1	IN THE SUPREME COUR	RT OF THE STATE OF NEVADA
2	PETER JASON HELFRICH)
3	Appellant,) Supreme Court Case No.: 85505
4	vs.)
5	THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVALIN AND FOR THE COUNTY OF NY	
7	AND THE HONORABLE DAVID R GAMBLE, SENIOR JUDGE,	.)
8	Respondent.)
9	RESPONDENT FIFTH JUDICIA	ALDISTRICT COURT'S ANSWER TO
10	PETITION FOR WRIT O	F MANDAMUS/PROHIBITION
11	ATTORNEY FOR APPELLANT	ATTORNEYS FOR RESPONDENTS
12	PETER JASON HELFICH#1111875 High Desert State Prison PO Box 650	NYE COUNTY DISTRICT ATTORNEY 520 E. Basin Road, Suite 107
14	Indian Springs, NV 89070	Pahrump, NV 89041 (775) 751-7080
15		BRADLEY J. RICHARDSON
16		P. O. Box 593 101 Radar Road
17		Tonopah, NV 89049
18		AARON FORD NEVADA ATTORNEY GENERAL
19		SABRENA CLINTON DEPUTY ATTORNEY GENERAL
20		100 N. Carson St. Carson City, NV 89701

INTRODUCTION

On behalf of the Clerk of the Fifth Judicial District Court, the Nye County District Attorney's Office submits this Answer to Mr. Helfrich's Petition for Writ of Mandamus. It is the understanding of the Nye County District Attorney that a separate Answer will be filed by the Nevada Attorney General's Office on behalf of District Court Judge David Gamble.

FACTS AND PROCEDURAL HISTORY

On April 8, 2021, Petitioner Helfrich pleaded no contest guilty to the offense of Battery with a Deadly Weapon pursuant to a Guilty Plea Agreement Executed on April 7, 2021. (Case summary APPX 002-006 at APPX 003). The No Contest Plea Agreement is at APPX 007-021.

On July 27, 2021, Helfrich, appearing at sentencing with his attorney David Neely, was sentenced to 2 to 6 years in prison with parole eligibility in 2 years as well as being given credit for time served of 120 days. See Case Summary at page (APPX 004).

ARGUMENT

In reviewing the Fifth Judicial District Court file in Case No. CR20-0145A, it appears that Petitioner had waived his right to complain of the Presentence Investigation Report when he filed his *Affidavit of Indigent Petition for Writ of Habeas Corpus* on September 10, 2021 because it was untimely.

Mr. Helfrich's sentencing took place on July 27, 2021. His Affidavit of 1 Indigent Petition for Writ of Habeas Corpus ("Affidavit") complaining about the deficiencies in the PSI was not filed until September 10, 2021. Furthermore, there 4 does not appear to be a filed Proof of Service or Certificate of Service for this 5 pleading in the file. The Fifth Judicial District Court clerk is not responsible for service of any such pleading. 6 7 It is this Respondent's belief that Mr. Helfrich's Affidavit was not timely 8 filed. It has been held by this Court that the failure to challenge any inaccuracies at 9 or before the time of sentencing waive any such challenge after a defendant is 10 sentenced. See Stockmeier v. State 127 Nev. 243255 P.3d 209 (2011). 11 It is this Respondent's belief that the Fifth Judicial District Court would not 12 have jurisdiction over the matters complained of in Mr. Helfrich's 13 DECLARATION IN SUPPORT OF AFFIANT'S (EMERGENCY) MOTION 14 FOR A TEMPORARY RESTRAINING ORDER & PRELIMINARY 15 INJUNCTION. Mr. Helfrich alleges that the Acting Warden of the High Desert 16 Prison and the Nevada Department of Corrections have withheld and/or destroyed 17 Helfrich's papers and records. Such a complaint should either be brought in Clark 18 County or Carson City according to NRS 13.020 which reads as follows:

NRS 13.020 Venue of actions for recovery of penalties and forfeitures; actions against public officers; actions against State of Nevada. Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the power of the court to change the place of trial:

1. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river or other stream of water, situated in two or more counties, the action may

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1	CONCLUSION
2	Respondent, the Nye County District Attorney's Office on behalf of the
3	Fifth Judicial District Court Clerk, requests that the Petition be denied in its
4	entirety.
5	DATED this 6th day of February 2023.
6	BRIAN T. KUNZI
7	Nevada Bar No. 2173 NYE COUNTY DISTRICT ATTORNEY
8	P. O. Box 593 Tonopah, NV 89049
9	Attorney for Respondents
10	By Gradley & Tichardon
11	Bradley J. Richardson Nevada Bar No. 1159
12	Chief Deputy District Attorney
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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

1 VERIFICATION 2 I hereby certify that this brief complies with the formatting 1. 3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and 4 the type style requirements of NRAP 32(a)(6) because: 5 [x]This brief has been prepared in a proportionally spaced typeface using Microsoft Word 97-2003 in Times New Roman, 14 pt. 6 font; or 7 This brief has been prepared in a monospaced typeface using Microsoft Word 97-2003in with [state number of 8 characters per inch and name of type style]. 9 2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by 10 11 NRAP 32(a)(7)(C), it is either: 12 Proportionately spaced, has a typeface of 14 points or more and contains words; or 13 [] Monospaced, has 10.5 or fewer characters per inch, and 14 contains ___ words or __ lines of text; or 15 Does not exceed 30 pages. 16 3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for 17 18 any improper purpose. I further certify that this brief complies with all applicable 19 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires 20 every assertion in the brief regarding matters in the record to be supported by a

1	reference to the page and volume number, if any, of the transcript or appendix where
2	the matter relied on is to be found. I understand that I may be subject to sanctions in
3	the event that the accompanying brief is not in conformity with the requirements of
4	the Nevada Rules of Appellate Procedure.
5	DATED this day of February 2023.
6	BRIAN T. KUNZI
7	Nevada Bar No. 2173 NYE COUNTY DISTRICT ATTORNEY
8	P. O. Box 593 Tonopah, NV 89049
9	Attorney for Respondents
10	By Bradley J. tichulan
11	BRADLEY J. RICHARDSON Nevada Bar No. 1159
12	CHIEF DEPUTY DISTRICT ATTORNEY
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1 **PROOF OF SERVICE** 2 I, Kristine M. Kipp, Executive Legal Secretary, Office of the Nye County 3 District Attorney, P. O. Box 593, Tonopah, NV 89049, do hereby certify that on __, 2023, I caused copies of RESPONDENT'S ANSWERING 4 BRIEF and RESPONDENT'S APPENDIX to be served via Nevada Supreme 5 Court's E-Flex e-filing system to the following: PETER JASON HELFICH#1111875 High Desert State Prison PO Box 650 Indian Springs, NV 89070 9 10 AARON D. FORD **NEVADA ATTORNEY GENERAL** 11 SABRENA CLINTON **DEPUTY ATTORNEY GENERAL** 100 N. Carson Street 12 Carson City, NV 89701 13 14 Kristine M. Kip 15 16 17 18 19 20