liability, to-wit: (1)  
4 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
5 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
6 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
7 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
8 Defendants aiding or abetting and/or conspiring, Defendants acting in concert throughout.

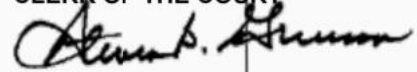
9 STEVEN B. WOLFSON  
10 Clark County District Attorney  
11 Nevada Bar #001565

12 BY

  
13 MEGAN THOMSON  
14 Chief Deputy District Attorney  
15 Nevada Bar #011002

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27 DA#16F03770X /cc/L4  
28 LVMPD EV#1603072804  
(TK)





JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EDWARD HONABACH aka  
Edward Joseph Honabach  
#7029816

Defendant.

CASE NO. C-16-314092-2

DEPT. NO. XXX

JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony) in violation of NRS 200.310, 200.320; thereafter, on the 26<sup>th</sup> day of March, 2019, the Defendant was present in Court for sentencing with counsel ROBERT BECKETT, ESQ., and good cause appearing,

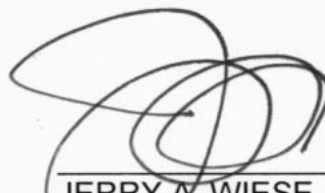
THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

PCR 19

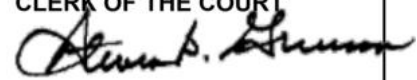
1 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the  
2 Defendant is sentenced as follows: LIFE WITHOUT THE POSSIBILITY OF PAROLE  
3 in the Nevada Department of Corrections (NDC).  
4

5 DATED: 27 day of March, 2019.



6  
7 JERRY A. WIESE  
8 DISTRICT COURT JUDGE  
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jm



**PCHC**  
**THE LAW OFFICE OF TRAVIS AKIN**  
Travis Akin, Esq.  
Nevada Bar No. 13059  
8275 S. Eastern Ave., Suite 200  
Las Vegas, NV 89123  
Phone: (702) 510-8567  
Fax: (702) 778-6600  
*Former Attorney of Petitioner*

CASE NO: A-20-812948-W  
Department 26

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

EDWARD HONABACH  
Plaintiff,

vs.

WILLIAM GITTERE,  
Defendant.

CASE NO. :  
DEPT. NO.:

**PETITIONER'S POST-CONVICTION  
WRIT OF HABEAS CORPUS**

**PETITIONER'S POST-CONVICTION WRIT OF HABEAS CORPUS**

**COMES NOW**, Petitioner EDWARD HONABACH, by and through his former counsel, Travis Akin, Esq., hereby submits Petitioner's PETITION FOR POST-CONVICTION WRIT OF HABEAS CORPUS. Counsel was originally appointed to handle Petitioner's appeal. Counsel agreed with Petitioner that an appeal was not proper due to the guilty plea agreement, and Counsel dismissed Petitioner's appeal. Shortly thereafter, Petitioner moved to have Counsel withdrawn from this case. Out of an abundance of caution, Counsel calendared the deadline to file the instant petition. After checking the docket, it appears that Petitioner did not ask for and was not appointed a new attorney. Counsel now files the instant writ of habeas corpus for his former client to preserve the one year timebar and asks this Court to appoint a replacement attorney to file a supplement.

In addition to all documents, pleadings, and oral arguments in this case, Petitioner asserts:

1. Name of institution and county in which you are presently imprisoned or where and

1 how you are presently restrained of your liberty: **Ely State Prison**

2 2. Name and location of court which entered the judgment of conviction under attack:

3 **Eighth Judicial District Court Department 30, Clark County, NV**

4 3. Date of judgment of conviction: **March 28, 2019**

5 4. Case number: **C-16-314092-2**

6 5. (a) Length of sentence: **LIFE WITHOUT PAROLE**

7 (b) If sentence is death, state any date upon which execution is scheduled: **N/A**

8 6. Are you presently serving a sentence for a conviction other than the conviction under  
9 attack in this motion? **No**

10 If "yes," list crime, case number and sentence being served at this time: **N/A**

11 7. Nature of offense involved in conviction being challenged: **FIRST DEGREE**  
12 **KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (NRS 200.310, 200.320**  
13 **– NOC 50052)**

14 8. What was your plea? (check one)

15 (a) Not guilty .....

16 (b) Guilty **X**

17 (c) Guilty but mentally ill .....

18 (d) Nolo contendere .....

19 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or  
20 information, and a plea of not guilty to another count of an indictment or information, or if a plea  
21 of guilty or guilty but mentally ill was negotiated, give details: **Guilty Plea was negotiated.**

22 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the  
23 finding made by: (check one)

24 (a) Jury: **N/A**

25 (b) Judge without a jury: **N/A**

- 1 11. Did you testify at the trial? **N/A**
- 2 12. Did you appeal from the judgment of conviction? **N/A**
- 3 13. If you did appeal, answer the following:
- 4 (a) Name of court: **Nevada Supreme Court**
- 5 (b) Case number or citation: **78694**
- 6 (c) Result: **Voluntary Dismissal**
- 7 (d) Date of result: **August 23, 2019**
- 8 (Attach copy of order or decision, if available.)
- 9
- 10 14. If you did not appeal, explain briefly why you did not: **Conviction a result of plea deal.**
- 11 15. Other than a direct appeal from the judgment of conviction and sentence, have you
- 12 previously filed any petitions, applications or motions with respect to this judgment in any court,
- 13 state or federal? **No**
- 14
- 15 16. If your answer to No. 15 was “yes,” give the following information:
- 16 (a) (1) Name of court: **N/A**
- 17 (2) Nature of proceeding: **N/A**
- 18 (3) Grounds raised: **N/A**
- 19 (4) Did you receive an evidentiary hearing on your petition, application or motion? **N/A**
- 20 (5) Result: **N/A**
- 21 (6) Date of result: **N/A**
- 22 (7) If known, citations of any written opinion or date of orders entered pursuant to such
- 23 result: **N/A**
- 24
- 25 (b) As to any second petition, application or motion, give the same information:
- 26 (1) Name of court: **N/A**
- 27 (2) Nature of proceeding: **N/A**
- 28 (3) Grounds raised: .....

- 1 (4) Did you receive an evidentiary hearing on your petition, application or motion? **N/A**  
2 (5) Result: .....  
3 (6) Date of result: .....  
4 (7) If known, citations of any written opinion or date of orders entered pursuant to such  
5 result:

6 .....  
7

8 (c) As to any third or subsequent additional applications or motions, give the same  
9 information as above, list them on a separate sheet and attach.

10 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
11 taken on any petition, application or motion?

12 (1) First petition, application or motion? **N/A**

13 Citation or date of decision: **N/A**

14 (2) Second petition, application or motion? **N/A**

15 Citation or date of decision: **N/A**

16 (3) Third or subsequent petitions, applications or motions? **N/A**

17 Citation or date of decision: **N/A**

18  
19 (e) If you did not appeal from the adverse action on any petition, application or motion,  
20 explain briefly why you did not. (You must relate specific facts in response to this question. Your  
21 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your  
22 response may not exceed five handwritten or typewritten pages in length.) **N/A**

23  
24 17. Has any ground being raised in this petition been previously presented to this or any  
25 other court by way of petition for habeas corpus, motion, application or any other postconviction  
26 proceeding? If so, identify: **No**

27 (a) Which of the grounds is the same: **None**

28 (b) The proceedings in which these grounds were raised: **N/A**

1 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
2 in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches  
3 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
4 length.) N/A

5 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional  
6 pages you have attached, were not previously presented in any other court, state or federal, list  
7 briefly what grounds were not so presented, and give your reasons for not presenting them. (You  
8 must relate specific facts in response to this question. Your response may be included on paper  
9 which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten  
10 or typewritten pages in length.) **This post-conviction claim was not available on appeal as it**  
11 **comes from a conviction resulting from a plea agreement.**

13 19. Are you filing this petition more than 1 year following the filing of the judgment of  
14 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
15 (You must relate specific facts in response to this question. Your response may be included on  
16 paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five  
17 handwritten or typewritten pages in length.) **No**

19 20. Do you have any petition or appeal now pending in any court, either state or federal, as  
20 to the judgment under attack? **No**

21 If yes, state what court and the case number: N/A

22 21. Give the name of each attorney who represented you in the proceeding resulting in your  
23 conviction and on direct appeal: **Robert S. Beckett**

25 22. Do you have any future sentences to serve after you complete the sentence imposed by  
26 the judgment under attack? **No**

27 If yes, specify where and when it is to be served, if you know: N/A

28 23. State concisely every ground on which you claim that you are being held unlawfully.

Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same:

A. Petitioner entered his plea agreement involuntarily, unintelligently, and unknowingly because he did not know that he could receive life without parole pursuant to the guilty plea agreement, therefore, the guilty plea is invalid; Petitioner was under the understanding that he would have, at minimum, a chance at parole;

B. Counsel was ineffective for failing to advise Petitioner that he could receive a life without parole sentence on his guilty plea; Petitioner was under the understanding that he would have, at minimum, a chance at parole;

C. Cumulative error.

### CONCLUSION

Former counsel has not had an opportunity to investigate these claims as he has not been counsel for the last 6 months. Counsel did meet with Petitioner prior to being withdrawn and Petitioner did communicate to Counsel that Petitioner did not believe that his guilty plea contemplated a life-without parole sentence. Former Counsel now files the instant writ of habeas corpus to preserve Petitioner's timebar and asks the Court to appoint counsel to investigate these claims and file supplemental briefs.

Dated this 27<sup>th</sup> day of March, 2020.

Respectfully submitted by:

**THE LAW OFFICE OF TRAVIS AKIN**

/s/ Travis Akin

---

Travis Akin, Esq.  
Nevada Bar No. 13059  
8275 S. Eastern Ave., Suite 200  
Las Vegas, NV 89123  
Phone: (702) 510-8567  
Fax: (702) 778-6600



**VERIFICATION**

STATE OF NEVADA                    )  
                                                  ) SS:  
COUNTY OF CLARK                 )

I, TRAVIS AKIN verify and declare under penalty of perjury:

1. That I am former counsel for the petitioner EDWARD HONABACH in the above-entitled action;
2. That I have read the foregoing Writ of Habeas Corpus (Post Conviction);
3. I know the contents thereof, and that the same is true of my own knowledge except for those matters stated on information and belief and as to those matters I believe to be true;
4. That my former client, EDWARD HONABACH is detained in the Ely State Prison and it is therefore unable to personally verify this petition.

FURTHER DECLARANT SAYETH NAUGHT

**THE LAW OFFICE OF TRAVIS AKIN**

/s/ Travis Akin

---

Travis Akin, Esq.  
Nevada Bar No. 13059  
8275 S. Eastern Ave., Suite 200  
Las Vegas, NV 89134  
Phone: (702) 510-8567  
Fax: (702) 778-6600  
*Former Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of March, 2020, I served a true and correct copy of the above and foregoing **SUPPLEMENTAL PETITION FOR POST CONVICTION WRIT OF HABEAS CORPUS** electronically and via mail addressed to the following:

**CLARK COUNTY DISTRICT ATTORNEY**

200 Lewis Avenue  
Las Vegas, Nevada 89101  
*Attorney for the State of Nevada*

**NEVADA ATTORNEY GENERAL**

Adam Paul Laxalt  
100 North Carson Street  
Carson City, Nevada 89701-4717

**/s/ Travis Akin**

---

Travis Akin, Esq.

*Steven B. Wolfson*  
CLERK OF THE COURT

**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
KAREN MISHLER  
Deputy District Attorney  
Nevada Bar #013730  
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-

EDWARD HONABACH, aka,  
Edward Joseph Honabach, #7029816  
Defendant.

CASE NO: A-20-812948-W

DEPT NO: XXX

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

THIS CAUSE having come before the Honorable JERRY WEISE, District Judge, on the 18th day of May, 2020, the Court having concluded that pursuant to Administrative Order 20-01 and subsequent Administrative Orders, this matter is "non-essential" and thus may be decided on the papers. 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**

**STATEMENT OF THE CASE**

On April 12, 2016, the State filed an Information charging Petitioner Edward Honabach ("Petitioner") with Conspiracy to Commit Murder (Category B Felony – NRS 200.010, 200.030, 199.480); Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Mayhem With Use of a Deadly Weapon (Category B

1 Felony – NRS 200.280, 193.165); Battery With Use of a Deadly Weapon Resulting in  
2 Substantial Bodily Harm (Category B Felony – NRS 200.481); First Degree Kidnapping With  
3 Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category A Felony – NRS  
4 200.310, 200.320, 193.165); Extortion With Use of a Deadly Weapon (Category B Felony –  
5 NRS 205.320, 193.165); Robbery With Use of a Deadly Weapon (Category B Felony – NRS  
6 200.380, 193.165); and First Degree Arson (Category B Felony – NRS 205.010).

7 On April 14, 2016, Petitioner was arraigned on the Information, at which time he  
8 entered a plea of not guilty and waived his right to a speedy trial. On February 4, 2019,  
9 pursuant to negotiations, the State filed an Amended Information charging Petitioner with one  
10 count of First Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony  
11 – NRS 200.310, 200.320). On that same date, Petitioner pleaded guilty to the charge contained  
12 in the Amended Information, and the State filed a Guilty Plea Agreement in open court.

13 On March 26, 2019, Petitioner was sentenced to a life without the possibility of parole  
14 in the Nevada Department of Corrections. The Judgment of Conviction was filed on March  
15 28, 2019. On April 26, 2019, Petitioner filed a Notice of Appeal. On August 13, 2019,  
16 Appellant filed a Notice of Withdrawal of Appeal. On August 23, 2019, the Nevada Supreme  
17 Court dismissed the appeal. No remittitur issued.

18 On March 27, 2020, Petitioner filed the instant post-conviction Petition for Writ of  
19 Habeas Corpus.

### 20 ANALYSIS

21 Petitioner claims he did not enter into the Guilty Plea Agreement voluntarily,  
22 intelligently, and knowingly, because he did not know that he could receive a sentence of life  
23 without the possibility of parole. He also claims that his plea counsel was ineffective for failing  
24 to advise him that he could receive a sentence of life without the possibility of parole. Both of  
25 these claims are clearly belied by the record. The Guilty Plea Agreement in this case clearly  
26 states that “the State will have the right to argue for Life without the possibility of Parole, and  
27 the Defense will argue for Life with the possibility of Parole after fifteen (15) years.”  
28 Additionally, during the plea canvass on February 4, 2019, the Court accepted Petitioner’s plea

1 of guilty, and concluded that his guilty plea was made freely and voluntarily, and that he  
2 understood the nature of the offense and the consequences of his plea.

3 Petitioner's only other claim is of cumulative error. As all of Petitioner's claims are  
4 clearly belied by the record, there is no suggestion or evidence of any cumulative error.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
7 shall be, and it is, hereby denied.

Dated this 21st day of July, 2020

8 DATED this \_\_\_\_\_ day of July, 2020.

9  
10   
DISTRICT JUDGE

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

318 764 021C 7440  
Jerry A. Wiese  
District Court Judge

13 BY /s/KAREN MISHLER  
14 KAREN MISHLER  
15 Deputy District Attorney  
Nevada Bar #013730

16  
17  
18  
19 **CERTIFICATE OF MAILING**

20 I hereby certify that service of the above and foregoing was made this \_\_\_\_\_ day of  
21 July, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

22 EDWARD HONABACH #1214257  
23 ELY STATE PRISON  
24 4569 N. STATE ROUTE 490  
ELY, NV, 89301

25 BY \_\_\_\_\_  
26 Jimenez  
27 Secretary for the District Attorney's Office

28 km/L3

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Edward Honabach, Plaintiff(s) CASE NO: A-20-812948-W  
7 vs. DEPT. NO. Department 30  
8 William Gittere, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/21/2020

15 Travis Akin travis@avalonlg.com  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD JOSEPH HONABACH,  
Appellant,

vs.

WILLIAM A. GITTERE, WARDEN,  
Respondent.

No. 81402

**FILE**

**DEC 17 2021**

A. BROWN  
SUPREME COURT

DEPU CLERK

**ORDER OF REVERSAL AND REMAND**

This is a pro se appeal from a district court order denying Edward Honabach's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge. We conclude that the district court erred in resolving the petition filed by counsel which had not been authorized by Honabach and had been filed after his counsel had withdrawn from representing him.

On March 28, 2019, the district court convicted Honabach, pursuant to a guilty plea, of one count of first-degree kidnapping resulting in substantial bodily harm and sentenced Honabach to life in prison without the possibility of parole. Honabach filed a timely notice of appeal. Trial counsel withdrew from representation shortly after the judgment was entered, and the district court appointed Travis Akin as appellate counsel. Akin subsequently filed a notice of withdrawal of appeal, stating that he had explained the consequences of withdrawing the appeal and that Honabach consented to the voluntary dismissal. Based on this notice, this court granted the request and dismissed the appeal. *Honabach v. State*, No. 78694, 2019 WL 4013641 (Nev. Aug. 23, 2019) (Order Dismissing Appeal). Several months later, Honabach wrote to this court complaining that he had not consented to the withdrawal of his direct appeal. Akin responded that he was still the attorney of record, that he sought to dismiss the appeal for reasons discussed with his client, and that he was planning on filing a

postconviction petition for a writ of habeas corpus. Because the dispute over whether Akin advised Honabach of the consequences of withdrawing the appeal and whether Honabach agreed to the withdrawal involved claims of ineffective assistance of counsel that had to be raised in the district court in the first instance, this court determined that the appeal should remain dismissed. *Honabach v. State*, Docket No. 78694 (Order, March 11, 2020). On March 1, 2020, while this court was considering Honabach's letter and Akin's response, Akin filed a motion to withdraw as counsel in the district court citing an insurmountable conflict of interest and that he had taken a job at a law firm and no longer had the time to represent Honabach. The district court considered the motion on March 12, 2020, but for reasons not apparent in the record, determined that the motion to withdraw was moot as it had been previously granted.'

Subsequently, on March 27, 2020, Akin filed a postconviction petition for a writ of habeas corpus purportedly on behalf of Honabach. On the face of the petition, Akin noted a withdrawal motion had been filed but that he was filing the petition out of an abundance of caution given the one-year time limit to file a petition. Akin, referring to Honabach as his former client, further requested that the court replace him with a new attorney to supplement the petition. The petition prepared by Akin raised two claims: that Honabach's guilty plea was invalid because he did not know he would receive a sentence of life in prison without the possibility of parole, and that his counsel was ineffective for not advising him of the maximum sentence. Akin did not raise any claims relating to the dismissal of the appeal. The

'It appears the district court may have confused Akin's motion to withdraw with Honabach's earlier October 2019 motion relating to his trial counsel's withdrawal from representation.



district court denied the petition without clarifying whether counsel was authorized to file the petition after he had withdrawn, appointing new counsel, or allowing Honabach to supplement the petition. This appeal followed. <sup>2</sup>

Honabach argues that the district court improperly considered the petition filed by Akin, which he did not authorize to be filed and which was filed after Akin had withdrawn from representing him. Honabach argues the district court should have allowed him to supplement the petition after the appointment of new counsel.

NRS 34.730(1) provides that if counsel verifies a petition in place of a petitioner, he must verify that "the petitioner personally authorized counsel to commence the action." Here, Akin acknowledged on the face of the petition that he had already withdrawn as counsel when he submitted the petition. While Akin's concern about the running clock on Honabach's time to file a petition is commendable, it does not supplant the authorization requirement in NRS 34.730(1).<sup>3</sup> And given Akin's actions in filing the petition and requesting the appointment of new counsel, it is

<sup>2</sup>The State argues that this court is without jurisdiction because Honabach makes the same arguments he raised in a motion to reconsider that he filed in district court. We disagree. Honabach appealed from the order denying the postconviction habeas petition, which is an appealable order pursuant to NRS 34.575(1).

<sup>3</sup>We note that both Akin and the district court believed that a petition had to be filed within one year from entry of the judgment of conviction. But as we made clear in the order dismissing Honabach's timely direct appeal, he had one year from that order to file a timely postconviction habeas petition. *See Honabach*, 2019 WL 4013641, at \*1 n.1 ("Because no remittitur will issue in this matter, *see* NRAP 42(b), the one-year period for filing a post-conviction habeas corpus petition under NRS 34.726(1) shall commence to run from the date of this order.").

understandable and reasonable that Honabach did not file a pro se petition or motion for appointment of counsel. *See Hathaway v. State*, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003) (recognizing that a petitioner would reasonably not file a petition when he believed counsel was pursuing a direct appeal). In these circumstances, rather than resolving the petition submitted by Akin, the district court should have clarified whether Honabach wanted to proceed on the petition submitted by Akin, supplement the petition, or request the appointment of postconviction counsel pursuant to NRS 34.750(1).<sup>4</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order. 5

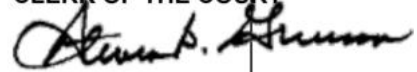
A.adt ,C.J.  
Hardesty

—1hr J. Sr.J.  
Herndon

<sup>4</sup>Despite the problems with the authorization, we conclude that the petition filed by Akin stopped the clock on the deadline to file a timely postconviction petition such that any supplemental pleadings would be timely in this case. *See State v. Powell*, 122 Nev. 751, 756-58, 138 P.3d 453, 457-58 (2006) (recognizing that a supplemental petition relates back to the filing date of the original petition); *Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) (holding that the failure to verify a petition is an amendable defect).

<sup>5</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Jerry A. Wiese, District Judge  
Edward Joseph Honabach  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



APET  
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Attorney for Edward Honabach

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

EDWARD HONABACH,  
Petitioner,

vs.

STATE OF NEVADA,  
Respondent

Case No.: A-20-812948-W

Department 30

**AMENDED PETITION FOR POST-  
CONVICTION RELIEF**

EDWARD HONABACH, by and through his counsel JIM HOFFMAN,  
ESQ., hereby brings this Amended Petition for Post-Conviction Relief. This  
Amended Petition is based on the original Petition, as well as the attached  
Argument, Exhibits, and all other pleadings on file in this case.

DATED: 4/28/22

/s/ Jim Hoffman

Jim Hoffman, Esq

## ARGUMENT

### I. Factual and Procedural Background

Along with three co-defendants, Edward Honabach was charged in 2016 with various offenses related to the attempted murder of Jose Ortiz-Salazar. Information. Before trial, the State negotiated a plea agreement with Edward and the other defendants, where each agreed to plead to one count of kidnapping with substantial bodily harm. Plea Agreement 1. This Court then sentenced Mr. Honabach (along with the other defendants) to life without parole. Transcript of Sentencing, March 26, 2019.<sup>1</sup>

Mr. Honabach filed a timely direct appeal. Notice of Appeal. However, his appellate counsel withdrew the appeal, stating that he had explained the situation to Mr. Honabach and Mr. Honabach consented to withdrawing the appeal. Notice of Withdrawal of Appeal. However, Edward had not actually consented or even been aware of the withdrawal. Letter to Supreme Court. The Supreme Court ordered appellate counsel to respond to the letter, and appellate counsel did, filing a copy of a letter that he had allegedly sent to Edward (after the withdrawal). Order to Respond; Response to Letter. The Supreme Court then reaffirmed its dismissal of

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<sup>1</sup> The sentencing transcript, as well as the change of plea transcript, were originally prepared for a co-defendant's case, C-16-314092-1. However, both transcripts also pertain to Mr. Honabach and are thus cited here. They are also attached as exhibits for the convenience of the parties and the Court.

1 the appeal, notwithstanding Edward's follow-up letter disputing the assertion that  
2 he had received any such letter. Order; Letter to Court.

3  
4 Meanwhile, appellate counsel filed a shell petition for post-conviction relief  
5 and then withdrew from the case. Post-Conviction Petition. Eventually, the  
6 undersigned was appointed to represent Mr. Honabach and this amended petition  
7 follows.  
8

## 9 **II. Appellate Counsel Was Ineffective Under the Sixth Amendment.**

10 The most obvious violation of Mr. Honabach's constitutional rights was due  
11 to his appellate counsel's withdrawal of his appeal without consent. This is clear  
12 ineffective assistance of counsel. In addition, counsel's failure to raise the  
13 arguments described in Section III also constitutes ineffective assistance of  
14 counsel. On this ground, the Court should allow Edward a chance to actually  
15 argue his appeal.  
16  
17

18 The Sixth Amendment to the US Constitution guarantees the right to  
19 counsel. "[T]he right to counsel is the right to effective assistance of  
20 counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n. 14 (1970). The  
21 application of this right is governed by *Strickland v. Washington*, 466 U.S. 668  
22 (1984).  
23

24 To prevail on a claim of ineffective assistance of counsel, a petitioner must  
25 demonstrate that his trial counsel's performance "fell below an objective standard  
26

1 of reasonableness" at the time of trial and "that there is a reasonable probability  
2 that, but for counsel's unprofessional errors, the result of the proceeding would  
3 have been different." *Id.* at 688, 694. In other words, there are two prongs of the  
4 Strickland test: deficient performance and prejudice.  
5

6 In order to obtain relief, petitioner need only demonstrate the underlying  
7 facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012,  
8 103 P.3d 25, 33 (2004). Petitioners are entitled to an evidentiary hearing if they  
9 raise claims supported by sufficient factual allegations that, if true, would entitle  
10 them to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225  
11 (1984).  
12  
13

14 **A. Appellate Counsel Was Ineffective in Withdrawing Edward's**  
15 **Appeal Without His Consent.**

16 **i. Factual background**

17 After his sentence by this Court, Edward filed a timely pro se notice of  
18 appeal. Travis Akin was appointed as his appellate counsel. However, he then  
19 filed a notice of withdrawal of appeal with the Nevada Supreme Court in August  
20 2019. In conformance with the Nevada Rules of Appellate Procedure, the  
21 withdrawal recited that Mr. Akin "explained and informed Edward Honabach of  
22 the legal consequences" of the withdrawal and that "Having so been informed,  
23 Edward Honabach hereby consents to a voluntary dismissal of the above-  
24  
25  
26

1 mentioned appeal.”<sup>2</sup> Notice of Withdrawal of Appeal 1. Shortly thereafter, the  
2 Supreme Court dismissed the appeal. Order, 8/23/19.

3  
4 In January 2020, Mr. Honabach wrote a letter to the Supreme Court, stating “I  
5 have not heard from him [Akin] in about 7 or 8 months, he has not answered any of  
6 my letters or phone calls.” Edward then obtained his docket sheet from the court  
7 “and found out that my lawyer has canceled my direct appeal without my  
8 knowledge or consent. I was never notified by my lawyer or the court of this  
9 either before or after this was done.” He also expressed confusion about whether  
10 Akin was even still his lawyer. Letter to Supreme Court, 1/13/20.  
11  
12

13 After receiving this letter, the Supreme Court ordered Mr. Akin to respond  
14 to it. Order, 1/16/20. Akin then filed a letter with the court dated February 14,  
15 2020, stating “I did dismiss your Supreme Court appeal for the reasons that we  
16 spoke about at High Desert State Prison.” Letter to Supreme Court, 2/14/20. The  
17  
18  
19

---

20 <sup>2</sup> Mr. Akin did not explain the basis for the withdrawal of the appeal, but it was  
21 presumably due to the fact that Edward’s guilty plea contained the following  
22 waiver: “The right to appeal the conviction with the assistance of an attorney,  
23 either appointed or retained, unless specifically reserved in writing and agreed  
24 upon as provided in NRS 174.035(3). I understand this means I am  
25 unconditionally waiving my right to a direct appeal of this conviction, including  
26 any challenge based upon reasonable constitutional, jurisdictional or other grounds  
27 that challenge the legality of the proceedings as stated in NRS 177.015(4).  
28 However, I remain free to challenge my conviction through other post-conviction  
remedies including a habeas corpus petition pursuant to NRS Chapter 34.” Plea  
Agreement 4.



1 Supreme Court then filed an order reaffirming its dismissal, on the grounds that  
2 “Whether appellant was advised of the consequences and agreed to the withdrawal  
3 of his appeal involves claims of ineffective assistance of counsel that must be  
4 raised in the district court in the first instance and requires factual determinations  
5 that need to be resolved through an evidentiary hearing.” Order, 3/11/20.  
6

7  
8 Mr. Honabach wrote again to the Supreme Court stating that even though  
9 Akin’s February letter was addressed to him, “I never received any letter” from  
10 Mr. Akin, and that “I have written several letters to Mr. Akin with no response.”  
11 He again asked the court whether Akin was still his attorney, and asked the court  
12 for a copy of the February letter. Letter to Supreme Court, 3/18/20. In response,  
13 the Supreme Court again reaffirmed the dismissal. Order, 3/24/20.  
14

15  
16 Mr. Honabach reiterated these same facts in a declaration pursuant to this  
17 Amended Petition. “As far as Mr. Akin, he withdrew my appeal without my  
18 consent. He said that I consented to do this, but I never did. In addition, I never  
19 received a letter from him, even though he told the Supreme Court he sent me one.  
20 I wanted to file an appeal and am upset that the appeal was withdrawn.”  
21

22 Declaration of Edward Honabach.<sup>3</sup>  
23

---

24  
25 <sup>3</sup> The declaration is not attached to the Petition. Counsel typed up Mr. Honabach’s  
26 statement and mailed it to him for signature, but has not yet received it back. The  
27 declaration will be filed with the Court as soon as it is received. Counsel  
28 apologizes for any delay.

1       **ii. Legal background**

2           “Counsel must file an appeal when a convicted defendant’s desire to  
3 challenge the conviction is reasonably inferable from the totality of the  
4 circumstances.” *Burns v. State*, 455 P.3d 840 (Nev. 2020). “Counsel’s duty to file  
5 a notice of appeal when one is requested is not affected by the perceived merits of  
6 the defendant’s claims on appeal.” *Id.* Even where a defendant explicitly waives  
7 his right to appeal, appellate counsel is still required to prosecute the appeal  
8 anyway if that is what the defendant wants. *Garza v. Idaho*, 139 S. Ct. 738, 742,  
9 203 L.Ed.2d 77 (2019); *see also Toston v. State*, 267 P.3d 795, 127 Nev. Adv. Op.  
10 87 (Nev. 2011). Failure to file an appeal when requested is error under *Strickland*,  
11 and prejudice is presumed. *Garza*, 139 S. Ct. at 742; *Lozada v. State*, 110 Nev.  
12 349, 354-57, 871 P.2d 944, 947-49 (Nev. 1994).

13           In *Mitchell v. State*, 381 P.3d 642 (Nev. 2012) the Court voluntarily  
14 dismissed an appeal based on not just counsel’s statement that the appeal waiver  
15 foreclosed it, but also a “Consent to Voluntary Dismissal” that was signed by the  
16 defendant. This is not something that the Supreme Court per se requires, but it is a  
17 way to verify that the defendant actually consents that was not present in Mr.  
18 Honabach’s case.

19           //

20           //

1       **iii. Analysis**

2           The caselaw here is simple: where a defendant wants to appeal, their  
3 attorney is required to appeal. Even if there is an appeal waiver, the defendant  
4 retains the ultimate decision about whether or not to pursue the matter.<sup>4</sup> If an  
5 attorney fails to appeal, prejudice is presumed according to both the Nevada and  
6 U.S. Supreme Courts. Thus, there is only a factual question remaining of whether  
7 or not Mr. Akin actually obtained Edward’s consent to withdraw the appeal or not.  
8  
9

10          The weight of the evidence suggests that Edward did not consent to  
11 withdraw the appeal. He has repeatedly maintained that he did not, in his letters  
12 to the Supreme Court and in his declaration pursuant to this Petition. When the  
13 Supreme Court ordered Akin to respond to these allegations, he did so by pointing  
14 to a letter which he stated that he sent *after* withdrawing the appeal, in which he  
15 references a conversation that happened at some unspecified point in time, without  
16 saying whether that conversation happened before or after the withdrawal. The  
17 letter also simply states that “we spoke about” the dismissal, which does not  
18 actually establish that Edward consented to the dismissal. Even if the Court takes  
19 the letter at face value, the evidence still supports the proposition that Edward did  
20 not consent.  
21  
22  
23  
24  
25

---

26 <sup>4</sup> *See also* Nevada Rules of Professional Conduct 1.2(a): “[A] lawyer shall abide by  
27 a client’s decision concerning the objectives of representation[.]””

1           Additionally, Mr. Akin has previously been the subject of a reprimand from  
2 the State Bar. The reprimand was due to the fact that Akin had three other cases  
3 before the Nevada Supreme Court (in 2020, just a few months after Mr.  
4 Honabach's) where he failed to file any briefs. Despite Supreme Court sanctions,  
5 for whatever reason he could not get his work done and so that Court removed  
6 him as counsel. Bar Reprimand. It is not a leap of logic to suggest that if Mr.  
7 Akin failed in his duty to represent other appellants before the Supreme Court, he  
8 failed to do so in the instant case as well. The inference here is that he withdrew  
9 Mr. Honabach's appeal for the same reason that he never filed briefs in the other  
10 cases. The withdrawal was not because Mr. Honabach consented, it was because  
11 he was unable to diligently perform his duties.  
12

13           The record in this case is arguably enough to order a new direct appeal for  
14 Mr. Honabach, where he can have the effective assistance of counsel. Alternately,  
15 as the Supreme Court suggested, this Court could hold an evidentiary hearing with  
16 Mr. Akin in order to evaluate these claims. Either way, appellate counsel's failure  
17 to file an appeal was clear error, from which prejudice must be presumed. This  
18 was a violation of Mr. Honabach's Sixth Amendment right, and this Court should  
19 therefore grant the Petition on this ground.  
20

21 //

1           **B. Appellate Counsel Was Ineffective in Failing to Challenge the**  
2           **Voluntariness of Edward's Plea.**

3           As stated in his declaration, Edward did not actually want to accept the plea  
4 deal. He did so because he felt pressured into taking the deal by his counsel, as  
5 well as the condition of the offer that all four codefendants would have to plead  
6 guilty in order for the offer to go into effect. Declaration; Plea Agreement 1. In  
7 addition, his decision to plead was based on the advice of counsel who had not  
8 adequately reviewed the discovery materials. Declaration.  
9

10  
11           To be constitutionally valid under the Fifth Amendment, a guilty plea must  
12 be entered knowingly, willingly, and understandingly. *North Carolina v. Alford*,  
13 400 U.S. 25, 37-38 (1971). A plea is only voluntary if counsel's advice in giving  
14 the plea was effective – ineffective assistance of counsel vitiates the plea. *Hill v.*  
15 *Lockhart*, 474 U.S. 52, 56-60, 106 S. Ct. 366, 370 (1985).  
16

17           Edward's plea was not voluntary, as he was pressured into it. In addition,  
18 counsel's failure to review the discovery was ineffective assistance of counsel  
19 which rendered the plea involuntary. See Section III-B below. This was a  
20 violation of Mr. Honabach's Sixth Amendment rights and so the Court should  
21 grant relief on this claim.  
22  
23

24           **C. Appellate Counsel's Errors Cumulated to Create Prejudice.**

25           Even if no one error is sufficient to constitute a violation justifying  
26 reversal, cumulative error can take on constitutional dimensions. *Parle v.*

1 *Runnels*, 505 F.3d 922, 927 (9th Cir. 2007); *Chambers v. Mississippi*, 410 U.S.  
2 284, 290 n.3, 93 S. Ct. 1038, 1043 (1973). This also applies to ineffective  
3 assistance of counsel. “Where no single error or omission of counsel, standing  
4 alone, significantly impairs the defense, the district court may nonetheless find  
5 unfairness and thus, prejudice emanating from the totality of counsel’s errors and  
6 omissions.” *Ewing v. Williams*, 596 F.2d 391, 396 (9th Cir. 1979). Taken  
7 separately or together, appellate counsel’s errors constitute prejudice and therefore  
8 ineffective assistance of counsel.  
9

### 11 **III. Trial Counsel Was Ineffective Under the Sixth Amendment.**

12 In addition to the prejudicial errors discussed above, Edward’s trial counsel  
13 was also ineffective under the Sixth Amendment. First, he failed to review all  
14 discovery before advising Edward to accept the plea, rendering it non-knowing and  
15 voluntary. Next, he failed to adequately prepare for sentencing. Finally, while  
16 each of these errors constituted prejudice by itself, they also cumulated to  
17 constitute ineffective assistance of counsel. The Court should therefore reverse  
18 Mr. Honabach’s conviction on these grounds, hold an evidentiary hearing, or other  
19 such relief as it believes proper.  
20  
21  
22

#### 23 **A. Trial Counsel Failed to Review Discovery Before Advising Edward** 24 **to Accept the Plea Offer.**

25 As Mr. Honabach stated in his declaration, “I never got to see the discovery  
26 in my case. I was especially concerned about seeing the statements of my co-  
27

1 defendants and other witnesses. I found out right before sentencing that Mr.  
2 Beckett hadn't seen most of the discovery either. He told me that he had talked to  
3 the lawyers for the other defendants and that was good enough." Declaration.<sup>5</sup>  
4

5 The right to effective assistance of counsel extends to the plea bargaining  
6 process. *Lafler v. Cooper*, 132 S. Ct. 1376, 1384 (2012). To show prejudice  
7 where a plea bargain has been accepted, defendants must demonstrate a reasonable  
8 probability that they would have gone to trial absent counsel's errors. *Hill v.*  
9 *Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).  
10

11 "Counsel has a duty to make reasonable investigations." *Strickland v.*  
12 *Washington*, 466 U.S. 668, 691 (1984). "Although trial counsel is typically  
13 afforded leeway in making tactical decisions regarding trial strategy, counsel  
14 cannot be said to have made a tactical decision without first procuring the  
15 information necessary to make such a decision." *Reynoso v. Giurbino*, 462 F.3d  
16 1099, 1112 (9<sup>th</sup> Cir. 2006).  
17

18 "Because an intelligent assessment of the relative advantages of pleading  
19 guilty is frequently impossible without the assistance of an attorney, counsel have a  
20 duty to supply criminal defendants with necessary and accurate information." *Iaea*  
21 *v. Sunn*, 800 F.2d 861, 865 (9<sup>th</sup> Cir. 1986) (internal citations and quotations  
22  
23  
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27 <sup>5</sup> See note 3 *supra*.

omitted). Failure to review discovery before advising a client as to a plea offer falls well outside prevailing professional norms and is therefore error under *Strickland. Williams v. Washington*, 59 F.3d 673, 680-81 (7<sup>th</sup> Cir. 1995).

To be constitutionally valid, a guilty plea must be entered knowingly, willingly, and understandingly. *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1971). A plea is only voluntary under this standard if counsel's advice in giving the plea was effective – ineffective assistance of counsel vitiates the plea. *Hill v. Lockhart*, 474 U.S. 52, 56-60, 106 S. Ct. 366, 370 (1985).

In the instant case, trial counsel's failure to review all of the discovery before advising Mr. Honabach to accept the plea was erroneous. It was additionally prejudicial – as Edward stated in his declaration, he did not want to take the deal in the first place and only did so on the advice of his trial counsel. He would not have done so if he were aware that counsel had failed to review all the discovery. This establishes prejudice. Mr. Honabach's Sixth Amendment right was violated, and this Court should therefore reverse his conviction on this ground.

#### **B. Trial Counsel Failed to Adequately Prepare for Sentencing.**

At sentencing, a substantial disparity was revealed between the amount of preparation that Edward's lawyer did and the preparation that the other defendants' counsel engaged in. For instance, counsel for codefendant Angel Castro submitted a sentencing memorandum asking the Court for leniency, along with a substantial



1 number of letters from Mr. Castro's family. Transcript of Sentencing, 3/26/19, 5-  
2 10. By contrast, Mr. Honabach's counsel did not submit a sentencing  
3 memorandum (although the State did) and only submitted one letter, from  
4 Edward's parents. *Id.* at 4; Declaration. Trial counsel also failed to prepare  
5 Edward to speak at his sentencing. Declaration.  
6

7  
8 This was prejudicial error under *Strickland*. Failing to prepare for  
9 sentencing was deficient performance below the standard expected of a lawyer, as  
10 demonstrated by the co-defendant's counsel. It was also prejudicial, as there was a  
11 reasonable probability of a different result if counsel had done a better job of  
12 presenting mitigation evidence to the Court. Trial counsel's actions constituted  
13 ineffective assistance of counsel and so the Court should reverse on this ground.  
14

### 15 **C. Trial Counsel's Errors Cumulated to Create Prejudice.**

16 Even if no one error is sufficient to constitute a violation justifying  
17 reversal, cumulative error can take on constitutional dimensions. *Parle v.*  
18 *Runnels*, 505 F.3d 922, 927 (9th Cir. 2007); *Chambers v. Mississippi*, 410 U.S.  
19 284, 290 n.3, 93 S. Ct. 1038, 1043 (1973). This also applies to ineffective  
20 assistance of counsel. "Where no single error or omission of counsel, standing  
21 alone, significantly impairs the defense, the district court may nonetheless find  
22 unfairness and thus, prejudice emanating from the totality of counsel's errors and  
23  
24  
25  
26

omissions.” *Ewing v. Williams*, 596 F.2d 391, 396 (9th Cir. 1979). Taken separately or together, trial counsel’s errors constitute prejudice and therefore ineffective assistance of counsel.

#### **IV. Mr. Honabach’s Guilty Plea Was Not Voluntary in Violation of the Fifth Amendment.**

As stated in his declaration, Edward did not actually want to accept the plea deal. He did so because he felt pressured into taking the deal by his counsel, as well as the condition of the offer that all four codefendants would have to plead guilty in order for the offer to go into effect. Declaration; Plea Agreement 1. In addition, his decision to plead was based on the advice of counsel who had not adequately reviewed the discovery materials. Declaration.

To be constitutionally valid under the Fifth Amendment, a guilty plea must be entered knowingly, willingly, and understandingly. *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1971). A plea is only voluntary if counsel’s advice in giving the plea was effective – ineffective assistance of counsel vitiates the plea. *Hill v. Lockhart*, 474 U.S. 52, 56-60, 106 S. Ct. 366, 370 (1985).

Edward’s plea was not voluntary, as he was pressured into it. In addition, counsel’s failure to review the discovery was ineffective assistance of counsel which rendered the plea involuntary. See Section III-B above. This was a

1 violation of Mr. Honabach's Fifth Amendment rights and so the Court should grant  
2 relief on this claim.<sup>6</sup>

### 3 4 CONCLUSION

5 Edward Honabach's appellate counsel failed to maintain his appeal, despite  
6 an uncontroverted record which shows that Edward did not consent to withdrawal.  
7 This was clear error under *Strickland*, and prejudice is presumed. In addition, both  
8 appellate and trial counsel made other errors. Taken altogether, these prejudicial  
9 errors constitute ineffective assistance of counsel. Mr. Honabach respectfully  
10 requests that the Court reverse his conviction, allow him to file a new appeal, hold  
11 an evidentiary hearing to further evaluate these claims, or grant whatever other  
12 relief the Court finds to be appropriate.  
13  
14

15 DATED: 4/28/22

16  
17 \_\_\_\_\_ /s/ Jim Hoffman

18 Jim Hoffman, Esq  
19  
20  
21  
22  
23

24 <sup>6</sup> Under NRS 34.810, a claim which could have been raised on direct appeal is  
25 barred from consideration in a post-conviction petition unless the petitioner shows  
26 cause and prejudice to excuse the procedural default. In this case, cause and  
27 prejudice are established by appellate counsel's failure to raise the claim on direct  
28 appeal. See Section I-B *supra*.

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that a copy of this Amended Petition was served  
3 on the Clark County District Attorney's Office on April 28, 2022, via e-service to  
4 PDMotions@ClarkCountyDA.com.  
5

6 DATED: April 28, 2022  
7

8 /s/ Jim Hoffman  
9

10 

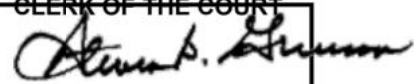
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JIM HOFFMAN, ESQ.  
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## **Index of Exhibits to Amended Post-Conviction Relief Petition**

<b>Name</b>	<b>Ex</b>
Transcript of Change of Plea, 2/4/19	1
Transcript of Sentencing, 3/26/19	2
Notice of Withdrawal of Appeal, 8/13/19	3
Order, 8/23/19	4
Letter to Court, 1/13/20	5
Order, 1/16/20	6
Letter to Court, 2/15/20	7
Order, 3/11/20	8
Letter to Court, 3/18/20	9
Order, 3/24/20	10
Reprimand of Travis Akin	11

# Exhibit 1



DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C314092
	)	DEPT. NO. XXX
vs.	)	
	)	
LUIS ANGEL CASTRO,	)	
	)	
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
*ENTRY OF PLEA*  
BEFORE THE HONORABLE JERRY A. WIESE, II  
MONDAY, FEBRUARY 4, 2019  
AT 10:20 A.M.  
LAS VEGAS, NEVADA

For the State: MEGAN S. THOMSON, ESQ.

For the Defendants: WARREN GELLER, ESQ.  
ROBERT BECKETT, ESQ.  
MACE YAMPOLSKY, ESQ.  
CARL ARNOLD, ESQ.

REPORTED BY: KIMBERLY A. FARKAS, NV CCR No. 741

1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 4, 2019

2  
3 P R O C E E D I N G S

4 \* \* \* \* \*

5 **THE COURT:** This is Case No. C314092, State  
6 of Nevada v. Luis Angel Castro, Edward Honabach,  
7 Fabiola Jimenez, and Lionel King. It's on today for  
8 jury trial start, but my understanding is the case has  
9 pled.

10 Somebody want to put the negotiations on the  
11 record?

12 **MS. THOMSON:** My understanding is today that  
13 each of these defendants will be entering a guilty plea  
14 for first degree kidnapping resulting in substantial  
15 bodily harm. The negotiation is contingent upon all  
16 four both entering the plea and proceeding through  
17 sentencing. The parties agree that no one will argue  
18 for the term of years in the 15 to 48-year term. The  
19 defense will have the opportunity to argue that the  
20 Court should sentence each of these individuals to a  
21 term of life with the possibly of parole at 15 years.  
22 And the State will have the opportunity to argue that  
23 the Court should sentence to a term of life without the  
24 possibility of parole. Those are the two statutorily  
25 mandated sentencing structures that each of the parties



1 have agreed are appropriate in this case.

2 I believe that is the totality.

3 **MR. GELLER:** On behalf of Defendant Castro,  
4 Tom Geller. That's correct.

5 **MR. YAMPOLSKY:** On behalf of Defendant King,  
6 Mace Yampolsky. That's accurate.

7 **MR. BECKETT:** On behalf of Defendant  
8 Honabach, that's correct.

9 **MR. ARNOLD:** On behalf of Ms. Jimenez, that's  
10 correct, Your Honor.

11 **THE COURT:** Okay. I've got to do a plea  
12 canvas with each of you individually. I'm just going  
13 to do them in the order that they're in the pleadings.  
14 So We'll do Luis Angel Castro first. The rest of you  
15 can sit down if you want.

16 Mr. Castro, give me your full legal.

17 **THE DEFENDANT:** Luis Angel Castro Morales.

18 **THE COURT:** How old are you, sir?

19 **THE DEFENDANT:** 32.

20 **THE COURT:** How far did you go in school.

21 **THE DEFENDANT:** Tenth grade.

22 **THE COURT:** Do you read, write, and  
23 understand the English language?

24 **THE DEFENDANT:** The best I can.

25 **THE COURT:** What does that mean?

1           **THE WITNESS:** Yes.

2           **THE COURT:** Have you seen a copy of the  
3 amended information in this case charging you with  
4 first degree kidnapping resulting in substantial bodily  
5 harm, which is a category A. Have you seen that?

6           **THE DEFENDANT:** Yes, sir.

7           **THE COURT:** Did you have a chance to read  
8 that and discuss it with your attorney?

9           **THE DEFENDANT:** Yes, I have.

10          **THE COURT:** With regard to that charge, first  
11 degree kidnapping resulting in substantial bodily harm,  
12 how do you plead, guilty or not guilty?

13          **THE DEFENDANT:** Guilty.

14          **THE COURT:** Before I can accept your plea of  
15 guilty, I have to be convinced that your plea is freely  
16 and voluntarily made. Are you making your plea freely  
17 and voluntarily?

18          **THE DEFENDANT:** Yes, I am, sir.

19          **THE COURT:** Has anybody forced you or coerced  
20 you to enter that plea?

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

22          **THE COURT:** Are you making that plea because  
23 you're, in fact, guilty of that charge?

24          **THE DEFENDANT:** Yes, sir.

25          **THE COURT:** Has anybody made any promises or

1 guarantees to you other than what's been stated in open  
2 court and what's contained in the guilty plea  
3 agreement?

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

5 **THE COURT:** In looking at the guilty plea  
6 agreement, it looks like you signed this on page 5.  
7 It's dated February 4. Did you read and sign that  
8 today?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Did you understand it before you  
11 signed it?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** You had a chance to discuss it  
14 with your attorney, and he answered any questions you  
15 might have had about it?

16 **THE DEFENDANT:** Yes, I have.

17 **THE COURT:** You understand that by signing  
18 it, you're agreeing that you read and understood it;  
19 correct?

20 **THE DEFENDANT:** That is correct.

21 **THE COURT:** Also by signing that document,  
22 you're agreeing to waive certain important  
23 constitutional rights like the right to be able to  
24 confront your accuser, go to trial and put on evidence  
25 on your own behalf. You understand that?

1           **THE DEFENDANT:** I understand, sir.

2           **THE COURT:** Are you currently suffering from  
3 any emotional or physical distress that's caused you to  
4 enter this plea?

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

6           **THE COURT:** Are you currently under the  
7 influence on any alcohol, medication, narcotics or any  
8 substance that might affect your ability to understand  
9 these documents or the process that we're going  
10 through?

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

12          **THE COURT:** Do you understand that in the  
13 guilty plea agreement it says that the possibility of  
14 sentence is 15 to 40 years or for minimum of 15 years  
15 and a maximum of life or life without parole? Do you  
16 understand that those are the options?

17          **THE DEFENDANT:** Yes, sir.

18          **THE COURT:** Do you understand that sentencing  
19 is strictly up to the Court, and nobody can promise you  
20 probation, leniency, or any kind of special treatment;  
21 correct?

22          **THE DEFENDANT:** That's correct.

23          **THE COURT:** Do you have any questions that  
24 you want to ask of myself or the State or your counsel  
25 before we proceed?

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

2           **THE COURT:** Has your attorney made any  
3 promises to you that are not contained in the guilty  
4 plea agreement?

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

6           **THE COURT:** Based on all the facts and  
7 circumstances, are you satisfied with the services of  
8 your attorney?

9           **THE DEFENDANT:** Yes, sir.

10          **THE COURT:** Are you a U.S. citizen?

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

12          **THE COURT:** Do you understand that there are  
13 some charges that have adverse immigration consequences  
14 and may result in deportation?

15          **THE DEFENDANT:** That is correct.

16          **THE COURT:** Have you had the chance to  
17 discuss any immigration issues with your attorney, and  
18 he's answered any questions you have?

19          **THE DEFENDANT:** To this point, yes and no,  
20 but I'll just say yes.

21          **MR. GELLER:** Judge, I can represent to the  
22 Court, I've been in touch with his immigration  
23 attorney, and we've been in communication. I did let  
24 my client know today, as well as previously, that  
25 there's a substantial probability he'll be deported

1 after he serves a period of incarceration.

2 **THE COURT:** Do you understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** You still agree with the terms as  
5 set forth in the guilty plea agreement?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** So I have to go through the  
8 amended information with you to make sure that there's  
9 a factual basis for your plea.

10 According to the information, it says that,  
11 "On or about the 7th day of March 2016 in Clark County,  
12 Nevada, contrary to the laws of the State of Nevada,  
13 you did willfully, unlawfully, feloniously seize,  
14 confine, inveigle, entice, decoy, abduct, conceal,  
15 kidnap, or carry away Jose Ortiz Salazar, a human  
16 being, with the intent to hold or detain Jose Ortiz  
17 Salazar against his will and without his consent for  
18 the purpose of committing murder and/or robbery with  
19 substantial bodily harm. The defendants being  
20 criminally liable under one or more of the following  
21 principals of criminal liability, to wit: One, by  
22 directly committing the crime or by; two, aiding or  
23 abetting in the commission of the crime with the intent  
24 that the crime be committed by counseling, encouraging,  
25 hiring, commanding, inducing or otherwise procuring the

1 other to commit the crime; and/or, three, pursuant to  
2 conspiracy to commit the crime with the intent that the  
3 crime be committed, the defendants aiding or abetting  
4 or conspiring, defendants acting in concert  
5 throughout."

6 Is that what you did?

7 **THE DEFENDANT:** According to this, yes.

8 **THE COURT:** The question is, is that what you  
9 did?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Okay. Because, I mean, if you  
12 don't think that's what you did, then you can't be  
13 freely and voluntarily accepting the plea.

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** You agree that's what you did;  
16 correct?

17 **THE WITNESS:** Yes.

18 **THE COURT:** All right. The Court hereby  
19 finds the defendant's plea of guilty is freely and  
20 voluntarily made. He appears to understand the nature  
21 of the offense and the consequences of the plea. I'll  
22 therefore accept your plea of guilty. We'll refer this  
23 to the Division of Parole and Probation for preparation  
24 of the PSI. We'll set for sentencing hearing for --

25 **THE CLERK:** March 26th, 8:30.

1           **THE COURT:** Thank you, sir. You can sit.

2           We'll go to Edward Honabach.

3           Mr. Honabach, can you please state your full  
4 legal name.

5           **THE DEFENDANT:** Edward Joseph Honabach.

6           **THE COURT:** How old are you, sir?

7           **THE DEFENDANT:** 31.

8           **THE COURT:** How far did you go in school?

9           **THE DEFENDANT:** Eleventh grade.

10          **THE COURT:** Do you read, write, and  
11 understand the English language?

12          **THE DEFENDANT:** Yes.

13          **THE COURT:** You've received a copy of the  
14 amended information in this case; correct?

15          **THE DEFENDANT:** Yes, Your Honor.

16          **THE COURT:** You've had a chance to discuss  
17 that with your attorney, and he answered any questions  
18 you had about it?

19          **THE DEFENDANT:** Yes.

20          **THE COURT:** In that amended information it  
21 charges you with first degree kidnapping resulting in  
22 substantial bodily harm, a category A felony. With  
23 regard to that charge, how do you plea, guilty or not  
24 guilty?

25          **THE DEFENDANT:** Guilty.



1           **THE COURT:** Before I can accept your plea of  
2 guilty, I have to be convinced that your plea is freely  
3 and voluntarily made. Are you making your plea freely  
4 and voluntarily?

5           **THE DEFENDANT:** Yes, Your Honor.

6           **THE COURT:** Has anybody forced you or coerced  
7 to accept that plea?

8           **THE DEFENDANT:** No.

9           **THE COURT:** Are you making that plea of  
10 guilty because you are, in fact, guilty of that charge?

11           **THE DEFENDANT:** Yes, Your Honor.

12           **THE COURT:** Has anybody made any promises or  
13 guarantees to you other than what's been stated in open  
14 court and what's contained in the guilty plea  
15 agreement?

16           **THE DEFENDANT:** No.

17           **THE COURT:** In looking the the guilty plea  
18 agreement, it looks like you signed this on page 5.  
19 It's dated, looks like, the 4th day of February, 2019.  
20 Did you read this and sign it today?

21           **THE DEFENDANT:** Yes, Your Honor.

22           **THE COURT:** Did you have a chance to discuss  
23 it with your attorney; he answered any questions you  
24 had about it?

25           **THE DEFENDANT:** Yes.

1           **THE COURT:** You understood the terms before  
2 you signed it?

3           **THE DEFENDANT:** Yes.

4           **THE COURT:** You understand that by signing  
5 this, you're agreeing that you read it and understood  
6 it; correct?

7           **THE DEFENDANT:** Yes.

8           **THE COURT:** Also by signing it, you're giving  
9 up important rights, like the right to confront your  
10 accuser, the right to go to trial, and the right to  
11 present evidence on your own behalf? You understand  
12 that?

13           **THE DEFENDANT:** Yes.

14           **THE COURT:** Are you currently under the  
15 influence of any alcohol, medication, narcotics or  
16 substance that might affect your ability to understand  
17 these documents or the process that we're going  
18 through?

19           **THE DEFENDANT:** No.

20           **THE COURT:** Are you currently suffering from  
21 any emotional or physical distress that's caused you to  
22 enter this plea?

23           **THE DEFENDANT:** No.

24           **THE COURT:** You understand that the range of  
25 punishment for this, according to the law, is 15 to 40

1 years or for a minimum of no less than 15 years and a  
2 maximum of life or life without parole? Do you  
3 understand those are the options?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** You understand that sentencing is  
6 strictly up to the Court. Nobody can promise you any  
7 type of leniency or any special treatment? You  
8 understand that?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** Do you have any questions that  
11 you want to ask of myself, your attorney, or the State  
12 before we go forward?

13 **THE DEFENDANT:** No, Your Honor.

14 **THE COURT:** Has your attorney made any  
15 promises to you that are not contained in the guilty  
16 plea agreement?

17 **THE DEFENDANT:** No.

18 **THE COURT:** Based on all the facts and  
19 circumstances, are you satisfied with the services of  
20 your attorney?

21 **THE DEFENDANT:** Yes

22 **THE COURT:** Are you a U.S. citizen?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** All right. So I'm going to go  
25 through the information. This is going to be

1 redundant. You guys are going to hear this four times.  
2 I've got to go through it with each of you.

3 Mr. Honabach, according to the amended  
4 information charging you with first degree kidnapping  
5 resulting in substantial bodily harm, it says that, "On  
6 or about March 7th, 2016, in Clark County, Nevada  
7 contrary to the laws of the State of Nevada, you did  
8 willfully, unlawfully, and feloniously seize, confine,  
9 inveigle, entice, decoy, abduct, conceal, kidnap or  
10 carry away Jose Ortiz Salazar, a human being, with the  
11 intent to hold or detain Jose Ortiz Salazar against his  
12 will and without his consent for the purpose of  
13 committing murder and/or robbery resulting in  
14 substantial bodily harm to Jose Ortiz Salazar. The  
15 defendants being criminally liable under one or more of  
16 the following principles of criminal liability: By  
17 directly committing the crime and/or, two, by aiding or  
18 abetting in the commission of the crime with the intent  
19 that the crime be committed by counseling, encouraging,  
20 hiring, commanding, inducing and/or otherwise procuring  
21 the other to commit the crime, and/or, three, pursuant  
22 to a conspiracy to commit the crime with the intent  
23 that the crime be committed, the defendants aiding or  
24 abetting or conspiring, defendants acting in concert  
25 throughout."

1 Is that what you did?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** All right. The Court hereby  
4 finds the defendant's plea of guilty is freely and  
5 voluntarily made. He appears to understand the nature  
6 of the offense and the consequences of the plea. I'll  
7 therefore accept your plea of guilty, and we'll refer  
8 this to the Division of Parole and Probation for  
9 preparation of a PSI. And we'll set your sentencing  
10 hearing for --

11 **THE CLERK:** March 26th, 8:30.

12 **THE DEFENDANT:** Thank you, Your Honor.

13 **THE COURT:** Thank you. Fabiola Jimenez.  
14 Ms. Jimenez, can you give me your full legal?

15 **THE DEFENDANT:** Yes. Fabiola Jimenez.

16 **THE COURT:** How old are you, ma'am?

17 **THE DEFENDANT:** 43.

18 **THE COURT:** How far did you go in school?

19 **THE DEFENDANT:** Eleventh.

20 **THE COURT:** Do you read, write, and  
21 understand the English language?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Have you received a copy of the  
24 amended information in this case which charges you with  
25 first degree kidnapping resulting in substantial bodily

1 harm?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** You've had a chance to review  
4 that with your attorney; he answered any questions you  
5 had about it?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** With regard to that charge, how  
8 do you plead, guilty or not guilty?

9 **THE DEFENDANT:** Guilty.

10 **THE COURT:** Before I can accept your plea of  
11 guilty, I have to be convinced that your plea is freely  
12 and voluntarily made. Are you making your plea freely  
13 and voluntarily?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Has anybody forced you or coerced  
16 to accept that plea?

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

18 **THE COURT:** Are you making the plea of guilty  
19 because you're, in fact, guilty of that charge.

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Has anybody made any promises or  
22 guarantees to you other than what's been stated in open  
23 court and what's contained in the guilty plea  
24 agreement?

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

1           **THE COURT:** In looking at the guilty plea  
2 agreement, it appears that you signed this on page 5.  
3 It's dated February 4th. Did you read it and sign it  
4 today?

5           **THE DEFENDANT:** Yes, sir.

6           **THE COURT:** Did you understand it before you  
7 signed it?

8           **THE DEFENDANT:** Yes, sir.

9           **THE COURT:** You had a chance to talk to your  
10 attorney about it; he answered any questions you might  
11 have had about it?

12           **THE DEFENDANT:** Yes, sir.

13           **THE COURT:** You understand that by signing  
14 it, you're agreeing that you read it and understood it;  
15 correct?

16           **THE DEFENDANT:** Yes, sir.

17           **THE COURT:** Also by signing that, you're  
18 giving up important rights like the right to confront  
19 your accuser, the right to go to trial, and the right  
20 to present evidence on your own behalf? Do you  
21 understand that?

22           **THE DEFENDANT:** Yes, sir.

23           **THE COURT:** Are you currently under the  
24 influence of any alcohol, medication, narcotics, or any  
25 substance that might affect your ability to understand

1 these documents or the process that we're going  
2 through?

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

4 **THE COURT:** Are you currently suffering from  
5 any emotional or physical distress that's caused you to  
6 enter the plea?

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

8 **THE COURT:** Do you understand that the range  
9 of punishment for this is 15 to 40 years or minimum of  
10 no less than 15 years and a maximum of life or life  
11 without parole? You understand that those are the  
12 options?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Do you understand that sentencing  
15 is strictly up to the Court. Nobody can promise you  
16 probation, leniency or any special treatment; right?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Do you have any questions you  
19 want to ask of myself, your attorney, or the State  
20 before we go forward?

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

22 **THE COURT:** Did your attorney make any  
23 promises to you that are not contained in the guilty  
24 plea agreement?

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



1           **THE COURT:** Based on all the facts and  
2 circumstances, are you satisfied with the services of  
3 your attorney?

4           **THE DEFENDANT:** Yes, sir.

5           **THE COURT:** Are you a U.S. citizen?

6           **THE DEFENDANT:** Yes, sir.

7           **THE COURT:** All right. Let me go through the  
8 amended information with you and make sure there's a  
9 factual basis. According to the information it says,  
10 "On or about the 7th day of March 2016, in Clark  
11 County, Nevada, contrary to the laws of the State of  
12 Nevada, you did willfully, unlawfully, feloniously  
13 seize, confine, inveigle, entice, decoy, abduct,  
14 conceal, kidnap, or carry away Jose Ortiz Salazar, a  
15 human being, with the intent to hold or detain Jose  
16 Ortiz Salazar against his will and without his consent  
17 for the purpose of committing murder and/or robbery  
18 resulting in substantial bodily harm to Jose Ortiz  
19 Salazar. The defendants being criminally liable under  
20 one or more of the following principles of criminal  
21 liability, to wit: one, by directly committing the  
22 crime; and/or, two, by aiding or abetting in the  
23 commission of the crime with the intent that the crime  
24 be committed, by counseling, encouraging, hiring,  
25 commanding, inducing, or otherwise procuring the other

1 to the commit the crime; and/or, three, pursuant to a  
2 conspiracy to commit the crime with the intent that the  
3 crime be committed, defendants aiding or abetting or  
4 conspiring, defendants acting in concert throughout."

5 Is that what you did?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** All right. The Court hereby  
8 finds the defendant's plea of guilty is freely and  
9 voluntarily made. She appears to understand the nature  
10 of the offense and the consequences of the plea. I'll,  
11 therefore, accept your plea of guilty. We'll refer  
12 this matter to the Division of Parole and Probation for  
13 preparation of a PSI. We'll set your sentencing  
14 hearing date for --

15 **THE CLERK:** March 26th, 8:30.

16 **THE COURT:** All right. Lionel king.

17 Mr. King, can you please give me your full.

18 **THE DEFENDANT:** Lionel Anthony King.

19 **THE COURT:** How old are you, sir?

20 **THE DEFENDANT:** 32.

21 **THE COURT:** How far did you go in school?

22 **THE DEFENDANT:** Tenth grade.

23 **THE COURT:** Do you read, write, and  
24 understand the English language?

25 **THE DEFENDANT:** Yes, sir.

1           **THE COURT:** Have you received a copy of the  
2 amended information in this case which charges you with  
3 first degree kidnapping resulting in substantial bodily  
4 harm?

5           **THE DEFENDANT:** I have.

6           **THE COURT:** You reviewed that with your  
7 attorney; he answered any questions you had about it?

8           **THE DEFENDANT:** Yes.

9           **THE COURT:** With regard to that charge, how  
10 do you plead, guilty or not guilty?

11          **THE DEFENDANT:** Guilty.

12          **THE COURT:** Before I can accept your plea of  
13 guilty, I have to be convinced that your plea is freely  
14 and voluntarily made. Are you making your plea freely  
15 and voluntarily?

16          **THE DEFENDANT:** Yes, sir.

17          **THE COURT:** Has anybody forced you or coerced  
18 you to accept that plea?

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

20          **THE COURT:** Are you making the plea of guilty  
21 because you're, in fact, guilty of that charge?

22          **THE DEFENDANT:** Yes.

23          **THE COURT:** Has anybody made any promises or  
24 guarantees to you other than what's been stated in open  
25 court?

1           **THE DEFENDANT:** No.

2           **THE COURT:** In looking at the guilty plea  
3 agreement, it looks like it's signed on page 5, dated  
4 February 4. Did you read and sign this today?

5           **THE DEFENDANT:** I did.

6           **THE COURT:** Did you understand it before you  
7 signed it?

8           **THE DEFENDANT:** Yes, sir.

9           **THE COURT:** You had a chance to discuss it  
10 with your attorney; he answered any questions you might  
11 have had about it?

12          **THE DEFENDANT:** Um-hum. Yes.

13          **THE COURT:** You understand that by signing  
14 this, you're agreeing that you read and understood it;  
15 correct?

16          **THE DEFENDANT:** Correct, sir.

17          **THE COURT:** Also by signing it, you're giving  
18 up important constitutional rights, like the right to  
19 confront your accuser, the right to go to trial and  
20 present evidence on your own behalf? Do you understand  
21 that?

22          **THE DEFENDANT:** Yes, Your Honor.

23          **THE COURT:** Are you currently under the  
24 influence of any alcohol, medication, narcotics, or any  
25 substance that might affect your ability to understand

1 these documents or the process that we're going  
2 through?

3 **THE DEFENDANT:** No, Your Honor.

4 **THE COURT:** Are you currently suffering from  
5 any emotional or physical distress that's caused you to  
6 enter this plea?

7 **THE DEFENDANT:** No.

8 **THE COURT:** You understand that the range of  
9 punishment for this charge is 15 to 40 years or for a  
10 minimum of 15 years and a maximum of life or life  
11 without parole? Do you understand that those are the  
12 options?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** You understand that sentencing is  
15 strictly up to the Court. Nobody can promise you any  
16 type of leniency or any special treatment?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Do you have any questions that  
19 you want to ask of myself, your attorney, or the State  
20 before we go forward?

21 **THE DEFENDANT:** I do not, sir.

22 **THE COURT:** Has your attorney made my  
23 promises to you that are not contained in the guilty  
24 plea agreement?

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

1           **THE COURT:** Based on all the facts and  
2 circumstances in the case, are you satisfied with the  
3 services of your attorney?

4           **THE DEFENDANT:** Yes, I am, Your Honor.

5           **THE COURT:** Are you a U.S. citizen?

6           **THE DEFENDANT:** Yes, sir.

7           **THE COURT:** Let me go through the information  
8 with you to make sure that there's a factual basis for  
9 your plea. It says that, "On or about the 7th day of  
10 March 2016, in Clark County, Nevada, contrary to the  
11 laws of the state of Nevada, you did willfully,  
12 unlawfully, feloniously seize, confine, inveigle,  
13 entice, decoy, abduct, conceal, kidnap, or carry way  
14 Jose Ortiz Salazar, a human being, with the intent to  
15 hold or detain Jose Ortiz Salazar against his will and  
16 without his consent for the purpose of committing  
17 murder and/or robbery resulting in substantial bodily  
18 harm to Jose Ortiz Salazar, the defendant being  
19 criminally liable under one or more of the follow  
20 principles of criminal liability: One, by directly  
21 committing the crime; and/or, two, by aiding or  
22 abetting in the commission of the crime with the intent  
23 that the crime be committed by counseling, encouraging,  
24 hiring, commanding, inducing and/or otherwise procuring  
25 the other to commit the crime; and/or, three, pursuant

1 to a conspiracy to commit the crime with the intent  
2 that the crime be committed, the defendants aiding or  
3 abetting and/or conspiring, defendants acting in  
4 concert throughout."

5 Is that what you did?

6 **THE DEFENDANT:** Yes, Your Honor.

7 **THE COURT:** All right. Court hereby finds  
8 the defendant's plea is freely and voluntarily made.  
9 He appears to understand the nature of the offense and  
10 the consequences of his plea. I'll, therefore, accept  
11 your plea of guilty. We'll refer this to the Division  
12 of Parole and Probation for preparation of a PSI, and  
13 we'll set your sentencing hearing date for --

14 **THE CLERK:** March 26th, 8:30.

15 **THE COURT:** All right. Thanks, guys.

16 **MS. THOMSON:** Thank you, Your Honor.

17 **THE COURT:** That resolves the case. We will  
18 see you at sentencing. We'll excuse your jurors.

19 (Proceedings concluded at 10:39 A.M.)

20 -o0o-

21 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
22 PROCEEDINGS.

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25 /S/ Kimberly A. Farkas, RPR, CRR

<b>MR. ARNOLD: [1]</b> 3/8 <b>MR. BECKETT: [1]</b> 3/6 <b>MR. GELLER: [2]</b> 3/2 7/20 <b>MR. YAMPOLSKY:</b> [1] 3/4 <b>MS. THOMSON: [2]</b> 2/11 25/15 <b>THE CLERK: [4]</b> 9/24 15/10 20/14 25/13 <b>THE COURT: [115]</b> <b>THE DEFENDANT:</b> [107] <b>THE WITNESS: [2]</b> 3/25 9/16 <b>-</b> <b>-o0o [1]</b> 25/20 <b>/</b> <b>/S [1]</b> 25/24 <b>1</b> <b>10:20 [1]</b> 1/15 <b>10:39 [1]</b> 25/19 <b>15 [10]</b> 2/18 2/21 6/14 6/14 12/25 13/1 18/9 18/10 23/9 23/10 <b>2</b> <b>2016 [4]</b> 8/11 14/6 19/10 24/10 <b>2019 [3]</b> 1/14 2/1 11/19 <b>26th [4]</b> 9/25 15/11 20/15 25/14 <b>3</b> <b>31 [1]</b> 10/7 <b>32 [2]</b> 3/19 20/20 <b>4</b> <b>40 [4]</b> 6/14 12/25 18/9 23/9 <b>43 [1]</b> 15/17 <b>48-year [1]</b> 2/18 <b>4th [2]</b> 11/19 17/3 <b>7</b> <b>741 [1]</b> 1/25 <b>7th [4]</b> 8/11 14/6 19/10 24/9 <b>8</b> <b>8:30 [4]</b> 9/25 15/11 20/15 25/14 <b>A</b> <b>A.M [2]</b> 1/15 25/19 <b>abduct [4]</b> 8/14 14/9 19/13 24/13	<b>abetting [8]</b> 8/23 9/3 14/18 14/24 19/22 20/3 24/22 25/3 <b>ability [4]</b> 6/8 12/16 17/25 22/25 <b>able [1]</b> 5/23 <b>about [12]</b> 5/15 8/11 10/18 11/24 14/6 16/5 17/10 17/11 19/10 21/7 22/11 24/9 <b>accept [11]</b> 4/14 9/22 11/1 11/7 15/7 16/10 16/16 20/11 21/12 21/18 25/10 <b>accepting [1]</b> 9/13 <b>according [5]</b> 8/10 9/7 12/25 14/3 19/9 <b>accurate [2]</b> 3/6 25/21 <b>accuser [4]</b> 5/24 12/10 17/19 22/19 <b>acting [4]</b> 9/4 14/24 20/4 25/3 <b>adverse [1]</b> 7/13 <b>affect [4]</b> 6/8 12/16 17/25 22/25 <b>after [1]</b> 8/1 <b>against [4]</b> 8/17 14/11 19/16 24/15 <b>agree [3]</b> 2/17 8/4 9/15 <b>agreed [1]</b> 3/1 <b>agreeing [5]</b> 5/18 5/22 12/5 17/14 22/14 <b>agreement [13]</b> 5/3 5/6 6/13 7/4 8/5 11/15 11/18 13/16 16/24 17/2 18/24 22/3 23/24 <b>aiding [8]</b> 8/22 9/3 14/17 14/23 19/22 20/3 24/21 25/2 <b>alcohol [4]</b> 6/7 12/15 17/24 22/24 <b>all [13]</b> 2/15 7/6 9/18 13/18 13/24 15/3 19/1 19/7 20/7 20/16 24/1 25/7 25/15 <b>Also [4]</b> 5/21 12/8 17/17 22/17 <b>am [2]</b> 4/18 24/4 <b>amended [8]</b> 4/3 8/8 10/14 10/20 14/3 15/24 19/8 21/2 <b>and/or [14]</b> 8/18 9/1 14/13 14/17 14/20 14/21 19/17 19/22 20/1 24/17 24/21 24/24 24/25 25/3 <b>ANGEL [4]</b> 1/7 2/6 3/14 3/17 <b>answered [8]</b> 5/14 7/18 10/17 11/23 16/4 17/10 21/7 22/10	<b>Anthony [1]</b> 20/18 <b>any [37]</b> <b>anybody [8]</b> 4/19 4/25 11/6 11/12 16/15 16/21 21/17 21/23 <b>appears [5]</b> 9/20 15/5 17/2 20/9 25/9 <b>appropriate [1]</b> 3/1 <b>are [41]</b> <b>argue [3]</b> 2/17 2/19 2/22 <b>ARNOLD [1]</b> 1/23 <b>as [3]</b> 7/24 7/24 8/4 <b>ask [4]</b> 6/24 13/11 18/19 23/19 <b>ATTEST [1]</b> 25/21 <b>attorney [21]</b> 4/8 5/14 7/2 7/8 7/17 7/23 10/17 11/23 13/11 13/14 13/20 16/4 17/10 18/19 18/22 19/3 21/7 22/10 23/19 23/22 24/3 <b>away [3]</b> 8/15 14/10 19/14 <b>B</b> <b>Based [4]</b> 7/6 13/18 19/1 24/1 <b>basis [3]</b> 8/9 19/9 24/8 <b>be [17]</b> 2/13 4/15 5/23 7/25 8/24 9/3 9/12 11/2 13/25 14/19 14/23 16/11 19/24 20/3 21/13 24/23 25/2 <b>because [5]</b> 4/22 9/11 11/10 16/19 21/21 <b>BECKETT [1]</b> 1/21 <b>been [6]</b> 5/1 7/22 7/23 11/13 16/22 21/24 <b>before [13]</b> 1/13 4/14 5/10 6/25 11/1 12/1 13/12 16/10 17/6 18/20 21/12 22/6 23/20 <b>behalf [8]</b> 3/3 3/5 3/7 3/9 5/25 12/11 17/20 22/20 <b>being [8]</b> 8/16 8/19 14/10 14/15 19/15 19/19 24/14 24/18 <b>believe [1]</b> 3/2 <b>best [1]</b> 3/24 <b>bodily [11]</b> 2/15 4/4 4/11 8/19 10/22 14/5 14/14 15/25 19/18 21/3 24/17 <b>both [1]</b> 2/16	<b>C</b> <b>C314092 [2]</b> 1/5 2/5 <b>can [15]</b> 3/15 3/24 4/14 6/19 7/21 10/1 10/3 11/1 13/6 15/14 16/10 18/15 20/17 21/12 23/15 <b>can't [1]</b> 9/12 <b>canvas [1]</b> 3/12 <b>CARL [1]</b> 1/23 <b>carry [4]</b> 8/15 14/10 19/14 24/13 <b>case [10]</b> 1/5 2/5 2/8 3/1 4/3 10/14 15/24 21/2 24/2 25/17 <b>CASTRO [6]</b> 1/7 2/6 3/3 3/14 3/16 3/17 <b>category [2]</b> 4/5 10/22 <b>caused [4]</b> 6/3 12/21 18/5 23/5 <b>CCR [1]</b> 1/25 <b>certain [1]</b> 5/22 <b>chance [8]</b> 4/7 5/13 7/16 10/16 11/22 16/3 17/9 22/9 <b>charge [9]</b> 4/10 4/23 10/23 11/10 16/7 16/19 21/9 21/21 23/9 <b>charges [4]</b> 7/13 10/21 15/24 21/2 <b>charging [2]</b> 4/3 14/4 <b>circumstances [4]</b> 7/7 13/19 19/2 24/2 <b>citizen [4]</b> 7/10 13/22 19/5 24/5 <b>CLARK [5]</b> 1/2 8/11 14/6 19/10 24/10 <b>client [1]</b> 7/24 <b>coerced [4]</b> 4/19 11/6 16/15 21/17 <b>commanding [4]</b> 8/25 14/20 19/25 24/24 <b>commission [4]</b> 8/23 14/18 19/23 24/22 <b>commit [8]</b> 9/1 9/2 14/21 14/22 20/1 20/2 24/25 25/1 <b>committed [8]</b> 8/24 9/3 14/19 14/23 19/24 20/3 24/23 25/2 <b>committing [8]</b> 8/18 8/22 14/13 14/17 19/17 19/21 24/16 24/21 <b>communication [1]</b> 7/23 <b>conceal [4]</b> 8/14 14/9 19/14 24/13 <b>concert [4]</b> 9/4 14/24 20/4 25/4 <b>concluded [1]</b> 25/19	<b>confine [4]</b> 8/14 14/8 19/13 24/12 <b>confront [4]</b> 5/24 12/9 17/18 22/19 <b>consent [4]</b> 8/17 14/12 19/16 24/16 <b>consequences [5]</b> 7/13 9/21 15/6 20/10 25/10 <b>conspiracy [4]</b> 9/2 14/22 20/2 25/1 <b>conspiring [4]</b> 9/4 14/24 20/4 25/3 <b>constitutional [2]</b> 5/23 22/18 <b>contained [7]</b> 5/2 7/3 11/14 13/15 16/23 18/23 23/23 <b>contingent [1]</b> 2/15 <b>contrary [4]</b> 8/12 14/7 19/11 24/10 <b>convinced [4]</b> 4/15 11/2 16/11 21/13 <b>copy [4]</b> 4/2 10/13 15/23 21/1 <b>correct [14]</b> 3/4 3/8 3/10 5/19 5/20 6/21 6/22 7/15 9/16 10/14 12/6 17/15 22/15 22/16 <b>counsel [1]</b> 6/24 <b>counseling [4]</b> 8/24 14/19 19/24 24/23 <b>COUNTY [5]</b> 1/2 8/11 14/6 19/11 24/10 <b>court [16]</b> 1/1 2/20 2/23 5/2 6/19 7/22 9/18 11/14 13/6 15/3 16/23 18/15 20/7 21/25 23/15 25/7 <b>crime [24]</b> 8/22 8/23 8/24 9/1 9/2 9/3 14/17 14/18 14/19 14/21 14/22 14/23 19/22 19/23 19/23 20/1 20/2 20/3 24/21 24/22 24/23 24/25 25/1 25/2 <b>criminal [4]</b> 8/21 14/16 19/20 24/20 <b>criminally [4]</b> 8/20 14/15 19/19 24/19 <b>CRR [1]</b> 25/24 <b>currently [8]</b> 6/2 6/6 12/14 12/20 17/23 18/4 22/23 23/4 <b>D</b> <b>date [2]</b> 20/14 25/13 <b>dated [4]</b> 5/7 11/19 17/3 22/3 <b>day [4]</b> 8/11 11/19 19/10 24/9 <b>decoy [4]</b> 8/14 14/9
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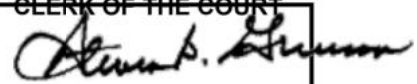


<b>D</b> <b>decoy...</b> [2] 19/13 24/13 <b>defendant</b> [5] 1/8 3/3 3/5 3/7 24/18 <b>defendant's</b> [4] 9/19 15/4 20/8 25/8 <b>defendants</b> [13] 1/20 2/13 8/19 9/3 9/4 14/15 14/23 14/24 19/19 20/3 20/4 25/2 25/3 <b>defense</b> [1] 2/19 <b>degree</b> [7] 2/14 4/4 4/11 10/21 14/4 15/25 21/3 <b>deportation</b> [1] 7/14 <b>deported</b> [1] 7/25 <b>DEPT</b> [1] 1/5 <b>detain</b> [4] 8/16 14/11 19/15 24/15 <b>did</b> [27] <b>directly</b> [4] 8/22 14/17 19/21 24/20 <b>discuss</b> [6] 4/8 5/13 7/17 10/16 11/22 22/9 <b>distress</b> [4] 6/3 12/21 18/5 23/5 <b>DISTRICT</b> [1] 1/1 <b>Division</b> [4] 9/23 15/8 20/12 25/11 <b>do</b> [27] <b>document</b> [1] 5/21 <b>documents</b> [4] 6/9 12/17 18/1 23/1 <b>does</b> [1] 3/25 <b>don't</b> [1] 9/12 <b>down</b> [1] 3/15	<b>excuse</b> [1] 25/18 <b>F</b> <b>Fabiola</b> [3] 2/7 15/13 15/15 <b>fact</b> [4] 4/23 11/10 16/19 21/21 <b>facts</b> [4] 7/6 13/18 19/1 24/1 <b>factual</b> [3] 8/9 19/9 24/8 <b>far</b> [4] 3/20 10/8 15/18 20/21 <b>FARKAS</b> [2] 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# Exhibit 2



DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA, )  
 )  
Plaintiff, ) CASE NO. C314092  
 ) DEPT. NO. XXX  
vs. )  
 )  
 )  
LUIS ANGEL CASTRO, )  
 )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
*SENTENCING*  
BEFORE THE HONORABLE JERRY A. WIESE, II  
TUESDAY, MARCH 26, 2019  
AT 9:57 A.M.  
LAS VEGAS, NEVADA

For the State: MEGAN THOMSON, ESQ.

For the Defendants: WARREN GELLER, ESQ  
ROBERT BECKETT, ESQ.  
MACE YAMPOLSKY, ESQ.  
CARL ARNOLD, ESQ.

REPORTED BY: KIMBERLY A. FARKAS, NV CCR No. 741

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 26, 2019

2  
3 P R O C E E D I N G S

4 \* \* \* \* \*

5  
6 **THE MARSHAL:** You may remain seated. Please  
7 come to order. Pages 11 12, 13, 14. Page 11, Luis  
8 Castro, C314092; page 12, Edward Honabach, C314092;  
9 page 13, Fabiola Jimenez, C314092; page 14, Lionel  
10 King, Case No. C314092.

11 **MR. GELLER:** Warren Geller on behalf of Luis  
12 Castro. He's present in custody this morning.

13 **MR. BECKETT:** Bob Beckett appearing with  
14 Mr. Honabach.

15 **MR. ARNOLD:** Good morning, Your Honor. Carl  
16 Arnold on behalf of Fabiola Jimenez.

17 **MR. YAMPOLSKY:** Mace Yampolsky on behalf of  
18 Lionel King.

19 **MS. THOMSON:** Megan Thomson for the State.

20 **THE COURT:** It's on for sentencing today.  
21 Any reason we should not go forward?

22 **MR. GELLER:** On behalf of Defendant Castro,  
23 there is one stipulated correction to his PSI. I don't  
24 believe there's any reason we wouldn't be able to put  
25 that on the record and then proceed.

1           **THE COURT:** Let's do that now. What's the  
2 issue?

3           **MR. GELLER:** With respect to page 2, there  
4 are three boxes which the PSI author can check in this  
5 case with an X, indicating age at first arrest. On  
6 Mr. Castro's PSI, it's checked "19 or younger." That's  
7 not substantiated by his arrest history later in the  
8 report. The parties have agreed to have that removed.  
9 And I believe a "24 and older" would be the appropriate  
10 box that should have been checked in that instance.

11           **MS. THOMSON:** I agree.

12           **THE COURT:** Okay. That doesn't rise to the  
13 level of a Stockmeier issue, I don't believe.

14           **MR. GELLER:** I don't believe either,  
15 Your Honor.

16           **THE COURT:** Okay. Mr. Beckett.

17           **MR. BECKETT:** Judge, we're ready to proceed.

18           **THE COURT:** You've reviewed the PSI with your  
19 client. Are there any issues.

20           **MR. BECKETT:** No, Judge.

21           **THE COURT:** Mr. Arnold?

22           **MR. ARNOLD:** Yes, Your Honor. We've gone  
23 through the PSI, and there's no issues. We're ready  
24 for sentencing.

25           **THE COURT:** Mr. Yampolsky?

1           **MR. YAMPOLSKY:** We reviewed the PSI. There's  
2 no issues.

3           **THE COURT:** All right. I have received  
4 sentencing memos from the State on all four defendants.  
5 I did receive a sentencing memo from Mr. Geller with  
6 regard to Mr. Castro. And I also received a letter  
7 yesterday from Mr. Honabach's parents. So I've  
8 reviewed all of that.

9           Let me go through here and as far as the  
10 guilty plea agreement is concerned, I'm just going to  
11 do it combined. So each of you are -- I'm adjudicating  
12 you guilty pursuant to the guilty plea agreement of  
13 first degree kidnapping resulting in substantial bodily  
14 harm. It's a category A felony. That being said, what  
15 does the State want to tell me more?

16           **MS. THOMSON:** Just briefly, Your Honor. I  
17 believe that I've outlined it well within each of the  
18 sentencing memos, but, ultimately, it's the State's  
19 position that each of these individuals, while they may  
20 be separately situated in terms of their active  
21 participation in the crime, their prior criminal  
22 convictions and the other cases that were pending at  
23 the time it all balances out that each of them should  
24 receive a term of life in prison without the  
25 possibility of parole, given the amount of torture, the



1 danger that this crime posed to the community, and the  
2 danger that each of these individuals poses to the  
3 community in the future.

4 **THE COURT:** Start with Mr. Geller.

5 **MR. GELLER:** Judge, a couple things I'd like  
6 to emphasize. I know that the Court doesn't want  
7 counsel to reiterate and reread the sentencing  
8 memorandum. I do want to sort of hit the high points  
9 from that document that I submitted to the Court.

10 As I've indicated with Mr. Castro's  
11 biography, the majority of his life up until his late  
12 20s was crime free. I do concede in there during his  
13 teen years and early 20s he was committing, obviously  
14 he wasn't caught for it, but possessory drug crimes. I  
15 mentioned in the memorandum that he suffered some  
16 trauma as a young man or a young boy. It looks like,  
17 at least with respect to the report that was prepared  
18 by Dr. Sharon Jones Forester that I attached as an  
19 exhibit, that he may have been self-medicating through  
20 much of his youth associated with some of that trauma.

21 I'm not going to suggest to the Court that  
22 that somehow makes it okay to be involved in the awful  
23 things that Your Honor obviously saw in the photographs  
24 attached to Ms. Thomson's memorandum. But I do think  
25 it's important that I emphasize to the Court a little

1 context.

2 I think it's easy in these circumstances to  
3 kind of zero in and laser in on just the awful things  
4 that happened. And I think it's important to really  
5 look at a human being in the course of their entire  
6 life. Obviously, there's a lot of people that love and  
7 care for Luis. He's got a large support group here.  
8 Pretty much everybody other than the media that's  
9 sitting right in this area, there's his brother,  
10 mother, father, nieces, nephews, cousins. There's  
11 extensive support from them.

12 **THE COURT:** I think I got letters from every  
13 one of them.

14 **MR. GELLER:** I think you did, Your Honor. I  
15 don't know that I've ever had a case where there were  
16 more letters of support. Again, I realize that even if  
17 he had a thousand letters and a family of a thousand  
18 people, it's not going to undue the horrible things  
19 that happened, but I do think it does speak to some  
20 degree to his character when he's sober.

21 Now, Ms. Thomson did do an excellent job of  
22 pointing out some of the things. Like, there was, I  
23 guess, a fight in CCDC. I did point out in the  
24 sentencing memorandum the District Attorney's office  
25 never charged him for that. When I showed that to my

1 client, he was a little bit frustrated insofar as he  
2 never went through the adjudicated process in court  
3 where he was able to say who started it. The DA's  
4 office, I guess, didn't feel it was appropriate to  
5 charge him with that. I did want to mention that as  
6 well.

7           With respect to what I believe the PSI is  
8 recommending, the PSI is not asking the Court to say he  
9 needs to be out, back on the streets or back with his  
10 family, whatever the case may be in 15 years. I think  
11 what they're suggesting and what the defense is  
12 suggesting just give the parole board the option to  
13 where he can have parole at some point in his life.

14           As you saw in my sentencing memorandum, when  
15 he was an infant, he was brought to the United States.  
16 So he is subject to removal. There is an ICE hold.  
17 If, let's say, the Court, for instance, granted the  
18 defense's request for parole eligibility at 15 years,  
19 that doesn't mean he gets out in 15 years less his  
20 credit. That means let's say one day he's a  
21 70-year-old man in a wheelchair in the Nevada  
22 Department of Corrections. The parole board would have  
23 the option to say, you know what, federal government,  
24 now you can take Mr. Castro and deport him to Mexico.

25           If the Court sentences him to life without,

1 no matter what the circumstances are, we're always  
2 going to be paying for his incarceration, even if he's  
3 a 70 or 80-year-old man. If he is a model inmate, if  
4 there's no incidents, and if at least parole  
5 commissioners, after examining the same facts that Your  
6 Honor is examining, determine that he is ripe for  
7 removal from the United States, they can put that in a  
8 motion by having him turned over to federal custody,  
9 and he'll be deported to Mexico.

10 I'm not in any way, shape or form suggesting  
11 that because he's got the family, because he's got the  
12 trauma, and because he had a drug addiction, that means  
13 that the crime wasn't awful. I know it's got to be one  
14 of the worst ones Your Honor has ever seen. We're just  
15 asking the Court to allow the parole board to have the  
16 discretion, maybe when he's an elderly man, to consider  
17 releasing him in light of the fact that he's not  
18 somebody that was out on a criminal rampage his whole  
19 life. He's not someone that in my mind and the minds  
20 of the family and friends who are here to support him  
21 that's completely unredeemable.

22 He did everything he could to try to persuade  
23 the Court and to try to persuade the State that he  
24 never actually was one of the people that handled the  
25 weapon. I completely concede that the victim in this

1 case does say that he handled the weapon and used it on  
2 him.

3 His DNA wasn't found on the weapon. He asked  
4 to take a polygraph test on that issue. When the  
5 police grilled him excessively about that issue, he was  
6 adamant that he never touched a weapon or never struck  
7 the victim or did any of the things associated with the  
8 photographs. He does concede he made bad judgment; he  
9 did encourage the victim to go over to the abandoned  
10 house. He's guilty of that. He's responsible for  
11 that. I know that that's an issue in contention,  
12 whether he ever personally used the weapon on the  
13 victim, but everything that we tried to gather up and  
14 muster up is to demonstrate to the Court that he was  
15 trying to prove that he didn't. But it certainly  
16 wasn't worth going to trial over on that one issue  
17 because he has criminal liability for everything else  
18 that happened.

19 Again, with respect to him leaving and going  
20 to the convenient store, I know Your Honor has the  
21 screenshots that I took from the surveillance video.  
22 Again, Ms. Thomson is correct in her memorandum; he did  
23 return to the scene of the crime. I'm not suggesting  
24 that because he left and went to the 7-11, that means  
25 that he had no responsibility or no culpability. What

1 I am suggesting is that he did, in fact, leave because  
2 he was feeling very uneasy about things. And he was  
3 asking the police to take a polygraph on that issue.  
4 Again, State's completely within its rights to say no,  
5 but he wanted to take a polygraph even if it was with a  
6 Metro polygrapher to prove that he left because he was  
7 getting queazy and uncomfortable and that he didn't  
8 touch a weapon.

9 So in summation, Judge, really what I'm just  
10 asking the Court is, not to endorse the conduct, not to  
11 say that the allegations are only worth 15 years in  
12 custody, but rather to just say, parole board, maybe  
13 one day when he's an old man, you have the authority to  
14 consider releasing him for deportation to Mexico. And  
15 that's it. We're not asking for the Court to endorse  
16 anything that went on here. We're just asking for the  
17 parole board to have that option at some point in his  
18 life because I do think that, notwithstanding what  
19 happened, he is an otherwise redeemable person. I'd  
20 submit with that, Your Honor.

21 **THE COURT:** Mr. Castro, anything else you  
22 want to tell me?

23 **THE DEFENDANT:** Yeah. First, I'm nervous.  
24 Never been in no type of trouble in my life. But, you  
25 know, I do want to apologize to the victim. I don't

1 know if he's here or not. I do want it out, to know  
2 that I do apologize for putting him in this type of  
3 ordeal. It's going to be marked in his life as well.  
4 The situation is marked in mine as well because I am  
5 paying as well for my consequences.

6 You know, I do apologize to my family, too  
7 because -- for the embarrassment for all of this has  
8 caused as well. Because they raised me better, to be a  
9 better person, better man.

10 Due to the drugs, I got into the situation.  
11 I got into this position. You know, whatever your  
12 judgment is at the end, I'm gonna, you know, have my  
13 head up high and deal with it, go forward. But the  
14 only thing I do ask is give me one permission to be  
15 back with my family, to my son, to them, you know,  
16 because I'm gonna miss a lot of part of their life. At  
17 least let me turn into be still some part of it at  
18 least at the end. That's what I want to say. Thank  
19 you.

20 **THE COURT:** Thank you, sir. Mr. Beckett.

21 **MR. BECKETT:** Yes, Judge. Thank you.

22 Judge, as you read, of course, on page 4 of  
23 on Mr. Honabach's PSI, looks like the last time he was  
24 in trouble was a while ago, in 2012. The question  
25 comes up, Judge, between then and when this crime was

1 committed, what happened. The facts are disturbing and  
2 they're ugly. There's no way around that. And they've  
3 been set forth in the PSI and set forth in  
4 Ms. Thomson's sentencing memorandum. I'm not going to  
5 even go to the facts. They are what they are.

6 The question comes up -- sometimes we want  
7 answers -- how can something like this happen so we can  
8 somehow make sense of it if possible. Well, talking  
9 with Edward, what happened was meth happened. That's  
10 an old story.

11 He was doing pretty well. He was working as  
12 a flagger for a construction company, as Your Honor  
13 knows. He was paying his bills. Life was going along.  
14 And then he ran into meth.

15 He started doing -- smoking, as he said, an 8  
16 ball a day, which I find out now is like 3.5 grams a  
17 day. On top of smoking 3.5 grams a day, he was also  
18 doing what they call a meth ball. Now, I'm told that  
19 you take a gram of meth, put it on a square toilet  
20 paper, roll it up, twist it up and wash it down with  
21 whatever. I'm surprised that that doesn't kill a  
22 person. But he had been doing that for about four days  
23 or so prior to this crime.

24 And he said that during that four days, of  
25 course, on the influence of meth, which is a very



1 strong type of speed, is what I'm told, he wasn't  
2 eating. He wasn't sleeping. He wasn't drinking water.  
3 So he was dehydrated. He said he started hearing  
4 voices of sorts. He said he started seeing out of the  
5 corner of his eye shadow people.

6 I'm surprised he didn't go into some sort of  
7 seizure or whatever, but he kept going. So that was  
8 what was going on when this occurred.

9 There's no excuse, Judge. It's not an  
10 excuse. But sometimes we can say, well, okay, he was  
11 under the influence of this horrible drug. Yes, he  
12 voluntarily ingested it in different forms. He's  
13 responsible for what happened. The law recognizes  
14 that. But that's what was going on. I can say that he  
15 was basically speeding out of his mind when this  
16 happened. No excuse, just facts.

17 Then we get to, okay, where is he at today?  
18 He's been in custody about three years. Of course,  
19 he's clean. And, of course, he's a different person  
20 now when he's not on the drugs. I've seen that since  
21 I've picked up the case, that he's been pretty  
22 rational -- well, very rational. He's intelligent.  
23 He's articulate. His father has, of course, seen the  
24 difference in him today than when he was on meth, when  
25 he was using meth years ago.

1           What has he done with his time now that he's  
2 clean? He's gotten his GED. He's going forward. He's  
3 going to get his diploma. That's another step and  
4 that's important to him. He's looking forward to  
5 someday getting out.

6           I've got to be careful with this, Judge,  
7 because there's the old joke. Everybody in jail finds  
8 religion; okay. Well, sometimes it's sincere.  
9 Sometimes it's not. Sometimes it's just a thing of the  
10 moment. He's been reading the bible a lot in addition  
11 to doing his studies, and he's finding a lot of comfort  
12 in that.

13           He's using that time constructively. What  
14 does he want to do? Where does he want to be if he's  
15 granted parole? What does he want to do with his life  
16 if he's granted parole and if he has a chance of  
17 getting out of prison? Well, his plans right now are  
18 maybe, because it's going to be limited with his  
19 record, because when some potential employer,  
20 especially if it's submitted online, there's going to  
21 be problems.

22           He does have strong family support. His  
23 father is here. His father has always been in contact  
24 with me. His father has been at every court  
25 appearance. His mother is here. She's had a number of

1 health problems, she's here for him as well. They'll  
2 always be here for him, of course, Judge. He has  
3 family in different areas that can help him get a job,  
4 that can help him get started in some sort of labor  
5 job.

6 He'd like some day, Judge, to have a life.  
7 What does that mean? Have a job, maybe get a house,  
8 maybe get married, might eventually have kids if he's  
9 granted possibility of parole in this case. He's gonna  
10 be a lot older than he is right now. He's probably  
11 going to be a completely different person, of course,  
12 than he was when this crime occurred, than he is today,  
13 than he will be in 15 or so years when he gets paroled.

14 And when he gets paroled, is it just, have a  
15 nice life? No. He'll be on parole. He'll be watched.  
16 He'll be monitored. I'm sure with these type of crimes  
17 that occurred, that they're going to be extra diligent  
18 in supervising him.

19 Judge, I know Mr. Honabach wants to talk to  
20 you, wants to express how he feels, the remorse he has,  
21 and the disbelief of what actually happened. But he'd  
22 like a chance at life, eventually have a chance at some  
23 sort of life. And we ask you give him the chance of  
24 sentencing him to 15 to 20 with the possibility of  
25 parole.

1           **THE COURT:** Life with the possibility of  
2 parole.

3           **MR. BECKETT:** Life with the possibility of  
4 parole.

5           **THE COURT:** Mr. Honabach, go ahead.

6           **THE DEFENDANT:** Your Honor, I'd first off  
7 like to say that I am sorry for what I done. I'm not  
8 going to sit here and try to make excuses for it.  
9 There is no excuse. There's no way to say it's okay.  
10 There's no way to lessen the effect.

11           It's affected my life, the victim's life, his  
12 family's, my family's. And it's just such a tremendous  
13 and unforgivable way. There's no way I could ever  
14 express my remorse. I can't even comprehend that it  
15 was me that was involved in something like this. It's  
16 just not me.

17           But I am sorry, Your Honor. I do take full  
18 responsibility for it. And I am a different person  
19 than when I first came in. Like my attorney said,  
20 drugs are the devil's playground. And I regret -- they  
21 change who you are. They change how you think, how you  
22 feel. They make it so you don't even recognize reality  
23 anymore. You can't feel -- there's no way to explain  
24 it to somebody who hasn't been there.

25           And I'm just, I'm very sorry, Your Honor.

1 And I have taken this to heart. And I do apologize to  
2 the victim and to his family, to my family, to three of  
3 my co-defendants and their families, to everyone who  
4 was affected in this case, Your Honor. There's no  
5 excuse. I'm sorry.

6 I have taken this to heart and changed my  
7 life around. I changed -- I have found God. And not  
8 just the jailhouse religion. I run Bible studies. I  
9 really have found God. I've actually gotten several  
10 certificates in Bible courses.

11 I'm involved with two missionaries, CNI and  
12 ANI, as well as taking courses with Moody Bible College  
13 to get degrees so if I am granted the possibility to  
14 get out one day, that I can help other people, just not  
15 do this. I want to help youth, talk to them. I've  
16 been there; I've done that; it ain't worth it; don't  
17 throw your life away; don't do it.

18 I'm sorry. But I'm not the same person I was  
19 when I got in here. And God's carried me through this  
20 far. God will carry me through further. I plan on  
21 continuing when I do go to prison to further help  
22 people there realize as well, you know, look at where  
23 we're at. Look at the lives we've ruined. Look at the  
24 hurt we've caused. Change it. Do something better.  
25 Find God. Listen to his word. He'll direct you on the

1 right path.

2 And I just ask that I be given the chance to  
3 one day show that, not just to the people in jail, but  
4 to the world, that, you know, you can change, and I  
5 have. And thank you, Your Honor. That's all I have to  
6 say.

7 **THE COURT:** Thank you, Mr. Honabach.  
8 Mr. Arnold.

9 **MR. ARNOLD:** Your Honor, on behalf of  
10 Ms. Jimenez, she's also asking for a sentence of life  
11 with the possibility of parole after 15 years. It's  
12 been a big difference in her, Your Honor. I mean,  
13 she's not the same person that she was when she came  
14 in. She was also on meth, as all the co-defendant's in  
15 the case. She went through a rash of disciplinary  
16 problems in jail. I think those were outlined in the  
17 sentencing memorandum, Your Honor.

18 And then there was a point in time -- in  
19 honesty, Your Honor, I think she just had given up.  
20 She really did not have any hope. And then she made a  
21 reconnection with her oldest daughter and started to  
22 have some hope, and decided, hey, I really need to get  
23 my life together. She started attending classes,  
24 Your Honor. And this was while we were still  
25 considering going to trial and, you know, trying to

1 offer a defense in this case.

2 She's going to classes. She started anger  
3 management counseling, substance abuse counseling. And  
4 this is back in October of last year. Then she did  
5 successful release counseling, marriage and family  
6 counseling, to help with her daughter, parenting  
7 counseling, and life skills counseling, Your Honor.  
8 She's been taking a class a month trying to better  
9 herself.

10 She's going to continue to do this,  
11 regardless of what Your Honor offers because -- or what  
12 you sentence her to, for the simple reason is she knows  
13 that she does have something to live for. Even though  
14 right now she can't be with her family, she's asking  
15 for that opportunity, one time, you know, if she's ever  
16 paroled on this matter, to be out there with her  
17 family. I know she wants to say a couple of words to  
18 you, Your Honor, but we're requesting just give her  
19 that chance.

20 **THE COURT:** Ms. Jimenez.

21 **THE DEFENDANT:** Yes, Your Honor. I would  
22 like to say, first of all, I apologize for everything.  
23 I take full responsibility for my part. I came in one  
24 person. I am now a totally different person. I've  
25 been doing a lot of classes, a lot of programming. I

1 want to say I apologize to the families, to my  
2 co-defendants also.

3 I don't know what else to say, Your Honor,  
4 but that I apologize for my actions and I take full  
5 responsibility for what I've done. And I ask you to  
6 please give me that opportunity to go back to my  
7 daughter that I just got back. And I'm trying to get  
8 my son back. And the only way to get them back is to  
9 be able to have a second chance to go home so I can be  
10 their mother and a grandmother to my kids, my  
11 grandkids.

12 Right now nobody is talking to me.  
13 Everybody's upset. And I get it, you know. And I'm  
14 trying to get my kids back in my life. I got one at a  
15 time. And if you please give me that second chance so  
16 that I can be that mother to my kids that I have been  
17 absent for a very long time due to meth. And, like I  
18 said, I'm a different person now, you know.

19 I've also done Bible studies myself. And I  
20 just -- I just ask for a second chance, Your Honor.

21 **THE COURT:** Okay. Thank you.

22 Mr. Yampolsky.

23 **MR. YAMPOLSKY:** Thank you, Your Honor. I'll  
24 be brief.

25 As my co-counsel have all stated, it's an



1 awful crime, no excuse. According to the terms of the  
2 plea agreement, I'm limited, that I can only argue for  
3 life. And, obviously, I'm arguing life with the  
4 possibility of parole. It's not a murder case. Murder  
5 cases are the absolute worst. And even in a murder  
6 case you're eligible for a term of years, 20 to 50 or  
7 20 to life or, of course, life without. And I'm  
8 suggesting that this is not as bad as a murder case.

9 Now, as I said, I'm limited as to what I can  
10 argue, but the PSI that sees thousands of people, they  
11 recommend 15 to 40. I'm not asking for that, but based  
12 on their recommendation, I believe it's appropriate for  
13 him to receive life with the possibility of parole.

14 **THE COURT:** Okay. Mr. King, anything you  
15 want to tell me?

16 **THE DEFENDANT:** Yes, Your Honor. As all the  
17 counsel's and the co-defendants said, it comes down to  
18 the facts. The facts is, yes, I did do it. Yes, I am  
19 sorry to the victim, to the family. Most important,  
20 the victim's family who had to bear witness to what we  
21 did, what our -- what we did. And there's no way  
22 around that.

23 The only thing I can do is better myself, and  
24 that's what I've been doing. It's all in black and  
25 white. I'm a model inmate. I got a job, plus six

1 months. You know, you show up. If you don't show up,  
2 you get fired. It's very strict.

3 And I'm just doing the best I can. I'm on  
4 the waiting list to get my CSN so I can go to college  
5 after I do my GED. So in the future, if possible,  
6 Your Honor, if granted, you know, I have something with  
7 me when I get out and something that help me build  
8 myself into a better man that my kids need me to be,  
9 that my family knows me to be, raised me to be. And,  
10 Your Honor, that's all I ask is for that one chance.  
11 Thank you, sir.

12 **THE COURT:** All right. Thank you.

13 So here's the dilemma that I have, folks. I  
14 will generally try to be a merciful judge. I know as a  
15 Judge my job is to try to apply mercy and justice in a  
16 fair way to people. And I think most people would  
17 acknowledge that I try to give people probation when I  
18 have that opportunity, to give them at least one  
19 chance.

20 In this case I understand that drugs is a  
21 problem for most, if not all, of you, and that drugs  
22 and alcohol may have been the factor that caused some  
23 of these actions, but I don't know that I consider that  
24 an excuse. I don't know that I consider that a good  
25 reason to have committed horrific crimes.

1 I want to be merciful, but at the same time,  
2 I know that justice has to be done. And we have a  
3 victim who, but for the fact that he lived against what  
4 you all thought -- my understanding is not only was he  
5 tortured and mutilated in this room for a period of  
6 time, for a period of hours, but that everybody thought  
7 he was dead, tried to burn the house down around him.  
8 And if you had been successful in this, this would have  
9 been a capital murder case and you all would be looking  
10 at potentially a capital sentence.

11 I have a hard time with the pictures that  
12 I've seen and the horrible injuries that were inflicted  
13 upon this poor victim. I understand that he is not the  
14 pillar of our community either, but that doesn't  
15 justify the things that were done to him over \$50. And  
16 that almost makes it worse because that was the basis  
17 for this, is him not being able to come up with \$50.

18 So each of you are going to be imposed a \$25  
19 administrative assessment fee. Each of you has a \$150  
20 DNA fee, if that's not been taken. I believe at least  
21 with a couple of you it's been taken so it would not  
22 apply. But if it hasn't been taken, you'd have that  
23 \$150 DNA fee. There's an additional \$3 DNA fee. I'm  
24 going to go ahead and sentence each of you to life in  
25 the Nevada Department of Corrections without the

1 possibility of parole. I understand that that is a  
2 difficult sentence for you to have to deal with. It's  
3 a difficult sentence for me to have to give, but I  
4 don't see any redeeming qualities. I would like to be  
5 merciful, but I don't think that this is a crime  
6 that -- I don't think the community wants you back out  
7 on the streets. So that will be the sentence. I don't  
8 think credit time served matters.

9 Anything else on the record, counsel?

10 **MS. THOMSON:** No, Your Honor.

11 **MR. GELLER:** No.

12 **MR. BECKETT:** No.

13 **THE COURT:** I hope you folks can get  
14 programming while you're in prison. May God have mercy  
15 on your souls.

16 (Proceedings concluded at 10:27 A.M.)

17 -o0o-

18 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
19 PROCEEDINGS.

20  
21   
22 /s/ Kimberly A. Farkas, RPR, CRR  
23  
24  
25

<b>MR. ARNOLD:</b> [3] 2/14 3/21 18/8	<b>5</b>	22/21 23/4 23/9	<b>attending</b> [1] 18/23	<b>boxes</b> [1] 3/4
<b>MR. BECKETT:</b> [6] 2/12 3/16 3/19 11/20 16/2 24/11	<b>50</b> [1] 21/6	<b>allegations</b> [1] 10/11	<b>ATTEST</b> [1] 24/18	<b>boy</b> [1] 5/16
<b>MR. GELLER:</b> [7] 2/10 2/21 3/2 3/13 5/4 6/13 24/10	<b>7</b>	<b>allow</b> [1] 8/15	<b>attorney</b> [1] 16/19	<b>brief</b> [1] 20/24
<b>MR. YAMPOLSKY:</b> [3] 2/16 3/25 20/22	<b>7-11</b> [1] 9/24	<b>almost</b> [1] 23/16	<b>Attorney's</b> [1] 6/24	<b>briefly</b> [1] 4/16
<b>MS. THOMSON:</b> [4] 2/18 3/10 4/15 24/9	<b>70</b> [1] 8/3	<b>along</b> [1] 12/13	<b>author</b> [1] 3/4	<b>brother</b> [1] 6/9
<b>THE COURT:</b> [20] 2/19 2/25 3/11 3/15 3/17 3/20 3/24 4/2 5/3 6/11 10/20 11/19 15/25 16/4 18/6 19/19 20/20 21/13 22/11 24/12	<b>70-year-old</b> [1] 7/21	<b>also</b> [6] 4/6 12/17 18/10 18/14 20/2 20/19	<b>authority</b> [1] 10/13	<b>brought</b> [1] 7/15
<b>THE DEFENDANT:</b> [4] 10/22 16/5 19/20 21/15	<b>741</b> [1] 1/25	<b>always</b> [3] 8/1 14/23 15/2	<b>away</b> [1] 17/17	<b>build</b> [1] 22/7
<b>THE MARSHAL:</b> [1] 2/3	<b>8</b>	<b>am</b> [8] 10/1 11/4 16/7 16/17 16/18 17/13 19/24 21/18	<b>awful</b> [4] 5/22 6/3 8/13 21/1	<b>burn</b> [1] 23/7
<b>\$</b>	<b>80-year-old</b> [1] 8/3	<b>amount</b> [1] 4/25	<b>B</b>	<b>C</b>
<b>\$150</b> [2] 23/19 23/23	<b>9</b>	<b>ANGEL</b> [1] 1/7	<b>back</b> [10] 7/9 7/9 11/15 19/4 20/6 20/7 20/8 20/8 20/14 24/6	<b>C314092</b> [5] 1/5 2/8 2/8 2/9 2/10
<b>\$25</b> [1] 23/18	<b>9:57</b> [1] 1/15	<b>anger</b> [1] 19/2	<b>bad</b> [2] 9/8 21/8	<b>call</b> [1] 12/18
<b>\$3</b> [1] 23/23	<b>A</b>	<b>ANI</b> [1] 17/12	<b>balances</b> [1] 4/23	<b>came</b> [3] 16/19 18/13 19/23
<b>\$50</b> [2] 23/15 23/17	<b>A.M</b> [2] 1/15 24/16	<b>another</b> [1] 14/3	<b>ball</b> [2] 12/16 12/18	<b>can</b> [20] 3/4 7/13 7/24 8/7 12/7 12/7 13/10 13/14 15/3 15/4 17/14 18/4 20/9 20/16 21/2 21/9 21/23 22/3 22/4 24/13
<b>-</b>	<b>abandoned</b> [1] 9/9	<b>answers</b> [1] 12/7	<b>based</b> [1] 21/11	<b>can't</b> [3] 16/14 16/23 19/14
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<b>/</b>	<b>about</b> [4] 9/5 10/2 12/22 13/18	<b>anymore</b> [1] 16/23	<b>basis</b> [1] 23/16	<b>care</b> [1] 6/7
<b>/S</b> [1] 24/21	<b>absent</b> [1] 20/17	<b>anything</b> [4] 10/16 10/21 21/14 24/9	<b>be</b> [42]	<b>careful</b> [1] 14/6
<b>1</b>	<b>abuse</b> [1] 19/3	<b>apologize</b> [7] 10/25 11/2 11/6 17/1 19/22 20/1 20/4	<b>BECKETT</b> [4] 1/21 2/13 3/16 11/20	<b>CARL</b> [2] 1/23 2/15
<b>10:27</b> [1] 24/16	<b>According</b> [1] 21/1	<b>appearance</b> [1] 14/25	<b>been</b> [23] 3/10 5/19 10/24 12/3 12/22 13/18 13/21 14/10 14/23 14/24 16/24 17/16 18/12 19/8 19/25 20/16 21/24 22/22 23/8 23/9 23/20 23/21 23/22	<b>carried</b> [1] 17/19
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4/25 15/9 15/24 16/1 16/3 17/13 18/11 21/4 21/13 24/1</p> <p><b>possible</b> [2] 12/8 22/5</p> <p><b>potential</b> [1] 14/19</p> <p><b>potentially</b> [1] 23/10</p> <p><b>prepared</b> [1] 5/17</p> <p><b>present</b> [1] 2/12</p> <p><b>pretty</b> [3] 6/8 12/11 13/21</p> <p><b>prior</b> [2] 4/21 12/23</p> <p><b>prison</b> [4] 4/24 14/17 17/21 24/14</p> <p><b>probably</b> [1] 15/10</p> <p><b>probation</b> [1] 22/17</p> <p><b>problem</b> [1] 22/21</p> <p><b>problems</b> [3] 14/21 15/1 18/16</p> <p><b>proceed</b> [2] 2/25 3/17</p> <p><b>PROCEEDINGS</b> [3] 1/11 24/16 24/19</p> <p><b>process</b> [1] 7/2</p> <p><b>programming</b> [2] 19/25 24/14</p> <p><b>prove</b> [2] 9/15 10/6</p> <p><b>PSI</b> [11] 2/23 3/4 3/6 3/18 3/23 4/1 7/7 7/8 11/23 12/3 21/10</p> <p><b>pursuant</b> [1] 4/12</p> <p><b>put</b> [3] 2/24 8/7 12/19</p> <p><b>putting</b> [1] 11/2</p> <p><b>Q</b></p> <p><b>qualities</b> [1] 24/4</p> <p><b>queazy</b> [1] 10/7</p> <p><b>question</b> [2] 11/24 12/6</p> <p><b>R</b></p> <p><b>raised</b> [2] 11/8 22/9</p> <p><b>rampage</b> [1] 8/18</p> <p><b>ran</b> [1] 12/14</p> <p><b>rash</b> [1] 18/15</p> <p><b>rather</b> [1] 10/12</p>	<p><b>rational</b> [2] 13/22 13/22</p> <p><b>read</b> [1] 11/22</p> <p><b>reading</b> [1] 14/10</p> <p><b>ready</b> [2] 3/17 3/23</p> <p><b>reality</b> [1] 16/22</p> <p><b>realize</b> [2] 6/16 17/22</p> <p><b>really</b> [5] 6/4 10/9 17/9 18/20 18/22</p> <p><b>reason</b> [4] 2/21 2/24 19/12 22/25</p> <p><b>receive</b> [3] 4/5 4/24 21/13</p> <p><b>received</b> [2] 4/3 4/6</p> <p><b>recognize</b> [1] 16/22</p> <p><b>recognizes</b> [1] 13/13</p> <p><b>recommend</b> [1] 21/11</p> <p><b>recommendation</b> [1] 21/12</p> <p><b>recommending</b> [1] 7/8</p> <p><b>reconnection</b> [1] 18/21</p> <p><b>record</b> [3] 2/25 14/19 24/9</p> <p><b>redeemable</b> [1] 10/19</p> <p><b>redeeming</b> [1] 24/4</p> <p><b>regard</b> [1] 4/6</p> <p><b>regardless</b> [1] 19/11</p> <p><b>regret</b> [1] 16/20</p> <p><b>reiterate</b> [1] 5/7</p> <p><b>release</b> [1] 19/5</p> <p><b>releasing</b> [2] 8/17 10/14</p> <p><b>religion</b> [2] 14/8 17/8</p> <p><b>remain</b> [1] 2/6</p> <p><b>remorse</b> [2] 15/20 16/14</p> <p><b>removal</b> [2] 7/16 8/7</p> <p><b>removed</b> [1] 3/8</p> <p><b>report</b> [2] 3/8 5/17</p> <p><b>REPORTED</b> [1] 1/25</p> <p><b>REPORTER'S</b> [1] 1/11</p> <p><b>request</b> [1] 7/18</p> <p><b>requesting</b> [1] 19/18</p> <p><b>reread</b> [1] 5/7</p> <p><b>respect</b> [4] 3/3 5/17 7/7 9/19</p> <p><b>responsibility</b> [4] 9/25 16/18 19/23 20/5</p> <p><b>responsible</b> [2] 9/10 13/13</p> <p><b>resulting</b> [1] 4/13</p> <p><b>return</b> [1] 9/23</p> <p><b>reviewed</b> [3] 3/18 4/1 4/8</p> <p><b>right</b> [8] 4/3 6/9 14/17 15/10 18/1 19/14 20/12 22/12</p> <p><b>rights</b> [1] 10/4</p>
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<p><b>R</b></p> <p><b>ripe [1]</b> 8/6  <b>rise [1]</b> 3/12  <b>ROBERT [1]</b> 1/21  <b>roll [1]</b> 12/20  <b>room [1]</b> 23/5  <b>RPR [1]</b> 24/21  <b>ruined [1]</b> 17/23  <b>run [1]</b> 17/8</p> <hr/> <p><b>S</b></p> <p><b>said [9]</b> 4/14 12/15  12/24 13/3 13/4 16/19  20/18 21/9 21/17  <b>same [4]</b> 8/5 17/18  18/13 23/1  <b>saw [2]</b> 5/23 7/14  <b>say [19]</b> 7/3 7/8 7/17  7/20 7/23 9/1 10/4  10/11 10/12 11/18  13/10 13/14 16/7 16/9  18/6 19/17 19/22 20/1  20/3  <b>scene [1]</b> 9/23  <b>screenshots [1]</b> 9/21  <b>seated [1]</b> 2/6  <b>second [3]</b> 20/9  20/15 20/20  <b>see [1]</b> 24/4  <b>seeing [1]</b> 13/4  <b>seen [4]</b> 8/14 13/20  13/23 23/12  <b>sees [1]</b> 21/10  <b>seizure [1]</b> 13/7  <b>self [1]</b> 5/19  <b>self-medicating [1]</b>  5/19  <b>sense [1]</b> 12/8  <b>sentence [7]</b> 18/10  19/12 23/10 23/24  24/2 24/3 24/7  <b>sentences [1]</b> 7/25  <b>sentencing [12]</b> 1/12  2/20 3/24 4/4 4/5 4/18  5/7 6/24 7/14 12/4  15/24 18/17  <b>separately [1]</b> 4/20  <b>served [1]</b> 24/8  <b>set [2]</b> 12/3 12/3  <b>several [1]</b> 17/9  <b>shadow [1]</b> 13/5  <b>shape [1]</b> 8/10  <b>Sharon [1]</b> 5/18  <b>she [14]</b> 18/13 18/13  18/14 18/15 18/19  18/20 18/20 18/23  19/2 19/4 19/12 19/13  19/14 19/17  <b>she's [9]</b> 14/25 15/1  18/10 18/13 19/2 19/8  19/10 19/14 19/15  <b>should [3]</b> 2/21 3/10  4/23</p>	<p><b>show [3]</b> 18/3 22/1  22/1  <b>showed [1]</b> 6/25  <b>simple [1]</b> 19/12  <b>since [1]</b> 13/20  <b>sincere [1]</b> 14/8  <b>sir [2]</b> 11/20 22/11  <b>sit [1]</b> 16/8  <b>sitting [1]</b> 6/9  <b>situated [1]</b> 4/20  <b>situation [2]</b> 11/4  11/10  <b>six [1]</b> 21/25  <b>skills [1]</b> 19/7  <b>sleeping [1]</b> 13/2  <b>smoking [2]</b> 12/15  12/17  <b>so [19]</b> 4/7 4/11 7/16  10/9 12/7 12/23 13/3  13/7 15/13 16/22  17/13 20/9 20/15 22/4  22/5 22/13 23/18  23/21 24/7  <b>sober [1]</b> 6/20  <b>some [14]</b> 5/15 5/20  6/19 6/22 7/13 10/17  11/17 13/6 14/19 15/4  15/6 15/22 18/22  22/22  <b>somebody [2]</b> 8/18  16/24  <b>someday [1]</b> 14/5  <b>somehow [2]</b> 5/22  12/8  <b>someone [1]</b> 8/19  <b>something [6]</b> 12/7  16/15 17/24 19/13  22/6 22/7  <b>sometimes [5]</b> 12/6  13/10 14/8 14/9 14/9  <b>son [2]</b> 11/15 20/8  <b>sorry [6]</b> 16/7 16/17  16/25 17/5 17/18  21/19  <b>sort [4]</b> 5/8 13/6 15/4  15/23  <b>sorts [1]</b> 13/4  <b>souls [1]</b> 24/15  <b>speak [1]</b> 6/19  <b>speed [1]</b> 13/1  <b>speeding [1]</b> 13/15  <b>square [1]</b> 12/19  <b>Start [1]</b> 5/4  <b>started [8]</b> 7/3 12/15  13/3 13/4 15/4 18/21  18/23 19/2  <b>STATE [6]</b> 1/4 1/18  2/19 4/4 4/15 8/23  <b>State's [2]</b> 4/18 10/4  <b>stated [1]</b> 20/25  <b>States [2]</b> 7/15 8/7  <b>step [1]</b> 14/3  <b>still [2]</b> 11/17 18/24</p>	<p><b>stipulated [1]</b> 2/23  <b>Stockmeier [1]</b> 3/13  <b>store [1]</b> 9/20  <b>story [1]</b> 12/10  <b>streets [2]</b> 7/9 24/7  <b>strict [1]</b> 22/2  <b>strong [2]</b> 13/1 14/22  <b>struck [1]</b> 9/6  <b>studies [3]</b> 14/11  17/8 20/19  <b>subject [1]</b> 7/16  <b>submit [1]</b> 10/20  <b>submitted [2]</b> 5/9  14/20  <b>substance [1]</b> 19/3  <b>substantial [1]</b> 4/13  <b>substantiated [1]</b>  3/7  <b>successful [2]</b> 19/5  23/8  <b>such [1]</b> 16/12  <b>suffered [1]</b> 5/15  <b>suggest [1]</b> 5/21  <b>suggesting [6]</b> 7/11  7/12 8/10 9/23 10/1  21/8  <b>summation [1]</b> 10/9  <b>supervising [1]</b>  15/18  <b>support [5]</b> 6/7 6/11  6/16 8/20 14/22  <b>sure [1]</b> 15/16  <b>surprised [2]</b> 12/21  13/6  <b>surveillance [1]</b> 9/21</p> <hr/> <p><b>T</b></p> <p><b>take [8]</b> 7/24 9/4  10/3 10/5 12/19 16/17  19/23 20/4  <b>taken [5]</b> 17/1 17/6  23/20 23/21 23/22  <b>taking [2]</b> 17/12 19/8  <b>talk [2]</b> 15/19 17/15  <b>talking [2]</b> 12/8  20/12  <b>teen [1]</b> 5/13  <b>tell [3]</b> 4/15 10/22  21/15  <b>term [2]</b> 4/24 21/6  <b>terms [2]</b> 4/20 21/1  <b>test [1]</b> 9/4  <b>than [7]</b> 6/8 13/24  15/10 15/12 15/12  15/13 16/19  <b>thank [9]</b> 11/18  11/20 11/21 18/5 18/7  20/21 20/23 22/11  22/12  <b>that [149]</b>  <b>that's [14]</b> 3/6 6/8  8/21 9/11 10/15 11/18  12/9 13/14 14/3 14/4</p>	<p>18/5 21/24 22/10  23/20  <b>their [7]</b> 4/20 4/21  6/5 11/16 17/3 20/10  21/12  <b>them [7]</b> 4/23 6/11  6/13 11/15 17/15 20/8  22/18  <b>then [7]</b> 2/25 11/25  12/14 13/17 18/18  18/20 19/4  <b>there [13]</b> 2/23 3/3  3/19 5/12 6/15 6/22  7/16 16/9 16/24 17/16  17/22 18/18 19/16  <b>there's [18]</b> 2/24  3/23 4/1 6/6 6/9 6/10  8/4 12/2 13/9 14/7  14/20 16/9 16/10  16/13 16/23 17/4  21/21 23/23  <b>these [5]</b> 4/19 5/2  6/2 15/16 22/23  <b>they [10]</b> 4/19 8/7  11/8 12/5 12/5 12/18  16/20 16/21 16/22  21/10  <b>They'll [1]</b> 15/1  <b>they're [3]</b> 7/11 12/2  15/17  <b>they've [1]</b> 12/2  <b>thing [3]</b> 11/14 14/9  21/23  <b>things [8]</b> 5/5 5/23  6/3 6/18 6/22 9/7 10/2  23/15  <b>think [15]</b> 5/24 6/2  6/4 6/12 6/14 6/19  7/10 10/18 16/21  18/16 18/19 22/16  24/5 24/6 24/8  <b>this [36]</b>  <b>THOMSON [4]</b> 1/18  2/19 6/21 9/22  <b>Thomson's [2]</b> 5/24  12/4  <b>those [1]</b> 18/16  <b>though [1]</b> 19/13  <b>thought [2]</b> 23/4  23/6  <b>thousand [2]</b> 6/17  6/17  <b>thousands [1]</b> 21/10  <b>three [3]</b> 3/4 13/18  17/2  <b>through [7]</b> 3/23 4/9  5/19 7/2 17/19 17/20  18/15  <b>throw [1]</b> 17/17  <b>time [12]</b> 4/23 11/23  14/1 14/13 18/18  19/15 20/15 20/17  23/1 23/6 23/11 24/8</p>	<p><b>today [4]</b> 2/20 13/17  13/24 15/12  <b>together [1]</b> 18/23  <b>toilet [1]</b> 12/19  <b>told [2]</b> 12/18 13/1  <b>too [1]</b> 11/6  <b>took [1]</b> 9/21  <b>top [1]</b> 12/17  <b>torture [1]</b> 4/25  <b>tortured [1]</b> 23/5  <b>totally [1]</b> 19/24  <b>touch [1]</b> 10/8  <b>touched [1]</b> 9/6  <b>TRANSCRIPT [2]</b>  1/11 24/18  <b>trauma [3]</b> 5/16 5/20  8/12  <b>tremendous [1]</b>  16/12  <b>trial [2]</b> 9/16 18/25  <b>tried [2]</b> 9/13 23/7  <b>trouble [2]</b> 10/24  11/24  <b>TRUE [1]</b> 24/18  <b>try [6]</b> 8/22 8/23 16/8  22/14 22/15 22/17  <b>trying [5]</b> 9/15 18/25  19/8 20/7 20/14  <b>TUESDAY [2]</b> 1/14  2/1  <b>turn [1]</b> 11/17  <b>turned [1]</b> 8/8  <b>twist [1]</b> 12/20  <b>two [1]</b> 17/11  <b>type [4]</b> 10/24 11/2  13/1 15/16</p> <hr/> <p><b>U</b></p> <p><b>ugly [1]</b> 12/2  <b>ultimately [1]</b> 4/18  <b>uncomfortable [1]</b>  10/7  <b>under [1]</b> 13/11  <b>understand [3]</b>  22/20 23/13 24/1  <b>understanding [1]</b>  23/4  <b>undue [1]</b> 6/18  <b>uneasy [1]</b> 10/2  <b>unforgivable [1]</b>  16/13  <b>United [2]</b> 7/15 8/7  <b>unredeemable [1]</b>  8/21  <b>until [1]</b> 5/11  <b>up [13]</b> 5/11 9/13  9/14 11/13 11/25 12/6  12/20 12/20 13/21  18/19 22/1 22/1 23/17  <b>upon [1]</b> 23/13  <b>upset [1]</b> 20/13  <b>used [2]</b> 9/1 9/12  <b>using [2]</b> 13/25 14/13</p>
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<p><b>V</b></p> <p><b>VEGAS [2]</b> 1/16 2/1  <b>very [6]</b> 10/2 12/25  13/22 16/25 20/17  22/2  <b>victim [9]</b> 8/25 9/7  9/9 9/13 10/25 17/2  21/19 23/3 23/13  <b>victim's [2]</b> 16/11  21/20  <b>video [1]</b> 9/21  <b>voices [1]</b> 13/4  <b>voluntarily [1]</b> 13/12</p> <hr/> <p><b>W</b></p> <p><b>waiting [1]</b> 22/4  <b>want [16]</b> 4/15 5/6  5/8 7/5 10/22 10/25  11/1 11/18 12/6 14/14  14/14 14/15 17/15  20/1 21/15 23/1  <b>wanted [1]</b> 10/5  <b>wants [4]</b> 15/19  15/20 19/17 24/6  <b>WARREN [2]</b> 1/20  2/11  <b>was [46]</b>  <b>wash [1]</b> 12/20  <b>wasn't [7]</b> 5/14 8/13  9/3 9/16 13/1 13/2  13/2  <b>watched [1]</b> 15/15  <b>water [1]</b> 13/2  <b>way [10]</b> 8/10 12/2  16/9 16/10 16/13  16/13 16/23 20/8  21/21 22/16  <b>we [13]</b> 2/21 2/24  4/1 9/13 12/6 12/7  13/10 13/17 15/23  18/24 21/20 21/21  23/2  <b>we're [8]</b> 3/17 3/23  8/1 8/14 10/15 10/16  17/23 19/18  <b>we've [3]</b> 3/22 17/23  17/24  <b>weapon [6]</b> 8/25 9/1  9/3 9/6 9/12 10/8  <b>well [15]</b> 4/17 7/6  11/3 11/4 11/5 11/8  12/8 12/11 13/10  13/22 14/8 14/17 15/1  17/12 17/22  <b>went [4]</b> 7/2 9/24  10/16 18/15  <b>were [6]</b> 4/22 6/15  18/16 18/24 23/12  23/15  <b>what [34]</b>  <b>What's [1]</b> 3/1  <b>whatever [4]</b> 7/10  11/11 12/21 13/7</p>	<p><b>wheelchair [1]</b> 7/21  <b>when [22]</b> 6/20 6/25  7/14 8/16 9/4 10/13  11/25 13/8 13/15  13/20 13/24 13/24  14/19 15/12 15/13  15/14 16/19 17/19  17/21 18/13 22/7  22/17  <b>where [6]</b> 6/15 7/3  7/13 13/17 14/14  17/22  <b>whether [1]</b> 9/12  <b>which [3]</b> 3/4 12/16  12/25  <b>while [4]</b> 4/19 11/24  18/24 24/14  <b>white [1]</b> 21/25  <b>who [7]</b> 7/3 8/20  16/21 16/24 17/3  21/20 23/3  <b>whole [1]</b> 8/18  <b>WIESE [1]</b> 1/13  <b>will [4]</b> 15/13 17/20  22/14 24/7  <b>within [2]</b> 4/17 10/4  <b>without [4]</b> 4/24  7/25 21/7 23/25  <b>witness [1]</b> 21/20  <b>word [1]</b> 17/25  <b>words [1]</b> 19/17  <b>working [1]</b> 12/11  <b>world [1]</b> 18/4  <b>worse [1]</b> 23/16  <b>worst [2]</b> 8/14 21/5  <b>worth [3]</b> 9/16 10/11  17/16  <b>would [8]</b> 3/9 7/22  19/21 22/16 23/8 23/9  23/21 24/4  <b>wouldn't [1]</b> 2/24</p> <hr/> <p><b>X</b></p> <p><b>XXX [1]</b> 1/5</p> <hr/> <p><b>Y</b></p> <p><b>YAMPOLSKY [4]</b>  1/22 2/17 3/25 20/22  <b>Yeah [1]</b> 10/23  <b>year [3]</b> 7/21 8/3  19/4  <b>years [10]</b> 5/13 7/10  7/18 7/19 10/11 13/18  13/25 15/13 18/11  21/6  <b>yes [7]</b> 3/22 11/21  13/11 19/21 21/16  21/18 21/18  <b>yesterday [1]</b> 4/7  <b>you [61]</b>  <b>you'd [1]</b> 23/22  <b>you're [2]</b> 21/6 24/14  <b>You've [1]</b> 3/18</p>	<p><b>young [2]</b> 5/16 5/16  <b>younger [1]</b> 3/6  <b>your [36]</b>  <b>Your Honor [30]</b>  <b>youth [2]</b> 5/20 17/15</p> <hr/> <p><b>Z</b></p> <p><b>zero [1]</b> 6/3</p>		
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# Exhibit 3

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDWARD HONABACH	)	CASE NO.: 78694	Electronically Filed Aug 13 2019 11:16 a.m. Elizabeth A. Brown Clerk of Supreme Court
Appellant,	)		
vs.	)		
THE STATE OF NEVADA	)		
Appellee,	)		
_____			
	)		

**NOTICE OF WITHDRAWAL OF APPEAL**

Edward Honabach, appellant named above, hereby moves to voluntarily withdraw the appeal mentioned above. I, Travis Akin, as counsel for the appellant, explained and informed Edward Honabach of the legal effects and consequences of this voluntary withdrawal of this appeal, including that Edward Honabach cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived. Having been so informed, Edward Honabach hereby consents to a voluntary dismissal of the above-mentioned appeal.

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**VERIFICATION**

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED THIS 13<sup>th</sup> day of August, 2019.

**THE LAW OFFICE OF TRAVIS AKIN**

/s/ Travis Akin

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Travis Akin, Esq.  
Nevada Bar No. 13059  
9480 S. Eastern Ave., Suite 257  
Las Vegas, NV 89123  
Phone: (702) 510-8567  
Fax: (702) 778-6600  
Attorney for Appellant

# Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD JOSEPH HONABACH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78694

**FILED**

AUG 2019

*ORDER DISMISSING APPEAL*

ELI  
CLE  
BY  
BROWN  
RENE COURT  
ar. 411".s.....m,-  
CLERK

This is a direct appeal from a judgment of conviction. Eighth  
Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellant's counsel has filed a notice of voluntary withdrawal  
of this appeal. Counsel advises this court that he has informed appellant of  
the legal consequences of voluntarily withdrawing this appeal, including  
that appellant cannot hereafter seek to reinstate this appeal, and that any  
issues that were or could have been brought in this appeal are forever  
waived. Having been so informed, appellant consents to a voluntary  
dismissal of this appeal. Cause appearing, this court

ORDERS this appeal DISMISSED.'

Parraguirre

Cadish

'Because no remittitur will issue in this matter, *see*  
one-year period for filing a post-conviction habeas corpus petition under  
NRS 34.726(1) shall commence to run from the date of this order.

NRAP 42(b), the

cc: Hon. Jerry A. Wiese, District Judge  
The Law Office of Travis Akin  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk  
Edward Joseph Honabach



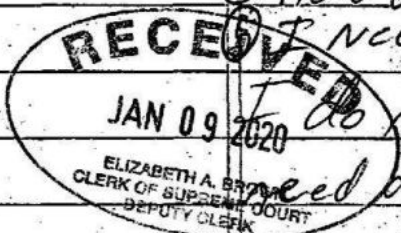
# Exhibit 5

JAN 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY ELIZABETH A. BROWN  
DEPUTY CLERK

Hello I am Edward Joseph Horabach and I had Filed a direct appeal. I appointed Travis Atkins, Esq, as my appellant lawyer. I have not heard from him in about 7 or 8 months, He has not answered any of my letters or phone calls. SO I Then wrote to This court For a docket sheet which was reserved by This court on 12-23-19. I reserved The docket sheet and Found out That my lawyer has canceled my direct appeal without my knowledge or consent. I was never ~~notified~~ notified by my lawyer or The court of This ~~all~~ either before or after This was done. I do not even know if I still have a lawyer and have no idea of what to do. I need This court's help please. One, I need to know if Travis Atkins is still my lawyer. If not I need one to help with my appeal and my Habeas corpus. Again Again I did not consent to The withdrawal of my appeal. I know nothing of Law or how to do anything on my own I need help please!

- ① Do I have a lawyer?
- ② If not how do I get one?
- ③ What can I do about my appeal?
- ④ How do I get help with my Habeas corpus.
- ⑤ I need a case Sumonery please.



I do not know what to do or how to do it. I need assistance. I have a Life without parole sentence.

PCR41324

I believe my case number is: 78694 but I'm not sure. Please help me. Thank you and God Bless.

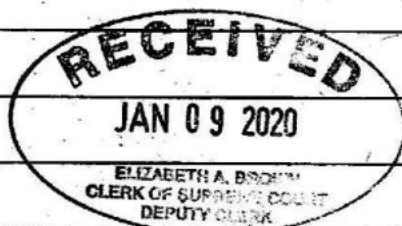
Sincerely,

Edward J. Honabach

Edward J. Honabach #1214251

P.O. Box 1989 - E.S.P.

Ely, Nevada 89301



# Exhibit 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD JOSEPH HONABACH,

No. 78694

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

JAN

**ORDER**

COUR

BY

DEPUTY CLEPX

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of kidnaping resulting in substantial bodily harm and a sentence of life without the possibility of parole. On August 23, 2019, this court dismissed this appeal pursuant to a motion for voluntary dismissal filed by Travis Akin, counsel for appellant. Appellant has filed in pro se a letter to this court asserting that he has not had contact with his appointed counsel, was unaware that his appeal had been dismissed, and that he did not consent to the dismissal of his appeal.

It appears that a response from counsel for appellant would assist this court in resolving appellant's claims. Travis Akin shall have 30 days from the date of this order to file and serve a response to appellant's letter.

It is so ORDERED.

A

, C.J.

cc: The Law Office of Travis Akin  
Attorney General/Carson City  
Clark County District Attorney  
Edward Joseph Honabach

# Exhibit 7

**THE LAW OFFICE OF TRAVIS AKIN**

8275 S. Eastern Ave., Suite 200  
Las Vegas, NV 89123  
United States  
Phone: (702) 510-8567  
Fax: (702) 778-6600  
[Travisakin8@gmail.com](mailto:Travisakin8@gmail.com)

Electronically Filed  
Feb 15 2020 06:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

February 14, 2020

**Sent via First Class Mail:**

Edward Honabach # 1214257  
Ely State Prison  
Ely, Nevada 89301

Ms. Honabach:

I am in receipt of your letter. I am still your attorney on this matter. I did dismiss your Supreme Court appeal for the reasons that we spoke about at High Desert State Prison. I have also spoke with your father. He understands where we are in the process, and he told me that he has regular communication with you, so he can fill in some of the details. The Nevada Supreme Court is requesting that I file this letter, so I do not want to communicate to in-depth about the case.

I am still planning on filing a post-conviction writ of habeas corpus with the district court, as we discussed. I will come out to Ely to visit before the opening brief is due in late March to explain everything in-depth.

Thank you and have a great day.

Sincerely,

/s/Travis Akin

**THE LAW OFFICE OF TRAVIS AKIN**

Travis Akin, Esq.  
9480 S. Eastern Ave., Suite 257  
Las Vegas, NV 89123  
Phone: (702) 510-8567  
Fax: (702) 778-6600  
[Travisakin8@gmail.com](mailto:Travisakin8@gmail.com)

# Exhibit 8



IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD JOSEPH HONABACH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78694

F pm'

**ORDER**

ELZ  
CLE  
BY DEPUTY CLERK—

This is a direct appeal from a judgment of conviction. On August 23, 2019, this court dismissed this appeal pursuant to a motion for voluntary dismissal filed by Travis Akin, counsel for appellant. On January 13, 2020, appellant filed, in pro se, a letter to this court asserting that he had not had contact with his appointed counsel, was unaware that his appeal had been dismissed, and that he did not consent to the dismissal of his appeal. This court directed Mr. Akin to respond to appellant's allegations. Mr. Akin has filed a copy of a letter he sent to appellant in which he indicates that he and appellant had confirmed the dismissal of the appeal and Mr. Akin's intent to file a postconviction petition for a writ of habeas corpus on behalf of appellant.

Whether appellant was advised of the consequences and agreed to the withdrawal of his appeal involves claims of ineffective assistance of counsel that must be raised in the district court in the first instance and requires factual determinations that need to be resolved through an evidentiary hearing. See NRS 34.720-.810. This appeal shall remain dismissed.

It is so ORDERED.

cc: The Law Office of Travis Akin  
Attorney General/Carson City  
Clark County District Attorney  
Edward Joseph Honabach

# Exhibit 9

MAR 18 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

On 3/13/2020 I received a Letter from this court stating that Mr. Akin ~~filed~~ <sup>filed a copy</sup> of a letter he says he sent me which indicates that Mr. Akin and appellant (myself) confirmed the dismissal of appeal.

I never received ~~this~~ Any Letter. When any inmate ~~receives~~ receives any legal mail we have to sign for it with one copy staying with me and another going to the sender.

Therefore I request a copy of the Letter and of ~~proof~~ <sup>proof of</sup> the signed receipt stating it was received by me. ALSO I still have had know contact with Mr. Akin and request that this court order him to contact me so this matter can be resolved. ALSO the Letter this court sent me states that Mr. Akin said he intends to file a writ of habeas corpus on my behalf. AS far as I know this has not been done ~~either~~.

I have written several letters to Mr. Akin with know response. He has told this court he is my lawyer and I need contact ~~to~~ with him. please help with this, my time is running out and I have no legal expertises.

RECEIVED

MAR 18 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

Sincerely

Edward Horabach

# Exhibit 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD JOSEPH HONABACH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78694

**FILED**

**MAR 2 II 2020**

ELIZABETH A. E7f.OWN  
CLER1 ØF SUPREMECOURT

BY DEeUr (

**ORDER**

This court takes no action regarding appellant's letter filed  
March 18, 2020. This appeal has been dismissed.  
It is so ORDERED.

cc: The Law Office of Travis Akin  
Attorney General/Carson City  
Clark County District Attorney  
Edward Joseph Honabach

# Exhibit 11



FILED

FEB 24 2021

STATE BAR OF NEVADA  
BY: B. Felix  
OFFICE OF BAR COUNSEL

Case No.: OBC20-0848

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
)  
vs. )  
)  
TRAVIS D. AKIN, ESQ., )  
)  
Nevada Bar No. 13059, )  
)  
Respondent. )  
\_\_\_\_\_ )

PUBLIC REPRIMAND

TO: TRAVIS D. AKIN, ESQ.  
9480 S. Eastern Avenue, Suite 257  
Las Vegas, Nevada 89123

In January 2020, the Eighth Judicial District Court appointed you as appellate counsel for the appellants and respondents in their respective matters pending in the Nevada Supreme Court.

In all three appeals, briefing schedules were either established or reinstated, and you were directed to file and serve various documents and/or pleadings in each case. However, despite the directives and warnings from the Supreme Court, you failed to file and serve documents and pleadings as ordered by the Supreme Court and required by the Nevada Rules of Appellate Procedure.

In each case, the Supreme Court and its clerk's office sent you warnings that sanctions would be imposed if you did not comply with their orders and failed to file the required documents.



1 an Opening Brief and Appendix in each matter. You also were warned that failure to comply  
2 result in your removal as counsel-of-record in the appeals and referral to the State Bar for  
3 investigations.

4 In June 2020, in all three appeals, the Supreme Court imposed conditional sanctions  
5 would be automatically vacated if you filed the required pleadings. However, you failed to  
6 did not further communicate with the Supreme Court.

7 Your failure to comply with judicial orders caused the Supreme Court to remove  
8 appellate counsel in July 2020 for one case. The court removed you from the other two  
9 August 2020. All three appeals had to be remanded to the Eighth Judicial District for the  
10 appointment of new appellate counsel.

11 Your actions delayed the appeals of your clients and wasted the time and resources of the  
12 Supreme Court and District Court.

13 In light of the foregoing, you violated Rule of Professional Conduct 1.3 (Diligence) and  
14 3.4(c) (Fairness to Opposing Party and Counsel), and are hereby PUBLICLY REPRIMANDED.

15 DATED this 24 day of February, 2021.

16  
17 Kenneth E Hogan

Kenneth E Hogan (Feb 24, 2021 15:08 PST)

18 KENNETH HOGAN, Esq., Hearing Panel Chair  
19 Southern Nevada Disciplinary Board  
20  
21  
22  
23  
24  
25

1 **CERTIFICATE OF SERVICE**

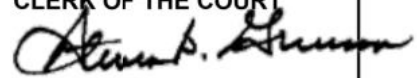
2 The undersigned hereby certifies a true and correct copy of the foregoing

3 **PUBLIC REPRIMAND** was served via electronic mail to:

- 4 1. Kenneth Hogan, Esq. (Panel Chair): [ken@h2legal.com](mailto:ken@h2legal.com)  
5 2. Travis Akin, Esq (Respondent): [travisakin8@gmail.com](mailto:travisakin8@gmail.com)  
6 3. Phil Pattee, Esq. (Assistant Bar Counsel): [philp@nvbar.org](mailto:philp@nvbar.org)

7 Dated this 25th day of February, 2021.

8 *Sonia Del Rio*  
9 \_\_\_\_\_  
10 Sonia Del Rio, an employee  
11 of the State Bar of Nevada  
12  
13  
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**RSPN**  
**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 Respondent

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**EDWARD HONABACH,**  
aka Edward Joseph Honabach,  
#7029816

Petitioner,

-vs-

**THE STATE OF NEVADA,**

Respondent.

**CASE NO: A-20-812948-W**

**DEPT NO: XXX**

**STATE'S RESPONSE TO PETITIONER'S AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS (POST-CONVICTION)**

**DATE OF HEARING: June 28, 2022**  
**TIME OF HEARING: 8:30 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 Response to Petitioner's Amended Petition for Writ of Habeas Corpus (Post-Conviction).

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.

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 12, 2016, the State filed an Information charging Petitioner Edward Honabach  
4 (hereinafter "Petitioner") with eight counts in Case No. C-16-314092-2. These included:

- 5 • Count 1 – Conspiracy to Commit Murder (Category B Felony - NRS 200.010,  
6 200.030, 199.480 - NOC 50038);  
7 • Count 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony -  
8 NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031);  
9 • Count 3 – Mayhem with Use of a Deadly Weapon (Category B Felony - NRS  
10 200.280, 193.165 - NOC 50045);  
11 • Count 4 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily  
12 Harm (Category B Felony - NRS 200.481 - NOC 50226);  
13 • Count 5 – First Degree Kidnapping with Use of a Deadly Weapon Resulting in  
14 Substantial Bodily Harm (Category A Felony - NRS 200.310, 200.320, 193.165 -  
15 NOC 50056);  
16 • Count 6 – Extortion with Use of a Deadly Weapon (Category B Felony - NRS  
17 205.320, 193.165 - NOC 50620);  
18 • Count 7 – Robbery with Use of a Deadly Weapon (Category B Felony - NRS  
19 200.380, 193.165 - NOC 50138);  
20 • Count 8 – First Degree Arson (Category B Felony – NRS 205.010 – NOC 50414).

21 Petitioner was one of four co-defendants.

22 On February 4, 2019, after four continued trial dates, Petitioner and his co-defendants  
23 ultimately pled guilty on the first day of trial. On that same date, an Amended Information and  
24 Guilty Plea Agreement ("GPA") was filed in open court, memorializing that Petitioner agreed  
25 to plead guilty to one count of First Degree Kidnapping Resulting in Substantial Bodily Harm  
26 (Category A Felony - NRS 200.310, 200.320 - NOC 50052).

27 On March 26, 2019, Petitioner was sentenced to life without the possibility of parole in  
28 the Nevada Department of Corrections. The Judgment of Conviction was filed on March 28,  
2019.

On April 11, 2019, Petitioner's counsel, Mr. Robert S. Beckett, Esq., filed a Motion to  
Withdraw as Attorney of Record. The district court granted the Motion and Mr. Beckett was  
withdrawn on April 23, 2019. On that same day, Mr. Travis D. Akin, Esq. was appointed and  
confirmed as counsel.

*Direct appeal from the Judgement of Conviction*

On April 26, 2019, Petitioner, proceeding in pro se, filed a Notice of Appeal from the  
Judgment of Conviction in S.C. Case No. 78694. On May 15, 2019, the Nevada Supreme Court

1 ordered the district court to confirm whether Mr. Akin was appointed to represent Petitioner  
2 on appeal. On June 6, 2019, Mr. Akin was confirmed as Petitioner's counsel in open court and  
3 advised he had met with Petitioner to discuss potential options on appeal, and consequently,  
4 anticipated Petitioner voluntarily dismissing the appeal and moving forward on a Petition for  
5 Writ of Habeas Corpus (Post-Conviction). The district court minute order from the June 6,  
6 2019 hearing was filed with the Court on June 11, 2019.

7 On August 13, 2019, Mr. Akin filed a Notice of Withdrawal of Appeal on behalf of  
8 Petitioner. On August 23, 2019, the Nevada Supreme Court dismissed the appeal pursuant to  
9 the motion for voluntary dismissal. No remittitur issued.

10 On January 13, 2020, Petitioner filed, in pro se, a letter to the Nevada Supreme Court  
11 asserting that he had not had contact with his appointed counsel [Mr. Akin], was unaware that  
12 his appeal had been dismissed, and did not consent to the dismissal of his appeal. The Court  
13 then directed Mr. Akin to respond to Petitioner's allegations on January 16, 2020. Mr. Akin  
14 filed a copy of a letter he sent to Petitioner, in which he indicates that he and Petitioner had  
15 confirmed the dismissal of the appeal and Mr. Akin's intent to file a Petition for Writ of Habeas  
16 Corpus (Post-Conviction) on behalf of Petitioner on February 15, 2020. On March 11, 2020,  
17 the Court ordered that the appeal would remain dismissed.<sup>1</sup>

18 On March 18, 2020, Petitioner filed, in pro se, another letter to the Court asserting that  
19 he never received a letter from Mr. Akin, had not had contact with Mr. Akin, and was unaware  
20 if a petition had been filed. On March 24, 2020, the Court ordered that no action would be  
21 taken regarding Petitioner's second letter.

22 *Petition for Writ of Habeas Corpus (Post-Conviction)*

23 On March 1, 2020, Mr. Akin filed a Motion to Withdraw as Counsel, citing an  
24 insurmountable conflict of interest, and that he had taken a job at a law firm and no longer had  
25  
26

27 <sup>1</sup> The Court held that "Whether appellant was advised of the consequences and agreed to the withdrawal of his appeal  
28 involves claims of ineffective assistance of counsel that must be raised in the district court in the first instance and requires  
factual determinations that need to be resolved through an evidentiary hearing. See NRS 34.720-.810." See No. 78694,  
Order (Mar. 11, 2020).

1 the time to represent Petitioner. The district court determined that the Motion had been  
2 previously granted, and therefore was moot, on March 12, 2020.<sup>2</sup>

3 On March 27, 2020, Mr. Akin, referring to himself as Petitioner's former counsel, filed  
4 a Petition for Writ of Habeas Corpus (Post-Conviction) ("Petition") to stop the clock on the  
5 deadline to file a timely postconviction petition, and requested the district court appoint a  
6 replacement attorney to file a supplement in Case No. A-20-812948-W. On May 18, 2020, the  
7 district court issued a Minute Order denying the Petition.<sup>3</sup>

8 On June 10, 2020, Petitioner filed a Motion to Reconsider. On July 17, 2020, the State  
9 filed its Opposition to Petitioner's Motion to Reconsider. On July 23, 2020, the district court  
10 denied Petitioner's Motion to Reconsider.<sup>4</sup>

11 *Appeal from the district court's order denying the Petition*

12 On June 24, 2020, Petitioner filed, in pro se, a Notice of Appeal from the denial of his  
13 Petition in S.C. Case No. 81402. On December 7, 2020, Petitioner filed, in pro se, an Informal  
14 Brief. The Nevada Supreme Court then ordered the State to respond on October 6, 2021. On  
15 November 3, 2021, the State filed its Answering Brief.

16 On December 17, 2021, the Court reversed the district court's order and remanded the  
17 matter, holding that the district court erred in resolving the Petition filed by counsel which had  
18 not been authorized by Petitioner and had been filed after his counsel had withdrawn from  
19 representing him. The Court ruled that rather than resolving the petition submitted by Mr.  
20 Akin, the district court should have clarified whether Petitioner wanted to proceed on the  
21 Petition submitted by Mr. Akin, supplement the Petition, or request the appointment of  
22 postconviction counsel. Remittitur issued January 11, 2022.

23 *Amended Petition for Writ of Habeas Corpus (Post-Conviction)*

24 On March 3, 2022, Mr. Jim Hoffman, Esq., was appointed as Petitioner's counsel. On  
25 April 28, 2022, Petitioner filed an Amended Petition for Writ of Habeas Corpus (Post-  
26 Conviction) ("Amended Petition"). The State's Response now follows.

27 <sup>2</sup> It appears the district court may have confused Mr. Akin's Motion to Withdraw as Counsel with Petitioner's earlier  
28 October 2019 Motion for Withdrawal of Attorney of Record relating to his trial counsel's, Mr. Beckett's, withdrawal.

<sup>3</sup> The Court's Findings of Fact, Conclusions of Law and Order ("Findings") was filed on July 21, 2020.

<sup>4</sup> The Court's Order denying Defendant's Motion for Reconsideration was filed on August 18, 2020.



## STATEMENT OF THE FACTS

Petitioner's Pre-Sentence Investigation Report ("PSI") summarized the facts of the offense as follows:

On March 7, 2016, officers received a call in reference to a residential fire and of a male with a slit throat exiting the same residence. The caller reported that the victim was possibly tied up.

Paramedics arrived on the scene and advised there were several citizens around the victim attempting to provide first aid. The paramedics observed that the victim had both legs bound together by a cord at his ankles and knees. The paramedics removed the bindings. The victim had several injuries including: multiple stab wounds to his chest, back and right arm, his right pinky finger was partially amputated, his fingernails were pulled off from his right index and middle fingers, there was a laceration to his right thumb and a deep laceration to his throat/neck. The paramedics reported that it appeared that the victim was tortured. The victim was treated by paramedics and transported to a local hospital. The victim was unable to be interviewed the night of the incident as he was undergoing numerous surgeries and was heavily sedated.

Officers and detectives arrived on the scene and set a perimeter around the crime scene while firefighters battled the residential fire. Detectives interviewed each witness individually on scene. All witnesses confirmed that they noticed the residence on fire and when they pulled over to assist, they observed the victim with his legs bound, with several injuries. On March 8, 2016, detectives canvassed the area and spoke to surrounding neighbors. The neighbors advised seeing a pickup truck with two males and two females at the victim's residence.

Detectives arrived to the local hospital to attempt to speak to the victim. He was unable to speak due to his injuries; however, he was responsive and wished to attempt to provide information to the detectives. He was able to provide information regarding his identity and his girlfriend's identity. When asked how many suspects committed the crime against him, he raised four fingers. When asked who committed the crime against him, the victim mouthed the name Angel Castro, who was identified as a co-defendant Luis Angel Castro.

Detectives were able to make contact with the victim's girlfriend. She stated that on March 6, 2016, her vehicle had broken down while the victim was driving it and he asked his friend Angel Castro for a tow back to his girlfriend's home. The victim's girlfriend stated that the victim told her he was going to pay Mr. Castro \$50.00 in United States currency for the tow. She stated on March 7, 2016 the victim was still at her residence with a mechanic when Mr. Castro arrived in a pickup truck with two other males. Mr. Castro demanded the tow money from the victim and the other male made mention that he had a firearm inside the truck. The victim then agreed to leave with the three males in the truck. The victim's girlfriend reported that she had not heard from the victim for several hours so she attempted to contact several friends of his to see if anyone had heard from him. One of his friends told her that the victim had contacted him asking for \$300.00 in United States currency. He stated that he heard a female in the background apparently coaching him on what to say.

Detectives returned to the hospital and continued to interview the victim. The victim reported he was taken in a pickup truck to an unknown house. Once

1 at the home, Mr. Castro bound the victim's hands/wrists and ankles/knees. He  
2 stated that he remembers making three phone calls asking for \$300.00 in United  
3 States currency. The victim reported that one of the males cut his finger and hand  
4 with a machete and stabbed him multiple times about his body with a knife. He  
5 reported that all four suspects cut his throat/neck. The victim stated that he was  
6 tortured before, during and after he made the phone calls. He reported after the  
7 four suspects took turn cutting his throat/neck, the victim faked as if he died.  
8 After believing the victim was dead, the unknown male started the fire and all  
9 the suspects left the house. Once all the suspects left, the victim stated he was  
10 able to get out of the home, where he was assisted by people going by. The  
11 victim stated that the only thing the suspects took from him was a pack of  
12 cigarettes.

13 During the course of the investigation, detectives were able to identify  
14 the defendant Edward Honabach as the driver of the pickup truck. Both the  
15 victim and his girlfriend were able to identify Angel Castro and Edward  
16 Honabach from a lineup. Detectives went to Mr. Honabach's residence and took  
17 Mr. Honabach and Mr. Castro into custody. Also, present at the residence were  
18 two females. One of the females was identified as the co-defendant Fabiola  
19 Jimenez. A photo lineup with Ms. Jimenez in it was presented to the victim who  
20 confirmed that Ms. Jimenez was present and involved in his torture. A search of  
21 Mr. Honabach's residence was completed where detectives found numerous  
22 knives inside the home and the vehicle. They also found a machete and twine  
23 inside the vehicle.

24 On March 10, 2016, detectives interviewed Ms. Jimenez. She confessed  
25 to being present during the brutal attempt murder and arson where the incident  
26 occurred. Her version of the incident was similar to the victim's account. She  
27 stated that on March 7, 2016, Mr. Honabach, Mr. Castro and an unknown male  
28 went to pick up the victim. Ms. Jimenez reported that the victim owed \$200.00  
in United States currency for a drug debt. A short time later, Mr. Honabach, Mr.  
Castro and the unknown male arrived with the victim to the residence the  
incident occurred at. Ms. Jimenez was already present at the residence as Mr.  
Castro and Mr. Honabach had dropped her off prior to picking up the victim.  
Once inside the residence, Mr. Honabach and Mr. Castro confronted the victim  
about the money he owed them. The victim told them he was working on getting  
the money and asked Mr. Honabach and Mr. Castro for another week to pay off  
the debt. Mr. Honabach and Mr. Castro became physical with the victim and  
forced him into a chair and bound his hands and legs with rope found in the  
home. Ms. Jimenez reported that Mr. Honabach, Mr. Castro and the unknown  
male started punching the victim. Mr. Honabach then brandished a pocket knife  
and stabbed the victim three times in his right shoulder area. The victim pleaded  
for them to stop. Mr. Honabach asked Mr. Castro what he wanted to do and Mr.  
Castro stated "we have gone this far, let's finish it." At that point, Mr. Honabach  
pulled the victim's hair and Mr. Castro took the knife and cut the victim's throat.  
Ms. Jimenez advised that they all believed the victim to be dead so began to  
gather paper materials and household chemicals which they poured on the  
victim. Mr. Castro told Ms. Jimenez to leave the residence at that point and she  
did. She stated that before she left she saw Mr. Honabach and Mr. Castro with  
lighters in their hands. Once outside, Ms. Jimenez saw the flames coming from  
the house and that is when Mr. Honabach and Mr. Castro left the residence.

They then got into the vehicle and left. Ms. Jimenez reported she did not  
know where the unknown male had gone. She stated that she did believe the  
victim was dead and confirmed that she did not call the police to stop the brutal  
attack. Ms. Jimenez denied participating in the actual stabbing or setting the  
house on fire. Initially, she denied being with Mr. Castro and Mr. Honabach;





1 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,  
2 537 P.2d 473, 474 (1975).

3 The role of a court in considering allegations of ineffective assistance of counsel is “not  
4 to pass upon the merits of the action not taken but to determine whether, under the particular  
5 facts and circumstances of the case, trial counsel failed to render reasonably effective  
6 assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does  
7 not mean that the court should “second guess reasoned choices between trial tactics nor does  
8 it mean that defense counsel, to protect himself against allegations of inadequacy, must make  
9 every conceivable motion no matter how remote the possibilities are of success.” Id. To be  
10 effective, the constitution “does not require that counsel do what is impossible or unethical. If  
11 there is no bona fide defense to the charge, counsel cannot create one and may disserve the  
12 interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648,  
13 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

14 “There are countless ways to provide effective assistance in any given case. Even the  
15 best criminal defense attorneys would not defend a particular client in the same way.”  
16 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
17 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
18 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
19 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
20 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
21 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

22 Even if a Petitioner can demonstrate that his counsel’s representation fell below an  
23 objective standard of reasonableness, he must still demonstrate prejudice and show a  
24 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (*citing*  
26 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
27 sufficient to undermine confidence in the outcome.” Id. (*citing Strickland*, 466 U.S. at 687-89,  
28 694, 104 S. Ct. at 2064-65, 2068).

1 This portion of the test is slightly modified when a conviction occurs due to a guilty  
2 plea. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985); Kirksey v. State, 112 Nev.  
3 980, 988, 923 P.2d 1102, 1107 (1996). For a guilty plea, a Petitioner “must show that there is  
4 a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
5 would have insisted on going to trial.” Hill, 474 U.S. at 59; see also Kirksey v. State, 112 Nev.  
6 at 988; Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

7 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
8 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
9 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
10 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
11 be supported with specific factual allegations, which if true, would entitle the petitioner to  
12 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
13 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
14 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
15 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
16 petition to be dismissed.” (emphasis added).

17 A defendant is entitled to effective assistance of counsel in the plea-bargaining process,  
18 and in determining whether to accept or reject a plea offer. Lafler v. Cooper, 566 U.S. 156,  
19 162, 132 S. Ct. 1376, 1384 (2012); see also McMann v. Richardson, 397 U.S. 759, 771, 90 S.  
20 Ct. 1441, 1449 (1970) (Constitution guarantees effective counsel when accepting guilty plea).  
21 Similarly, a “defendant has the right to make a reasonably informed decision whether to accept  
22 a plea offer.” Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002) (*quoting United States v.*  
23 *Day*, 969 F.2d 39, 43 (3rd Cir. 1992)). Importantly, the question is not whether “counsel’s  
24 advice [was] right or wrong, but . . . whether that advice was within the range of competence  
25 demanded of attorneys in criminal cases.” Id., *quoting McMann*, 397 U.S. at 771, 90 S. Ct. at  
26 1449. To establish a claim of ineffective assistance of counsel for advice regarding a guilty  
27 plea, a defendant must show “gross error on the part of counsel.” Id. Further, the Nevada  
28 Supreme Court has held that a reasonable plea recommendation which hindsight reveals to be

1 unwise is not ineffective assistance. Larson v. State, 104 Nev. 691, 694, 766 P.2d 261, 263  
2 (1988). Similarly, the fact that a defense tactic is ultimately unsuccessful does not make it  
3 unreasonable. Id. Lastly, while it is counsel's duty to candidly advise a defendant regarding  
4 whether or not they believe it would be beneficial for a defendant to accept a plea offer, the  
5 ultimate decision of whether or not to accept a plea offer is the defendants. Rhyne, 118 Nev.  
6 at 8, 38 P.3d at 163.

7 Petitioner's claims are insufficiently pled pursuant to Hargrove v. State, 100 Nev. 498,  
8 502, 686 P.2d 222, 225 (1984), and Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).  
9 Indeed, a party seeking review bears the responsibility "to cogently argue, and present relevant  
10 authority" to support his assertions. Edwards v. Emperor's Garden Restaurant, 122 Nev. 317,  
11 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.  
12 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant's failure to present legal  
13 authority resulted in no reason for the district court to consider defendant's claim); Maresca v.  
14 State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his arguments  
15 with relevant authority and cogent argument; "issues not so presented need not be addressed");  
16 Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may  
17 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock  
18 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking citation to relevant  
19 legal authority do not warrant review on the merits). Claims for relief devoid of specific factual  
20 allegations are "bare" and "naked," and are insufficient to warrant relief, as are those claims  
21 belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
22 (1984). "[Petitioner] *must* allege specific facts supporting the claims in the petition[.]...Failure  
23 to allege specific facts rather than just conclusions may cause [the] petition to be dismissed."  
24 NRS 34.735(6) (emphasis added).

#### 25 **A. Appellate Counsel Was Not Ineffective When the Plea Was Withdrawn**

26 In Ground One, Petitioner claims appellate counsel was ineffective in withdrawing  
27 Petitioner's appeal without his consent. Petition at 3-9. Appellate counsel represented that he  
28 withdrew the appeal after explaining to, and obtaining the consent of, Petitioner, and Petitioner



1 further recognizes that, when he pled guilty, he waived any right to appeal. Petition at 4-6.  
2 Petitioner mostly recites letters he sent to the Nevada Supreme Court arguing that he did not  
3 consent to the withdrawal of his appeal.<sup>5</sup> Id.

4 Petitioner fails to demonstrate either deficiency or prejudice. The law cited by Petitioner  
5 relates to the requirement that counsel file a notice of appeal if a defendant requests an appeal.  
6 Petition at 7. There are two related problems with this. The first is the Petitioner does not  
7 assert, much less establish, that he requested that counsel file an appeal in the first place. The  
8 second is that counsel did timely file a notice of appeal, just not an opening brief.

9 “[T]here is no constitutional requirement that counsel must always inform a defendant  
10 who pleads guilty of the right to pursue a direct appeal.” Thomas v. State, 115 Nev. 148, 150,  
11 979 P.2d 222, 223 (1999). Thomas explicitly declined to extend Lozada, cited by Petitioner, to  
12 cases where a defendant pleads guilty. Id.; Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994);  
13 Petition at 7. When a defendant has pled guilty, an “attorney is not obliged to obtain consent  
14 not to file the appeal where the client does not express a desire to challenge the proceedings.  
15 However, if the client does express a desire to appeal, counsel is obligated to file the notice of  
16 appeal on the client's behalf.” Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).  
17 (emphasis added). A defendant who pleads guilty waives much of their right to appeal but can  
18 appeal on some limited grounds. Id. at 19. Petitioner's citation to Burns is irrelevant because  
19 Burns is 1) unpublished, and 2) relates to the obligation of counsel to file an appeal where the  
20 defendant has been convicted via jury trial, not when a defendant pleads guilty. Petitioner cites  
21 to Toston v. State but fails to appreciate the holding thereof. 127 Nev. 971, 979, 267 P.3d 795,  
22 801 (2011); Petition at 7.

23 In Toston, the Nevada Supreme Court held that “counsel has a duty to file a direct  
24 appeal when the client's desire to challenge the conviction or sentence can be reasonably  
25 inferred from the totality of the circumstances, focusing on the information that counsel knew  
26 or should have known at the time.” Id. at 979. However, whether a defendant has pled guilty

27 <sup>5</sup> Petitioner asserts that a declaration that counsel drafted was sent to Petitioner for his signature and will be filed “as  
28 soon as it is received.” Petition at 6. As of the time the State's response is due, no declaration has been filed and, since  
any declaration was drafted by counsel and not adopted by Petitioner, the representations regarding what the declaration  
would say should not be considered.

1 is relevant to the totality of the circumstances analysis because “a guilty plea reduces the scope  
2 of potentially appealable issues and because such a plea may indicate that the defendant seeks  
3 an end to judicial proceedings.” Id. “[W]hen the defendant has pleaded guilty, relevant  
4 circumstances may include whether the defendant received the sentence he bargained for as  
5 part of the plea (it would be reasonable to conclude that a defendant who received the  
6 bargained-for sentence would be satisfied with that sentence), whether the defendant reserved  
7 certain issues for appeal (the reservation of an issue for appeal reasonably indicates the  
8 defendant's desire to appeal), whether the defendant indicated a desire to challenge his  
9 sentence within the period for filing an appeal, and whether the defendant sought relief from  
10 the plea before sentencing (the filing of a presentence motion to withdraw a plea reasonably  
11 indicates dissatisfaction with the conviction).” Id. at 979-980.

12       Petitioner fails to undertake any of the analysis required by Toston to demonstrate that  
13 counsel should have known that Petitioner wanted to pursue a direct appeal. Petitioner agreed  
14 to a sentence of Life in prison, wherein the State would argue that he should not receive the  
15 possibility of parole, and the defense would argue that Petitioner should receive the possibility  
16 of parole after 15 years. GPA at 1. Petitioner received life without parole, one of the two  
17 potential sentences, and so received the sentence he bargained for as part of the plea. There is  
18 no indication that Petitioner reserved any issues for appeal, either in the Guilty Plea Agreement  
19 itself or in any of the record. Other than the notice of appeal that counsel timely filed, there is  
20 no indication that Petitioner indicated a desire to challenge his plea within the time period for  
21 filing an appeal. He did not, for instance, complain at sentencing or file any other post-  
22 sentencing motions. Nor did he seek relief from the plea in the approximately two months  
23 prior to sentencing. In sum, none of the Toston factors support a claim that counsel knew or  
24 should have known that Petitioner wanted to challenge his plea, and Petitioner does not argue  
25 otherwise. Because Petitioner fails to demonstrate that counsel knew or should have known  
26 that he wished to appeal, Petitioner fails to demonstrate that counsel was deficient.

27       Even if Petitioner had demonstrated that he wished to file an appeal, however, counsel  
28 was not necessarily deficient for withdrawing it, even without Petitioner's consent. Petitioner

1 doesn't identify any meritorious issues that he would have raised had the appeal been filed.  
2 Petitioner's complaints have only ever revolved around the supposed 'coercion' involved in  
3 obtaining Petitioner's plea, or the voluntariness of the plea. Assuming he wanted to challenge  
4 his plea, a Post-Conviction Petition for Writ of Habeas Corpus is the proper vehicle to do so,  
5 not a direct appeal. "[C]hallenges to the validity of a guilty plea and claims of ineffective  
6 assistance of trial and appellate counsel must be first pursued in post-conviction proceedings  
7 in the district court ..." Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994),  
8 disapproved of by Thomas, 115 Nev. 148, 979 P.2d 222. (Thomas, cited *supra*, explicitly  
9 disproved of Franklin to the extent that Franklin "suggest[s] that counsel has an absolute duty  
10 to advise a defendant who pleads guilty of the right to appeal." Thomas at 150.) Accordingly,  
11 assuming Petitioner wished to challenge his plea, counsel withdrawing the appeal to pursue a  
12 petition for writ of habeas corpus, either with Petitioner's consent as counsel claims, or without  
13 it as Petitioner claims, was not deficient because he was making the challenge in the correct  
14 forum. Counsel even filed a barebones habeas petition on Petitioner's behalf to ensure that  
15 Petitioner could raise his challenges in district court. Petitioner speculates about other reasons  
16 why counsel might have withdrawn the appeal, but "speculation does not demonstrate any  
17 prejudice." Browning v. State, 120 Nev. 347, 357, 91 P.3d 39, 47 (2004).

18 Petitioner only complains that his appeal was withdrawn without his consent. But,  
19 because he fails to demonstrate that 1) he asked for an appeal, 2) that counsel should have  
20 known that he wanted an appeal, and/or 3) that withdrawing the appeal was itself deficient,  
21 Petitioner's claim that counsel performed deficiently should be denied.

22 **B. Appellate Counsel Was Not Ineffective For Failing to Challenge the**  
23 **Voluntariness of Petitioner's Plea On Direct Appeal**

24 Petitioner claims appellate counsel was ineffective in failing to challenge the  
25 voluntariness of Petitioner's plea in Ground Two. Petition at 10.

26 There is a strong presumption that appellate counsel's performance was reasonable and  
27 fell within "the wide range of reasonable professional assistance." See United States v.  
28 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at

1 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set  
2 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
3 to satisfy Strickland's second prong, the defendant must show that the omitted issue would  
4 have had a reasonable probability of success on appeal. Id. For judges to second-guess  
5 reasonable professional judgments and impose on appointed counsel a duty to raise every  
6 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective  
7 advocacy." Jones v. Barnes, 463 U.S. 745, 754, 103 S. Ct. 3308, 3314 (1983).

8 As just noted, appellate counsel could not have been deficient for failing to challenge  
9 the voluntariness of Petitioner's plea **on direct appeal** because such a claim "must be first  
10 pursued in post-conviction proceedings in the district court ..." Franklin, 110 Nev. at 751-52.  
11 The Nevada Supreme Court routinely rejects claims asserting that a plea is not voluntary when  
12 raised on direct appeal. *See, e.x.* Bryant, v. State, 102 Nev. 268, 272, 721 P.2d 364, 368  
13 (1986)("[W]e will no longer permit a defendant to challenge the validity of a guilty plea on  
14 direct appeal from the judgment of conviction."); Smith, v. State, 110 Nev. 1009, 1010-11 n.1,  
15 879 P.2d 60, 61 n.1 (1994) (stating that unless error clearly appears from the record, a  
16 challenge to the validity of a guilty plea must first be raised in the district court in a motion to  
17 withdraw guilty plea or a postconviction petition for a writ of habeas corpus).<sup>6</sup> Instead, the  
18 proper course is to pursue the challenge to the guilty plea in a post-conviction petition. And  
19 that's just what counsel did. Counsel filed a Petition for Writ of Habeas Corpus (Post-  
20 Conviction) on March 27, 2020, alleging the following:

- 21 A. Petitioner entered his plea agreement involuntarily, unintelligently, and  
22 unknowingly because he did not know that he could receive life without  
23 parole pursuant to the guilty plea agreement, therefore, the guilty plea is  
24 invalid; Petitioner was under the understanding that he would have, at  
25 minimum, a chance at parole;
- 26 B. Counsel was ineffective for failing to advise Petitioner that he could receive  
27 a life without parole sentence on his guilty plea; Petitioner was under the  
28 understanding that he would have, at minimum, a chance at parole;
- 29 C. Cumulative error.

<sup>6</sup> Most appeals from a guilty plea are decided by the Nevada Court of Appeals via unpublished order, but those cases are not citable.



1 See Petition (Mar. 27, 2020).

2 This claim demonstrates that counsel's decision to withdraw the plea was reasonable,  
3 not deficient. Counsel properly raised the claim in a timely filed petition, rather than on direct  
4 appeal. Petitioner fails to demonstrate any reason why counsel was deficient for raising the  
5 claim in the proper place and fails to demonstrate deficiency because he does not argue that  
6 the Nevada Supreme Court would even have considered, much less granted any relief on, his  
7 claim if raised in direct appeal. He also fails to demonstrate prejudice because Petitioner's plea  
8 was knowingly and voluntarily entered into, and so even if the claim had been raised on direct  
9 appeal it would have been meritless.

### 10 **C. Petitioner Knowingly and Voluntarily Entered His Plea**

11 Petitioner claims that his plea was not voluntary for three reasons. First, he felt  
12 'pressured into taking the deal by his counsel,' second, he felt pressured by "the condition of  
13 the offer that all four co-defendants would have to plead guilty for the offer to go into effect,"  
14 and third "his decision to plead was based on the advice of counsel who had not adequately  
15 reviewed the discovery materials." Petition at 15.<sup>7</sup> Petitioner does not explain how, or in what  
16 manner, counsel "pressured" him into pleading guilty, and the claim is belied by the record.  
17 Petitioner affirmed in his GPA that he was satisfied with counsel:

#### 18 VOLUNTARINESS OF PLEA

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

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

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

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

27 I believe that pleading guilty and accepting this plea bargain is in my best  
28 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.

<sup>7</sup> As noted in footnote 5, Petitioner's Declaration has not been filed as of the time the State's response is due and should not be considered if it is filed in the future.

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

4           GPA at 4–5 (emphasis added).

5           Petitioner signed and agreed to the terms of the GPA, affirming that he was satisfied  
6           with his counsel’s representations and that he discussed all possible defenses with counsel. Id.  
7           at 5. Petitioner’s counsel, Mr. Robert Beckett, as an officer of this Court, affirmed that he fully  
8           explained and advised Petitioner regarding the GPA. Id. at 6. After Petitioner signed his GPA,  
9           he was thoroughly canvassed by this Court, and again affirmed that he was satisfied with  
10          counsel and that he discussed all potential defenses with counsel:

11           **THE COURT:** Before I can accept your plea of guilty, I have to be  
12           convinced that your plea is freely and voluntarily made. *Are you making your*  
13           *plea freely and voluntarily?*

14           **THE DEFENDANT:** Yes, Your Honor.

15           **THE COURT:** *Has anybody forced you or coerced you to accept that*  
16           *plea?*

17           **THE DEFENDANT:** No.

18           **THE COURT:** Are you making that plea of guilty because you are, in  
19           fact, guilty of that charge?

20           **THE DEFENDANT:** Yes, Your Honor.

21           **THE COURT:** Has your attorney made any promise to you that are not  
22           contained in the guilty plea agreement?

23           **THE DEFENDANT:** No.

24           **THE COURT:** *Based on all the facts and circumstances, are you*  
25           *satisfied with the services of your attorney?*

26           **THE DEFENDANT:** Yes.

27           Reporter’s Transcript, Entry of Plea (Feb. 4, 2019) (“RT: EOP”) at 13 (emphasis added).

28           Because Petitioner does not offer any specific facts about how counsel supposedly  
            pressured him into accepting a negotiation, and because he expressly represented the contrary  
            to the Court, this Court should deny that claim.

            The Court should also deny the claim that Petitioner was pressured into taking a  
            contingent plea bargain because such ‘pressure’ does not render a plea involuntary as a matter  
            of law. Caruso v. State, 486 P.3d 1285 (Nev. 2021)(unpub)(citing United States v. Williams,  
            827 F.3d 1134, 1164–65 (D.C. Cir. 2016) (explaining that “a plea deal contingent on a co-  
            defendant’s guilty plea” did not violate defendant’s due process rights); United States v.  
            Gonzalez-Vazquez, 219 F.3d 37, 43 (1st Cir, 2000) (explaining that a “package deal” would  
            not violate the defendants’ constitutional rights); United States v. Seligsohn, 981 F.2d 1418,

1 1426 (3d Cir. 1992) (“Package deal plea bargains, in which a prosecutor makes an agreement  
2 with one defendant contingent upon a co-defendant also pleading guilty, are permissible  
3 provided that the defendant's decision to forego a trial is otherwise voluntary.”), *superseded*  
4 *by statute for other reasons as stated in United States v. Corrado*, 53 F.3d 620, 624 (3d Cir.  
5 1995); *United States v. Wheat*, 813 F.2d 1399, 1405 (9th Cir. 1987) (declining to declare  
6 “‘package-deal’ plea bargains” per se impermissible)). Even if it were not, Petitioner fails to  
7 provide any specific facts that the plea was coercive beyond its contingent nature, and  
8 Petitioner’s representations to the court that he was not coerced or pressured into accepting the  
9 plea belie that claim.

10 Finally, Petitioner claims that the plea was not voluntary because plea counsel failed to  
11 review discovery before advising Petitioner to accept the plea offer. Petition at 11–13.<sup>8</sup>  
12 However, this claim is nothing but a bare and naked assertion that is belied by the record  
13 suitable only for summary denial.

14 In signing the GPA, Petitioner confirmed that counsel “answered all of [Petitioner's]  
15 questions regarding [the] guilty plea agreement and its consequences to [Petitioner's]  
16 satisfaction and [Petitioner was] satisfied by the services provided by [his] attorney.” GPA at  
17 5. Petitioner acknowledged that he understood that he was waiving his right to a jury trial.  
18 GPA at 4. During the plea canvass, Petitioner confirmed that he was waiving his right to  
19 challenge the evidence at trial. RT: EOP at 12. Petitioner has failed to articulate what other  
20 investigation or challenge to the evidence counsel should have engaged in, prior to Petitioner's  
21 guilty plea that would have resulted in Petitioner asserting his right to a jury trial in lieu of a  
22 guilty plea. Petitioner fails to assert what discovery counsel failed to review, how that  
23 discovery would have changed counsel’s advice, or why that discovery would have cause  
24 Petitioner to reject the plea and instead proceed to trial. Indeed, the limited evidence reviewed  
25 by this Court at sentencing was horrific – no doubt a jury would have believed so as well.  
26 Accordingly, Petitioner has not demonstrated that counsel's performance fell below an  
27  
28

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<sup>8</sup> Once again, the only purported evidence of this is the unfiled Declaration, referenced previously in fn. 5 and 7.

1 objective standard of reasonableness or a reasonable probability that he would have refused to  
2 plead guilty and would have insisted on proceeding to trial.

3 Because petitioner fails to demonstrate that his plea was not knowingly and voluntarily  
4 entered into, the claim should be denied.

#### 5 **D. Trial Counsel Effectively Prepared for Sentencing**

6 Petitioner claims that counsel was ineffective at sentencing because counsel did not file  
7 a sentencing memorandum and did not "prepare" Petitioner to speak at sentencing. Petition at  
8 13-14.<sup>9</sup> Petitioner fails to demonstrate that counsel was deficient because filing a sentencing  
9 memorandum is not required, particularly where, as here, the range of potential sentences is  
10 relatively narrow. He fails to identify anything that counsel should have included in the  
11 sentencing memorandum or demonstrate that he provided anything to counsel that was not  
12 presented at sentencing. Nor does he demonstrate prejudice. Of the four co-defendants, only  
13 Castro filed a sentencing memorandum. Sentencing Memorandum on Behalf of Luis Castro,  
14 filed March 24, 2019. Castro received exactly the same sentence. It was not the lack of  
15 mitigation, but the abhorrent nature of the crimes the defendants committed that resulted in  
16 that sentence:

17  
18 **THE COURT:** So here's the dilemma that I have, folks. I will generally  
19 try to be a merciful judge. I know as a Judge my job is to try to apply mercy and  
20 justice in a fair way to people. And I think most people would acknowledge that  
21 I try to give people probation when I have that opportunity, to give them at least  
22 one chance.

23 In this case I understand that drugs is a problem for most, if not all, of  
24 you, and that drugs and alcohol may have been the factor that caused some of  
25 these actions, but I don't know that I consider that an excuse. I don't know that I  
26 consider that a good reason to have committed horrific crimes.

27 I want to be merciful, but at the same time, I know that justice has to be  
28 done. And we have a victim who, but for the fact that he lived against what you  
all thought -- my understanding is not only was he tortured and mutilated in this  
room for a period of time, for a period of hours, but that everybody thought he  
was dead, tried to burn the house down around him. And if you had been  
successful in this, this would have been a capital murder case and you all would  
be looking at potentially a capital sentence.

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<sup>9</sup> See fn. 5, 7, 8, regarding the Declaration.



1 I have a hard time with the pictures that I've seen and the horrible injuries  
2 that were inflicted upon this poor victim. I understand that he is not the pillar of  
3 our community either, but that doesn't justify the things that were done to him  
4 over \$50. And that almost makes it worse because that was the basis for this, is  
5 him not being able to come up with \$50.

6 Sentencing Transcript, March 26, 2019, at 22-23.

7 In addition to failing to identify anything that counsel should have put into a mitigation  
8 packet, Petitioner fails to identify anything else counsel should have done to prepare for  
9 sentencing, or in what way counsel should have better prepared Petitioner to speak at  
10 sentencing. Counsel argued, at length, that Petitioner should be given the opportunity for  
11 parole. Id. at 11-16. Counsel brought Petitioner's parents to sentencing, and explained what  
12 Petitioner hoped for if he was granted a chance for parole. Id. at 14-16. He explained that  
13 Petitioner's meth use drove Petitioner's acts, and he explained what Petitioner had been doing  
14 in jail to become a better person if he were ever able to be released. Id. at 11-16. When  
15 Petitioner addressed the Court, he also explained what he had done in jail to become a better  
16 person and explained what he hoped he could do if released. Id. at 17-18. He claimed that he  
17 was sorry, that he was remorseful, and that he took 'full responsibility.' Id. at 16. But now he  
18 claims that there was something his attorney could have prepared him to say that somehow  
19 would have resulted in a lesser sentence – but he doesn't say what that could have been.

20 Petitioner has failed to demonstrate that counsel's decision not to file a sentencing  
21 memorandum, counsel's presentation at sentencing, or counsel's preparation on Petitioner for  
22 sentencing were deficient or that they resulted in any prejudice. Accordingly, the claims should  
23 be denied.

## 24 **II. INSTANCES OF INEFFECTIVE ASSISTANCE OF COUNSEL CANNOT BE** 25 **CUMULATED**

26 In Ground Three, Petitioner claims appellate counsel's errors cumulated to create  
27 prejudice. Petition at 10–11. Similarly, in Ground Six, Petitioner claims trial counsel's errors  
28 cumulated to create prejudice. Petition at 14–15. However, the Nevada Supreme Court has not  
endorsed application of its direct appeal cumulative error standard to the post-conviction  
Strickland context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor

1 should cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838,  
2 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) (“a habeas petitioner  
3 cannot build a showing of prejudice on series of errors, none of which would by itself meet  
4 the prejudice test.”).

5 Even if applicable, a finding of cumulative error in the context of a Strickland claim is  
6 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and  
7 through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that  
8 there can be no cumulative error where the petitioner fails to demonstrate any single violation  
9 of Strickland. Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where individual  
10 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to  
11 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,  
12 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th  
13 Cir. 2005)).

14 Here, Petitioner failed to show cumulative error because there were no errors to  
15 cumulate. Petitioner failed to show how any of the above claims constituted ineffective  
16 assistance of counsel. Instead, all of Petitioner’s claims are meritless. As such, Petitioner has  
17 failed to establish cumulative error, and therefore, this Court should deny the Amended  
18 Petition.

### 19 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

20 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. NRS  
21 34.770 reads:

- 22 1. The judge or justice, upon review of the return, answer and all supporting  
23 documents which are filed, shall determine whether an evidentiary hearing is  
24 required. A petitioner must not be discharged or committed to the custody of a  
25 person other than the respondent *unless an evidentiary hearing is held*.
- 26 2. If the judge or justice determines that the petitioner is not entitled to relief  
27 and an evidentiary hearing is not required, he shall dismiss the petition without  
28 a hearing.
3. If the judge or justice determines that an evidentiary hearing is required, he  
shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without  
expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.

1 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
2 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
3 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
4 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
5 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction  
6 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
7 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
8 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

9 It is improper to hold an evidentiary hearing simply to make a complete record. See  
10 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The  
11 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted  
12 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary  
13 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is  
14 not required simply because counsel’s actions are challenged as being unreasonable strategic  
15 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
16 post hoc rationalization for counsel’s decision making that contradicts the available evidence  
17 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
18 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
19 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*  
20 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
21 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
22 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

23 Here, Petitioner requests “the Court hold an evidentiary hearing to further evaluate  
24 these claims...” Petition at 16. However, an evidentiary hearing is unnecessary, as each of  
25 Petitioner’s claims are without merit and. Petitioner has failed to make specific factual  
26 assertions which, if true, would entitle him to relief and he has likewise failed to demonstrate  
27 that the record needs to be expanded through an evidentiary hearing. Any hearing is  
28 unnecessary given that Petitioner is unable to show prejudice. Petitioner would not be entitled

1 to relief even if counsel were deficient. Thus, Petitioner's request for an evidentiary hearing  
2 should be denied.

3 **CONCLUSION**

4 For the foregoing reasons, the State respectfully requests Petitioner's Amended Petition  
5 for Writ of Habeas Corpus (Post-Conviction) be DENIED.

6 DATED this 26<sup>th</sup> day of May, 2022.

7 Respectfully submitted,

8 STEVEN B. WOLFSON  
9 Clark County District Attorney  
Nevada Bar #1565

10 BY  for

11 JOHN AFSHAR  
12 Deputy District Attorney  
13 Nevada Bar #14408

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of the above and foregoing was made this 26<sup>th</sup> day of  
16 May 2022 by electronic filing to:

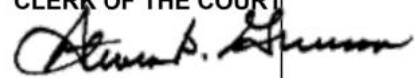
17  
18 Jim Hoffman, Esq.  
19 Jim.Hoffman.Esq@gmail.com

20 BY: 

21 Secretary for the District Attorney's Office  
22  
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28 16F03770B/clh/L3





1 RTRAN

2  
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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 EDWARD HONABACH,  
9 Plaintiff,

CASE#: A-20-812948-W  
DEPT. VII

10 vs.

11 WILLIAM GITTERE,  
12 Defendant.

13  
14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
15 TUESDAY, AUGUST 16, 2022

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **EVIDENTIARY HEARING**

18 APPEARANCES:

19 For the State: SELESTE WYSE, ESQ.  
Deputy District Attorney

20  
21 For the Defendant: JIM HOFFMAN, ESQ.,

22  
23  
24 RECORDED BY: KIMBERLY ESTALA, COURT RECORDER  
25

1 Las Vegas, Nevada, Tuesday, August 16, 2022

2  
3 [Case called at 9:21 a.m.]

4 THE COURT: Okay, State of Nevada versus Edward  
5 Honabach. He's present here from the prison and it's set today for an  
6 evidentiary hearing. So I'm not super inclined to grant a continuance.

7 MR. HOFFMAN: We're ready to proceed but I'm fine with the  
8 continuance if Your Honor is fine with it.

9 MS. WYSE: I mean that's -- can you trail this one, Your  
10 Honor, and I'll speak with defense counsel --

11 THE COURT: Yes.

12 MS. WYSE: About it.

13 [Proceedings concluded at 9:21 a.m.]

14 [Case recalled at 10:08 a.m.]

15 THE COURT: -- 948. All right, Ms. Wyse?

16 MS. WYSE: So, Your Honor, it sounds like the Court's not  
17 inclined to continue the hearing today. I'll be ready to go forward after --

18 THE COURT: Okay, great.

19 MS. WYSE: -- you're hearing the next calendar.

20 THE COURT: Thank you.

21 [Proceedings concluded at 10:08 a.m.]

22 [Case recalled at 11:58 a.m.]

23 THE COURT: -- hearing on Mr. Honabach's post-conviction  
24 motion. Can I get everybody's appearance for the record? Sir, you can  
25 sit.

1 MR. HOFFMAN: Jim Hoffman for Mr. Honabach, 13896.  
2 MS. WYSE: Seleste Wyse on behalf of the State, bar number  
3 14971.  
4 THE COURT: All right, so go ahead and call your first  
5 witness.  
6 MR. HOFFMAN: Sorry?  
7 THE COURT: Witness.  
8 MR. HOFFMAN: Yes, Mr. Honabach is my witness.  
9 THE COURT: Okay.  
10 MR. HOFFMAN: And we've discussed waiving attorney client  
11 privilege --  
12 THE COURT MARSHAL: He's the attorney's only one, Your  
13 Honor.  
14 THE COURT: He's the only witness?  
15 MR. HOFFMAN: I'm sorry, Your Honor, I'm deaf in one ear.  
16 THE COURT: It's okay. He's the only witness?  
17 MR. HOFFMAN: The only witness that I have, yes,  
18 THE COURT: Okay.  
19 MR. HOFFMAN: That may be why the State was trying to  
20 continue it.  
21 MS. WYSE: That's not -- may we approach? I can explain  
22 why we were seeking to continue. It was for a different reason.  
23 THE COURT: Okay.  
24 MR. HOFFMAN: My mistake.  
25 MS. WYSE: Because we weren't planning on calling any

1 witnesses.

2 THE COURT: Okay. I mean it's your hearing so -- all right,  
3 you know what sir, we'll just have you testify from right there because it  
4 looks like you have a little bit of mobility issue. So if you want to raise  
5 your right hand the clerk will swear you in.

6 EDWARD HONABACH

7 [having been called as a witness and being first duly sworn testified as  
8 follows:

9 THE CLERK: Please state your full name and spell your first  
10 and last name for the record.

11 THE WITNESS: Edward Joseph Honabach. E-D-W-A-R-D H-  
12 O-N-A-B-A-C-H.

13 THE COURT: You can sit if you'd like sir. Go ahead.

14 DIRECT EXAMINATION OF EDWARD HONABACH

15 BY MR. HOFFMAN:

16 Q So Mr. Honabach before we start we discussed that since  
17 your speaking about your previous attorney's you would need to waive  
18 your right to attorney client confidentiality as it related to this. Is that  
19 correct?

20 A [No audible response]

21 Q And are you okay with that waiver?

22 A [No audible response]

23 THE COURT RECORDER: I can't hear him.

24 THE COURT MARSHAL: You need to speak up.

25 A Yes.

1 Q All right, thank you. Okay, so first I'd like to talk about your trial  
2 lawyer. Who was your lawyer during the trial?

3 A Mr. Beckett.

4 Q Beckett. And what was his first name?

5 A I'm not sure what his first name --

6 Q Was it Bob?

7 A Bob Beckett, yes, Bob Beckett.

8 THE COURT: Do we have -- I'm having trouble hearing him  
9 as well.

10 THE COURT MARSHAL: You need to speak up louder.

11 THE COURT: Perhaps we could just --

12 THE RECORDER: Switch them? We have mic's on that side.  
13 I don't know if that's --

14 THE COURT: Yeah that might be better if we can just have  
15 him go over there where there's microphones.

16 MS. WYSE: Do you want us to switch as well, Your Honor?  
17 No, okay.

18 THE COURT: Unless you want to. Okay.

19 BY MR. HOFFMAN:

20 A Bob Beckett.

21 THE COURT: Much better.

22 Q All right, so I'm going to ask you some questions now about  
23 Mr. Beckett's representation of you. So this case involved a plea deal, is  
24 that correct?

25 A Yes.

1 Q What were your feelings about the deal?

2 A That I didn't want to take it.

3 Q You didn't want to take it. Could you expand on that please?

4 A I didn't want to take it. I felt like, like it wasn't a good idea from  
5 the get go. But Mr. Beckett insisted that if I ever wanted to see my family  
6 again this was the only shot I had and so forth.

7 Q Okay.

8 MS. WYSE: And Your Honor, I would just note for the record  
9 that my objection that he's testifying to things that someone else said not  
10 personally what his -- I just wanted to note that objection for the record.

11 THE COURT: Hearsay objection?

12 MS. WYSE: Yes, Your Honor.

13 THE COURT: Mr. Hoffman?

14 MR. HOFFMAN: I'll rephrase.

15 Q Mr. Honabach would you please not state anything directly  
16 that anyone said to you.

17 A Okay.

18 Q So without going into that sort of statement --

19 THE COURT: And just for the record the objection was  
20 sustained.

21 MS. WYSE: Thank you.

22 MR. HOFFMAN: Thank you.

23 Q So did you feel like you had a free choice to accept the plea?

24 A No.

25 Q And without going into what specifically he said did Mr.

1 Beckett say things to you that made you feel like you didn't have a free  
2 choice?

3 A Yes.

4 Q Now you -- the plea deal it was what's called a package deal,  
5 is that correct?

6 A Yeah.

7 Q So there were other defendant's that were dependent on you  
8 pleading in order to also get their plea deals?

9 A Correct.

10 Q Okay, were you concerned about what would happen if the  
11 Judge didn't agree with the deal?

12 A Yes.

13 Q And how do you mean that?

14 A Well I -- I even asked, you know, what happens if I sign this  
15 deal and the Judge doesn't go along with it. And I was simply told that I  
16 just -- I had to take it.

17 Q But without --

18 MS. WYSE: I'm going to object to hearsay.

19 Q Sorry, again without going into specifically what he said to  
20 you, what he may have said to you. But the bottom line is you felt  
21 pressured into taking the deal, is that correct?

22 A Yes.

23 Q Okay. And then changing topics were you ever able to see the  
24 discovery in your case?

25 A No.

1 Q No. Were you ever able to see the statements specifically of  
2 your co-defendants?

3 A No.

4 Q And would you have liked to see those things?

5 A Yes.

6 Q Did you ask Mr. Beckett about those things?

7 A Repeatedly.

8 Q Did he ever let you see them?

9 A No.

10 Q Okay, to your knowledge, and again remember please don't  
11 say anything specifically that Mr. Beckett said. To your knowledge had  
12 he seen any of the discovery?

13 A No.

14 MS. WYSE: And, Your Honor, objection speculation.

15 THE COURT: Sustained.

16 Q What knowledge did you have of whether he had seen your  
17 discovery?

18 A I was told by my investigator that --

19 Q And I'm sorry remember --

20 A Oh okay, to my knowledge he hadn't received any of it.

21 Q Okay, and that was information that you understood after  
22 speaking with the investigator?

23 A Yes.

24 Q Okay. Let me switch gears now and ask about sentencing. Did  
25 Mr. Beckett write a sentencing memo for you?



1           A     No.

2           Q     Did you want him to?

3           A     Yes.

4           Q     Did you ask him to?

5           A     Yes.

6           Q     Okay but he didn't? What about did he prepare you to speak  
7 in court at all on the sentencing?

8           A     No.

9           Q     Did you want him to do that?

10          A     Absolutely.

11          Q     Did you ask him to do that?

12          A     Repeatedly.

13          Q     Okay -- is there anything that you'd like to add about Mr.  
14 Beckett? Any other issues you had with him, or concerns?

15          A     I think that probably covers it.

16          Q     Okay and then who was the lawyer for your appeal?

17          A     Travis Atkins, Esquire.

18          Q     Okay, now he -- the record shows that he filed an appeal and  
19 then withdrew it. Did you consent to that withdrawal?

20          A     No.

21          Q     No. Did you -- so you didn't tell him to withdraw it?

22          A     No, I wasn't even aware that he had until after I got a notice  
23 from the court.

24          Q     Okay, now there's in the exhibits here I'm referring to Exhibits I  
25 think 4, 5, and 6. So there's -- these are some letters that you wrote to

1 the Nevada Supreme Court. In the letters you make statements that are  
2 basically -- so you make a statement that your lawyer has cancelled your  
3 direct appeal without your knowledge or consent. This is Exhibit 5. Is  
4 that an accurate statement?

5 A Yes.

6 Q And it says I was never notified by my lawyer or the Court of  
7 this either before or after this was done. I do not even know if I still have  
8 a lawyer and I have no idea of what to do. So that's something you said?

9 A Yes.

10 Q And is that an accurate statement?

11 A Yes.

12 Q Okay. And so then in response to that the Supreme Court  
13 ordered Mr. Akin to submit a letter to them. This is Exhibit 7 in the  
14 record. So according to this letter it says that -- this is a quote from Mr.  
15 Akin [I did dismiss your Supreme Court appeal for the reasons that we  
16 spoke about at High Desert State Prison.] So without saying any of what  
17 Mr. Akin specifically said, did you speak to him at High Desert State  
18 Prison about the appeal?

19 A Yes.

20 Q And what did you say?

21 A I said for him not to do it unless he explicitly has a letter from  
22 me stating that I wanted to.

23 Q Not to dismiss the appeal, or not to file the appeal?

24 A To not dismiss it.

25 Q Okay, so you didn't want to dismiss the appeal, you told him

1 that?

2 A Yes.

3 Q Okay. And that conversation happened before he dismissed  
4 the appeal, is that correct?

5 A Yes.

6 Q Okay. And so this letter is dated February 14<sup>th</sup>, 2020  
7 according to the letter. Did you receive it?

8 A No.

9 Q No. And then in Exhibit 9 there's a letter that you sent to the  
10 Supreme Court which states you never -- I never received any letter  
11 when -- I never received any letter is what it materially says. So again  
12 you didn't receive that letter?

13 A No.

14 Q So he knew that you wanted to keep doing the appeal, is that  
15 correct?

16 MS. WYSE: Objection, Your Honor. I would object to  
17 speculation he can't testify to what the attorney knew.

18 THE COURT: Sustained.

19 Q You believed that he knew?

20 A Yes.

21 Q Okay. You had conveyed that to him? You had clearly told  
22 that.

23 A Yes.

24 Q And you wanted to file the appeal? You wanted to keep going  
25 with the appeal?

1           A     Yes.

2                   MR. HOFFMAN: All right, that's all I have. No further  
3 questions, Your Honor.

4                   THE COURT: All right, Ms. Wyse.

5                   CROSS EXAMINATION OF EDWARD HONABACH

6 BY MS. WYSE:

7           Q     And then Mr., and I apologize if I butcher your last name, Mr.  
8 Honabach you remember signing a guilty plea agreement in this case,  
9 correct?

10          A     Yes.

11          Q     And then at that time you also had an opportunity -- do you  
12 also remember pleading guilty in this particular case?

13          A     Yes.

14          Q     And the Court asked you several questions?

15          A     Yes.

16          Q     Do you remember the court asking you if you plea was freely  
17 and voluntarily made?

18          A     Yes.

19          Q     And you responded that yes it was?

20          A     Yes.

21          Q     Do you remember the Court asking you that anyone forced  
22 you or coerced you to accept your plea?

23          A     Yes.

24          Q     And then you responded that no, no one had?

25          A     Yes.

1 Q Did you also inform the Court that your attorney at the time  
2 had answered any questions that you had about the guilty plea  
3 agreement?

4 A I don't recall.

5 Q I'm referring to the plea canvass. Looks like the Court had  
6 asked you did you have a chance to discuss it with your attorney, has he  
7 answered your questions and you responded yes. Do you remember  
8 that?

9 A I'll go along with you, yes.

10 Q And ultimately you did sign the guilty plea agreement in this  
11 case?

12 A Yes.

13 MS. WYSE: No further questions, Your Honor.

14 THE COURT: All right, anything else?

15 REDIRECT EXAMINATION OF EDWARD HONABACH

16 BY MR. HOFFMAN:

17 Q So, there seems to be a discrepancy there between what you  
18 said just now in court and what is reflected in that transcript. How would  
19 you explain that discrepancy?

20 A Well because -- well I can't explain without saying that hey  
21 certain people have told me that --

22 MS. WYSE: And objection, Your Honor, hearsay.

23 A If I wanted any chance to see my family again, if I wanted any  
24 hope at life I had to do this and I had to even though I raised those  
25 objections that I want to put it on the record that I'm not comfortable I

1 was told I can not do that.

2 Q So without --

3 MS. WYSE: Your Honor, I'd ask that be struck from the  
4 record.

5 Q So you --

6 THE COURT: Mr. Hoffman, do you want to respond to the  
7 objection?

8 MR. HOFFMAN: I agree the use of the way he phrased it is  
9 specifically a problem.

10 THE COURT: So I will disregard his last answer.

11 MS. WYSE: Thank you.

12 BY MR. HOFFMAN:

13 Q So again without explaining how you got this perception. You  
14 had a perception at this time that you had to sign the deal if you wanted  
15 to see your family again, is that correct?

16 A Yes.

17 Q Okay. And so that's why you stated that you were fine with --

18 A Yes.

19 Q -- assistance you received and that it was voluntary?

20 A Yes.

21 Q But was it voluntary?

22 A No.

23 Q And were you fine with the assistance that you received?

24 A No.

25 Q Okay, and then one final point. This colloquy happened during

1 the trial phase, is that correct?

2 A Yes.

3 Q So it was before any of the stuff with the appeal?

4 A Yes.

5 Q It was before Mr. Akin was even appointed?

6 A Yes.

7 MR. HOFFMAN: Okay, no further questions.

8 THE COURT: All right. Anything else Ms. Wyse?

9 MS. WYSE: No, Your Honor.

10 THE COURT: And no additional witnesses?

11 MR. HOFFMAN: No, Your Honor.

12 THE COURT: And none from the State?

13 MS. WYSE: None from the State, Your Honor.

14 THE COURT: All right, argument. I did want to say just for the  
15 record the sentencing transcript was prepared and it was filed but it was  
16 actually not filed in --

17 MR. HOFFMAN: It was filed in --

18 THE COURT: -- the right case it was filed in the co-  
19 defendant's case.

20 MR. HOFFMAN: That's correct, Your Honor.

21 THE COURT: Is it the 2 or the -- which one is it, Kim? It was  
22 filed in C-16-314092-1. What event number?

23 THE COURT RECORDER: 37, 38, and 41.

24 THE COURT: I don't think that's right. Oh wait a minute there  
25 it is. It's -- so it looks like it was filed on June 18<sup>th</sup> of 2019 in that case

1 under our docket number 38 is the sentencing. Mr. Hoffman?

2 MR. HOFFMAN: Argument, Your Honor?

3 THE COURT: Yes.

4 MR. HOFFMAN: So the thing I really want to stress here is  
5 the issue with the appeal. Because it's very clear from his testimony that  
6 he wanted to keep going with the appeal, that Mr. Akin did not get his  
7 consent before withdrawing it. And if you look at the exhibits there was  
8 this issue where he wrote the Court and told them he didn't consent. And  
9 so Mr. Akin responded to that with a letter of which doesn't actually  
10 dispute his account in any way. It says that he dismissed the appeal for  
11 the reasons that we spoke about at High Desert State Prison. So that's  
12 not actually saying that Mr. Honabach consented. Also that letter is, kind  
13 of like post hoc thing, it happened after -- it happened like 6 months after  
14 he dismissed the appeal.

15 And then I also wanted to stress there is the bar reprimand,  
16 which is Exhibit 11. And it says that around the same time he just  
17 completely failed to file several appeals in the Nevada Supreme Court.  
18 So I think the inference here is that for whatever reason, work load or  
19 whatever, that he couldn't file those other cases he just withdrew in this  
20 case instead of actually doing the work. So that I think is the strongest  
21 claim that Mr. Honabach has here. As far as the trial level claims of Mr.  
22 Beckett go I think we can just submit those on the briefings.

23 THE COURT: All right, thank you. Ms. Wyse?

24 MS. WYSE: And Your Honor, I won't go into too much detail  
25 because ultimately based on what we've heard today I think this can



1 largely be relied on the briefings that were submitted by defense counsel  
2 as well as the State. I do want to note -- just to pretty much start  
3 ultimately today the burden was on the defense to have witnesses testify  
4 and things of that nature. However, all we've heard from was defendant  
5 himself and that's concerning because he's just making these bare  
6 assertions without any support. And what we can only rely on now is  
7 evidence that's been submitted, were looking at the plea canvass, the  
8 sentencing canvass, as well. So, Your Honor, given that I'm just going to  
9 briefly walk through some of the highlights of our response and like I  
10 said I've tried not to go into too much detail because I think largely we  
11 can rely on that. But it looks like, Your Honor, overall defendant has  
12 failed to show that the counsel was ineffective. I do note it looks like  
13 *Notice of Appeal*, even though an appellate brief hadn't been filed a  
14 Notice was filed in the case. Mr. Akin also filed that letter as pointed out  
15 by defense counsel. He filed it to the Supreme Court knowing that there  
16 was a discussion between him and his client and ultimately decided to  
17 withdraw the plea, which, is not surprising because since he's contesting  
18 what happened during his plea canvass. The more appropriate route  
19 would have been to do a *Petition for Writ of Habeas Corpus* which is  
20 ultimately what was done here.

21 Next, let's see --

22 THE COURT: I did know that Mr. Akin was appointed  
23 specifically for the appeal by the Court.

24 MS. WYSE: Let me double check, Your Honor.

25 MR. HOFFMAN: I believe that's correct.

1 MS. WYSE: Yes, so he was -- he was confirmed and he was  
2 able to ultimately confirm as counsel in order to discuss the potential  
3 options on appeal. Let's see -- and ultimately I -- ultimately Your Honor  
4 defendants -- defendant has failed to meet the burden establishing the  
5 fact that -- actually let me move on from that point, Your Honor.

6 And I just want to highlight the fact that *Notice of Appeal* was  
7 ultimately filed for the defendant. Yes it was withdrawn and no opening  
8 brief had been submitted but the petition was still submitted for this  
9 Court. Next, Your Honor, focusing on our next response was the fact  
10 that appellate counsel was not ineffective for failing to challenge a  
11 voluntary miss of his plea on direct appeal. As we noted in our response  
12 that appellate counsel could not have been deficient for doing so filing it  
13 in direct appeal because it would be something to be done at post-  
14 conviction proceedings which is outlined in our response. I submit on the  
15 fact and on our pleadings that his plea was knowingly and voluntarily  
16 entered into. We do have the plea canvass where in response to the  
17 Judge's questions he did state that he was not coerced or forced things  
18 of that nature. He also did openly sign the guilty plea agreement and  
19 again we don't have the two -- it's on the defendant it's his burden today  
20 we didn't have any testimony from what we refer to as trial counsel  
21 although he did plead guilty in this case. So again all we have is these  
22 bare naked assertions without any support. And that's why we can  
23 definitely highly rely on the plea canvass and the guilty plea agreement  
24 itself.

25 There's also some concern with his counsel not preparing a

1 sentencing memorandum. I do note that it looks like there was extensive  
2 argument by counsel at sentencing. There's no statute requiring that  
3 defense attorney file a sentencing memorandum it's completely a  
4 strategic decision that's up to them. So there's also no merit behind that  
5 argument as well. And not to belabor the point, Your Honor, I do submit  
6 on our response at this time.

7 THE COURT: All right, anything else Mr. Hoffman?

8 MR. HOFFMAN: No, Your Honor.

9 THE COURT: Thank you. The Court will issue a written order  
10 and we'll set a status check in 2 weeks on that. Nobody -- no one needs  
11 to appear for that. I'm sorry, -- so Mr. Honabach does not need to be  
12 transported it's just a status check for the -- basically for the Court. And  
13 we'll probably have something out before that anyway but just for your  
14 own purposes.

15 MR. HOFFMAN: Thank you.

16 MS. WYSE: Thank you.

17 THE CLERK: September 1<sup>st</sup> at 8:30.

18 THE COURT: Great, thank you.

19 [Proceedings concluded at 12:21 p.m.]

20 \* \* \* \* \*

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

24   
25 Kimberly Estala  
Court Recorder/Transcriber

1 **DAO**

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

4  
5 EDWARD HONABACH,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondents.

Case No.

A-20-812948-W

Dept. No.

VII

10  
11 **DECISION AND ORDER**

12 Petitioner Edward Honabach filed an Amended Post-Conviction Petition for Writ of Habeas  
13 Corpus seeking relief from his conviction for First Degree Kidnapping. Mr. Honabach's claims are  
14 based on ineffective assistance of counsel related to his guilty plea. The matter came before the  
15 Court for an evidentiary hearing on August 16, 2022, and the Court heard testimony from Mr.  
16 Honabach. After review of the Petition and other papers, the testimony of witnesses, and the oral  
17 argument of the parties, the Court denies Mr. Honabach's Petition for Writ of Habeas Corpus.

18 **I. Factual and Procedural Background**

19 On April 12, 2016, the State charged Petitioner Mr. Honabach with multiple offenses related  
20 to the abduction and serious injury to Jose Ismael Salazar-Ortiz. On February 4, 2019, Mr.  
21 Honabach along with his three co-defendants pled guilty. An Amended Guilty Plea Agreement was  
22 filed in open court and Mr. Honabach pled guilty to one count of First Degree Kidnapping Resulting  
23 in Substantial Bodily Harm. The plea negotiation allowed for the State to argue for life without the  
24 possibility of parole and for the defense to argue for life with the possibility of parole. On March 26,  
25 2019, Mr. Honabach was sentenced to life without the possibility of parole. After sentencing, Mr.  
26 Honabach's counsel, Mr. Robert S. Beckett, Esq., withdrew from the case. The Court appointed Mr.  
27 Travis D. Akin, Esq. to serve as Mr. Honabach's appellate counsel.

1 Prior to Mr. Akin's appointment, Mr. Honabach filed a Notice of Appeal. On August 13,  
2 2019, Mr. Akin filed a Notice of Withdrawal of Appeal on behalf of Mr. Honabach. Mr. Akin  
3 represented he had explained the consequences of withdrawing the appeal and that Mr. Honabach  
4 consented to the voluntary dismissal. As a result, the Nevada Supreme Court dismissed the appeal.  
5 Following the dismissal, Mr. Honabach sent a letter to the Nevada Supreme Court asserting he did  
6 not consent to the dismissal of his appeal, did not have contact with Mr. Akin, and had been unaware  
7 that his appeal was dismissed.

8 Based on Mr. Honabach's letter, the Nevada Supreme Court ordered Mr. Akin to respond.  
9 Mr. Akin filed a copy of a letter he sent to Mr. Honabach. This letter indicated Mr. Akin and Mr.  
10 Honabach communicated about the dismissal of the appeal and that Mr. Akin intended to file a post-  
11 conviction petition for writ of habeas corpus on behalf of Mr. Honabach. On March 11, 2020, the  
12 Nevada Supreme Court ordered that the appeal would remain dismissed. Mr. Honabach then wrote  
13 another letter to the Nevada Supreme Court stating that he was unaware whether a petition was filed  
14 on his behalf. The Court determined no action would be taken regarding the letter.

15 On March 27, 2020, Mr. Akin filed a post-conviction petition for writ of habeas corpus on  
16 behalf of Mr. Honabach and asked the district court to appoint a replacement attorney to file a  
17 supplement. The district court denied the petition without any supplement, and denied a subsequent  
18 Motion to Reconsider.

19 Mr. Honabach filed an appeal of the denial of his petition. He prevailed on his appeal, and  
20 the matter was remanded for an evidentiary hearing.

21 The District Court appointed new counsel for Mr. Honabach, who filed an amended petition.  
22 The State responded on May 15, 2022. The matter came before the Court for an evidentiary hearing  
23 on August 16, 2022. At the evidentiary hearing, the Court heard testimony from Mr. Honabach, as  
24 well as arguments from both parties.

## 25 II. Discussion

26 Mr. Honabach raises six claims for relief, all related to ineffective assistance of counsel and  
27 the voluntariness of his plea. A claim of ineffective assistance of counsel is analyzed under the two-  
28 part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant

1 alleging ineffective assistance of counsel must show (1) that their counsel's performance was  
2 deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may  
3 consider the two test elements in any order and need not consider both prongs if the defendant  
4 makes an insufficient showing on either one. Id. at 697.

5 Counsel's performance is deficient when their representation amounted to incompetence  
6 under prevailing professional norms, "not whether it deviated from best practices or most common  
7 custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the  
8 second half of the Strickland test, the defendant must show "that there is a reasonable probability  
9 that, but for counsel's unprofessional errors, the result of the proceeding would have been different."  
10 Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine  
11 confidence in the outcome." Id.

12 There is a presumption of effectiveness and the defendant must demonstrate by a  
13 preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33  
14 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be  
15 supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or  
16 "naked" allegations are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 686  
17 P.2d 222, 225 (Nev. 1984). NRS 34.735(6) states in part, "[Petitioner] must allege specific facts  
18 supporting the claims in the petition[.]... Failure to allege specific facts rather than just conclusions  
19 may cause your petition to be dismissed." (emphasis added).

20 **A. Mr. Honabach is not entitled to relief because Mr. Honabach has not shown that his  
21 counsel was ineffective under Strickland.**

22 The amended petition argues that the Judgment of Conviction should be vacated on seven  
23 grounds. The first three grounds allege errors made by Mr. Honabach's appellate attorney Mr. Akin.  
24 Grounds Four, Five, and Six allege errors made by trial counsel Mr. Beckett which resulted in  
25 ineffective assistance of counsel. The final Ground alleges that Mr. Honabach's guilty plea was not  
26 voluntary violating the Fifth Amendment. The State filed a response to the amended petition on May  
27 26, 2022. The State argues that Mr. Honabach's first six grounds of ineffective assistance of counsel  
28 are unmeritorious, and that the final ground should not be considered due to Mr. Honabach freely

1 and voluntarily entering into his guilty plea. The Court finds that Mr. Honabach is not entitled to  
2 relief on all grounds of the Petition.

3 **1. Mr. Honabach failed to establish appellate counsel was ineffective for withdrawing Mr.**  
4 **Honabach's appeal without his consent.**

5 In his first Ground, Mr. Honabach argues that his appellate counsel, Mr. Akin, was  
6 ineffective by withdrawing Mr. Honabach's appeal without his consent. Mr. Akin represented that  
7 he withdrew the appeal after explaining to and obtaining consent from Mr. Honabach. In the  
8 evidentiary hearing, Mr. Honabach testified that he had asked Mr. Akins not to withdraw his appeal.  
9 However, the record indicates that Mr. Akins communicated with Mr. Honabach via letter about the  
10 dismissal of the appeal and that Mr. Akin's had intended to file a post-conviction petition for writ of  
11 habeas corpus on behalf of Mr. Honabach. Mr. Akins was not at the evidentiary hearing to confirm  
12 Mr. Honabach's claims that he indeed communicated to Mr. Akins that he did not want to have his  
13 appeal withdrawn.

14 Mr. Honabach has not established that he had an issue to raise on appeal and that he would  
15 have been successful. As represented in Toston, the Nevada Supreme Court held that "counsel has a  
16 duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be  
17 reasonably inferred from the totality of the circumstances, focusing on the information that counsel  
18 knew or should have known at the time." Toston v. State, 127 Nev. 979, 267 P.3d 795, 801 (2011).  
19 There is no indication that Mr. Honabach reserved any issues for appeal, either in the Guilty Plea  
20 Agreement itself or in any of the record. Furthermore, under Hargrove, Mr. Honabach has not  
21 provided the Court with specific factual allegations that would entitle him to relief. Mr. Honabach's  
22 naked allegations during the evidentiary hearing do not meet this standard.

23 The Court finds that Mr. Honabach failed to demonstrate that counsel should have known he  
24 wanted an appeal and that withdrawing the appeal itself was deficient. Therefore, Mr. Honabach's  
25 Petition is denied on this Ground.

26 **2. Mr. Honabach failed to establish appellate counsel was ineffective for failing to**  
27 **challenge the voluntariness of Mr. Honabach's plea on direct appeal.**

28 Mr. Honabach's second Ground is that appellate counsel was ineffective in failing to  
challenge the voluntariness of Mr. Honabach's plea. The Court finds that Mr. Akins was not

1 ineffective for failing to challenge the voluntariness of Mr. Honabach's plea on direct Appeal.  
2 Challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate  
3 counsel must be first pursued in post-conviction proceedings in the district court. Franklin v. State,  
4 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994). Appellate counsel cannot be ineffective for  
5 failing to raise a claim that is inappropriate on direct appeal. Therefore, Mr. Honabach's Petition is  
6 denied on this Ground.

7 **3. Appellate counsel's errors did not constitute cumulative error.**

8 In his third Ground, Mr. Honabach argues that his trial and appellate counsel's errors  
9 cumulated to create prejudice. A finding of cumulative error in the context of a Strickland claim is  
10 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and through  
11 Ramseyer v. Wood, 64 F.3d 1432, 1438 (9<sup>th</sup> Cir. 1995). There can be no cumulative error because  
12 Mr. Honabach fails to demonstrate that his appellate counsel violated Strickland. Mr. Honabach  
13 failed to establish that his appellate counsel was ineffective because Mr. Honabach did not show  
14 what claim he would have raised and that he would have likely succeeded on the merits. Mr. Akins  
15 had properly raised Mr. Honabach's claims in a timely filed petition instead of a direct appeal.  
16 Therefore, the Court denies Mr. Honabach's petition on this Ground.

17 **4. Mr. Honabach failed to establish trial counsel was ineffective when trial counsel failed  
to review discovery.**

18 In Ground 4 Mr. Honabach argues that his trial counsel was ineffective because he had failed  
19 to review discovery before advising Mr. Honabach to accept the plea offer. At the evidentiary  
20 hearing the Court heard testimony from Mr. Honabach relating to the conversations he had with his  
21 trial counsel. Mr. Honabach then testified that he would not have taken the plea deal had he known  
22 his counsel had failed to review all of the discovery. A post-conviction petitioner's claim of  
23 ineffective assistance of counsel must be supported with specific factual allegations which would  
24 entitle a petitioner to relief if true; "bare" or "naked" allegations are not sufficient to show  
25 ineffectiveness of counsel. Hargrove v. State, 686 P.2d 222, 225 (Nev. 1984).

26 Mr. Honabach testified that the investigator told him Mr. Beckett had not reviewed the  
27 discovery. It is impossible for the Court to know what Mr. Beckett did or did not review without the  
28



1 benefit of Mr. Beckett's testimony. Failure to review discovery prior to advising a client would be  
2 deficient performance however, Mr. Honabach failed to establish Mr. Beckett did not have or review  
3 discovery. The Court only heard testimony from Mr. Honabach himself and not his trial attorney.  
4 These allegations made at the evidentiary hearing are not supported by specific facts and can be  
5 considered "bare" allegations which are not enough to support a post-conviction petitioner's claim  
6 of ineffective assistance of counsel under Hargrove. The Court therefore denies Mr. Honabach's  
7 claim that his trial counsel was ineffective in regards to this Ground.

8 **5. Mr. Honabach failed to establish trial counsel was ineffective during sentencing.**

9 In Ground 5, Mr. Honabach argues that his trial counsel was ineffective because he failed to  
10 prepare him for sentencing and did not file a sentencing memorandum. After looking at the record  
11 and reviewing the evidentiary hearing, the Court finds that Mr. Honabach's counsel was not  
12 ineffective during sentencing. In regards to the sentencing memorandum, Mr. Honabach has failed to  
13 demonstrate that there was a reasonable probability of a different outcome absent counsel's alleged  
14 error. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner  
15 claiming counsel did not conduct an adequate investigation must allege what the results of a better  
16 investigation would have been and how it would have affected the outcome of the proceedings). Of  
17 the four co-defendants, only one filed a sentencing memorandum and the same co-defendant  
18 received the exact same sentence. Mr. Honabach fails to demonstrate the probability of a different  
19 outcome because it was not the lack of mitigation, but the nature of the crimes the defendants  
20 committed that resulted in the sentence that was given:

21 THE COURT: In this case I understand that drugs is a problem for most, if not all, of you,  
22 and that drugs and alcohol may have been the factor that caused some of these actions, but I  
23 don't know that I consider that an excuse. I don't know that I consider that a good reason to  
have committed horrific crimes.

24 Sentencing Transcript, March 26, 2019, at 22.

25 Furthermore, during sentencing Counsel presented testimony as to why Mr. Honabach  
26 should be given a sentence that allowed parole, explained mitigating factors that contributed to his  
27 actions, such as Mr. Honabach's history of drug use leading up to the crime, how his prolonged drug  
28

1 use affected his decision making during the crime, what Mr. Honabach had been doing to improve  
2 himself while in jail, and also explained what Mr. Honabach's hopes were if granted the opportunity  
3 of parole. Id. at 11-16. Under Strickland, Mr. Honabach has failed to demonstrate that his Counsel  
4 was deficient during sentencing. Therefore, the Court denies Mr. Honabach's petition on this  
5 Ground.

6 **6. Trial counsel's errors did not cumulate to create prejudice.**

7 In his sixth ground, Mr. Honabach argues that his trial counsel's errors cumulated to create  
8 prejudice. A finding of cumulative error in the context of a Strickland claim is extraordinarily rare  
9 and requires an extensive aggregation of errors. See, e.g., Harris By and through Ramseyer v. Wood,  
10 64 F.3d 1432, 1438 (9<sup>th</sup> Cir. 1995). Where individual allegations of error are not of constitutional  
11 stature or are not errors, there is nothing to cumulate. Turner v. Quarterman, 481 F.3d 292, 301 (5<sup>th</sup>  
12 Cir. 2007). Mr. Honabach has failed to demonstrate that his trial counsel was ineffective by failing  
13 to review discovery because his allegations are not supported by specific facts and can be considered  
14 "naked" allegations which are not enough to support a post-conviction petitioner's claim of  
15 ineffective assistance of counsel under Hargrove. Moreover, Mr. Honabach failed to demonstrate  
16 that counsel's performance during sentencing fell below an objective standard of reasonableness or a  
17 reasonable probability of a different outcome absent counsel's alleged errors. Therefore, the Court  
18 denies Mr. Honabach's petition on this Ground.

19 **B. The record demonstrates Mr. Honabach entered into the guilty plea agreement  
20 voluntarily.**

21 In Ground 7, Mr. Honabach argues that he did not want to accept the plea deal, and that he  
22 took the deal because he felt pressured by his trial counsel. To be constitutionally valid under the  
23 Fifth Amendment, a guilty plea must be entered knowingly, willingly, and understandingly. North  
24 Carolina v. Alford, 400 U.S. 25, 37-38 (1985). Mr. Honabach stated that he did not enter into the  
25 Guilty Plea Agreement voluntarily, intelligently, and knowingly, because he was unaware that he  
26 could receive a sentence of life without the possibility of parole. Mr. Honabach also claims that his  
27 plea counsel was ineffective due to failing to advise him that he could receive a sentence of life  
28 without the possibility of parole.

1 However, the record would suggest that Mr. Honabach voluntarily accepted the plea deal.  
2 On July 21, 2020, the District Court denied a previous petition for writ of habeas corpus filed by Mr.  
3 Honabach stating that the Guilty Plea Agreement in this case clearly pointed out that “the State will  
4 have the right to argue for life without the possibility of parole, and the defense will argue for life  
5 with the possibility of Parole after fifteen (15) years.” Furthermore, on February 4, 2019, the Court  
6 had accepted Petitioner’s guilty plea and affirmed that Mr. Honabach was satisfied with his  
7 counsel’s representation and his guilty plea was made freely and voluntarily:

8  
9 THE COURT: Before I can accept your plea of guilty, I have to be convinced that your plea  
is freely and voluntarily made. Are you making your plea freely and voluntarily?

10 MR. HONABACH: Yes, Your Honor.

11 THE COURT: Has anybody forced you or coerced you to accept that plea?

12 MR. HONABACH: No.

13 THE COURT: Has your attorney made any promise to you that are not contained in the  
guilty plea agreement?

14 MR. HONABACH: No.

15 THE COURT: Based on all the facts and circumstances, are you satisfied with the services of  
your attorney?

16 MR. HONABACH: Yes.

17 Reporter’s Transcript, Entry of Plea (Feb. 4, 2019).

18 Therefore, the Court denies Mr. Honabach’s Petition on this Ground because he voluntarily  
and freely entered into his plea.

### 19 III. Conclusion

20 Mr. Honabach’s claims related to ineffective assistance of counsel do not show that his  
21 counsel was both deficient and that the deficiency prejudiced Mr. Honabach’s defense. Therefore,  
22 Grounds One through Six are denied. The Court also finds that Mr. Honabach voluntarily and freely  
23 entered into his guilty plea. Therefore, Ground Seven is denied and the Court denies Mr. Honabach’s  
24 petition for writ of habeas corpus.

25 DATED this day of September \_\_, 2022.

26 Dated this 15th day of September, 2022

27 \_\_\_\_\_  
LINDA MARIE BELL  
28 DISTRICT COURT JUDGE

6DA E12 7F94 D622  
Linda Marie Bell  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

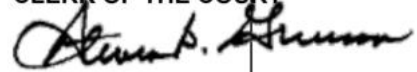
4  
5  
6 Edward Honabach, Plaintiff(s) CASE NO: A-20-812948-W  
7 vs. DEPT. NO. Department 7  
8 William Gittere, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/15/2022

15 Travis Akin	travis@avalonlg.com
16 Jim Hoffman	jim.hoffman.esq@gmail.com
17 Clark County DA	pdmotions@clarkcountyda.com
18 Jim Hoffman, Esq.	Jim.Hoffman.Esq@gmail.com



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**ATTORNEY FOR EDWARD HONABACH**

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

EDWARD HONABACH,

Petitioner,

vs.

THE STATE OF NEVADA ET AL.,

Respondents

Case No.: A-20-812948-W

Department VII

**NOTICE OF APPEAL**

Notice is hereby given that EDWARD HONABACH, by and through his counsel JIM HOFFMAN, ESQ., appeals the denial of his petition for post-conviction relief issued by the Court on September 15, 2022.

DATED: September 21, 2022

/s/ Jim Hoffman

JIM HOFFMAN, ESQ.

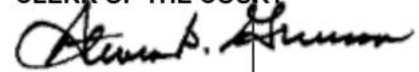
1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that a copy of this NOTICE OF APPEAL  
3  
4 was served on the Clark County District Attorney's Office on September 21, 2022,  
5 via e-service to [PDMotions@ClarkCountyDA.com](mailto:PDMotions@ClarkCountyDA.com).

6 DATED: September 21, 2022

7  
8  
9 /s/ Jim Hoffman

10 \_\_\_\_\_  
JIM HOFFMAN, ESQ.



DECL  
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Attorney for Edward Honabach

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

EDWARD HONABACH,

Case No.: A-20-812948-W

Petitioner,

vs.

**DECLARATION OF EDWARD  
HONABACH**

STATE OF NEVADA ET AL.,

Respondent

EDWARD HONABACH, by and through his counsel JIM HOFFMAN,  
ESQ., hereby files this Declaration. The Declaration is an exhibit to the Amended  
Petition for Post-Conviction Relief, filed April 28, 2022, which was inadvertently  
not filed until the present date.

DATED: 8/15/22

/s/ Jim Hoffman

Jim Hoffman, Esq

DECLARATION OF EDWARD HONABACH

I, Edward Honabach, hereby declare that the following statements are true, under the penalty of perjury under Nevada and federal law.

1. My name is Edward Honabach. I am currently incarcerated at High Desert State Prison.
2. My trial lawyer was Bob Beckett and my appeal lawyer was Travis Akin. I feel like both of them made mistakes that hurt my case.
3. I did not want to take a plea deal in the first place. However, Mr. Beckett leaned on me to take the deal offered by the prosecutors. I was concerned about what would happen if the judge didn't agree to the deal, but Mr. Beckett told me I would just have to accept it. I felt pressured into taking the deal even though I wasn't comfortable with it.
4. In addition, I never got to see the discovery in my case. I was especially concerned about seeing the statements of my co-defendants and other witnesses. I found out right before sentencing that Mr. Beckett hadn't seen most of the discovery either. He told me that he had talked to the lawyers for the other defendants and that was good enough.
5. I also think that Mr. Beckett should have written a sentencing memo, but he did not. He also did not prepare me to speak in court at the sentencing.
6. As far as Mr. Akin, he withdrew my appeal without my consent. He said that I consented to do this, but I never did. In addition, I never received a letter from him, even though he told the Supreme Court he sent me one. I wanted to file an appeal and am upset that the appeal was withdrawn.

Signed under penalty of perjury on May 29, 2021.

Edward Honabach

EDWARD HONABACH