

In the Supreme Court of the State of Nevada

No. 85513

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Elizabeth A. Brown
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DUJUAN LOOPER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**Appeal from Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County**

APPELLANT'S APPENDIX VOLUME 2 OF 2 TO OPENING BRIEF

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Respectfully Submitted,

/s/ Diane C. Lowe

DIANE C. LOWE ESQ. Nevada Bar #14573

1 A We just talked about this -- she just -- we talked about the deal she was
2 just telling me that --

3 Q Well my question was while she's going through, when she's reading
4 the Guilty Plea Agreement line by line, were you able to ask her any question that
5 she might want?

6 A Well she didn't -- we didn't really just -- she didn't really read the whole
7 thing line by line. She just skimmed through different lines and I just asked her okay
8 well if I'm getting the minimal. It's pretty much I was just a yes -- I was going along
9 with everything. After she told me what it was that I could be getting that I'll be
10 getting that's what I went with.

11 Q So you -- would it be fair to say that you've read the whole Guilty Plea
12 Agreement?

13 A Yeah, well as she -- when she skimmed through it, yes.

14 Q And I'm showing you what's marked as State's Exhibit 2, is that the
15 Guilty Plea Agreement?

16 A Yes.

17 Q Okay. And if you skim through the Guilty Plea Agreement it has a
18 number of particular items it discusses and it comes down to a signature page, is
19 that correct?

20 A Yeah.

21 Q And there's your name.

22 A Yeah.

23 Q Is that your signature?

24 A It is.

25 Q Okay now in this Guilty Plea Agreement in fact part of the Guilty Plea

1 Agreement specifically asks you or makes a statement particularly -- I believe it's on
2 page 7. Let's go ahead and take a look. It's that last paragraph there. Could you
3 read that to us?

4 A Agreement or the proceedings --

5 Q The last paragraph right here starting with my.

6 A My attorney --

7 Q Need it closer?

8 A My attorney has answered all my questions regarding this Guilty Plea
9 Agreement.

10 Q Could you speak up just a little bit?

11 A My attorney has answered all my questions regarding this Guilty Plea
12 Agreement and consequences to my satisfaction. I am satisfied with the service
13 provided by my attorney.

14 Q Okay. And that's the last thing right there before your signature, is that
15 correct?

16 A Yeah.

17 Q Okay, so is that a true statement of what happened when your attorney
18 came over and talked to you?

19 A Well yeah after she --

20 Q Okay, that's fine. So how long was it that she was over there talking to
21 you when you went to jail?

22 A I mean, she's -- we was there talking for a while but it wasn't all -- it was
23 just talking about just random stuff. It wasn't just all about the Guilty Plea.

24 Q So how long was she there?

25 A I guess just enough to charm me to sign the Guilty Plea.

1 Q Yeah, and you said that she promised you that you would get a specific
2 sentence, is that what you said?

3 A Yes, I was under the impression that I was getting a 2 to something, a 1
4 to 5, and a 1 to something else, I can't remember, ran concurrent. And --

5 Q Why were you under that impression?

6 A Because that's what she told me.

7 Q So she told you that's exactly what you're going to get?

8 A She told me that's what I'll be getting, yeah.

9 Q Now the same Guilty Plea Agreement that we've been talking about I
10 believe on page 5 specifically says right here, this paragraph here, these three lines,
11 can you read that to me?

12 A Conviction will not --

13 Q Can you speak up just a little bit?

14 A Conviction will not result in negative --

15 Q It starts regardless.

16 A Oh, regardless of what I have been told by attorney no one can promise
17 me that this conviction will not result in negative immigration consequences.

18 THE COURT: I don't think that's what you're looking for.

19 MR. SWEETIN: Oh that's not -- wrong one. Let me find it real quick. Let's
20 see.

21 THE COURT: Middle of page 4 I think is what you're looking for.

22 MR. SWEETIN: Oh I'm sorry, Judge. Yeah, I'm sorry.

23 THE COURT: Line --

24 MR. GAMAGE: Judge, if he couldn't find it you know.

25 THE COURT: I don't know for sure that's what he's looking for, but I think so.

1 MR. SWEETIN: I'm sorry, Mr. Looper, I'm a little slow this afternoon but if you
2 could just read here this paragraph starting on line 19, these two lines.

3 A I have not been promised or guaranteed any particular sentence by
4 anyone. I know that my sentence is to be determined by the Court within the limits
5 proceeding by statute. I understand that if my attorney or the State of Nevada or
6 both recommend any specific punishment to the Court the Court is not obliged to
7 accept the recommendation. I understand that if I --

8 THE COURT: Okay.

9 BY MR. SWEETIN:

10 Q Okay, that's fine. So do you understand that?

11 A I do.

12 Q Okay, what does that mean to you?

13 A It means that she can't promise me --

14 MR. GAMAGE: Objection as to time, Judge. We're talking about what it
15 meant to him at the time this was discussed as opposed to what it means to him
16 now. We're not asking to evaluate the Guilty Plea Agreement at this time.

17 THE COURT: Okay, fair enough.

18 MR. SWEETIN: So what does it mean to you?

19 THE COURT: What did it mean to your or what did you understand it to mean
20 at the time?

21 MR. GAMAGE: Well foundation as to whether or not he even read it at the
22 time. The testimony has been that he went over sketchy paragraphs. I don't know if
23 he went over this paragraph.

24 THE COURT: Alright, I'm going to let him answer the question.

25 MR. GAMAGE: Thank you, Judge.

1 BY MR. SWEETIN:

2 A Well like I said she had the deal in front of her. She just skimmed
3 through it; she read it. After she did that she slid it -- she gave it to me to sign. I
4 signed it. That was it. I had --

5 THE COURT: In the jail?

6 THE WITNESS: In the jail. I had no -- I train every day. I'm a fighter. You
7 guys went to school you trained your minds for this for years. I had no reason to not
8 believe her, you know, this is what she trained for. This is what she prepared for
9 every day, so I thought when she told me --

10 THE COURT: So you took her word for it.

11 THE WITNESS: So I took her word for it.

12 THE COURT: Okay.

13 BY MR. SWEETIN:

14 Q So she told you that you were going to get a very specific sentence
15 contrary to this particular part of the Guilty Plea Agreement? Is that right? So you
16 thought that -- this -- just this part of the Guilty Plea Agreement just didn't apply to
17 you?

18 MR. GAMAGE: Objection, assumes facts --

19 MR. SWEETIN: I'm --

20 MR. GAMAGE: -- not in testimony. He hasn't testified whether he read this or
21 not at the time of the interview yet. You haven't asked him that question. Why don't
22 you ask him that question first?

23 MR. SWEETIN: I'm asking --

24 THE COURT: Sustained.

25 BY MR. SWEETIN:

1 Q So you indicated that you read through this Guilty Plea Agreement with
2 your attorney, is that correct?

3 A She read through it.

4 Q Okay and you listened, --

5 A She --

6 Q -- is that correct?

7 A Well like I said before she just skimmed through it and then was just
8 basically getting to what I would get. It was just short --

9 Q So when she skimmed through she went through every paragraph?

10 A Well I don't -- I mean, I can't say if she went through every one. It was
11 just real quick she just read a few things out of --

12 Q So you never saw --

13 A No --

14 Q So you never saw this paragraph?

15 A No, I just signed it after --

16 Q You just signed it?

17 A Yeah.

18 Q You just signed saying that you had read the entire agreement?

19 A I had no reason to doubt her. I just -- I mean, it was -- I was -- she told
20 me what it was. I signed it. I agree with what came out of her mouth.

21 Q Mr. Looper, would you agree that these are fairly significant charges?

22 A Yeah.

23 Q Would you agree that it's maybe more important than signing a contract
24 to buy a car?

25 A Yes.

1 Q Would you agree that you would normally read a contract, how much
2 am I going to have to pay when I have to buy a car, would you agree with me?

3 A Yes.

4 Q So would you agree that each and every paragraph in this agreement is
5 pretty important to you?

6 A Yes, but my --

7 Q Okay, that's fine. So in regards to the agreement itself this agreement
8 makes particular reference to a couple of things. One of the things is that you would
9 be subject to sex offender registration and you indicated that you did read that with
10 your attorney, is that correct?

11 A Yeah, she told me -- yeah.

12 Q Okay, and you indicated that when she had that discussion with you
13 that she said that it's okay if you move to another state that you don't have to
14 register, is that what you're saying?

15 A I didn't say that she told me that. I said that I've heard -- I heard that
16 throughout the jail and I asked her about that.

17 Q Okay, and did she answer your question?

18 A She said she wasn't sure or didn't know.

19 Q Okay. Did she show you statutes that related to the offenses that you
20 were pleading guilty to when you were going over the Guilty Plea Agreement in jail?

21 A She just -- I mean, she skimmed through it. She just -- she skimmed
22 through a few things. They was just mostly like conversation. She'll look at
23 something we'll have a conversation about it. We didn't really just sit down and just
24 read anything and just like read a whole -- or the statutes or anything like that, no.

25 Q So she would read the statute and then she would convey that you, is

1 that what happened?

2 A Yeah.

3 Q Okay, and you did that for 3 hours?

4 A I wouldn't say it was 3 hours. We did it for a little bit, like I said. And
5 the conversation always -- if just went to something else. It was -- she would get
6 through that and then it would just be the butter upper. You know, the conversation
7 would go to something else. Just talking about: Oh, are you going to box? Oh,
8 what are you going to do when this, you know.

9 Q She was buttering you up?

10 A She put the charms on. When I was -- I mean, I don't know the right
11 words to say. We talk about -- we'll talk about the agreement and then it was just
12 fast and then it was just --

13 Q What would she do to butter you up? I mean, would she smile. I mean,
14 --

15 A I mean, yeah, just yeah just the -- I don't know, the friendly chatter chat.

16 Q Yeah, so why do you think that she wanted to butter you up to take this
17 deal?

18 A Well she was just starting out maybe to score a plus with the firm, the
19 DA. I got a deal signed. I don't know.

20 MR. GAMAGE: Objection, calls for speculation, Judge. I'm just going to -- I'm
21 trying to give him some leeway because he gave me some, Judge. But, I mean,
22 that's pretty far afield. He's asking what she thought.

23 THE COURT: No, he's asking why he thought that, so overruled.

24 MR. GAMAGE: He's asking him what -- excuse me, Your Honor. He's asking
25 him what he thought was her reason. So he's asking him to speculate as what's in

1 her head. I just think that's too far afield, Judge, that's all.

2 THE COURT: Well, okay, so I understood the question to be following up on
3 what Mr. Looper testified to as what he was thinking.

4 MR. SWEETIN: Thank you, Judge.

5 BY MR. SWEETIN:

6 Q When you came to court in regards to sex offender registration the
7 Judge ask you right on the record do you understand that you're subject to sex
8 offender registration, is that correct?

9 A Yeah.

10 Q Okay, and you indicated that you were, --

11 A Right.

12 Q -- is that correct?

13 THE COURT: Yes?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 BY MR. SWEETIN:

17 Q So the Judge also in the course of canvassing you here in court, do you
18 remember her asking you make sure to ask me if you have any questions?

19 A Yes.

20 Q Do you remember that? Do you remember her saying if you have any
21 questions for me or your attorney before I accept your plea let me know right now?

22 A Yes.

23 Q Okay, and how did you respond to that?

24 A I didn't have any -- I didn't have any questions for her. I talked to my
25 attorney --

1 Q Well, Mr. Looper, you just said you had a question for your attorney in
2 regards to lifetime registration that's qualified --

3 A That was at the --

4 Q Well hold on a second; let me finish. That, you know, essentially if I
5 move out of the state then what's going to happen and she said I don't know. So
6 this would be the perfect opportunity for you to ask the Judge wouldn't it? If your
7 attorney doesn't know ask the Judge?

8 A I wasn't thinking about asking the Judge.

9 Q You didn't think about asking her that question. The Judge also asked
10 you whether you read your Guilty Plea Agreement and you signed it. Do you
11 remember her asking you that?

12 A Yeah.

13 Q Okay, and you said that you had?

14 A Yeah.

15 Q But today you tell us that you didn't read it that your attorney just sort of
16 skimmed through it, so were you lying to the Judge when you said that you had?

17 A No, I just thought it was one and the same. If she's reading it to me, I'm
18 her client it kind of goes with the territory, right, just as if I read it. I felt I can trust her
19 to do that.

20 Q You also indicated that you understood everything contained in that
21 Guilty Plea Agreement. Do you remember the Judge asking you that? You
22 understand everything contained in this Guilty Plea Agreement. Do you remember
23 that?

24 A Yeah.

25 Q And you answered that you did, is that right?

1 A Yes.

2 Q So that wasn't honest either according to your testimony today?

3 A My attorney told me to say yes to everything that the Judge say and
4 play nice and that's what I did.

5 Q In the Guilty Plea Agreement it also makes reference to the
6 Psychosexual Evaluation, is that correct?

7 A Yes.

8 Q And it talks about the Psychosexual Evaluation being required before
9 your eligible for probation on count 3 and also before you become eligible for parole.
10 Do you remember that?

11 A Yes.

12 Q Okay and your attorney explained that to you, is that correct?

13 A I mean, we went over it because I did a psychosexual.

14 Q Okay.

15 A They had me do one, so that's the one that we were talking about was
16 the one that we had coming up that I did.

17 Q And the Judge again explained that to you when you were here in
18 Court, is that right?

19 A About what?

20 Q When you were entering your plea the Judge asked you if you
21 understood the necessity for a psychosexual evaluation.

22 A Yes, but I thought I had already did that because of the fact, I mean, I
23 did it. I went to go see the little psych doctor or whatever. And I passed, low to
24 moderate. It's in there.

25 THE COURT: Are you saying you think you did that before you entered your

1 plea?

2 THE WITNESS: Well what I -- well here what the thing is when we were
3 doing this I didn't know that I was going to be have to do two of these. I just found
4 this out today that it was going to be two. Because I did one of these --

5 THE COURT: Right.

6 THE WITNESS: -- so every time we was talking about that I was under the
7 impression that's the one that we were talking about and that they were going to
8 have me do. So every time they said oh we're going to see the psychosexual it was
9 for this guy that I was preparing to go see or getting ready to go see whenever he
10 came to see me. I didn't know that I was going to have to do two of these.

11 THE COURT: Okay.

12 BY MR. SWEETIN:

13 Q So in the Guilty Plea Agreement if you look here at the bottom of page
14 3 and the top of page 4 it talks about two separate psychological evaluations to be
15 performed on you. Do you remember that?

16 A No.

17 Q Okay, so you don't remember talking specifically about these two
18 particular --

19 A No, I only talked with Marjorie about taking the psychosexual, never
20 about taking two, just taking the psychosexual. And she said I'll be seeing a doctor
21 here sometime soon.

22 Q What about here in court when you entered your Guilty Plea? Did you
23 talk about two separate psychosexual or psychological evaluations? Did the Judge
24 talk to you about that here?

25 A I mean, whatever -- whatever the Judge said. Like I said before I just

1 did what my lawyer told me to do. I said yes. I thought everything was done. I just
2 said yes to get through with everything. I took my counsel's advice.

3 Q In regards to lifetime supervision as the Judge was asking you that
4 question she asked you the question whether you knew you were subject to lifetime
5 supervision, is that correct?

6 A Right. And I was under the impression that that as far as lifetime goes,
7 like I told you before, was me registering for life, me being registered for life. I
8 thought it was -- I don't know, one and the same. I didn't do my research on all of
9 these charges or on all of these things.

10 Q And, Mr. Looper, you didn't have to do your research because the
11 Judge specifically asked you whether you were subject to sex offender registration.
12 And then she also specifically asked you whether you were -- you understood you
13 were subject to lifetime supervision, two separate things. Do you remember that?

14 A Well yes, but you got to -- at that time I was under a whole lot of
15 pressure. I was just doing what the professionals told me to do.

16 Q Even though the Judge told you that if you had any questions you could
17 ask. Even though the Judge particularly gave you every opportunity to ask those
18 questions or to give any concerns that you might have in regards to the Guilty Plea?

19 A Right.

20 Q Would you agree with me that that's the case in the course of the --

21 A Yeah, but I wouldn't ask that. I wouldn't go against the grain of my
22 team. If they asked me to do something that's what I'm going to do.

23 MR. SWEETIN: I have nothing further, Judge.

24 THE COURT: Redirect.

25 **REDIRECT EXAMINATION**

1 BY MR. GAMAGE:

2 Q Mr. Looper, the District Attorney asked you about how you -- you know,
3 normal people read contracts and things like that. Did ever buy a car?

4 A Yeah, but cashed it out not through contracts or anything.

5 Q Okay, so you've never gone to a dealership and brought a car?

6 A No.

7 Q Okay, so you've never -- have you ever read through like these 4-5
8 page contracts that you'll get for like a car or get for a house or get for some big
9 purchase you made?

10 A No, I always had an attorney that did it for me.

11 Q Okay. Alright, so for purposes of this particular agreement as she went
12 through these particular paragraphs did you have a copy of this in front of you?

13 A No.

14 Q Okay, so it was just you relying on what she was telling you from the
15 copy that she was reading from, is that correct?

16 A Yes.

17 MR. GAMAGE: Court's indulgence.

18 BY MR. GAMAGE:

19 Q Mr. Looper, did Ms. Barbeau discuss with you the nature of the
20 discretion of a sitting District Court Judge when it comes to honoring or not honoring
21 a Guilty Plea Agreement?

22 A No.

23 Q When she discussed with you as you testified that you believed you
24 were going to get like a 2 year and a 1 and 1 year on the bottom end all concurrent,
25 did you think that was the actual sentence or that was the possible sentence?

1 A No, I thought that's what I was getting.

2 Q Okay, when you signed the agreement how did she hand the

3 agreement to you? Did she hand it to you with just a signature block available or did

4 you have to flip through it to get to the signature block?

5 A No, she flipped it up and had it there and I signed it and just gave it

6 back to her.

7 Q Okay, and did they eventually mail you a copy of the agreement?

8 A No, I never got a copy until -- I never got a copy of it -- of the deal until

9 sentencing or until we did get into -- yeah, until when we came into the courtroom.

10 Q On this writ? Are you saying --

11 A No, no --

12 Q -- on the writ or on the sentencing?

13 A -- no until I came in with her for the --

14 Q The change of plea hearing?

15 A No to accept the deal --

16 Q Okay.

17 A -- to accept the deal.

18 Q Just --

19 A That's when I got a copy.

20 Q Yeah, that's what I'm -- the day you came in and the Judge canvassed

21 you about accepting the Guilty Plea Agreement?

22 A Right.

23 Q So that day you did get a copy in Court?

24 A Afterwards, yeah.

25 Q After the hearing?

1 A Yeah.

2 MR. GAMAGE: Okay. Pass the witness.

3 MR. SWEETIN: No questions, Judge.

4 **FURTHER QUESTIONS**

5 BY THE COURT:

6 Q So I just want to clarify a couple things. The record shows that the day
7 you entered your guilty plea was Wednesday January 8th, okay of 2014. How long
8 before that was the meeting you had at the jail with the attorney we've been talking
9 about to go over the plea?

10 A The night the day before.

11 Q The day before?

12 A [No audible response].

13 Q Yes? Sorry, you're nodding --

14 A Yes, yes.

15 Q I need it out loud.

16 A Yes.

17 Q Okay. And when did you sign the agreement?

18 A That same day.

19 Q At the jail?

20 A At the jail.

21 Q The Guilty Plea Agreement -- hold on let me find it. Do you have the
22 exhibit?

23 MR. GAMAGE: I will retrieve it, Judge.

24 THE COURT: Can you show it to him? If you turn to page -- can you get it to
25 turn to page 7? Someone can help you.

1 MR. GAMAGE: Page 7?

2 BY THE COURT:

3 Q Page 7 of the Guilty Plea Agreement. Okay, is that your signature?

4 A Yes.

5 Q Did you write the date on there? You fill in that number eight?

6 A No, I didn't put that in.

7 Q You didn't?

8 A No.

9 Q Okay. Are you saying you -- so January 8th, the date shown on there is
10 the date that you actually entered your plea here in court?

11 A Yes.

12 Q Are you saying you didn't sign it that day as shown in the Guilty Plea
13 Agreement?

14 A Oh, I -- well I don't know the one that she -- at the jail I signed it and
15 then -- yeah, whatever proceedings that went through in court I did everything that
16 was supposed to have happened that day. But I did --

17 Q Do you recall signing the Guilty Plea Agreement here in court the day
18 you entered your plea?

19 A I don't -- I can't remember. I don't know.

20 Q Okay, I mean, it's 3 ½ years ago it's hard to remember right?

21 A I just know for sure that -- I signed the one for her the day before. But
22 as far as in court I don't know. But I didn't -- that's not my eight.

23 Q That's not your eight but that's your signature?

24 A Yes.

25 Q Okay. And were you a professional boxer at that time or an amateur

1 boxer, what was your status?

2 A I was an amateur I was getting ready for -- when I got arrested I was
3 getting ready for the 2012 Olympics and then I caught the case and --

4 Q Right.

5 A -- came in here.

6 Q Okay. And how old are you now?

7 A 33.

8 Q 33. And so the Rio Olympics you mentioned those were last year in
9 2016, right?

10 A Yes.

11 Q So you were expecting to box in the Olympics last year at age 32?

12 A Oh yes.

13 Q Yes? Okay, I'm no boxing expert. I don't pretend to be. Yes, that was
14 your expectation though?

15 A Yes.

16 Q Okay you were actually training with someone where you could be at
17 that kind of level to be in the Olympics?

18 A Oh, yeah, I'm three time Golden Glove. Yeah.

19 Q Okay, good. So if I understand it when you met with the attorney in the
20 jail and went over the Guilty Plea Agreement so I believe what you've described is
21 she had the agreement in front of her and as she would get to like important parts
22 she would describe that to you. Is that fair description of what happened?

23 A Okay, yeah. Yes.

24 Q If I'm not right --

25 A No, no, yes, yes.

1 Q Yeah, okay. And so you didn't necessarily -- you weren't necessarily
2 looking at each word written on the agreement but listening to her explanation, is
3 that fair?

4 A Yeah.

5 Q Okay, alright. So when you were entering your plea and I ended up
6 asking questions during that plea canvass about registration as a sex offender and
7 ultimately lifetime supervision at that time was the lifetime supervision a surprise to
8 you?

9 A I didn't even -- I didn't really -- I didn't even catch it when we were in
10 there. I heard the words --

11 Q Yeah.

12 A And like I said when the lifetime came up --

13 Q Uh-huh.

14 A I was always under the impression of me registering for life. And she
15 just told me to say yes, get through everything like she always say play nice. And
16 so I was just going through the motions, because this -- because she -- this is what
17 she told me to do.

18 Q Right.

19 A And I just thought everything was going to be what she had told me so.

20 Q Okay.

21 A It --

22 Q Excuse me. So even after you entered your plea because it was then
23 like three months or more before you got sentenced, even during all that time did
24 you ask your attorney again about what all that meant?

25 A No, it was -- it was just it was done with after that. It was just me getting

1 ready to talk to the little psych doctor or whatever --

2 Q Right.

3 A -- the psychosexual doctor.

4 Q Uh-huh.

5 A The deal or anything none of that even came back, because at that time
6 Marjorie she was gone.

7 Q Right.

8 A And then it was just Weaver. And the deal never even -- it never came
9 back up and I just thought everything was in place.

10 Q Okay.

11 A And then, you know, when I got sentenced --

12 Q Right.

13 A -- like awhile there I was like whoa. And then --

14 Q Okay.

15 A -- that's when I started really looking into everything. And that's when
16 she told me well, you know, you can put in a writ of hamus [sic]. Because otherwise
17 I wouldn't even knew to put this writ in or try and get this writ put in. But Melinda told
18 me, you know, you should file a writ of hamus and that's what I did.

19 Q Now once I -- I want to make sure I understand. Once you entered your
20 plea back in January of 2014 did you then after that have a copy of the Guilty Plea
21 Agreement?

22 A Yeah, I had it. But I -- it was --

23 Q So did you read it over at all after that?

24 A No because I didn't -- because I wouldn't understand the language
25 anyway.

1 Q Right.

2 A I just thought everything was set in stone so I didn't feel no need for me
3 to -- and I didn't have nobody other than the attorney. But I wasn't going to let
4 nobody in the jail look at my stuff at that time.

5 Q Okay, so now let's talk about what you're asking for here today right.

6 A Yeah.

7 Q So the argument in this writ is that counsel didn't properly inform you
8 about all the consequences of your plea and that you should be able to undo your
9 Plea Agreement, right? That's what you're asking for?

10 A Yes.

11 Q Okay. Now you understand that before you entered that plea you were
12 facing 9 felony counts.

13 A Yes.

14 Q Right. And that included one count of second degree kidnapping, you
15 understand that?

16 A Yes.

17 Q One count of coercion, right?

18 A Yes.

19 Q Two counts of child abuse and neglect, right?

20 A Yes.

21 Q One count of battery domestic violence strangulation, right?

22 A Yes.

23 Q One count of sexual assault with a minor under 14 years of age?

24 A Yes.

25 THE COURT: And what's the sentencing range for sex assault with a minor

1 under 14 years of age?

2 MR. SWEETIN: Your Honor, that would be 35 years to life.

3 BY THE COURT:

4 Q 35 to life. So if you were convicted on that particular charge minimum
5 35 years in prison. You understand that?

6 A Yes.

7 Q And then one count of lewdness with a child under the age of 14. You
8 understand that?

9 A Yes.

10 Q And then count 8 was use of minor in producing pornography. You
11 understand you were facing that.

12 A Yes.

13 Q And count 9, possession of visual presentation depicting sexual
14 conduct of a child. That was the last charge you understand that?

15 A Yes.

16 Q What's the range for second degree kidnapping?

17 A I believe second degree is actually 2 to 10 I believe, Judge.

18 Q Okay, alright. Okay, now you understand that if you were to persuade
19 me that in fact you didn't understand this because your counsel didn't properly
20 explain it to you and that you get to set aside this plea deal. State goes back to
21 pursuing these 9 counts against you?

22 A Yes.

23 Q You understand that?

24 A Yes, Your Honor.

25 Q And so -- and then you're still facing a trial and still facing all the

1 potential sentences on these 9 counts, right?

2 A Yes.

3 Q And they -- I'm confident you now know these charges can be run
4 concurrently or consecutively if you're convicted of them, right?

5 A Yes.

6 Q Okay, so you're -- the one charge alone if you're convicted is a 35 to
7 life. And then you could also be facing other counts with other minimum sentences
8 and they could be run consecutive you understand that?

9 A Yes.

10 Q So you could end up facing a substantially more severe sentence then
11 what you got under your plea deal?

12 A Yes.

13 Q And additionally part of what you have to persuade me besides whether
14 -- that there was ineffective assistance in advising you about the plea you have to
15 convince me that you in fact would have chosen to proceed to trial and not taken the
16 plea deal if you were fully advised about that.

17 A Okay.

18 Q Go ahead.

19 A Your Honor, if you remember Vicki Greco was my counsel and she
20 made this courtroom a joke.

21 Q I had forgotten that but okay.

22 A And, you know, I paid her. I gave her money, everything like that and
23 she put a meth head on the stand or to represent me. Then PD --

24 Q There were issues in her office. I'll give you that.

25 A Right and so everything was -- it was just so -- because, you know, I

1 was just: Trial, trial, trial. I want to go to trial. I want to go to trial. Well and I still
2 would have went, because I feel the evidence is insufficient. You know, it's just
3 more so -- it's just I understand hearsay alone is enough to convict you, but that's
4 just all that it is. And I really would -- the only thing that stopped me is because I
5 thought I was going to get my chance to go after the gold because I missed it in
6 2012. Other than that I wouldn't have took the deal. I wouldn't have signed a
7 lifetime any -- nothing with a lifetime nothing on there. And that was the only reason
8 that I -- and that's why I took the deal, because I thought I was going to get out and
9 be able to go fight the Olympics because I missed it in 2012. My life is simple, just
10 fighting, boxing.

11 THE COURT: That's all I had. Do you have any follow-up?

12 MR. GAMAGE: I believe we -- you just covered it with Ms. Greco and Mr.
13 Brandon Smith as his prior representation.

14 THE COURT: Right, I had forgotten about that -- them being prior counsel
15 before the appointment of counsel.

16 MR. GAMAGE: I think all we would have would be argument if the Court
17 wishes to take it, Judge.

18 THE COURT: Of course I'll have argument, yeah, yeah. But no more
19 questions for him?

20 MR. GAMAGE: No, Judge, I'll let that rest.

21 THE COURT: Mr. Sweetin, any other questions for him?

22 MR. SWEETIN: No, Your Honor.

23 THE COURT: Okay, alright. So then any other evidence for the defense?

24 MR. GAMAGE: No, Your Honor.

25 THE COURT: And any witnesses for the State?

1 MR. SWEETIN: No, Your Honor.

2 THE COURT: Alright so then argument, go ahead.

3 MR. GAMAGE: Judge, the testimony has gleaned some interesting facts
4 today. We have basically an attorney with less than a year's experience being sent
5 on a very complex matter to discuss a very complex issue to obtain a guilty plea in a
6 case from Mr. Sgro's office. He wasn't present, I think it's a fair reading of the
7 evidence that was presented today and that she essentially went there herself to
8 accomplish this task. Based upon her training and her experience at that time, I
9 mean, I've been in those shoes before, it's a daunting task to go to the jail. It's not
10 something you get used to easily or early.

11 I was a little bit different than everybody else. I was a cop for 12 years.
12 I came in the other entrance. So it didn't bother me a bit, you know, so whenever I
13 worked for Dominic Gentile I went to the jail all the time, it didn't bother me. But I
14 know that, especially young, you know, college just right out of college people don't
15 have a lot of experience in life just the process of going to the jail is -- can be
16 frightening and can cause lots of problems with your ability to think clearly and think
17 about what the steps you need to go through.

18 The process of obtaining appropriate consent has been deemed by the
19 United States Supreme Court as a critical stage of my client's case. It is undisputed
20 that he is entitled to effective assistance of counsel and be advised of the
21 consequences of his plea. Yes, Judge, he has testified that he wanted to go to trial.
22 He's in-artfully testified of those reasons. But, Judge, the -- when you read through
23 the discovery as I have in preparation for this matter and as he's testified to, the
24 evidence relating to where this picture came from was extremely, to be kind to both
25 sides, extremely disputable.

1 Okay, it is an issue -- a highly technical issue related to the Cloud. And
2 I don't know if you've seen some of these recent movies where they talk about:
3 Everything is in the Cloud and we don't know where the Cloud comes from. The
4 Cloud is a very nebulous concept for juries to understand. It's a very nebulous
5 concept for professionals to understand. How did that picture get there? It could
6 have gotten there from a number of sources. There was not a lot of technical
7 evidence or a trial so to speak of where a picture was shot from or what device to go
8 to the Cloud and be sitting in the Cloud to be accessed by how many different
9 devices. For example I can be in Barcelona Spain, take a picture and my girlfriend
10 can have the picture arrive on her cell phone in seconds. Okay.

11 And so my understanding of the evidence is there wasn't a lot of
12 evidence presented or at least my client was not advised that there was not a lot of
13 evidence presented as to how they're going to source that. And how are they going
14 to put that to him as a chain of custody issue, number one. Number two, that the --
15 for his purposes of understanding the evidence and a weakness of the case is what
16 he discussed, and Judge, I understand this is a very serious matter and I don't mean
17 to belittle anything that this victim has gone through. But I just bring to the Court's
18 attention that he made an evidentiary judgment as part of his urging to go to trial
19 during this process. That's what he's testified to and that's what he's told me.

20 And that there was no evidence indicating there was GHB in this glass
21 that supposedly this girl took the drink from and became woozy and then was
22 assaulted as a result of it. There was no DNA evidence or any useable DNA
23 evidence that was collected is my understanding and it was his impression from the
24 evidence that he was told from anywhere related to the child in the case to put it
25 bluntly.

1 And so he was operating from the principle that this was a case based
2 upon an accusation by a woman scorned. This woman that he was with -- this
3 woman who -- this was his -- her daughter, they had been having some falling out.
4 They had been having some problems, some domestic problems leading up to this
5 issue. And in fact it was my client's belief, although he did not testify to it today. I'll
6 say that to be clear. That this child had some particular problems, had problems in
7 school and that the evidence would show if it had gone to trial that there were issues
8 related to the veracity or credibility of the allegation. And so he operated from that
9 principal.

10 And a 6-month or an 8-month, you know, attorney shows up on a very
11 complex case with, you know, all of these different elements that have to be proven
12 up beyond a reasonable doubt under each heading of each charge and essentially
13 did not give him a complete copy of the Guilty Plea Agreement at that time. That's
14 the statement here today by my client and did not go through paragraph by
15 paragraph like she stated. She read the paragraph. She said this is what it is.

16 And it's kind of interesting. It's actually quite a very -- a quite credible
17 review of what I've heard of in my appellate practice and habeas practice of how
18 these things go. They're usually very quick. Sometimes for purposes of public
19 representation they're in the courtroom. You know, here read your guilty plea
20 agreement. You know, and you got a person there that's like, you know, and there
21 are terms of art that are included in these agreements. There are things that go on
22 behind the words of a guilty plea agreement that only really attorneys would know
23 that have to be explained to people.

24 I do as a matter of practice go paragraph by paragraph. And I make my
25 clients check off or I actually write initials on it. I write all over the damn thing. It's a

1 mess when I'm done with it. Because I want everybody to know that I touched the
2 paragraph. I touched those words. And that way it has substance but of course that
3 wasn't done here so we don't have any evidence of that. We just have the word of
4 an attorney who didn't really remember anything, Judge. Okay, she had -- the
5 words I don't know came out of her mouth a lot when I was asking her questions.
6 But of course when the State asked her questions, you know, she started
7 remembering stuff. And so I would just ask you to take that into consideration for
8 purposes of credibility, okay, assessing your testimony.

9 Judge, you have more experience than I certainly in assessing the
10 credibility of the witness. I saw many tells there that we have a civil attorney that
11 didn't really want her reputation besmirched and nobody does. And maybe she
12 doesn't quite understand that your representation wouldn't be besmirched if she
13 made a mistake. Because that's not what -- we're not here to accuse people of
14 something. We're here to find out as a secondary check on the constitutional
15 system as to whether or not a mistake was made, an important constitutional
16 mistake was made for this gentleman so that he got his rights adhered to. And she
17 had little or no experience and was given a task way beyond her pay grade. And
18 unfortunately I believe she did not meet the standard.

19 Okay, so a mistake was made. And it's okay. It's okay that a mistake
20 was made and that's why this process is here today. And I think this process can
21 catch that mistake, Judge. I think the testimony indicates that.

22 And also I think you should take from the testimony today that this was
23 a situation where you have Mr. Sgro who by all accounts, I've worked with him.
24 He's a very fine attorney. But there is a myriad of people working on this file. It just
25 seems like it's willy-nilly. And she couldn't even recall what her responsibility was, if

1 she actually had like authority on this case to do something. You know, if she was
2 in court and had to make a decision about a continuance or something like that she
3 had to wait for marching instructions. And that is commensurate obviously with her
4 experience, Judge. And I think you should take that into consideration as well.

5 And certainly -- so there was -- there wasn't really I think a centralized
6 control or at least testimony that demonstrated that as to the representation and how
7 the representation of Mr. Looper is going to be handled and by who and who is
8 going to make decisions on it. And who said what to who when. So we have the
9 situation of, you know, everybody is kind of pointing this way when they come up
10 and testify about whether or not this was covered or not covered.

11 I don't think either of them really know what the other one did because
12 they weren't there and it's okay. They probably had 5, 10, 15 other cases to worry
13 about at that time. And they did their level best to get the best results for those
14 clients. And so I'm not accusing them of being, you know, intending to do this. I'm
15 saying that, because of the nature of their work, because of what they did, there --
16 and then the myriad of people that were working on this file and it's being passed
17 from this person to this person to this person I'm thinking that Mr. Looper was
18 viewed in their office as someone that was somewhat of a difficult client. Go in
19 there, schmooze him, and get him to sign this thing because it's in his best interest, I
20 think. You know, maybe that was said. Maybe it wasn't.

21 That's why the Court felt it very important to discuss with Mr. Looper,
22 you know, hey careful what you're asking for. You know, and I think that's -- that
23 was the first conversation not to breach my attorney-client privilege, that I had with
24 my client. Because careful what you're asking for. Because yes you could go to
25 trial and I've seen situations where people had a good deal, filed a -- you know, after

1 they even started, you know, serving and then got it blown up and then went to trial
2 and ended up with three times the time at the bottom end. You know, so you know I
3 understand that. And he's fully aware of that okay. It is his belief that he was
4 innocent and that he was facing a case that was going to destroy him and his
5 potential career and that this was the easiest way out to meet his goals in life which
6 was to box. Okay. And I frequently have to --

7 THE COURT: So I've just got to interrupt for just a second.

8 MR. GAMAGE: Sure, Judge.

9 THE COURT: And I apologize.

10 MR. GAMAGE: Sure.

11 THE COURT: This wasn't an *Alford* plea?

12 MR. GAMAGE: No, no, Judge. But, I mean, --

13 THE COURT: He stood in court --

14 MR. GAMAGE: Yeah.

15 THE COURT: -- and acknowledged that he committed these three crimes.

16 MR. GAMAGE: Judge, I've been a criminal defense attorney, you know, for
17 over a decade you know, a decade and a half around there okay. And I've worked a
18 lot of appointed cases. I've worked appellate and habeas cases. I've worked trial
19 cases. I worked for very good attorneys. And yes a reality is not necessarily what is
20 put out there by this court system or by the District Attorney's Office as to how we
21 have to relate to defendants and how we do things and discuss things with clients.
22 Yes, you do get clients who are insane. And you have to do things whether they
23 consent or not okay. And that's an important thing, because you can't tell what their
24 consent is because they're incompetent, you know, what I'm saying.

25 So, I mean, point is, Judge, is that there is a part of selling a guilty plea

1 agreement. I mean, that is true. That is absolute truth. Some clients don't care
2 what you say to them. I'm not signing that agreement. I'm going to go to trial. I've
3 represented sovereign citizens who've been that way. You know, they want me to
4 throw out entire Title 18, okay.

5 THE COURT: Uh-huh.

6 MR. GAMAGE: And they've got the 175 pages to prove it, you know. And so
7 you have to deal with that as a defense attorney. It's not an easy thing. And it's
8 certainly not something for an 8-month, you know, --

9 THE COURT: I understand that.

10 MR. GAMAGE: -- experienced attorney. I just -- again I just follow up on your
11 question, Judge. I'm -- I don't know if I quite answered it for you but.

12 THE COURT: Well I guess what I was getting at, I mean, I certainly
13 understand the difficulty in representing folks charged with criminal offenses.

14 MR. GAMAGE: Serious crimes.

15 THE COURT: Right, but my point was that to the extent there's some part of
16 the argument is disputing whether he did these things. He stood in court and
17 acknowledged he did it.

18 MR. GAMAGE: Yes, Judge.

19 THE COURT: And that it -- unlike some cases and frankly a lot of sex cases it
20 was not an *Alford* plea.

21 MR. GAMAGE: I understand that, Judge, and yes I apologize that nuisance
22 slipped my mind as I was got talking. For purposes of discussion with a client as to
23 what an *Alford* plea does or does not do for you -- for purposes of the client it
24 doesn't do a lot. It does some things --

25 THE COURT: I mean, it doesn't change the conviction --

1 MR. GAMAGE: -- that they're going to do time.

2 THE COURT: -- or yeah the a sentence.

3 MR. GAMAGE: It doesn't -- for their purposes. And so, you know, a lot of
4 that is hard to sell, you know, to a client. And so a lot of those aren't done very
5 often. And sometimes the District Attorney's Offices don't allow them. You know,
6 then fine you're not going to take the deal, don't take the deal, we're going to trial.
7 And so, you know, but yes it is a part of -- and I say this for purposes of argument,
8 Judge.

9 THE COURT: Yep.

10 MR. GAMAGE: There's a part of a defense attorney's job to explain to people
11 that, you know, sometimes it's better to take the deal then to go to a trial that which
12 is not necessarily truth, --

13 THE COURT: Right.

14 MR. GAMAGE: -- which is going to be at the end. But it's what the State can
15 prove.

16 THE COURT: Right.

17 MR. GAMAGE: And, you know, I've had client's say I'm absolutely innocent.
18 I'm absolutely innocent. I'm absolutely innocent. I didn't do this. Okay, but you
19 know you were facing some very serious charges --

20 THE COURT: Right.

21 THE WITNESS: -- you could do life. And they're offering you two years.

22 THE COURT: Right.

23 MR. GAMAGE: What do you want to do? And they'll say fine. They'll sign it
24 and they'll be done with it.

25 THE COURT: Right.

1 MR. GAMAGE: This was somewhat of a situation that my client had, Judge.

2 THE COURT: Yeah.

3 MR. GAMAGE: He believed that this all arose out of the domestic dispute
4 that was burgeoning between him and his wife. And because of that these were
5 false allegations that were made against him. And that's not -- again to belittle what
6 may have happened or did happen to this little girl. I'm just saying Judge for
7 purposes of his discussion, for purposes of his assessment of the evidence in this
8 case that was his belief and that's why he was adamant about going to trial all the
9 way up until the point where he got this offer that was going to let him do what is the
10 goal of his life.

11 And simple people doing simple things like focusing on the
12 achievement of an Olympic medal that's all they do. That's it, Judge, and that's all
13 that matters to them, those types of people. And I'm -- I think my clients testified
14 that that's the type of person he is. And so they do that to the exclusion of
15 relationships. They do that to the exclusion of all else. And I think that's kind of
16 what he's testifying to today. So I -- Judge, I think what we've met is we met that the
17 standard wasn't met.

18 Okay, I think Ms. Barbeau did not discuss the nuances of the difference
19 between the registration and supervision. I don't think she delved into that for him. I
20 think she somewhat short shifted this issue because this was a new experience for
21 her. And that she was going over a complex issue that maybe she was being.
22 Having questions thrown at her she didn't know the answer to and she didn't want to
23 look like she didn't know the answer. I've been in that situation, Judge. And so
24 maybe she should have walked away from that and maybe she should have come
25 into court and said look, Judge, we need to pass this for another month or so or

1 whatever so that Mr. Sgro can sit with this client. Maybe that should have
2 happened, okay. But I don't believe the standard was adhered to so I believe that
3 the first prong was met.

4 Now as to the second prong my client was deprived of his right to a
5 trial. That is the second prong. That's the deprivation. That's the injury. He has
6 testified that he would have gone to trial. And I thought he was given some credible
7 reasons. And sometimes I -- you know, the personal type of reason is the most
8 credible to them. I mean, it's not like a quirky reason. He gave a -- I think an
9 interesting personal reason. It's very simple, very simple to him. And with that I'd
10 pass it. Unless you have any questions?

11 THE COURT: No, Mr. Sweetin.

12 MR. SWEETIN: Judge, there are -- there's two prongs that the Defendant has
13 to prove. He has to prove that counsel's performance was deficient and that the
14 deficient performance prejudiced the defense. Those are the two things. It's good --
15 the State would submit that the law is clear that the Court begins with the
16 presumption of effectiveness. And in the case of a guilty plea the guilty plea is
17 presumed valid. So the Defendant has to tip the scales in this case. We're looking
18 at preponderance of evidence. The Defense does not come near to doing that at all
19 in this case the State would submit.

20 In the case of a guilty plea the Defendant must show reasonable
21 probability that but for counsel's errors he would not have pleaded guilty and would
22 have instead gone to trial. Let's start there for a minute. You know, even if the
23 Defendant, if counsel is somehow found to be deficient in some way, which State
24 submits is far from the case, in this particular case the Defendant is saying
25 essentially that in his pleadings anyway he says that the reason that he wants to

1 walk away from this deal is that he didn't understand lifetime supervision. He didn't
2 understand sex offender registration. He didn't understand the psychological
3 evaluation despite all the testimony that we have contradicting that. He's saying that
4 that's the reason he wants to walk away from this.

5 If we look at this the Court went through the charges that were charged
6 beforehand and what he walked away from at the end. We go from he's charged at
7 the beginning with a sentencing range of 62 years to life and he gets a deal where
8 the sentencing range is essentially 4 to 31 years. So he gets an incredible benefit
9 here. Just from a rationable, reasonable standpoint the State would submit that it's
10 unreasonable to believe that an individual would want to walk away from the deal
11 because of these particular items.

12 What's really going on here he gets buyer's remorse. I mean, he takes
13 the deal. He comes before the Court. He makes his best arguments for sentencing
14 and the sentencing doesn't go the way he wants. And so as a result of that he
15 comes back here and says well wait a second, wait a second, I didn't understand
16 the deal beforehand. That's what's going on here.

17 You know, he's talked a little bit about the boxing thing. And I think the
18 Court was very astute in regards to the calculating his age and his goals of going to
19 the Olympics. I think that that's not something -- that's also something that's not
20 reasonable here. I think that he misses that prong completely. It's just not
21 reasonable to say that these particular items that he's delineated as the reason why
22 he didn't want to go forward with this deal outweighs the benefit of this deal. The
23 State would submit that that's clear that that's just not the case. But beyond that
24 there's no ineffective assistance here.

25 In this case we got an attorney who comes in here after a number of

1 years and she remembers this guy. She says that this guy was very active. He was
2 very inquisitive. He was very engaged in the conversations that she was having
3 with him. She described going and seeing him on a number of occasions. She
4 indicated that she went to court on a number of occasions with him. And the court
5 record indicates that she was before, Your Honor, on at least I think 2 to 3 occasions
6 on discovery issues. So she was involved in this case. She was talking to him on a
7 regular basis. She explained to him this Guilty Plea Agreement.

8 Now we've talked about her being a new attorney. And I've been a new
9 attorney. And I'll tell you something when I was a new attorney I think I as more
10 prepared for things than I am now as a more seasoned attorney. And the reason for
11 that is man I got into the statutes. I printed them out. I wanted to know every little
12 bit, because this is the first time I'm through it. Now the reason that the State says
13 that is that's very instructive for this because that's the mechanics of exactly what
14 we're talking about here. Because we're talking about going through this Guilty Plea
15 Agreement and letting the Defendant know exactly what he's agreeing to. And
16 that's what she said she did. She researched this out. She figured everything out.
17 She brought it into him. She laid it all out.

18 She even remembered specific questions that were asked. She
19 remembers the question that the Defendant made reference to where he indicated:
20 Well, you know, what if I move out of state? She says well I quickly told him yeah
21 you still have to register. He said well she said she didn't know. Well that doesn't
22 make any sense. Based upon I think -- the State would submit just looking at the
23 witness, the demeanor of the witness, the way in which she handles stuff that just
24 does not make sense the State would submit.

25 And I think as -- you know as an attorney that is something that I think

1 any attorney takes very, very serious and certainly wouldn't guess or whatnot. But
2 add to that now all the other things that we know about the Defendant. Because we
3 just don't have the attorney coming in and saying hey this is the story. We've got
4 the Guilty Plea Agreement, which he signs. And in that Guilty Plea Agreement he
5 basically -- it lays out, you know, the sex offender registration, the psychosexual
6 evaluation. He signs that saying he doesn't have any more questions for the Court.
7 He understands. He's satisfied with his counsel. All his questions have been
8 answered, all of that.

9 We put together that Guilty Plea Agreement for a reason. You know, I
10 mean, if someone can just say well you know what I didn't want to read it so I just
11 didn't and that's sufficient. Well the Guilty Plea Agreement really doesn't have a lot
12 of function then does it? And that's essentially what the Defendant is doing here.
13 That's why the Court brings him in and you canvass them and the canvass is
14 another thing. You talk to him about the Guilty Plea Agreement. Did you read this
15 Guilty Plea? Do you understand this Guilty Plea Agreement? Did you talk to
16 counsel about this Guilty Plea Agreement? And you go through all those things.
17 The Court has to depend on that when the Defendant enters his plea, has to.

18 And the State submits that in the course of that plea agreement here
19 the Defendant clearly said that he had talked to his attorney about this and he
20 understood everything that was going on. He asked if he had any questions -- you
21 asked him if he had any questions. If you have any questions ask me or your
22 attorney. You can ask me if you want to, any questions. And he says no I don't
23 have any questions. Defendant has not made a showing on either prong. And the
24 State submits that his writ should be denied. We'd submit it on that.

25 THE COURT: Mr. Gamage, any rebuttal?

1 MR. GAMAGE: Judge, he says these forms are made to, you know, because
2 we want everybody to understand these things. These forms are handed to people
3 who are facing some of the worst times in their lives. These forms are handed to
4 people in courtrooms, you know, that are -- that sometimes look like let's make a
5 deal. I mean, I've been in courtrooms where Judges like yourself have had three
6 calendars in one morning and are telling people let's go, let's go, let's go. You
7 know, and it's like you need to move it along here or we're going to wait three
8 weeks. You're going to be in custody for three weeks. I mean, things like that
9 happen. There is pressure. There's time.

10 And then of course you've got attorneys who have little time. And it's
11 hard for them to get in -- over to the jail because it's hard for them to get it in their
12 schedule like if they have to go do trials and they're prepping for this and they're
13 doing that. So there's pressure okay and there's pressure. And the idea that all
14 these defendant's read this stuff and don't rely on these attorneys. I mean, it's the --
15 quite the opposite. That's all they do is rely on it. Okay, because that's all they
16 have. It's the person that speaks to them as opposed to this cold written piece of
17 paper that doesn't say anything other than blah, blah, blah, and just keeps going
18 and going and going.

19 And of course he's going to sign this and of course he's going to come
20 to court and say yes to everything the Judge says. Because I was told that this is
21 the deal. I'm going to get 4 years. I'm going to be able to box. I'm not going to
22 have to be 35 years in prison. You know, and that's a big deal and people do that
23 every day in these courtrooms. They have to make a decision as to whether or not
24 they're going to take a chance, spin the wheel, or they're going to, you know, take
25 what is known in front of them. What -- the known evil that's handed to them. And a

1 lot of people, because the court knows the statistics, 90 something odd percent of
2 these cases are all pled out --

3 THE COURT: Right.

4 MR. GAMAGE: -- for good reason, Judge. And so with that, Judge, I would
5 state that my client's statements were very credible. I think -- you know, as I've
6 seen -- I've represented clients over the years. They were very credible in the
7 sense that he had a very personal reason for believing and he stated very matter-of-
8 factly I believe her. She's my attorney. That's her job. You know, and a lot of
9 people do that. And that's what it -- that's how they rely.

10 I believe that Ms. Barbeau's statements were -- I think she just doesn't
11 want to be said to have been -- said to have made a mistake. Okay, and that's
12 okay. Maybe she doesn't understand that as a civil attorney. We're not accusing
13 her of doing anything wrong. I'm not saying she's a bad attorney. I'm saying that
14 she just may have made a mistake. I make mistakes all the time, Judge. And
15 sometimes, it hasn't happened to me yet and I hope it never does, but sometimes
16 those mistakes can turn into a constitutional violation. And I'm asserting today,
17 Judge, that's what happened when you send a 6 or 8 month attorney in to do this
18 job, okay, with this gentleman and the evidence picture that we have here today.

19 And so he's fully aware of what he's getting if you grant this writ. And
20 I'd ask you to grant this writ, Judge, based upon the fact that we've met our burden
21 on both prongs.

22 THE COURT: So because this is a habeas petition on a gentleman who
23 entered a guilty plea the focus of the habeas writ has to be on whether he was given
24 effective assistance in terms of the entering of the plea and then the prejudice is
25 whether in fact he would have rejected the offer and gone to trial instead.

1 And so Ms. Barbeau at the time that she was counseling Mr. Looper
2 about entering this plea was a new attorney, obviously that's undisputed. She was
3 still a fairly new attorney. But what is also clear to me though is that she wasn't
4 making any decisions without consulting with Mr. Sgro about them who obviously is
5 a much more experienced attorney. That she did, unlike the folks who are going
6 over a guilty plea agreement with a client in the box here during the calendar, went
7 over and met with him at the jail for a lengthy period of time going through not just
8 his file but all of the evidence against him and perhaps evidence that favors him,
9 going through all the evidence and then going through the agreement. And she
10 testified that she had talked to him about registration and supervision. And she did
11 recall discussion about that with Mr. Looper.

12 And when I -- during the plea canvass when I asked about lifetime
13 supervision to me it's pretty telling that she very quickly responded yes that's part of
14 the negotiations. It's lifetime supervision. She didn't say what's that -- you know, I
15 better go check that or it looks like -- she didn't -- she wasn't flustered or taken by
16 surprise by that at all. And when I followed up and asked Mr. Looper about it he
17 also, you know, acknowledged yes.

18 Now I understand that Mr. Looper may not have read himself through
19 each and every word reading from the page of the Guilty Plea Agreement, but it
20 does appear to me that she did go over the agreement with him. That she was
21 reviewing it and discussing with him what it meant precisely because a lay person
22 wouldn't necessarily understand all of how that's written on the page. And her
23 having taken the time to go through all of that and even brought statutes with her,
24 which was the testimony. And frankly I think that's unusual and prob -- and goes
25 above and beyond. And because she was a new attorney it seems to me that she

1 was trying to make sure she covered everything with regard to this Plea Agreement.

2 And the basis for the petition is about a lack of understanding regarding
3 the registration and supervision and the need for another psychosexual to be
4 released on parole. And I don't think it was even alleged in here about the sentence
5 or the position today that it was promised to him that he was getting the minimums
6 on all counts and all of them were definitely running concurrent. But certainly the
7 Plea Agreement itself and my plea canvass to him was to the contrary.

8 And I think what -- let's see how can I say this? Sometimes when a
9 defendant or any person when you're seeing one thing and you're focused on one
10 thing sometimes you don't hear everything else. And it's possible that some of that
11 was going on here. And Mr. Looper's testimony was that basically, you know, she
12 might have talked -- mentioned these other things, but I was focused on this and
13 that's what I wanted to do. And I think that the testimony of Ms. Barbeau and Ms.
14 Weaver is credible in that there was that discussion that he had no concerns. I'm
15 sorry it's now Ms. Kratsas not Ms. Barbeau. I think that was credible testimony
16 about what they reviewed.

17 And I think that, you know, there was right to argue at the time of
18 sentencing. And I felt at the time of sentencing that a fairly lengthy sentence was
19 appropriate and that's what I imposed. And I think that it wasn't the sentence that
20 Mr. Looper had hoped for and I understand that that was the case. But hoping for it
21 and being guaranteed it are two different things. And I don't have any evidence --
22 well I understand his testimony. I don't find credible the testimony that anyone
23 promised him that's what was going to happen. I think they discussed the ranges,
24 but I don't believe that he was guaranteed the minimum.

25 And so overall when I look at this it seems to me that he was given

1 effective assistance of counsel in advising about the entry of this plea. And I find
2 that he made the choice to enter this plea with full advice and that would not have
3 made the decision to proceed to trial under the circumstance based on the plea deal
4 which was a substantial benefit to him given what he was facing at the time. So for
5 all of those reasons I am denying the petition for a writ of habeas corpus. I'm going
6 to need the State obviously to prepare the proposed order and of course show the
7 draft to Mr. Gamage before you submit it.

8 MR. GAMAGE: Can I ask for two points of clarification, Your Honor?

9 THE COURT: Yep.

10 MR. GAMAGE: Okay, one the Court mentioned wasn't flustered and
11 responded quickly. Did -- may I inquire into the Court did you review the JAVS
12 video of the hearing?

13 THE COURT: No, that's a good question. Actually I did not. I was reading
14 the transcript and I saw the response in the transcript. So that's a fair point. I don't
15 know how long it took, but I know it's her that responded --

16 MR. GAMAGE: I just --

17 THE COURT: -- the way she responded.

18 MR. GAMAGE: I was just going to ask --

19 THE COURT: No, it's a fair question.

20 MR. GAMAGE: I was just going to ask if you did if you could put the JAVS
21 into an exhibit so that we can --

22 THE COURT: Sure.

23 MR. GAMAGE: -- review it for appellate purposes.

24 THE COURT: It's a very reasonable question and I'm glad to clarify it. I
25 actually did not review the JAVS. It was based on my reading of the transcript that I

1 drew that conclusion.

2 MR. GAMAGE: And the Court made part of its findings that you felt based
3 upon the testimony that there was a fairly lengthy sentence was called for.

4 THE COURT: Yes.

5 MR. GAMAGE: Generally we're not allowed as litigants to inquire into the
6 reasoning underlying Court's decisions. And so I could not cross-examine you on
7 that issue. And I thought that the Court did bring up the issue that we did not bring
8 as to the sentencing. We didn't bring about what the amount of the sentence would
9 be as part of our pleadings so I --

10 THE COURT: The -- there wasn't an argument that there was a
11 misrepresentation by counsel about how the sentencing works and the ability to run
12 them consecutive and to not go -- even though the range is 2 to 20 and 8 to 20 we
13 all know is a legal sentence within that range.

14 MR. GAMAGE: I'm just -- what I'm asking the Court to maybe advise the
15 State is that they do not put that -- the portion of the Court's statement, consider it
16 maybe dicta, that you felt that a lengthy sentence was required. Because in
17 essence it doesn't go to the pleadings it doesn't go to the issues. And I can't cross-
18 examine the Court on that issue. Although the sentencing transcript is in --

19 THE COURT: Right.

20 MR. GAMAGE: -- in evidence.

21 THE COURT: So the fact that, I mean, --

22 MR. GAMAGE: It's irrelevant I guess is what I'm saying.

23 THE COURT: Well the fact that I did impose -- effectively I maxed him out
24 and so obviously that's part of it.

25 MR. GAMAGE: I concede your ability to do that, Judge.

1 THE COURT: No, no, no. Obviously I know that. What I'm saying is I think
2 it's appropriate as part of the legal analysis that I did impose the maximum
3 sentence. I don't necessarily disagree with whether my reasoning should be in the
4 order so that's fine if that's not. But it's part of the analysis in terms of this petition
5 coming back after being maxed out on the sentence, which perhaps was not what
6 he thought was going to happen.

7 MR. GAMAGE: Thank you, Your Honor.

8 THE COURT: But to be clear I don't -- I don't find that any attorney
9 represented to him that he was going to get the minimums and that they would be
10 run concurrent.

11 MR. GAMAGE: Thank you, Judge.

12 THE COURT: Okay thanks for your time.

13 MR. SWEETIN: Thanks, Judge.

14 [Hearing concluded at 4:51 p.m.]

15 * * * * *

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

18 

19 Jessica Kirkpatrick
20 Court Recorder/Transcriber
21
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23
24
25



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

CASE#: C279379
DEPT. VI

10 vs.

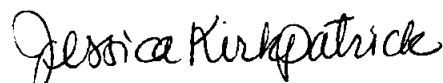
11 DUJAN LOOPER,
12 Defendant.

13
14 **ERRATA**

15 A clerical error was discovered on page 2 of the transcript of the
16 evidentiary hearing held on July 6th, 2017. I accidentally filed it with my working copy
17 of the index page.

18
19 Attached is the correct index page.

20
21 Dated this 3rd day of August, 2017

22
23 

24 Jessica Kirkpatrick
25 Court Recorder/Transcriber

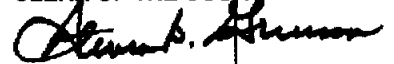
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1 NEO

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

4 DUJUAN LOOPER,

5
6 Petitioner,

Case No: C-12-279379-1

Dept No: VI

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on August 18, 2017, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on August 22, 2017.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 22 day of August 2017, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Dujan Looper # 1120989
P.O. Box 650
Indian Springs, NV 89070

William Gamage, Esq.
5580 S. Fort Apache Rd., Ste 110
Las Vegas, NV 89148

26
27 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

ORIGINAL

Electronically Filed
8/18/2017 2:32 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JAMES R. SWEETIN**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005144**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**
11 **Plaintiff,**

12 **-vs-**

13 **DUJUAN LOOPER,**
14 **#1871455**

15 **Defendant.**

CASE NO: C-12-279379-1

DEPT NO: VI

16 **FINDINGS OF FACT, CONCLUSIONS OF**

17 **LAW AND ORDER**

18 **DATE OF HEARING: JULY 6, 2017**

19 **TIME OF HEARING: 1:30 PM**

20 **THIS CAUSE** having come on for hearing before the Honorable ELISSA CADISH,
21 **District Judge,** on the 6th day of July, 2017; the Petitioner not being present, represented by
22 **WILLIAM H. GAMAGE, ESQ.;** the Respondent being represented by **STEVEN B.**
23 **WOLFSON,** Clark County District Attorney, by and through **JAMES R. SWEETIN,** Chief
24 **Deputy District Attorney;** and having considered the matter, including briefs, transcripts,
25 **arguments of counsel,** and documents on file herein, the Court makes the following findings
26 **of fact and conclusions of law:**

27 **//**

28 **//**

1 **FINDINGS OF FACT**

2 **CONCLUSIONS OF LAW**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 DUJUAN DON LOOPER (hereinafter "Looper") with the following: COUNT 1 – Second
6 Degree Kidnapping (Category B Felony- NRS 200.310); COUNT 2 – Coercion (Category B
7 Felony – NRS 207.190); COUNTS 3 & 4 – Child Abuse and Neglect (Category B Felony –
8 NRS 200.508); COUNT 5 – Battery Constituting Domestic Violence – Strangulation
9 (Category C Felony – NRS 200.481, 200.485, 33.018); COUNT 6 – Sexual Assault with a
10 Minor Under Fourteen Years of Age (Category A Felony – NRS 200.364, 200.366); COUNT
11 7 – Lewdness with a Child Under the Age of 14 (Category A Felony – NRS 201.230); COUNT
12 8 – Use of Minor in Producing Pornography (Category A Felony – NRS 200.700, 200.710,
13 200.750); and COUNT 9 – Possession of Visual Presentation Depicting Sexual Conduct of a
14 Child (Category B Felony – NRS 200.700, 200.730).

15 On January 8, 2014, Looper entered into a Guilty Plea Agreement, whereby he agreed
16 to plead guilty to the following charges as contained in a Third Amended Information:
17 COUNT 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age (Category
18 B Felony – NRS 193.330, 200.364, 200.366); COUNT 2 – Battery Constituting Domestic
19 Violence – Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018); and COUNT
20 3 – Possession of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony
21 – NRS 200.700, 200.730).

22 On April 28, 2014, Looper appeared for sentencing and was sentenced to the Nevada
23 Department of Corrections ("NDOC") as follows: as to COUNT 1 – 96 to 240 months; as to
24 COUNT 2 – 19 to 60 months, to run consecutive to Count 1; as to COUNT 3 – 19 to 72 months,
25 to run consecutive to Counts 1 and 2. Looper received 809 days credit for time served. The
26 Court also imposed a special sentence of lifetime supervision and ordered Looper to register
27 as a sex offender. The Judgment of Conviction ("JOC") was filed on May 23, 2014.

28 //

1 Looper filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court affirmed
2 the conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11, 2014). Remittitur
3 issued on January 5, 2015.

4 On January 16, 2015, Looper filed a Post-Conviction Petition for Writ of Habeas
5 Corpus ("Petition") and Motion to Appoint Counsel. The State filed an Opposition to Looper's
6 Motion to Appoint Counsel on February 2, 2015. On February 4, 2015, this Court appointed
7 counsel. William H. Gamage, Esq., was confirmed as counsel on February 11, 2015.

8 On April 18, 2016, Looper, through counsel, filed a Supplement to Petition for Writ of
9 Habeas Corpus ("Supplement"). On June 13, 2016, the State filed its Response to Looper's
10 Petition and Supplement.

11 On July 6, 2017, an evidentiary hearing was held where this Court heard sworn
12 testimony from Melinda Weaver, Esq. ("Ms. Weaver"), Marjorie Barbeau Kratsas, Esq. ("Ms.
13 Barbeau"), and Looper. This Court denied habeas relief noting that Looper made the choice to
14 enter his plea with full advice from counsel and would not have made the decision to proceed
15 to trial based on the plea negotiations, which was a substantial benefit to Looper given what
16 he was facing. This Court now orders that Looper's Petition for Writ of Habeas Corpus be
17 DENIED.

18 Looper claims that his guilty plea was involuntarily made due to ineffective assistance
19 of counsel. Claims of ineffective assistance of counsel are analyzed under the two-pronged
20 test articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein
21 the defendant must show: (1) that counsel's performance was deficient, and (2) that the
22 deficient performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted
23 this standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). "A court may consider
24 the two test elements in any order and need not consider both prongs if the defendant makes
25 an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102,
26 1107 (1997).

27 //

28 //

1 “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559
2 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney’s
3 representations amounted to incompetence under prevailing professional norms, “not whether
4 it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86,
5 88, 131 S. Ct. 770, 778 (2011). Further, “[e]ffective counsel does not mean errorless counsel,
6 but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of
7 attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975)
8 (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

9 The court begins with the presumption of effectiveness and then must determine
10 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
11 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role
12 of a court in considering alleged ineffective assistance of counsel is “not to pass upon the
13 merits of the action not taken but to determine whether, under the particular facts and
14 circumstances of the case, trial counsel failed to render reasonably effective assistance.”
15 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,
16 551 F.2d 1162, 1166 (9th Cir. 1977)).

17 In considering whether trial counsel was effective, the court must determine whether
18 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
19 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at
20 690–91, 104 S. Ct. at 2066). Then, the court will consider whether counsel made “a reasonable
21 strategy decision on how to proceed with his client’s case.” Doleman, 112 Nev. at 846, 921
22 P.2d at 280 (citing Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066). Counsel’s strategy
23 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
24 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280.

25 This analysis does not indicate that the court should “second guess reasoned choices
26 between trial tactics, nor does it mean that defense counsel, to protect himself against
27 allegations of inadequacy, must make every conceivable motion no matter how remote the
28 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551

1 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of counsel’s
2 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
3 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed
4 ineffective for failing to make futile objections, file futile motions, or for failing to make futile
5 arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

6 When considering ineffective-assistance-of-counsel claims where the defendant
7 pleaded guilty, the Nevada Supreme Court has held that:

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

15 Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) (internal quotations and
16 citations omitted) (emphasis added). “A reasonable probability is a probability sufficient to
17 undermine confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. It is
18 counsel’s duty to candidly advise a defendant regarding whether or not they believe it would
19 be beneficial for a defendant to accept a plea offer, but the ultimate decision of whether or not
20 to accept a plea offer is the defendant’s, as it was in this case. Rhyne v. State, 118 Nev. 1, 8,
21 38 P.3d 163, 163 (2002).

22 Claims asserted in a petition for post-conviction relief must be supported with specific
23 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100
24 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” or “naked” allegations are not sufficient, nor
25 are those belied and repelled by the record. Id.; see also NRS 34.735(6).

26 Looper claims that his plea counsel, Marjorie E. Barbeau, Esq., rendered ineffective
27 assistance because she failed to fully inform him of (1) the nature and requirements of sex
28 offender registration; (2) the consequences and procedural aspects of lifetime supervision; and

1 (3) the requirement that he undergo a medical and mental health assessment in order to be
2 eligible for parole. Supplement at 6. These claims are belied by the record. Hargrove, 100 Nev.
3 at 502, 686 P.2d at 225.

4 First, this Court canvassed Looper fully on the consequences of his guilty plea.
5 Recorder's Transcript of Hearing, January 8, 2014, at 2-6. Within this canvass, the Court
6 specifically asked Looper whether he understood that he would be subject to sex offender
7 registration, lifetime supervision, and a psychosexual evaluation:

8 THE COURT: You understand that you are not eligible for
9 probation for counts 1 and 2?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And as to count 3, the visual presentation of sexual
12 conduct of a child charge that by pleading guilty to that charge
13 there's going to be a psychosexual evaluation – it's kind of moot
14 in a sense – but you wouldn't be eligible for probation unless it
15 found you were not a high risk to reoffend. Additionally if you
16 serve time in prison you can't be paroled unless there's a finding
17 that you do not represent a high risk to reoffend. Do you
18 understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And additionally your sentence will include a
21 requirement that you register as a sex offender. Do you understand
22 that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: It's not lifetime supervision?

25 MS. BARBEAU: Judge, that was part of the negotiations. So it
26 will be lifetime supervision.

27 THE COURT: It is lifetime. So you understand you will also be
28 subject to lifetime supervision as a sex offender even after release
from custody, do you understand that?

THE DEFENDANT: Yes, Your Honor.

Id. at 5-6. When Looper was asked whether he had questions for the Court or his attorney, he
replied in the negative. Id. at 6. While the advisement concerning the psychosexual evaluation
appeared after discussion of Count 3, this does not make a difference, and it was clear Looper
was advised that before he could be eligible for parole, he would have to undergo a

1 psychosexual evaluation.

2 Further, the Guilty Plea Agreement contained specific provisions informing Looper of
3 the psychosexual evaluation and sex offender registration requirements:

4 Further, that before I am eligible for parole a panel consisting of
5 the administrator of the mental health and developmental services
6 of the department of human resources or his designee; the director
7 of the department of corrections or his designee; and a
8 psychologist license to practice in this state or a psychiatrist
9 license to practice medicine in this state certifies that I was under
10 observation while confined in an institution of the department of
11 corrections that I do not represent a high risk to reoffend based
12 upon a currently accepted standard of assessment.

13 I further understand that the Court will include as part of my
14 sentence, in addition to any other penalties provided by law,
15 pursuant to NRS 179D.450, I must register as a sex offender within
16 forty-eight (48) hours of release from custody.

17 Guilty Plea Agreement, filed January 8, 2014, at 3-4. Thus, the Guilty Plea Agreement further
18 advised Looper of the consequences of his plea.

19 Lastly, at the evidentiary hearing, the Court stated that Ms. Barbeau was a new attorney
20 at the time she was counseling Looper, however, it was clear to the Court that she was not
21 making any decisions without consulting Mr. Sgro. Moreover, because Ms. Barbeau was a
22 new attorney, it seems to the Court that she was trying to make sure she covered everything
23 with regard to Looper's Guilty Plea Agreement. Ms. Barbeau testified that she went to the
24 Clark County Detention Center ("CCDC") and met with Looper for a lengthy period of time
25 going through not just his file, but all the evidence and the Guilty Plea Agreement. Ms.
26 Barbeau further testified that she recalls speaking with Looper about sex offender registration
27 and lifetime supervision.

28 Looper claims that Palmer v. State, 118 Nev. 823, 831, 59 P.3d 1192, 1197 (2002), is
analogous to his case. Palmer, however, is distinguishable. In that case, the Nevada Supreme
Court held that, "the record of a plea canvass in the district court should reflect that a defendant
entering a plea of guilty to a sexual offense enumerated in NRS 176.0931 has been specifically
advised that lifetime supervision is a consequence of the plea." Unlike the district court in
Palmer, the plea canvass in this case did exactly that.

1 Further, the Palmer Court noted “that the failure of the record to reflect such an
2 advisement is not necessarily reversible error,” as a guilty plea would remain valid “if the
3 totality of the circumstances revealed by the record otherwise demonstrate that the defendant
4 was aware of the consequence prior to the entry of the plea, and was so informed either by the
5 written plea agreement, by counsel, or in some other manner.” Id. Here, once again, it is clear
6 from the record that Looper was advised of the lifetime supervision consequence via the plea
7 canvass, even if it was not contained in the Guilty Plea Agreement. Under a totality of the
8 circumstances approach, as mandated by Palmer, it is clear that Looper was advised that he
9 would be subject to lifetime supervision upon release.¹

10 To the extent Looper attempts to insert additional claims relating to the voluntariness
11 of his plea, and that he was given an inadequate amount of time to review the Guilty Plea
12 Agreement in his “Justification for Evidentiary Hearing” Section, these claims are belied by
13 this Court’s canvass, where Looper acknowledged that he had read the Guilty Plea Agreement,
14 understood everything contained within it, and discussed it with his attorney. Recorder’s
15 Transcript of Hearing, January 8, 2014, at 4.

16 Therefore, this claim is belied by the record and is denied.

17 Looper also argues that Nevada’s lifetime supervision statutes, NRS 176.0931, NRS
18 213.1243, and NRS 213.1255 are unconstitutionally vague. Supplement at 7-11. This claim is
19 procedurally barred.

20 Nevada law dictates that all claims appropriate for direct appeal must be pursued on
21 direct appeal or they will be “considered waived in subsequent proceedings.” Franklin v. State,
22 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v.
23 State, 115 Nev. 148, 979 P.2d 222 (1999). The Nevada Supreme Court has emphasized that:
24 “[a] court *must* dismiss a habeas petition if it presents claims that either were or could have
25 been presented in an earlier proceeding, unless the court finds both cause for failing to present
26 the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v.

27 ¹ To the extent being advised of the “procedural aspects” of lifetime supervision exceeds being advised of the
28 consequence of lifetime supervision, it is not required by Palmer, and Looper does not point to any other
authority requiring a drawn-out explanation of all the aspects of lifetime supervision.

1 State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added), overruled in part on
2 other grounds, Lisle v. State, 131 Nev. ___, 351 P.3d 725 (2015).

3 Here, Looper's claims relating to the constitutionality of the lifetime supervision
4 statutes could have been raised during his direct appeal. Looper is obviously raising a
5 substantive attack on the statutes, rather than a collateral one based on the actions of counsel,
6 given that in his "Justification for Evidentiary Hearing" section, he states that this claim
7 "amounts to a review of this Court of the language of the statutes complained of to render an
8 at-law decision." Supplement at 11. Looper fails to establish good cause for failing to raise
9 this claim on direct appeal. Accordingly, this claim should be dismissed pursuant to Evans and
10 Franklin.

11 Additionally, this claim falls outside the scope of claims that may be raised in a habeas
12 petition after a guilty plea:

13 1. The court shall dismiss a petition if the court determines that:

14 (a) The petitioner's conviction was upon a plea of guilty or guilty
15 but mentally ill and the petition is not based upon an allegation
16 that the plea was involuntarily or unknowingly entered or that the
17 plea was entered without effective assistance of counsel.

18 unless the court finds both cause for the failure to present the
19 grounds and actual prejudice to the petitioner.

20 NRS 34.810(1)(a). This claim clearly falls outside the scope of permissible claims for habeas
21 relief after a guilty plea. Looper fails to establish good cause and prejudice to overcome this
22 procedural bar. Therefore, this claim should also be dismissed pursuant to NRS 34.810(1)(a).

23 Looper also raised several pro per claims within his initial Petition, including: (1)
24 counsel did not visit him; (2) counsel did not file "exculpatory" motions; (3) counsel did not
25 file a "habeas in limine challenging the sufficiency of the evidence;" (4) counsel did not obtain
26 a fair sentence for Looper; (5) counsel did not examine the witness statements "closely
27 enough," (6) counsel refused to involve Looper in the defense; (7) counsel was ineffective
28 because the State retained the right to argue; (8) counsel did not advise him that sentencing

1 was a matter of the Court's discretion; (9) counsel "took advantage" of him; and (10) counsel
2 did not seek withdrawal of his plea.

3 These claims amount to nothing but bare, naked allegations. Hargrove, 100 Nev. at 502,
4 686 P.2d at 225.

5 To the extent Looper alleges a failure to investigate, he does not show prejudice. A
6 guilty plea, of necessity, cuts short trial preparation and investigation. The notion that guilty
7 pleas are entered into only after all trial preparation is fully concluded is false:

8 Molina impliedly argues that, to satisfy Strickland, counsel must
9 fully and completely prepare for trial, exhausting all avenues of
10 defense, before rendering advice concerning a negotiated
11 arrangement proposed by the State. We disagree. Where counsel
and the client in a criminal case clearly understand the evidence
and the permutations of proof and outcome, counsel is not required
to unnecessarily exhaust all available public or private resources.

12 Molina, 120 Nev. at 191-92, 87 P.3d at 538. A defendant who contends his attorney was
13 ineffective because he did not adequately investigate must show how a better investigation
14 would have rendered a more favorable outcome probable. Id. Looper fails to make this
15 showing.

16 To the extent Looper claims that counsel failed to file a pre-trial writ of habeas corpus,
17 Looper waived his right to a preliminary hearing. Reporter's Transcript of Waiver of
18 Preliminary Hearing, February 9, 2012. Looper could not have raised a pre-trial challenge to
19 the sufficiency of the allegations in light of his waiver, and any motion would have been futile.
20 Ennis, 122 Nev. at 706, 137 P.3d at 1103.

21 Looper fails to show what "exculpatory" motions should have been filed or that these
22 motions had any likelihood of success. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

23 Looper's claim that he was not advised that sentencing was a matter of the Court's
24 discretion is belied by this Court's canvass and the Guilty Plea Agreement. Recorder's
25 Transcript of Hearing, January 8, 2014, at 6; Guilty Plea Agreement, filed January 8, 2014, at
26 4. To the extent Looper complains of the State's retention of the right to argue, he chose to
27 plead guilty despite this provision, and counsel cannot be faulted for Looper's choice to take
28 this negotiation. See Rhyne, 118 Nev. at 8, 38 P.3d at 163.

Looper's objections to his counsel's performance at sentencing are subjective and belied by counsel's sentencing argument. Recorder's Transcript of Hearing, April 28, 2014, at 7. Looper also fails to show any legal basis to raise a Motion to Withdraw Guilty Plea, and his conduct at sentencing, which reflects a willingness to proceed with sentencing, suggests he never sought to have his guilty plea withdraw.

Finally, Looper's claims relating to his relationship with counsel are bare allegations. Hargrove, 100 Nev. at 502, 686 P.2d at 225. There is no indication that counsel "took advantage" of him. Moreover, Looper was not entitled to a meaningful relationship with counsel nor entitled to direct trial strategy. See Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983); Rhyne, 118 Nev. at 8, 38 P.3d at 163.

Accordingly, Looper's pro per claims are denied in their entirety.

ORDER

THEREFORE, IT IS **HEREBY ORDERED** that the Petition for Writ of Habeas Corpus and Supplement to Petition for Writ of Habeas Corpus shall be, and it is, denied.

DATED this 14 day of July, 2017.

DISTRICT JUDGE BL

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

BY

JAMES R. SWEETH
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 28th day of JULY
2017, to:

WILLIAM GAMAGE, ESQ.
wgamage@gamagelaw.com

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

MC
AOR
WILLIAM H. GAMAGE
FP

Electronically Filed
5/11/2018 1:59 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

Du Juan Looper # 1120989
/In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

IN THE 5th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

State of NEVADA
Plaintiff

vs.

Du Juan Looper
Defendant

Case No. C-12-279379-1

Dept. No. 6

Docket _____

MOTION TO WITHDRAW COUNSEL

Date of Hearing: June 4, 2018

Time of Hearing: 8:30 am

'ORAL ARGUMENT REQUESTED, Yes _____ No ✓

COMES NOW, Defendant, Du Juan Looper, proceeding in proper person,
moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
of record in the proceeding action, namely,

William H. Gamage

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
which are hereby incorporated by this reference, the Points and Authorities herein, and attached
Affidavit of Defendant.

DATED: this 1 day of May, 2018.

BY: Du Juan Looper

Du Juan Looper #1120989
HDSP /In Propria Personam

CLERK OF THE COURT

MAY 11 2018

RECEIVED

90

CLERK OF THE COURT

MAY 06 2018

RECEIVED

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items
5 of tangible personal property which belong to or were prepared for that client.
6
7 2. . . . If the court finds that an attorney has, without just cause, refused or neglected to obey its
8 order given under this section, the court may, after notice and fine or imprison him until the
9 contempt purged. If the court finds that the attorney has, without just cause, withheld the
10 client's papers, documents, pleadings, or other property, the attorney is liable for costs and
11 attorney's fees.

12 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant
13 does not owe counsel any fees.

14 **WHEREFORE,** Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel
15 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other
16 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper
17 assistance that is needed to insure that justice is served.

18
19 **DATED:** this 1 day of may, 2018

20
21 Respectfully submitted,

22
23 BY: Dustin Miller #1120969
24 HDSP /In Propria Personam
25 Post Office Box 650 [HDSP]
26 Indian Springs, Nevada 89018
27
28

CERTIFICATE OF SERVICE BY MAILING

I, Dustin Leeper, hereby certify, pursuant to NRCP 5(b), that on this 5
day of May, 2018 I mailed a true and correct copy of the foregoing, "Motion
to Withdraw Counsel"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

CCDA
700 Lewis Ave
LAS VEGAS N.V.
89155

CC:FILE

DATED: this 5 day of May, 2018

Dustin Leeper
Dustin Leeper #1120939
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Duane Cooper #1120989
HOSP - P.O. Box 650
Indian Springs NV. 89076



Clerk
8th JD
Dept No. 6
Case No. C-12-279379-1
200 Lewis Ave
Las Vegas NV. 89155-1160

Legal mail

CLINT
MAY 06 2018
(HIGH DESERT STATE PROJECTS)

MEMORANDUM OF POINTS AND AUTHORITIES

FILED

OCT 25 2013

DISTRICT COURT

CLARK County NEVADA

CLERK OF COURT

STATE OF NEVADA

Plaintiff

Case No: C-12-279379-1

VS

Duyuan Looper

Defendant

C-12-279379-1
MMSE
Motion to Modify Sentence
4791143



NOVEMBER 26 2018
@ 8:30 AM

Motion FOR Modification of Sentence

Comes Now Duyuan Looper and Respectfully
Requests this Court for A Modification of Sentence
This Motion is Made and based pursuant to the
Supporting points and Authorities Attached hereto,
NRS 176.033 and NRS 176A.450 as well as All papers
Pleadings and documents on file herein.

Points and Authorities.

The NEVADA Supreme Court has long Recognized
The district Courts have both the power and
Jurisdiction to Modify A Sentence. SEE
Staley vs State 787 P2d 396, 106 Nev 75.
MR Looper is Not ASKING for A Number Reduction
of his Sentences, in fact he has nearly Completed
the 96-240 Month Sentence and will Be parole
eligible, he only ASKS that the Sentences be
Modified to Concurrent terms so once eligible for
parole he Can get out and Be A productive

1 (Additional pages, if needed; identify what is being continued.)

2 Member of Society. The State May ARGUE that
3 laches apply due to the fact that So Many Years
4 have passed Since Sentence was pronounced.
5 However, the NEVADA Supreme Court held that
6 Such A time Requirement does Not apply to A
7 Request to Modify A Sentence SEE: Passanisi VS
8 State 831 P2d/1371, 108 Nev. 318. The term
9 Materially untrue Assumptions is used AS A
10 Reason for Modification. We Assert that Since the
11 Domestic Violence Could Not Be Established by any
12 Type of physical Evidence that this WAS an
13 Assumption/Not based upon Evidence IN A Landmark
14 Case decided in June 2018 the United States Supreme
15 Court Ruled the following: "Judges need Not provide
16 Detailed explanations When Modifying A prison
17 Sentence." This WAS Read and entered by Justice
18 Stephen Breyer for the Majority opinion.
19 We Submit this on its Merits and ASK the
20 Court to Modify the Sentence According to its fair
21 and just Consideration.
22

23
24 DATED this 22ND Day of October 2018

25
26 Respectfully Submitted.
27 X Dustin Tracy
28

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, _____

Motion For Modification Of Sentence

(Title of Document)

Filed in case number: C-12-279379-1

☒ Document does not contain the social security number of any person

Or

☐ Document contains the social security number of a person as required by:

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: October 22, 2018

X Duane Looper
(Signature)

Duane LOOPER
(Print Name)

Pro Se
(Attorney for)

DEAN LOOPER #1120989
-S.P. 1060X 1989
-LY. NV. 89301

LAS VEGAS NV 890
22 OCT 2018 PM 3 L



STEVEN D. GRIERSON
CLARK OF THE COURT
200 LEWIS AVE 3RD FLOOR
LY. NV. ~~89455~~ 89455-1160
89101-630000

U
OCT 21 1983
ELY STATE PRISON

MEMORANDUM OF POINTS AND AUTHORITIES

FILED

NOV 01 2018

CLERK OF COURT

DISTRICT COURT
CLARK County NEVADA

STATE OF NEVADA

Plaintiff

CASE NO: C-12-279379-1

VS

NOVEMBER 26, 2018

C-12-279379-1
MOT
Motion
4792733

Duyuan Hooper

@ 8:30 AM

Defendant



Motion to Correct ILLEGAL Sentence.

MR Hooper Asserts that a Sentence Can in fact become illegal at any time. The Sentence Can Be within Statutory Guidelines and yet if the Due Process of Law is Violated in order to obtain the Sentence it then becomes an illegal Sentence. In this Case the Court Made Several Due Process Violations Concerning MR Hooper. A Defendant has an Absolute Right to Appeal yet as this Court is Well Aware, MR Hooper's Counsel for effecting a Meaningful Appeal was in fact Arrested on Murder Related Charges. As Such MR Hooper is Waiting on Counsel to file an Appeal and the Counsel is in jail. This Obviously is Not and Can Not be Attributed to MR Hooper. Further this Court held two "hearings" with No Parties Present. First hearing denied MR Hooper's Request to Appoint Counsel to represent him in an Appeal and habeas Corpus the Second was the denial of

CLERK OF THE COURT

his petition for writ of Habeas Corpus. This was denied without the required finding of facts and conclusions of law hearing. IN fact there was no hearing as there were no parties present. It is obvious that the odds are stacked against MR Looper, these two hearings were actual denials of his absolute right to petition the Court. Because of these facts the sentence becomes illegal in that if MR Looper had been afforded his right to a hearing on this petition for habeas Corpus then he would have been released, thus he is in an illegal sentence. This Court must rule in favor of MR Looper

Dated this 25th day of October, 2018.

By: X

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, _____

MOTION to Correct ILLEGAL Sentence

(Title of Document)

Filed in case number: C-12-29379-7

☒ Document does not contain the social security number of any person

Or

☐ Document contains the social security number of a person as required by:

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: October 25, 2018

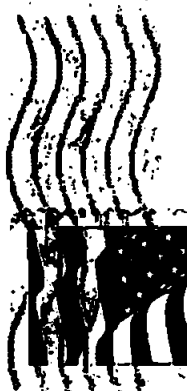
X Duwan Looper
(Signature)

Duwan Looper
(Print Name)

Pro Se
(Attorney for)

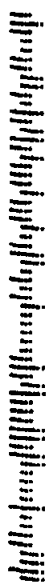
DUJUAN LOOPYR #1120984
E.S.P. Bobox 1985
ELY, NV, 89301

LAS VEGAS, NV 890
29 OCT 2018 PM 4:11



STEVEN D. GRIERSON, Clark of the Court
200 Lewis Ave, 3rd floor
LV, NV, 89155-1160

8910136300 0075



ELY STATE F. CO. I
OCT 28 2018
U8



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN NIMAN
6 Deputy District Attorney
7 Nevada Bar #14408
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 DUJUAN LOOPER,
13 #1871455

14 Defendant.

CASE NO: C-12-279379-1

DEPT NO: VI

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR MODIFICATION OF**
16 **SENTENCE AND TO DEFENDANT'S MOTION TO CORRECT ILLEGAL**
17 **SENTENCE**

18 DATE OF HEARING: NOVEMBER 26, 2018
19 TIME OF HEARING: 8:30 AM

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

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

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 Defendant Dajuan Don Looper ("Defendant") as follows – Count 1 – Second Degree
6 Kidnapping (Category B Felony- NRS 200.310); Count 2 – Coercion (Category B Felony –
7 NRS 207.190); Counts 3-4 – Child Abuse and Neglect (Category B Felony – NRS 200.508);
8 Count 5 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS
9 200.481, 200.485, 33.018); Count 6 – Sexual Assault with a Minor Under Fourteen Years of
10 Age (Category A Felony – NRS 200.364, 200.366); Count 7 – Lewdness with a Child Under
11 the Age of 14 (Category A Felony – NRS 201.230); Count 8 – Use of Minor in Producing
12 Pornography (Category A Felony – NRS 200.700, 200.710, 200.750); Count 9 – Possession
13 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
14 200.700, 200.730).

15 On January 8, 2014, the State filed a Third Amended Information as follows: Count 1
16 – Attempt Sexual Assault with a Minor under Fourteen; Count 2 – Battery Constituting
17 Domestic Violence (Strangulation); and Count 3 – Possession of Visual Presentation Depicting
18 Sexual Conduct of a Child. That same day, Defendant pled guilty to the crimes as charged in
19 the Third Amended Information.

20 On April 28, 2014, Defendant was sentenced as follows: as to Count 1, ninety-six (96)
21 to two hundred forty (240) months in the Nevada Department of Corrections; as to Count 2,
22 nineteen (19) to sixty (60) months, to run consecutive to Count 1; and as to Count 3, nineteen
23 (19) to seventy-two (72) months, to run consecutive to Counts 1 and 2, with 809 days credit
24 for time served. The Court also imposed a special sentence of lifetime supervision and ordered
25 Defendant to register as a sex offender. The Judgment of Conviction was filed on May 23,
26 2014.

27 //

28 //

1 Defendant filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court
2 affirmed Defendant's conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11,
3 2014). Remittitur issued January 5, 2015.

4 On January 16, 2015, Defendant filed a Post-Conviction Petition for Writ of Habeas
5 Corpus and Motion to Appoint Counsel. After counsel was appointed, Defendant, through
6 counsel, filed a Supplement to Petition for Writ of Habeas Corpus on April 18, 2016. The State
7 filed its Response on June 13, 2016. This Court held an evidentiary hearing on July 6, 2017
8 and dismissed the Petition that same day.

9 Defendant filed the instant Motions on October 25, 2018 (Motion for Modification of
10 Sentence) and November 1, 2018 (Motion to Correct Illegal Sentence). The State's response
11 to both Motions follows.

12 ARGUMENT

13 **DEFENDANT HAS NOT SHOWN THAT HIS SENTENCE IS ILLEGAL OR THAT** 14 **HE IS ENTITLED TO A MODIFICATION OF HIS SENTENCE**

15 In general, a district court lacks jurisdiction to modify or vacate a sentence once the
16 defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373
17 (1992), overruled on other grounds, Harris v. State, 130 Nev. ___, ___, 329 P.3d 619, 627
18 (2014). A motion to correct or modify an illegal sentence may only challenge the facial legality
19 of the sentence: either the district court was without jurisdiction to impose a sentence or the
20 sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704,
21 708, 918 P.2d 321, 324 (1996).

22 A district court does have inherent authority to correct, vacate, or modify a sentence
23 where the defendant can demonstrate the sentence violates due process because it is based on
24 a materially untrue assumption or mistake of fact that has worked to the defendant's extreme

25 //

26 //

27 //

1 detriment. Edwards, 112 Nev. at 707, 918 P.2d at 324. But not every mistake or error during
2 sentencing gives rise to a due process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97,
3 677 P.2d 1044, 1048 (1984). The Nevada Supreme Court has emphasized that a “motion to
4 modify a sentence is limited in scope to sentences based on mistaken assumptions about a
5 defendant’s criminal record which work to the extreme detriment of the defendant.” Edwards,
6 112 Nev. at 708.

7 First, Defendant has not satisfied the requirements of a Motion to Correct Illegal
8 Sentence. He makes various complaints about alleged, post-conviction due process violations,
9 but he has not offered any authority or cogent argument demonstrating that his sentence is
10 facially illegal. Motion to Correct Illegal Sentence at 1–3; see Maresca v. State, 103 Nev. 669,
11 673, 748 P.2d 3, 6 (1987). Defendant was sentenced to ninety-six (96) to two hundred forty
12 (240) months for Attempt Sexual Assault with a Minor under Fourteen; to nineteen (19) to
13 sixty (60) months for Battery Constituting Domestic Violence (Strangulation); and to nineteen
14 (19) to seventy-two (72) months for Possession of Visual Presentation Depicting Sexual
15 Conduct of a Child. Defendant does not claim any of these terms are in excess of the statutory
16 maximums. Edwards, 112 Nev. at 708, 918 P.2d at 324. Nor does he argue that this Court was
17 without jurisdiction to impose the sentence. Id. Thus, this Court must deny this Motion.

18 Second, Defendant’s complaint that his sentences should run concurrently is no basis
19 for sentence modification. Motion for Modification of Sentence at 1–2. Defendant has failed
20 to show that this Court sentenced him under a materially untrue assumption or mistake of fact,
21 let alone one that worked to his extreme detriment. See NRS 176.555; Edwards, 112 Nev. at
22 707, 918 P.2d at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. To the extent he is
23 challenging the sufficiency of the evidence supporting his conviction for Battery Constituting
24 Domestic Violence (Strangulation), such a claim is not properly raised in a motion of this kind

25 //

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1 but rather in a Post-Conviction Petition for Writ of Habeas Corpus. Motion at 2; see NRS
2 Chapter 34. Thus, Defendant's Motion falls outside the limited scope of a motion to modify
3 sentence, and it must be denied.

4 DATED this 20th day of November, 2018.

5 Respectfully submitted,

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

9 BY /s/ John Niman
10 JOHN NIMAN
11 Deputy District Attorney
12 Nevada Bar #14408

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on the 20th day of November, 2018, I mailed a copy of the above
15 and foregoing to Dajuan Looper, #1120989, Ely State Prison, PO Box 1985 Ely, NV, 89031,
16 for review.

17
18 BY: /s/ J. Serpa
19 J. Serpa
20 Employee of the District Attorneys Office
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12F00467X/JN/appeals/js

ORIGINAL

Electronically Filed
1/9/2019 3:36 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

14 DUJUAN LOOPER,
15 #1871455

16 Defendant.

CASE NO: C-12-279379-1

DEPT NO: VI

17 **ORDER DENYING DEFENDANT'S MOTIONS OF NOVEMBER 26, 2018**

18 DATE OF HEARING: NOVEMBER 26, 2018
19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come before the above entitled Court on the 26TH day of
21 NOVEMBER, 2018; Defendant not being present, IN PROPER PERSON; Plaintiff being
22 represented by STEVEN B. WOLFSON, District Attorney, through LEAH BEVERLY, Chief
23 Deputy District Attorney; and without argument, based on the pleadings and good cause
24 appearing,

25 //

26 //

27 //

28 //

W:\2012\2012F\004\6712F00467-ORDR-(LOOPER_DUJUAN_11_26_2018)-001.DOCX


1 **THE COURT HEREBY ORDERS** that DEFENDANT'S MOTION TO CORRECT
2 ILLEGAL SENTENCE and DEFENDANT'S MOTION FOR MODIFICATION OF
3 SENTENCE, shall be, and are, DENIED.

4 DATED this 2 day of ^{January 2019} December, 2018.

5
6 
DISTRICT JUDGE 66

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

9
10 BY

 for
LEAH BEVERLY
Chief Deputy District Attorney
Nevada Bar #012556

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28 hjc/SVU

District Court / State of Nevada
County of Clark

FILED

May 26 2022

State of Nevada
Plaintiff
VS

Case no. C-12-279379-1

Dept. no. 6

June 20, 2022
8:30 AM

DuJuan Looper
1120989
Defendant

Motion For Appointment
OF
Specific Counsel

Comes now Defendant, DuJuan Looper, in prose, and moves this Honorable Court for an order appointing him Specific Counsel in the above case proceedings.

It would be a conflict of interest for the Public Defenders office to represent Mr. DuJuan Looper in this criminal case.

Points And Authorities

I. Statement of Facts

Defendant has and is being assisted by other inmates not being Law clerks.

Defendant is unable to afford Counsel.

Defendants Counsel of record William H. Gamage, Esq. was arrested and Disbarred and didn't notify defendant of his Appeal and Evidentiary Hearing Proceeding and Findings. (Cont)

RECEIVED
MAY 23 2022
CLERK OF THE COURT

Statement of Facts

Defendant understood to the Best of his knowledge Mr. Gamage was still representing defendant in his appeal.

Defendant has limited formal education, and very limited knowledge of the law, has difficulty understanding instructions and is "overwhelmed" by anything requiring paperwork and organization.

The substantive issues and procedural matters in this case are too complex for defendant's comprehension and abilities.

Defendant is incarcerated at High Desert State Prison. as is unable to undertake the ability, as an attorney would or could, to investigate crucial facts, argue effectively to properly present the case to this court coupled with the fact that appointed counsel would be of service to the court, defendant and the plaintiff's as well, by sharpening the issues, shaping the examination of potential witnesses and shortening the time of the nature of this case.

The prison severely limits defendant access to law library and it takes weeks for research materials to get to defendant delivered by custody staff.

pg.
2

(cont.)

Statement of Facts

Defendant does not have the assistance of a prison law clerk. If law clerks would be available, their legal assistance have limited knowledge and expertise.

The ends of Justice will be served in this case by the Appointment of Specific professional and Competent Counsel to represent Defendant DuJuan Lopper.

II Argument For Appointment

Motions for appointment of Counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the court to indigent defendants.

In order for the appointment of Counsel to be granted; (1) The merit of the grounds (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by Counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the criminal case being Constitutional.

III. Conclusion

Based upon the facts and laws presented herein, Defendant would respectfully request this Honorable Court to weigh the factors involved within this case, and appoint Specific Counsel for Defendant to assist this Court in the just determination of this action.

Dated. 18 day of May, 2022

Du Tran Looper #1120989
Defendant

*→ Du Tran Looper
In Pro Se

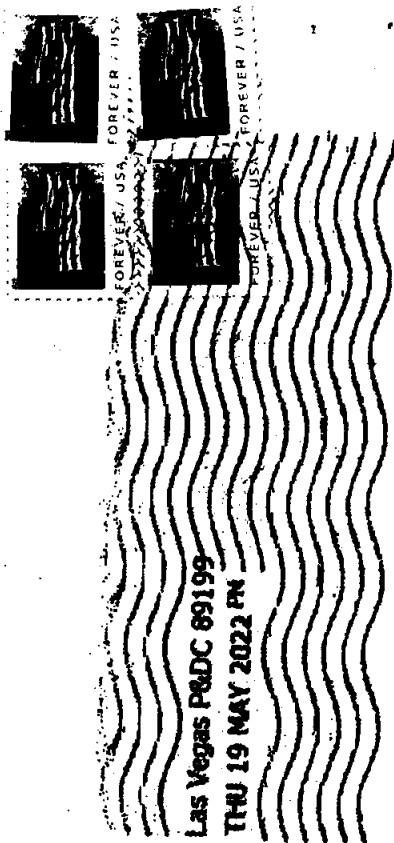
High Desert State Prison
P.O. Box 1650
Indian Springs, NV. 89070

DuJuan Looper # 1120989
High Desert State Prison
P.O. Box 650
Indian Springs, NV. 89070

HDSP

MAY 18 2022

UNIT 11



Eight Judicial District Court / Clark County
c/o: clerk of Court Nevada
200 Lewis Ave.
Las Vegas, NV. 89155

Confidential
Legal Mail

District Court / State of Nevada
County of Clark

Steven D. Grierson

State of Nevada
Plaintiff,
VS.

Case no. C-12-279379-1
Dept no. 6

DuJuan Looper
#1120989
Defendant

Notice of Appeal

Notice is Hereby Given that Defendant
DuJuan Looper hereby appeals the Judgement
of Conviction entered in this Honorable Court
on or about 25th day of May 2014.

Argument

Present Federal law has made an appeal from a
Judgement of Conviction in a criminal case a
matter of right. See Coppedge v. U.S., 82 S.Ct. 917,
918 (1962). If a state has created appellate courts
as an integral part of the system for finally adjudicating
the guilt or innocence of a defendant, the
procedures used in deciding appeals must comport
with the demands of the Due Process and equal
Protection clauses of the U.S. Constitution.

Evitts v. Lucey, 105 S.Ct. 830, 834 (1985).

The state of Nevada has further provided
defendants convicted by guilty plea, a right to
appeal by statute. PG. 1 (Cont)

CLERK OF THE COURT

MAY 23 2022

RECEIVED

Conclusion

Defendant has shown that he has a right to appeal as a matter of law and that he never waived his right to appeal or appellate counsel.

Defendant now request that the Court allow him to take an out of time appeal, and that he be allowed to file all papers and documents relevant thereto.

Statements of Facts

Defendants Counsel of Record William H. Gamage, Esq. was arrested and Disbarred and gave no notice to defendant DuJuan Looper of Appeal Evidentiary Hearing scheduled or findings.

Dated: 18 day of may ~~2021~~ 2022

Sincerely,

DuJuan Looper #1120989
In Proper Person

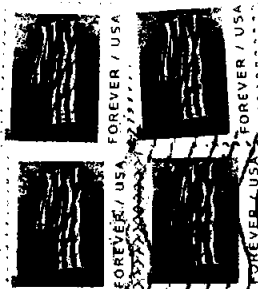
*→ ~~DuJuan Looper~~
Defendant

DoJuan Looper # 1120989
High Desert State Prison
P.O. Box 650
Indian Springs, NV. 89070

HDSP

MAY 18 2022

UNIT 11



Las Vegas P&DC 89199
THU 19 MAY 2022 PM

Eight Judicial District Court / Clark County
c/o: clerk of Court Nevada

200 Lewis Ave.

Las Vegas, NV. 89155

Confidential
Legal Mail

District Court / State of Nevada
County of Clark

Steven D. Grierson

State of Nevada
Plaintiff,

Case no. C-12-279379-1

Dept. no. 6

VS.

DuJuan Looper

Designation of Record

1120989

on Appeal

Defendant

Comes now, DuJuan Looper, Defendant
in proper persona, and herein designates the
record on appeal to be certified by the
Clerk of the Court and transcribed to the
Clerk of the Nevada Supreme Court.

All motions, pleadings, Transcripts.

Dated: 18 day of May 2022

DuJuan Looper #1120989

In Proper Persona

*→ *DuJuan Looper*

Defendant

CLERK OF THE COURT

MAY 23 2022

RECEIVED

UNDER PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 18 day of May, 2022

DeJuan Don Lopez # 1120989
Name and Prison BAC#, printed

CERTIFICATE OF SERVICE BY MAILING

I, DuJuan Looper, hereby certify, pursuant to NRCP 5(b), that on this 10
day of March, 2022, I mailed a true and correct copy of the foregoing, "Motion for
Appointment of specific counsel, Notice of appeal / ^{Designation of} or record on
^{Appeal}
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Eight Judicial
~~Dist~~ District Court
C/O Clerk of Court
200 Lewis Ave
LV. NV. 89155

District attorney's office
200 Lewis Ave
LV. NV. 89155

CC: FILE

DATED: this 18 day of March, 2022.

DuJuan Looper # 1120989
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89028 70
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for Appointment of
Specific Counsel / Notice of appeal / Designation of
record on Appeal
(Title of Document)

filed in District Court Case number C-12-279379-1

☒ Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-or-

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

DuJuan Don Looper
Signature

5-18-22
Date

DuJuan Looper
Print Name

Defendant - pro se
Title

Exhibit

A

GAMAGE & GAMAGE

Amy M. Gamage, Esq.
William H. Gamage, Esq.

1775 Village Center Circle, Suite 190
Las Vegas, Nevada 89134
Tel: (702) 386-9529
Fax: (702) 382-9529

April 18, 2016

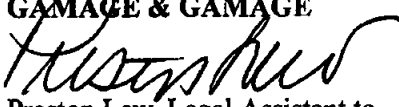
Via First Class Mail
Mr. Dujuan Looper (#1120989)
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Re: State of Nevada v. Dujuan Looper
Case No: C-12-279379

Dear Mr. Looper:

Please find enclosed a copy of your Supplemental Petition for Writ of Habeas Corpus. For your interest, after Hearing of this date, the State's Answering Brief is due on or before June 20, 2016. If necessary, a Reply Brief, in your behalf, will be filed within 30 days of the filing the State's answering brief. A Hearing on the Petition is scheduled for August 2016. We will keep you posted on the exact dates.

Thank you for your attention to this matter. Should you have any further concerns, we suggest that you correspond with our office by letter form.

Sincerely,
GAMAGE & GAMAGE

Preston Lew, Legal Assistant to
WILLIAM H. GAMAGE, Esq.
Counsel of Record to Dujuan Looper

WHG/pl
Enclosure as indicate

wgamage@gamagelaw.com

Las Vegas lawyer gets probation for stealing from clients



Former attorney William Gamage led out of the courtroom after his sentencing at the Regional Justice Center on Thursday, Jan. 30, 2020, in Las Vegas. (Bizuyehu Tesfaye/Las Vegas Review-Journal) @bizutesfaye

By David Ferrara Las Vegas Review-Journal



January 30, 2020 - 5:42 pm

Don't miss the big stories. Like us on Facebook.

Updated January 30, 2020 - 5:44 pm

A suspended Las Vegas lawyer prosecutors said acted as an accessory to murder and stole hundreds of thousands of dollars from clients was given probation Thursday.

After sentencing William Gamage, 53, to five years probation, District Judge Mary Kay Holthus ordered him to serve the first 60 days of his probation in the Clark County Detention Center.

Gamage pleaded guilty in September to conspiracy and theft charges.

In May, Gamage was suspended after the State Bar of Nevada said he “misappropriated or mishandled thousands of dollars of client or third-party funds entrusted to him,” records show.

Prosecutors said Gamage stole nearly \$180,000 from three clients in personal injury cases between November 2015 and February 2017, including one client who lost \$142,000.

Gamage also was charged with harboring, concealing or aiding a felony offender in connection with the April 2018 death of 30-year-old Bailey Kay Beck, according to his arrest report. Charges against him in that case are expected to be dismissed.

During his sentencing on Thursday, Gamage admitted that he used methamphetamines but said he was not lining his pockets with the stolen money.

“I wasn’t a very good business person,” he said to the judge, “but I was a good lawyer.”

Contact David Ferrara at dferrara@reviewjournal.com or 702-380-1039. Follow @randompoker on Twitter.

CASE SUMMARY
CASE NO. C-12-279379-1

Sentencing Memorandum

04/28/2014

Disposition (Judicial Officer: Cadish, Elissa F.)

1. ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

Guilty

PCN: Sequence:

2. BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

Guilty

PCN: Sequence:

3. POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD

Guilty

PCN: Sequence:

04/28/2014

Sentence (Judicial Officer: Cadish, Elissa F.)

1. ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

Adult Adjudication

Sentenced to Nevada Dept. of Corrections

Term: Minimum:96 Months, Maximum:240 Months

Other Fees

1. , \$5,320.80

04/28/2014

Sentence (Judicial Officer: Cadish, Elissa F.)

2. BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

Adult Adjudication

Sentenced to Nevada Dept. of Corrections

Term: Minimum:19 Months, Maximum:60 Months

Consecutive: Charge 1

04/28/2014

Sentence (Judicial Officer: Cadish, Elissa F.)

3. POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD

Adult Adjudication

Sentenced to Nevada Dept. of Corrections

Term: Minimum:19 Months, Maximum:72 Months

Consecutive: Charge 1 & 2

Credit for Time Served: 809 Days

Fee Totals:

AA Fee - Battery

Domestic Violence

35.00

\$35

Administrative

Assessment Fee

25.00

\$25

Fee Totals \$

60.00

\$150.DNAF Waived

Condition

1. Register As A Sex Offender, within 48 hours of release from custody

2. Lifetime Supervision, is imposed to commence upon the release from any term of Probation, Parole or Imprisonment

05/06/2014

☒ Notice of Appeal (criminal)

















Notice of Appeal

05/07/2014














☒ Case Appeal Statement

Case Appeal Statement








CASE SUMMARY
CASE NO. C-12-279379-1

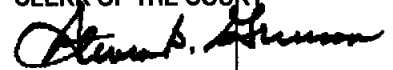
| | |
|------------|--|
| 05/23/2014 |  Judgment of Conviction <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i> |
| 05/30/2014 |  Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i> |
| 06/12/2014 |  Reporters Transcript <i>Request for Rough Draft Transcripts</i> |
| 06/24/2014 |  Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing: Status Check: Trial Status, January 8, 2014</i> |
| 06/24/2014 |  Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing: Sentencing (Both), April 28, 2014</i> |
| 01/09/2015 |  NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i> |
| 01/16/2015 |  Inmate Filed - Petition for Writ of Habeas Corpus <i>Party: Defendant Looper, Dajuan Don</i> |
| 01/16/2015 |  Motion <i>Filed By: Defendant Looper, Dajuan Don</i> <i>Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference</i> |
| 01/16/2015 |  Notice of Motion <i>Filed By: Defendant Looper, Dajuan Don</i> <i>Notice of Motion</i> |
| 01/16/2015 |  Motion <i>Filed By: Defendant Looper, Dajuan Don</i> <i>Motion to Appoint Counsel</i> |
| 01/16/2015 |  Application to Proceed in Forma Pauperis <i>Filed By: Defendant Looper, Dajuan Don</i> |
| 01/23/2015 |  Order for Petition for Writ of Habeas Corpus |
| 02/02/2015 |  Opposition <i>Opposition to Defendant's Motion to Appoint Counsel</i> |
| 02/04/2015 |  Motion for Appointment of Attorney (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Events: 01/16/2015 Motion</i> <i>Def't's Pro Per Motion to Appoint Counsel</i> |
| 02/11/2015 |  Confirmation of Counsel (8:30 AM) (Judicial Officer: Cadish, Elissa F.) 02/11/2015, 03/11/2015 |
| 02/17/2015 |  Response <i>Petitioner's Response to the State's Opposition to Petitioner's Motion to Appoint Counsel</i> |

CASE SUMMARY
CASE NO. C-12-279379-1

| | |
|------------|---|
| 04/08/2015 | CANCELED Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Becker, Nancy) <i>Vacated - per Judge</i> |
| 04/15/2015 |  Status Check (8:30 AM) (Judicial Officer: Cadish, Elissa F.) 04/15/2015, 06/17/2015 <i>Status Check: Set Briefing Schedule</i> |
| 08/17/2015 |  Motion <i>Motion to Extend Time to File Supplemental Brief</i> |
| 09/02/2015 |  Motion (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Motion to Extend Time to File Supplemental Brief</i> |
| 01/06/2016 |  Argument (8:30 AM) (Judicial Officer: Cadish, Elissa F.) 01/06/2016, 04/18/2016, 08/10/2016 |
| 04/18/2016 |  Supplement <i>Petitioner's Supplement to Petitioner's Writ of Habeas Corpus</i> |
| 04/18/2016 |  Exhibits <i>Petitioner's Appendix in Support of Post Conviction Writ of Habeas Corpus (Vol. 1)</i> |
| 06/13/2016 |  Response <i>Response to Defendant's Supplement to Post-Conviction Petition for Writ of Habeas Corpus</i> |
| 08/18/2016 |  Order for Production of Inmate <i>Order for Production of Inmate</i> |
| 09/15/2016 | CANCELED Evidentiary Hearing (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i> <i>Evidentiary Hearing Habeas Petition</i> |
| 09/21/2016 |  Status Check (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Status Check: Resetting Evidentiary Hearing</i> |
| 01/12/2017 | CANCELED Evidentiary Hearing (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i> <i>Evidentiary Hearing: Habeas Petition</i> |
| 01/18/2017 |  Status Check (8:30 AM) (Judicial Officer: Cadish, Elissa F.) 01/18/2017, 01/25/2017 <i>Status Check: Resetting Evidentiary Hearing</i> |
| 02/02/2017 |  Order for Production of Inmate <i>Order for Production of Inmate</i> |
| 03/30/2017 | CANCELED Evidentiary Hearing (1:30 PM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i> |
| 04/05/2017 |  Status Check (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Status Check: Evidentiary Hearing</i> |
| 07/06/2017 |  Evidentiary Hearing (1:30 PM) (Judicial Officer: Cadish, Elissa F.) <i>Evidentiary Hearing Re: Def't's Petition for Writ of Habeas Corpus</i> |

CASE SUMMARY
CASE NO. C-12-279379-1

| 07/06/2017 |  Consent <i>Audiovisual Transmission Equipment Appearance Consent</i> | |
|-------------------------------------|---|-----------------------|
| 07/06/2017 |  Audiovisual Transmission Equipment Appearance Request <i>Audiovisual Transmission Equipment Appearance Request</i> | |
| 07/17/2017 |  Order <i>Order for Transcripts</i> | |
| 08/03/2017 |  Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: Evidentiary Hearing, July 6, 2017</i> | |
| 08/03/2017 |  Errata <i>Errata to Criminal Transcript Evidentiary Hearing, July 6th, 2017</i> | |
| 08/18/2017 |  Findings of Fact, Conclusions of Law and Order | |
| 08/22/2017 |  Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i> | |
| DATE | | FINANCIAL INFORMATION |
| Defendant Looper, Dajuan Don | | |
| Total Charges | | 60.00 |
| Total Payments and Credits | | 0.00 |
| Balance Due as of 3/2/2018 | | 60.00 |



1 ASTA

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

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 DUJUAN DON LOOPER,

14 Defendant(s),
15

Case No: C-12-279379-1

Consolidated with C-12-279418-1

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): DuJuan Looper

20 2. Judge: Elissa F. Cadish

21 3. Appellant(s): DuJuan Looper

22 Counsel:

23 DuJuan Looper #1120989
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

1 (702) 671-2700

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

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

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

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

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

9 9. Date Commenced in District Court: February 10, 2012

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

11 Type of Judgment or Order Being Appealed: Judgment of Conviction

12 11. Previous Appeal: Yes

13 Supreme Court Docket Number(s): 65608

14 12. Child Custody or Visitation: N/A

15 Dated This 31 day of May 2022.

16 Steven D. Grierson, Clerk of the Court

17
18 /s/ Heather Ungermann

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

23 cc: DuJuan Looper
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUJUAN DON LOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84804

FILED

JUN 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a judgment of conviction. This court's review of this appeal reveals a jurisdictional defect. Specifically, the district court entered the judgment of conviction on May 23, 2014. Appellant did not file the notice of appeal, however, until May 26, 2022, well after the expiration of the 30-day appeal period prescribed by NRAP 4(b). *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (explaining that an untimely notice of appeal fails to vest jurisdiction in this court). Accordingly, this court

ORDERS this appeal DISMISSED.

[Signature], J.
Hardesty

[Signature], J.
Stiglich

[Signature], J.
Herndon

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 17
Dajuan Don Looper
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUJUAN DON LOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84804
District Court Case No. C279379

FILED

AUG 01 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: July 11, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):

Dujuan Don Looper
Clark County District Attorney \ Alexander G. Chen
Hon. Michael Villani, District Judge

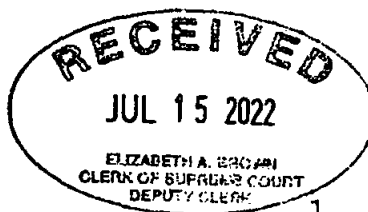
RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 12 2022

[Signature]
Deputy District Court Clerk

RECEIVED
APPEALS
JUL 12 2022

CLERK OF THE COURT



1

22-21764

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUJUAN DON LOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84804
District Court Case No. C279379

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDERS this appeal DISMISSED."

Judgment, as quoted above, entered this 16th day of June, 2022.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 11, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2012

C-12-279379-1 State of Nevada
vs
Dujuan Looper

February 22, 2012 10:30 AM Initial Arraignment

HEARD BY:

COURTROOM: RJC Lower Level
Arraignment

COURT CLERK: Jill Chambers

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Looper, Dujuan Don Defendant
 MacArthur, Jonathan Attorney for Deft
 Robinson, Lynn M. Attorney for Pltf
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Ms. Robinson advised the Court an Amended Information needed to be prepared and requested matter be continued. COURT SO ORDERED.

CUSTODY

2/22/12 1:30 PM CONTINUED

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

February 22, 2012 1:30 PM Arraignment Continued

HEARD BY: Weed, Randall F

COURTROOM: RJC Lower Level
 Arraignment

COURT CLERK: Jill Chambers;

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

| | | |
|-----------------|---------------------|-------------------|
| PRESENT: | Fleck, Michelle | Attorney for Pltf |
| | Looper, Dajuan Don | Defendant |
| | MacArthur, Jonathan | Attorney for Deft |
| | Turner, Robert B. | Attorney for Pltf |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT. DEFT. LOOPER ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

4/23/12 9:30 AM CALENDAR CALL

4/30/12 10:00 AM JURY TRIAL

DEPT 6

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 23, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

April 23, 2012 9:30 AM Calendar Call

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|-----------|
| PRESENT: | Greco, Vicki | |
| | Looper, Dajuan Don | Defendant |
| | Rinetti, Dena I. | Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Court noted Ms. Greco's motion to withdraw calendared April 30th. Upon the inquiry of the Court, Deft. stated he is not opposed to the withdrawal of Ms. Greco, and he is willing to waive speedy trial. Court stated findings and there being no opposition, ORDERED, Ms. Greco WITHDRAWN as counsel of record; trial VACATED ; proceedings CONTINUED for the Deft. to obtain new counsel and advise them of the next hearing; should the Deft. determine he cannot afford to retain counsel, he must complete a financial affidavit to confirm if he is eligible for assistance as an indigent. Deft. stated he will attempt to obtain new counsel. COURT ORDERED, proceedings CONTINUED.

CUSTODY

5-7-12 8:30 AM STATUS CHECK: COUNSEL

PRINT DATE: 05/01/2012

Page 1 of 1

Minutes Date:

April 23, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 11, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

**June 11, 2012 8:30 AM Motion to Withdraw as
 Counsel**

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed/kr; Dulce Romea

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|------------------|-----------|
| PRESENT: | Coffee, Amy A | Attorney |
| | Public Defender | Attorney |
| | State of Nevada | Plaintiff |
| | Stephens, Robert | Attorney |

JOURNAL ENTRIES

- Ms. Coffee advised she spoke with Deputy District Attorney Michelle Fleck, and she is not opposed to the motion understanding the unusual issues in the case; the same motion has been filed in the Deft's case in Department II. Upon the inquiry of the Court, Deft. acknowledged he is aware of the motion. In light of the issues that may be raised due to conflict, and given the conflict ORDERED, Deft's Motion To Withdraw Due To Conflict GRANTED. Ms. Coffee advised she will ask the office of Drew Christiansen to appoint one attorney to both of the Deft's cases due to the overlapping discovery; the file will be forwarded to appointed counsel. COURT ORDERED, proceedings CONTINUED for confirmation of counsel; matter REFERRED to Drew Christiansen for appointment of counsel; Ms. Coffee may speak with Mr. Christiansen regarding the appointment of 1 attorney for both cases.

CUSTODY

6-18-12 8:30 AM CONFIRMATION OF COUNSEL

PRINT DATE: 06/14/2012

Page 1 of 2

Minutes Date:

June 11, 2012

C-12-279379-1

CLERK'S NOTE: Drew Christiansen notified of scheduled proceedings.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 18, 2012

C-12-279379-1 State of Nevada
 vs
 Dujuan Looper

June 18, 2012 8:30 AM Confirmation of Counsel

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Tia Everett; Dulce Romea / dr

RECORDER: Jessica Ramirez

PARTIES

| | | |
|-----------------|-----------------|--------------------------|
| PRESENT: | Coffee, Amy A | Deputy Public Defender |
| | Fleck, Michelle | Deputy District Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Also present: Roy Nelson, Esq.

Mr. Nelson advised he was sent by Mr. Christensen to accept the appointment; however, he may have a potential conflict. Ms. Coffee stated the Deft.'s other case is on calendar in Department 2 on Thursday and requested this case be continued to Wednesday; another attorney can be present to accept the appointment; he will be asked to give the Deft. a copy of the discovery.

CUSTODY

6-20-12 8:30 AM CONFIRMATION OF COUNSEL

CLERK'S NOTE: Minutes corrected to reflect Mr. Roy Nelson, not Derek Nelson. / dr 6-20-12

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

June 20, 2012 8:30 AM Confirmation of Counsel

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Tia Everett/te; Dulce Romea

RECORDER: Jessica Ramirez

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|---|
| PRESENT: | Coffee, Amy A | Public Defender for Defendant |
| | Fleck, Michelle | Deputy District Attorney for State of Nevada |
| | Leik, Kevin C. | Attorney for Defendant |
| | Looper, Dajuan Don | Defendant |

JOURNAL ENTRIES

- Mr. Leik stated he will confirm as counsel this morning for the Defendant and Ms. Coffee has provided the discovery in Open Court this morning. Colloquy regarding scheduling. Upon Court's inquiry, Mr. Leik stated he would like to maintain the trial date at this time and if something should happen he will place the matter on calendar. Ms. Coffee stated she has provided the discovery in both of Defendant's cases this morning and has the SCOPE print outs for the victims and another witness which she request the Court authorize her to turn the information over to Mr. Leik this morning. COURT SO ORDERED.

CUSTODY

PRINT DATE: 06/21/2012

Page 1 of 1

Minutes Date: June 20, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 05, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

September 05, 2012 9:30 AM Calendar Call

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Roshonda Mayfield

RECORDER: Jessica Ramirez

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|----------------------------|
| PRESENT: | Leik, Kevin C. | Attorney for the Defendant |
| | Looper, Dajuan Don | Defendant |
| | Rinetti, Dena I. | Attorney for the State |

JOURNAL ENTRIES

- Attorney Leik advised, he will be leaving the state and relocating on September 14, 2012. Further, counsel requested to be withdrawn as defense counsel in this matter. COURT ORDERED, Attorney Leik is WITHDRAWN AS COUNSEL in this matter; matter CONTINUED. Attorney Christensen is to be contacted regarding there being new counsel appointed for the defendant.

CUSTODY

9/12/12 8:30 A.M. CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 12, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

September 12, 2012 8:30 AM Confirmation of Counsel

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|-----------|
| PRESENT: | Looper, Dajuan Don | Defendant |
| | O'Brien, Glen | Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Court stated notification was received from Drew Christensen that Anthony Sgro would confirm as counsel. Deft. advised he has a letter for the Court to read regardless if he has counsel or not. Mr. O'Brien stated he is standing in for Michelle Fleck, the Deputy District Attorney handling this case. Court advised the letter will be read prior to the next court appearance, directed a copy of the letter be provided to Ms. Fleck. and ORDERED, proceedings CONTINUED for the presence of Mr. Sgro.

CUSTODY

9-19-12 8:30 AM CONFIRMATION OF COUNSEL (A. SGRO)

CLERK'S NOTE: Following proceedings, Kevin Leik Esq. appeared and stated he will notify Mr. Sgro of the next court date.

PRINT DATE: 09/17/2012

Page 1 of 1

Minutes Date:

September 12, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 29, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

October 29, 2012 8:30 AM Motion to Remand

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed/kr; Katrina Hernandez; Andrea Davis; Sylvia Perez; Sharon Coffman

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Cortese, Gregory | Defense Attorney |
| | Fleck, Michelle | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Mr. Cortese moved to remand the case to Justice Court for preliminary hearing as the waiver was not voluntarily and knowingly entered; it's believed the canvas was proper, but was not understood by the Deft. Argument in opposition by Ms. Fleck. Court stated findings and ORDERED, Deft's Motion To Remand To Justice Court For Preliminary Hearing DENIED.

CUSTODY

2-20-13 9:30 AM CALENDAR CALL

2-25-13 10:00 AM JURY TRIAL

PRINT DATE: 10/29/2012

Page 1 of 1

Minutes Date: October 29, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 19, 2012

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

November 19, 2012 8:30 AM Motion

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|-------------------|
| PRESENT: | Cortese, Gregory | Defense Attorney |
| | Fleck, Michelle | District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Argument in support of Deft's Motion For Bail Reduction by Mr. Cortese advising the Deft's uncle has represented the Deft. can live with him. Ms. Fleck opposed arguing nothing has changed since the trial setting; things have actually gotten worse. Court stated findings and ORDERED, Deft's Motion For Bail Reduction DENIED.

CUSTODY

2-20-13 9:30 AM CALENDAR CALL

2-25-13 10:00 AM JURY TRIAL

PRINT DATE: 11/29/2012

Page 1 of 1

Minutes Date: November 19, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

February 04, 2013 8:30 AM Motion to Consolidate

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Patti Slattery

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|------------------------|
| PRESENT: | Cortese, Gregory | Attorney for Defendant |
| | Fleck, Michelle | District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Argument in support of State's Motion To Consolidate by Ms. Fleck, and in opposition by Mr. Cortese. Court stated findings and ORDERED, motion GRANTED. Colloquy regarding the rescheduling of the trial dates. Ms. Fleck stated an Amended Information consolidating all charges will be filed. Court directed counsel make sure the Amended Information is filed in both cases.

CUSTODY

4-29-13 9:30 AM CALENDAR CALL

5-6-13 10:00 AM JURY TRIAL

CLERK'S NOTE: The above minute order has been distributed to: Master Calendar
CONSOLIDATING cases C279418 & C279379

PRINT DATE: 02/14/2013

Page 1 of 2

Minutes Date:

February 04, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 24, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

April 24, 2013 8:30 AM Motion to Dismiss

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Cortese, Gregory | Attorney for Defendant |
| | Fleck, Michelle | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Upon the inquiry of the Court, Mr. Cortese stated the motion has been seen. Upon the inquiry of the Court, Defendant stated he still seeks to dismiss counsel. COURT ORDERED, proceedings TRAILED for matters to be heard outside the presence of others to preserve attorney client privilege. Ms. Fleck argued it's not believed there are any grounds for the dismissal of counsel and the root of things is the Deft. does not like the offer, and he will never get the deal he wants.

MATTER RECALLED:

Other than the security staff, Court staff, Deft. and Mr. Cortese, COURT ORDERED, courtroom CLEARED; proceedings SEALED.

MATTER RECALLED ON THE RECORD:

Ms. Fleck present on behalf of the state. Court informed Ms. Fleck the motion has been continued to the calendar call to allow an opportunity for the Deft. and Mr. Cortese to meet and discuss issues to determine where they're at. Upon the inquiry of Ms. Fleck, Court stated it sounds like the case will

PRINT DATE: 04/25/2013

Page 1 of 2

Minutes Date: April 24, 2013

C-12-279379-1

not proceed to trial as scheduled as there may be additional work to be done on the case; matters will be discussed further at the calendar call.

CUSTODY

4-29-13 9:30 AM CALENDAR CALL...DEFT'S PRO SE MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL

5-6-13 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 29, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

April 29, 2013 8:30 AM All Pending Motions

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Cortese, Gregory | Attorney for Defendant |
| | Fleck, Michelle | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- CALENDAR CALL...MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATIVE COUNSEL

Mr. Cortese advised the motion to dismiss counsel has been resolved. Upon the inquiry of the Court, Deft. stated he is satisfied with Mr. Cortese and he may continue on the case. COURT ORDERED, Motion to Dismiss Counsel and Appointment of Alternative Counsel OFF CALENDAR. Mr. Cortese moved for a continuance of the trial advising there are additional issues he would like to pursue on the Defendant's behalf as there is an alternate theory as to the events; the Deft. is not opposed to a continuance to allow counsel to get prepared. Ms. Fleck announced the state is ready to proceed to trial, but is not opposed to the continuance request. COURT ORDERED, trial CONTINUED to allow Mr. Cortese to conduct further investigations in anticipation of the trial. Colloquy regarding the continuation of the trial which could last more than a week. Counsel suggested the trial be scheduled on a normal trial setting and proceedings could be set for a status check to explore perhaps placing the trial in a civil stack. COURT ORDERED, matter set for status check.

CUSTODY

PRINT DATE: 05/23/2013

Page 1 of 2

Minutes Date: April 29, 2013

C-12-279379-1

10-9-13 8:30 AM STATUS CHECK

11-25-13 9:30 AM CALENDAR CALL

12-2-13 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 30, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

September 30, 2013 8:30 AM Deft's Motion For Disclosure of Juvenile Records

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed; Shelly Landwehr/sl

RECORDER: Jessica Kirkpatrick

REPORTER:

| | | |
|-----------------|----------------------|-----------|
| PARTIES | Barbeau, Marjorie E. | Attorney |
| PRESENT: | Heap, Hilary | Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Ms. Barbeau stated Mr. Sgro is out of the jurisdiction and requested a continuance to 10/09/13.
There being no objection, COURT SO ORDERED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 09, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

October 09, 2013 8:30 AM All Pending Motions

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|----------------------|--------------------------|
| PRESENT: | Barbeau, Marjorie E. | Attorney for Defendant |
| | Fleck, Michelle | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- STATUS CHECK: DEFENDANT'S MOTION FOR DISCLOSURE OF JUVENILE RECORDS

Argument in support of Deft's Motion For Disclosure Of Juvenile Records by Ms. Barbeau and in opposition by Ms. Fleck. Court stated findings and ORDERED, the motion is GRANTED to allow for documentation to be provided to the Court in-camera to determine if there is anything discoverable that will be provided to each side; the order is to be drafted by Ms. Barbeau and run by the state prior to submission.

CUSTODY

11-25-13 9:30 AM CALENDAR CALL

12-2-13 10:00 AM JURY TRIAL

PRINT DATE: 10/14/2013

Page 1 of 2

Minutes Date:

October 09, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 21, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

October 21, 2013 8:30 AM All Pending Motions

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|-----------------------|--------------------------|
| PRESENT: | Barbeau, Marjorie E. | Attorney for Defendant |
| | Fleck, Michelle | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | Sgro, Anthony Patrick | Attorney for Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR DISCOVERY...DEFT'S MOTION FOR RELEASE OF CHILD PROTECTIVE SERVICES RECORDS...DEFT'S MOTION FOR METROPOLITAN POLICE DEPARTMENT RECORDS

Mr. Sgro advised a couple of the matters are resolved and requested it be placed on the record it has been represented by the state that the defense has the C.P.S. records which were received this morning, as to any further inquiries or follow up that is needed defense counsel will take it up with the state and then with the Court if necessary; a file review is scheduled today and the defense has been advised the DNA has been requested from the lab and they are awaiting the results. Mr. Sgro stated the other issue is he does not have the photographs and is uncertain what the state's position is. Ms. Fleck stated because the requested items are child porn she does not normally turn over the information, but they can meet with the detective to look at things and figure out how to get it to defense counsel; the DNA was turned over months ago, they just wanted the raw data used to get there. Mr. Sgro stated he would like the photographs in his possession without the involvement of

PRINT DATE: 11/07/2013

Page 1 of 2

Minutes Date: October 21, 2013

the state to prepare for trial and can speak with the Court ex-parte. Ms. Fleck stated she would be happy to get it to them to have in their possession. Mr. Sgro requested a time period of approximately 72 hours to look at the pictures and to return them. Ms. Fleck advised there are no copies. COURTORDERED, the state is to set up a meeting with the detective to review what they have and require that the photographs needed by defense counsel be provided and there can be restrictions on their use in connection with the case; they should not be provided to the Deft. or anyone else. Mr. Sgro stated no copies will be made and the items will be returned. As to the motion regarding the METRO records, relative to Chandra and Charlotte, issues as to Chandra have been resolved, Mr. Sgro argued the defense will need prior interactions with law enforcement in regards to Ms. Todd, specifically as to acts of truthfulness, misconduct, non truthfulness with law enforcement; at minimum would like an order directing the state to run the SCOPE, specifically as to Ms. Todd. Ms. Fleck argued the defense is not entitled to the information; SCOPE & NCIC will be run and whatever they are entitled to will be provided. Continued arguments by Mr. Sgro. COURT ORDERED, the state is to provide any felony convictions within the past 10 years, convictions for any crimes of moral turpitude, or any pending matters against her; the rest of the motion is DENIED. Upon the inquiry of Mr. Sgro, Ms. Fleck stated the information can be provided to Mr. Sgro this afternoon.

CUSTODY

11-25-13 9:30 AM CALENDAR CALL

12-2-13 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

October 28, 2013 8:30 AM Deft.'s Motion for Medical Records

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Dania Batiste

RECORDER: Jessica Kirkpatrick

PARTIES

| | | |
|-----------------|----------------------|--------------------------|
| PRESENT: | Barbeau, Marjorie E. | Attorney for Defndant |
| | Looper, Dajuan Don | Defendant |
| | Sweetin, James R | Deputy District Attorney |

JOURNAL ENTRIES

- Following statements by counsel, COURT ORDERED, Motion is GRANTED to the extent the treatment center provides records regarding the minor victim in this case to the Court for an in-camera review, and the production of any records.

Colloquy between the Court and counsel regarding the proposed order prepared and submitted by Ms. Barbeau. Court amended the defense's order by interlineation, and FURTHER ORDERED, the records may be provided to counsel in a sealed package for delivery to the Court. ORDER SIGNED IN OPEN COURT. Court DIRECTED counsel to file the Order electronically.

CUSTODY

11/25/2013 9:30 am CALENDAR CALL

12/2/2013 10:00 am JURY TRIAL

PRINT DATE: 10/30/2013

Page 1 of 1

Minutes Date: October 28, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 18, 2013

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

November 18, 2013 8:30 AM

All Pending Motions

Deft's Motion for
Metropolitan Police
Department Records
work Card Division;
Deft's Motion for
Jury Questionnaire

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Katherine Streuber

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|----------------------|------------------------|
| PRESENT: | Barbeau, Marjorie E. | Attorney for Defendant |
| | Fleck, Michelle | District Attorney |
| | Looper, Dajuan Don | Defendant |
| | Weaver, Melinda | Attorney for Defendant |

JOURNAL ENTRIES

- CONFERENCE AT THE BENCH. Court advised it understood counsel's need to continue the trial. Colloquy regarding trial schedules. COURT ORDERED, trial date VACATED and RESET. Ms. Weaver argued as to the Motion for Jury Questionnaire, noting jurors do not want to open up in Court due to the sexual nature of the case and pointed out the trial would be two weeks in length. Argument by the State. Further argument by counsel. court stated it had not seen jury questionnaires make jury selection any faster and seeing no issue warranting a questionnaire, ORDERED, Deft's Motion for Jury Questionnaire is DENIED. Counsel argued the work card would go to the mother's credibility. State noted the detectives in this case do not know what the defense is requesting, pointed out mother does not have a criminal history and believes the motion should be denied as irrelevant. Further argument by counsel. Court inquired how the work card records

PRINT DATE: 11/25/2013

Page 1 of 2

Minutes Date:

November 18, 2013

C-12-279379-1

would show the mother was at work. Counsel advised they are valid from date to date. State argued defense counsel should have gone through the night club. Court stated its findings and ORDERED, Deft's Motion for Metropolitan Police Department Records Work Card Division is DENIED. Further arguments by counsel. COURT ORDERED, matter SET for status check.

CUSTODY

01-08-14 8:30 AM STATUS CHECK: TRIAL STATUS

02-03-14 9:30 AM CALENDAR CALL

02-10-14 10:00 AM TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 08, 2014

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

January 08, 2014 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed; Sylvia Perez(sdp)

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|----------------------|----------------------------|
| PRESENT: | Barbeau, Marjorie E. | Attorney for the Defendant |
| | Looper, Dajuan Don | Defendant |
| | Smith, Tyler D., ESQ | Deputy District Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Defendant present, in custody.

NEGOTIATIONS are as contained in the Guilty Plea Agreement and the THIRD AMENDED INFORMATION FILED IN OPEN COURT. DEFT. LOOPER ARRAIGNED AND PLED GUILTY TO COUNT 1 - ATTEMPT SEXUAL ASSAULT WITH MINOR UNDER FOURTEEN YEARS OF AGE (F), COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (F) and COUNT 3 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F). Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. COURT FURTHER ORDERED, trial date VACATED.

CUSTODY

3/12/14 8:30 AM SENTENCING

PRINT DATE: 01/13/2014

Page 1 of 1

Minutes Date:

January 08, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 12, 2014

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

March 12, 2014 8:30 AM Sentencing

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Fleck, Michelle | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |
| | Weaver, Melinda | Attorney for Defendant |

JOURNAL ENTRIES

- Ms. Weaver advised they are awaiting a psych report. Ms. Fleck noted there was to be a speaker and that the case does not warrant a Psycho Sexual Evaluation. COURT ORDERED, matter CONTINUED; it's up to the defense to obtain the Psycho Sexual Evaluation.

CUSTODY

4-28-14 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 28, 2014**

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

April 28, 2014 8:30 AM Sentencing

HEARD BY: Cadish, Elissa F.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** Keith Reed**RECORDER:** Jessica Kirkpatrick**REPORTER:****PARTIES**

| | | |
|-----------------|---|--|
| PRESENT: | Fleck, Michelle Looper, Dajuan Don State of Nevada Weaver, Melinda | Deputy District Attorney Defendant Plaintiff Attorney for Defendant |
|-----------------|---|--|

JOURNAL ENTRIES

- Defendant LOOPER ADJUDGED GUILTY OF COUNT I, ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F), COUNT II, BATTERY CONSTITUTING DOMESTIC VIOLENCE-STRANGULATION (F), AND COUNT III, POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F). Statements by counsel and Defendant. Speakers sworn and testified. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$35.00 Domestic Violence fee & \$5,320.80 Restitution, \$150.00 DNA Analysis fee WAIVED, as to COUNT I, Defendant SENTENCED to a MAXIMUM OF TWO HUNDRED FORTY (240) MONTHS AND A MINIMUM OF NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC), as to COUNT II, a MAXIMUM OF SIXTY (60) MONTHS AND A MINIMUM OF NINETEEN (19) MONTHS in the Nevada Department of Corrections (NDC) CONSECUTIVE TO COUNT I, and as to COUNT III, a MAXIMUM OF SEVENTY-TWO (72) MONTHS AND A MINIMUM OF NINETEEN (19) MONTHS in the Nevada Department of Corrections (NDC) CONSECUTIVE TO COUNTS I & II with EIGHT HUNDRED NINE (809) DAYS credit for time served. FURTHER ORDERED, a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole or imprisonment; Defendant to register as a sex offender within 48 hours after sentencing or release from custody.

PRINT DATE: 04/29/2014

Page 1 of 2

Minutes Date: April 28, 2014

C-12-279379-1

NDC

PRINT DATE: 04/29/2014

Page 2 of 2

Minutes Date: April 28, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

**February 04, 2015 8:30 AM Motion for Appointment of
Attorney**

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT: DiGiacomo, Sandra
 State of Nevada

Deputy District Attorney
Plaintiff

JOURNAL ENTRIES

- Court stated findings noting this is the Defendants first post-conviction petition, which appears to be timely, and ORDERED, Defendant's Pros Se Motion To Appoint Counsel is GRANTED; proceedings CONTINUED for confirmation of counsel; proceedings of April 8, 2015 VACATED; prior briefing schedule VACATED; Mr. Sgro WITHDRAWN as counsel.

NDC

2-11-15 8:30 AM CONFIRMATION OF COUNSEL

CLERK'S NOTE: Drew Christensen notified of scheduled proceedings.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 11, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

February 11, 2015 8:30 AM Confirmation of Counsel

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Phyllis Irby

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|------------------------|
| PRESENT: | Gamage, William H. | Attorney for the Deft |
| | Looper, Dajuan Don | Defendant |
| | Pesci, Giancarlo | Attorney for the State |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Mr. Gamage informed the Court he can confirm as counsel; requested a continuance to review file and speak with Deft. The Court noted Mr. Gamage is confirmed on Deft's both cases. COURT ORDERED, Mr. Gamage is CONFIRMED AS COUNSEL. STATUS CHECK SET.

NDC

3-11-15 8:30 AM STATUS CHECK: CASE UPDATE (DEPT. VI)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 11, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

February 11, 2015 8:30 AM Confirmation of Counsel

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Phyllis Irby

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|-----------|
| PRESENT: | Gamage, William H. | Attorney |
| | Looper, Dajuan Don | Defendant |
| | Pesci, Giancarlo | Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Mr. Gamage informed the Court he can confirm as counsel; requested a continuance to review file and speak with Deft. The Court noted Mr. Gamage is confirmed on Deft's both cases. COURT ORDERED, Mr. Gamage is CONFIRMED AS COUNSEL. STATUS CHECK SET.

NDC

3-11-15 8:30 AM STATUS CHECK: CASE UPDATE (DEPT. VI)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 11, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

**March 11, 2015 8:30 AM Confirmation of Counsel
(C279379-1)**

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Susan Jovanovich

RECORDER: Jessica Ramirez

REPORTER:

PARTIES

| | | |
|-----------------|---------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | Hamner, Christopher | Deputy District Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

Deft. not present; incarcerated in Nevada Department of Corrections (NDC). Court NOTED counsel has already confirmed on this case; and inquired to Mr. Gamage if he spoke with Deft. yet. Mr. Gamage advised he did not speak with him yet, further noting defense received the case file and will be requesting a status check hearing, to review the case further, as defense may be seeking a briefing schedule. COURT ORDERED, status check hearing SET.

NDC

4/15/15 8:30 A.M. STATUS CHECK: SET BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 15, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

April 15, 2015 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Phyllis Irby

RECORDER: Jessica Ramirez

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|------------------------|
| PRESENT: | Gamage, William H. | Attorney for the Deft |
| | State of Nevada | Plaintiff |
| | Villani, Jacob J. | Attorney for the State |

JOURNAL ENTRIES

- DEFT NOT PRESENT. Mr. Gamage requested a continuance; advised the Court Deft is in NDC and he needs time to get medical and educational records from Wisconsin. COURT ORDERED MATTER CONTINUED.

NDC

6-17-15 8:30 AM STATUS CHECK: BRIEFING SCHEDULE (DEPT. VI)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 17, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

June 17, 2015 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | State of Nevada | Plaintiff |
| | Thoman, Charles W. | Deputy District Attorney |

JOURNAL ENTRIES

- Mr. Gamage advised the Defendant is in the Nevada Department of Corrections (NDC) and that he has the trial file of 2 different attorneys, he has spoken with the Defendant and is trying to obtain his educational and medical records from Wisconsin with the help of his family and requested 60 days to obtain the information; if it's obtained opening briefs could be submitted in 60 days and allow time for the State to answer, if there are no records or they cannot be obtained, the defense will proceed with they have, or file for an extension. COURT ORDERED, briefing schedule as follows: Defendant's supplemental petition is due August 17th, States response is due October 19th with the Defendant's reply due November 2nd; matter SET for argument. Mr. Gamage stated the Defendant DOES NOT need to be transported for the hearing.

NDC

11-16-15 8:30 AM ARGUMENT

PRINT DATE: 06/19/2015

Page 1 of 2

Minutes Date: June 17, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 02, 2015

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

September 02, 2015 8:30 AM Motion

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | State of Nevada | Plaintiff |
| | Thoman, Charles W. | Deputy District Attorney |

JOURNAL ENTRIES

- Mr. Gamage advised the Defendant is in the Nevada Department of Corrections (NDC) and 30 days is needed to communicate with the client. COURT ORDERED, Defendant s Motion To Extend Time To File Supplemental Brief GRANTED; Defendant s supplement is due October 5th, State's response December 7th, defense reply December 21st; argument CONTINUED until January 6th.

NDC

1-6-16 8:30 AM ARGUMENT: Defendant s Petition

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 06, 2016

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

January 06, 2016 8:30 AM Argument

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|---------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | State of Nevada | Plaintiff |
| | Sudano, Michelle L. | Deputy District Attorney |

JOURNAL ENTRIES

- Mr. Gamage advised an error with the briefing schedule was made by his office, and he s appeared to determine if there will be an Evidentiary Hearing; the briefs are not done, and 7-14 days is requested for briefs. There being no opposition, COURT ORDERED, Defendant s Supplemental Petition is due by January 20th, State s response is due by March 21st, Defendant s reply is due by April 4th; matter SET for argument April 18th. Mr. Gamage stated the Defendant s presence is not needed at the next hearing. Court noted the hearing will be for argument, it s not an Evidentiary Hearing.

NDC

4-18-16 8:30 AM ARGUMENT

PRINT DATE: 01/26/2016

Page 1 of 1

Minutes Date: January 06, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 18, 2016

C-12-279379-1 State of Nevada
 vs
 Dujuan Looper

April 18, 2016 8:30 AM Argument

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|-----------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | State of Nevada | Plaintiff |
| | Zadrowski, Bernard B. | Deputy District Attorney |

JOURNAL ENTRIES

- Defendant not present. Mr. Gamage advised there was a mistake in his office, the brief has been filed, there is a courtesy copy for the Court and State, and requested a briefing schedule. COURT ORDERED, State's opposition to be filed by June 20th, Defendant's reply by July 20th, matter SET for argument; Defendant need not be transported for argument, and will be transported should it be determined an Evidentiary Hearing is needed.

NDC

8-10-16 8:30 AM ARGUMENT: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

PRINT DATE: 05/06/2016

Page 1 of 1

Minutes Date: April 18, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 10, 2016

C-12-279379-1 State of Nevada
vs
Dajuan Looper

August 10, 2016 8:30 AM Argument

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Louisa Garcia

RECORDER: Jessica Kirkpatrick

PARTIES

| | | |
|-----------------|-----------------------|-----------|
| PRESENT: | Cannizzaro, Nicole J. | Attorney |
| | Gamage, William H. | Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Defendant not present, in the Nevada Department of Corrections. Mr. Gamage stated they were not bringing the pro per claims for purposes of argument today. Mr. Gamage argued in support of petition and Ms. Canazzaro in opposition. Following arguments regarding ineffective assistance of counsel and vagueness of statutes, Court advised under NRS 34.810 with Mr. Looper having been convicted pursuant to a plea of guilty in this case, any claims on habeas other than the plea was involuntarily or unknowingly entered or that it was entered without effective assistance are not permitted and the Court is required to dismiss them with those procedural limitations. Court noted the second claim does not appear to be a claim within those perimeters and ORDERED, that claim DISMISSED; it could have been raised on direct appeal. As to ineffective assistance of counsel alleging inadequate advice, Court advised it was set out in the plea canvass and Guilty Plea Agreement; however, thinks an evidentiary hearing was warranted regarding the conversations Defendant had with counsel. COURT ORDERED, matter SET for hearing.

NDC

9/15/16 8:30 AM EVIDENTIARY HEARING: HABEAS PETITION

PRINT DATE: 08/19/2016

Page 1 of 2

Minutes Date: August 10, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 21, 2016

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

September 21, 2016 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT: Gamage, William H. Attorney for Defendant
 Sweetin, James R Deputy District Attorney

JOURNAL ENTRIES

- COURT ORDERED, Defendant's presence WAIVED. Colloquy regarding the rescheduling of the Evidentiary Hearing for the Habeas Petition. Mr. Gamage advised both sides are having issues finding prior counsel. Mr. Sweetin stated he cannot remember counsels name, but she moved out of state, and parties have discussed if she is located taking audio visual testimony from her; request 60 days to track her down. COURT ORDERED, matter SET for Evidentiary Hearing.

NDC

1-12-17 8:30 AM EVIDENTIARY HEARING

PRINT DATE: 10/13/2016

Page 1 of 1

Minutes Date: September 21, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 18, 2017

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

January 18, 2017 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | LoGrippo, Frank R. | Deputy District Attorney |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Court noted Mr. Gamage miss-scheduled today's proceedings, and would like a continuance. Mr. Logrippo stated that's his understanding. COURT ORDERED, matter CONTINUED; Defendant IS NOT to be transported to the next hearing, but will be transported for the Evidentiary Hearing.

NDC

1-25-17 8:30 AM Status Check: Resetting Evidentiary Hearing

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 25, 2017

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

January 25, 2017 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |
| | Sweetin, James R. | Deputy District Attorney |

JOURNAL ENTRIES

- Court noted proceedings were calendared to reschedule a hearing in regards to the Defendants Petition For Writ of Habeas Corpus. Colloquy regarding scheduling of the Evidentiary Hearing. Mr. Sweetin informed the Court of his witnesses, and requested an afternoon hearing so the witness in Hawaii can appear by telephone. COURT ORDERED, matter SET for Evidentiary Hearing; Defendant is to be transported.

NDC

3-30-17 1:30 PM EVIDENTIARY HEARING

PRINT DATE: 02/22/2017

Page 1 of 1

Minutes Date: January 25, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 05, 2017

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

April 05, 2017 8:30 AM Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|--------------------------|
| PRESENT: | Gamage, William H. | Attorney for Defendant |
| | State of Nevada | Plaintiff |
| | Sweetin, James R. | Deputy District Attorney |

JOURNAL ENTRIES

- Defendant not present.

Court noted the Evidentiary Hearing needs to be rescheduled on the Defendant's Petition For Writ of Habeas Corpus. Colloquy regarding rescheduling of the Evidentiary Hearing. Mr. Sweetin stated the Hawaii witness would like a morning setting due to the time change. COURT ORDERED, matter SET for Evidentiary Hearing.

NDC

7-6-17 8:30 AM Evidentiary Hearing

PRINT DATE: 04/05/2017

Page 1 of 1

Minutes Date: April 05, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 06, 2017**

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

July 06, 2017 1:30 PM Evidentiary Hearing Re: Deft's Petition for Writ of Habeas Corpus

HEARD BY: Cadish, Elissa F.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** April Watkins**RECORDER:** Jessica Kirkpatrick**PARTIES**

| | | |
|-----------------|--------------------|---------------------|
| PRESENT: | Gamage, William H. | Attorney for Deft. |
| | Looper, Dajuan Don | Defendant |
| | State of Nevada | Plaintiff |
| | Sweetin, James R. | Attorney for Pltff. |

JOURNAL ENTRIES

- Court noted ineffective assistance of counsel alleged in petition for writ of habeas corpus in regards to the plea deal Deft. entered into. Statement by Mr. Sweetin regarding proposed exhibits. Mr. Gamage stated he has no objection to the proposed exhibits. Exhibits presented. (See worksheet). Mr. Gamage stated as to waiver of attorney client privilege, will be limited to the issue only in this case. Mr. Sweetin stated if not relevant to the issue before the Court, State will not get into it. Court noted not a complete waiver and focusing on entering guilty plea. Statement by Mr. Gamage as to Count 2. Court stated Count 2 has already been ordered dismissed in August of 2016. Melinda Weaver, Esq., Marjorie Barbeau Kratsas, Esq., and Deft. DeJuan Looper, sworn and testified. Following arguments by counsel, Court stated Ms. Barbeau at the time that she was counseling Deft. about entering plea was a new attorney. It is also clear to the Court she was not making any decisions without consulting with Mr. Sgro. Counsel went over to Clark County Detention Center and met with Deft. for a lengthy period of time going through not just his file, going through all evidence and going through the guilty plea agreement. Further, Ms. Barbeau testified that she had talked to Deft. about registration and supervision and she did recall discussion with Deft. During the plea canvass and the Court asked about lifetime supervision, Ms. Barbeau immediately

PRINT DATE: 07/17/2017

Page 1 of 3

Minutes Date: July 06, 2017

responded that it is part of the negotiations. She was not flustered or taken by surprise by that at all and when the Court followed up and asked the Deft., Deft. acknowledged yes. Deft. may not have read himself through each and every word reading from the page of the guilty plea agreement but it appears to the Court, counsel did go over agreement with Deft. Ms. Barbeau haven taken the time to go through all of that, bringing statutes with her and frankly the Court thinks that is unusual and goes above and beyond. Because she was a new attorney, it seems to the Court she was trying to make sure she covered everything with regard to this plea agreement. Basis for the petition is about the lack of understanding regarding the registration, supervision and the need for another psycho-sexual needed for parole. The Court does not think it was alleged in petition about sentence or the position it was promised to Deft. he was getting the minimums on all counts and all of them were definitely running concurrent. Certainly, the plea agreement and Court's canvass to Deft. was to the contrary. The Court FINDS testimony of Ms. Barbeau and Ms. Weaver is creditable in that there was that discussion that Deft. had no concerns. Further, there was right to argue at time of sentencing and the Court felt at time of sentencing, a fairly lengthy sentence was appropriate. The Court does NOT FIND creditable the testimony that any one promised Deft. that was going to happen. It seems to the Court Deft. was given effective assistance of counsel advising about entry of plea and the Court FINDS Deft. made choice to enter plea with full advise and that would not have made the decision to proceed to trial based on the circumstances based on the plea deal which was a substantial benefit to the Deft. given what he was facing at the time. For all of those reasons, COURT ORDERED, petition DENIED. State to prepare the order.

Mr. Gamage inquired if the Court reviewed the JAVS video of the Court hearing. Court stated she did not review JAVS, read the transcript, saw the response and the way she responded. Colloquy. Further, Mr. Gamage stated the Court made part of the findings based on the testimony a fairly lengthy sentence was called for. Further, we are not allowed as litigants to inquire into the reasoning underlying the Court's decisions so counsel could not cross examine the Court on that issue and counsel believes the Court brought up the issue that counsel did not bring up the amount of sentencing as being part of the pleading. The Court stated there was no argument that there was a misrepresentation by counsel about how the sentencing works, the ability to run them consecutive and to not go even though the range is 2 to 20, an 8 to 20 we all know is a legal sentence within that range. Mr. Gamage requested the State not put that portion of the Court's statement that the Court felt a lengthy sentence was required in the order as it does not go to the essence of the pleadings, does not go to the issues and counsel cannot cross examine the Court. Court stated the fact the Court did impose, effectively maxed him out, and it is appropriate as part of the legal analysis the Court did impose the maximum sentence and does not necessarily disagree whether the Court's reasoning should be in the order and that is fine if it is not. But it is part of the analysis in terms of this petition coming back after being maxed out on the sentence which perhaps what not what Deft. though would happen. The Court DOES NOT FIND any attorney represented to Deft. that he was going to get the minimums and that they would run concurrent.

NDC

C-12-279379-1

PRINT DATE: 07/17/2017

Page 3 of 3

Minutes Date: July 06, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 04, 2018**

C-12-279379-1 State of Nevada
 vs
 Dajuan Looper

June 04, 2018 08:30 AM Defendant's Pro Per Motion to Withdraw Counsel

HEARD BY: Cadish, Elissa F. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Reed, Keith

RECORDER: Crews, De'Awna

REPORTER:

PARTIES PRESENT:

Frank R. LoGrippe

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

Defendant not present.

Court stated findings and ORDERED, Defendant's Pro Per Motion To Withdraw Counsel GRANTED; as to Defendant's Pro Per Motion To Obtain A Copy of the Presentence Investigation Report (PSI) which was returned by the Clerk's Office May 16, 2018 due to the showing of the Defendant being represented by counsel, it's ORDERED, the Clerk's Office is to file the Defendant's Motion To Obtain A Copy of the Sealed Record submitted by the Defendant, GRANT the motion and ORDER the Clerk's Office to send the Defendant a copy of the PSI in this case.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Dajuan Don Looper # 1120989, POB 650 HDSP, Indian Springs Nv. 89018 & District Court Clerk's Office order bin. kar 7/2/18

Thomas B. Shuman
CLERK OF THE COURT

ORDER
LOWE LAW, L.L.C.
DIANE C. LOWE, ESQ. Nevada Bar No. 14573
7350 West Centennial Pkwy #3085
Las Vegas, Nevada 89131
(725)212-2451 – F: (702)442-0321
Email: DianeLowe@LoweLawLLC.com
Attorney for Dujuan Looper

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DUJUAN LOOPER, #1120989

Defendant.

Case No.: C-12-279379-1

DEPT NO: XVII

**ORDER FOR APPOINTMENT OF
COUNSEL and TO DELIVER
CASEFILE**

THIS MATTER HAVING COME BEFORE THE COURT and there
appearing good cause, it is hereby ORDERED, ADJUDGED AND DECREED that
Diane C. Lowe be appointed to represent the above-named Dujuan Looper as of this
date in this case and any associated motions and or appeals stemming from it.

1 IT IS FURTHER ORDERED that prior counsel for Dajuan Looper in
2 his criminal case, writ case and any and all matters stemming from his criminal case:
3
4 C-12-279379-1, A-18-771898-W, 77330-COA, 84804 forward to Diane Lowe Esq..
5 the newly appointed attorney, the casefile they have: including but not limited to
6
7 discovery, internal reports, investigation reports, attorney notes and client and
8 attorney correspondence, PSIs, billing records and everything else that is not
9 publicly available online.
10

11
12 Dated this 7th day of July, 2022

13 
14

15 FD9 45B ED9C 549C
16 Michael Villani
17 District Court Judge
18
19

20 Order Prepared by: /s/ Diane C. Lowe
21 Diane C Lowe, Esq.
22
23
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25
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28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 State of Nevada

CASE NO: C-12-279379-1

7 vs

DEPT. NO. Department 17

8 Dajuan Looper
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: 7/7/2022

15 JACKIE Mosley .

Jaclyn.mosley@clarkcountytia.com

16 Law Clerk .

Dept06LC@clarkcountycourts.us

17 Tim Kelly .

KellyT@clarkcountycourts.us

18 Dept Law Clerk

dept17lc@clarkcountycourts.us
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PWHC
LOWE LAW, L.L.C.
DIANE C. LOWE, ESQ. Nevada Bar No. 14573
7350 West Centennial Pkwy #3085
Las Vegas, Nevada 89131
(725)212-2451 – F: (702)442-0321
Email: DianeLowe@LoweLawLLC.com
Attorney for DUJUAN D. LOOPER

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No.: ~~C-12-279379-1~~
A-22-856419-W

DEPT NO: XVII

vs.

DUJUAN D. LOOPER,
[NDOC 1120989]

Hearing Requested

Defendant.

Hearing Date:

Hearing Time:

PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty.

High Desert State Prison, Indian Springs, Clark County Nevada.

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

3 Eighth Judicial District Court, Clark County Nevada.
4

5 **3. Date of judgment of conviction:**

6 May 23, 2014. Case Number: C-12-279379-1.
7

8 Remittitur Appeal 65608 – January 5 2018.

9 **5. (a) Length of Sentence:**

10 Aggregate of all three counts convicted of:
11

12 **153 months to 444 months** = 12.75 years to 37 years with 2.22 years jail credit
13 (809 days).
14

15 **Count 1:** Attempt Sexual Assault with a Minor under 14 years of Age Count 1 - 96
16 months to 240 months= 8 years to 20 years. Concurrent to Count 2 and
17 Consecutive to Count 3.
18
19

20 **Count 2:** Battery Constituting Domestic Violence – Strangulation Count 2 – 19
21 months to 60 months = 1 year 7 months to 5 years. Concurrent to Count 1 and
22 Consecutive to Count 3
23
24

25
26 **Count 3:**
27
28

Possession of Visual Presentation Depicting Sexual Conduct of a Child. Must register as a sex offender within 48 hours release from custody. Count 3 – 19 months to 72 months. Count 3 consecutive to counts 1 and 2 and 809 days credit. 1 year 7 months to 6 years.

(b) If sentence is death, state any date upon which execution is scheduled:

N/A.

6. Is he presently serving a sentence for a conviction other than the conviction under attack in this motion?

No.

7. Nature of offense involved in Conviction being challenged:

| Crime | Statute | Classification & Date of Charge | Plea | Date of Conviction |
|---|------------------------------------|---|--------|--|
| Attempt Sexual Assault with a Minor under 14 years of Age DC Case #279418 Chardae Todd | NRS 193.330 200.364, 200.366 | B 2-20 years with min not to exceed 40% of maximum not eligible for probation | Guilty | JOC 05/23/2014 Count 1 - 96 months to 240 months 8 years to 20 years |
| Battery Constituting Domestic Violence – Strangulation DC Case #C279379 Charlotte Todd | NRS 200.481 200.385 33.018 | C 1-5 years with min not to exceed 40% of maximum \$10,000 fine possible - not eligible for probation Possible future enhancement for additional similar crimes | Guilty | JOC 05/23/2014 Count 2 – 19 months to 60 months 1 year 7 months to 5 years |
| Possession of Visual Presentation Depicting Sexual Conduct of a Child to Chardae Todd DOB 1-20-98 DC Case #279418 | NRS 200.700, 200.730 | B 1-6 years with min not to exceed 40% of maximum | Guilty | JOC 05/23/2014 Count 3 – 19 months to 72 months |

| | | | | | |
|---|---|--|---|--|---|
| 1 2 3 4 5 6 7 8 9 | Must register as a sex offender within 48 hours release from custody. | | \$5,000 fine possible Suspension of sentence or probation permitted Div of Parole and Probation shall arrange for psychosexual evaluation and unless it certifies he is not high risk to reoffend then not eligible for probation | | Count 3 consecutive to counts 1 and 2 and 809 days credit 1 year 7 months to 6 years |
|---|---|--|---|--|---|

10 **8. What was your plea?**

11 Guilty.

12
13
14 **9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information or if a plea of guilty or guilty but mentally ill was negotiated, give details:**

15 N/A.

16
17
18
19 **10. If Mr. Looper was found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by:**

20 (a) Jury: No.

21 (b) Judge without a jury: No.

22
23
24 **11. Did Mr. Looper testify at the trial?**

25 Not applicable.

26
27 **12. Did Mr. Looper appeal from the judgment of conviction?**

1 Yes.

2
3 **13. If he did appeal, Answer the following:**

4 (a) Name of Court: Nevada Supreme Court

5 (b) Case number or citation: 65608.

6 (c) Result: Conviction Affirmed

(d) Date of Result: Remittitur Appeal 65608- January 5 2018.

7 **14. If he did not appeal, answer the following:**

8 N/A

9
10 **15. Other than a direct appeal from the judgment of conviction and sentence,**
11 **have you previously filed any petitions, applications or motions with respect to**
12 **this judgment in any court, state or federal?**

13 Yes.

14 **16. If your answer to No. 15 was "yes," give the following information:**

15 Guilty Plea Agreement and Hearing January 8 2014. Sentencing Hearing April 28
16 2014. Judgment of Conviction May 23, 2014. Remittitur: January 5, 2015.

17 District Court Inmate filed Petition for Writ of Habeas Corpus January 16, 2015.

18 Confirmation of Counsel William H. Gamage February 11 2015. Findings of Fact

19 Conclusions of Law & Order August 18, 2017. Notice of Entry August 22, 2017.

20 Handwritten Motion to Withdraw William Gamage May 11 2018. Motion Granted

21 June 4 2018. Pro Se Motion for Modification of Sentence October 25, 2018.

22 November 5 2018 Pro per Motion to Correct Illegal Sentence. Motions Denied

23 November 26, 2018. Order January 9 2019 denying motions. Reassignment to

1 Judge Villani September 7 2021. May 26, 2022 Motion for Appointment of Special
2 Counsel. Notice of Appeal May 26, 2022. Appointment of Diane Lowe to be
3 Special Counsel July 6, 2022. NV Supreme Court Order Dismissing pro se
4 postconviction writ Appeal 84804 due to untimeliness June 16 2022:
5
6

7
8 'This is a pro se appeal from a judgment of conviction. This court's
9 review of this appeal reveals a jurisdictional defect. Specifically, the
10 district court entered the judgment of conviction on May 23, 2014.
11 Appellant did not file the notice of appeal, however, until May 26,
12 2022, well after the expiration of the 30-day appeal period prescribed
13 by NRAP 4(b). Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946
14 (1994) (explaining that an untimely notice of appeal fails to vest
jurisdiction in this court). Accordingly, this court Orders this appeal
Dismissed.'

15
16 **17. Has any ground being raised in this petition been previously presented to**
17 **this or any other court by way of petition for habeas corpus, motion,**
application or any other post-conviction proceeding?

18 No.
19

20 **18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any**
21 **additional pages you have attached, were not previously presented in any**
22 **other court, state or federal, list briefly what grounds were not so presented,**
and give your reasons for not presenting them.

23 Postconviction writ of habeas corpus attorney Mr. Gamage represented Mr. Looper
24 throughout his postconviction writ of habeas corpus case and at the evidentiary
25 hearing but did not advise him that an Order denying relief was issued August 22
26
27
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1 2017 nor did he advise him that he was not going to file an appeal as promised if
2 they lost. A petitioner may demonstrate good cause and prejudice to excuse and
3 untimely filing. NRS 34.726(1)(a) and (b). ‘...mistaken but reasonable belief that
4 his attorney was pursuing a direct appeal was good cause if the petitioner raised the
5 claim within a reasonable time after learning that his attorney” had not filed an
6 appeal. Hathaway v. State, 119 Nev. 248, 250, 71 P.3d 503, 505 (2003).
7

8 The Findings of Fact Conclusions of Law & Order were issued August 18, 2017.
9 Notice of Entry was issued August 22, 2017.

10 Mr. Looper’s attorney William Gamage failed to file the promised appeal of the Writ
11 of Habeas Corpus Findings of Fact, Conclusions of Law & Order, and this was
12 unbeknownst by Mr. Looper until just recently. An attorney has a duty to perfect an
13 appeal when a convicted defendant expresses a desire to appeal or indicates
14 dissatisfaction with a conviction. Prejudice is presumed for purposes of establishing
15 ineffective assistance of counsel when counsel's conduct completely denies a
16 convicted defendant an appeal. Mann v. State, 118 Nev. 351, 352, 46 P.3d 1228,
17 1228 (2002).
18

19 In Mann, the court held that: “If the petitioner demonstrated that his counsel in fact
20 ignored his request for an appeal, then he had established ineffective assistance of
21 counsel and was not required to demonstrate anything further. The trial court would
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1 be obligated to appoint counsel to represent and assist him in the preparation of a
2 post-conviction petition for a writ of habeas corpus asserting any issues that could
3 have been raised on direct appeal.” Since the postconviction action he seeks to
4 appeal has already concluded we assert that in finding for Mr. Looper - he should
5 be allowed to proceed with his appeal of the Findings of Fact, Conclusions of Law
6 and Order issued August 18 2017. At the present time the Nevada Supreme Court
7 states they do not have jurisdiction to consider it due to its untimely nature.
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13 A capital sentencing proceeding which involves a hearing with a right to an advisory
14 jury, with argument by counsel and findings of aggravating and mitigating
15 circumstances, is sufficiently like a trial in its adversarial format and in the existence
16 of standards for decision, that counsel's role in the proceeding is comparable to
17 counsel's role at trial for the purposes of determining constitutionally effective
18 assistance of counsel. Strickland v. Washington, 466 U.S. 668, 671, 104 S. Ct. 2052,
19 2056, 80 L.Ed.2d 674, 683 (1984).
20
21

22 Nev. Rev. Stat. 34.810(2) provides that a second or successive petition for habeas
23 corpus must be dismissed if the judge or justice determines that it fails to allege new
24 or different grounds for relief and that the prior determination was on the merits or,
25 if new and different grounds are alleged, the judge or justice finds that the failure of
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1 the petitioner to assert those grounds in a prior petition constituted an abuse of the
2 writ. Crump v. Demosthenes, 113 Nev. 293, 294, 934 P.2d 247, 248 (1997). Nev.
3 Rev. Stat. 34.810(3) provides that pursuant to Nev. Rev. Stat. 34.810(1) and Nev.
4 Rev. Stat. 34.810(2), the petitioner for a writ of habeas corpus has the burden of
5 pleading and proving specific facts that demonstrate: a) good cause for the
6 petitioner's failure to present the claim or for presenting the claim again; and (b)
7 actual prejudice to the petitioner.
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11 Though Crump holds that “The right to effective counsel on a petition for post-
12 conviction relief arises only if that counsel was appointed pursuant to a statutory
13 mandate. The right does not arise if the counsel was appointed pursuant to the court's
14 discretion.” Crump v. Demosthenes, 113 Nev. 293, 294, 934 P.2d 247, 248 (1997);
15
16 Crump does not provide an absolute bar on discretionary relief if warranted. Under
17 Mann v. State – it is clear that failure to file a promised appeal for one’s client is
18 prejudicially ineffective. Mr. Looper made numerous attempts to contact his
19 counsel to determine the status of appeal. And when that did not work, he reached
20 out to others to see if they could reach him, but they could not. He was not notified
21 by him. See attached Declarations of attempted contact.
22
23

24
25 According to the Nevada State Bar attorney look up he was publicly reprimanded
26 June 4 2015, Suspended May 11 2018, and suspended from the practice of law for
27
28

1 five years on June 21 2019. He has not responded to this attorneys USPS priority
2 mail request for Mr. Looper's casefile.

3
4
5 "Defendants in other cases have been able to demonstrate adequate excuse for late
6 petitions when their attorneys have agreed to file direct appeals or petitions for writ
7 of habeas corpus and then failed to follow through on filing the appeal or petition
8 without telling the defendant. Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d
9 503, 507-08 (2003); Harris v. State, 407 P.3d 348, 350 (Nev. App. 2017). The
10 Courts in these cases concluded that "in such a circumstance, counsel's
11 abandonment of the petitioner will constitute an impediment external to the defense
12 that prevented the petitioner from timely pursuing post-conviction relief." Harris v.
13 State, 407 P.3d 348, 352-53 (Nev. App. 2017)."

14
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16
17 Nev. Rev. Stat. § 34.800(1) provides that a court may dismiss a petition if delay in
18 its filing either prejudices the State in responding to the petition, unless the petitioner
19 shows that the petition is based upon grounds of which he could not have had
20 knowledge by the exercise of reasonable diligence before the prejudice arose, or
21 prejudices the State in its ability to conduct a retrial of the petitioner, unless the
22 petitioner demonstrates that a fundamental miscarriage of justice has occurred. If the
23 pertinent period of delay exceeds five years, it leads to a rebuttable presumption of
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1 prejudice to the State. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225,
2 227, 112 P.3d 1070, 1071 (2005). This writ is less than five years from the Findings
3 of Fact Conclusions of Law & Order issued August 18, 2017. Notice of Entry was
4 issued August 22, 2017. (4 years 11 months). And no prejudice exists for the State
5 with the filing of this action.
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9
10 Mr. Looper would like to pursue an appeal on one or more of the issues presented in
11 his initial petition for writ of habeas corpus and supplemental briefing and argument;
12 for which relief was denied after an evidentiary hearing, namely: Ground One –
13 Violation of Petitioner’s Right to Effective Assistance of Counsel During Plea
14 Negotiations and Sentencing. Therefore, we reassert these issues and request a new
15 Findings of Fact Conclusions of Law and Order adding to the original findings - a
16 finding of prejudicial ineffectiveness as to the failure to file the promised appeal. We
17 believe this should allow the original issue/s to be appealed to the Nevada Supreme
18 Court.
19

20
21
22 In the alternative if the court will not presume prejudice for failure to file an appeal
23 on the Findings of Fact, Conclusions of Law & Order, we argue that prejudice in
24 fact can be established because of the meritorious issue/s raised and the lost
25 opportunity to appeal:
26
27

1 Attorney Gamage was prejudicially ineffective for failing as promised, to appeal the
2 decision of the District Court as to Ground one Violation of Petitioner's 6th
3 amendment right of counsel during plea negotiations and at sentencing. The original
4 argument from the Supplement we which argue was meritorious; and subsequently
5 prejudicial when the promised appeal was not filed was as follows:
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7

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9
10 Failure to properly explain and transmit a plea offer in violation of his
11 5th, 6th and 14 amendment constitutional rights. The plea-bargaining
12 process is a critical stage of a criminal prosecution. Iowa v. Tovar, 541
13 U.S. 77, 81 (2004) and Burger v. Kemp, 483 U.S. 776, 803-804 (1987).
14 Accordingly, the Sixth Amendment applies to representation during the
15 plea process. Missouri v. Frye, 132 S. Ct. 1399, 1405 2012) and Hill v.
16 Lockhart, 474 U.S. 52, 57 (1985).
17
18

19 The decision to plead guilty or contest a criminal charge is
20 ordinarily the most important single decision in any criminal case.
21 Boria v. Keane, 99 F.3d 492, 496-497 (2nd Cir. 1996). This decision
22 must ultimately be left to the client's wishes. *Id.* The United States
23 Supreme Court noted the importance of plea negotiations when it stated
24 in Santobello v. New York, 404 U.S. 257, 261 (1971):
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1 Disposition of charges after plea discussions is not only an essential
2 part of the process but a highly desirable part for many reasons. It leads
3 to prompt and largely final disposition of most criminal cases; it avoids
4 much of the corrosive impact of enforced idleness during pre-trial
5 confinement for those denied release pending trial; it protects the public
6 from those accused persons who are prone to criminal conduct even
7 while on pretrial release; and by shortening the time between the charge
8 and disposition, it enhances whatever may be the rehabilitative
9 prospects of the guilty when they are ultimately imprisoned.

10 Id. The very nature of this process involves a quid pro quo: the
11 government avoids the time and expense of a trial and the defendant
12 secures a more advantageous outcome. US. ex rel. Caruso v. Zelinski,
13 689 F.2d 435,438 (3rd Cir. 1982).

14 Failure of counsel to effectively advise a defendant of a plea offer from
15 the government is constitutionally deficient performance. Frye, 132 S.
16 Ct. at 1407-1408 and Caruso, 689 F.2d at 438; US. v. Blaylock, 20
17 F.3d 1458, 1466 (9th Cir. 1994); Ex parte Lemke, 13 S.W.3d 791, 796
18 (Texas App., 2000); and, Turner v. State, 49 S.W.3d 461, 464-465
19 (Texas App., 2001) "Under Strickland v. Washington, 466 U.S. 668,
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1 687 (1984), an ineffective assistance claim 'has two components. First,
2 the [petitioner] must show that counsel's performance was deficient....
3
4 Second, the [petitioner] must show that the deficient performance
5 prejudiced the defense.'" Tilcock v. Budge, 538 F.3d 1138, 1146 (9th
6 Cir. 2008).
7

8
9 In the *Hill* case, the United States Supreme Court
10 addressed the test for ineffective assistance of counsel set out
11 in *Strickland* in the context of a guilty plea accepted by the
12 defendant. The Court in *Hill* held that the test for deficient
13 performance in the plea process remains the same as in a trial
14 context. *Hill*, 474 U.S. at 59. The Court further held that the
15 prejudice element "focuses on whether counsel's
16 constitutionally ineffective performance affected the outcome of
17 the plea process." *Id.* In this sense, the Court stated that the
18 defendant must show that but for counsel's ineffectiveness, there is
19 a reasonable probability that he would not have pleaded guilty and
20 would have insisted on going to trial. *Id.* The ineffectiveness alleged
21 in *Hill* was counsel's incorrect advice regarding parole eligibility.
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28 *Hill*, 474 U.S. at 54-55.

1 In Palmer v. State, the Nevada Supreme Court remanded
2
3 a petitioner back to the district court for an evidentiary hearing as to
4 whether the defendant was aware of the lifetime supervision
5 requirement before entering his plea. *Palmer v. State*, 118 Nev. 823,
6 831, n. 30 (2002). The Court reasoned that because of its punitive
7 and enduring effect, lifetime supervision is a direct consequence
8 of a guilty plea which a defendant pleading guilty must be aware.
9 Palmer 118 Nev. At 830. In remanding, the Nevada Supreme Court
10 ruled that as the record below was silent with respect to whether
11 Palmer knew, in pleading guilty to a sexual offense, that he would
12 be subject to lifetime supervision; an evidentiary hearing was
13 necessary in order to fully rule on his postconviction petition.
14 *Palmer*, 118 Nev. at 830-831.

15
16 Here, Looper's counsel was ineffective because he failed to fully
17 inform him of the following:

18
19 The nature and requirements of registration as a sex offender as a
20 consequence of his plea to Count

21
22 The consequences and procedural aspects of life-time supervision as a
23 consequence of his plea to Count 1; and,
24

1 The extra added hurdles for a child sex offender to obtain parole
2 through a medical and mental health assessment of risk to re-offend.
3

4
5 These failures to counsel Looper on critical components of his guilty
6 plea agreement constitute substandard performance and had Looper
7 been properly counseled by his appointed attorney, he would not have
8 accepted the offer and went to trial. Thus, like the Hill case, Looper
9 received ineffective assistance of counsel in violation of his 5th, 6th and
10 14th Amendment Rights.” Supplement of William Gamage p.4-6.
11
12

13
14 See Also Looper Testimony, Transcript of Evidentiary Hearing July 6 2017. Page
15 76 of 127 to 117.
16

17 “If the trier of fact believes Bryner's testimony that Means contacted him, well
18 within the time to file an appeal, and complained about his allegedly illegal sentence
19 and the imposition of lifetime supervision, Means may be entitled to relief. While
20 Means must prove by a preponderance of the evidence the factual underpinnings
21 concerning what issues he raised with his attorneys, if he shows that he asked for an
22 appeal, the legal conclusion to be drawn is settled. In *Davis v. State*, we recognized
23 that, HN10 if a defendant who was convicted pursuant to a guilty plea asks for an
24 appeal, and counsel fails to appeal, prejudice to the defendant is presumed. That is,
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1 if counsel fails to file an appeal despite the defendant's request, counsel rendered
2 ineffective assistance. Moreover, we also held that "an attorney has a duty to perfect
3 an appeal when a convicted defendant expresses a desire to appeal or indicates
4 dissatisfaction with a conviction." Means v. State, 120 Nev. 1001, 1014-15, 103
5 P.3d 25, 34 (2004).
6

7
8 Q Okay. Alright during the course of the case against you related to the Guilty Plea
9 Agreement what was your intention for the majority of the time as to whether or not
10 you wanted to go to trial or not? A: I wanted to go. Q Okay, so it was your
11 contention that the allegations against you weren't backed by strong evidence, is that
12 a fair statement? A Yes." Evidentiary Hearing p. 77 of 127.
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16

17 Mr. Looper states in 2022: I can't remember the exact date that I found out he was
18 not working on my appeal, but I know it was quite sometime after the date for a
19 timely appeal. When I saw him on the news for criminal charges, I put 2 and 2
20 together.
21

22 A search of internet shows Mr. Gamage was in the news in 2020
23

24 [https://www.reviewjournal.com/crime/courts/las-vegas-lawyer-gets-probation-for-](https://www.reviewjournal.com/crime/courts/las-vegas-lawyer-gets-probation-for-stealing-from-clients-1947079/)
25 [stealing-from-clients-1947079/](https://www.reviewjournal.com/crime/courts/las-vegas-lawyer-gets-probation-for-stealing-from-clients-1947079/)
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1 **MR. LOOPER IS ENTITLED TO AN EVIDENTIARY HEARING.**

2
3 A petitioner is entitled to an evidentiary hearing where the petitioner raises a
4 colorable claim of ineffective assistance. Smith v McCormick, 914 F.2d 1153
5 1170(9th Cir. 1990); Hendricks v Vasques, 974 F.2d 1099, 1103, 1109-10 (9th Cir.
6 1992). See also Morris v California, 996 F.2d 448, 454 (9th Cir. 1991) (remand for
7 evidentiary hearing required where allegations in petitioner's affidavit raise
8 inference of deficient performance); Harich v. Wainright, 813 F.2d 1082, 1090 (11th
9 Cir. 1987) ("[W]here a petitioner raises a colorable claim of ineffective assistance,
10 and where there has not been a state or federal hearing on this claim, we must remand
11 to the district court for an evidentiary hearing."); Porter v. Wainwright, 805 F.2d
12 930 (11th Cir. 1986)(without the aid of an evidentiary hearing the court cannot
13 conclude whether attorneys properly investigated a case or whether their decisions
14 concerning evidence were made for tactical reasons). In the instant case, an
15 evidentiary hearing is necessary to question trial counsel. Mr. Looper's counsel fell
16 below a standard of reasonableness. More importantly, based on the failures of trial
17 counsel, he was severely prejudiced, pursuant to Strickland v Washington, 466 U.S.
18 688, 104 S. Ct. 204 (1984). Under the facts presented here, an evidentiary hearing
19 is mandated to determine whether the performance of trial counsel was effective, to
20 determine the prejudicial impact of the errors and omissions noted in the petition,
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1 and to ascertain the truth in this case. We assert the above error was outside the
2 performance of a reasonable attorney. "A postconviction habeas petitioner is entitled
3 to an evidentiary hearing on any claims that if true would warrant relief as long as the
4 claims are supported by specific factual allegations which the record does not belie or
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repel." Byford v. State, 123 Nev. 67, 68, 156 P.3d 691, 691 (2007).

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on a direct appeal?

Yes. Judgment of Conviction: May 23, 2014.

Supreme Court Case Remittitur: Direct Appeal 79719 Remittitur

Issued January 25 2015.

Writ statutory deadline: NRS 34.726(1). 1 year from Judgment of conviction or remittitur unless there is good cause. January 25, 2016.

Initial petition for writ of habeas corpus was timely filed January 16 2015.

20. Do you have any petition or appeal now pending in any court, either state or federal as to the judgment under attack.

No.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

1 **Trial Counsel:**

2
3 Brandon Smith Esq. 02/09/2012.

4 Vicki Greco Esq. 02/16/2012 - 04/30/2012.

5
6 Public Defender's Office 05/07/2012 – 06/20/2012

7 Daniel Page

8 Amy Coffee

9
10 Maria T. Cleveland

11 James E. Ohrenschall

12
13 Phillip Kohn

14 Roy Nelson

15 Kevin C. Leik, Esq. 06/20/12 determined there was a conflict.

16
17 Law Firm: Patti, Sgro & Lewis 10/17/2012 – 02/11/2015

18 Anthony Sgro

19 Gregory Cortese

20
21 Marjorie E. Barbeau / Kratsas (testified at evidentiary hearing)

22 Melinda Weaver (testified at evidentiary hearing)

23
24 William H. Gamage, Esq. for Post-Conviction Writ of Habeas Corpus Petition

25 02/11/2015 – 06/04/2018

1 **Appeal Counsel:**

2
3 Ultimately Mr. Looper filed an appeal himself on the denial of relief for
4 postconviction relief, but it was too late and the Nevada Supreme Court found they
5 did not have jurisdiction to consider it on the merits.
6

7
8 **22. Do you have any future sentences to serve after you complete the sentence**
9 **imposed by the judgment under attack?**

10 No.
11

12 **23. State concisely every ground on which you claim that you are being held**
13 **unlawfully. Summarize briefly the facts supporting each ground. If necessary,**
14 **you may attach pages stating additional grounds and facts supporting same.**

15 While there is no constitutional right to a writ of habeas corpus attorney and
16 the option stems statutorily at the discretion of the district court judge to
17 determine if appointment is warranted – in this case the judge did determine
18 counsel was warranted and once that task is undertaken – it results in a relied-
19 on right to effective assistance and follow through. Here Mr. Looper was not
20 advised by his counsel Mr. Gamage that the Findings of Fact Conclusions of
21 Law and Order had been issued; and further was advised by Mr. Gamage that
22 if they lost, he would file an appeal; therefore, this court should find that
23 Gamage's failure to alert Mr. Looper of the Findings of Fact, Conclusions of
24 Law and Order and failure to file the promised Notice of Appeal is actionable.
25 This so he can properly pursue his issues raised in the postconviction action
26 with the Nevada Supreme Court.
27
28

25 **V. Petitioner requests an evidentiary hearing pursuant to NRS 34.770.**
26
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28

1 Nev. Rev. Stat. § 34.735 dictates the form and content of a post-conviction
2 petition for a writ of habeas corpus. To avoid dismissal, a habeas petitioner who
3 claims that the petitioner's imprisonment is illegal must state facts which show that
4 the restraint or detention is illegal. If the petitioner challenges the constitutionality
5 of a conviction or sentence, Nev. Rev. Stat. § 34.370(4) also expressly requires the
6 petitioner to attach affidavits, records, or other evidence supporting the claims.
7 Mann v. State, 118 Nev. 351, 352, 46 P.3d 1228, 1228 (2002). We have provided
8 sufficient information herein to require further supplemental briefing and an
9 evidentiary hearing so testimony can be heard from Mr. Looper and his writ attorney
10 regarding the allegations herein and those that may be raised at a later date.
11
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14

15 WHEREFORE, petitioner prays that the court grant petitioner relief to which
16 petitioner may be entitled in this proceedings.
17
18

19 Executed this 2nd day of the month of August of the year 2022.

20 /s/ Diane C. Lowe
21 DIANE C. LOWE, ESQ
22 Nevada Bar No. 14573
23 Lowe Law, L.L.C.
24 7350 W Centennial Pkwy #3085
25 Las Vegas, NV. 89131
26 T: (725)212-2451
27 danielowe@lowelawllc.com
28 Attorney for Petitioner

1 DATED this 2nd day of August 2022.
2

3
4 **CERTIFICATE OF SERVICE**

5 **IT IS HEREBY CERTIFIED**, by the undersigned that on this
6 2nd day of August 2022, I served a true and correct copy of the foregoing
7 **Petition for Writ of Habeas Corpus on the parties listed on the**
8 **attached service list:**

9 **BY eService E-MAIL:** by transmitting a copy of the document in the
10 format to be used for attachments to the electronic-mail address
11 designated by the attorney or the party who has filed a written consent
12 for such manner of service.

13 **By: /s/Diane C Lowe, Esq.**
14 **DIANE C. LOWE**
15 **LOWE LAW, L.L.C.**

16 **SERVICE LIST**

| ATTORNEYS OF RECORD | PARTIES REPRESENTED | METHOD OF SERVICE |
|--|------------------------------|-------------------------------|
| CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 motions@clarkcountyda.com | STATE OF NEVADA Warden | Email Service via eService |

1 **DECL**
2 **LOWE LAW, L.L.C.**
3 **DIANE C. LOWE, ESQ. Nevada Bar No. 14573**
4 **7350 West Centennial Pkwy #3085**
5 **Las Vegas, Nevada 89131**
6 **(725)212-2451 – F: (702)442-0321**
7 **Email: DianeLowe@LoweLawLLC.com**
8 **Attorney for Petitioner Dajuan Looper**

9
10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY NEVADA**

12 **STATE OF NEVADA,**

13 **Petitioner,**

14 **vs.**

15 **DUJUAN LOOPER, #1120989**

16 **Respondent.**

Case No.: C-12-279379-1

DEPT NO XVII

**DECLARATION OF DUJUAN
LOOPER**

- 18
19
20
21 1. My name is Dajuan Looper, Inmate # 1120989 and I am the subject of this
22 action.
- 23 2. I am currently incarcerated at High Desert State Prison, having been convicted
24 after my plea agreement January 8 2014. My Sentencing hearing for 2 Felony
25 B Crimes and 1 Felony C Crime was April 28, 2014. The Judgment of
26 conviction was filed May 23, 2014.
27
28

- 1 3. Attorney Sgro handled my direct appeal, #65608, which resulted in an Order
2 of Affirmance on or around January 9 2015.
3
- 4 4. I filed a Petition for Writ of Habeas Corpus January 16 2015.
- 5 5. Attorney William H. Gamage was appointed to be my attorney.
- 6 6. Mr. Gamage told me if we lost the action, he would file an appeal.
- 7
- 8 7. After the evidentiary hearing on July 6, 2017, I waited for word from him on
9 whether I won, or an appeal had been filed.
10
- 11 8. After some time had gone by, I called him several times to find out what the
12 status was.
13
- 14 9. I kept trying to get through to him but could not, so I asked some other people
15 to contact him including Daniel Behan, Mark Rayner and Laura Becker – but
16 they were unable to reach him either.
17
- 18 10. Had I known I had lost, and he was not planning on doing anything about it I
19 would have alerted the court and requested substitute counsel and if denied
20 would have filed it myself pro per.
21
- 22 11. I can't remember the exact date that I found out he was not working on my
23 appeal, but I know it was quite sometime after the date for a timely appeal.
24
25 When I saw him on the news for criminal charges I put 2 and 2 together.
26
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12. The Supreme Court issued an Order Dismissing Appeal June 16, 2022. They
did not consider the merits and instead found that the claim was untimely filed
and they did not have jurisdiction to consider it.

*I declare under penalty of perjury under the law of the State of Nevada that the
foregoing is true and correct.*

Executed on. July - 19 - 22
(date)

(signature) D. Juan L. Loper x
Dajuan Loper

DECL.

LOWE LAW, L.L.C.

DIANE C. LOWE, ESQ. Nevada Bar No. 14573

7350 West Centennial Pkwy #3085

Las Vegas, Nevada 89131

(725)212-2451 - F: (702)442-0321

Email: DianeLowe@LoweLawLLC.com

Attorney for Petitioner Dajuan Looper

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

STATE OF NEVADA,

Case No.: C-12-279379-1

Petitioner,

vs.

DEPT NO XVII

DUJUAN LOOPER, #1120989

Respondent.

DECLARATION OF LAURA
BECKER

1. My name is Laura Becker.

2. I am an adult.

3. I live in Las Vegas NV.

4. At the time my friend Dajuan Looper was attempting to have his criminal conviction overturned via a Petition for Writ of Habeas corpus he advised me he was having difficulties reaching his attorney William Gamage.

5. He asked me if I could call him on his behalf to see if I could reach him.

6. I tried a few times and even left a message but never got through and never heard back from him.

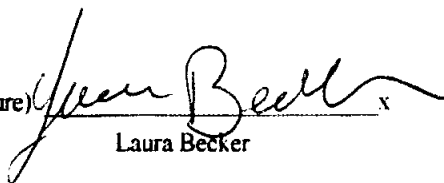
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed

on July 14th 2022

(date)

(signature)

 x
Laura Becker

1 **DECL**
2 **LOWE LAW, L.L.C.**
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Email: DianeLowe@LoweLawLLC.com
8 Attorney for Petitioner Dajuan Looper

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY NEVADA**

11 **STATE OF NEVADA,**

Case No.: C-12-279379-1

12 **Petitioner,**

13 **vs.**

DEPT NO XVII

14 **DUJUAN LOOPER, #1120989**

15 **Respondent.**

DECLARATION OF DANIEL
BEHAN

- 16
- 17 1. My name is Daniel Behan.
- 18 2. My date of birth is December 2, 1946.
- 19 3. I live in Las Vegas NV.
- 20 4. At the time my friend Dajuan Looper was attempting to have his criminal
- 21 conviction overturned via a Petition for Writ of Habeas corpus he advised me
- 22 he was having difficulties reaching his attorney William Gamage.
- 23 5. He asked me if I could call him on his behalf to see if I could reach him.
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1 6. I tried a few times and even left a message but never got through and never
2 heard back from him.
3

4 *I declare under penalty of perjury under the law of the State of Nevada that the*
5 *foregoing is true and correct.*
6

7 Executed on..... 7/15/2022.....
8 (date)

9
10 (signature) Daniel Behan
11 Daniel Behan
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1 **DECL**
2 **LOWE LAW, L.L.C.**
3 **DIANE C. LOWE, ESQ. Nevada Bar No. 14573**
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8 **Attorney for Petitioner Dajuan Looper**

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY NEVADA**

11 **STATE OF NEVADA,**

12 **Petitioner,**

13 **vs.**

14 **DUJUAN LOOPER, #1120989**

15 **Respondent.**

Case No.: C-12-279379-1

DEPT NO XVII

DECLARATION OF MARK RAYNER

- 16 1. My name is Mark Rayner.
- 17
- 18 2. My date of birth is December 17, 1989.
- 19
- 20 3. I currently live in Mount Clemens Michigan. I have previously lived in Las
- 21 Vegas NV.
- 22 4. At the time my cousin Dajuan Looper was attempting to have his criminal
- 23 conviction overturned via a Petition for Writ of Habeas corpus he advised me
- 24 he was having difficulties reaching his attorney William Gamage.
- 25
- 26 5. He asked me if I could call him on his behalf to see if I could reach him.
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6. I tried a few times and even left a message but never got through and never
heard back from him.

*I declare under penalty of perjury under the law of the State of Nevada that the
foregoing is true and correct.*

Executed on 7/27/2022
(date)

(signature) Mark Rayner x
Mark Rayner



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

DISTRICT COURT
CLARK COUNTY, NEVADA

DUJUAN LOOPER,
#1238619

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-22-856419-W**
C-12-279379-1

DEPT NO: **XVII**

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

DATE OF HEARING: **SEPTEMBER 19, 2022**
TIME OF HEARING: **8:30 AM**

The State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN AFSHAR, Deputy District Attorney, submits the attached Points and Authorities in this State's Response to Looper's Petition for Writ of Habeas Corpus.

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.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 Defendant Dajuan Don Looper ("Defendant") as follows – Count 1 – Second Degree
6 Kidnapping (Category B Felony- NRS 200.310); Count 2 – Coercion (Category B Felony –
7 NRS 207.190); Counts 3-4 – Child Abuse and Neglect (Category B Felony – NRS 200.508);
8 Count 5 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS
9 200.481, 200.485, 33.018); Count 6 – Sexual Assault with a Minor Under Fourteen Years of
10 Age (Category A Felony – NRS 200.364, 200.366); Count 7 – Lewdness with a Child Under
11 the Age of 14 (Category A Felony – NRS 201.230); Count 8 – Use of Minor in Producing
12 Pornography (Category A Felony – NRS 200.700, 200.710, 200.750); Count 9 – Possession
13 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
14 200.700, 200.730).

15 On January 8, 2014, Defendant entered into a Guilty Plea Agreement, whereby he
16 agreed to plead guilty to the following charges as contained in a Third Amended Information:
17 Count 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age (Category B
18 Felony – NRS 193.330, 200.364, 200.366); Count 2 – Battery Constituting Domestic Violence
19 – Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018); Count 3 – Possession
20 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
21 200.700, 200.730).

22 On April 28, 2014, Defendant appeared for sentencing and was sentenced to the Nevada
23 Department of Corrections as follows: Count 1 – 96 to 240 months; Count 2 – 19 to 60 months,
24 to run consecutive to Count 1; Count 3 – 19 to 72 months, to run consecutive to Counts 1 and
25 2, with 809 days credit for time served. The Court also imposed a special sentence of lifetime
26 supervision and ordered Defendant to register as a sex offender. The Judgment of Conviction
27 was filed on May 23, 2014.

28 //

1 Defendant filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court
2 affirmed the conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11, 2014).
3 Remittitur issued on January 5, 2015.

4 On January 16, 2015, Defendant filed a Post-Conviction Petition for Writ of Habeas
5 Corpus ("Petition") and Motion to Appoint Counsel. The State filed an Opposition to
6 Defendant's Motion to Appoint Counsel on February 2, 2015. On February 4, 2015, this Court
7 appointed counsel. William H. Gamage, Esq., confirmed as counsel on February 11, 2015.

8 On April 18, 2016, Defendant, through counsel, filed a Supplement to Petition for Writ
9 of Habeas Corpus ("Supplement"). On June 13, 2016, the State filed its Response. On July 6,
10 2017, an evidentiary hearing was held on the Petition and the Petition was denied. On August
11 18, 2017, the court filed its Findings of Fact, Conclusions of Law and Order ("Order"). On
12 August 22, 2017, the court filed a Notice of Entry of Findings of Fact, Conclusions of Law
13 and Order.

14 On May 11, 2018, Looper filed a Pro Se Motion to Withdraw Counsel. On June 4, 2018,
15 the motion was granted.

16 On October 25, 2018, Looper filed a Pro Se Motion to Modify Sentence. On November
17 1, 2018, Looper filed a Pro Se Motion to Correct Illegal Sentence. On November 20, 2018, the
18 State filed its Opposition to Defendant's Motion for Modification of Sentence and Motion to
19 Correct Illegal Sentence. On November 26, 2018, the court denied the motions. The court's
20 written order was filed on January 9, 2019.

21 On May 26, 2022, Looper filed a Notice of Appeal appealing the court's denial of his
22 first habeas petition. On July 12, 2022, the Nevada Supreme Court dismissed Looper's appeal
23 as untimely.

24 On May 26, 2022, Looper filed a Motion for Appointment of Attorney. On July 1, 2022,
25 the State filed an Opposition to Looper's Motion for Appointment of Specific Counsel. On
26 July 6, 2022, Looper's Motion was granted and Diane Lowe, Esq. was appointed as counsel.

27 On August 2, 2022, Looper, through counsel, filed the instant Petition for Writ of
28 Habeas Corpus. The State responds as follows.

ARGUMENT

I. THE PETITION IS PROCEDURALLY BARRED

A. Application of the Procedural Bars is Mandatory

The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118 Nev. 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days late pursuant to the “clear and unambiguous” provisions of NRS 34.726(1)). Further, the district courts have a *duty* to consider whether post-conviction claims are procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005). The Nevada Supreme Court has found that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” noting:

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

Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot be ignored when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars. The procedural bars are so fundamental to the post-conviction process that they must be applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

A. The Petition is Time-Barred

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

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

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

//

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

6 The one-year time limit for preparing petitions for post-conviction relief under NRS
7 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
8 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
9 evidence presented by the defendant that he purchased postage through the prison and mailed
10 the petition within the one-year time limit.

11 Here, remittitur issued from Looper’s direct appeal on January 9, 2015. Therefore,
12 Looper had until January 9, 2016, to file a timely habeas Petition. Looper filed the instant
13 Petition on August 2, 2022. This is over seven years past Looper’s one-year deadline. As
14 explained below, Looper has not demonstrated good cause or prejudice for the court to ignore
15 this procedural bar.

16 **II. LOOPER CANNOT DEMONSTRATE GOOD CAUSE AND PREJUDICE** 17 **SUFFICIENT TO OVERCOME HIS PROCEDURAL BARS**

18 Looper’s failure to prove good cause or prejudice requires the dismissal of his Petition.
19 To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for delay in
20 filing his petition or for bringing new claims or repeating claims in a successive petition; and
21 (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3). To establish
22 prejudice “a petitioner must show that errors in the proceedings underlying the judgment
23 worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler, 128 Nev.
24 192, 197, 275 P.3d 91, 94-95 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013).

25 “To establish good cause, petitioners must show that an impediment external to the
26 defense prevented their compliance with the applicable procedural rule. A qualifying
27 impediment might be shown where the factual or legal basis for a claim was not reasonably
28 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),

1 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);
2 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to
3 demonstrate good cause, a petitioner must show that an impediment external to the defense
4 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117
5 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s
6 declaration in support of a habeas petition were sufficient “good cause” to overcome a
7 procedural default, whereas a finding by Supreme Court that a defendant was suffering from
8 Multiple Personality Disorder was). An external impediment could be “that the factual or legal
9 basis for a claim was not reasonably available to counsel, or that ‘some interference by
10 officials’ made compliance impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478, 488,
11 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing
12 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

13 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture
14 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
15 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
16 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by
17 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such
18 as the lack of assistance of counsel when preparing a petition as well as the failure of trial
19 counsel to forward a copy of the file to a petitioner have been found not to constitute good
20 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),
21 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
22 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

23 **B. Looper Fails to Establish Good Cause**

24 Looper alleges that Mr. Gamage, who represented him for his first Petition for Writ of
25 Habeas Corpus (1) failed to inform Looper that the court issued an Order denying the Petition
26 on August 22, 2017, and (2) failed to file an appeal of the court’s denial of the Petition as they
27 had discussed. Petition at 6–7. These claims do not establish good cause.

28 //

1 First, Looper was not entitled to effective assistance of counsel in his post-conviction
2 proceedings. The Nevada Supreme Court has “consistently held that the
3 ineffective assistance of post-conviction counsel in a noncapital case may not constitute ‘good
4 cause’ to excuse procedural defaults.” Brown v. McDaniel, 130 Nev. 565, 569, 331 P.3d 867,
5 870 (2014) (citing McKague v. Warden, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996));
6 (Crump v. Warden, 113 Nev. 293, 303 & n. 5, 934 P.2d 247, 253 & n. 5 (1997)). “This is
7 because there is no constitutional or statutory right to the assistance of counsel in
8 noncapital post-conviction proceedings, and ‘[w]here there is no right to counsel there can be
9 no deprivation of effective assistance of counsel.’” Id. at 569, 331 P.3d at 870 (quoting
10 McKague, 112 Nev. at 163–65, 912 P.2d at 258. Moreover, Looper was not entitled to an
11 appeal from the denial of his post-conviction petition. “Trial counsel is ineffective if he or she
12 fails to file a **direct appeal**” after a defendant has requested or expressed a desire for one—
13 not an appeal from a Petition for Writ of Habeas Corpus. See Hathaway v. State, 119 Nev.
14 248, 254, 71 P.3d 503, 507 (2003) (emphasis added). Here, Looper did file a direct appeal on
15 May 6, 2014, and the Supreme Court affirmed his Judgment of Conviction on December 11,
16 2014. Thus, Looper was neither entitled to an appeal, nor effective assistance of counsel after
17 his Petition was denied. As such, his claim that his counsel was ineffective for failing to file
18 an appeal cannot be used to establish good cause.

19 All of the cases cited by Looper either refer to the right to a *direct appeal*, or the right
20 to effective assistance of counsel in a capital case where counsel is appointed by statute. Both
21 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003), and Mann v. State, 118 Nev. 351, 46
22 P.3d 1228, 1229 (2002), cited by Looper deal with the denial of the right to a direct appeal.
23 Harris v. State, 133 Nev. 683, 407 P.3d 348 (Nev. App. 2017), is similarly distinguishable as
24 this case only addressed counsel’s failure to follow through on filing a timely first habeas
25 petition. Thus, Looper cites no support for his contention that he was entitled to an appeal.

26 Further, Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997), cited by Looper
27 specifically states, the “right to effective assistance of counsel arises **only** if that counsel was
28 appointed pursuant to a statutory **mandate**. This right does *not* arise if the counsel was

1 appointed pursuant to the court's **discretion.**" Id. at 303, n.5, 934 P.2d 253, n.5. Here, Looper's
2 counsel was not appointed by statute, thus, he cannot argue that Mr. Gamage's alleged
3 ineffective assistance constitutes good cause.

4 Second, Looper's claim that he was not aware that the district court issued an Order
5 denying his first habeas petition is belied by the record. The court's Notice of Entry of Findings
6 of Fact, Conclusions of Law and Order shows that a copy of the Order was mailed directly to
7 Looper. See Notice of Entry of Findings of Fact, Conclusions of Law and Order, August 22,
8 2017, at 1. Moreover, Looper was present and testified at the July 6, 2017, evidentiary hearing
9 when the court denied his Petition. See generally Evidentiary Hearing, July 6, 2017. Thus,
10 any claim that Looper was not aware that the Petition had been denied or did not know that
11 the court had entered its written findings is belied by the record. Hargrove v. State, 100 Nev.
12 498, 502, 686 P.2d 222, 225 (1984). As such, Looper's failure to demonstrate good cause
13 necessitates the dismissal of his Petition.

14 **C. Looper Cannot Show Sufficient Prejudice**

15 Looper's failure to demonstrate good cause necessitates the dismissal of his petition.
16 However, Looper also fails to demonstrate that he was prejudiced by being unable to appeal
17 the denial of his Petition because his claims lack merit. "A court **must** dismiss a habeas petition
18 if it presents claims that either were or could have been presented in an earlier proceeding,
19 unless the court finds both cause for failing to present the claims earlier or for raising them
20 again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d
21 498, 523 (2001) (emphasis added). To demonstrate prejudice to overcome the procedural bars,
22 a defendant must show "not merely that the errors of [the proceeding] created possibility of
23 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state
24 proceedings with error of constitutional dimensions." Hogan v. Warden, 109 Nev. 952, 960,
25 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584,
26 1596 (1982)). To find good cause there must be a "substantial reason; one that affords a legal
27 excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v.
28 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).

1 The United States Supreme Court has long recognized that “the right to counsel is the
2 right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104
3 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
4 (1993). Claims of ineffective assistance of counsel are analyzed under the two-pronged test
5 articulated in Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must
6 show: 1) that counsel’s performance was deficient, and 2) that the deficient performance
7 prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this standard in Warden
8 v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). “A court may consider the two test elements in
9 any order and need not consider both prongs if the defendant makes an insufficient showing
10 on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); Molina v.
11 State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

12 “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559
13 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). “There are countless ways to provide effective
14 assistance in any given case. Even the best criminal defense attorneys would not defend a
15 particular client in the same way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. The question
16 is whether an attorney’s representations amounted to incompetence under prevailing
17 professional norms, “not whether it deviated from best practices or most common custom.”
18 Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). “Effective counsel does
19 not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
20 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State
21 Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S.
22 759, 771, 90 S. Ct. 1441, 1449 (1970)).

23 The court begins with the presumption of effectiveness and then must determine
24 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
25 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). Based on
26 the above law, the role of a court in considering allegations of ineffective assistance of counsel
27 is “not to pass upon the merits of the action not taken but to determine whether, under the
28 particular facts and circumstances of the case, trial counsel failed to render reasonably

1 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing
2 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). This analysis does not indicate that
3 the court should “second guess reasoned choices between trial tactics, nor does it mean that
4 defense counsel, to protect himself against allegations of inadequacy, must make every
5 conceivable motion no matter how remote the possibilities are of success.” Donovan, 94 Nev.
6 at 675, 584 P.2d at 711. The role of a court in considering alleged ineffective assistance of
7 counsel is “not to pass upon the merits of the action not taken but to determine whether, under
8 the particular facts and circumstances of the case, trial counsel failed to render reasonably
9 effective assistance.” Id. In essence, the court must “judge the reasonableness of counsel’s
10 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
11 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

12 The Strickland analysis does not “mean that defense counsel, to protect himself against
13 allegations of inadequacy, must make every conceivable motion no matter how remote the
14 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
15 F.2d at 1166 (9th Cir. 1977)). To be effective, the constitution “does not require that counsel
16 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
17 cannot create one and may disserve the interests of his client by attempting a useless charade.”
18 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984). “Counsel
19 cannot be deemed ineffective for failing to make futile objections, file futile motions, or for
20 failing to make futile arguments.” Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103
21 (2006). Counsel’s strategy decision is a “tactical” decision and will be “virtually
22 unchallengeable absent extraordinary circumstances.” Id. at 846, 921 P.2d at 280; see also
23 Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691,
24 104 S. Ct. at 2066. “Strategic choices made by counsel after thoroughly investigating the
25 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
26 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Trial
27 counsel has the “immediate and ultimate responsibility of deciding if and when to object,
28 which witnesses, if any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8,

1 38 P.3d 163, 167 (2002).

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

12 Even if a petitioner can demonstrate that his counsel's representation fell below an
13 objective standard of reasonableness, he must still demonstrate prejudice by showing a
14 reasonable probability that, but for counsel's errors, the result of the trial would have been
15 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
16 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
17 sufficient to undermine confidence in the outcome.” Id.

18 Here, Looper cannot demonstrate prejudice in being unable to appeal the district court's
19 decision because the district court properly denied his Petition. Looper claims that his plea
20 counsel, Marjorie E. Barbeau, Esq., rendered ineffective assistance because she failed to fully
21 inform him of (1) the nature and requirements of sex offender registration; (2) the
22 consequences and procedural aspects of lifetime supervision; and (3) the requirement that he
23 undergo a medical and mental health assessment in order to be eligible for parole. Petition at
24 16.

25 In its Order denying the Petition, the district court explained that Looper was canvassed
26 on whether he understood that he would be subject to sex offender registration, lifetime
27 supervision, and a psychosexual evaluation. Order, August 18, 2017, at 6. Further, Looper's
28 plea agreement contained specific provisions informing Looper of the psychosexual evaluation

1 and sex offender registration requirements. Order, August 18, 2017at 7. Finally, Ms. Barbeau
2 testified at the evidentiary hearing that she went to the Clark County Detention Center
3 ("CCDC") and met with Looper for a lengthy period of time going through not just his file,
4 but all the evidence and the Guilty Plea Agreement. Order, August 18, 2017at 7. Ms. Barbeau
5 further testified that she recalls speaking with Looper about sex offender registration and
6 lifetime supervision. Order, August 18, 2017at 7. Thus, the district court properly denied
7 Looper's claims as they were belied by the record. Order, August 18, 2017at 7. Accordingly,
8 Looper cannot show that he was prejudiced by his inability to appeal the denial of his habeas
9 petition because his claims lack merit. As Looper has failed to show good cause or prejudice
10 sufficient to overcome his procedural bar, the instant Petition should be denied.

11 **III. LOOPER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

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

23 The Nevada Supreme Court has held that if a petition can be resolved without
24 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
25 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
26 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
27 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
28 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction
relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it

1 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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

16 Here, as explained *supra*, Looper was not entitled to effective assistance of counsel in
17 his post-conviction proceedings, nor was he entitled to an appeal of the district court’s denial
18 of his habeas petition. Thus, Looper has failed to demonstrate that an expansion of the record
19 on this issue is warranted.

20 CONCLUSION

21 Based on the foregoing arguments, Looper’s Petition for Writ of Habeas Corpus (Post-
22 Conviction) should be DENIED.

23 DATED this 6th day of September, 2022.

24 Respectfully submitted,

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

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

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CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 6th day of
SEPTEMBER 2022, to:

DIANE LOWE, ESQ.
dianelowe@lowelawllc.com

BY /s/ Howard Conrad
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 19, 2022

A-22-856419-W Dajuan Looper, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

September 19, 2022 08:30 AM Petition for Writ of Habeas Corpus

HEARD BY: Gibbons, Mark **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Santi, Kristine

REPORTER:

PARTIES PRESENT:

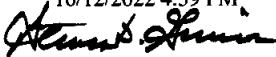
| | |
|-------------------------|-------------------------------|
| Jacob J. Villani | Attorney for Defendant |
| Nevada State of | Defendant |

JOURNAL ENTRIES

Plaintiff not present. Diane Lowe, Esq. not present.

State submitted. COURT ORDERED, Petition DENIED as procedurally and time barred. State to prepare the order.

NDC


CLERK OF THE COURT

1 **FFCO**
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 Respondent

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

9 **DUJUAN LOOPER,**
10 **#1238619**

11 Petitioner,

12 -vs-

13 THE STATE OF NEVADA,

14 Respondent.

CASE NO: **A-22-856419-W**
C-12-279379-1

DEPT NO: **XVII**

16 **FINDINGS OF FACT, CONCLUSIONS**

17 **OF LAW AND ORDER**

18 DATE OF HEARING: **SEPTEMBER 19, 2022**
19 TIME OF HEARING: **8:30 AM**

20 THIS CAUSE having presented before the Honorable MARK GIBBONS, District
21 Judge, on the 19th day of September, 2022; Petitioner not present, the Respondent being
22 represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through
23 JACOB J. VILLANI, Chief Deputy District Attorney; and having considered the matter,
24 including briefs, transcripts, arguments of counsel, and documents on file herein, the Court
25 makes the following Findings of Fact and Conclusions of Law:

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 Defendant Dajuan Don Looper ("Defendant") as follows – Count 1 – Second Degree
6 Kidnapping (Category B Felony- NRS 200.310); Count 2 – Coercion (Category B Felony –
7 NRS 207.190); Counts 3-4 – Child Abuse and Neglect (Category B Felony – NRS 200.508);
8 Count 5 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS
9 200.481, 200.485, 33.018); Count 6 – Sexual Assault with a Minor Under Fourteen Years of
10 Age (Category A Felony – NRS 200.364, 200.366); Count 7 – Lewdness with a Child Under
11 the Age of 14 (Category A Felony – NRS 201.230); Count 8 – Use of Minor in Producing
12 Pornography (Category A Felony – NRS 200.700, 200.710, 200.750); Count 9 – Possession
13 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
14 200.700, 200.730).

15 On January 8, 2014, Defendant entered into a Guilty Plea Agreement, whereby he
16 agreed to plead guilty to the following charges as contained in a Third Amended Information:
17 Count 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age (Category B
18 Felony – NRS 193.330, 200.364, 200.366); Count 2 – Battery Constituting Domestic Violence
19 – Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018); Count 3 – Possession
20 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
21 200.700, 200.730).

22 On April 28, 2014, Defendant appeared for sentencing and was sentenced to the Nevada
23 Department of Corrections as follows: Count 1 – 96 to 240 months; Count 2 – 19 to 60 months,
24 to run consecutive to Count 1; Count 3 – 19 to 72 months, to run consecutive to Counts 1 and
25 2, with 809 days credit for time served. This Court also imposed a special sentence of lifetime
26 supervision and ordered Defendant to register as a sex offender. The Judgment of Conviction
27 was filed on May 23, 2014.

28 //

1 Defendant filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court
2 affirmed the conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11, 2014).
3 Remittitur issued on January 5, 2015.

4 On January 16, 2015, Defendant filed a Post-Conviction Petition for Writ of Habeas
5 Corpus ("Petition") and Motion to Appoint Counsel. The State filed an Opposition to
6 Defendant's Motion to Appoint Counsel on February 2, 2015. On February 4, 2015, this Court
7 appointed counsel. William H. Gamage, Esq., confirmed as counsel on February 11, 2015.

8 On April 18, 2016, Defendant, through counsel, filed a Supplement to Petition for Writ
9 of Habeas Corpus ("Supplement"). On June 13, 2016, the State filed its Response. On July 6,
10 2017, an evidentiary hearing was held on the Petition and the Petition was denied. On August
11 18, 2017, this court filed its Findings of Fact, Conclusions of Law and Order ("Order"). On
12 August 22, 2017, this court filed a Notice of Entry of Findings of Fact, Conclusions of Law
13 and Order.

14 On May 11, 2018, Looper filed a Pro Se Motion to Withdraw Counsel. On June 4, 2018,
15 the motion was granted.

16 On October 25, 2018, Looper filed a Pro Se Motion to Modify Sentence. On November
17 1, 2018, Looper filed a Pro Se Motion to Correct Illegal Sentence. On November 20, 2018, the
18 State filed its Opposition to Defendant's Motion for Modification of Sentence and Motion to
19 Correct Illegal Sentence. On November 26, 2018, this court denied the motions. This court's
20 written order was filed on January 9, 2019.

21 On May 26, 2022, Looper filed a Notice of Appeal appealing the court's denial of his
22 first habeas petition. On July 12, 2022, the Nevada Supreme Court dismissed Looper's appeal
23 as untimely.

24 On May 26, 2022, Looper filed a Motion for Appointment of Attorney. On July 1, 2022,
25 the State filed an Opposition to Looper's Motion for Appointment of Specific Counsel. On
26 July 6, 2022, Looper's Motion was granted and Diane Lowe, Esq. was appointed as counsel.

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1 On August 2, 2022, Looper, through counsel, filed a Petition for Writ of Habeas Corpus.
2 The State responded. On September 19, 2022, this Court denied the Petition, for the reasons
3 stated below.

4 ANALYSIS

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

6 **A. Application of the Procedural Bars is Mandatory.**

7 The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118 Nev.
8 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days late
9 pursuant to the “clear and unambiguous” provisions of NRS 34.726(1)). Further, the district
10 courts have a *duty* to consider whether post-conviction claims are procedurally barred. State
11 v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005). The
12 Nevada Supreme Court has found that “[a]pplication of the statutory procedural default rules
13 to post-conviction habeas petitions is mandatory,” noting:

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

17 Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot
18 be ignored when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada
19 Supreme Court has granted no discretion to the district courts regarding whether to apply the
20 statutory procedural bars. The procedural bars are so fundamental to the post-conviction
21 process that they must be applied by this Court even if not raised by the State. See Riker, 121
22 Nev. at 231, 112 P.3d at 1074.

23 **B. The Petition is Time-Barred.**

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

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

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

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

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
11 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
12 evidence presented by the defendant that he purchased postage through the prison and mailed
13 the petition within the one-year time limit.

14 Here, remittitur issued from Looper’s direct appeal on January 9, 2015. Therefore,
15 Looper had until January 9, 2016, to file a timely habeas Petition. Looper filed the instant
16 Petition on August 2, 2022. This is over seven years past Looper’s one-year deadline. As
17 explained below, Looper has not demonstrated good cause or prejudice for the court to ignore
18 this procedural bar.

19 **II. LOOPER CANNOT DEMONSTRATE GOOD CAUSE AND PREJUDICE**
20 **SUFFICIENT TO OVERCOME HIS PROCEDURAL BARS.**

21 Looper’s failure to prove good cause or prejudice requires the dismissal of his Petition.
22 To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for delay in
23 filing his petition or for bringing new claims or repeating claims in a successive petition; and
24 (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3). To establish
25 prejudice “a petitioner must show that errors in the proceedings underlying the judgment
26 worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler, 128 Nev.
27 192, 197, 275 P.3d 91, 94-95 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013).

28 //

1 “To establish good cause, petitioners must show that an impediment external to the
2 defense prevented their compliance with the applicable procedural rule. A qualifying
3 impediment might be shown where the factual or legal basis for a claim was not reasonably
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),
5 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);
6 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to
7 demonstrate good cause, a petitioner must show that an impediment external to the defense
8 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117
9 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s
10 declaration in support of a habeas petition were sufficient “good cause” to overcome a
11 procedural default, whereas a finding by Supreme Court that a defendant was suffering from
12 Multiple Personality Disorder was). An external impediment could be “that the factual or legal
13 basis for a claim was not reasonably available to counsel, or that ‘some interference by
14 officials’ made compliance impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478, 488,
15 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing
16 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

17 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture
18 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
19 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
20 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by
21 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such
22 as the lack of assistance of counsel when preparing a petition as well as the failure of trial
23 counsel to forward a copy of the file to a petitioner have been found not to constitute good
24 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),
25 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
26 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

27 //

28 //

1 **C. Looper Fails to Establish Good Cause.**

2 Looper alleges that Mr. Gamage, who represented him for his first Petition for Writ of
3 Habeas Corpus (1) failed to inform Looper that the court issued an Order denying the Petition
4 on August 22, 2017, and (2) failed to file an appeal of the court's denial of the Petition as they
5 had discussed. Petition at 6–7. These claims do not establish good cause.

6 First, Looper was not entitled to effective assistance of counsel in his post-conviction
7 proceedings. The Nevada Supreme Court has “consistently held that the
8 ineffective assistance of post-conviction counsel in a noncapital case may not constitute ‘good
9 cause’ to excuse procedural defaults.” Brown v. McDaniel, 130 Nev. 565, 569, 331 P.3d 867,
10 870 (2014) (citing McKague v. Warden, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996));
11 (Crump v. Warden, 113 Nev. 293, 303 & n. 5, 934 P.2d 247, 253 & n. 5 (1997)). “This is
12 because there is no constitutional or statutory right to the assistance of counsel in
13 noncapital post-conviction proceedings, and ‘[w]here there is no right to counsel there can be
14 no deprivation of effective assistance of counsel.’” Id. at 569, 331 P.3d at 870 (quoting
15 McKague, 112 Nev. at 163–65, 912 P.2d at 258. Moreover, Looper was not entitled to an
16 appeal from the denial of his post-conviction petition. “Trial counsel is ineffective if he or she
17 fails to file a **direct appeal**” after a defendant has requested or expressed a desire for one—
18 not an appeal from a Petition for Writ of Habeas Corpus. See Hathaway v. State, 119 Nev.
19 248, 254, 71 P.3d 503, 507 (2003) (emphasis added). Here, Looper did file a direct appeal on
20 May 6, 2014, and the Supreme Court affirmed his Judgment of Conviction on December 11,
21 2014. Thus, Looper was neither entitled to an appeal, nor effective assistance of counsel after
22 his Petition was denied. As such, his claim that his counsel was ineffective for failing to file
23 an appeal cannot be used to establish good cause.

24 All of the cases cited by Looper either refer to the right to a *direct appeal*, or the right
25 to effective assistance of counsel in a capital case where counsel is appointed by statute. Both
26 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003), and Mann v. State, 118 Nev. 351, 46
27 P.3d 1228, 1229 (2002), cited by Looper deal with the denial of the right to a direct appeal.
28 Harris v. State, 133 Nev. 683, 407 P.3d 348 (Nev. App. 2017), is similarly distinguishable as

1 this case only addressed counsel's failure to follow through on filing a timely first habeas
2 petition. Thus, Looper cites no support for his contention that he was entitled to an appeal.

3 Further, Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997), cited by Looper
4 specifically states, the "right to effective assistance of counsel arises **only** if that counsel was
5 appointed pursuant to a statutory **mandate**. This right does *not* arise if the counsel was
6 appointed pursuant to the court's **discretion**." Id. at 303, n.5, 934 P.2d 253, n.5. Here, Looper's
7 counsel was not appointed by statute, thus, he cannot argue that Mr. Gamage's alleged
8 ineffective assistance constitutes good cause.

9 Second, Looper's claim that he was not aware that this court issued an Order denying
10 his first habeas petition is belied by the record. The court's Notice of Entry of Findings of Fact,
11 Conclusions of Law and Order shows that a copy of the Order was mailed directly to Looper.
12 See Notice of Entry of Findings of Fact, Conclusions of Law and Order, August 22, 2017, at
13 1. Moreover, Looper was present and testified at the July 6, 2017, evidentiary hearing when
14 the court denied his Petition. See generally Evidentiary Hearing, July 6, 2017. Thus, any claim
15 that Looper was not aware that the Petition had been denied or did not know that the court had
16 entered its written findings is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686
17 P.2d 222, 225 (1984). As such, Looper's failure to demonstrate good cause necessitates the
18 dismissal of his Petition.

19 **D. Looper Cannot Show Sufficient Prejudice.**

20 Looper's failure to demonstrate good cause necessitates the dismissal of his petition.
21 However, Looper also fails to demonstrate that he was prejudiced by being unable to appeal
22 the denial of his Petition because his claims lack merit. "A court **must** dismiss a habeas petition
23 if it presents claims that either were or could have been presented in an earlier proceeding,
24 unless the court finds both cause for failing to present the claims earlier or for raising them
25 again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d
26 498, 523 (2001) (emphasis added). To demonstrate prejudice to overcome the procedural bars,
27 a defendant must show "not merely that the errors of [the proceeding] created possibility of
28 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state

1 proceedings with error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952, 960,
2 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584,
3 1596 (1982)). To find good cause there must be a “substantial reason; one that affords a legal
4 excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v.
5 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).

6 The United States Supreme Court has long recognized that “the right to counsel is the
7 right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104
8 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
9 (1993). Claims of ineffective assistance of counsel are analyzed under the two-pronged test
10 articulated in Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must
11 show: 1) that counsel’s performance was deficient, and 2) that the deficient performance
12 prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this standard in Warden
13 v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). “A court may consider the two test elements in
14 any order and need not consider both prongs if the defendant makes an insufficient showing
15 on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); Molina v.
16 State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

17 “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559
18 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). “There are countless ways to provide effective
19 assistance in any given case. Even the best criminal defense attorneys would not defend a
20 particular client in the same way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. The question
21 is whether an attorney’s representations amounted to incompetence under prevailing
22 professional norms, “not whether it deviated from best practices or most common custom.”
23 Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). “Effective counsel does
24 not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
25 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State
26 Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S.
27 759, 771, 90 S. Ct. 1441, 1449 (1970)).

28 //

1 The court begins with the presumption of effectiveness and then must determine
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
3 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). Based on
4 the above law, the role of a court in considering allegations of ineffective assistance of counsel
5 is “not to pass upon the merits of the action not taken but to determine whether, under the
6 particular facts and circumstances of the case, trial counsel failed to render reasonably
7 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing
8 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). This analysis does not indicate that
9 the court should “second guess reasoned choices between trial tactics, nor does it mean that
10 defense counsel, to protect himself against allegations of inadequacy, must make every
11 conceivable motion no matter how remote the possibilities are of success.” Donovan, 94 Nev.
12 at 675, 584 P.2d at 711. The role of a court in considering alleged ineffective assistance of
13 counsel is “not to pass upon the merits of the action not taken but to determine whether, under
14 the particular facts and circumstances of the case, trial counsel failed to render reasonably
15 effective assistance.” Id. In essence, the court must “judge the reasonableness of counsel’s
16 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
17 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

18 The Strickland analysis does not “mean that defense counsel, to protect himself against
19 allegations of inadequacy, must make every conceivable motion no matter how remote the
20 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
21 F.2d at 1166 (9th Cir. 1977)). To be effective, the constitution “does not require that counsel
22 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
23 cannot create one and may disserve the interests of his client by attempting a useless charade.”
24 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984). “Counsel
25 cannot be deemed ineffective for failing to make futile objections, file futile motions, or for
26 failing to make futile arguments.” Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103
27 (2006). Counsel’s strategy decision is a “tactical” decision and will be “virtually
28 unchallengeable absent extraordinary circumstances.” Id. at 846, 921 P.2d at 280; see also

1 Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691,
2 104 S. Ct. at 2066. “Strategic choices made by counsel after thoroughly investigating the
3 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
4 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Trial
5 counsel has the “immediate and ultimate responsibility of deciding if and when to object,
6 which witnesses, if any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8,
7 38 P.3d 163, 167 (2002).

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

18 Even if a petitioner can demonstrate that his counsel's representation fell below an
19 objective standard of reasonableness, he must still demonstrate prejudice by showing a
20 reasonable probability that, but for counsel's errors, the result of the trial would have been
21 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
22 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
23 sufficient to undermine confidence in the outcome.” Id.

24 Here, Looper cannot demonstrate prejudice in being unable to appeal this court's
25 decision. Looper claims that his plea counsel, Marjorie E. Barbeau, Esq., rendered ineffective
26 assistance because she failed to fully inform him of (1) the nature and requirements of sex
27 offender registration; (2) the consequences and procedural aspects of lifetime supervision; and
28 (3) the requirement that he undergo a medical and mental health assessment in order to be

1 eligible for parole. Petition at 16.

2 In its Order denying the Petition, this court explained that Looper was canvassed on
3 whether he understood that he would be subject to sex offender registration, lifetime
4 supervision, and a psychosexual evaluation. Order, August 18, 2017, at 6. Further, Looper's
5 plea agreement contained specific provisions informing Looper of the psychosexual evaluation
6 and sex offender registration requirements. Order, August 18, 2017 at 7. Finally, Ms. Barbeau
7 testified at the evidentiary hearing that she went to the Clark County Detention Center
8 ("CCDC") and met with Looper for a lengthy period of time going through not just his file,
9 but all the evidence and the Guilty Plea Agreement. Order, August 18, 2017 at 7. Ms. Barbeau
10 further testified that she recalls speaking with Looper about sex offender registration and
11 lifetime supervision. Order, August 18, 2017 at 7. Thus, this court denied Looper's claims as
12 they were belied by the record. Order, August 18, 2017 at 7. Accordingly, Looper cannot show
13 that he was prejudiced by his inability to appeal the denial of his habeas petition because his
14 claims lack merit. As Looper has failed to show good cause or prejudice sufficient to overcome
15 his procedural bar, the instant Petition should be denied.

16 **III. LOOPER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

17 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

18 1. The judge or justice, upon review of the return, answer and all
19 supporting documents which are filed, shall determine whether an
20 evidentiary hearing is required. A petitioner must not be discharged
or committed to the custody of a person other than the respondent
unless an evidentiary hearing is held.

21 2. If the judge or justice determines that the petitioner is not entitled
22 to relief and an evidentiary hearing is not required, he shall dismiss
the petition without a hearing.

23 3. If the judge or justice determines that an evidentiary hearing is
24 required, he shall grant the writ and shall set a date for the hearing.

25 The Nevada Supreme Court has held that if a petition can be resolved without
26 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
27 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
28 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual

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

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

21 Here, as explained *supra*, Looper was not entitled to effective assistance of counsel in
22 his post-conviction proceedings, nor was he entitled to an appeal of this court’s denial of his
23 habeas petition. Thus, Looper has failed to demonstrate that an expansion of the record on this
24 issue is warranted.

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ORDER

THEREFORE, **IT IS ORDERED** that Defendant's Petition for Post-Conviction Relief shall be and it is hereby **DENIED**.

Dated this 12th day of October, 2022



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

7F9 F53 5AAD 9C38
Carolyn Ellsworth
District Court Judge
For: Sr. Judge Mark Gibbons

BY



JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Dujuan Looper, Plaintiff(s)

CASE NO: A-22-856419-W

7 vs.

DEPT. NO. District Court Criminal/Civil

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/12/2022

15 DA SVU

DASVUTeam@clarkcountyda.com

16 Diane Lowe

dianelowe@lowelawllc.com
17
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1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 DUJUAN LOOPER,

6 Petitioner,

Case No: A-22-856419-W

Dept No: XVII

7 vs.

8 STATE OF NEVADA,

9 Respondent,
10

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

11 PLEASE TAKE NOTICE that on October 12, 2022, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on October 13, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Heather Ungermann

17 Heather Ungermann, Deputy Clerk
18

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 13 day of October 2022, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Dujuan Looper # 1120989
P.O. Box 650
26 Indian Springs, NV 89070

Diane C. Lowe, Esq.
7350 W. Centennial Pkwy. #3085
Las Vegas, NV 89131

27 /s/ Heather Ungermann

28 Heather Ungermann, Deputy Clerk



1 **NOASC**
2 **LOWE LAW, L.L.C.**
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Email: DianeLowe@LoweLawLLC.com
8 Attorney for Petitioner Dajuan Looper

9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY NEVADA

11 DUJUAN LOOPER,

Case No.: A-22-856419-W

12 [NDOC 1120989]

13 Petitioner,

DEPT NO. XVII

14 vs.

[stemming from C-12-279379-1]

15 CALVIN JOHNSON WARDEN OF
16 HIGH DESERT STATE PRISON

17 Respondent.

18
19 NOTICE OF APPEAL
20
21

22 NOTICE is hereby given that DUJUAN LOOPER, Petitioner above
23 named, hereby appeals to the Supreme Court of Nevada from the Findings of
24 Fact, Conclusions of Law and Order entered October 12, 2022, by the Honorable
25 Carolyn Ellsworth for Sr. Judge Mark Gibbons. Argument consisted of
26 submission on the Petition for Writ of Habeas Corpus and State Response.
27
28 An evidentiary hearing was denied.

1 DATED this 13th day of October, 2022.

2 Respectfully Submitted,
3

4 /s/ Diane C. Lowe, Esq.

5 DIANE C. LOWE, ESQ. Nevada Bar #014573

6 Lowe Law, L.L.C.

7 7350 West Centennial Pkwy #3085

8 Las Vegas, NV 89131

9 Telephone: (725)212-2451 Facsimile: (702)442-0321

10 Attorney for Petitioner Dajuan Looper
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BY eService E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

LOWE LAW, L.L.C.

| ATTORNEYS OF RECORD | PARTIES REPRESENTED | METHOD OF SERVICE |
|---|---------------------|----------------------------|
| CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 motions@clarkcountyda.com <u>Nevada Attorney General's</u> <u>Office</u> Wiznetfilings.ag.nv.gov | STATE OF NEVADA | Email Service via eService |

/s/ Diane C. Lowe, Esq.
Attorney for Dajuan Looper



1 **ASTA**
2 **LOWE LAW, L.L.C.**
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Email: DianeLowe@LoweLawLLC.com
8 Attorney for Petitioner Dujuan Looper

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY NEVADA**

11 DUJUAN LOOPER,

Case No.: A-22-856419-W

12 [NDOC 1120989]

13 Petitioner,

DEPT NO. XVII

14 vs.

[stemming from C-12-279379-1]

15 CALVIN JOHNSON WARDEN OF
16 HIGH DESERT STATE PRISON

17 Respondent.

CASE APPEAL STATEMENT

- 18
- 19
- 20 1. Name of appellant filing this case appeal statement: Dujuan Looper.
- 21 2. Identify the judge issuing the decision, judgment, or order appealed from:
- 22 The Honorable Carolyn Ellsworth, Department 17 for Sr. Judge Mark
- 23 Gibbons, Nevada Eighth Judicial District Court.
- 24
- 25 3. Identify each appellant and the name and address of counsel for each
- 26 appellant: Appellant: Dujuan Looper; Counsel for Appellant Diane C. Lowe
- 27
- 28

1 7350 W Centennial Parkway #3085 Las Vegas, NV. 89131. Nevada Bar #
2 14573.
3

4 4. Identify each respondent and the name and address of appellate counsel if
5 know for each respondent. Respondent: State of Nevada. Counsel for
6 Respondent: Steve Wolfson Esq. Nevada Bar # 1565; Clark County District
7 Attorney 200 Lewis Avenue Las Vegas, Nevada 89155; Aaron D. Ford,
8 Nevada Bar # 7704; Attorney General, 100 North Carson Street Carson City,
9 Nevada 89701.
10
11

12 5. Indicate whether any attorney identified above in response to questions 3 or
13 4 is not licensed to practice law in Nevada. All attorneys listed above are
14 licensed to practice law in Nevada.
15

16 6. Indicate whether appellant was represented by appointed or retained counsel
17 in the district court: Appointed.
18

19 7. Indicate whether appellant is represented by appointed or retained counsel
20 on appeal: Appointed.
21

22 8. 8. Indicate whether appellant was granted leave to proceed in forma
23 pauperis: Yes.
24

25 9. Indicate the date the proceedings in the district court (e.g., date complaint,
26 indictment information, or petition was filed: Criminal complaint filed in
27
28

1 Las Vegas Justice Court January 9, 2012; Preliminary Hearing waived
2 February 9, 2019 with criminal bindover to District court the same day.
3
4 Plea entered at a hearing on January 8, 2014. His sentencing hearing was
5 April 28, 2014. The Judgment of Conviction (Plea of Guilty) was filed May
6 23, 2014.
7

8 10. Nature of action: Mr. Looper was charged with 9 criminal counts. His plea
9 agreement was for 3 counts: Count 1 Attempt Sexual Assault with a minor
10 under fourteen years of age (Category B Felony – NRS 193.330, 200.364,
11 200.366); Count 2 – Battery Constituting Domestic Violence – Strangulation
12 (Category C Felony – NRS 200.481; 200.485; 33.018) and Count 3 –
13 Possession of Visual Presentation Depicting Sexual Conduct of a Child
14 (Category B Felony – N.R.S. 200.700, 200.730). There was a fast-track
15 direct appeal 65608 which resulted in a judgment affirmed December 11,
16 2014. He had an attorney appointed for his postconviction writ of habeas
17 corpus action A-18-771898-W. He lost and his attorney fell out of
18 communication with him and failed to file an appeal. He much later filed a
19 pro se appeal May 26, 2022, which was rejected by the Nevada Supreme
20 Court as untimely leaving them without jurisdiction. 84804. Order of
21 Dismissal filed June 16, 2022. He was able to get this attorney appointed,
22 Diane Lowe who filed an in-depth petition for writ of habeas corpus on his
23
24
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28

1 CLARK COUNTY
2 DISTRICT ATTORNEY'S
3 OFFICE
4 200 E. Lewis Ave
5 Las Vegas, NV 89101
6 motions@clarkcountyda.com

7 Nevada Attorney General's
8 Office
9 Wiznetfilings.ag.nv.gov

Email Service via
eService

And direct email

10 I further certify that I served a copy of this document by mailing a true and correct
11 copy thereof, post pre-paid, addressed to Dajuan Looper. NDOC 1120989, High
12 Desert State Prison PO Box 650 Indian Springs, NV 89070-0650.

13
14 /s/ Diane C. Lowe, Esq.
15 Attorney for Dajuan Looper

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 19 2022 09:21 AM
Elizabeth A. Brown
Clerk of Supreme Court

DUJUAN LOOPER,

[NDOC 1120989]

Petitioner,

vs.

CALVIN JOHNSON WARDEN OF
HIGH DESERT STATE PRISON

Respondent.

Supreme Court Case 85513

Case No.: A-22-856419-W

DEPT NO. XVII

[stemming from C-12-279379-1]

DOCKETING STATEMENT

CRIMINAL CASE APPEAL

1. Eighth Judicial District Clark County
Honorable Carolyn Ellsworth, for Sr. Judge Mark Gibbons Dept 17
District Court Case A-22-856419-W.
2. On April 28, 2014, he was sentenced to:
Count 1 Attempt Sexual Assault with a Minor Under Fourteen Years of Age
Sentenced to a maximum of two hundred forty (240)
months and a minimum of ninety-six (96) months
Count 2 Battery Constituting Domestic Violence Strangulation and

Sentenced to a maximum of sixty (60) months and a minimum of nineteen (19) months consecutive to count 1
Count 3 Possession of Visual Presentation Depicting Sexual Conduct of a Child

Sentenced to a maximum of seventy-two (72) months and a minimum of nineteen (19) months consecutive to counts 1 and 2

eight hundred nine (809) days credit for time served. It was further ordered a special sentence of lifetime supervision is imposed to commence upon release from any term of probation, parole or imprisonment and he is to register as a sex offender within 48 hours after sentencing or release from custody.

| | Minimum | Maximum |
|---|------------|------------|
| 1 | 96 months | 240 months |
| 2 | 19 months | 60 months |
| 3 | 19 months | 72 months |
| | 134 months | 372 months |

Total time: 134 months to 372 months = 11.16 years to 31 years – with 809 days jail credit (2.22 years)

- b) The Appellant's sentence has not been stayed.
- c) The Appellant has not been admitted to bail pending appeal.
- 3. All attorneys who represented Appellant in District Court were appointed.
- 4. Attorney filing this docketing statement:
Diane C. Lowe, Esq.
Lowe Law, L.L.C.
7350 West Centennial Pkwy #3085
Las Vegas, NV 89131
Telephone 725 212 2451
- 5. Appellate counsel is appointed.

6. Respondent Attorney:

District Attorney Steven Wolfson, Esq.
Clark County District Attorney's Office
200 Lewis Avenue, 9th Floor
Las Vegas, NV. 89155
(702)671-2750

Attorney General Arron D. Ford
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701
Telephone 775 684 1100

Client: The State of Nevada

7. Disposition Below: Judgment upon guilty pleas.
8. Does this appeal raise an issue concerning a LIFE sentence, death, juvenile, pretrial? No.
9. Appellant is not in favor of proceeding in an expedited manner.
10. Prior proceedings in this court: Direct appeal 81195.
11. Prior proceedings in other courts:
1. There was a fast-track direct appeal 65608 which resulted in a judgment affirmed December 11, 2014. He had an attorney appointed for his postconviction writ of habeas corpus action A-18-771898-W. He lost and his attorney fell out of communication with him and failed to file an appeal. He much later filed a pro se appeal May 26, 2022, which was rejected by the Nevada Supreme Court as untimely leaving them without jurisdiction. 84804. Order of Dismissal filed June 16, 2022. He was able to get this

attorney appointed, Diane Lowe who filed an in-depth petition for writ of habeas corpus on his behalf. The State responded and the District Court rejected the arguments of Petitioner. There was no briefing beyond the attorney filed petition for writ of habeas corpus and the State's response.

The 15-page Findings of Fact, Conclusions of Law & Order issued October 12, 2022.

12. Nature of Action. Briefly describe the nature of the action and the result below.

Mr. Looper was charged with 9 criminal counts. His plea agreement was for 3 counts: Count 1 Attempt Sexual Assault with a minor under fourteen years of age (Category B Felony – NRS 193.330, 200.364, 200.366); Count 2 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS 200.481; 200.485; 33.018) and Count 3 – Possession of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – N.R.S. 200.700, 200.730). His original petition for writ of habeas corpus went through to a evidentiary hearing which resulted in denial of relief. He states he thought his attorney was going to file an appeal for him but he did not. Much later he tried to himself but it was too late and the Nevada Supreme Court found they did not have jurisdiction to consider the action. This attorney was then appointed and a Petition for Writ of Habeas Corpus was filed and denied without additional briefing or hearings.

13. Issues Appellant is raising in this appeal:

Postconviction writ of habeas corpus attorney Mr. Gamage represented Mr. Looper throughout his postconviction writ of habeas corpus case and at the evidentiary hearing but did not advise him that an Order denying relief was issued August 22 2017 nor did he advise him that he was not going to file an appeal as promised if they lost.

Mr. Looper would like to pursue an appeal on one or more of the issues presented in his initial petition for writ of habeas corpus and supplemental briefing and argument; for which relief was denied after an evidentiary

hearing, namely: Ground One – Violation of Petitioner’s Right to Effective Assistance of Counsel During Plea Negotiations and Sentencing.

14. Not applicable. No known challenges to the Constitutionality of Statutes at issue at this time.

15. Pursuant to NRAP 17(b)(3) this proceeding is presumptively assigned to the Court of Appeals because this is a postconviction appeal of two Category B felonies and a Category C felony (plea agreement / denial of writ of habeas corpus petition.).

16. First Impression: No.

Public Interest: No.

17. This was a plea agreement and there was not any postconviction hearing on argument or evidence.

18. No objection to the submission of this appeal for disposition without oral argument.

TIMELINESS OF NOTICE OF APPEAL

19. September 19, 2022.

20. The 15-page Findings of Fact, Conclusions of Law & Order issued October 12, 2022.

21. Findings of Fact Conclusions of Law and Order denying relief issued by eService for Portal the online case system for the Eighth Judicial District Court.

22. This is not a direct appeal. We asserted in our petition that the untimeliness was due to his attorney’s failure to file an appeal after the original findings of fact conclusions of law and order was issued on December 27, 2018 for A-18-771898-W.

23. N/A.

24. The Notice of Appeal was filed on October 13, 2022.

25. The statute governing the time limit for filing the Notice of Appeal is NRAP 4(b).

26. The statute which grants this Court jurisdiction to review the instant appeal is N.R.S. 177.015(3).

VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Respectfully Submitted,
LOWE LAW, L.L.C.

/s/ Diane C. Lowe

DIANE C. LOWE ESQ.

Nevada Bar #14573

CERTIFICATE OF SERVICE

I certify that on October 19, 2022, an electronic copy of the foregoing
DOCKETING STATEMENT was sent via the master transmission list with the
Nevada Supreme Court to the following:

AARON FORD, ESQ. ✓
Nevada Attorney General

STEVEN WOLFSON, ESQ. ✓
Clark County District Attorney

/s/ Diane C. Lowe

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