

IN THE SUPREME COURT FOR THE STATE OF NEVADA

Electronically Filed
Aug 24 2023 12:20 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 85838

D'VAUGHN KING,

Appellant/Petitioner,

vs.

THE STATE OF NEVADA,

Appellee/Respondent.

**APPELLANT'S APPENDIX
VOLUME I**

Theresa Ristenpart, Esq.
Nevada Bar No. 9665
464 South Sierra Street
Reno, Nevada 89501
Attorney for Mr. D'Vaughn King

APPELLANT'S APPENDIX INDEX

<u>Description</u>	<u>Page No.</u>
Sparks Justice Court Docket	AA 001
Second Judicial District Court Docket	AA 002
Transcript Sentencing Hearing November 22, 2012	AA 0027
Judgment of Conviction	AA 0070
Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	AA 0072
Opening Brief Nevada S.Ct. 74703	AA 0081
Order Reversing and Remanding 74703 Filed March 14, 2019	AA 0095
Memorandum Attorney Oldenburg Filed December 12, 2019	AA 00103
Transcript Evidentiary Hearing November 21, 2022	AA 00109
Motion to Withdraw Attorney Oldenburg Filed December 16, 2022	AA 00194
Order Dismissing Petition and Supplemental Petition Filed January 3, 2023	AA 00199

REGISTER OF ACTIONS**CASE No. 12-SCR-00668****The State of Nevada vs. Dvaughn Kiethan King**§
§
§
§
§
§
§
§
§
§Case Type: **Felony**
Date Filed: **04/19/2012**
Location: **Sparks Criminal**
Judicial Officer: **Deriso, Susan**
Agency Number: **SPD 10-11148**
District Attorney Number: **438987**
Probable Cause Number: **SPPD0027003C****PARTY INFORMATION****Defendant** **King, Dvaughn Kiethan *Also Known***
As King, Dvaughn Keathan *Also Known*
As PreschoolMale Black
DOB: 10/04/1977
6' 1", 190 lbs**Attorneys**
Richard A. Molezzo
Retained
775-686-6626(W)Alternate Public Defender
Retained
775-328-3955(W)**Plaintiff** **The State of Nevada****Bruce C. Hahn**
775-328-3200(W)**CHARGE INFORMATION****Charges: King, Dvaughn Kiethan**

1. Open murder - deadly weapon enhancement

Statute
NRS 200.010**Level**
Unclassified Felony**Date**
11/05/2010**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**07/19/2012 **Disposition** (Judicial Officer: Deriso, Susan)
1. Open murder - deadly weapon enhancement
Waived**OTHER EVENTS AND HEARINGS**04/19/2012 [Case Filed](#)
04/19/2012 [Warrant of Arrest Issued](#)
NO BAIL
04/19/2012 **Affidavit in Support of Warrant Filed**
06/06/2012 [Warrant Served](#)
06/07/2012 **Arraignment** (8:15 AM) (Judicial Officer Deriso, Susan)
Result: Held
06/07/2012 **Bail Set** (Judicial Officer: Deriso, Susan)
at No Bail.
06/07/2012 **Defendant Remanded to Custody** (Judicial Officer: Deriso, Susan)
06/07/2012 **Defendant Requested Appointment of Public Defender** (Judicial Officer: Deriso, Susan)
06/07/2012 [Public Defender Appointed](#) (Judicial Officer: Deriso, Susan)
Sent to PD on 06/07/2012.
06/07/2012 [Warrant Returned](#)
06/07/2012 [Alternate Public Defender Appointed](#)
06/07/2012 [Conflict Attorney Appointed](#)
06/12/2012 [Warrant Returned](#)
06/12/2012 [Conflict Attorney Appointed](#)
Richard Molezzo
06/20/2012 **CANCELED Preliminary Hearing** (10:00 AM) (Judicial Officer Deriso, Susan)
Vacated
07/19/2012 **Preliminary Hearing** (10:00 AM) (Judicial Officer Deriso, Susan)
A Go Prelim.
07/19/2012 [Waiver](#)



Second Judicial District Court
State of Nevada
Washoe County

Electronic Filing

Case Summary for Case: CR12-1160

STATE OF NEVADA VS. DVAUGHN KEITHAN KING (TN) (D7)

Case Number CR12-1160
Case Type CRIMINAL
Opened 07-09-2012
Status DISPOSED

Plaintiff STATE OF NEVADA et al
Defendant DVAUGHN KEITHAN KING
Judge HONORABLE EGAN WALKER - Division D7

[Show/Hide Participants](#)

File Date

Case History

02-01-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9487504 - Approved By: NOREVIEW : 02-01-2023:14:07:25
02-01-2023	Supreme Court Receipt for Doc Filed Supreme Court Receipt for Doc SUPREME COURT NO. 85838 - RECEIPT FOR DOCUMENTS - Transaction 9487493 - Approved By: NOREVIEW : 02-01-2023:14:06:16
01-26-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9476017 - Approved By: NOREVIEW : 01-26-2023:09:22:44
01-26-2023	Certificate of Clerk Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEARANCE - Transaction 9476015 - Approved By: NOREVIEW : 01-26-2023:09:22:13
01-26-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9475704 - Approved By: NOREVIEW : 01-26-2023:07:19:28
01-25-2023 Defendant	Notice of Appearance Filed by: THERESA RISTENPART, ESQ. Notice of Appearance DFX: NO BAR NUMBER LISTED ON DOCUMENT FOR COUNSEL THERESA RISTENPART, ESQ FOR DEFT - Transaction 9475569 - Approved By: SACORDAG : 01-26-2023:07:17:29
01-25-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9475262 - Approved By: NOREVIEW : 01-25-2023:16:20:30
01-25-2023	Case Appeal Statement Filed Case Appeal Statement Transaction 9475259 - Approved By: NOREVIEW : 01-25-2023:16:18:15
01-25-2023	Certificate of Clerk Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9475259 - Approved By: NOREVIEW : 01-25-2023:16:18:15
01-25-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9475082 - Approved By: NOREVIEW : 01-25-2023:15:37:04
01-25-2023	Case Appeal Statement Filed Case Appeal Statement CASE APPEAL STATEMENT - Transaction 9475077 - Approved By: NOREVIEW : 01-25-2023:15:36:25
01-25-2023	Certificate of Clerk Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9475077 - Approved By: NOREVIEW : 01-25-2023:15:36:25
01-25-2023 Defendant	Notice/Appeal Supreme Court Filed by: DVAUGHN KEITHAN KING Notice of Appeal Supreme Court
01-25-2023 Defendant	Designation Record on Appeal Filed by: DVAUGHN KEITHAN KING Designation Record on Appeal

AA 002

01-25-2023 Defendant	Notice/Appeal Supreme Court Filed by: DVAUGHN KEITHAN KING Notice of Appeal Supreme Court JUDGMENT 11/21/2022
01-25-2023 Defendant	Request for Submission Filed by: DVAUGHN KEITHAN KING Request for Submission REQUEST FOR SUBMISSION FOR NOTICE OF APPEAL (NO S1 BUILT)
01-23-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9468139 - Approved By: NOREVIEW : 01-23-2023:08:33:01
01-23-2023	Certificate of Clerk Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - ORDER - Transaction 9468135 - Approved By: NOREVIEW : 01-23-2023:08:32:22
01-23-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9468059 - Approved By: NOREVIEW : 01-23-2023:08:17:04
01-23-2023	Ord Appointing Counsel Filed Ord Appointing Counsel Transaction 9468053 - Approved By: NOREVIEW : 01-23-2023:08:16:23
01-17-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9459601 - Approved By: NOREVIEW : 01-17-2023:16:25:13
01-17-2023	Supreme Court Order Filed Supreme Court Order... SUPREME COURT NO. 85838 - ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL - Transaction 9459591 - Approved By: NOREVIEW : 01-17-2023:16:23:21
01-05-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9440296 - Approved By: NOREVIEW : 01-05-2023:10:16:16
01-05-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9440292 - Approved By: NOREVIEW : 01-05-2023:10:15:31
01-05-2023	Ord Trial Transcript/Public\$ Filed Ord Trial Transcript/Public\$ Transaction 9440293 - Approved By: NOREVIEW : 01-05-2023:10:15:31
01-05-2023	Ord Withdrawal of Counsel Filed Ord Withdrawal of Counsel VICTORIA T. OLDENBURG - Transaction 9440286 - Approved By: NOREVIEW : 01-05-2023:10:14:44
01-04-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9437396 - Approved By: NOREVIEW : 01-04-2023:05:58:47
01-04-2023 Court	Request for Submission Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Request for Submission Transaction 9437395 - Approved By: NOREVIEW : 01-04-2023:05:58:08 DOCUMENT TITLE: MOTION TO WITHDRAW AS ATTORNEY OF RECORD PARTY SUBMITTING: V. OLDENBURG, ESQ DATE SUBMITTED: 01/04/2023 SUBMITTED BY: SJA DATE RECEIVED JUDGE OFFICE: - EX1
01-03-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9435490 - Approved By: NOREVIEW : 01-03-2023:10:24:20
01-03-2023	Notice of Stricken Document Filed Notice of Stricken Document UNSIGNED ORDER - Transaction 9435483 - Approved By: NOREVIEW : 01-03-2023:10:23:38
01-03-2023	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9435316 - Approved By: NOREVIEW : 01-03-2023:09:49:51
01-03-2023	Notice of Entry of Ord Filed Notice of Entry of Ord Transaction 9435314 - Approved By: NOREVIEW : 01-03-2023:09:49:03
01-03-2023	Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 9434968 - Approved By: NOREVIEW : 01-03-2023:07:03:34](#)

Ord Deny/Dism Post Conviction

01-03-2023

Filed

[Ord Deny/Dism Post Conviction ORDER DENYING PETITION - Transaction 9434967 - Approved By: NOREVIEW : 01-03-2023:07:02:54](#)

Notice of Electronic Filing

01-03-2023

Filed

[Proof of Electronic Service Transaction 9434966 - Approved By: NOREVIEW : 01-03-2023:06:57:13](#)

Request for Submission

01-03-2023
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

[Request for Submission Motion to Withdraw as Attorney of Record - Transaction 9434965 - Approved By: NOREVIEW : 01-03-2023:06:56:33 DOCUMENT TITLE: MOTION TO WITHDRAW AS ATTORNEY OF RECORD PARTY SUBMITTING: VICTORIA OLDENBURG ESQ DATE SUBMITTED: 1/03/2023 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:
- Exhibit 1](#)

Notice of Electronic Filing

01-03-2023

Filed

[Proof of Electronic Service Transaction 9434952 - Approved By: NOREVIEW : 01-03-2023:06:34:02](#)

Request for Submission

01-03-2023
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

[Request for Submission NOTICE OF STRICKEN DOCUMENT FILED 1/03/2023 STRIKING THE EXHIBIT 1 - UNSIGNED ORDER FOR THE FOLLOWING REASON: DOCUMENT IS AN UNSIGNED ORDER THAT IS NOT IDENTIFIED AS A PROPOSED ORDER – WDCR 10\(c\)\(1\) - Transaction 9434950 - Approved By: NOREVIEW : 01-03-2023:06:33:22 DOCUMENT TITLE: MOTION TO WITHDRAW AS ATTORNEY OF RECORD PARTY SUBMITTING: VICTORIA OLDENBURG ESQ DATE SUBMITTED: 1/03/2023 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:
- Document withheld. Document Security Level Exceeded](#)

Notice of Electronic Filing

12-23-2022

Filed

[Proof of Electronic Service Transaction 9425338 - Approved By: NOREVIEW : 12-23-2022:12:32:46](#)

Request for Submission

12-23-2022
Plaintiff

Filed by: JENNIFER P. NOBLE, ESQ.

[Request for Submission Transaction 9425336 - Approved By: NOREVIEW : 12-23-2022:12:31:55 DOCUMENT TITLE: Order Denying Petition PARTY SUBMITTING: J. NOBLE, ESQ DATE SUBMITTED: 12/23/2022 SUBMITTED BY: SJA DATE RECEIVED JUDGE OFFICE:
- EX1](#)

Notice of Electronic Filing

12-16-2022

Filed

[Proof of Electronic Service Transaction 9414572 - Approved By: NOREVIEW : 12-16-2022:14:33:04](#)

Case Appeal Statement

12-16-2022

Filed

[Case Appeal Statement CASE APPEAL STATEMENT - Transaction 9414569 - Approved By: NOREVIEW : 12-16-2022:14:32:16](#)

Certificate of Clerk

12-16-2022

Filed

[Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9414569 - Approved By: NOREVIEW : 12-16-2022:14:32:16](#)

Notice of Electronic Filing

12-16-2022

Filed

[Proof of Electronic Service Transaction 9414361 - Approved By: NOREVIEW : 12-16-2022:13:25:14](#)

Motion

12-16-2022
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

[Motion ... MOTION TO WITHDRAW AS ATTORNEY OF RECORD - Transaction 9414353 - Approved By: YVILORIA : 12-16-2022:13:24:47](#)

Request

12-16-2022
Defendant

Filed by: DVAUGHN KEITHAN KING

[Request REQUEST FOR TRANSCRIPT OF PROCEEDINGS](#)

Mtn Trial Trans. Public Exp

12-16-2022
Defendant

Filed by: DVAUGHN KEITHAN KING

[Mtn Trial Trans. Public Exp](#)

Request for Submission

12-16-2022
Defendant

Filed by: DVAUGHN KEITHAN KING

[Request for Submission DOCUMENT TITLE: MOTION FOR TRANSCRIPT AT PUBLIC EXPENSE PARTY SUBMITTING: D'VAUGHN KEITHAN KING DATE SUBMITTED: DECEMBER 16, 2022 SUBMITTED BY: BBLOUGH DATE RECEIVED JUDGE OFFICE:](#)12-16-2022
Defendant

Request for Submission

AA 004

	Filed by: DVAUGHN KEITHAN KING
12-15-2022 Defendant	Request for Submission Filed by: DVAUGHN KEITHAN KING Request for Submission FOR NOTICE OF APPEAL (NO S1 BUILT)
12-15-2022 Defendant	Notice/Appeal Supreme Court Filed by: DVAUGHN KEITHAN KING Notice of Appeal Supreme Court ORDER APPEALING NOT FILED IN CASE AS OF THIS DATE
12-12-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9403565 - Approved By: NOREVIEW : 12-12-2022:07:55:25
12-11-2022 Court	Ex-Parte Mtn Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
11-29-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9381766 - Approved By: NOREVIEW : 11-29-2022:10:41:53
11-29-2022	Transcript Filed Transcript HEARING - NOVEMBER 21, 2022 - Transaction 9381763 - Approved By: NOREVIEW : 11-29-2022:10:40:59 : this document can only be accessed at the court
11-21-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9373551 - Approved By: NOREVIEW : 11-21-2022:16:15:25
11-21-2022	***Minutes Filed ***Minutes 11/21/22 EVIDENTIARY HEARING ON POST CONVICTION PETITION - Transaction 9373546 - Approved By: NOREVIEW : 11-21-2022:16:14:23
09-20-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9269925 - Approved By: NOREVIEW : 09-20-2022:14:25:42
09-20-2022	Supreme Court Remittitur Filed Supreme Court Remittitur SUPREME COURT NO. 85135 - REMITTITUR - Transaction 9269921 - Approved By: NOREVIEW : 09-20-2022:14:24:53
09-20-2022	Supreme Ct Clk's Cert & Judg Filed Supreme Ct Clk's Cert & Judg SUPREME COURT NO. 85135 - CLERK'S CERTIFICATE JUDGMENT - Transaction 9269921 - Approved By: NOREVIEW : 09-20-2022:14:24:53
09-20-2022	Supreme Ct Ord Dismis Appeal Filed Supreme Ct Ord Dismis Appeal SUPREME COURT NO. 85135 - ORDER DISMISSING APPEAL - Transaction 9269921 - Approved By: NOREVIEW : 09-20-2022:14:24:53
08-24-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9224424 - Approved By: NOREVIEW : 08-24-2022:15:45:41
08-24-2022	Supreme Ct Ord Dismis Appeal Filed Supreme Ct Ord Dismis Appeal SUPREME COURT NO. 85135 - ORDER DISMISSING APPEAL - Transaction 9224421 - Approved By: NOREVIEW : 08-24-2022:15:44:49
08-15-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9206227 - Approved By: NOREVIEW : 08-15-2022:15:38:39
08-15-2022	Supreme Court Receipt for Doc Filed Supreme Court Receipt for Doc SUPREME COURT NO. 85135 - RECEIPT FOR DOCUMENTS - Transaction 9206222 - Approved By: NOREVIEW : 08-15-2022:15:37:51
08-08-2022	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 9193711 - Approved By: NOREVIEW : 08-08-2022:15:31:50

08-08-2022	Case Appeal Statement
	Filed Case Appeal Statement CASE APPEAL STATEMENT - Transaction 9193702 - Approved By: NOREVIEW : 08-08-2022:15:31:04
08-08-2022	Certificate of Clerk
	Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9193702 - Approved By: NOREVIEW : 08-08-2022:15:31:04
08-08-2022 Defendant	Notice/Appeal Supreme Court
	Filed by: DVAUGHN KEITHAN KING Notice of Appeal Supreme Court
07-21-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9162756 - Approved By: NOREVIEW : 07-21-2022:14:11:30
07-21-2022	Ord Striking
	Filed Ord Striking ... ORDER STRIKING MOTIONS - Transaction 9162753 - Approved By: NOREVIEW : 07-21-2022:14:10:52
07-20-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9159081 - Approved By: NOREVIEW : 07-20-2022:08:55:34
07-20-2022 Plaintiff	Application for Setting
	Filed by: JENNIFER P. NOBLE, ESQ. Application for Setting Transaction 9159076 - Approved By: NOREVIEW : 07-20-2022:08:54:46
07-15-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9152141 - Approved By: NOREVIEW : 07-15-2022:14:40:49
07-15-2022 Court	Ex-Parte Mtn
	Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
06-27-2022 Defendant	Request for Submission
	Filed by: DVAUGHN KEITHAN KING Request for Submission DOCUMENT TITLE: SUBSTITUTION OF COUNSEL / ENLARGEMENT OF TIME PARTY SUBMITTING: DVAUGHN KEITHAN KING DATE SUBMITTED: JUNE 27, 2022 SUBMITTED BY: BBLOUGH DATE RECEIVED JUDGE OFFICE:
06-19-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9107470 - Approved By: NOREVIEW : 06-19-2022:11:45:03
06-19-2022	Stip & Ord to Continue
	Filed Stip & Ord to Continue EVIDENTIARY HEARING - Transaction 9107469 - Approved By: NOREVIEW : 06-19-2022:11:44:33
06-16-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9104802 - Approved By: NOREVIEW : 06-16-2022:16:29:18
06-16-2022 Plaintiff	Opposition to Mtn
	Filed by: JENNIFER P. NOBLE, ESQ. Opposition to Mtn ... OPPOSITION TO PROPER PERSON MOTIONS - Transaction 9104759 - Approved By: SACORDAG : 06-16-2022:16:27:09
06-14-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9099344 - Approved By: NOREVIEW : 06-14-2022:12:26:57
06-14-2022 Court	Request for Submission
	Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Request for Submission Transaction 9099343 - Approved By: NOREVIEW : 06-14-2022:12:26:30 DOCUMENT TITLE: Stipulation to Continue Post-Conviction Hearing PARTY SUBMITTING: V. OLDENBURG, ESQ DATE SUBMITTED: 06/14/2022 SUBMITTED BY: SJA DATE RECEIVED JUDGE OFFICE: - EX1
06-14-2022	Notice of Electronic Filing
	Filed Proof of Electronic Service Transaction 9099339 - Approved By: NOREVIEW : 06-14-2022:12:25:38
06-14-2022 Court	Stipulation to Continuance
	Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

[Stipulation to Continuance Post-Conviction Hearing - Transaction 9099337 - Approved By: NOREVIEW : 06-14-2022:12:25:09](#)

06-06-2022 Defendant	<p>Motion</p> <p>Filed by: DVAUGHN KEITHAN KING</p> <p>Motion ... MOTION TO WITHDRAW COUNSEL</p> <p>- Exhibit 1</p>
06-06-2022 Defendant	<p>Motion</p> <p>Filed by: DVAUGHN KEITHAN KING</p> <p>Motion ... MOTION FOR ENLARGEMENT OF TIME, NRCP RULE 6(B)</p>
06-06-2022 Defendant	<p>Motion</p> <p>Filed by: DVAUGHN KEITHAN KING</p> <p>Motion ... MOTIONING THE COURT TO SUBSTITUTE COUNSEL</p>
05-27-2022	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 9070655 - Approved By: NOREVIEW : 05-27-2022:08:17:19</p>
05-27-2022	<p>Notice of Stricken Document</p> <p>Filed</p> <p>Notice of Stricken Document EXHIBIT 1 FILED 5-27-22 BY VICTORIA OLDENBURG ESQ. FOR NO CASE NUMBER OR AFFIRMATION (E-FILED INCORRECTLY) - Transaction 9070654 - Approved By: NOREVIEW : 05-27-2022:08:16:38</p>
05-27-2022	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 9070601 - Approved By: NOREVIEW : 05-27-2022:07:42:46</p>
05-27-2022	<p>Ord to Produce Prisoner</p> <p>Filed</p> <p>Ord to Produce Prisoner VIA SIMULTANEOUS AUDIO/VISUAL TRANSMISSION - Transaction 9070600 - Approved By: NOREVIEW : 05-27-2022:07:42:06</p>
05-27-2022	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 9070593 - Approved By: NOREVIEW : 05-27-2022:07:20:15</p>
05-27-2022 Court	<p>Stipulation</p> <p>Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.</p> <p>Stipulation ... STRIKING THE EXHIBIT 1 FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(10)(c)(1) ; DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(10)(c)(2) - Transaction 9070592 - Approved By: NOREVIEW : 05-27-2022:07:19:35</p>
05-26-2022	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 9068719 - Approved By: NOREVIEW : 05-26-2022:09:15:26</p>
05-26-2022 Court	<p>Request for Submission</p> <p>Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.</p> <p>Request for Submission REQUEST FOR SUBMISSION OF STIPULATION TO HOLD EVIDENTIARY HEARING VIA SIMULTANEOUS AUDIO/VISUAL TRANSMISSION - Transaction 9068718 - Approved By: NOREVIEW : 05-26-2022:09:14:36 DOCUMENT TITLE: STIPULATION TO HOLD EVIDENTIARY HEARING VIA SIMULTANEOUS AUDIO/VISUAL TRANSMISSION PARTY SUBMITTING: VICTORIA OLDENBURG ESQ DATE SUBMITTED: 5-26-22 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE: - Exhibit 1</p>
05-26-2022	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 9068671 - Approved By: NOREVIEW : 05-26-2022:08:52:15</p>
05-26-2022 Court	<p>Stipulation</p> <p>Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.</p> <p>Stipulation ... STIPULATION TO HOLD EVIDENTIARY HEARING VIA SIMULTANEOUS AUDIO/VISUAL TRANSMISSION - Transaction 9068670 - Approved By: NOREVIEW : 05-26-2022:08:51:47</p> <p>- Exhibit 1</p> <p>- Exhibit 1</p>
02-07-2022	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 8882985 - Approved By: NOREVIEW : 02-07-2022:08:04:09</p>
02-07-2022	<p>Ord Setting Hearing</p> <p>Filed</p> <p>Ord Setting Hearing ORDER RESETTING HEARING DATE AND TIME - Transaction 8882983 - Approved By: NOREVIEW : 02-07-2022:08:03:12</p>
11-08-2021	<p>Notice of Electronic Filing</p> <p>Filed</p> <p>Proof of Electronic Service Transaction 8739504 - Approved By: NOREVIEW : 11-08-2021:16:37:21</p>

11-08-2021	Ord to Produce Prisoner Filed Ord to Produce Prisoner Transaction 8739477 - Approved By: NOREVIEW : 11-08-2021:16:33:24
11-05-2021	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8735730 - Approved By: NOREVIEW : 11-05-2021:14:41:15
11-05-2021 Plaintiff	Application Produce Prisoner Filed by: JENNIFER P. NOBLE, ESQ. Application Produce Prisoner Transaction 8735721 - Approved By: NOREVIEW : 11-05-2021:14:40:16
11-05-2021	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8735519 - Approved By: NOREVIEW : 11-05-2021:14:16:33
11-05-2021 Plaintiff	Application for Setting Filed by: JENNIFER P. NOBLE, ESQ. Application for Setting Transaction 8735508 - Approved By: NOREVIEW : 11-05-2021:14:15:31
08-02-2021	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8572926 - Approved By: NOREVIEW : 08-02-2021:12:21:41
08-02-2021	Ord Approving Filed Ord Approving ... Transaction 8572922 - Approved By: NOREVIEW : 08-02-2021:12:20:41
07-27-2021	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8562683 - Approved By: NOREVIEW : 07-27-2021:07:38:02
07-26-2021	Notice Filed Document withheld. Document Security Level Exceeded
07-26-2021	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8560325 - Approved By: NOREVIEW : 07-26-2021:07:46:55
07-23-2021 Court	Ex-Parte Mtn Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
08-28-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8043629 - Approved By: NOREVIEW : 08-28-2020:14:53:19
08-28-2020	Ord Granting Continuance Filed Ord Granting Continuance Transaction 8043624 - Approved By: NOREVIEW : 08-28-2020:14:52:20
08-28-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8042585 - Approved By: NOREVIEW : 08-28-2020:10:15:11
08-28-2020 Court	Request for Submission Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Request for Submission - Transaction 8042583 - Approved By: NOREVIEW : 08-28-2020:10:14:01 DOCUMENT TITLE: REQUEST FOR SUBMISSION OF STIPULATION TO CONTINUE POST-CONVICTION HEARING PARTY SUBMITTING: VICTORIA OLDENBURG ESQ DATE SUBMITTED: 8/28/2020 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:
08-20-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8028580 - Approved By: NOREVIEW : 08-20-2020:09:36:08
08-20-2020 Court	Stipulation to Continuance Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Stipulation to Continuance Evidentiary Hearing - Transaction 8028558 - Approved By: NOREVIEW : 08-20-2020:09:34:47 - EXHIBIT 1 - EXHIBIT 2
08-05-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8005656 - Approved By: NOREVIEW : 08-05-2020:17:11:36
08-05-2020	Ord to Produce Prisoner

	Filed Ord to Produce Prisoner Transaction 8005652 - Approved By: NOREVIEW : 08-05-2020:17:10:36
08-05-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 8005432 - Approved By: NOREVIEW : 08-05-2020:16:09:26
08-05-2020 Plaintiff	Application for Setting Filed by: JENNIFER P. NOBLE, ESQ. Application for Setting Transaction 8005426 - Approved By: NOREVIEW : 08-05-2020:16:08:26
08-05-2020 Plaintiff	Application Produce Prisoner Filed by: JENNIFER P. NOBLE, ESQ. Application Produce Prisoner Transaction 8005426 - Approved By: NOREVIEW : 08-05-2020:16:08:26
07-17-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7975710 - Approved By: NOREVIEW : 07-17-2020:08:38:38
07-17-2020	Ord to Produce Prisoner Filed Ord to Produce Prisoner Transaction 7975706 - Approved By: NOREVIEW : 07-17-2020:08:37:36
07-16-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7974575 - Approved By: NOREVIEW : 07-16-2020:13:42:07
07-16-2020 Plaintiff	Application Produce Prisoner Filed by: JENNIFER P. NOBLE, ESQ. Application Produce Prisoner Transaction 7974567 - Approved By: NOREVIEW : 07-16-2020:13:40:56
07-14-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7969851 - Approved By: NOREVIEW : 07-14-2020:12:26:32
07-14-2020	Ord Approving Filed Ord Approving ... ORDER APPROVING INTERIM ATTORNEY'S FEES - Transaction 7969848 - Approved By: NOREVIEW : 07-14-2020:12:25:41
07-01-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7952148 - Approved By: NOREVIEW : 07-01-2020:15:10:08
07-01-2020 Court	Notice of Witnesses Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Notice of Witnesses NOTICE OF EXPERT WITNESS PURSUANT TO NRS 174.234 - Transaction 7952145 - Approved By: NOREVIEW : 07-01-2020:15:06:56 - Exhibit 1 - Confidential Exhibit 2
06-29-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7946251 - Approved By: NOREVIEW : 06-29-2020:08:57:55
06-28-2020	Notice Filed Document withheld. Document Security Level Exceeded
06-15-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7925690 - Approved By: NOREVIEW : 06-15-2020:15:36:08
06-15-2020 Court	Ex-Parte Mtn Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
06-04-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7910131 - Approved By: NOREVIEW : 06-04-2020:16:49:16
06-04-2020 Plaintiff	Application for Setting Filed by: JENNIFER P. NOBLE, ESQ. Application for Setting APPLICATION FOR SETTING - EVIDENTIARY HEARING - AUGUST 4, 2020, 1:30 PM Transaction 7910127 - Approved By: NOREVIEW : 06-04-2020:16:48:16
04-21-2020	Notice of Electronic Filing

	Filed Proof of Electronic Service Transaction 7843154 - Approved By: NOREVIEW : 04-21-2020:08:30:11
04-21-2020	Stip & Ord to Continue Filed Stip & Ord to Continue HEARING - Transaction 7843152 - Approved By: NOREVIEW : 04-21-2020:08:29:11
04-20-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7842482 - Approved By: NOREVIEW : 04-20-2020:15:17:40
04-20-2020 Plaintiff	Request for Submission Filed by: JENNIFER P. NOBLE, ESQ. Request for Submission Transaction 7842473 - Approved By: NOREVIEW : 04-20-2020:15:15:26 DOCUMENT TITLE: Stipulation and Order to Continue Post-Conviction Hearing PARTY SUBMITTING: JENNIFER NOBLE, ESQ DATE SUBMITTED: 04/20/2020 SUBMITTED BY: SJA DATE RECEIVED JUDGE OFFICE: - Exhibit 1
03-02-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7768981 - Approved By: NOREVIEW : 03-02-2020:13:27:05
03-02-2020 Plaintiff	Application for Setting Filed by: JENNIFER P. NOBLE, ESQ. Application for Setting 04/29/2020 @ 2:00 PM - Transaction 7768977 - Approved By: NOREVIEW : 03-02-2020:13:25:59
01-30-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7713582 - Approved By: NOREVIEW : 01-30-2020:14:37:36
01-30-2020	Ord Approving Filed Ord Approving ... RECOMMENDATION AND ORDER TO AUTHORIZE EXPERT WITNESS - Transaction 7713570 - Approved By: NOREVIEW : 01-30-2020:14:36:09
01-15-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7687294 - Approved By: NOREVIEW : 01-15-2020:12:35:46
01-15-2020 Court	Ex-Parte Mtn Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
01-09-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7677448 - Approved By: NOREVIEW : 01-09-2020:13:29:26
01-09-2020	Ord Granting Filed Ord Granting ... JOINT MOTION TO CONTINUE POST-CONVICTION HEARING AND ORDER TO RESET - Transaction 7677446 - Approved By: NOREVIEW : 01-09-2020:13:28:31
12-31-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7660280 - Approved By: NOREVIEW : 12-31-2019:07:25:00
12-31-2019 Court	Request for Submission Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ. Request for Submission REQUEST FOR SUBMISSION OF POINTS AND AUTHORITIES IN SUPPORT OF STIPULATION TO CONTINUE POST-CONVICTION HEARING - Transaction 7660279 - Approved By: NOREVIEW : 12-31-2019:07:24:00 DOCUMENT TITLE: POINTS AND AUTHORITIES IN SUPPORT OF THE STIPULATION TO CONTINUE POST CONVICTION HEARING PARTY SUBMITTING: VICTORIA OLDENBURG ESQ DATE SUBMITTED: 12-31-19 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:
12-30-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7659740 - Approved By: NOREVIEW : 12-30-2019:15:24:27
12-30-2019 Plaintiff	Memorandum Points&Authorities Filed by: JENNIFER P. NOBLE, ESQ. Memorandum Points&Authorities MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STIPULATION - Transaction 7659729 - Approved By: NOREVIEW : 12-30-2019:15:21:00
12-20-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7649151 - Approved By: NOREVIEW : 12-20-2019:08:39:01

Response

12-20-2019
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

Response... MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STIPULATION TO CONTINUE EVIDENTIARY HEARING ON PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) - Transaction 7649067 - Approved By: SACORDAG : 12-20-2019:08:37:49

- Exhibit 1
- Exhibit 2

Notice of Electronic Filing

12-19-2019

Filed

Proof of Electronic Service Transaction 7647518 - Approved By: NOREVIEW : 12-19-2019:12:26:21

Order...

12-19-2019

Filed

Order ... ORDER ON STIPULATION TO CONTINUE POST-CONVICTION HEARING - Transaction 7647516 - Approved By: NOREVIEW : 12-19-2019:12:25:21

Notice of Electronic Filing

12-18-2019

Filed

Proof of Electronic Service Transaction 7644063 - Approved By: NOREVIEW : 12-18-2019:06:13:33

Request for Submission

12-18-2019
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

Request for Submission Transaction 7644062 - Approved By: NOREVIEW : 12-18-2019:06:12:33 DOCUMENT TITLE: STIPULATION TO CONTINUE POST-CONVICTION HEARING PARTY SUBMITTING: VICTORIA OLDENBURG, ESQ DATE SUBMITTED: 12/18/2019 SUBMITTED BY: SJA DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

12-16-2019

Filed

Proof of Electronic Service Transaction 7640314 - Approved By: NOREVIEW : 12-16-2019:14:24:10

Stip Extension of Time

12-16-2019
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

Stip Extension of Time ... STIPULATION TO CONTINUE POST-CONVICTION HEARING - Transaction 7640301 - Approved By: NOREVIEW : 12-16-2019:14:22:50

Notice of Electronic Filing

07-29-2019

Filed

Proof of Electronic Service Transaction 7399718 - Approved By: NOREVIEW : 07-29-2019:15:13:14

Ord to Produce Prisoner

07-29-2019

Filed

Ord to Produce Prisoner Transaction 7399711 - Approved By: NOREVIEW : 07-29-2019:15:12:12

Notice of Electronic Filing

07-29-2019

Filed

Proof of Electronic Service Transaction 7399604 - Approved By: NOREVIEW : 07-29-2019:14:57:10

Application Produce Prisoner

07-29-2019
Plaintiff

Filed by: JENNIFER P. NOBLE, ESQ.

Application Produce Prisoner Transaction 7399599 - Approved By: NOREVIEW : 07-29-2019:14:56:08

Notice of Electronic Filing

07-29-2019

Filed

Proof of Electronic Service Transaction 7398794 - Approved By: NOREVIEW : 07-29-2019:11:50:58

Application for Setting

07-29-2019
Plaintiff

Filed by: JENNIFER P. NOBLE, ESQ.

Application for Setting Transaction 7398791 - Approved By: NOREVIEW : 07-29-2019:11:50:05

Notice of Electronic Filing

07-11-2019

Filed

Proof of Electronic Service Transaction 7366877 - Approved By: NOREVIEW : 07-11-2019:08:24:45

Ord Vacating

07-11-2019

Filed

Ord Vacating HEARING AND DIRECTING THE MATTER TO BE RESET - Transaction 7366870 - Approved By: NOREVIEW : 07-11-2019:08:23:44

Notice of Electronic Filing

07-09-2019

Filed

Proof of Electronic Service Transaction 7362885 - Approved By: NOREVIEW : 07-09-2019:13:28:15

Stipulation to Continuance

07-09-2019
Court

Filed by: VICTORIA THIMMESCH OLDENBURG, ESQ.

Stipulation to Continuance Evidentiary Hearing - Transaction 7362879 - Approved By: NOREVIEW : 07-09-2019:13:27:14

06-07-2019

Notice of Electronic Filing

AA 0011

Filed
[Proof of Electronic Service Transaction 7309870 - Approved By: NOREVIEW : 06-07-2019:12:24:20](#)

06-07-2019 Ord Appointing Counsel
 Filed
[Ord Appointing Counsel VICTORIA OLDENBURG, ESQ. - Transaction 7309867 - Approved By: NOREVIEW : 06-07-2019:12:23:19](#)

05-14-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7267981 - Approved By: NOREVIEW : 05-14-2019:09:40:43](#)

05-14-2019 Ord Withdrawal of Counsel
 Filed
[Ord Withdrawal of Counsel Transaction 7267978 - Approved By: NOREVIEW : 05-14-2019:09:39:46](#)

05-13-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7267546 - Approved By: NOREVIEW : 05-13-2019:16:52:18](#)

05-13-2019 Request for Submission
 Filed by: TROY C. JORDAN, ESQ.
[Request for Submission REQUEST FOR SUBMISSION - Transaction 7267434 - Approved By: YVILORIA : 05-13-2019:16:51:12](#)
[DOCUMENT TITLE: MOTION TO WITHDRAW AS COUNSEL PARTY SUBMITTING: TROY JORDAN ESQ DATE SUBMITTED: 5-13-19](#)
[SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:](#)
 - Exhibit 1

05-09-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7261411 - Approved By: NOREVIEW : 05-09-2019:09:35:41](#)

05-09-2019 Motion
 Filed by: TROY C. JORDAN, ESQ.
[Motion ... MOTION TO WITHDRAW AS COUNSEL - Transaction 7261324 - Approved By: YVILORIA : 05-09-2019:09:33:37](#)

04-10-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7211900 - Approved By: NOREVIEW : 04-10-2019:14:06:02](#)

04-10-2019 Supreme Court Remittitur
 Filed
[Supreme Court Remittitur SUPREME COURT NO. 74703 / REMITTITUR - Transaction 7211893 - Approved By: NOREVIEW : 04-10-2019:14:05:02](#)

04-10-2019 Supreme Ct Clk's Cert & Judg
 Filed
[Supreme Ct Clk's Cert & Judg SUPREME COURT NO. 74703 / CLERK'S CERTIFICATE & JUDGMENT - Transaction 7211893 - Approved By: NOREVIEW : 04-10-2019:14:05:02](#)

04-10-2019 Supreme Court Ord Reversing
 Filed
[Supreme Court Ord Reversing SUPREME COURT NO. 74703 / ORDER OF REVERSAL AND REMAND - Transaction 7211893 - Approved By: NOREVIEW : 04-10-2019:14:05:02](#)

03-26-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7186118 - Approved By: NOREVIEW : 03-26-2019:15:11:26](#)

03-26-2019 Application for Setting
 Filed by: JENNIFER P. NOBLE, ESQ.
[Application for Setting 09/4/19 @1:30PM - Transaction 7185956 - Approved By: CVERA : 03-26-2019:15:10:13](#)

03-19-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7172852 - Approved By: NOREVIEW : 03-19-2019:08:19:22](#)

03-19-2019 Ord Setting Hearing
 Filed
[Ord Setting Hearing ORDER ACKNOWLEDGING ORDER OF REVERSAL AND REMAND FROM THE COURT OF APPEALS; ORDER DIRECTING THE PARTIES TO SET THIS MATTER FOR AN EVIDENTIARY HEARING - Transaction 7172850 - Approved By: NOREVIEW : 03-19-2019:08:18:22](#)

03-15-2019 Notice of Electronic Filing
 Filed
[Proof of Electronic Service Transaction 7169075 - Approved By: NOREVIEW : 03-15-2019:14:08:45](#)

03-15-2019 Supreme Court Ord Remanding
 Filed

Supreme Court Ord Remanding SUPREME COURT NO. 74703 / ORDER OF REVERSAL AND REMAND - Transaction 7169068 - Approved By: NOREVIEW : 03-15-2019:14:07:40

Notice of Electronic Filing

09-14-2018

Filed

Proof of Electronic Service Transaction 6880960 - Approved By: NOREVIEW : 09-14-2018:14:26:48

Supreme Court Notice

09-14-2018

Filed

Supreme Court Notice SUPREME COURT NO. 74703 / NOTICE OF TRANSFER TO COURT OF APPEALS - Transaction 6880954 - Approved By: NOREVIEW : 09-14-2018:14:25:29

Notice of Electronic Filing

08-29-2018

Filed

Proof of Electronic Service Transaction 6854717 - Approved By: NOREVIEW : 08-29-2018:12:27:10

Ord Approving

08-29-2018

Filed

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

08-07-2018

Filed

Proof of Electronic Service Transaction 6816402 - Approved By: NOREVIEW : 08-07-2018:12:50:20

Ex-Parte Mtn

08-07-2018
Court

Filed by: TROY C. JORDAN, ESQ.

Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

06-22-2018

Filed

Proof of Electronic Service Transaction 6742101 - Approved By: NOREVIEW : 06-22-2018:10:19:57

Ord Approving

06-22-2018

Filed

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

05-29-2018

Filed

Proof of Electronic Service Transaction 6700086 - Approved By: NOREVIEW : 05-29-2018:09:21:36

Ex-Parte Mtn

05-28-2018
Court

Filed by: TROY C. JORDAN, ESQ.

Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

12-20-2017

Filed

Proof of Electronic Service Transaction 6448385 - Approved By: NOREVIEW : 12-20-2017:14:46:13

Supreme Court Receipt for Doc

12-20-2017

Filed

Supreme Court Receipt for Doc SUPREME COURT NO. 74703 / RECEIPT FOR DOCUMENTS - Transaction 6448379 - Approved By: NOREVIEW : 12-20-2017:14:45:13

Notice of Electronic Filing

12-13-2017

Filed

Proof of Electronic Service Transaction 6436534 - Approved By: NOREVIEW : 12-13-2017:08:23:38

Certificate of Clerk

12-13-2017

Filed

Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6436529 - Approved By: NOREVIEW : 12-13-2017:08:22:49

Notice of Electronic Filing

12-12-2017

Filed

Proof of Electronic Service Transaction 6436041 - Approved By: NOREVIEW : 12-12-2017:15:50:57

Notice of Electronic Filing

12-12-2017

Filed

Proof of Electronic Service Transaction 6436040 - Approved By: NOREVIEW : 12-12-2017:15:50:48

Notice of Electronic Filing

12-12-2017

Filed

Proof of Electronic Service Transaction 6436036 - Approved By: NOREVIEW : 12-12-2017:15:50:40

12-12-2017
Court

Notice

Filed by: TROY C. JORDAN, ESQ.

AA 0013

Notice ... NOTICE THAT NO TRANSCRIPTS ARE REQUESTED - Transaction 6436019 - Approved By: YVILORIA : 12-12-2017:15:49:54

12-12-2017
Court

Case Appeal Statement

Filed by: TROY C. JORDAN, ESQ.

Case Appeal Statement Transaction 6436013 - Approved By: YVILORIA : 12-12-2017:15:49:36

12-12-2017
Court

Notice/Appeal Supreme Court

Filed by: TROY C. JORDAN, ESQ.

Notice of Appeal Supreme Court Transaction 6436000 - Approved By: YVILORIA : 12-12-2017:15:49:24

11-22-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6406980 - Approved By: NOREVIEW : 11-22-2017:08:55:37

11-22-2017

Notice of Entry of Ord

Filed

Notice of Entry of Ord Transaction 6406972 - Approved By: NOREVIEW : 11-22-2017:08:52:39

11-21-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6406213 - Approved By: NOREVIEW : 11-21-2017:15:14:17

11-21-2017

Ord Deny/Dism Post Conviction

Filed

Ord Deny/Dism Post Conviction ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) - Transaction 6406207 - Approved By: NOREVIEW : 11-21-2017:15:13:27 (NOE mailed out on 11/22/17-mcholino)

09-15-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6301437 - Approved By: NOREVIEW : 09-15-2017:10:06:24

09-15-2017
Court

Request for Submission

Filed by: TROY C. JORDAN, ESQ.

Request for Submission Transaction 6301355 - Approved By: YVILORIA : 09-15-2017:10:05:23 DOCUMENT TITLE: PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) FILED 7-16-15, SUPPLEMENTAL PETITION FILED 3-30-17, ANSWER FILED 5-10-17 PARTY SUBMITTING: TROY C. JORDAN ESQ DATE SUBMITTED: SEPT 15, 2017 SUBMITTED BY: YVILORIA DATE RECEIVED JUDGE OFFICE:

07-17-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6199932 - Approved By: NOREVIEW : 07-17-2017:16:15:54

07-17-2017

Order...

Filed

Document withheld. Document Security Level Exceeded

06-29-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6174304 - Approved By: NOREVIEW : 06-29-2017:16:13:15

06-29-2017
Court

Ex-Parte Mtn

Filed by: TROY C. JORDAN, ESQ.

Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

05-10-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6093575 - Approved By: NOREVIEW : 05-10-2017:11:54:46

05-10-2017
Plaintiff

Answer

Filed by: JOSEPH R. PLATER, III, ESQ.

Answer ... ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) - Transaction 6093544 - Approved By: PMSEWELL : 05-10-2017:11:53:40

03-30-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6025585 - Approved By: NOREVIEW : 03-30-2017:14:08:21

03-30-2017
Court

Supplemental Petition

Filed by: TROY C. JORDAN, ESQ.

Supplemental Petition SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) - Transaction 6025544 - Approved By: PMSEWELL : 03-30-2017:14:07:28

03-20-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6006653 - Approved By: NOREVIEW : 03-20-2017:09:38:34

03-20-2017	Ord Granting Extension Time Filed Ord Granting Extension Time Transaction 6006648 - Approved By: NOREVIEW : 03-20-2017:09:37:41
03-17-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6005419 - Approved By: NOREVIEW : 03-17-2017:14:49:15
03-17-2017	Stip Extension of Time Filed Stip Extension of Time ... Transaction 6005294 - Approved By: CSULEZIC : 03-17-2017:14:44:58
03-15-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5997631 - Approved By: NOREVIEW : 03-15-2017:09:25:36
03-15-2017	Order... Filed Document withheld. Document Security Level Exceeded
03-01-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5975589 - Approved By: NOREVIEW : 03-01-2017:16:50:08
03-01-2017	Order... Filed Document withheld. Document Security Level Exceeded
02-14-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5950008 - Approved By: NOREVIEW : 02-14-2017:11:00:20
02-14-2017 Court	Ex-Parte Mtn Filed by: TROY C. JORDAN, ESQ. Document withheld. Document Security Level Exceeded
02-13-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5947962 - Approved By: NOREVIEW : 02-13-2017:12:07:27
02-13-2017	Ord Granting Filed Ord Granting ... EXTENSION OF TIME - Transaction 5947959 - Approved By: NOREVIEW : 02-13-2017:12:06:27
02-09-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5944916 - Approved By: NOREVIEW : 02-09-2017:16:55:11
02-09-2017	Stip Extension of Time Filed Stip Extension of Time ... Transaction 5944687 - Approved By: CSULEZIC : 02-09-2017:16:54:09
02-03-2017	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5933207 - Approved By: NOREVIEW : 02-03-2017:11:43:30
02-03-2017 Court	Ex-Parte Mtn Filed by: TROY C. JORDAN, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
12-12-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5849313 - Approved By: NOREVIEW : 12-12-2016:15:40:19
12-12-2016	Ord Granting Extension Time Filed Ord Granting Extension Time Transaction 5849299 - Approved By: NOREVIEW : 12-12-2016:15:39:01
12-12-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5848227 - Approved By: NOREVIEW : 12-12-2016:11:29:19
12-12-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5848206 - Approved By: NOREVIEW : 12-12-2016:11:25:26

12-12-2016 Plaintiff	Notice of Change of Attorney Filed by: JENNIFER P. NOBLE, ESQ. Notice of Change of Attorney JENNIFER P. NOBLE DA IN PLACE OF TERRENCE P MCCARTHY DA / STATE - Transaction 5848201 - Approved By: YVILORIA : 12-12-2016:11:28:18
12-12-2016	Stip Extension of Time Filed Stip Extension of Time ... STIPULATION FOR EXTENSION OF TIME - Transaction 5848190 - Approved By: YVILORIA : 12-12-2016:11:24:37
11-08-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5796981 - Approved By: NOREVIEW : 11-08-2016:12:39:58
11-08-2016	Order... Filed Order ... RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL (POST CONVICTION) - Transaction 5796979 - Approved By: NOREVIEW : 11-08-2016:12:39:10
10-18-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5762427 - Approved By: NOREVIEW : 10-18-2016:10:45:23
10-18-2016	Order... Filed Document withheld. Document Security Level Exceeded
10-10-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5747776 - Approved By: NOREVIEW : 10-10-2016:09:20:51
10-09-2016 Defendant	Ex-Parte Mtn Filed by: MARY LOU A. WILSON, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
07-28-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5631667 - Approved By: NOREVIEW : 07-28-2016:11:04:37
07-28-2016 Defendant	Mtn for Extension of Time Filed by: MARY LOU A. WILSON, ESQ. Mtn for Extension of Time Transaction 5631006 - Approved By: YVILORIA : 07-28-2016:11:03:39
07-07-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5596763 - Approved By: NOREVIEW : 07-07-2016:09:24:27
07-06-2016 Defendant	Notice of Change of Address Filed by: MARY LOU A. WILSON, ESQ. Notice of Change of Address D'VAUGHN KING - Transaction 5596441 - Approved By: RKWATKIN : 07-07-2016:09:23:21
06-28-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5582530 - Approved By: NOREVIEW : 06-28-2016:10:31:40
06-28-2016	Order... Filed Document withheld. Document Security Level Exceeded
06-09-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5556093 - Approved By: NOREVIEW : 06-09-2016:16:21:51
06-09-2016 Defendant	Ex-Parte Mtn Filed by: MARY LOU A. WILSON, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
05-20-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5526665 - Approved By: NOREVIEW : 05-20-2016:16:48:36
05-20-2016 Defendant	Mtn for Extension of Time Filed by: MARY LOU A. WILSON, ESQ. Mtn for Extension of Time MOTION FOR EXTENSION OF TIME (FIRST REQUEST) - Transaction 5526623 - Approved By: TBRITTON : 05-20-2016:16:47:33

05-19-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5523994 - Approved By: NOREVIEW : 05-19-2016:15:56:04
05-19-2016 Defendant	Ex-Parte Mtn Filed by: MARY LOU A. WILSON, ESQ. Document withheld. Document Security Level Exceeded
03-24-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5433471 - Approved By: NOREVIEW : 03-24-2016:10:54:34
03-24-2016	Ord Appointing Counsel Filed Ord Appointing Counsel [Mary Lou Wilson, Esq. for D'Vaughn King - ks] - Transaction 5433469 - Approved By: NOREVIEW : 03-24-2016:10:53:37
02-26-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5388885 - Approved By: NOREVIEW : 02-26-2016:09:45:29
02-26-2016	Ord Granting Mtn Filed Ord Granting Mtn ... FOR COURT APPOINTED COUNSEL - Transaction 5388873 - Approved By: NOREVIEW : 02-26-2016:09:44:30
02-26-2016	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 5388869 - Approved By: NOREVIEW : 02-26-2016:09:42:06
02-26-2016	Ord Grant in Forma Pauperis Filed Ord Grant in Forma Pauperis Transaction 5388864 - Approved By: NOREVIEW : 02-26-2016:09:41:04
07-16-2015 Defendant	Pet Post-Conviction Relief Filed by: DVAUGHN KEITHAN KING Pet Post-Conviction Relief
07-16-2015 Defendant	Mtn Proceed Forma Pauperis Filed by: DVAUGHN KEITHAN KING Mtn Proceed Forma Pauperis
07-16-2015 Defendant	Application Appoint Counsel Filed by: DVAUGHN KEITHAN KING Application Appoint Counsel
07-16-2015 Defendant	Motion Filed by: DVAUGHN KEITHAN KING Motion ... MOTION FOR LEAVE OF COURT TO FILE THE LONGER THAN NORMAL PETITION
12-30-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4754544 - Approved By: NOREVIEW : 12-30-2014:14:39:32
12-30-2014	Supreme Court Remittitur Filed Supreme Court Remittitur SUPREME COURT NO. 64983/REMITTITUR - Transaction 4754537 - Approved By: NOREVIEW : 12-30-2014:14:38:31
12-30-2014	Supreme Ct Clk's Cert & Judg Filed Supreme Ct Clk's Cert & Judg SUPREME COURT NO. 64983/CLERK'S CERTIFICATE AND JUDGMENT - Transaction 4754537 - Approved By: NOREVIEW : 12-30-2014:14:38:31
12-30-2014	Supreme Court Order Affirming Filed Supreme Court Order Affirming SUPREME COURT NO. 64983/ORDER OF AFFIRMANCE - Transaction 4754537 - Approved By: NOREVIEW : 12-30-2014:14:38:31
12-08-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4725365 - Approved By: NOREVIEW : 12-08-2014:11:35:09
12-08-2014	Supreme Court Order Affirming Filed Supreme Court Order Affirming SUPREME COURT NO. 64983/ORDER OF AFFIRMANCE - Transaction 4725361 - Approved By: NOREVIEW : 12-08-2014:11:34:11
10-30-2014	Notice of Electronic Filing

	Filed Proof of Electronic Service Transaction 4675792 - Approved By: NOREVIEW : 10-30-2014:11:24:06
10-30-2014	Notice Filed Document withheld. Document Security Level Exceeded
10-22-2014 Defendant	Ex-Parte Mtn Filed by: KARLA BUTKO, ESQ. Document withheld. Document Security Level Exceeded
10-21-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4660914 - Approved By: NOREVIEW : 10-21-2014:09:42:06
10-21-2014	Certificate of Clerk Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - Transaction 4660905 - Approved By: NOREVIEW : 10-21-2014:09:41:07
10-08-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4642480 - Approved By: NOREVIEW : 10-08-2014:11:07:19
10-08-2014	Supreme Ct Order Granting ... Filed Supreme Ct Order Granting ... SUPREME COURT NO. 64983 / ORDER GRANTING MOTION FOR TRANSMISSION OF PRESENTENCE INVESTIGATION REPORT - Transaction 4642476 - Approved By: NOREVIEW : 10-08-2014:11:06:28
09-02-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4585911 - Approved By: NOREVIEW : 09-02-2014:09:16:28
09-02-2014	Notice Filed Document withheld. Document Security Level Exceeded
08-12-2014 Defendant	Ex-Parte Mtn Filed by: KARLA BUTKO, ESQ. Document withheld. Document Security Level Exceeded
03-10-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4335898 - Approved By: NOREVIEW : 03-10-2014:13:14:03
03-10-2014	Supreme Court Ord Remanding Filed Supreme Court Ord Remanding SUPREME COURT NO. 64983/ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL - Transaction 4335892 - Approved By: NOREVIEW : 03-10-2014:13:10:42
03-06-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4331927 - Approved By: NOREVIEW : 03-06-2014:11:30:26
03-06-2014	Notice of Appearance Filed Notice of Appearance KARLA BUTKO, ESQ. / D'VAUGHN KING - Transaction 4331824 - Approved By: MCHOLICO : 03-06-2014:11:29:11
02-26-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4319778 - Approved By: NOREVIEW : 02-26-2014:09:50:19
02-26-2014	Notice Filed Document withheld. Document Security Level Exceeded
02-14-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4305981 - Approved By: NOREVIEW : 02-14-2014:10:45:21
02-14-2014	Supreme Court Receipt for Doc Filed Supreme Court Receipt for Doc SUPREME COURT NO. 64983/RECEIPT FOR DOCUMENTS - Transaction 4305975 - Approved By: NOREVIEW : 02-14-2014:10:42:29
02-07-2014	Notice of Electronic Filing Filed

[Proof of Electronic Service Transaction 4295161 - Approved By: NOREVIEW : 02-07-2014:10:11:22](#)

Case Appeal Statement

02-07-2014

Filed

[Case Appeal Statement Transaction 4295157 - Approved By: NOREVIEW : 02-07-2014:10:10:22](#)

Certificate of Clerk

02-07-2014

Filed

[Certificate of Clerk CERTIFICATE OF CLERK AND TRANMITTAL - NOTICE OF APPEAL - Transaction 4295157 - Approved By: NOREVIEW : 02-07-2014:10:10:22](#)

Notice of Electronic Filing

02-06-2014

Filed

[Proof of Electronic Service Transaction 4293192 - Approved By: NOREVIEW : 02-06-2014:10:55:09](#)

Transcript

02-06-2014

Filed

[Transcript SENTENCING - JANUARY 22, 2014 - Transaction 4293188 - Approved By: NOREVIEW : 02-06-2014:10:54:11 : this document can only be accessed at the court](#)

Notice of Electronic Filing

02-04-2014

Filed

[Proof of Electronic Service Transaction 4289264 - Approved By: NOREVIEW : 02-04-2014:14:17:16](#)

Ex-Parte Mtn

02-04-2014

Defendant

Filed by: JOHN OHLSON, ESQ.

[Document withheld. Document Security Level Exceeded](#)
[- Document withheld. Document Security Level Exceeded](#)

Mtn Trial Trans. Public Exp

01-31-2014

Filed

[Mtn Trial Trans. Public Exp](#)

Req to Crt Rptr - Rough Draft

01-31-2014

Filed

[Req to Crt Rptr - Rough Draft](#)

Application Appoint Counsel

01-31-2014

Filed

[Application Appoint Counsel INDIGENT REQUEST FOR COURT APPOINTED COUNSEL ON APPEAL](#)

Notice/Appeal Supreme Court

01-31-2014

Filed

[Notice of Appeal Supreme Court](#)

Notice of Electronic Filing

01-28-2014

Filed

[Proof of Electronic Service Transaction 4278675 - Approved By: NOREVIEW : 01-28-2014:15:18:05](#)

***Minutes

01-28-2014

Filed

[***Minutes SENTENCING - 01-22-14 - Transaction 4278667 - Approved By: NOREVIEW : 01-28-2014:15:16:58](#)

Notice of Electronic Filing

01-27-2014

Filed

[Proof of Electronic Service Transaction 4276269 - Approved By: NOREVIEW : 01-27-2014:13:50:18](#)

Notice Withdrawal of Attorney

01-27-2014

Defendant

Filed by: JOHN OHLSON, ESQ.

[Notice Withdrawal of Attorney JOHN OHLSON, ESQ - Transaction 4276161 - Approved By: SHAMBRIG : 01-27-2014:13:47:00](#)

Notice of Electronic Filing

01-23-2014

Filed

[Proof of Electronic Service Transaction 4271604 - Approved By: NOREVIEW : 01-23-2014:12:51:23](#)

Judgment of Conviction

01-23-2014

Filed

[Judgment of Conviction 01-22-14 - Transaction 4271603 - Approved By: NOREVIEW : 01-23-2014:12:50:33](#)

** Exhibit(s) ...

01-22-2014

Filed

Untitled Document

01-22-2014

Filed

Notice of Electronic Filing

01-21-2014

Filed

[Proof of Electronic Service Transaction 4267173 - Approved By: NOREVIEW : 01-21-2014:11:59:41](#)

AA 0019

	Transcript
01-21-2014	Filed Transcript CHANGE OF PLEA - NOVEMBER 25, 2013 - Transaction 4267171 - Approved By: NOREVIEW : 01-21-2014:11:58:39 : this document can only be accessed at the court
	Notice of Electronic Filing
01-16-2014	Filed Proof of Electronic Service Transaction 4263025 - Approved By: NOREVIEW : 01-16-2014:15:40:05
	Memorandum
01-16-2014 Defendant	Filed by: JOHN OHLSON, ESQ. Memorandum ... DEFENDANT'S PRE-SENTENCE MEMORANDUM - Transaction 4262738 - Approved By: SHAMBRIG : 01-16-2014:15:23:17 - Exhibit 1
	Notice of Electronic Filing
01-09-2014	Filed Proof of Electronic Service Transaction 4245160 - Approved By: NOREVIEW : 01-09-2014:09:10:15
	PSI - Confidential
01-09-2014	Filed PSI - Confidential (CONFIDENTIAL) Transaction 4245096 - Approved By: MELWOOD : 01-09-2014:09:07:03
	Notice of Electronic Filing
12-19-2013	Filed Proof of Electronic Service Transaction 4208637 - Approved By: NOREVIEW : 12-19-2013:08:30:45
	Notice
12-19-2013	Filed Document withheld. Document Security Level Exceeded
	Notice of Electronic Filing
12-05-2013	Filed Proof of Electronic Service Transaction 4178559 - Approved By: NOREVIEW : 12-05-2013:14:37:05
	Ex-Parte Mtn
12-05-2013 Defendant	Filed by: JOHN OHLSON, ESQ. Document withheld. Document Security Level Exceeded - Document withheld. Document Security Level Exceeded
	Notice of Electronic Filing
11-25-2013	Filed Proof of Electronic Service Transaction 4159233 - Approved By: NOREVIEW : 11-25-2013:14:48:07
	***Minutes
11-25-2013	Filed ***Minutes CHANGE OF PLEA - Transaction 4159211 - Approved By: NOREVIEW : 11-25-2013:14:45:23
	Notice of Electronic Filing
11-25-2013	Filed Proof of Electronic Service Transaction 4157783 - Approved By: NOREVIEW : 11-25-2013:10:06:14
	Guilty Plea Memo/Agreement
11-25-2013	Filed Guilty Plea Memo/Agreement Transaction 4157773 - Approved By: NOREVIEW : 11-25-2013:10:04:19
	Notice of Electronic Filing
11-22-2013	Filed Proof of Electronic Service Transaction 4155374 - Approved By: NOREVIEW : 11-22-2013:14:04:49
	Amended Information
11-22-2013 Plaintiff	Filed by: BRUCE C. HAHN, ESQ. Amended Information Transaction 4154695 - Approved By: SHAMBRIG : 11-22-2013:14:03:06
	Notice of Electronic Filing
11-22-2013	Filed Proof of Electronic Service Transaction 4154671 - Approved By: NOREVIEW : 11-22-2013:12:54:18
	Application for Setting
11-22-2013 Plaintiff	Filed by: BRUCE C. HAHN, ESQ. Application for Setting CHANGE OF PLEA HEARING 11-25-13 AT 9:00 - Transaction 4154581 - Approved By: SHAMBRIG : 11-22-2013:12:53:02
	Notice of Electronic Filing
11-21-2013	Filed Proof of Electronic Service Transaction 4149923 - Approved By: NOREVIEW : 11-21-2013:08:31:15
11-21-2013	Notice

Filed

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

11-13-2013

Filed

Proof of Electronic Service Transaction 4132314 - Approved By: NOREVIEW : 11-13-2013:17:12:46

Stip and Order

11-13-2013

Filed

Stip and Order... RE PRE-PRELIMINARY HEARING AND PRE-TRIAL RECIPROCAL DISCOVERY (FELONY AND GROSS MISDEMEANOR CASES) - Transaction 4132313 - Approved By: NOREVIEW : 11-13-2013:17:11:24

Notice of Electronic Filing

10-22-2013

Filed

Proof of Electronic Service Transaction 4083930 - Approved By: NOREVIEW : 10-22-2013:11:22:52

Notice

10-22-2013

Filed

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

10-02-2013

Filed

Proof of Electronic Service Transaction 4037089 - Approved By: NOREVIEW : 10-02-2013:10:50:06

Ex-Parte Mtn

10-02-2013

Defendant

Filed by: JOHN OHLSON, ESQ.

Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

09-12-2013

Filed

Proof of Electronic Service Transaction 3991651 - Approved By: NOREVIEW : 09-12-2013:10:54:39

Notice

09-12-2013

Filed

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

09-06-2013

Filed

Proof of Electronic Service Transaction 3976846 - Approved By: NOREVIEW : 09-06-2013:09:17:24

Ex-Parte Mtn

09-06-2013

Defendant

Filed by: JOHN OHLSON, ESQ.

Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

08-07-2013

Filed

Proof of Electronic Service Transaction 3906650 - Approved By: NOREVIEW : 08-07-2013:12:29:35

Notice

08-07-2013

Filed

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

07-29-2013

Filed

Proof of Electronic Service Transaction 3884112 - Approved By: NOREVIEW : 07-29-2013:08:42:41

Transcript

07-29-2013

Filed

Transcript STATUS HEARING - MAY 22, 2013 - Transaction 3884095 - Approved By: NOREVIEW : 07-29-2013:08:40:59 : this document can only be accessed at the court

Notice of Electronic Filing

07-16-2013

Filed

Proof of Electronic Service Transaction 3858622 - Approved By: NOREVIEW : 07-16-2013:15:03:51

Ex-Parte Mtn

07-16-2013

Defendant

Filed by: JOHN OHLSON, ESQ.

Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

06-26-2013

Filed

Proof of Electronic Service Transaction 3816664 - Approved By: NOREVIEW : 06-26-2013:11:02:50

06-26-2013

Notice

Filed

AA 0021

Document withheld. Document Security Level Exceeded

06-12-2013

Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 3782223 - Approved By: NOREVIEW : 06-12-2013:08:41:53](#)

06-12-2013

Notice

Filed

Document withheld. Document Security Level Exceeded

06-05-2013

Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 3769040 - Approved By: NOREVIEW : 06-05-2013:14:59:04](#)

06-05-2013

Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 3769036 - Approved By: NOREVIEW : 06-05-2013:14:58:13](#)

06-05-2013

Transcript

Filed

Transcript STATUS HEARING - MAY 8, 2013 - Transaction 3769035 - Approved By: NOREVIEW : 06-05-2013:14:57:51 : this document can only be accessed at the court

06-05-2013

Transcript

Filed

Transcript STATUS HEARING - MAY 3, 2013 - Transaction 3769032 - Approved By: NOREVIEW : 06-05-2013:14:56:47 : this document can only be accessed at the court

06-05-2013
Court

Request for Submission

Filed by: RICHARD A. MOLEZZO, ESQ.

[Request for Submission NO S1 DONE - REFERRED TO BOB BELL DOCUMENT TITLE: EX PARTE MOTION FOR AN ORDER OF APPROVAL OF PAYMENT OF INVESTIGATOR FEES - PARTY SUBMITTING: RICHARD MOLEZZO DATE SUBMITTED: 6-5-13 SUBMITTED BY: S HAMBRIGHT DATE RECEIVED JUDGE OFFICE:](#)

06-05-2013
Court

Ex-Parte Mtn

Filed by: RICHARD A. MOLEZZO, ESQ.

Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

05-30-2013

Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 3755126 - Approved By: NOREVIEW : 05-30-2013:10:19:14](#)

05-30-2013

Notice

Filed

Document withheld. Document Security Level Exceeded

05-29-2013

Request for Submission

Filed

[Request for Submission DOCUMENT TITLE: EXPARTE MOTION FOR AN ORDER OF APPROVAL OF PANY OF ATTORNEY'S FEES AND COSTS \(PHASE 3 - FINAL PHASE\) FILED UNDER SEAL \(NO S1 BUILT - REFERRED TO BOB BELL\) PARTY SUBMITTING: RICHARD MOLEZZO, ESQ DATE SUBMITTED: 05/29/13 SUBMITTED BY: ASMITH DATE RECEIVED JUDGE OFFICE:](#)

05-29-2013

Ex-Parte Mtn

Filed

Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

05-28-2013

Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 3749572 - Approved By: NOREVIEW : 05-28-2013:13:42:00](#)

05-28-2013
Defendant

Ex-Parte Mtn

Filed by: JOHN OHLSON, ESQ.

Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

- Document withheld. Document Security Level Exceeded

05-22-2013

Notice of Electronic Filing

Filed

[Proof of Electronic Service Transaction 3743634 - Approved By: NOREVIEW : 05-22-2013:16:44:59](#)

05-22-2013

***Minutes

Filed

[***Minutes 5-22-13 STATUS HEARING - Transaction 3743625 - Approved By: NOREVIEW : 05-22-2013:16:42:59](#)

05-14-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3725030 - Approved By: NOREVIEW : 05-14-2013:14:58:23](#)

05-14-2013 ***Minutes
Filed
[***Minutes 5-8-13 STATUS HEARING IN RE: APPOINTMENT OF COUNSEL - Transaction 3725013 - Approved By: NOREVIEW : 05-14-2013:14:56:14](#)

05-13-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3720623 - Approved By: NOREVIEW : 05-13-2013:10:50:38](#)

05-13-2013 Order...
Filed
[Order ... \[ATTY JOHN OHLSON IS APPT'D TO REP DEFENDANT; TRIAL DATE OF 08.12.13 AND MTN TO CONFIRM HEARING OF 07.31.13 ARE HEREBY VACATED; NEW TRIAL DATE TO BE SET AT STAT HEARING SCH'D FOR 05.22.13 - 9:00 A.M. - ks\]](#)

05-08-2013 ** Exhibit(s) ...
Filed

05-06-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3707650 - Approved By: NOREVIEW : 05-06-2013:16:48:10](#)

05-06-2013 ***Minutes
Filed
[***Minutes 5/3/13 STATUS HEARING - Transaction 3707641 - Approved By: NOREVIEW : 05-06-2013:16:45:20](#)

04-25-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3685374 - Approved By: NOREVIEW : 04-25-2013:10:35:39](#)

04-25-2013 Application for Setting - eFile
Filed
[Application for Setting eFile STAT HEARING - 05.03.13 - 11:00 A.M.](#)

04-24-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3682908 - Approved By: NOREVIEW : 04-24-2013:12:59:06](#)

04-24-2013 Notice
Filed
[Document withheld. Document Security Level Exceeded](#)

04-23-2013 Ex-Parte Mtn
Defendant
Filed by: DVAUGHN KEITHAN KING
[Ex-Parte Mtn... EX-PARTE MOTION REQUESTING TO RELIEVE COUNSEL](#)

04-19-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3673840 - Approved By: NOREVIEW : 04-19-2013:14:55:32](#)

04-19-2013 Transcript
Filed
Transcript STATUS HEARING - FEBRUARY 20, 2013 - Transaction 3673832 - Approved By: NOREVIEW : 04-19-2013:14:54:00 : this document can only be accessed at the court

04-03-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3634070 - Approved By: NOREVIEW : 04-03-2013:08:23:03](#)

04-03-2013 Notice
Filed
[Document withheld. Document Security Level Exceeded](#)

03-25-2013 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3614163 - Approved By: NOREVIEW : 03-25-2013:13:47:28](#)

03-25-2013 Request for Submission
Court
Filed by: RICHARD A. MOLEZZO, ESQ.
[Request for Submission NO S1 BUILT \(REFERRED TO BOB BELL\) - EX PARTE MOTION FOR AN ORDER OF APPROVAL OF PAYMENT OF ATTORNEY'S FEES AND COSTS - Transaction 3614109 - Approved By: JYOST : 03-25-2013:13:44:02 PARTY SUBMITTING: RICHARD MOLEZZO, ESQ. DATE SUBMITTED: 03-25-13 SUBMITTED BY: JYOST DATE RECEIVED JUDGE OFFICE:](#)

03-25-2013 Notice of Electronic Filing
Filed

[Proof of Electronic Service Transaction 3613388 - Approved By: NOREVIEW : 03-25-2013:10:46:11](#)

Ex-Parte Mtn

Filed by: RICHARD A. MOLEZZO, ESQ.

03-25-2013
Court

Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

02-27-2013

Filed

[Proof of Electronic Service Transaction 3558175 - Approved By: NOREVIEW : 02-27-2013:10:44:24](#)

***Minutes

02-27-2013

Filed

***Minutes STATUS HEARING - 02-20-13 - Transaction 3558164 - Approved By: NOREVIEW : 02-27-2013:10:42:26

Notice of Electronic Filing

02-22-2013

Filed

[Proof of Electronic Service Transaction 3549465 - Approved By: NOREVIEW : 02-22-2013:14:04:30](#)

Request for Submission

Filed by: RICHARD A. MOLEZZO, ESQ.

02-22-2013
Court

Request for Submission NO S1 DONE - REFERRED TO BOB BELL - Transaction 3549286 - Approved By: SHAMBRIG : 02-22-2013:14:00:13 DOCUMENT TITLE: EX PARTE MOTION FOR DEFENSE THEORY EXPERT FEES, FILED UNDER SEAL PARTY SUBMITTING: RICHARD MOLEZZO, ESQ DATE SUBMITTED: 2-22-13 SUBMITTED BY: S HAMBRIGHT DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

02-22-2013

Filed

[Proof of Electronic Service Transaction 3548769 - Approved By: NOREVIEW : 02-22-2013:11:26:09](#)

Ex-Parte Mtn

Filed by: RICHARD A. MOLEZZO, ESQ.

02-22-2013
Court

Document withheld. Document Security Level Exceeded

Notice of Electronic Filing

12-04-2012

Filed

[Proof of Electronic Service Transaction 3383257 - Approved By: NOREVIEW : 12-04-2012:09:15:54](#)

Transcript

12-04-2012

Filed

Transcript ARRAIGNMENT - AUGUST 22, 2012 - Transaction 3383242 - Approved By: NOREVIEW : 12-04-2012:09:13:23 : this document can only be accessed at the court

Notice of Electronic Filing

12-03-2012

Filed

[Proof of Electronic Service Transaction 3382338 - Approved By: NOREVIEW : 12-03-2012:16:01:11](#)

Transcript

12-03-2012

Filed

Transcript MOTION TO SET TRIAL - NOVEMBER 28, 2012 - Transaction 3382284 - Approved By: NOREVIEW : 12-03-2012:15:54:14 : this document can only be accessed at the court

Notice of Electronic Filing

11-29-2012

Filed

[Proof of Electronic Service Transaction 3376471 - Approved By: NOREVIEW : 11-29-2012:15:39:34](#)

***Minutes

11-29-2012

Filed

***Minutes 11-28-12 MOTION TO SET TRIAL - Transaction 3376445 - Approved By: NOREVIEW : 11-29-2012:15:36:30

Notice of Electronic Filing

11-27-2012

Filed

[Proof of Electronic Service Transaction 3370262 - Approved By: NOREVIEW : 11-27-2012:16:19:20](#)

Application for Setting

Filed by: BRUCE C. HAHN, ESQ.

11-27-2012
Plaintiff

Application for Setting MOTION TO SET TRIAL 11-28-12 AT 9:00 A.M. - Transaction 3370181 - Approved By: JYOST : 11-27-2012:16:14:16

Notice of Electronic Filing

10-29-2012

Filed

[Proof of Electronic Service Transaction 3309177 - Approved By: NOREVIEW : 10-29-2012:12:22:35](#)

Notice

10-29-2012

Filed

Document withheld. Document Security Level Exceeded

AA 0024

10-09-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3269967 - Approved By: NOREVIEW : 10-09-2012:10:42:45](#)

10-09-2012 Ex-Parte Mtn
Court Filed by: RICHARD A. MOLEZZO, ESQ.
Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

08-29-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3181270 - Approved By: NOREVIEW : 08-29-2012:08:55:50](#)

08-29-2012 Notice
Filed
Document withheld. Document Security Level Exceeded

08-24-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3174648 - Approved By: NOREVIEW : 08-24-2012:15:18:05](#)

08-24-2012 Ex-Parte Mtn
Court Filed by: RICHARD A. MOLEZZO, ESQ.
Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

08-23-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3170643 - Approved By: NOREVIEW : 08-23-2012:10:53:14](#)

08-23-2012 ***Minutes
Filed
[***Minutes 08-22-12 ARRAIGNMENT - Transaction 3170621 - Approved By: NOREVIEW : 08-23-2012:10:49:16](#)

08-16-2012 Proceedings
Filed
[Proceedings JUSTICE COURT PROCEEDINGS](#)

08-03-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3127396 - Approved By: NOREVIEW : 08-03-2012:12:09:44](#)

08-03-2012 Stip and Order
Filed
[Stip and Order... CONSOLIDATED STIPULATION: GOOD CAUSE TO CONTINUE FIRST APPEARANCE; GOOD CAUSE FOR CONTINUANCE OF TIME TO BE BROUGHT TO TRIAL - Transaction 3127394 - Approved By: NOREVIEW : 08-03-2012:12:08:10](#)

07-26-2012 Return on B/W - Quashed
Filed
[Return on B/W - Quashed WARRANT FILED 07/12/12 - QUASHED 07/23/12](#)

07-23-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3102625 - Approved By: NOREVIEW : 07-23-2012:16:20:25](#)

07-23-2012 Waiver of Preliminary Exam
Plaintiff Filed by: BRUCE C. HAHN, ESQ.
[Waiver of Preliminary Exam Transaction 3102518 - Approved By: AZION : 07-23-2012:16:18:19](#)

07-23-2012 Information
Plaintiff Filed by: BRUCE C. HAHN, ESQ.
[Information Transaction 3102518 - Approved By: AZION : 07-23-2012:16:18:19](#)

07-23-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3101535 - Approved By: NOREVIEW : 07-23-2012:13:32:21](#)

07-23-2012 Order...
Filed
[Order ... QUASHING MATERIAL WITNESS WARRANT \(ERIC KING\) - Transaction 3101523 - Approved By: NOREVIEW : 07-23-2012:13:30:54](#)

07-23-2012 Notice of Electronic Filing
Filed
[Proof of Electronic Service Transaction 3100939 - Approved By: NOREVIEW : 07-23-2012:10:43:47](#)

07-23-2012 Plaintiff	<p>Mtn Quash Warrant Attachmnt</p> <p>Filed by: BRUCE C. HAHN, ESQ. Mtn Quash Warrant Attachmnt MOTION TO QUASH MATERIAL WITNESS WARRANT (ERIC KING) - Transaction 3100807 - Approved By: AZION : 07-23-2012:10:41:15</p>
07-20-2012	<p>Notice of Electronic Filing</p> <p>Filed Proof of Electronic Service Transaction 3099356 - Approved By: NOREVIEW : 07-20-2012:14:17:47</p>
07-20-2012	<p>Pretrl Srvc Assessment Report</p> <p>Filed Pretrl Srvc Assessment Report Transaction 3099230 - Approved By: AZION : 07-20-2012:14:06:56</p>
07-20-2012	<p>Notice of Electronic Filing</p> <p>Filed Proof of Electronic Service Transaction 3098345 - Approved By: NOREVIEW : 07-20-2012:09:51:52</p>
07-20-2012	<p>Application for Setting - eFile</p> <p>Filed Application for Setting eFile ARRAIGNMENT 08-08-12 @ 9AM - Transaction 3098332 - Approved By: NOREVIEW : 07-20-2012:09:49:54</p>
07-12-2012	<p>Bench Warrant Filed -Case Open</p> <p>Filed Bench Warrant Filed -Case Open BENCH WARRANT ON MATERIAL WITNESS ORDER</p>
07-12-2012	<p>Notice of Electronic Filing</p> <p>Filed Proof of Electronic Service Transaction 3081202 - Approved By: NOREVIEW : 07-12-2012:17:10:24</p>
07-12-2012	<p>Order...</p> <p>Filed Order ... MATERIAL WITNESS ORDER - Transaction 3081098 - Approved By: NOREVIEW : 07-12-2012:16:58:56</p>
07-12-2012	<p>Notice of Electronic Filing</p> <p>Filed Proof of Electronic Service Transaction 3080836 - Approved By: NOREVIEW : 07-12-2012:16:52:54</p>
07-12-2012 Plaintiff	<p>Motion</p> <p>Filed by: BRUCE C. HAHN, ESQ. Motion ... MOTION TO REQUIRE BOND OF A MATERIAL WITNESS - Transaction 3079983 - Approved By: AZION : 07-12-2012:16:20:15</p>
07-10-2012	<p>Notice of Electronic Filing</p> <p>Filed Proof of Electronic Service Transaction 3069871 - Approved By: NOREVIEW : 07-10-2012:11:50:02</p>
07-10-2012	<p>Order...</p> <p>Filed Order ... CRIMINAL CERTIFICATION UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES (NRS SEC. 174.425) - Transaction 3069762 - Approved By: NOREVIEW : 07-10-2012:11:37:56</p>
07-09-2012 Plaintiff	<p>Application</p> <p>Filed by: BRUCE C. HAHN, ESQ. Application ... MATERIAL WITNESS</p>

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)
12 Plaintiffs,)
13 vs.) Case No. CR12-1160 and
14 DVAUGHN KEITHAN KING,) CR13-1149
15 Defendant.) Department 7
16 _____)
17

18 TRANSCRIPT OF PROCEEDINGS

19 SENTENCING

20 January 22, 2014

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: BRUCE HAHN, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 JOHN OHLSON, ESQ.
9 Attorney at Law
10 Reno, Nevada
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 RENO, NEVADA, January 22, 2014, 9:00 a.m.

2

3 --oOo--

4 THE CLERK: Case number CR13-1149, State of Nevada
5 versus Dvaughn King. Matter set for motion to dismiss
6 indictment. And case number CR12-1160, State of Nevada
7 versus Dvaughn Keithan King. Matter set for sentencing.
8 Counsel and the Division, please state your appearance.

9 MR. HAHN: Bruce Hahn for the State.

10 MR. OHLSON: Good morning, your Honor. John
11 Ohlson for the defendant. He's in custody and present.

12 MS. IVESON: Your Honor, Jennifer Iveson for the
13 Division. We have two corrections to make to the presentence
14 investigation report.

15 THE COURT: Just a minute. Let me pull it up.
16 This is the time set for sentencing in the above-entitled
17 case. The Court is in receipt of a presentence investigation
18 report prepared December 31st. Have counsel had an
19 opportunity to review the report and are there any facts,
20 errors or omissions you want to the bring to the Court's
21 attention? Mr. Ohlson, the Court is also in receipt of the
22 defendant's presentence memorandum filed January 16th, 2014.
23 Mr. Ohlson.

24 MR. OHLSON: Yes, your Honor. We did file a

1 presentence memorandum. And as that memorandum states, I've
2 had the opportunity to discuss the presentence report with
3 Mr. King. We've gone over it. We discussed his exceptions
4 to the report, which are noted in the memorandum. We're
5 prepared for sentencing today. Mr. King will want to address
6 the Court and I have one witness to present.

7 THE COURT: Let me hear from the Division. You
8 had some corrections to the report?

9 MS. IVESON: Yes, your Honor. On page one, under
10 sentencing date, it should be January 22nd, 2014.

11 THE COURT: All right.

12 MS. IVESON: On page eight under credit time
13 served, it should be June 6th, 2012 to January 22nd, 2014,
14 596 days is the correct amount.

15 THE COURT: 596?

16 MS. IVESON: Yes, your Honor.

17 THE COURT: All right. Mr. Ohlson.

18 MR. OHLSON: Yes, your Honor. As to the credit
19 time served, I think the record shows that Mr. King was
20 arrested on a warrant dated April 19th, 2012 on this offense.

21 THE COURT: I was confused by that as well.
22 Apparently, Mr. King was out of custody until the Sparks
23 warrant is served and then he picks up the PCS with a weapon.

24 MR. OHLSON: I think not. I think he was

1 arrested -- Sparks Police contacted the authorities in
2 California, who contacted Mr. King, and that resulted in his
3 arrest on the possession.

4 THE COURT: The PCS?

5 MR. OHLSON: Yes. And his incarceration on that
6 offense. Subsequently, he was in prison on California on
7 that offense and arrested on the Sparks warrant and brought
8 to Nevada.

9 THE COURT: How long was he in California custody
10 before that?

11 THE DEFENDANT: 11/8/2010.

12 THE COURT: So the Sparks warrant was served
13 November 8th?

14 MR. OHLSON: April 12th.

15 THE COURT: Was that the warrant or was that just
16 a request?

17 MR. HAHN: Judge, forgive me, Bruce Hahn. I have
18 a little bit different perspective. The arrest affidavit and
19 criminal complaint was filed on April 19, 2012.
20 Subsequently, the defendant, once he discovered of the hold,
21 he initiated detainers. Pursuant to the --

22 THE COURT: Was he already in custody?

23 MR. HAHN: Yes, he was serving a California prison
24 sentence. And so the defendant thereafter initiated

1 proceedings under the IAD. So it's the State's perspective
2 that any -- that the time involved here really begins when he
3 was booked in the Washoe County Jail. When he crossed over
4 the State lines, came to Washoe County from California, that
5 would have been the date that the Division reflects, which I
6 believe is June 6th, 2012.

7 THE COURT: But he's held.

8 MR. HAHN: He was being held in California, that's
9 true, under California charges.

10 THE COURT: Correct.

11 MR. HAHN: We filed the criminal complaint in
12 April of 2012, specifically the date was April 19th of 2012.
13 However, merely because we had filed a complaint, it's the
14 State's perspective that credit wouldn't begin to accrue
15 necessarily. If California wishes to give him credit for
16 that, that's fine. But until he was booked into in Washoe
17 County in June 6th, 2012, that would be effective date.

18 MR. OHLSON: Let's just say something happened in
19 California and he was released on the California charges.

20 THE COURT: He'd still be held on the Nevada
21 charges.

22 MR. OHLSON: That's right.

23 THE COURT: What would be the credit time served
24 if we backed it up to April 19th?

1 MS. IVESON: April 19th to 2012?

2 MR. OHLSON: Another 48 days, we calculate.

3 MS. IVESON: I would have 55 days, your Honor.

4 THE COURT: An additional 55 on top of 596.

5 MS. IVESON: 654, your Honor.

6 THE COURT: 54 or 51?

7 MS. IVESON: I apologize. 651.

8 THE COURT: They warned me in school not to do
9 math in public for a reason.

10 MR. OHLSON: Always an appropriate admonition.

11 THE COURT: And one other thing I had for
12 Division, one of the concerns I have in these presentence
13 investigation reports is every time a prisoner is revoked on
14 parole and reenters, it's counted as another conviction. So
15 you have somebody who is convicted, it's one conviction, he
16 or she is paroled and then parole is revoked, they're
17 returned, the Division counts that as a second conviction.

18 MS. IVESON: We count it a revocation and parole,
19 not another conviction, a felony conviction.

20 MR. OHLSON: In fairness to the department, I
21 think the report counts it as an incarceration, not a
22 separate conviction.

23 THE COURT: I see. All right.

24 MS. IVESON: I'm sorry. Yes, if he goes back to

1 prison, it's another prison sentence.

2 THE COURT: Even though he's serving the same
3 prison sentence?

4 MS. IVESON: That's how California counts it, your
5 Honor.

6 THE COURT: All right.

7 MR. OHLSON: Before we proceed further, can
8 Mr. King be relieved of one of his handcuffs so he can have a
9 drink of water, please?

10 THE COURT: Deputy, yes. You have a witness,
11 Mr. Ohlson?

12 MR. OHLSON: I do. Nancy King, your Honor.

13 (One witness sworn at this time.)

14 THE COURT: Mr. Ohlson.

15 BY MR. OHLSON:

16 Q. What is your name?

17 A. Nancy King.

18 Q. Are you related to the defendant?

19 A. Yes.

20 Q. How are you related?

21 A. I'm his wife.

22 Q. When were you married to him?

23 A. January 9th, 2004.

24 Q. Do you two have any children together?

1 A. Yes. We have a six-year-old son.

2 Q. When did Mr. King go into prison in California?

3 Do you recall? Was it 2012 -- 2010, I'm sorry.

4 A. November of 2010.

5 Q. Have you been in communication with him since he's
6 been incarcerated?

7 A. Yes.

8 Q. Have you noted any change in his character since
9 he has been incarcerated?

10 A. Yes. He's gone to counseling sessions and I see
11 that he's found a purpose in life now that he has, I want to
12 say the gift, but he knows how to reach people and I believe
13 that he wants to help people not follow in his same footsteps
14 and try to keep them from making the same horrible decisions
15 he's had.

16 Q. You're aware of the offense to which your husband
17 has pled guilty?

18 A. Yes. I do want to say that I send my condolences
19 to Mr. Young's family and I'm truly sorry for the pain and
20 the loss that you guys are dealing with.

21 Q. Have you been in regular contact with your husband
22 since he was incarcerated in 2010?

23 A. Yes.

24 Q. You continue up to this date to communicate with

1 him to the extent that you can --

2 A. Yes.

3 Q. -- during his incarceration? Do you have any
4 hopes to be reunited on the outside with your husband?

5 A. I believe that one day our family will be put back
6 together and I believe he's going to be a better person than
7 when he went into jail and that he will not -- he won't make
8 the same mistakes that he's done before. I believe that this
9 has happened for a reason in that he's finally figured out
10 what life is supposed to be about.

11 Q. What's your son's name?

12 A. Daviar King.

13 Q. Are you in contact with other members of your
14 husband's family?

15 A. Yes, all of his family.

16 Q. Are any of them present in court today?

17 A. Yes, his mom, his dad and his brother.

18 Q. Back in the back of the courtroom?

19 A. Yes.

20 Q. And they traveled here from where?

21 A. His dad traveled from Mississippi and his mom and
22 brother traveled from California.

23 Q. Okay. Do you have anything else to add?

24 A. Not that I can think of.

1 MR. OHLSON: That's all, your Honor.

2 THE COURT: Mr. Hahn, any questions?

3 MR. HAHN: I waive. Thank you for coming.

4 THE COURT: Thank you, ma'am. Watch your step.

5 THE WITNESS: Okay.

6 THE COURT: Mr. Ohlson, any further questions?

7 MR. OHLSON: Mr. King would like to be heard, your
8 Honor. I assume by statute, you want that done now.

9 THE COURT: Let me hear from the State.

10 MR. HAHN: Briefly, your Honor. What I would
11 anticipate is just a road map. I will be offering one
12 witness to address just a couple of things. Number one, to
13 address Mr. King's exceptions to the presentence report, to
14 address a few gaps that are in the presentence report, to
15 address perhaps Ms. King's perspective of a change in
16 character of her husband, and then, of course to address one
17 of the issues in this case, which is consecutive versus
18 concurrent with the California matter. So that's the purpose
19 of the statement and the State respects and intends to honor
20 the plea agreement.

21 With that, I would be offering one witness, I'll
22 offer some argument and I'm also informed that three
23 witnesses would like to offer a victim impact statements.
24 They indicate that they're statutorily qualified. Our victim

1 witnesses interviewed them and they are Evelyn Young who is
2 the sister of the deceased, Kianna Pride who is the sister of
3 the deceased and then Karen Jones who is the mother of the
4 deceased. They wish to exercise their right to be heard
5 last.

6 THE COURT: Certainly. You want to proceed with
7 the other witnesses?

8 MR. HAHN: Thank you, just one witness.

9 MR. OHLSON: Can we get a couple of chairs, your
10 Honor, it looks like we're going to be here a while.

11 THE COURT: Certainly.

12 (One witness sworn at this time.)

13 MR. HAHN: As Mr. Gallop is being seated, can I
14 approach the clerk with an exhibit?

15 THE COURT: Certainly.

16 THE CLERK: Exhibit 1 marked for identification.

17 MR. HAHN: Let the record reflect I'm showing
18 defense counsel Exhibit 1, which has been provided in the
19 course of discovery.

20 THE COURT: Mr. Hahn, your witness.

21 MR. HAHN: May I approach?

22 THE COURT: Certainly.

23 BY MR. HAHN:

24 Q. Mr. Gallop, could you share your full name and

1 spell your last name, please?

2 A. Yes. My name is Ken Gallop, G-a-l-l-o-p.

3 Q. Your occupation, sir?

4 A. Occupation is a detective with the Sparks Police
5 Department in Sparks, Nevada.

6 Q. How long have you served as a sworn law
7 enforcement peace officer in the State of Nevada?

8 A. Just over 20 years.

9 Q. Mr. Gallop, you know why I asked you here, is that
10 true?

11 A. Yes, sir.

12 Q. If I could, I would like you to address a couple
13 of matters. Specifically, I would like to offer your
14 perspective of the evidence, to address perhaps an exception
15 that Mr. Toy, the codefendant, was owed drug money from
16 Mr. Young and to also address the principal suspect, who is
17 the principal suspect in terms of the evidence that you
18 assessed in this case? May I do that?

19 A. Yes, sir.

20 Q. Are you familiar with the term case agent?

21 A. I am.

22 Q. What does it mean?

23 A. A case agent is a term used by our department to
24 define who the detectives are that are responsible for

1 overseeing the entire investigation. The case agent also is
2 an active investigator in the case. So as the investigation
3 proceeds with the numerous detectives, the case agent is
4 ultimately responsible for putting together what we call
5 binders, the binders. So it's a culmination of the entire
6 investigative effort in any case. The case agent puts
7 together a binder to demonstrate the entire case.

8 Q. Was that your role in this case?

9 A. Yes.

10 Q. Are you acquainted with all the law enforcement
11 reports gathered and garnered by the Sparks Police
12 Department?

13 A. I am.

14 Q. Does that also include California authorities as
15 well?

16 A. It did, numerous.

17 Q. With regard to some of the individuals in
18 assessing those two concerns that I addressed to you, is
19 there a document in front of you, Exhibit 1?

20 A. Yes, sir.

21 Q. Are you acquainted with it?

22 A. I am.

23 Q. What is it?

24 A. This is a report called a Penlink report and this

1 indicates some of the people involved in this case.

2 THE COURT: Could you spell that, Penlink?

3 THE WITNESS: Penlink, your Honor. It's
4 P-e-n-l-i-n-k. It's a software program that's utilized by
5 law enforcement, specifically the Sparks Police Department,
6 to enter in cellular phone data and communications and that
7 cellular phone data is used to create a chart for
8 demonstrative purposes to show communications between certain
9 cell phones. In this case, it shows communications between
10 some people involved in this case.

11 BY MR. HAHN:

12 Q. And how was that chart generated or compiled?

13 A. This chart was --

14 MR. OHLSON: Your Honor, I'm going to raise an
15 objection at this point. Testimony at this time as to the
16 defendant's guilt has been usurped by his guilty plea. If
17 we're going to have some testimony that bears upon the
18 Court's decision as to sentencing, that's one thing, but he's
19 accepted responsibility and entered his plea.

20 THE COURT: I understand that, but even under the
21 federal sentencing guidelines, role in the offense is a
22 factor to take into consideration.

23 MR. OHLSON: I understand that, as long as we're
24 not relitigating who done what.

1 THE COURT: All right, with that proviso.

2 MR. HAHN: Again, the purpose of the State
3 offering this is there's been some representations made by
4 Mr. King that I don't know would square with the evidence.
5 We're trying to offer the Court a different perspective for
6 you to make a decision today.

7 THE COURT: Well, this is argument, so go ahead.

8 BY MR. HAHN:

9 Q. Very well. You mentioned that was compiled by
10 data entered into the standard utilized software by Sparks
11 Police Department to generate that document, is that true?

12 A. Correct.

13 Q. Now, with regard to you determining who the
14 primary suspect was, are there some individuals identified on
15 that document?

16 A. Yes, there are.

17 Q. I'd like to start with an individual identified as
18 Tom Young, is that the deceased?

19 A. Yes.

20 Q. Is that person on the document?

21 A. Yes.

22 Q. How did you attempt to determine who the primary
23 suspect was from the data available from Tom Young, the
24 deceased?

1 A. Relating to this document alone, we utilized cell
2 phone data of two cellular telephones that were utilized and
3 identified as being utilized by Tommy Young in this case.

4 Q. And were you able to identify some recent phone
5 traffic between him and an individual in California?

6 A. Not specifically with Tommy Young's cellular
7 telephones.

8 Q. Very well. Did you determine any connection at
9 all between Tommy Young's cellular telephones and the
10 codefendant, Henry Toy?

11 A. No.

12 Q. Very well. With regard to the Tom Young cell
13 phones, were those analyzed?

14 A. Yes.

15 Q. And did you attempt to determine leads of the
16 primary suspect in that with the cell phone?

17 A. Yes. With the physical cell phone, we were
18 attempting to gather information of who may or may not have
19 been speaking to Tommy Young prior to the incident.

20 Q. And were you able to find someone who had been
21 speaking with him recently?

22 A. With his cellular telephones, no, not
23 specifically.

24 Q. Whose cellular telephones did you find a link?

1 A. We found a link to Tommy Young through Dvaughn
2 King's cellular telephones and some other people.

3 Q. Now, with regard to Mr. King's cell phones, how
4 did you gain access to those?

5 A. Mr. King was in possession of one cellular
6 telephone at the time of his arrest for the parole violation
7 in California and then the Sparks Police Department traveled
8 to Sacramento and continued the investigation over there. We
9 worked with the Sacramento authorities, the police department
10 and the sheriffs office, and through their efforts and our
11 investigation, we discovered another cellular telephone
12 pursuant to search warrants over there in Sacramento.

13 Q. Were you able to find communications between the
14 cell phones of Dvaughn King, the defendant, and the deceased,
15 Tommy Young?

16 A. Yes.

17 Q. How recent was that communication, if you recall?

18 A. As recent as approximately four weeks prior to the
19 murder.

20 Q. Now, with regard to another source, are you
21 acquainted with the name Henry Toy, the codefendant in this
22 case?

23 A. Yes, I am.

24 Q. Were you able to obtain information from him?

1 A. Yes.

2 Q. Was he truthful in the initial statements that he
3 made?

4 A. No.

5 MR. OHLSON: Objection.

6 THE COURT: Sustained.

7 BY MR. HAHN:

8 Q. Very well. With regard to his representations,
9 did the initial representations that Mr. Toy offered, did
10 they pan out in terms of your investigation?

11 A. No. The initial statements made by Mr. Toy were
12 not able to be corroborated and therefore our investigation
13 revealed later on that in fact the initial statements were
14 not truthful.

15 Q. With regard to further investigation, did he
16 ultimately provide some type of identification by a photo?

17 A. He did.

18 Q. Who did that lead you to?

19 A. It led us to Dvaughn King.

20 Q. With regard to another name on that Penlink
21 document that you have there, are you acquainted with the
22 name Hanna Malatu?

23 A. Yes.

24 Q. Who is she?

1 A. She was a girlfriend of Dvaughn King.

2 Q. In connection with your contact with her, did
3 you -- is that where you found the other cell phone belonging
4 to Dvaughn King that you referred to?

5 A. Yes.

6 Q. Did you discover any connection or contact between
7 Henry Toy and Ms. Malatu?

8 A. No.

9 Q. Is there another individual on that Penlink
10 document identified as an Eric King?

11 A. Yes.

12 Q. Who is Mr. Eric King?

13 A. Eric King is actually friends of the deceased in
14 this case, Tommy Young. Our investigation revealed he was
15 actually a family friend of Mr. Young's family. We also
16 discovered that he was friends and acquainted with Dvaughn
17 King, but we could not determine that there was any family
18 connection based on the same last name. That's what we found
19 out about Mr. Eric King.

20 Q. Now, with regard to Mr. Eric King, did you find
21 any connection between Mr. Eric King and Henry Toy?

22 A. No.

23 Q. And what was Mr. King, Eric King's connection with
24 Mr. Dvaughn King?

1 A. Mr. Eric King was the middle man who facilitated
2 drug deals between Dvaughn King and Tommy Young.

3 Q. Is there a further name identified on that
4 document as a Sherri Mitchell?

5 A. Yes.

6 Q. Who is Sherri Mitchell?

7 A. Sherri Mitchell is a prostitute who was acquainted
8 with and friends with Dvaughn King.

9 Q. And with regard to Sherri Mitchell, did you find
10 any connection by phone or otherwise or knowledge prior to
11 the murder of Tommy Young between her and Henry Toy?

12 A. No.

13 Q. Did Ms. Mitchell provide you some information that
14 led you to help determine a primary suspect in this case?

15 A. She did.

16 Q. Could you summarize that briefly for the Court,
17 please?

18 A. She was at the Grand Sierra Resort in Reno,
19 Nevada, the early morning hours of the murder. She was
20 picked up by Dvaughn King and Henry Toy. She provided
21 directions to Tommy Young's house, unknowingly. She did not
22 understand or know what was about to occur based on our
23 investigation.

24 The directions were provided at the request of

1 Dvaughn King. Upon arrival to Young's residence, she
2 indicated she was surprised that they actually drove past it
3 when she identified it to Mr. King and Mr. Toy. The vehicle
4 was parked kind of around the corner and she remained in the
5 vehicle when Mr. King, Dvaughn King, and Henry Toy exited the
6 vehicle and proceeded towards Tommy Young's house on foot.

7 Her attention was then drawn to Henry Toy
8 returning to the vehicle, claiming that he had been shot in
9 the legs. Dvaughn King was assisting him coming back to the
10 vehicle. She overheard Henry Toy make a comment about
11 dropping his gun. And both gentlemen got into the vehicle
12 and drove away.

13 She was present when Dvaughn King dropped off
14 Henry Toy in the 800 block of North Sierra in Reno and then
15 pleaded with Mr. King to let her out of the vehicle. She was
16 extremely afraid.

17 Q. So in fairness, did you find evidence that two
18 guns had been recently fired in connection with your
19 investigation with what happened on York?

20 A. Yes.

21 Q. I'd like to move forward, if I may. Are you
22 acquainted with the investigation of the Sacramento County
23 authorities did in connection with the charge that was
24 addressed earlier, specifically, possession of a controlled

1 substance involving Mr. King?

2 A. Yes.

3 Q. With regard to that matter, was that initiated by
4 virtue of search warrants that were obtained in connection
5 with the murder investigation in California?

6 A. The drug charges were as a result of evidence
7 found through those search warrants, yes.

8 Q. Was the approximate amount of the methamphetamine
9 in the case, was it in excess of 100 grams?

10 A. Yes. It was approximately a quarter pound of
11 methamphetamine.

12 Q. And where were the drugs located?

13 A. The drugs were located in a storage unit that was
14 rented in the name of Nancy King.

15 Q. Was there also a separate storage unit that you
16 were able to identify that Mr. Dvaughn King was associated
17 with?

18 A. Yes.

19 Q. And who was that?

20 A. That second storage unit was identified as being
21 rent the by Hannah Malatu or in the name of Hannah Malatu.

22 Q. In addressing this component, did you discover any
23 evidence that you're acquainted with to connect the drugs
24 that were found in the storage unit in Sacramento with

1 Nevada?

2 A. No.

3 Q. With regard to -- as I'm just finishing up the
4 questions I have for you -- with regard to the extradition
5 process, is it your understanding that extradition was sought
6 on or about April 30th, 2012 pursuant to the criminal
7 complaint that was filed on or about April 19, 2012 on
8 Mr. King?

9 A. That is my understanding, yes.

10 Q. And Mr. King was booked into the Washoe County
11 Jail on or about June 6th, 2012?

12 A. Correct.

13 Q. And did your investigation ultimately stop when
14 Mr. King was brought to Washoe County or did it continue?

15 A. The investigation continued.

16 Q. Did that involve monitoring of conversations
17 between Ms. King, Nancy King, the one who testified earlier
18 and Dvaughn King?

19 A. Yes. All communications that Dvaughn King
20 utilized through the detention center here at Washoe County
21 was monitored.

22 Q. Without giving us the content of that those
23 conversations between the two, did that lead you to
24 ultimately recommend a grand jury investigation into

1 Mr. King?

2 A. Yes.

3 Q. And in connection with the investigation that the
4 Grand Jury conducted into Mr. King, did you find any similar
5 conduct that was done by Henry Toy?

6 A. No.

7 MR. HAHN: I don't have any other questions.

8 THE COURT: Mr. Ohlson.

9 BY MR. OHLSON:

10 Q. So we're clear, the Sparks Police Department
11 identified Mr. King as a suspect in the Young killing before
12 he was arrested by California authorities, isn't that right?

13 A. He was identified as being involved in this case,
14 yes, prior to his arrest in California.

15 Q. Okay. And after he was identified, there was some
16 information received by Sparks Police Department that he was
17 physically located in Sacramento, isn't that right?

18 A. Yes. Sacramento contacted Sparks Police
19 Department upon his arrest.

20 Q. You weren't involved prior to his arrest in
21 California?

22 A. No. We actually left for California that night.

23 Q. Okay. Were you involved in the application for a
24 search warrant in California?

1 A. At what point?

2 Q. At any point.

3 A. Yes, I was.

4 Q. So the reports that indicate you were involved in
5 that are accurate?

6 A. Excuse me. That I was or was not?

7 Q. The reports that your department was involved in
8 the application for the search warrant are accurate, isn't
9 that right?

10 A. Yes, sir. I'm actually named in some of those
11 affidavits.

12 Q. The handgun that was recovered, that was
13 determined not to be involved in the Young killing, isn't
14 that right?

15 A. Which handgun, sir?

16 Q. The handgun that was retrieved in California, in
17 Sacramento, from Mr. King's residence?

18 A. We didn't find a gun at his residence.

19 Q. You found it in the storage facility?

20 A. No, sir.

21 Q. Where?

22 A. A handgun was located at Hanna Malatu's residence.

23 Q. And that wasn't involved?

24 A. That handgun was not involved, no, sir.

1 MR. OHLSON: Okay. That's all.

2 THE COURT: Any questions, Mr. Hahn?

3 BY MR. HAHN:

4 Q. I'm sorry. I neglected to ask one question.
5 Mr. Gallop, with regard to Mr. Toy, did you discover any
6 evidence that Mr. Toy was in any type of narcotics debt
7 relationship with Tommy Young?

8 A. Throughout this three-year investigation, we found
9 no evidence whatsoever that Henry Toy and Tommy Young knew
10 one another prior to the murder.

11 MR. HAHN: Nothing else. Thank you.

12 THE COURT: That raise any questions, Mr. Ohlson?

13 MR. OHLSON: No, thank you.

14 MR. HAHN: That's the State's representation with
15 regard to evidence. We're prepared to proceed to argument
16 when the time the Court is ready.

17 THE COURT: Let's talk about argument.
18 Mr. Ohlson.

19 MR. OHLSON: Your Honor, we raised bigger issues
20 that were supported in our presentence memorandum, basically
21 with regard to the consecutive or concurrent sentencing in
22 this case with the time that Mr. King has already been
23 sentenced in California. And we believe that the appropriate
24 sentence in this case would recognize the California sentence

1 as arising and consequential of the Nevada investigation and
2 that accordingly this Court ought to sentence Mr. King
3 concurrently with his California conviction.

4 In addition, Mr. King does have family that's
5 supportive of him that would like to see him on the outside
6 at some point in time. He has taken the effort to
7 demonstrate a path towards rehabilitation while he's been
8 both in prison and in the Washoe County Jail, which is
9 indicative of the programs that he's been involved in and his
10 behavior in jail.

11 With that, further, Mr. King would like to address
12 the Court.

13 THE COURT: I'll give him an opportunity. Let me
14 hear argument from the State.

15 MR. HAHN: I would invite the Court to reflect on
16 some of the earlier testimony that Mr. Gallop had offered
17 this Court at the time when Mr. Molezzo was Mr. King's
18 counsel and some of the representations and whatnot that
19 were, again, offered by Detective Gallop.

20 Judge, with regard to the sentence in this case,
21 the State is recommending that the Court impose a term of
22 life imprisonment with the possibility of parole within ten
23 years. Further, the State is recommending for the
24 enhancement, the 24- to 72-month consecutive to the term.

1 Judge, with regard to these two terms, we are also
2 recommending that these terms run consecutive to his
3 underlying California sentence and I would offer the Court a
4 couple of comments with regard to this.

5 Almost a quarter pound of methamphetamine that was
6 discovered in a storage unit that was being -- that was under
7 Nancy King's name, it suggests, I think, perhaps, a
8 meaningful distribution network, if not just store-housing.
9 I think the evidence is fair for the Court to conclude that
10 there was interest in opening up perhaps a new market in
11 Reno. And so when I hear a concern that Mr. King has about
12 maybe this sort of being collateral damage, the California
13 matter, with ultimately the murder that occurred in Nevada, I
14 don't have -- I don't share that same perspective, judge.

15 What we're talking about is we're talking about a
16 convicted felon who had access to a weapon, who had 100 grams
17 of methamphetamine, in excess, in a storage unit in
18 California that happened to be discovered in connection with
19 a much larger investigation, two different locations, two
20 different distribution networks. And for that reason, judge,
21 alone, I believe that mitigates in favor of the consecutive
22 sentence with whatever the Court renders here in connection
23 with the California sentence he was serving time for. Absent
24 that, I stand ready to answer any questions.

1 THE COURT: No. Thank you.

2 MR. OHLSON: One point, if I may?

3 THE COURT: Certainly.

4 MR. OHLSON: Apparently, in the California case,
5 Mr. King's conviction relates to the substances found at the
6 residence and not in the storage unit.

7 THE COURT: Storage unit.

8 MR. OHLSON: That those storage unit substances,
9 that case was dismissed upon his conviction in the other
10 matter. So that's the only final argument.

11 THE COURT: Mr. King, the law affords you an
12 opportunity to address the Court at the time of sentencing in
13 terms of the presentence investigation report, mitigation,
14 punishment, any matter you want to bring to the Court's
15 attention, I invite you to do that at this time, if you wish.

16 THE DEFENDANT: I'll take responsibility for my
17 actions. I understand you've been doing this for quite
18 sometime and you pretty much heard everything, you know. And
19 I know you're not someone who is going to be conned into
20 being swayed one way or another. But with my utmost
21 sincerity, your Honor, I stand before you today not the same
22 man that I was three years ago.

23 I'm not going to sit here and tell you that I
24 found God, because that would be lying, to much like saying I

1 found my car keys or something. But he has definitely found
2 me. On one token, I am thank you for these circumstances
3 that have produced growth and transformation in me. On
4 another, I have a great deal of sadness and empathy for the
5 families involved in this case, especially the Young family,
6 Karen, Kianna, Evelyn, Shaniqua.

7 THE WITNESS: Joseph.

8 THE DEFENDANT: Yes. And Ms. Evelyn Mount. I
9 understand that forgiveness is the result of receiving proof
10 over a period of time and needing more proof than anything.
11 So today I will not ask that of you, which makes sense to me
12 given the gravity of matters. I am deeply sorry for your
13 loss and I look forward to the day you can truly forgive me
14 for the pain and suffering my actions have caused your
15 family, which I can only imagine you might be feeling.

16 Your Honor, as I ponder my legacy I will leave, I
17 decided that 100 years from now that I want to be known as
18 somebody who brought out the best in people, somebody who
19 left the world a better place. Material accomplishments will
20 soon be forgotten. The only thing that lasts is the
21 investment we make in other people's lives.

22 With that being said, I pray to the Court and the
23 families for an opportunity to give back to the others, other
24 wayward youth who may find themselves in similar

1 circumstances from bad decision making. I pray to someday to
2 be in a position where society welcomes me and I'm able to
3 allow my life experiences to be a beacon to others.

4 At the end of the day, I'm not what I once was and
5 I know I'm not who I ought to be. He's not done with me. So
6 by the grace of God, I'm not who I used to be. I thank the
7 Court for allowing me to share and I'm prepared to accept
8 whatever you deem is appropriate.

9 THE COURT: Thank you, sir. Mr. Hahn. You may be
10 seated.

11 MR. HAHN: Court's indulgence, please.

12 THE COURT: Take your time.

13 (One witness sworn at this time.)

14 BY MR. HAHN:

15 Q. Would you tell us your name and spell your last
16 name, please?

17 A. Evelyn Young, Y-o-u-n-g.

18 Q. Are you related to the young man we were speaking
19 of earlier this morning, Tommy Young?

20 A. Yes.

21 Q. What was your relationship with him?

22 A. I'm his sister.

23 Q. Ms. Young, what I want to do, is I don't have any
24 questions for you, I just want to allow you to share from

1 your heart to Judge Flanagan some of your feelings about the
2 crime, the loss and the impact it has had upon you. Please
3 feel free.

4 A. I was there the night that the murder happened and
5 it's a huge loss. It was my brother taken away from me, my
6 friend, my -- someone who I deeply loved was taken away. And
7 there's no reason good enough for his life not being here
8 today. There's no reason good enough.

9 I mean, he had children that are now left behind.
10 He was a father, a brother, a son. He was somebody important
11 and he's not here today and there's no reason why he
12 shouldn't be here today. He will truly be missed and there's
13 no reason for him not to be here. There's no excuse
14 whatsoever.

15 THE COURT: Thank you, ma'am. Mr. Hahn, next
16 witness.

17 (One witness sworn at this time.)

18 BY MR. HAHN:

19 Q. Could you tell us your name and spell your last
20 name, please?

21 A. Kianna Young, but now it's Pride, P-r-i-d-e.

22 Q. Ma'am, could you share with us, are you related to
23 the deceased in this case, Tommy Young, that we've been
24 speaking of?

1 A. He's my older brother.

2 Q. Older brother?

3 A. He's number two of the older brothers.

4 Q. Okay. Very well. If you would, I don't have any
5 specific questions for you, I'm just going to ask you if you
6 would be so kind, if you wish, to share with the judge some
7 of the feelings on your heart about the crime, about how it's
8 impacted you and your family and the loss.

9 A. I don't even know where to start. Whatever you
10 guys had going on, it wasn't that serious. You shouldn't
11 take an incident like this to make a better man. The minute
12 you had children, you should have become that better man.
13 Whatever the issue was, it could have been prevented.

14 They speak about saying that he had -- it wasn't
15 something that he wanted to do or it wasn't intended or
16 whatever. If that's the case, then he wouldn't have gone up
17 there with that intent. This man came from across state
18 lines to inflict harm on somebody. And, obviously, whatever
19 it was he meant to do happened and to me that doesn't seem
20 like somebody -- they did something they wanted to do, ain't
21 no sorry in that. Right now I'm bitter and there's nothing
22 nobody can say can probably make me feel better right now.
23 Maybe in the future things will be better for me. For right
24 now, today, everything that Dvaughn did was intended, it's

1 what he meant to do and this is the outcome of what he did.

2 He can't take it back. You can say you're sorry
3 to however many people you want to, but you're going to go
4 home to your son and your daughters eventually, you know, or
5 however. My brother will never go back to his children. His
6 girls will never see him. He'll never see them become the
7 young women they'll become one day. And for that I don't
8 have any -- ain't nothing you can say or do can make me
9 better today, nobody.

10 To your family, I'm sorry that we all got to go
11 through this, and excuse the way I feel right now, but I
12 don't have no feelings for any of you right now. Not to say
13 that anything bad about you. Maybe in the future, like I
14 said, it will change. But I'm pretty sure you can understand
15 where I'm coming from right now.

16 I know you from school, Dvaughn. I never thought
17 we would ever come across each other's path like this. I was
18 almost at a loss when I found out who it was that they were
19 even saying. You know what I mean? Whatever it is, is
20 whatever it is, it can't be brought back now. You claim to
21 be a better man, it shouldn't have took this to become a
22 better man.

23 I don't want to see nobody go to jail. I have
24 another brother that's doing life in jail. You know what I

1 mean? That's bullshit. It's just not that serious. And I
2 don't know what to say. I'm hurt. Can't bring my brother
3 back. I'd like to see you spend the rest of your life in
4 jail. It's up to him, but that's how I feel today.

5 THE DEFENDANT: I understand.

6 THE WITNESS: That's all I got to say.

7 THE COURT: Mr. Ohlson.

8 MR. OHLSON: No, thank you.

9 (One witness sworn at this time.)

10 BY MR. HAHN:

11 Q. Would you share with us your name and spell your
12 last name, please?

13 A. My name is Karen Jones, J-o-n-e-s.

14 Q. How are you related to the deceased Tommy Young?

15 A. He's my son.

16 Q. Ms. Jones, did you ask to be able to be heard
17 today?

18 A. I did.

19 Q. Would you like to share some of your feelings on
20 the impact of the crime and the loss and the circumstances
21 with Judge Flanagan?

22 A. I would.

23 Q. Go ahead and just share from your heart, if you
24 would.

1 A. I waited a long time for this. It's been three
2 years have passed, have been lost. Horrible time that I've
3 ever had to endure, losing a child in my own home. My other
4 kids were there. So imagine when I got that phone call. It
5 was more than I thought I could bear.

6 These people invaded my home. That wasn't Tommy's
7 home, that was my home. He was there, but that was my home.
8 I wasn't their friend. They came in my home and they killed
9 my son.

10 I am grateful that I serve a God that has brought
11 me to this point. We've had to go through some changes. It
12 was months later that I found out that my youngest daughter
13 that was there was going through some things. She was at
14 school one day and she just totally freaked out thinking
15 about what she had witnessed from her brother. At the time,
16 she was 16 years old. She's gone through counseling since
17 then and she's better. She's out in the hall now. We have
18 to be in that home every day in the room where he was killed.

19 In the beginning, I was very, very angry at what
20 you had done. You had no right to do that. Your name is not
21 God, it's Dvaughn.

22 THE DEFENDANT: Yes, ma'am.

23 THE WITNESS: And you had no right to do what you
24 did. The one consolation that I do have and I'm not sure if

1 you meant it or not, but you're heading in the right
2 direction getting and developing a relationship with God,
3 because that's the only thing and the only one that is going
4 to bring you through. And it's because of him I'm able to
5 say to you today, Dvaughn, that I forgive you. I truly
6 forgive you for what you've done. And it's my true desire
7 that you do develop a righteous relationship with God and
8 learn who you can be and what you can do for the future,
9 because that's all you have to look forward to. We can't go
10 back and change anything that has happened. All of this is
11 not going to bring my son back.

12 But the fact that you even mentioned that you know
13 that there is a God brings joy to my heart. I'm able to do
14 this today. I just want you to understand, by going through
15 that, you will realize what you had done. You've changed
16 people's lives that didn't have any reason whatsoever to be
17 changed like that. You had no right to do that, none
18 whatsoever. That's all.

19 THE COURT: Thank you, ma'am.

20 MR. HAHN: Your Honor, I will advise that's the
21 sum of all the witnesses who want to be heard. And if I may,
22 I just wanted to tender Exhibit 1 for our record.

23 MR. OHLSON: No objection.

24 THE COURT: Thank you. Exhibit 1 is admitted. A

1 judge has to take a lot of things into consideration in
2 imposing judgment on a human being. The Court has to take
3 into consideration the defendant, the defendant's background,
4 the defendant's personal history, the defendant's family,
5 employment, military history, education.

6 In this case, the Court finds the defendant is a
7 very intelligent, articulate individual and that is to his
8 credit and it is in many sense a shame, a waste. So much
9 good could have been brought with the proper application of
10 that intelligence.

11 The Court has to take into consideration the
12 victim. In this case, there's not one victim, there are many
13 victims, many innocent victims. We have the parents of the
14 decedent, the parents of the defendant, children, innocent
15 children who grow up not knowing their father, fathers. Our
16 communities will lose what good could have come from the
17 contribution these men could have made.

18 The Court has to take into consideration the
19 nature of the crime. This is murder, murder most foul, shot
20 cold-blooded in a mother's home. The Court has to take into
21 consideration the impact the crime has not just on the
22 family, but on everybody.

23 The Court has to take into consideration the goals
24 of punishment, rehabilitation, isolation, revenge,

1 retribution. Those are legitimate penological
2 considerations.

3 General deterrence, specific deterrence,
4 specifically, the sentence has to deter the individual from
5 committing the crime again. Generally, whatever sentence is
6 imposed has to reflect the voice and the values of the
7 community, what the community feels about this crime such
8 that if someone reads it in the paper, hears about it, they,
9 too, will be deterred from following this example and perhaps
10 spare the life of another human being.

11 For as long as human beings have gathered together
12 in society, there have been certain immutable laws. You find
13 them in the Old Testament, in Deuteronomy and Leviticus, the
14 Decalogue log, the Ten Commandments, as old as that. The
15 Fifth Commandment, four simple words, thousand shalt not
16 kill.

17 We can go back to the Roman stoics that form much
18 of the law that we follow here today. Cicero speaks of
19 certain laws that have always been part of who we are as
20 human beings sui generis, law of the people, one of which is
21 a law against violent acts against other human beings. It's
22 that old. And yet today we have before us another example of
23 a young man's death at the hands of another man. Senseless,
24 senseless death. Senseless, senseless death.

1 Many people consider judges to be powerful people.
2 The longer I've been doing this, the more I realize what
3 little power judges have. I cannot restore to a young girl a
4 sense of innocence that has been taken from her. I cannot
5 restore to a homeowner a sense of security when their house
6 has been violated. I cannot restore to a mother the body of
7 her dead child. I cannot turn back the hands of time. And
8 while I cannot change the past, I can shape the future and
9 that's just what I'm going to do.

10 All right. Mr. King, it will be the order of this
11 Court that the defendant is to pay a \$25 administrative
12 assessment fee, \$3 DNA, \$150 DNA, \$500 attorney's fees. In
13 addition to the sentence, the underlying sentence, this Court
14 is required by law to impose a consecutive sentence pursuant
15 to NRS 193.165, subsection one. In determining the length of
16 that additional penalty for the use of a deadly weapon, this
17 Court must consider; A, the facts and circumstances of the
18 crime; B, the criminal history of the person; C, the impact
19 of the crime on any victim; D, any mitigating factors
20 presented by the person; and, E, any other relevant
21 information. The Court will state for the record it has
22 considered all of these factors in coming to the following
23 sentence.

24 Therefore, it will be the order of the Court that

1 the defendant, Dvaughn King, be sentenced to the custody of
2 the Nevada Department of Corrections for a term of
3 imprisonment of life with the possibility of parole after ten
4 calendar years. The defendant is also to serve a consecutive
5 sentence for a deadly weapon enhancement in the term of 53 to
6 240 months. That is consecutive. This crime is consecutive
7 to 10F07661 with 651 days credit time served. Anything else,
8 Ms. Iveson?

9 MS. IVESON: No, your Honor.

10 THE COURT: Mr. Hahn.

11 MR. HAHN: No, thank you, your Honor.

12 THE COURT: Mr. Ohlson.

13 MR. OHLSON: No, your Honor.

14 THE CLERK: Your Honor, is CR13-1149 dismissed?

15 THE COURT: CR13-1149 is dismissed. This Court's
16 in recess.

17 --oOo--
18
19
20
21
22
23
24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on January 22, 2014, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the sentencing in the matter of THE STATE OF NEVADA,
10 Plaintiff, vs. DVAUGHN KEITHAN KING, Defendant, Case
11 No. CR12-1160 and CR13-1149, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 43, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 5th day of February 2014.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 **CODE 1850**
2
3
4
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR12-1160

12 **DVAUGHN KEITHAN KING,**

Dept. No. 7

13 **Defendant.**
14 _____/

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having entered a plea of guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him,
18 the Court rendered judgment as follows:

19 Dvaughn Keithan King is guilty of the crime of Murder in the Second Degree
20 With the Use of a Deadly Weapon, a violation of NRS 200.010, NRS 200.030 and NRS
21 193.165, a felony, as charged in the Amended Information, and that he be punished by
22 imprisonment in the Nevada State Prison for the term of Life With the Possibility of
23 Parole, with parole eligibility beginning when a minimum of Ten (10) years has been
24 served. Further, the Court, having considered Paragraphs (a) through (e) as described in
25 NRS 193.165(1), imposes an additional penalty of a consecutive term of imprisonment in
26 the Nevada State Prison for a minimum term of Fifty-Three (53) months to a maximum
27 term of Two Hundred and Forty (240) months for the Use of a Deadly Weapon
28 enhancement. It is further ordered that both sentences will be served consecutively to

1 the sentence previously imposed in Case No. 10F07661, with credit for time served in the
2 amount of Six Hundred and Fifty-One Days (651) days.

3 It is further ordered that the Defendant shall pay the statutory Twenty-Five
4 Dollar (\$25.00) administrative assessment fee, the One Hundred Fifty Dollar (\$150.00)
5 DNA testing fee, and submit to a DNA analysis to determine the presence of genetic
6 markers, if not previously ordered, the Three Dollar (\$3.00) administrative assessment
7 fee for obtaining a biological specimen and conducting a genetic marker analysis, if not
8 previously ordered, and reimburse the County of Washoe the sum of Five Hundred
9 Dollars (\$500.00) for legal representation.

10 Any fine, fee or administrative assessment imposed upon the Defendant
11 today as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada
12 Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees or
13 assessments, collection efforts may be undertaken against him.

14 Dated this 23rd day of January, 2014.

15
16
17 Patrick Flanagan
18 DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28

CODE:
TROY C. JORDAN
Nevada Bar No. 9073
300 South Arlington, Suite B
Reno, Nevada 89501
Tel: 775-432-1581
Attorney for Petitioner

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

D'VAUGHN KEITHAN KING,
Petitioner,

vs.

Case No. CR12-1160

STATE OF NEVADA,

Dept. No. 7

Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

1. Name of the institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: **High Desert State Prison, Clark County Nevada.**
2. Name and location of the Court which entered the Judgment of Conviction under attack: **Second Judicial District Court of the State of Nevada in and for the County of Washoe.**
3. Date of Judgment of Conviction:
4. Case Number: **CR12-1160**
5. Length of Sentence: **Life with the possibility of parole after ten (10) years plus an additional 53 months to 240 months consecutive for the deadly weapons enhancement.**
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion: **No**
7. Nature of Offenses: **2nd Degree Murder**
8. What was your plea? **Guilty**

9. What were the terms of the plea agreement? **In exchange for the Petitioner's guilty plea, the parties would be free to argue except that the state would cap its recommendation**
10. If you were found guilty at trial: **N/A**
11. Did you testify at trial: **N/A**
12. Did you appeal from the Judgment of Conviction: **Yes**
13. If you did appeal
- a) Name of the Court: **Nevada Supreme Court**
 - b) Case Number: **64983**
 - c) Result: **Affirmed**
 - d) Date: **11-12-2014**
14. If you did not appeal explain why: **N/A**
15. Other than a direct appeal from the Judgment of Conviction and Sentence, have you previously filed any petitions, applications or motions with respect this Judgment in any court, state or federal: **No.**
16. If the answer to 15 is yes: **N/A**
17. Has any ground being raised in this Petition been previously raised in another post-conviction proceeding: **No.**
18. If any of the grounds listed in No. 23 below were not previously presented to any other court why were they not presented: **Pursuant to Pellegrini v. State, 117 Nev. 860, 881-84, 34 P. 3d 519, 533-35 (2001), claims of ineffective assistance of counsel are allowed to be presented for the first time in a timely post-conviction writ of habeas corpus.**
19. Are you filing this Petition more than one year following the filing of the Judgment of Conviction or the filing of a decision on direct appeal? **No. The petition in timely and filed within one year.**
20. Do you have any Petitions 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 that represented you in the proceeding resulting in your

conviction and direct appeal

1) Richard Molezzo –pre-trial proceedings

2) John Ohlson-Trial

3) Karla Butko-Direct Appeal

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

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

I. Applicable Law Regarding Ineffective Assistance of Counsel

A defendant possesses a constitutional right to reasonably effective assistance of counsel at trial. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), *cert. denied*, 471 U.S. 1004, 85 L. Ed. 2d 159, 105 S. Ct. 1865 (1985).

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a convicted defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result of counsel's performance. *Strickland*, 466 U.S. at 687-88, 692. Prejudice is demonstrated where counsel's errors were so severe that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 466 U.S. at 694. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of trial. *Id.* The defendant carries the affirmative burden of establishing prejudice. *Id.* at 466 U.S. at 693. Prejudice in an ineffective assistance of counsel claim is shown when the reliability of the jury's verdict is in doubt. *Id.* at 466 U.S. at 687. Reliability is in doubt where the defendant can

show that, but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. See *State v. Love*, 109 Nev. 1136, 1139 (1993).

Prejudice in an ineffective assistance of counsel claim is shown when the reliability of the jury's verdict is in doubt. *Strickland*, 466 U.S. at 687. Reliability is in doubt where the defendant can show that, but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. See *State v. Love*, 109 Nev. 1136 (1993); *Strickland*, 466 U.S. at 694.

A defendant is entitled to effective assistance of counsel at the both the trial and appellate level. *Kirksey v. State*, 112 Nev. 980, 998, 923 P. 2d 1102, 1113-14 (1996); A claim of ineffective assistance of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in *Strickland*. Effective assistance of appellate counsel does not mean that appellate counsel must raise every non-frivolous issue. *Jones v. Barnes*, 463 U.S. 745, 751-54, 77 L. Ed. 2d 987, 103 S. Ct. 3308 (1983). An attorney's decision not to raise meritless issues on appeal is not ineffective assistance of counsel. *Daniel v. Overton*, 845 F. Supp. 1170, 1176 (E.D. Mich. 1994); *Leaks v. United States*, 841 F. Supp. 536, 541 (S.D.N.Y. 1994), *aff'd*, 47 F.3d 1157 (2d Cir.), *cert. denied*, U.S. , 133 L. Ed. 2d 228, 116 S. Ct. 327 (1995). To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal. *Duhamel v. Collins*, 955 F.2d 962, 967 (5th Cir. 1992); *Heath v Jones*, 941 F.2d 1126, 1132 (1991). In making this determination, a court must review the merits of the omitted claim. *Id.*

II. Supplemental Points and Authorities to Ground I of the proper person petition

Mr. King is being held in the Nevada Department of Corrections in violation of his Due Process rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), *Viperman v. State*, 96 Nev. 592, 614 P.2d 532 (1980), *U.S. v. Nixon*, 418 U.S. 683 (1974), *State v. Fouquette*, 67 Nev. 505, 221 P.2d 404 (1950), and *Vallery v. State*, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002) (quoting *Margetts v. State*, 107 Nev. 616, 619, 818 P.2d 392, 394

(1991) and deserves an evidentiary hearing under *Lewis v. State*, 100 Nev. 456, 686 P.2d 219 (1984), *Bolden v. State*, 99 Nev. 181, 659 P.2d 886 (1983), and *Gibbons v. State*, 97 Nev. 520, 634 P.2d 1214 (1981).

Trial Counsel John Ohlson was ineffective for failure to present appropriate mitigating testimony or evidence on behalf of Mr. King at sentencing to support an argument that Mr. King should receive a sentence of 10-25 years of incarceration and a lighter sentence the deadly weapons enhancement.

If granted an evidentiary hearing, would present Dr. Martha Mahaffey who is expected to testify that had the evaluation been presented, it would have shown a low risk to reoffend, was amenable to treatment and rehabilitation. Further, other mitigating psychological evidence such as the impact Mr. King's ADHD, learning disabilities, drug abuse, and childhood would have been presented indicating the need for rehabilitation. This piece of mitigating evidence would have been crucial and sentencing. The failure of counsel to present this evidence was deficient performance. Further, King suffered prejudice. Mr. King was sentenced to a life sentence plus an additional 53 months to 240 months. Had the evaluation been presented to the Court, the outcome would have been different. Mr. Hoffman either would not have been adjudicated to less than a life sentence or would have been sentenced to less than 53 months to 240 months for the weapons enhancement. Based on the above, both prongs of the *Strickland* standard are met and the Petitioner is entitled to a new sentencing hearing in this matter.

III. Supplemental Points and Authorities to Ground II of the proper person petition

Petitioner was deprived of his rights under the 5th, 6th, and 14th Amendments of the Constitutions of the United States and the State of Nevada to effective assistance of counsel and entry of a voluntary, intelligent and knowing plea.

The totality of the circumstances test has been the standard for reviewing the validity of guilty pleas for some years. In *Bryant v. State*, 102 Nev. 268, 721 P.2d 364 (1986), the Nevada Supreme Court urged trial courts to be as complete as possible in conducting a plea canvass, but stressed that the failure to utter talismanic phrases will not invalidate a plea

where a totality of the circumstances demonstrates that the plea was freely, knowingly and voluntarily made.

While trial courts should in all circumstances conduct sufficient and thorough plea canvasses, an appellate court reviewing the validity of a plea cannot be constrained to look only to the technical sufficiency of a plea canvass to determine whether a plea has been entered with a true understanding of the nature of the offense charged. *State v. Freese*, 116 Nev. 1097, 1104 (2000).

As the United States Supreme Court has recognized, a court should review the entire record and look to the totality of the facts and circumstances of a defendant's case to determine whether a defendant entered his plea with an actual understanding of the nature of the charges against him. See *Marshall v. Lonberger*, 459 U.S. 422, 74 L. Ed. 2d 646, 103 S. Ct. 843 (1983); *Henderson v. Morgan*, 426 U.S. 637, 49 L. Ed. 2d 108, 96 S. Ct. 2253 (1976). When a guilty plea is challenged for ineffective assistance, the defendant must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 994 (1996). When claims of ineffective assistance of counsel are alleged due to an involuntary guilty plea, the Strickland prejudice prong requires a showing by the petitioner "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

In this case Mr. King alleges and will testify that his plea was the product of coercion because trial counsel promised him if he pled guilty he would receive the exact sentence as stated in the plea bargain. As this Court is aware, sentencing is solely within the discretion of the Court. Further, given the seriousness of the allegations, a sentence beyond the plea bargain was a definite possibility. To claim that the sentence was guaranteed was deficient performance. Further, Mr. King was prejudiced. But for counsel's promise of a particular sentence, Mr. King would not have plead guilty and insisted on going to trial.

WHEREFORE, Petitioner requests an evidentiary hearing on his claims in the Petition and Supplemental Petition and any other relief as deemed appropriate by the Court.

Dated this 30th day of March, 2017

/S/ TROY C.JORDAN
TROY C. JORDAN
Attorney at Law

VERIFICATION

Under penalty of perjury, the undersigned declares he is the Counsel for the Petitioner named in the foregoing petition and knows the contents to be true based on information and belief.

Petitioner has specifically authorized counsel to file a supplemental petition.

Dated this 30th day of March 2017.

/S/ TROY C.JORDAN
TROY C. JORDAN
Attorney at Law

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in the above captioned case does not contain the social security number of any person

Dated this 30th day of March, 2017.

/S/ TROY C. JORDAN
TROY C. JORDAN
Attorney at Law

CERTIFICATE OF SERVICE

I, Troy C. Jordan, hereby certify that pursuant to NRCP 5(b), I served via the Eflex system with a true and correct copy of the forgoing document with notice to:

Washoe County District Attorney
1 South Sierra Street
Reno, NV 89501

Dated this 30th day of March, 2017

/S/ TROY C. JORDAN
TROY C. JORDAN
Attorney at Law

IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 74703

District Court Case No.
CR12-1160

Electronically Filed
May 02 2018 03:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from an Order Dismissing Post-Conviction Petition

Honorable David Hardy, Second Judicial District Court

APPELLANT'S OPENING BRIEF

Troy C. Jordan
Law Offices of Troy Jordan
300 S. Arlington Ave, Suite B
Reno, Nevada 89501
(775) 432-1581

Attorney for Appellant

Joseph Plater
Deputy District Attorney
Washoe County District Attorney
1 South Sierra Street
Reno, Nevada 89501
(775)328-3200

Adam Laxalt
Attorney General of the State of
Nevada
101 N. Carson St.
Carson City, NV 89701

Attorneys for Respondent

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that judges of this court may evaluate possible disqualification or recusal:

Troy Jordan, Esq.,

Law Offices of Troy Jordan, Ltd.

Washoe County District Attorney's Office

Joseph Plater, Esq.

Jennifer Noble, Esq.

Mary Lou Wilson, Esq.

Bruce Hahn, Esq.

Richard Molezzo, Esq.

John Ohlson, Esq.

Karla Butko, Esq.

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
RULE 26.1 DISCLOSURE	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	1
ROUTING STATEMENT	1
ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
LAW AND ARGUMENT	3
I. Applicable Law Regarding Ineffective Assistance of Counsel	3
II. The District Court erred in concluding that Ground I of the Petition and	
Supplemental petition did not meet or exceed the standard in <i>Hargrove</i>.	4
CONCLUSION	6
CERTIFICATE OF COMPLIANCE	7

CERTIFICATE OF SERVICE	9
------------------------------	---

TABLE OF AUTHORITIES

Cases

<i>Evans v. State</i> , 117 Nev. 609, 621, 28 P.3d 498, 507 (2001)	5
<i>Hargrove v. State</i> , 100 Nev. 498 (1984).....	4
<i>State v. Love</i> , 109 Nev. 1136, 1139 (1993)	4
<i>Strickland v. Washington</i> , 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)	3
<i>Warden v. Lyons</i> , 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), <i>cert. denied</i> , 471 U.S. 1004, 85 L. Ed. 2d 159, 105 S. Ct. 1865 (1985).....	3

JURISDICTIONAL STATEMENT

A. STATUTE ALLOWING JURISDICTION

NRS 34.575

B. TIMELINESS OF THIS APPEAL

The District Court filed the written order on November, 21 2017. Notice of Entry of Order was filed November 22, 2017. The notice of appeal was filed on December 12, 2018.

C. TYPE OF APPEAL

Direct Appeal from order of the District Court dismissing a Petition for Writ of Habeas Corpus Post Conviction without a hearing.

ROUTING STATEMENT

This matter involves the post-conviction appeal of a Category A Felony. Therefore, pursuant to NRAP 17 (b) (1) this matter should remain with the Supreme Court.

ISSUES PRESENTED FOR REVIEW

- I. The District Court Erred in Denying Ground I of the Petition and Supplemental Petition without first holding a hearing on the issue.**

STATEMENT OF THE CASE

On April 18, 2005 the State of Nevada filed and information against the Appellant charging him with one count of Murder with use of a firearm. Appellant's Appendix (hereinafter AA) at AA001-AA004. Pursuant to plea negotiations the State reduced the charge to Second Degree Murder with a Deadly Weapon. AA005-AA014. On November 25, 2013, the Appellant entered a plea of guilty to the reduced charge. AA015-AA031. Sentencing occurred on January 22, 2014. AA032. A judgement of conviction was entered the next day. AA075. The Appellant appealed his conviction, but this court affirmed his conviction on November 12, 2014. AA077-AA081. On July 16, 2015 Appellant filed a timely proper person post-conviction petition. AA082. Counsel was appointed and supplemented the petition. AA121. The State answered and did not move to dismiss the petition under *Hargrove*. AA130. Without granting a hearing the District Court denied the Petition alleging (despite the fact the State did not so allege) that the claims were belied by the record. AA130-AA138. This appeal followed.

STATEMENT OF FACTS

There were no facts developed below as no trial occurred. The Defendant pled guilty to Second Degree Murder alleging that he killed a human being with use of a firearm.

SUMMARY OF ARGUMENT

The District Court erred in denying ground I without a hearing. The claim met the or exceeded the standard in *Hargrove* and should have been granted a hearing.

LAW AND ARGUMENT

I. Applicable Law Regarding Ineffective Assistance of Counsel

A defendant possesses a constitutional right to reasonably effective assistance of counsel at trial. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), *cert. denied*, 471 U.S. 1004, 85 L. Ed. 2d 159, 105 S. Ct. 1865 (1985).

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a convicted defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result of counsel's performance. *Strickland*, 466 U.S. at 687-88, 692. Prejudice is demonstrated where counsel's errors were so severe that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 466 U.S. at 694. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of trial. *Id.* The defendant carries the

affirmative burden of establishing prejudice. *Id.* at 466 U.S. at 693. Prejudice in an ineffective assistance of counsel claim is shown when the reliability of the jury's verdict is in doubt. *Id.* at 466 U.S. at 687. Reliability is in doubt where the defendant can show that, but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. See *State v. Love*, 109 Nev. 1136, 1139 (1993).

II. The District Court erred in concluding that Ground I of the Petition and Supplemental petition did not meet or exceed the standard in *Hargrove*.

Mr. King was denied due process of law pursuant to the Fifth and Fourteenth Amendments to the United States Constitution when the District Court abused its discretion and dismissed Ground I of the Petition and Supplemental Petition finding it was belied by the record and failing to grant an evidentiary hearing.

Ground I of the Supplemental Petition was worthy of an evidentiary hearing. This Court has already articulated the standard for to receive an evidentiary hearing on claims in a post-conviction petition for writ of habeas corpus in *Hargrove v. State*, 100 Nev. 498 (1984). In *Hargrove*, the Court found that a petitioner cannot make bare or naked allegations. *Hargrove* at 100 Nev. 502. The petitioner must support his allegations with factual allegations that if true would entitle him to relief to receive an evidentiary hearing. *Id.*

This Court later held that a petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make specific factual allegations that if true would entitle him to relief. *Evans v. State*, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001). The petitioner is not entitled to an evidentiary hearing if the record belies or repels the allegations. *Id.* It is proper to raise claims of ineffective assistance of trial or appellate counsel initially in a timely, first post-conviction petition for a writ of habeas corpus. *Id.* at 117 Nev. 622.

In this case, the allegations in Ground I of the Supplemental Petition filed by counsel met or exceeded the standards in *Hargrove* and *Evans*. An evidentiary hearing should have been granted by the District Court.

Ground I of the supplemental petition indicated that that Petitioner's trial counsel failed to call Dr. Martha Mahaffey in mitigation at sentencing and had she been called at sentencing the outcome would have been different. AA124-AA125. Despite, Dr. Mahaffey never testifying previously, the Court found the claim to be belied by the record. AA135. Given that Mahaffey never testified, the claim cannot as a matter of law be belied by the record because the evidence was not before the court in the first instance. There was no argument by the State nor a finding made by the court that the claim was inadequately pled. Therefore, pursuant to *Hargrove*, the claim was entitled to an evidentiary hearing. The Court's finding was an abuse of discretion and not supported by the record.

CONCLUSION

The District Court erred in dismissing Appellant's Petition for Writ of Habeas Corpus. The District Court's findings of fact and conclusions of law should be reversed and Appellant should be granted an evidentiary hearing on these matters.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this opening brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This Opening Brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this opening complies with the page- or type-volume limitations of NRAP 32(a)(7) because it is:

[X] Proportionately spaced, has a typeface of 14 points or more and does not exceed 30 pages

3. Finally, I hereby certify that I have read this opening brief and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rule of Appellate Procedure including NRAP 28(e)(1), which every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the

Nevada Rules of Appellate Procedure.

Dated this 2nd Day of May, 2018

/S/ TROY JORDAN
TROY JORDAN
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that I, Troy Jordan, on the 2nd Day of May, 2018, served the foregoing Opening Brief by electronically filing the document with notice to:

Washoe County District Attorney

Nevada Attorney General

/S/ TROY JORDAN

TROY JORDAN

Attorney at Law

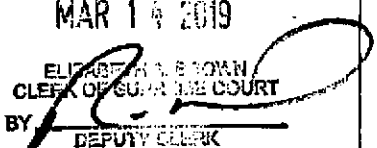
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR12-1160
07 No. 74703-COA

FILED

MAR 14 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

D'Vaughn Keithan King appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on July 16, 2015, and supplemental petition filed on March 30, 2017. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

King contends the district court erred by dismissing his claim of ineffective assistance of defense counsel without first conducting an evidentiary hearing. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697.

King argued defense counsel was ineffective for failing to present expert psychological testimony in mitigation at sentencing. King was entitled to the effective assistance of counsel at sentencing, see *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 938 (1978), and a


sentencing judge's "possession of the fullest information possible regarding the defendant's life and characteristics is essential to the selection of the proper sentence." *Brown v. State*, 110 Nev. 846, 851, 877 P.2d 1071, 1074 (1994). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

King's allegations are not belied by the record. And where, as here, the district court had a range of sentencing options available to it, we cannot say there is not a reasonable probability of a less severe sentence had the mitigating evidence been presented. Accordingly, we are unable to conclude the district court did not err by dismissing King's petition without first conducting an evidentiary hearing. We therefore remand this matter to the district court to conduct an evidentiary hearing on King's claim that counsel was ineffective for failing to present expert mitigating evidence at the sentencing hearing.

For the foregoing reasons, we

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


_____, J.
Gibbons


_____, J.
Bulla

TAO, J., dissenting:

I respectfully dissent. Convicted of murder with use of a deadly weapon, King alleges that counsel was constitutionally ineffective for failing to present the following supposedly mitigating evidence before the district court sentenced King:

[Expert witness] Dr. Martha Mahaffey "is expected to testify that had the [psychological] evaluation been presented, it would have shown a low risk to re-offend [and petitioner] was amenable to treatment and rehabilitation [O]ther mitigating psychological evidence such as the impact of Mr. King's ADHD, learning disabilities, drug abuse, and childhood would have been presented indicating the need for rehabilitation."

But King's petition is deeply flawed and falls far short of warranting an evidentiary hearing, much less any additional relief beyond that.

In the context of a post-conviction petition for writ of habeas corpus, King must allege, at a minimum, that counsel's performance was objectively deficient along with a reasonable probability that a different outcome would have resulted had counsel been effective. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). An evidentiary hearing is justified only where the petitioner has made factual allegations that, if true, would entitle him to the relief sought, which in this case is reversal of King's sentence. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

All of that means this: to warrant an evidentiary hearing, King must make allegations sufficient to mandate reversal of his sentence if the court believes those allegations to be more likely to be true than false (the

standard of proof being preponderance of the evidence). The evidentiary hearing then serves as the vehicle for determining whether those allegations are indeed true by subjecting them to the crucible of cross-examination and weighing their credibility against that of any competing evidence introduced by the State. However, if the allegations are insufficient to require relief even if accepted as true on their face, then no evidentiary hearing is necessary because there is no point in determining whether allegations that lead nowhere might be true or false. *See U.S. v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1977) (trial court did not err in refusing to hold evidentiary hearing when defendant failed to make "initial showing by affidavit or otherwise" of prima facie entitlement to relief, and motion "never seriously challenged by allegations or evidence" any of the underlying facts); *U.S. v. Smith*, 499 F.2d 251 (7th Cir. 1974) (no error when trial court concluded that defendant was not entitled to an evidentiary hearing because he failed to make the necessary "initial showing" that any facts were in dispute); *see generally, Nardone v. U.S.*, 308 U.S. 338, 341 (1939) ("the burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that [there is some factual question in dispute]. Once that is established . . . the trial judge must give opportunity [for a hearing]").

In this case, even if everything King alleges in his petition is accepted as true, he would not have shown any legal basis requiring his sentence to be overturned. An evidentiary hearing would thus be pointless and unnecessary.

King's allegation is not well articulated, so let's start by identifying what he's really saying in his petition. He alleges that the court should have learned about his difficult childhood, ADHD, drug addiction,

and learning disability before sentencing him. However, he does not allege that his counsel was deficient merely for failing to bring these things, in and of themselves, to the court's attention. Had he simply said that and stopped there, he might have had a better chance of obtaining relief or at least an evidentiary hearing (although he would have run into the stumbling block of why he himself failed to mention these things when given the chance to speak on his own behalf). But that is not what he alleges. He does not contend that those facts would have intrinsically added value to his sentencing just by themselves. Instead, he alleges that their potential value to his sentencing was that they rightfully should have been included within a "psychological evaluation" pointing to his "amenability" and "need" for "treatment and rehabilitation."

So, the deficiency that he cites is not merely a failure to present mitigating facts about his childhood, but rather a failure to include those facts in a psychological evaluation geared toward demonstrating that he is a good candidate for what he calls treatment and rehabilitation. But the problem here is that King apparently has still not had such a report prepared even now. Without the ability to review such a report, we have no way of knowing what the report supposedly would have said, other than the bland generalities that King was "amenable to treatment and rehabilitation." Without that knowledge, we cannot determine whether King's allegation is one that, "if true," would entitle him to have his sentence vacated. King has simply not given us enough to determine what "truth" he wanted the district court to know.


What King needed to do was present enough of the details of such a report to show that it would have made some difference and the district court might have imposed a different sentence had it had the report

in hand. But his petition stops well short, averring only that the report would have "indicat[ed] the need for rehabilitation," that he was "amenable to treatment and rehabilitation," and was a "low risk to re-offend." Nothing in the law requires district judges to impose a shorter sentence in a murder case just because a psychologist testifies that the defendant is "amenable to treatment." It's not even clear from King's petition what kind of "treatment" he refers to—he does not contend that there is some kind of medically recognized treatment for committing murder, so he must mean something else, like treatment for drug addiction, or perhaps ADHD. But when sentencing a defendant for committing murder, district courts have complete freedom to ignore a defendant's alleged amenability to treatment for conditions unrelated to the murder itself. Likewise, King claims that a psychologist would have classified him as a "low risk to reoffend"; but while this may have much legal significance in sentencing a sex offender (see, for example, NRS 176A.110), King was convicted of murder, not a sex crime. All King is really saying here is that a psychologist thinks he may be unlikely to commit another murder in the future; but that hardly means the district court would have imposed a shorter sentence for the murder King already committed if only the court had heard the psychologist say that.

Indeed, taken literally, King's central allegation—that a psychological evaluation would have proven that he is in need of "rehabilitation"—actually supports the need for punishment, "rehabilitation" being a primary purpose for incarcerating murderers in the penal system. As the district court correctly observed, King's argument is typical of the kind of evidence more appropriately presented in a capital case to stave off the death sentence in favor of incarceration through the promise of eventual "rehabilitation." But this is not a capital case, and

King's argument does not logically support his conclusion that the law entitled him to a shorter term of imprisonment than he received. A "need for rehabilitation" argues in favor of some kind of imprisonment, but says nothing about how long or short it must be or why the district court likely would have done anything other than it did.

King's petition is insufficient, or perhaps stated more accurately, incomplete. Even if everything he says is taken to be absolutely true—that counsel should have ordered up a psychological evaluation identifying his suitability for rehabilitation—what he alleges is not enough to grant him the relief he seeks. I would therefore affirm the district courts denial of his petition without requiring a pointless evidentiary hearing designed to assess the truth of allegations that lead nowhere even if proven entirely true.


_____, J.
Tao

cc: Hon. David A. Hardy, District Judge
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: April 9, 2019

Supreme Court Clerk, State of Nevada

By


Deputy

Code: 2075
VICTORIA T. OLDENBURG
OLDENBURG LAW OFFICE
P.O. Box 17422
Reno, Nevada 89511
Telephone: (775) 971-4245

Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

D'VAUGHN KEITHAN KING.

Petitioner,

Case No.: CR12-1160

vs.

Dept. No.: 7

STATE OF NEVADA,

Respondent.

_____/

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STIPULATION TO
CONTINUE EVIDENTIARY HEARING ON PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)

COMES NOW, Petitioner D'Vaughn Keithan King, by and through his attorney, Victoria T. Oldenburg, and, pursuant to this Court's order, submits this Memorandum of Points and Authorities, and Declaration of Victoria T. Oldenburg, in support of the Stipulation to Continue Evidentiary Hearing on Petition for Writ of Habeas Corpus (Post Conviction) filed with the Court on December 16, 2019, and submitted to the Court for decision on December 18, 2019.

DATED THIS 20th day of December, 2019.

/s/ Victoria T. Oldenburg
Victoria T. Oldenburg
Nevada Bar No. 4770

MEMORANDUM OF POINTS AND AUTHORITIES

On November 22, 2017, the Honorable David A. Hardy entered an *Order Dismissing Petition for Writ of Habeas Corpus (Post-Conviction)* ("Order"). Petitioner timely appealed the Order to the Nevada Supreme Court in Supreme Court Case No. 74703. The case was transferred to the Court of Appeals of the State of Nevada which issued an *Order of Reversal and Remand* on March 14, 2019. The Court of Appeals found the district court erred by not holding an evidentiary hearing on Petitioner's claim that trial counsel was ineffective for failing to present expert psychological testimony in mitigation at sentencing. Specifically, in his Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) submitted on Petitioner's behalf by post-conviction counsel Troy Jordan, Esq., Petitioner argued that expert witness Dr. Martha Mahaffey was expected to testify that had the psychological evaluation been presented, it would have shown a low risk to re-offend, and that Petitioner was amenable to treatment and rehabilitation. *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* at 5:8-10. Petitioner further alleged that "other mitigating psychological evidence such as the impact of Mr. King's ADHD, learning disabilities, drug abuse, and childhood would have been presented indicating the need for rehabilitation." *Id.* at 5:10-12.

Subsequent to the Court of Appeals reversal and remand, on March 26, 2019 this Court scheduled an evidentiary hearing to be held on September 4, 2019. On May 14, 2019, post-conviction counsel Troy Jordan, Esq., was permitted to withdraw from this case due to his obtaining employment with the Nevada Department of Rehabilitation and Training. On June 7, 2019 counsel herein was appointed in place of Mr. Jordan. On July 9, 2019, Counsel herein and Chief Appellate Deputy Jennifer P. Noble, Esq., stipulated to a continuance of the hearing so that counsel herein could have time to obtain former counsel's files and get up to speed on the case. Exhibit 1, paragraph 2, *Declaration of Victoria T. Oldenburg*. The Court granted the stipulation and the evidentiary hearing was reset to January 16, 2020.

Thereafter, Counsel herein was able to obtain some of the files of former counsel. Exhibit 1, paragraph 3. However, counsel herein is missing the closing memo and the file of post-conviction counsel Troy Jordan, Esq. *Id.* Mr. Jordan has informed counsel herein he

believes he provided his file to the former Court Appointed Administrator. However the file was not contained in the files provided to counsel herein. *Id.* Upon reviewing the files, approximately 6 banker's boxes, counsel discovered there were no documents in the record relating to a psychological evaluation. *Id.* Specifically, there were no school records, medical records, or assessments or evaluations performed by Dr. Mahaffey or any other psychologist Exhibit 1, paragraph 3.

Counsel herein had relied on the representations of former post-conviction counsel Mr. Jordan, as set forth in the pleadings, that Dr. Mahaffey had performed an evaluation and thus was prepared to testify at the evidentiary hearing originally scheduled for September 4, 2019. Exhibit 1, paragraph 4. Counsel herein was eventually able to make contact with Dr. Mahaffey and learned she had not met with the Petitioner and was unfamiliar with his case. It was further discovered that the conditions of ADHD, learning disabilities, drug abuse, and childhood circumstances alleged in the Supplemental Petition were based upon a self-report by the Petitioner to Troy Jordan. *Id.* Therefore, counsel herein had to initiate an investigation of the self-reported conditions which were to be presented in mitigation through the testimony of Dr. Mahaffey or another expert witness. *Id.*

Counsel herein recently obtained an estimate of fees and costs (from two (2) different psychologists) associated with travelling to Indian Springs to meet with the Petitioner to perform various tests and interviews, preparing a report, and testifying at trial. Exhibit 1, paragraph 5. Neither psychologists' schedules permit performing an assessment until early next year. *Id.*

Based upon the need for additional investigation into Petitioner's life and characteristics, which counsel herein did not anticipate required investigation until recently, and the present unavailability of an expert witness that can travel to Indian Springs, Nevada, assess and evaluate Petitioner, and prepare a report prior to January 16, 2020, counsel herein asked Ms. Jennifer Noble, Esq., Chief Appellate Deputy, if she would be willing to stipulate to a continuance of the evidentiary hearing. Exhibit 1, paragraph 6. Ms. Noble agreed and the parties' stipulation was filed with the Court on December 16, 2019 and submitted to the Court for decision on December 18, 2019. Counsel herein is not aware of any harm which would be caused to either Petitioner or

the State if the evidentiary hearing is continued in order to adequately present expert testimony to the Court as ordered by the Court of Appeals. Exhibit 1, paragraph 7.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned affirms that this Memorandum of Points and Authorities in support of Stipulation for Continuance of Evidentiary Hearing on Petition for Writ of Habeas Corpus (Post-Conviction), including Exhibit 1, does not contain the social security number of any person.

DATED this 20th day of December, 2019.

/s/ Victoria T. Oldenburg
Victoria T. Oldenburg
Nevada Bar No. 4770
OLDENBURG LAW OFFICE
P.O. Box 17422
Reno, Nevada 89511
Telephone: (775) 971-4245

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Victoria T. Oldenburg, hereby declare and state as follows:

I am over the age of eighteen years, a member of Oldenburg Law Office in the County of Washoe, State of Nevada, and I am not a party to this action.

On the 20th day of December, 2019, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Jennifer P. Noble, Chief Appellate Deputy
Washoe County District Attorney's Office
P.O. Box 11130
Reno, NV 89520

/s/ Victoria T. Oldenburg
Victoria T. Oldenburg

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Description</u>	<u>Pages</u>
1	Declaration of Victoria T. Oldenburg	2
2	Proposed Order Granting Motion	1

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE JEROME POLAHA, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CR12-1160
)	
14 DVAUGHN KEITHAN KING,)	Department 7
)	
15 Defendant.)	
_____)	

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 HEARING

20 November 21, 2022

21 1:30 p.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: JENNIFER NOBLE, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 VICTORIA OLDENBURG, ESQ.
9 Attorney at Law
10 Reno, Nevada
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 RENO, NEVADA, November 21, 2022, 1:30 p.m.

2
3 --oOo--

4 THE COURT: Good afternoon. Would you state your
5 appearances, please.

6 MS. NOBLE: Good afternoon, your Honor. Jennifer
7 Noble from the Washoe County District Attorney's Office.

8 MS. OLDENBURG: Good afternoon, your Honor. Vicki
9 Oldenburg on behalf of Mr. King.

10 THE COURT: All right. Mr. King.

11 THE DEFENDANT: Right.

12 THE COURT: Okay. Counsel, give me an idea of
13 what we're doing this afternoon. Are we just talking about
14 the psychological report?

15 MS. OLDENBURG: Your Honor, before I get to that,
16 I was just informed by Mr. King that he's filed a bar
17 complaint against me and a civil suit. So I'm not sure it's
18 appropriate for me to go forward today.

19 THE COURT: Well, there's caselaw that I recall
20 reading that being sued and a complaint filed against you
21 doesn't necessarily eliminate you, but --

22 MS. OLDENBURG: I think the basis for it is
23 that -- a little bit of background, if you don't mind, your
24 Honor.

1 THE DEFENDANT: Can I talk without the District
2 Attorney? Is that possible?

3 MS. OLDENBURG: So, your Honor, just to give you a
4 little bit of background if you don't mind?

5 THE COURT: I read the file.

6 MS. OLDENBURG: So what happened in this case was
7 Mr. King was formally represented on a habeas petition by
8 Troy Jordan. Troy Jordan had alleged that Dr. Mahaffey would
9 provide an evaluation that would state that Mr. King had a
10 low risk to reoffend.

11 Mr. Jordan withdrew from the case, went to work
12 for the State. I was appointed, went through all the
13 documents and learned that and talked to Dr. Mahaffey and
14 learned that she never -- didn't know anything about the
15 case, had never met with Mr. King and of course had done no
16 evaluation.

17 So Mr. King's expectations are a little different
18 based upon what our risk assessment has concluded and I think
19 those are the grounds for. I was not able to get a second
20 evaluation for him, because he wasn't happy with this one.
21 And so those are the grounds, I believe, that he is -- am I
22 correct?

23 THE DEFENDANT: No, that's not entirely.

24 MS. OLDENBURG: Oh.

1 MS. NOBLE: Your Honor, if I may be heard?
2 Jennifer Noble on behalf of the State. So this case, as the
3 Court can tell by the case number has been languishing in the
4 post conviction arena for quite some time. Initially, what
5 occurred is that Mr. Jordan filed a petition alleging various
6 ineffective assistance of counsel and other claims against
7 Mr. Ohlson who is present in court today and the Nevada
8 Supreme Court -- I'm sorry -- the Nevada Court of Appeals
9 after Judge Hardy found that it was appropriate to grant the
10 State's motion to dismiss, the Nevada Court of Appeals
11 disagreed in part and so we have a limited remand here today.

12 What the Court of Appeals disagreed with was
13 specifically the representation in the previous post
14 conviction counsel's pleadings indicating that Dr. Mahaffey
15 would opine that the defendant or the petitioner now was a
16 low risk to reoffend. We know now that never occurred.

17 So Ms. Oldenburg has been faced with a difficult
18 situation in which an expert whose opinion was purportedly
19 the basis of the remand is not willing to testify to what was
20 represented previously, but we have a remand.

21 I know from our discussions, Ms. Oldenburg has
22 been working very hard to obtain an evaluation for the
23 defendant in this case, for the petitioner, and has been very
24 professional throughout in terms of her diligence in getting

1 the same.

2 The mere fact, and maybe there's another fact, but
3 the mere fact that the petitioner is dissatisfied with the
4 conclusions of that evaluation I don't believe are grounds
5 for any kind of bar complaint against Ms. Oldenburg and I
6 would ask that we go forward today.

7 Mr. Ohlson has been subpoenaed several times. We
8 have the expert here. And I think is under the caselaw,
9 there's not necessarily entitlement to effective assistance
10 of post conviction counsel, arguably. So even if there were
11 a purported conflict here, I think we can go forward today.

12 THE COURT: Now, I looked for Mahaffy's report and
13 I didn't see it in the file. Evidently, there was not one.
14 Is that a matter of record or everybody stipulates that never
15 happened.

16 MS. OLDENBURG: It is in one of the stipulations
17 that I sought for the continuance when I discovered that it
18 did never happen. I've spoken with Dr. Mahaffey and she had
19 no idea who Mr. King was.

20 THE COURT: All right.

21 MS. OLDENBURG: I'm not sure why Mr. Jordan
22 alleged that. Maybe he was confused with another case. I
23 don't know.

24 THE DEFENDANT: May I speak?

1 THE COURT: Yeah. Go ahead.

2 THE DEFENDANT: I'm not sure --

3 THE COURT: You want to stand up.

4 THE DEFENDANT: Can I get one of these off?

5 THE COURT: What for?

6 THE DEFENDANT: Just to navigate my paperwork.

7 THE COURT: No. That's okay. Just do what you're
8 doing here.

9 THE DEFENDANT: Basically, multiple things going
10 on with this case. Yes, due to the fact as far as like the
11 time frame and all that, it wasn't due to me postponing the
12 case. You had Troy Jordan you had representing me and then
13 whatever he -- went somewhere else.

14 THE COURT: What I'm interested in is what we're
15 talking about as far as this particular hearing.

16 THE DEFENDANT: To update you, I sent you the
17 motions as far as trying to relieve her as my counsel.

18 THE COURT: You went to the Supreme Court and
19 they --

20 THE DEFENDANT: You struck them from the record
21 and said I don't have any bearing to talk to you because in
22 pro se I'm represented by her, correct? Or do you --

23 THE COURT: I didn't do any orders in this case.

24 THE DEFENDANT: You're Judge Walker, correct?

1 THE COURT: No. Polaha.

2 THE DEFENDANT: Well, Judge Walker, I was
3 wondering if I'm -- she, the District Attorney put a, what is
4 that, an opposition to my motions in regards to my counsel
5 and in regards to what she's doing. I've never met this
6 woman before. Today is my first time seeing who the woman
7 is. That's no disrespect to you. But at the same time, she
8 has done nothing for the case.

9 She didn't write the motion -- I mean, excuse me,
10 she didn't write the petition. She didn't do a supplemental
11 petition. I was blind-sided. I guess I came out here to
12 meet her like over two years ago. I still haven't met her
13 until today.

14 So two years ago, I was blind-sided with Dr. Sheri
15 Hixon-Brenenstall, correct. And she did -- and so I didn't
16 know who this woman was either. So I tried to reach out to
17 my attorney and say, hey, is it okay to talk to this woman?
18 I'm apprehensive. I'm getting kind of nervous, because I
19 don't know, she's asking me questions.

20 So I'm quite sure she can attest to the fact that
21 I stopped the conversation to reach out to contact my current
22 attorney and she still to no avail wasn't able to talk to her
23 or say is it okay. They brought me back to the room to talk
24 to Sheri and the thing proceeded.

1 So I was blind-sided with that and just the no
2 contact. Then so the fact of the matter is, she presented a
3 report and I expressed to her, my current attorney, that it
4 was done under duress or however you would say.

5 Now, is there a possibility of going first, she
6 said, yes, we'll talk to Mahaffey. We'll talk to I think
7 it's John Paglini was the gentleman that she was supposed to
8 contact. She said she had the money or whatever the case may
9 be it was to the point where she drew a line in the sand and
10 said, you know what, I'm not doing it. If you don't like it,
11 get another attorney. So I petitioned the Court to say, hey,
12 this is what's going on, we haven't had a dialogue or
13 whatever the case may be.

14 Anything that I asked her to do, because I
15 personally asked that I have a program that was assisting me
16 on, you know, trying to better myself as far as where I was
17 located in Southern Desert or down south, whatever the case
18 may be, and I was working in the law library as well.

19 I asked her, I sent to her, I wrote the motion and
20 said to her, hey, I would like to do a video Zoom so I
21 wouldn't upset the program I'm about to graduate from college
22 and these different things that I felt it was in the benefit
23 of me personally and society as far as what I can present and
24 I guess that's another --

1 THE COURT: So what is your point here?

2 THE DEFENDANT: My point is I'm asking for either
3 for her to be removed off of my case and allow me to talk to
4 somebody different that has a -- that's receptive to the
5 things that I'm asking, because I am intimate with the case.
6 She knows it. I can't say what she knows or doesn't know,
7 but I know as far as the things I'm trying to share with her,
8 she's not compliant. And it's in the best interests, or I
9 could see if I'm blind-siding her with frivolous things to
10 do, I'm not.

11 And so either I'm just asking for her to be
12 removed from the case. And I'm not -- because she obviously
13 had an opposition that I'm picking and choosing. It's not
14 what I'm here to ask for. I'm asking that I'm not getting
15 cooperation from the person that has been presented to me.
16 Maybe it's over workload, things in her life, I'm not
17 possibly sure. All I know is I'm not getting any motion or
18 movement from my attorney.

19 Now, whoever you may give me, that's all I ask.
20 I'm not trying to pick and choose or whatever the case may
21 be.

22 MS. OLDENBURG: Your Honor, would you like me to
23 respond?

24 THE COURT: Yes. And it's my understanding that

1 the only issue that we're concerned with is whatever a
2 psychologist is going to say or a therapist that examined you
3 is going to say and see if that --

4 THE DEFENDANT: That is not entirely --

5 THE COURT: That's what the order says.

6 THE DEFENDANT: Yes, the order did say to have a
7 psychologist. And then there is a law that states that, hey,
8 your attorneys are supposed to assist you or at least make
9 you aware prior to having a psychological evaluation.

10 THE COURT: According to the psychologist's
11 report, evidently that meeting went very well. You were
12 friendly and all of that stuff.

13 THE DEFENDANT: I'm saying in regards to my
14 attorney letting me be aware that, hey, this is coming or,
15 hey, you have this going on. I mean, I'm not trying to sit
16 here and badger with the caselaw or what the case may be.
17 I'm just asking for an opportunity for a fair shot and I'm
18 not getting it.

19 THE COURT: You'll get a fair shot. All right.

20 MS. OLDENBURG: Thank you, your Honor. This case
21 does have a long history. The first stipulation for
22 extension after I was appointed was when I discovered Dr.
23 Mahaffey had not been involved in this case. So I sought an
24 expert and got to up-to-speed on the case.

1 Then Mr. King decided he wanted an in person
2 hearing. We're kind in the middle of COVID at that point in
3 time and there were no in person hearings. So we did another
4 stipulation to continue the matter until he could have an in
5 person hearing.

6 And then he decided he wanted a virtual hearing,
7 but we didn't need to move it, because the Court approved
8 that. And then the Court had a conflict and so it was moved
9 again and now we're here today.

10 I've spoken with -- there was no cause to go out
11 and personally meet with him in Las Vegas, because we've
12 spoke on the phone many times. I explained to him what I
13 discovered that Dr. Mahaffey did not give this, you know,
14 kind of an opinion that was alleged.

15 We talked a lot about that I had retained another
16 expert, that she was going to go out and visit with him. He
17 was very well aware of that. He was not happy with the
18 results. So we talked about whether I could get a second
19 evaluation, not -- would not have been my recommendation, but
20 I did make attempts.

21 Talked again to Dr. Mahaffey. She said she was
22 not interested or available. I did talk to Dr. Paglini, I
23 think, in Las Vegas. He would not do a second evaluation
24 given that the first one hadn't been done and he understood

1 what the results were, so he was not interested. And so I
2 just recommended that we move forward on this one.

3 So, you know, I'm sorry that he doesn't feel I
4 spent enough time to with him, but this is a very limited
5 issue. I wasn't even going to call him to testify because
6 this is really based on the psychological evaluation for
7 risk.

8 THE COURT: Let me ask you this, whenever a judge
9 is challenged for a recusal, there's a subjective response
10 from the judge that they can or cannot be fair in proceeding
11 with the hearing. Do you have any problem, aside from the
12 fact that you're being sued and complained to the bar, about
13 your handling of this case.

14 MS. OLDENBURG: No, I have no problem.

15 THE DEFENDANT: Excuse me, your Honor.

16 THE COURT: No. That's okay.

17 THE DEFENDANT: Well, if you're leaning towards --

18 THE COURT: That's enough.

19 THE DEFENDANT: Okay. Okay. I didn't hear you.

20 THE COURT: Ms. Noble, do you have anything
21 further to add.

22 MS. NOBLE: Only that it appears there might be a
23 disconnect to some degree with Mr. King not understanding the
24 extremely limited scope of this hearing. Ms. Oldenburg has

1 gone above and beyond, because, frankly, I think she could
2 have just stopped at finding that Dr. Mahaffey indeed made no
3 such evaluation and submitted that information to the Court,
4 because that was the crux of the reversal and remand on this
5 limited issue. We're ready to go today and I think we can
6 get the proceedings under way if the Court is willing to do
7 so.

8 THE COURT: And the Court is willing, so --

9 THE DEFENDANT: Excuse me, your Honor.

10 THE COURT: No.

11 THE DEFENDANT: I would like to request a Ferrata
12 hearing.

13 THE COURT: Beg your pardon?

14 THE DEFENDANT: I would like to request a Ferrata
15 hearing. I would like to ask her not to be part of my case
16 if she's going to crash and burn me. Evidently, she thinks
17 I'm not intelligent enough to know that this is what's going
18 on. If that's the case, I would request to represent myself.

19 THE COURT: Let me ask you this, and this could be
20 a prelude to the Ferrata hearing, why do you think you're
21 here today?

22 THE DEFENDANT: You say why do I think I'm here?

23 THE COURT: Yeah, why do you think you're here?

24 THE DEFENDANT: It's supposed to be for an

1 evidentiary hearing.

2 THE COURT: An evidentiary hearing on what?

3 THE DEFENDANT: On the -- basically, the remand
4 from the Supreme Court to say, hey, why wasn't this done?
5 Why wasn't the psychology report or background and all the
6 things that would give you a downward departure on your
7 sentence when I was sentenced in 2014.

8 THE COURT: And all the things done are what in
9 your mind?

10 THE DEFENDANT: And all the things done? Excuse
11 me?

12 THE COURT: You said that.

13 THE DEFENDANT: No. What part of that are you
14 referring to?

15 THE COURT: You mentioned the psychological
16 evaluation report and then you added and all the things.

17 THE DEFENDANT: Dealing with background issues to
18 be specific, like background history, what has he done from
19 the point of this, because I mean at the end of the day, if
20 you're saying that the psychologist can only review like ten
21 years prior, which I believe is inaccurate, you know, to say
22 that the psychologist shouldn't take into account things that
23 have happened since then.

24 But if that's what she's saying, that is wrong. I

1 mean, I've read other caselaw that contradicts that and I
2 tried to share like some of these things with my attorney
3 and, you know, I'm unable to get in contact with her. So I
4 write letters, they're not answered.

5 So I just -- at this point, if she took the stance
6 of saying, hey, find another attorney and she has received
7 that I filed three separate motions to relieve, remove,
8 replace counsel, they're stricken from the record due to --
9 I'm not sure what the District Attorney's name is.

10 THE COURT: Ms. Noble.

11 THE DEFENDANT: Due to her opposition to it, to
12 say she shouldn't even talk to the Court based on the fact he
13 as is a pro se and as a pro se, proper person motion in
14 there, the word was -- I'm not sure of the word. It's
15 equivalent to like straggler. I'm not sure the word they use
16 for the actual motion. They said it's a -- does anybody know
17 what the word is?

18 MS. OLDENBURG: Stricken.

19 THE DEFENDANT: No, not stricken, when he referred
20 to the motion that's being fugitive.

21 THE COURT: Yes, fugitive motion.

22 THE DEFENDANT: Yes, so they referred to as being
23 fugitive and stricken from the record. I believe at that
24 point, she should initiate, say, you know, I'm going to

1 recuse myself or remove myself from the case.

2 THE COURT: Well, let me ask you this, who writes
3 your briefs? Do you write your briefs?

4 THE DEFENDANT: Yes.

5 THE COURT: So all that legal research you have
6 done?

7 THE DEFENDANT: Yes.

8 THE COURT: And you read the psychology report,
9 right?

10 THE DEFENDANT: Correct.

11 THE COURT: In which she found that you were
12 limited in your ability to --

13 THE DEFENDANT: She said I was remedial.

14 THE COURT: I couldn't hear you.

15 THE DEFENDANT: To a degree remedial, limited in
16 education.

17 THE COURT: Right.

18 THE DEFENDANT: She also said I was a high risk to
19 reoffend.

20 THE COURT: She said you were a moderate to
21 moderately high risk to reoffend.

22 THE DEFENDANT: Moderate to moderately high risk
23 to reoffend.

24 THE COURT: Right.

1 THE DEFENDANT: And I disagree with both of them.

2 THE COURT: I understand you disagree. I'm trying
3 to find out how you presented yourself to her and how you're
4 presenting yourself to the Court and how you present yourself
5 to the various attorneys that represented you.

6 THE DEFENDANT: Like this. I'm not saying that
7 I'm just a higher learning individual, but I try. I'm saying
8 that this situation happened over a decade ago and there has
9 been growth and that's all I'm just trying to reflect that to
10 the Court.

11 THE COURT: There has been growth?

12 THE DEFENDANT: Correct.

13 THE COURT: That's for the pardons board, isn't
14 it?

15 THE DEFENDANT: No.

16 THE COURT: No.

17 THE DEFENDANT: As far as like personal
18 development, as far as background history and who you are, I
19 think it's for the Court to see like, hey, this is who is in
20 front of me.

21 THE COURT: We're going back 10, 12 years ago.

22 THE DEFENDANT: We're going back 10 or 12 years,
23 but it doesn't limit you to say that, hey, this is who is in
24 front of you 10 or 12 years later.

1 THE COURT: In a way it does, because you're
2 arguing that at the time you were sentenced certain things
3 should have happened. Now, you had evidently according to
4 you subsequent growth and personal development in those last
5 12 years and you're saying they should now be taken into
6 account.

7 THE DEFENDANT: I believe everything should
8 globally be taken into account.

9 THE COURT: That's what you believe. I understand
10 that. Here's my opinion, my opinion is you enjoy doing this.

11 THE DEFENDANT: No, I don't. I'm sitting here
12 representing and fighting for my life, sir.

13 THE COURT: Anyway, like I said, that was my
14 opinion in reading all of this stuff and listening to you.
15 You want to represent yourself?

16 THE DEFENDANT: If you are not willing to relieve
17 her of the chair, yes.

18 THE COURT: I have to relieve her if I'm going to
19 appoint --

20 THE DEFENDANT: I mean, I don't want to be a fool
21 as a client and represent myself, but if I'm under this
22 situation where she refuses to remove herself and you refuse
23 to remove her from my case, yes, I'm left with no other
24 option.

1 THE COURT: Ms. Noble.

2 MS. NOBLE: Sorry, your Honor. Excuse me. If I
3 may be heard or I don't want to interrupt the Court's
4 thought.

5 THE COURT: No, go ahead.

6 MS. NOBLE: So under NRS Chapter 34.810, Mr. King
7 is not entitled to any counsel at all in these noncapital
8 habeas proceedings. I haven't heard anything from him that
9 would indicate that Ms. Oldenburg conducted any kind of
10 ethical breach or anything else that would justify removing
11 her from the case.

12 However, if he wants to proceed today in proper
13 person, I have no objection to that. I don't think it's a
14 good idea, but it's his choice.

15 However, I would reflect that the Court not
16 appoint him subsequent counsel. That would be his third post
17 conviction counsel. This case has been languishing for a
18 variety of different reasons, none of them having to do with
19 Ms. Oldenburg, but rather COVID and the remand. And at some
20 point criminal cases need to come to an end and this one is
21 at that juncture.

22 So whether it's that this Court finds that
23 Mr. King is entitled to a new sentencing hearing, which is
24 still up for debate, we have to hear from the witnesses, or

1 whether or not this Court finds that there was indeed no
2 ineffective assistance of counsel, the time to proceed is
3 now. It's either with an attorney, Ms. Oldenburg, or in
4 proper person. That would be what the State would ask this
5 Court to do.

6 Going through to the third subsequent post
7 conviction attorney because Mr. King has a limited
8 understanding about the scope of what she can argue about
9 with respect to what would have changed things at the
10 sentencing hearing, that's not a basis to remove her or to
11 move this hearing.

12 THE COURT: Okay. Then that takes me back to my
13 initial question, what are we doing here?

14 THE DEFENDANT: Excuse me.

15 THE COURT: No, I won't excuse you. If I find I
16 guess that the report comes in and it makes a difference,
17 does this turn into a sentencing hearing or do we schedule a
18 sentencing hearing?

19 MS. NOBLE: Your Honor, if the Court found that
20 prejudice within the meaning of Strickland was demonstrated
21 by the testimony of Mr. Ohlson and petitioner's expert, then
22 we would set a date, perhaps, for a sentencing hearing in
23 which case the Public Defender's Office or someone else could
24 be appointed to represent him at that critical stage in the

1 proceedings.

2 But you wouldn't have to do a resentencing here
3 today, certainly. And depending on the basis of the Court's
4 findings, there's always the chance that the State may appeal
5 those findings as well. So no sentencing would need to occur
6 today.

7 THE COURT: Okay. Mr. King, stand up. Okay. You
8 want to represent yourself in this hearing?

9 THE DEFENDANT: Yes. I would like to point out
10 the fact that she's representing that I'm on my third
11 attorney and it's not due to Victoria Oldenburg, but it's not
12 due to me either that I'm on my third attorney. I was
13 perfectly fine with Marylou Wilson. I was perfectly fine
14 with Troy Jordan.

15 THE COURT: That doesn't bother me.

16 THE DEFENDANT: That's what I was pointing out the
17 fact that I'm asking --

18 THE COURT: Do you want to represent yourself?

19 THE DEFENDANT: Do I want to represent myself? I
20 do not want or have the desire to represent myself, but --

21 THE COURT: Then I'm not going to let you
22 represent yourself if you don't want to do it. If you're
23 saying you're forced to do it, I'm not going to do that.

24 THE DEFENDANT: I'm asking the Court to be willing

1 to appoint me another counsel. That's what I'm asking.

2 THE COURT: No. I'm not prepared at this time to
3 do that.

4 THE DEFENDANT: Since you ruled on that, yes, I
5 would like to represent myself.

6 THE COURT: No. And based on the answer that I
7 got from Ms. Noble that this will not turn into a sentencing
8 hearing in the event you prevail today, then we're here for a
9 limited purpose and the limited purpose is basically putting
10 on the expert, talking to Mr. Ohlson and having his
11 testimony.

12 THE DEFENDANT: It's an absolute conflict for
13 someone I have filed two separate state board complaints
14 against.

15 THE COURT: Those are allegations and you're
16 familiar with allegations.

17 THE DEFENDANT: Correct. And they have a hearing
18 on -- an investigation as well, as well as a lawsuit pending.
19 So she's a defendant in the lawsuit and representing me in a
20 whole other case. That is a conflict.

21 MS. OLDENBURG: Your Honor, for the record, I have
22 not been served with anything. The State Bar hasn't reached
23 out. I'm not sure if they opened a file.

24 THE COURT: Were you served with a complaint?

1 MS. OLDENBURG: I heard about that this morning.

2 THE DEFENDANT: I have copies of them right here.

3 THE COURT: She wasn't served, so as far as the
4 law is concerned, there's no pending action against her. I'm
5 going to go ahead, you'll have your chance to appeal it as --

6 THE DEFENDANT: I don't want to go with an
7 evidentiary hearing with her representing me, your Honor, and
8 I'm asking you, you know, I'm asking the judge to at least
9 consider or at least read my allegations, as you say.

10 THE COURT: What allegations?

11 THE DEFENDANT: They're right in front of me, my
12 attorney that you have representing me in the evidentiary
13 hearing today. I didn't know what today was. I didn't know
14 if it was the Ferrata hearing. I didn't know if it was an
15 update of what's going on with the circumstances or an
16 evidentiary hearing. I'm totally in the blind.

17 She never told me, hey, you got a court date. So
18 I was transferred from High Desert State Prison Thursday and
19 still didn't know and they just came to my door like, hey,
20 you have a court date. I mean, I could have -- I'm not a
21 fool, so I kind of assumed that's what I was here for.

22 THE COURT: You may be seated.

23 THE DEFENDANT: Thank you.

24

1 THE COURT: Ms. Oldenburg, you're prepared to
2 handle this inquiry today?

3 MS. OLDENBURG: I am prepared, your Honor. So if
4 your Honor would like to go forward.

5 THE COURT: Yeah. We'll go forward.

6 MS. OLDENBURG: Your Honor, I'd like to invoke the
7 rule of exclusion.

8 THE COURT: Are there any witnesses aside from
9 Mr. Ohlson? Mr. Ohlson, you're familiar with the rule of
10 exclusion.

11 MS. OLDENBURG: Your Honor, if I may, I have a
12 very brief opening. A lot will be left out since we already
13 hashed out the petition. In 2014, Mr. King pled guilty to
14 second degree murder with the use of a deadly weapon. Mr.
15 King shot and killed the victim during an apparent dispute
16 over a drug deal.

17 Despite reports of a traumatic childhood and a
18 significant substance abuse history and the fact that
19 Mr. King faced life in prison, trial counsel did not present
20 any mitigating evidence to the sentencing judge to indicate
21 Mr. King's risk to reoffend and that Mr. King needed and
22 would benefit from rehabilitative treatment after serving his
23 sentence.

24 Mr. King was sentenced to ten years to life with a

1 consecutive term of 53 to 20 years on the deadly weapons
2 enhancement despite the State's recommendation that Mr. King
3 receive 2 to 6 years on the enhancement.

4 Mr. King's conviction was affirmed on direct
5 appeal, and, thereafter, Mr. King filed a petition for writ
6 for habeas corpus and was appointed Mr. Jordan. And I won't
7 go through that whole -- the supplemental petition. We
8 already talked about what Mr. Jordan had alleged.

9 Judge Hardy dismissed the petition and
10 supplemental petition. He found that ground one, which is
11 all we're dealing with here today, was belied by the record,
12 because Mr. King's wife testified that Mr. King found a
13 purpose in life and wanted to help prevent people from making
14 the same horrible decisions he had made and because his
15 mother, father and brother traveled from Mississippi and
16 California to attend the sentencing hearing.

17 On appeal, the Court of Appeals reversed and
18 remanded ground one for an evidentiary hearing finding that
19 Mr. King's claims were not belied by the record. The
20 appellate court stated that the District Court had a range of
21 sentencing options available to it and it could not be said
22 that there was not a reasonable probability of a lesser
23 sentence had the mitigating evidence been presented.

24 Dr. Hixon-Brenenstall who was retained as the

1 expert in this matter will testify that Mr. King presented
2 with a moderate to moderately high risk to reoffend, but if
3 Mr. King were able to remain sobriety and separate from a
4 drug oriented lifestyle it is possible his risk for
5 reoffending might decrease.

6 Dr. Hixon-Brenenstall also testified that the
7 medical conditions Mr. King presented with, including
8 substance abuse, PTSD, depression and anxiety and learning
9 disabilities, are treatable conditions and that Mr. King's
10 presentation to her supports that he has the capacity to
11 benefit from rehabilitative treatment for those issues and
12 could benefit from other interventions.

13 As the late Judge Flanagan stated at sentencing,
14 in determining the length of Mr. King's sentence he had to
15 take into account many things, including mitigating factors.
16 Judge Flanagan did not have the mitigating factors which Dr.
17 Hixon-Brenenstall will present.

18 It is Mr. King's contention that trial counsel was
19 ineffective for failing to obtain and provide for the Court a
20 psychological risk assessment in mitigation. Had Judge
21 Flanagan been presented with a psychological risk assessment
22 of Mr. King, there's a reasonable probability that Judge
23 Flanagan would have imposed a lesser sentence of 10 to
24 25 years and would have concurred with the State's

1 recommendation of 2 to 6 years on the weapons enhancement.

2 Thank you.

3 THE COURT: All right. Then, counsel, the full
4 effect of that sentence was or the options that the judge had
5 were 10 to life or 10 to 25, correct?

6 MS. OLDENBURG: Yes.

7 THE COURT: And then 2 to 6 pursuant to the
8 stipulation and 1 to 20 based on the statute.

9 MS. OLDENBURG: Correct.

10 THE COURT: And then either concurrent or
11 consecutive to the possession with a weapon that he was
12 convicted of in Sacramento, is that correct?

13 MS. OLDENBURG: That is correct, yes.

14 THE COURT: Okay. You may call your first
15 witness.

16 MS. OLDENBURG: Thank you, your Honor. I'd like
17 to call Dr. Hixon-Brenenstall.

18 THE COURT: Ms. Noble, did I cut you off from an
19 opening?

20 MS. NOBLE: You did not, your Honor. I'm happy to
21 waive any opening unless the Court would like one.

22 (One witness sworn at this time.)

23 SHERI HIXON-BRENENSTALL

24 called as a witness and being duly sworn did testify as

1 follows:

2 DIRECT EXAMINATION

3 BY MS. OLDENBURG:

4 Q. Good afternoon, Dr. Hixon-Brenenstall.

5 A. Good afternoon.

6 Q. Would you please state your name for the record
7 and spell your last name?

8 A. Sheri Hixon-Brenenstall, H-i-x-o-n, hyphen,
9 B-r-e-n-e-n-s-t-a-l-l.

10 Q. Thank you. And you have a doctorate in
11 psychology, correct?

12 A. Yes.

13 Q. In what discipline?

14 A. With clinical emphasize, it's a Ph.D.

15 Q. And what are your credentials in the area of
16 forensic psychology as it relates to psychological problems
17 associated with criminal behavior?

18 A. I'm a clinically certified forensic counselor for
19 both sexual, as well as nonsexual, you know, related issues.
20 And my certification is managed through the National
21 Association of Forensic Counselors.

22 Q. Okay. And what is your experience as it relates
23 to psychological evaluations including risk assessments?

24 A. I conduct risk assessments, psychosexual risk

1 assessments, general risk assessments, risk assessments for
2 violence, competency, both adults and juvenile. Sometimes
3 I'm asked to conduct a general psychological evaluation just
4 to inform a person's functioning to the courts.

5 Q. All right. Thank you. How long have you been a
6 licensed psychologist?

7 MS. NOBLE: I'm sorry, Ms. Oldenburg. Your Honor,
8 if it pleases the Court, Ms. Oldenburg, the State is happy to
9 stipulate to the qualifications of this expert in this area.

10 THE COURT: All right. But I want it on the
11 record. So go ahead.

12 BY MS. OLDENBURG:

13 Q. Just the last question, how long have you been a
14 licensed psychologist?

15 A. 2012.

16 MS. OLDENBURG: Your Honor, I would like to
17 designate Dr. Hixon-Brenenstall as an expert witness in the
18 area of forensic psychology.

19 THE COURT: We've already heard the stipulation.

20 MS. NOBLE: Thank you, your Honor.

21 BY MS. OLDENBURG:

22 Q. Dr. Hixon-Brenenstall, were you asked to complete
23 a psychological risk assessment for purposes of determining
24 whether Mr. King did or did not present a high risk to

1 reoffend?

2 A. Yes.

3 Q. Were you able to meet with Mr. King in person?

4 A. Yes.

5 Q. And do you recall approximately when you met?

6 A. It was February -- it was in 2020, February 11th,
7 2020.

8 Q. And where did your interview take place?

9 A. Carson City, the Northern Nevada Correctional
10 Facility.

11 Q. And do you recall how long the interview took?

12 A. About two and a half hours.

13 Q. And did you review any documents as part of your
14 assessment?

15 A. Yes. I always provide a list of the collateral
16 information as listed on page four.

17 Q. All right. Thank you. I'll refer to the report
18 on page four, Washoe County judicial court recommendation and
19 order to authorize expert witness. Those three things are
20 what you reviewed on page four?

21 A. Correct.

22 THE COURT: You're only offering page four?

23 MS. OLDENBURG: No. I'm offering the whole
24 report. I'm sorry, your Honor. I'm offering the whole

1 report, it has been filed with the Court but into evidence as
2 well. I was just referring to the documents she reviewed.

3 BY MS. OLDENBURG:

4 Q. What measures did you take as part of your
5 clinical interview?

6 A. I provided a list on page three. There's the wide
7 range achievement test four, anxiety inventory, depression
8 inventory, post traumatic stress disorder checklist and
9 historic clinical risk management assessment for violence,
10 HCR 20.

11 Q. What were your behavioral observations of
12 Mr. King?

13 A. He was attentive, oriented, cooperative. He
14 presented with satisfactory, you know, executive functioning
15 in terms of, you know, linear processing, you know, goal
16 directed responses. Observed symptoms included anxiety and
17 depression, worry.

18 Q. Okay. Maybe you have answered a bit of this, but
19 how would you describe his overall mental health?

20 A. Well, again, his presentation, you know, his
21 executive functioning appeared to be intact. There was no
22 observed indication of poor reality testing, perceptual
23 distortions.

24 Q. Okay. Your report indicates you inquired as to

1 Mr. King's family and relationship history. What was
2 reported to you?

3 A. Mr. King provided to me some details of his
4 history. Those are detailed between pages 7 and 8. His
5 description was that of a rather unstable, you know,
6 childhood and adolescent history, which included, as he
7 recalled several incidents where -- I'm not certain precisely
8 how it's referred to in California, but their version of the
9 Division of Child and Family Services.

10 Q. As far as the CPS history or Child Protective
11 Services history, what was that is based on, his removals?

12 A. He reported that it was due to child abuse and
13 neglect situations. He later revealed that he had also
14 witnessed domestic violence as a child, but I don't know --
15 records from the California Department of Child Services were
16 not available. So in order to confirm any details associated
17 with that, that wasn't possible.

18 Q. Okay. And were there any reports of substance
19 abuse in the home when he was a child?

20 A. He reported so, yes.

21 Q. By whom?

22 A. By his parents.

23 Q. I understand your report is based on basically
24 self-reports since we didn't have medical records or the

1 like. But you inquired as to Mr. King's substance use
2 history. What was reported to you?

3 A. Mr. King had detailed that he started consuming in
4 adolescence between the ages of 13 and 15 alcohol, cannabis,
5 methamphetamine.

6 Q. Okay. And you also discuss his developmental
7 periods and the significance of those. What were your
8 findings in that regard?

9 A. Well, given that based on his self-report history,
10 which, you know, as you mentioned, he was the sole historian
11 for this report. Based on Mr. King's reported history, it
12 would appear that there was a pattern of being incarcerated
13 and separated from community systems since at least some time
14 within adolescence, approximately age 14, in terms of the
15 judicial system or the juvenile justice system.

16 But prior to that, going back to childhood when
17 CPS in California was involved, which also created some
18 disruption, he reported that part of the reason he was
19 removed and sent to another family member in Tennessee was
20 due to neglect from his parents and that he was not
21 consistently enrolled in school was part of the issue.

22 So based on his self-report, it appears that the
23 disruption, you know, does extend back into sometime in early
24 to mid childhood, perhaps. I can only speculate there.

1 Q. Did you make any observations on the effect of
2 that dysfunctional developmental period?

3 A. Humans, we don't develop in a vacuum, so, you
4 know, having these types of disruptions can have an impact in
5 terms of an individual's emotional, social growth, skill set
6 development, you know, as we go through those developmental
7 periods, yes.

8 Q. And I note that you performed a variety of tests
9 on Mr. King. I'd like you to discuss those and the results
10 that you found. The first would you be the WRAT test.

11 A. Well, based on his performance, the results
12 supported below average age and grade range for his reading
13 and comprehension, mathematics. His strength would be the
14 spelling, but at the same time, you know, mildly below age
15 and grade range at that time.

16 Q. The PTSD test, what were the results of that?

17 A. On the PCL, a score of 41 is consistent with a
18 moderate range of symptoms. The PCL is used frequently
19 within the Veterans' Administration, as well as for civilian
20 use, and is considered a reasonable instrument for inquiry
21 about the possibility of symptoms and then the severity for
22 both initial assessment as well as for ongoing monitoring for
23 treatment progress.

24 Q. And I understand we're looking at a snapshot in

1 time going back to the sentencing time period, but were your
2 observations on PTSD related to anything at the time of
3 sentencing or prior?

4 A. I'm sorry. Could you --

5 Q. Can you opine as to whether the PTSD that you
6 observed was based on childhood trauma or previous
7 experiences during the adolescent time or prior to the
8 instant shooting?

9 A. Yes. That would be a contributing factor, you
10 know, the childhood and adolescent as well as being exposed
11 at such a young age as he reported that he was certified as
12 an adult. And as an older adolescent age of approximately
13 15, I think, if I recall the age correctly, being certified
14 as an adult and being transferred to an adult prison can also
15 have a traumatic affect.

16 Q. Okay. Thank you. You also did the Beck
17 depression test. What were your observations and findings on
18 that?

19 A. Out of the items that he had endorsed, they were
20 equal to a score of 24, which is within the range of what we
21 would consider moderate depression symptoms.

22 Q. And, finally, the Beck anxiety test, what were
23 your observations and results?

24 A. Again, the items that he endorsed at that time

1 fell within the moderate range.

2 Q. Were you able to perform any other test on
3 Mr. King that you might normally perform?

4 A. The HCR 20 was completed.

5 Q. Okay. In your report you mentioned a learning
6 disability. Did that limit you from performing any tests on
7 Mr. King that you would normally perform on a risk
8 assessment?

9 A. Yes, I did note in here that I did not complete
10 other testing such as the Millon Clinical Multiaxial
11 Inventory or something like the Minnesota personality.
12 Basically, when a person's reading and comprehension or other
13 possible features are present, there are some tests that are
14 not necessarily suitable to administer, because they may not
15 be able to engage them at the level needed to potentially
16 obtain valid results.

17 Q. And what are those tests geared towards eliciting?

18 A. Clinical and personality factors, functional
19 factors.

20 Q. What were your conclusions based on the HCR 20
21 rating as to Mr. King's risk to reoffend?

22 A. Based on the information available at the time of
23 the report, the rating fell within, you know -- it is, you
24 know, within the moderate to moderately high range at that

1 time.

2 Q. Okay. What were some of the contributing factors
3 to your finding of moderate to moderately high?

4 A. There appears to be a pattern for Mr. King of
5 substance use, but also being connected in a very like drug
6 seeking and related behaviors lifestyle.

7 He reported that he had been involved in sales,
8 distribution, you know, so forth, which would indicate that
9 he spent a significant amount of time in that type of
10 behavioral pattern. According to the information available,
11 much of his criminal history was linked to those types of --
12 you know, that type of drug oriented lifestyle.

13 Q. All right. And are there any circumstances in
14 which the risk could be lessened?

15 A. It is my opinion given the significance of the
16 drug use, as well as the additional lifestyle behaviors
17 related to the drug use, it is possible that if he was able
18 to separate from the substance use, as well as the lifestyle
19 related to it, that his risk could decrease.

20 On the other hand, should that continue, the
21 pattern of behavior suggests that the risk could increase.

22 Q. And on substance use, your report indicates that
23 Mr. King presents with symptoms of PTSD with accompanying
24 depression, anxiety and learning disorder problems. Could

1 those have been a contributing factor to the substance use?

2 A. It's possible.

3 Q. Can you elaborate a little bit on that?

4 A. Well, the research supports that sometimes when
5 people do have struggles with PTSD, anxiety, depression, that
6 they may, you know, engage in substance use. It's possible.
7 I really couldn't say, because, you know, I did not meet with
8 Mr. King, you know, back then when that could have possibly
9 been a factor for him. But can I say the research supports
10 that can be an issue for people, absolutely.

11 Q. Okay. Thank you. In Mr. King's case, do you
12 believe that his substance abuse, PTSD, depression and
13 anxiety would be treatable conditions?

14 A. Yes.

15 Q. And based on your clinical observations, is it
16 your opinion or what is your opinion on whether Mr. King
17 would benefit from rehabilitative treatment or other
18 interventions when released?

19 A. The information available suggests that he, you
20 know, could be a reasonable, you know, case. You know,
21 according to the information, he reportedly has been
22 cooperative while in detention, he has reportedly been
23 receptive to some interventions and psycho educational
24 classes, which, you know, would indicate that, you know, he

1 could be receptive to additional treatment, rehabilitative
2 services.

3 Q. And those are set forth in your report, I believe,
4 on page six of your report as to what Mr. -- I know we're
5 looking at a snapshot, but talking about what he has done
6 since he's been incarcerated, does that demonstrate or
7 support your opinion that his conditions are treatable, could
8 be treatable when he's released?

9 A. Yes. These conditions are treatable. In terms of
10 his receptivity to that, his history indicates, you know,
11 it's possible that he could be receptive to that given that
12 he, you know, had mentioned here, yeah, completion of, you
13 know, several different substance abuse programs that were
14 available while in detention, as well as, you know,
15 completing anger management classes, parenting classes. That
16 suggests that he has the capacity to be receptive to
17 intervention.

18 MS. OLDENBURG: Your Honor, I have no further
19 questions.

20 THE COURT: All right.

21 CROSS EXAMINATION

22 BY MS. NOBLE:

23 Q. Good afternoon, doctor.

24 A. Good afternoon.

1 Q. What's your understanding of the facts, the
2 underlying facts that led to this conviction?

3 A. My understanding is limited in the records that I
4 have reviewed.

5 Q. So did you read the presentence investigation
6 report?

7 A. Yes, I have it, you know, sitting back over there.
8 If I recall correctly, it was dated back from 2013, correct?
9 Is that the one you're referring to?

10 Q. There's only one presentence investigation report.
11 If you reviewed it, that would be the right one. Doctor, do
12 you recall in this case Mr. King was convicted pursuant to an
13 interaction or a transaction wherein he shot and killed one
14 person in a drug collection situation that apparently went
15 wrong? Does that make sense to you?

16 A. Yes.

17 Q. That sounds familiar?

18 A. Uh-huh.

19 Q. And then another person was also shot but that
20 person lived. Do you recall that?

21 A. Yes.

22 Q. That at the time of the crime, he was affiliated
23 with the Crips. Do you recall that, doctor?

24 A. He had mentioned that he was affiliated in

1 adolescence, but that he discontinued his affiliation. So in
2 terms of the status, if I recall correctly in the presentence
3 investigation report, that there was no record of his
4 affiliation as far as Nevada was concerned, but, again, I did
5 not have any records from California, so --

6 Q. That's fine. And if you don't know the answer to
7 one of my questions, that's perfectly fine, too, doctor.

8 A. Okay.

9 Q. I have a couple of more for you. So you were
10 aware, then, in the offense synopsis and in the interview
11 portion of the PSI that Mr. King indicated he was using drugs
12 at the time of the murder?

13 A. Yes.

14 Q. Methamphetamine specifically?

15 A. He reported to me that he was intoxicated at the
16 time and that he was using methamphetamine, alcohol and
17 cannabis during that time period.

18 Q. Okay.

19 A. And stated he was intoxicated at the time of the
20 reported incident.

21 Q. And you opine in your opinion, doctor, that he is
22 vulnerable, I think it's page 13, he's vulnerable to a
23 substance abuse relapse, is that correct?

24 THE COURT: Where is that, counsel?

1 MS. NOBLE: It is on page 13 of
2 Dr. Hixon-Brenenstall's expert report and I will get you a
3 paragraph more specifically. I apologize.

4 THE WITNESS: Page 14, maybe?

5 MS. NOBLE: Maybe that's it. Maybe it's my
6 ability to count that is causing these problems. Yes, page
7 14. Thank you.

8 THE WITNESS: Are you referring to the last
9 paragraph?

10 BY MS. NOBLE:

11 Q. Actually, I want to go back, sorry, to page 13
12 under risk management items, item R5, stress.

13 A. Okay.

14 Q. It indicates Mr. King struggles with managing
15 stress in positive ways and may be vulnerable to behaving in
16 self-defeating ways, for example, substance abuse relapse?

17 A. Yes. For some people when under stress, you know,
18 facing adversity, disappointment, can sometimes lead to them
19 making poor decisions and returning to maladaptive coping
20 patterns.

21 Q. And one maladaptive coping pattern would be
22 substance abuse, use or abuse?

23 A. Especially given his history where he did reveal a
24 lengthy period of poly-substance abuse, which in addition to

1 the involvement in more of the drug oriented kind of
2 lifestyle.

3 Q. Thank you, doctor. And I just have one last
4 question for you. I just want to confirm that it is your
5 opinion that Mr. King presents a moderate to moderately high
6 risk to reoffend based on the assessments you conducted and
7 your interview with Mr. King?

8 A. Yes.

9 MS. NOBLE: Thank you, doctor. I have no further
10 questions.

11 THE COURT: Redirect.

12 MS. OLDENBURG: Just one question, your Honor.

13 REDIRECT EXAMINATION

14 BY MS. OLDENBURG:

15 Q. Dr. Hixon-Brenenstall, just referring back to the
16 R5 stress, you had recommended several types of treatment in
17 your report for the rehabilitative treatment for Mr. King
18 when he is released. What types of treatment, if any, would
19 lessen that vulnerability and to what extent?

20 A. In my opinion, prior -- I understand he is not
21 eligible for release at this point. That being said, because
22 it was requested that I inform that I offer the best I can at
23 this time, it would be important that if he was to be
24 released, these are the areas that I would hope would be

1 addressed to determine his treatment needs upon exiting.

2 Treatment tends to be very individualized and so I
3 last worked with Mr. King in February of 2020, I don't know
4 how things may have changed for him. Perhaps he's had some
5 opportunity for treatment since then and improved in some
6 way.

7 Should he be released, because I was tasked with
8 needing to respond to that possibility, I would want to speak
9 to that wide scope of support services. I don't know what,
10 you know, maybe one of these ideas in here that I've shared
11 could end up being irrelevant for him at the time of his
12 release and something else may rise in a more significant
13 need.

14 Mental health court has an entire process at the
15 same time if he's struggling. As I mentioned here, it could
16 end up being a reasonable option to provide that additional
17 layer of monitoring as he transitions back into the community
18 if that were to be an option, just for example.

19 Q. So it's not a given that if he suffers stress,
20 he's going to relapse. It will all depend on his individual
21 needs and what services he may be getting through mental
22 health court or otherwise?

23 A. Well, being released would be stressful in of
24 itself. I would tend to believe that many people struggle

1 with that. So having those court services options to assist
2 them with their transition back into the community I believe
3 would be appropriate regardless.

4 In terms of his psychiatric treatment, well, I
5 would expect that there would be an additional evaluation
6 completed to determine just exactly what other support
7 services up to and including access to a substance abuse
8 counselor to help him maintain his sobriety as he's coping
9 with those stressors as he reintegrates into the community.

10 MS. OLDENBURG: Thank you.

11 MS. NOBLE: I have no further questions, your
12 Honor.

13 THE COURT: I have a couple of questions. Risk
14 assessment, now, that's basically a subjective call based on
15 some of the tests that you did, right?

16 THE WITNESS: We try to collate the data from
17 different sources. So we look at the collateral information,
18 the clinical interview, other testing we might do, possibly
19 interviews with others. So depending on the nature of the
20 case, we gather the information from multiple sources trying
21 to relate it and look at the totality of the information to
22 inform the individual's risk.

23 THE COURT: All right. Are there any data sort of
24 in the follow-up manner that risk assessments for such and

1 such, but especially you do probably more risk assessments in
2 the sexual offenders than you do in murder case, right?

3 THE WITNESS: Well, up to this point in my career,
4 I would say I have.

5 THE COURT: You do a lot of violent cases risk
6 assessments?

7 THE WITNESS: Depending on the nature of the --
8 yeah, I mean, it's not necessarily just murder. Sometimes --

9 THE COURT: Violence.

10 THE WITNESS: Right. Yes, sir.

11 THE COURT: Is there any method or manner in which
12 there's a follow-up, curiosity, a record keeper, whatever
13 that says, okay, the risk assessment that was proffered in
14 this case five years ago indicated a low level or a low risk
15 factor, and, look it, they did it again, so, so much for the
16 risk assessment type thing. Does anybody do any follow-up
17 that you're aware of?

18 THE WITNESS: It is appropriate to -- it is
19 appropriate where we can use, for instance, the HCR 20.

20 THE COURT: What is the HCR 20?

21 THE WITNESS: The one that I used during, you
22 know, for this case, the historic clinical risk assessment
23 for violence. That is used not just for an initial
24 assessment, but also to monitor a person's functioning over

1 time, because you are correct, sir, things can change. And
2 so, as part of that, in some jurisdictions, you know, the
3 research has found a person is on parole or probation, they
4 will have, you know, psychological evaluations to inform how
5 they're doing and so forth, including, you know, looking at
6 their possible other factors that should speak to their risk.

7 The idea being if you can identify a concern, can
8 we intervene and provide that person with some other
9 supports, treatment and so forth to lessen that potential
10 risk.

11 THE COURT: Let me ask you this, when you first
12 encountered Mr. King, he mentioned that he had no idea who
13 you were and he called the attorney or attempted to call the
14 attorney. Was that done in your presence?

15 THE WITNESS: The location at the correctional
16 center, I'm in an administrative building and so the staff
17 brings the person over to me. I would not have -- you know,
18 I would not present with him trying to call his attorney. I
19 simply have to take at face value that he did in fact go
20 back, did in fact, you know, try to reach the attorney. I'm
21 not present for that.

22 THE COURT: You weren't present?

23 THE WITNESS: No.

24 THE COURT: Was there any resistance to your

1 questioning?

2 THE WITNESS: I explained to him the purpose of
3 the evaluation, why it was requested. Went over any, you
4 know, concerns that he had, you know. I introduced myself,
5 explained to him the process, why we were there. He wanted
6 to speak with his attorney. He can call his attorney, yes,
7 goes back to work with the staff.

8 I emphasized to Mr. King as well as any individual
9 that I work with for the court, if you have questions and do
10 not want to proceed, we stop now. I will not continue unless
11 the person is comfortable doing so, sir.

12 THE COURT: Once you entered the room or once he
13 was brought into the room, was there a point in time shortly
14 thereafter that he excused himself and left the room?

15 THE WITNESS: As I recall, yes. And he would
16 have, you know, left the building with staff in order to, you
17 know, to make any call.

18 THE COURT: Do you recall him getting up and
19 leaving?

20 THE WITNESS: I do recall us interrupting and him
21 wanting to speak with his attorney. I wasn't present for
22 that, though. It wouldn't have been possible for me to.

23 THE COURT: It would be impossible for you to have
24 been present for the phone call?

1 THE WITNESS: Correct.

2 THE COURT: But you do recall him leaving?

3 THE WITNESS: Yes. And then he returned and
4 indicated he wanted to proceed. I went through the informed
5 consent form with him. And we completed the evaluation.

6 THE COURT: You have here an item regarding
7 psychopathy and you say there's no evidence available to
8 indicate the presence of psychopathic personality disorders.
9 How does one go about determining that in an hour or two-hour
10 interview?

11 THE WITNESS: That would entail using the Harris
12 Psychopathy Scales as well as personality testing.

13 THE COURT: Did you do that?

14 THE WITNESS: No.

15 THE COURT: Why not?

16 THE WITNESS: I did not proceed with the
17 personality testing, because his academic skills and his
18 limited -- the pattern of limited expressive vocabulary, I
19 elected not to proceed with the personality inventory as his
20 presentation suggested to me that I may not be able to obtain
21 valid results.

22 THE COURT: And did you give him a reading test or
23 something?

24 THE WITNESS: That was the wide range achievement

1 test, sir.

2 THE COURT: So you gave him that wide range test
3 before you got to the other one that you mentioned?

4 THE WITNESS: Correct.

5 THE COURT: That's when you realized it wouldn't
6 be any -- it wouldn't have been profitable, so to speak.

7 THE WITNESS: As part of the clinical interview, I
8 found that I was needing to restate information in more
9 simple language, which suggests that the person's expressive
10 vocabulary may not be as complex. And as I was going through
11 his personal history, including his educational history, and
12 him mentioning to me that he had been working with a Special
13 Ed teacher at the prison suggested to me that there could be
14 some academic skill issue.

15 THE COURT: For any of these factual
16 representations made, were they verified in any way?

17 THE WITNESS: I'm sorry, sir?

18 THE COURT: Well, as I understand, one of the
19 elements of psychopathy is lying, right, a person lies?

20 THE WITNESS: Deceitfulness.

21 THE COURT: Well, that's what I'm asking. Was
22 anything made, like he said he had a special education
23 teacher in prison, do you know that for a fact?

24 THE WITNESS: No, sir, I do not have access to

1 those records.

2 THE COURT: And all this stuff about his early
3 childhood, that's all self-reported, right?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did he talk about his prior
6 convictions before the murder conviction?

7 THE WITNESS: We went over some of those. In his
8 legal history, I include some of the information there.

9 THE COURT: Was reference made to the PSI
10 concerning the seven convictions that were reported on the
11 PSI?

12 THE WITNESS: Yes.

13 THE COURT: Did he say anything about that being
14 wrong, that he didn't have seven prior convictions?

15 THE WITNESS: He did not go into as much detail of
16 his legal history and not having the details from the PSI --
17 or, well, the PSI is very detailed. What I don't have are
18 other records to inform me of just, you know, what all
19 happened in those events.

20 THE COURT: In the report here, you talk about
21 seven prior convictions.

22 THE WITNESS: Uh-huh. Yes. The PSI mentioned the
23 seven.

24 THE COURT: Did you discuss those with him?

1 THE WITNESS: I did.

2 THE COURT: Merely to mention that there were
3 seven and here's what they were.

4 THE WITNESS: Uh-huh, I did, and his -- the PSI
5 had a number of convictions related back to the parole
6 violations.

7 THE COURT: Seven felonies and one misdemeanor, I
8 believe it was.

9 THE WITNESS: And as he had shared with me, that
10 would have begun approximately when he was 14 and certified
11 as an adult. And so his adult criminal history started back
12 approximately then, I'm guessing. Without having the
13 California records, I -- well, not being an attorney.

14 THE COURT: I was just curious whether or not you
15 discussed them with him.

16 THE WITNESS: Yes.

17 THE COURT: When I use discussed, I mean mentioned
18 them. He said, no, that's not true, they're wrong or he
19 said, that's what they are.

20 THE WITNESS: No. He acknowledged his criminal
21 history.

22 THE COURT: All right. From what I gather from
23 your testimony, as far as going through the questioning in
24 the session that you had with him, he presented well, he was

1 thinking, as far as you were concerned, and his answers were
2 appropriate to the questions asked?

3 THE WITNESS: Yes.

4 THE COURT: So he had the mental capability to
5 understand what you were doing, right?

6 THE WITNESS: Yes.

7 THE COURT: And he understood why you were there,
8 too, right?

9 THE WITNESS: He responded to me in a manner that
10 indicated that, yes, he understood the purpose of that
11 appointment, yes.

12 THE COURT: All right. Did that suggest any
13 questions?

14 MS. NOBLE: Not from the State, your Honor.

15 MS. OLDENBURG: I just have one question.

16 BY MS. OLDENBURG:

17 Q. Doctor, did you find Mr. King credible throughout
18 the interview?

19 A. His report was consistent with the information
20 available to me at the time, which, you know, does indicate
21 that he was being forthcoming, you know, in his responses to
22 me.

23 Q. Okay. And his PSI mentions a family history. Was
24 what he reported to you consistent with what was in the PSI?

1 A. Yes, it was.

2 Q. And as far as his substance use history, was what
3 he reported to you consistent with what was in the PSI?

4 A. Yes.

5 MS. OLDENBURG: Thank you. No further questions,
6 your Honor.

7 THE COURT: Okay. Thank you.

8 MS. OLDENBURG: Your Honor, I have no further
9 witnesses.

10 MS. NOBLE: Your Honor, the State would call John
11 Ohlson. I believe he's waiting just outside the courtroom.

12 (One witness sworn at this time.)

13 THE WITNESS: Good afternoon, your Honor.

14 JOHN OHLSON

15 called as a witness and being duly sworn did testify as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. NOBLE:

19 Q. Good afternoon. Could you state your name for the
20 court reporter?

21 A. My name is John Ohlson, O-h-l-s-o-n.

22 Q. What is your occupation as of now, Mr. Ohlson?

23 A. I'm retired.

24 Q. When did you retire?

1 A. Pardon?

2 Q. When did you retire?

3 A. About five years ago.

4 Q. And prior to your retirement, what was your
5 occupation?

6 A. I was a lawyer.

7 Q. What type of lawyer were you?

8 A. Somewhere north of Mel Shingold and south of
9 Thurgood Marshall.

10 Q. That sounds like a decent place to be. Let me ask
11 you a better question. Did your practice include criminal
12 defense?

13 A. I did do criminal defense.

14 Q. And in the course of your career, how long did you
15 practice criminal defense?

16 A. The entirety of my career from 1972 until I
17 retired.

18 Q. And then in the course and scope of your criminal
19 defense aspect of your practice, did you represent a
20 gentleman named Dvaughn King?

21 A. I did.

22 Q. Do you recall what the charge was?

23 A. It was murder in the first degree. Open murder.
24 I'm sorry.

1 Q. Open murder?

2 A. Yes.

3 Q. And you represented Mr. King at the sentencing
4 hearing, correct?

5 A. I did.

6 Q. And prior to the sentencing hearing, did you
7 discuss aspects of his case with him in terms of the PSI and
8 other items you might need to know about prior to going into
9 the sentencing?

10 A. I did.

11 Q. And did you ever have Mr. King get a forensic
12 psychology evaluation in order to assess his risk to
13 reoffend?

14 A. I'm sorry. Would you repeat the question?

15 Q. Yes, Mr. Ohlson. In the course of your
16 representation of Mr. King, did you ever have him evaluated
17 by any kind of psychological or psychiatric expert to
18 determine his risk to reoffend?

19 A. No.

20 Q. Why not?

21 A. There were several reasons. First, it was not
22 that kind of crime. It was not that kind of a defendant.
23 And, finally, what I knew about Mr. King and what he told me
24 about himself didn't indicate that it was a -- would benefit

1 him to do that.

2 Q. What did he tell you about himself that would
3 militate or cause you to not request that type of evaluation?

4 A. My memory isn't perfect, but my understanding was
5 that Mr. King had a prior murder conviction and a long gang
6 affiliation. And that the offense in this case was one that
7 arose out of a drug debt in which Mr. King was seeking money
8 for drugs that he had sold and hadn't been paid for.

9 And it was under those circumstances very
10 difficult with a straight face to stand up in court and say
11 that the defendant's motivations were rooted in a
12 psychological or emotional condition.

13 Q. Mr. Ohlson, if you recall, could you generally
14 describe your strategy at the sentencing hearing in front of
15 Judge Flanagan?

16 A. I can't. I don't recall.

17 Q. Fair enough.

18 MS. NOBLE: I have no further questions for
19 Mr. Ohlson. I think we can use the transcripts, if
20 necessary, later on down the line, your Honor.

21 THE COURT: All right. Cross.

22 CROSS EXAMINATION

23 BY MS. OLDENBURG:

24 Q. Good afternoon, Mr. Ohlson.

1 A. Afternoon.

2 Q. Part of the supplemental petition alleges --

3 A. Would you mind speaking up, please?

4 Q. Sure.

5 A. Thank you.

6 Q. What was alleged in the supplemental petition and
7 what is in front of this Court is you didn't present any
8 mitigating evidence with regards to Mr. King's traumatic
9 childhood or his substance abuse history. Can you explain
10 why that was not done?

11 A. I think I did on direct examination.

12 Q. I think what you talked about are risk
13 assessments, but there was other allegations that it was
14 ineffective to not present any kind of --

15 A. I'm sorry. Your voice is dropping off and I'm
16 having a hard time hearing you.

17 Q. I will start over. On direct, you testified just
18 specifically to your decision not to get a risk assessment,
19 correct?

20 A. Yes.

21 Q. And you stated it was because it wasn't that kind
22 of crime and he wasn't that kind of person?

23 A. That's right.

24 Q. Were you aware that Mr. King had a traumatic

1 childhood?

2 A. No, not particularly.

3 Q. Did you review the PSI?

4 A. Pardon?

5 Q. Did you review the PSI?

6 A. Of course.

7 Q. Were you aware that he had a significant substance
8 abuse history?

9 A. I don't recall.

10 Q. And did you review the PSI on that point or you
11 don't recall?

12 A. You're going to have to speak up. Your voice
13 drops off in the middle of the question and I lose the last
14 half of each question.

15 Q. Do you recall reading his PSI?

16 A. Yes.

17 Q. Do you recall reading his prior convictions?

18 A. No.

19 Q. Is it fair to assume you did back at that time?

20 A. Yes.

21 Q. You mentioned a prior murder conviction. That's
22 not in the record before us. It's not in the PSI.

23 A. It might have been a juvenile offense.

24 Q. But are you certain of that?

1 A. Pardon?

2 Q. Are you certain of that?

3 A. No.

4 Q. Is there a reason why you didn't present any
5 mitigating evidence at sentencing regarding Mr. King's
6 traumatic childhood and substance abuse history?

7 A. None other than that which I've already testified
8 to.

9 Q. Which was what?

10 A. As I said, I've already testified to it.

11 Q. You haven't answered the question as to why you
12 didn't present, not a risk assessment, but any kind of
13 mitigating evidence on his substance use history or his
14 traumatic childhood?

15 A. I don't know how you mitigate a substance abuse
16 history. Maybe you can tell me, counsel.

17 Q. I'm asking you the questions, Mr. Ohlson. Just
18 trying to find out why you didn't feel it was necessary to
19 have a substance abuse evaluation done to present to Judge
20 Flanagan?

21 A. Because he didn't tell me that he was a substance
22 abuser or that he was acting under the influence of drugs or
23 alcohol when he committed the offense.

24 Q. But you reviewed the PSI?

1 A. Pardon?

2 Q. You did review the PSI?

3 A. I know I did.

4 Q. Okay. Thank you. When someone, and you've had a
5 lot of experience, when someone is facing a life in prison
6 sentence, when do you think it's appropriate to do a
7 sentencing memorandum for the sentencing judge?

8 A. It varies with every case.

9 Q. And why did you not do one in this case?

10 A. I don't recall.

11 MS. NOBLE: Objection. There was one filed in
12 this case.

13 MS. OLDENBURG: Oh, there is. I apologize. I
14 think it was pretty brief, as I recall. I guess I don't have
15 any other questions. Thank you, your Honor.

16 REDIRECT EXAMINATION

17 BY MS. NOBLE:

18 Q. Mr. Ohlson, during the pendency of your criminal
19 practice, is it fair to say you represented defendants on
20 quite a few murder charges?

21 A. It's fair to say that.

22 Q. And is it fair to say that you were generally
23 familiar with the structure of the presentence investigation
24 reports prepared by the Division?

1 A. Yes.

2 Q. And in your experience in those reports,
3 typically, recount childhood history as expressed by the
4 person being evaluated or the defendant?

5 A. I'm sorry?

6 Q. That was a bad question. Let me backup. In the
7 presentence investigation reports, is there often a section
8 on childhood?

9 A. I think there always is.

10 Q. And is there often a section on substance abuse
11 history?

12 A. Yes.

13 Q. And do you have any idea how many cases you had
14 with Judge Flanagan the judge who presided over the
15 sentencing in this case?

16 A. Quite a few. Other cases than this? Quite a few.

17 Q. In your experience with Judge Flanagan, did he
18 generally appear to be aware of the contents of the
19 presentence investigation reports?

20 A. In my experience with Judge Flanagan, he tended to
21 be aware of everything.

22 Q. And one last question, or two, really, the
23 sentencing in this case was several years ago in 2014,
24 correct?

1 A. If you say so.

2 Q. All right. And so would it be fair to say in the
3 last eight years your memory about certain aspects of the
4 sentencing or the case might have faded over time?

5 A. Be fair to say that I'm 76 years old and my memory
6 has faded as to a lot of things over that period of time.

7 MS. NOBLE: Thank you, Mr. Ohlson. I have no
8 further questions.

9 MS. OLDENBURG: I have no questions, your Honor.

10 THE COURT: I have a couple. Mr. Ohlson, you
11 mentioned that he when you first met him was subject to
12 murder one charge or then you changed it to open murder.

13 THE WITNESS: Yes.

14 THE COURT: Do you recall specifically the first
15 paragraph had to do with murder one pursuant to the statutory
16 definition of murder one?

17 THE WITNESS: It would have, yes.

18 THE COURT: And then the second paragraph had to
19 do with a felony murder theory, is that correct?

20 THE WITNESS: I don't recall in this case that
21 felony murder was alleged.

22 THE COURT: Well, the home invasion.

23 THE WITNESS: Yes.

24 THE COURT: That's how it started out.

1 THE WITNESS: Yes.

2 THE COURT: Now, based on your experience and the
3 law, felony murder would involve anybody who participated in
4 causing -- in a situation that was illegal with intent to
5 commit a felony that resulted in death regardless of who was
6 the killer.

7 THE WITNESS: That's right.

8 THE COURT: And in the course of your
9 investigation, your efforts resulted in the murder two charge
10 that was ultimately entered by your client, is that correct?

11 THE WITNESS: Yes.

12 THE COURT: That's all I have. Did that suggest
13 any questions?

14 MS. OLDENBURG: It does for me.

15 RECROSS EXAMINATION

16 BY MS. OLDENBURG:

17 Q. What efforts did you engage in with the District
18 Attorney in your plea negotiations as you just affirmatively
19 answered that?

20 A. I missed the last part as you mumbled.

21 Q. As you just affirmatively answered your taking
22 responsibility for obtaining a more favorable sentence for
23 Mr. King, what -- tell us how that came about?

24 MS. NOBLE: Objection.

1 THE COURT: A more favorable charge.

2 MS. OLDENBURG: A more favorable charge.

3 MS. NOBLE: Objection, relevance.

4 MS. OLDENBURG: The judge asked the question. I
5 think it's relevant, because I can see where the judge -- I
6 can't see where you're heading, but I can guess where you're
7 sort of heading with this. Your memory is, and I understand
8 it, you remember things very affirmatively and I just want to
9 know what your recollection is of how that came about. Was
10 it based on evidence, was it based on your skill?

11 MS. NOBLE: Your Honor, is the Court overruling my
12 objection? There's a limited scope to this proceeding and it
13 does not have to do with ineffective assistance during the
14 plea negotiation stage.

15 THE COURT: That's true. But I will overrule.

16 MS. NOBLE: Thank you, your Honor.

17 THE WITNESS: Should I answer the question?

18 MS. OLDENBURG: Yes, please.

19 THE WITNESS: I can answer generally, but not
20 specifically. My recollection, I think the prosecutor on
21 that case was -- I'm blocking on his name, but I think he ran
22 for --

23 THE COURT: Bruce Hahn.

24 THE WITNESS: Right, Bruce Hahn. To answer your

1 question fairly with what recollection I have today, I'd have
2 to state that what my efforts were was both a general and
3 specific and thorough preparation of the case for trial, a
4 representation to the District Attorney that I was prepared
5 to go to trial and was willing to go to trial and happy to go
6 to trial.

7 And further representations that notwithstanding
8 the felony murder alleged, that the District Attorney would
9 have difficulty proving who pulled the trigger in the case.
10 And to my somewhat surprise and to my pleasure, the District
11 Attorney offered a second degree and I relayed it to my
12 client. I was surprised when my client decided to accept it.

13 MS. OLDENBURG: All right. Thank you. No further
14 questions.

15 THE COURT: Anything?

16 MS. NOBLE: Not from the State, your Honor. Thank
17 you.

18 THE COURT: All right. Mr. Ohlson, thank you.
19 Thank you, you're excused.

20 MS. NOBLE: Your Honor, the State has no further
21 witnesses.

22 THE COURT: Anything further, counsel?

23 MS. OLDENBURG: No, your Honor.

24 THE COURT: All right. Then you may proceed to

1 argument.

2 MS. OLDENBURG: Your Honor, I'll be brief. I
3 appreciate how well-versed you are in this case, especially
4 given that you're stepping in for Judge Walker. You know, as
5 set forth in the opening argument, Judge Flanagan did
6 recognize on the record at the sentencing hearing that it was
7 important for him to have mitigating factors in front of him.
8 I wasn't there. No one else was there. We don't have
9 another attorney to say what they do or do not do and what is
10 effective or ineffective.

11 But I think even the appellate court in this case
12 recognized that if the evidence were true, if mitigating
13 evidence had been presented, there was a reasonable
14 likelihood of a less severe sentence and they said that right
15 their order. I believe under these circumstances --

16 THE COURT: Well, they said they couldn't find
17 that the judge --

18 MS. OLDENBURG: In the negative.

19 THE COURT: Right.

20 MS. OLDENBURG: I guess that's how I read it. But
21 I think, you know, in a case where it is still you're facing
22 life in prison, given the PSI -- and we're learning more and
23 more about this every day about the effects of a traumatic
24 childhood on the propensity to engage in negative behavior

1 when you have parents who abuse substances, you've been
2 removed by CPS twice, removed from your parents, sent back,
3 very strong record of juvenile history, not having a lot of
4 direction, developmental issues and then the substance abuse.
5 We contend it was ineffective for Mr. Ohlson to not present
6 any mitigating evidence.

7 Whether it was a risk assessment, which it didn't
8 sound like he really looked into, whether that might be
9 appropriate, he didn't testify that he talked to anybody or
10 to present any evidence about the substance use history and
11 the impacts on that and possible rehabilitation to weigh in
12 on a lesser sentence for this charge.

13 Judge Flanagan did go beyond the stipulated
14 sentence on the consecutive, significantly beyond that, and
15 maybe had he had this, we can't go back in time, but there's
16 a reasonable probability I think that the judge would have
17 had concurred with the recommended consecutive sentence on
18 the enhancement.

19 And, you know, once again, you understand the
20 case, you've got the court report, you've got the report of
21 Dr. Hixon-Brenenstall in front of you. It's difficult to go
22 back in time, but especially given Mr. King's significant
23 efforts in prison, we do believe that he's entitled to a
24 lesser sentence and an opportunity to get out and prove

1 himself with the treatment that he never received as either a
2 child or an adult.

3 THE COURT: And what lesser sentence are you
4 referring to?

5 MS. OLDENBURG: The other sentence that was
6 available to Judge Flanagan, 10 to 25.

7 THE COURT: 10 to 25?

8 MS. OLDENBURG: Yes, and/or the consecutive
9 sentence of 2 to 6 on the enhancement.

10 THE COURT: How about the gun charge?

11 MS. OLDENBURG: That would be the gun charge
12 enhancement. He got 53 to 20 years on that, rather than what
13 the prosecutor and the defense counsel stipulated to, which
14 was 2 to 6 years.

15 THE COURT: You're talking about how the times
16 have changed and now we -- there is a recognition that trauma
17 in childhood can affect activities in adulthood. What I
18 wanted to say is the sentencing -- well, let me start over
19 again.

20 I was hoping to hearing from your client, to tell
21 you the truth, but you have the -- let me ask you the
22 question: Is this the kind of judge, what's his name, Tao,
23 the appellate judge that dissented in the decision.

24 MS. OLDENBURG: Yes.

1 THE COURT: He said this is not the kind of case
2 where that type of information, the psychological evaluation,
3 the amenability to rehabilitation or change would affect a
4 sentence, such as child sexual abuse, pedophiles, life and
5 death sentence. Okay. This is a murder case. Life
6 imprisonment is the maximum. In your opinion, what would be
7 the relevance of that type of information at that time?
8 Sympathy on the part of the judge to say, well, the guy
9 had --

10 MS. OLDENBURG: It could have resulted in an
11 analysis by Judge Flanagan as to the ability to rehabilitate.
12 You know, whether he was a high risk to reoffend or whether
13 based upon his history and his traumatic childhood, both
14 which are acknowledged in the PSI even back then, so they do
15 matter, I think it could have provided, you know, I can't say
16 for certain, it could have provided Judge Flanagan some
17 analysis to weigh his decision on whether to impose the life
18 or the 10 to 25.

19 THE COURT: Well, here's one thing and this is why
20 I wanted to hear from your client, I'm looking at the guilty
21 plea memorandum. Paragraphs 4 and 5, I understand the
22 charges against me and the elements of the offense which the
23 State would have to prove beyond a reasonable doubt at trial
24 are that on November 5th or thereabout in the County of

1 Washoe, I did willfully, unlawfully and with malice
2 aforethought kill and murder Tommy Young, a human being, at a
3 residence in Sparks, Nevada by shooting him multiple times
4 and did use a deadly weapon in the commission of said
5 offense, a 40-caliber pistol, thereby inflicting mortal
6 injuries upon Tommy Young from which he died on November 5th.

7 Paragraph five, I understand I admit the facts
8 which support all the elements of the offense by pleading
9 guilty. I admit that the State possesses sufficient
10 evidence, which would result in my conviction. I have
11 carefully examined the State's discovery of evidence against
12 me. I have considered and discussed all possible defenses
13 and defense strategies with my counsel. I understand that I
14 have the right to appeal from adverse rulings and pretrial
15 motions if the State and the Court consent. I understand
16 that any substantive or procedural pretrial issues have been
17 waived. And then he goes on to say he understands the
18 punishment.

19 At the end of the guilty plea memorandum, which is
20 typical, it says, I do hereby swear under penalty of perjury
21 that all the assertions in this written plea agreement
22 document are true. And then in his petitions, he says he
23 didn't kill the guy. That is a conflict of facts to me
24 presented by your client.

1 Now, he pled guilty and said he would be satisfied
2 with any sentencing that the judge would hand down. That
3 didn't turn out to be accurate.

4 MS. OLDENBURG: Your Honor, if I could speak to
5 that? I mean, when this case was handed down, it was for
6 that sole issue of the risk assessment. I had no authority
7 to file a supplemental petition, especially given the time
8 frames of not a knowing and voluntary plea that could have
9 been one of his claims. It was not a claim he made when
10 working with Mr. Jordan.

11 We know that sometimes defendants, you know, agree
12 to everything. Especially if they've got some learning
13 disabilities, there may have been an issue with
14 understanding. He was canvassed and that canvass was
15 appropriate and proper.

16 As far as I believe there was some contention that
17 it was an accidental shooting and not an intentional
18 shooting, which might have also brought it down to a second
19 degree. But Mr. --

20 THE COURT: One of the explanations was I wanted
21 him shot, Toy.

22 MS. OLDENBURG: Right, Toy.

23 THE COURT: Toy. Who shot him. And then one of
24 the explanations was that the gun went off and it went off

1 and shot the main victim, too.

2 MS. OLDENBURG: There was tough evidence to
3 proceed on.

4 THE COURT: Which would have resulted or could
5 have resulted in a felony murder conviction.

6 MS. OLDENBURG: Correct. I'm sorry. I lost my
7 train of thought there.

8 THE COURT: As far as the, how did you describe
9 it, the not unlearned but something about his educational
10 background.

11 MS. OLDENBURG: Yes.

12 THE COURT: He's gone to college now, right?

13 MS. OLDENBURG: Well, he's taking classes at the
14 prison, as I understand, pursuing a degree. But he was
15 pulled in and out of school as a child. That is in Dr.
16 Hixon-Brenenstall's report.

17 THE COURT: He finished his high school. I got a
18 substitute.

19 MS. OLDENBURG: I believe he did it when was
20 incarcerated. Did you?

21 THE DEFENDANT: Yes.

22 THE COURT: You've read the pleadings that he's
23 done. They're very lawyer like.

24 MS. OLDENBURG: I have only read -- you know, I

1 read his petition. I'm not sure if he authored that, as we
2 know, sometimes they don't always.

3 THE COURT: I asked him if he did it. He said
4 yes.

5 MS. OLDENBURG: I know. I understand. I read his
6 motions to have me withdrawn. Frankly, I think Judge Walker
7 should have had a Young hearing. But instead, the documents
8 were stricken and then the Supreme Court found they had no
9 jurisdiction, because they don't take those issues on appeal.
10 So it's kind of a very difficult situation here.

11 One of the things I wanted to point out, though,
12 is that Mr. King has been significantly remorseful.
13 Presented at sentencing was one witness, his wife, who talked
14 about how he had become a man of faith and regretted what he
15 did.

16 The defendant also, you know, spoke as to his
17 remorse and his apologies to the family, the victim's family,
18 anyone he has hurt, and his remorsefulness, which is also
19 shown in the report by Dr. Hixon-Brenenstall is also
20 consistent. So I just want to point that out to the Court
21 when we're talking about his character at the time of the
22 shooting and after.

23 THE COURT: Perspectively, what is the difference
24 between 10 and life and 10 to 25?

1 MS. OLDENBURG: Well, you can get out in 25
2 instead of life.

3 THE COURT: You think you cannot get out before 25
4 on 10 to life?

5 MS. OLDENBURG: Oh, no, absolutely he can.

6 THE COURT: Depending how he does in prison,
7 right?

8 MS. OLDENBURG: Right, but from his perspective.

9 THE COURT: That's why I said, perspectively,
10 there's a limit and the other is not.

11 MS. OLDENBURG: Yes. But the consecutive is
12 troubling that was not -- that the judge didn't find -- did
13 not want to follow that negotiation of the 2 to 6.

14 THE COURT: For the enhancement?

15 MS. OLDENBURG: Yes.

16 THE COURT: Do you have any insight as to why he
17 did not do that?

18 MS. OLDENBURG: No, your Honor, I don't. I've
19 read all the transcripts, but I don't know why he didn't do
20 that. There wasn't a lot of discussion at the sentencing on
21 the enhancements.

22 THE COURT: All right. Anything else?

23 MS. OLDENBURG: No, thank you, your Honor.

24 THE COURT: Ms. Noble.

1 MS. NOBLE: Good afternoon, your Honor. In
2 reference to the Court's colloquy with petitioner's counsel,
3 I just want to make sure that the Court and the parties are
4 focused on the subject of the remand, right, which is whether
5 or not Mr. Ohlson was objectively unreasonable within the
6 holding in Strickland versus Washington not to have a risk
7 assessment prepared and presented to Judge Flanagan during
8 the 2014 sentencing.

9 I would submit to this Court that the answer is
10 no. But working backwards, we know that under Strickland,
11 we've got two prongs, right. We have the deficient
12 performance prong, which is the objectively unreasonable
13 performance, which is sort of interesting, because the Court
14 was referencing Judge Tao's dissent, in which Judge Tao
15 indicated this was not the type of case where he thought that
16 was appropriate.

17 Now, that's not evidence in this case, but it is
18 an indication that reasonable minds, perhaps, could differ
19 about what would have been appropriate in 2014 in front of
20 Judge Flanagan. That's the first prong, was he objectively
21 unreasonable?

22 And, number two, was he or was his deficient
23 performance, his auctorial mission, something that resulted
24 in actual prejudice to Mr. King.

1 Now, when the Court makes this assessment, it
2 begins under Harrington versus Richter with the strong
3 presumption that counsel's performance was reasonable. But I
4 think even if you didn't do that, your Honor, you could go
5 back to the sentencing transcript and the PSI in this case,
6 as well as the assessment that has been prepared by the
7 expert who testified here today.

8 In 2014, the PSI was presented to Judge Flanagan.
9 It's reference in the sentencing transcript. And I believe
10 on page two, it references Mr. King's tumultuous childhood,
11 the fact that his parents both used crack cocaine, that he
12 was sent to live with his grandparents for a time, that his
13 mother at some time ceased using drugs at least for a time,
14 but that he was never able to attach back to his mother. In
15 other words, that important attachment between mother and son
16 just was not able to be repaired. That's reflected in the
17 presentence investigation report.

18 The presentence investigation report Judge
19 Flanagan had access to and no doubt referenced also indicated
20 that there was a substance abuse history with Mr. King, that
21 he had struggled with methamphetamine addiction, daily
22 marijuana use and alcohol use at the time of this murder.

23 Now, the question is, and it's difficult, because
24 Judge Flanagan is no longer with us, so we can't ask him this

1 question, he can't preside over this hearing, but back in
2 2014, if Judge Flanagan had the additional information in
3 this assessment, would it have made a difference? Has the
4 petitioner shown that there was a probability of a different
5 outcome, in other words, a different sentence in this case?

6 And I would submit, the answer is no and you can
7 find the answer essentially in the transcript starting at
8 page 39 of the January 22nd, 2014 transcript. Now, Judge
9 Flanagan --

10 THE COURT: Page?

11 MS. NOBLE: 39, your Honor.

12 THE COURT: Of what transcript?

13 MS. NOBLE: The sentencing transcript and the date
14 of that transcript is January 22nd, 2014. And I actually
15 have an extra copy if it would please the Court.

16 THE COURT: Well, I have it here as soon as I can
17 bring it up. And page 39, did you say?

18 MS. NOBLE: Yes, your Honor. And really beginning
19 towards the bottom of page 38 as well. And what I'd like to
20 generally observe about getting toward the end of that
21 transcript, starting at page 39, is Judge Flanagan go through
22 the penological objectives or considerations for punishment.
23 He goes through rehabilitation, isolation, retribution,
24 general deterrence, specific deterrence, and then he talks

1 about this case.

2 And he talks about there's not one victim, there
3 are many victims, many innocent victims. He says the parents
4 of the decedent, the parents of the defendant, children,
5 innocent children who grow up not knowing their father or
6 fathers. The Court has taken into consideration the nature
7 of the crime. Starting at line 18 of page 39, this is
8 murder, murder most foul, shot cold-blooded in a mother's
9 home. The Court has taken into consideration the impact the
10 crime has not just on the family but on everybody.

11 And he goes on as Judge Flanagan often did in an
12 erudite and interesting discussion of Roman stoics and the
13 book of Deuteronomy and Leviticus, but he arrives at the
14 conclusion that this is the appropriate sentence.

15 Now, given those concerns that Judge Flanagan
16 expressed and given the information that he had at the time
17 of sentencing, which included information about a tumultuous
18 childhood and a substance abuse history that were at play
19 during the time this crime was committed, I would submit to
20 the Court that not only has there been no deficient
21 performance demonstrated on the part of Mr. Ohlson. But if
22 that is any question, the Court need not decide it.

23 It can get to the second prong of Strickland
24 which, is prejudice, and the answer to the question of

1 whether or not Strickland prejudice has been demonstrated is
2 no. Because the judge had very similar information at the
3 time of sentencing and that the judge was very focused on the
4 impact of the crime on the victims, punishing the defendant,
5 making sure he couldn't hurt anyone else and I would say the
6 criminal justice objective of general and specific
7 deterrence.

8 There hasn't been a demonstration that the outcome
9 would have been different or a reasonable probability, not
10 possibility, but probability that the outcome of the
11 proceedings would have been different. And for that reason,
12 we ask that you deny the remaining claim in the petition.

13 Thank you, your Honor.

14 THE COURT: Counsel.

15 MS. OLDENBURG: Nothing further, your Honor.

16 THE COURT: All right. We were here for the one
17 question, the lack of evidentiary hearing including the
18 background and the evaluation by a professional to show that
19 there was a troubled background that could have caused the
20 actions that occurred back in November of 2010.

21 And I have to agree with counsel's representation,
22 Mr. Ohlson was a competent practitioner. He had a case that
23 through his efforts changed the potential exposure, risk
24 exposure of the defendant. And as he indicated on the stand,

1 he didn't see it as a case where the ability to be
2 rehabilitated would make a difference.

3 Now, to demonstrate the ineffective assistance of
4 counsel, petitioner must show that the performance was
5 deficient and that it fell below an objective standard of
6 reasonableness and prejudice resulted in that there was a
7 reasonable probability of a different outcome absent
8 counsel's errors.

9 I don't find that there were counsel errors. I
10 don't find that a standard of reasonableness was breached in
11 any way. There was no evidence to show that. And the
12 prejudice to the defendant was not due to any part of or lack
13 thereof on Mr. Ohlson's behalf.

14 It was as the Court indicated in the record his
15 looking at the crime of murder and the circumstances
16 surrounding that individual offense and he made the call as
17 he usually does or did.

18 And the only question I had was the gun
19 enhancement. He went over the recommendation of the
20 attorneys and that's what I was going to say when I started
21 that one sentence and stopped, nowadays as far as we learn
22 about the influence of childhood experiences on adult
23 behavior, we also realize that when the promises made to get
24 a plea bargain are exceeded by the Court, the Court would

1 usually at least when I practiced in federal court that was
2 the rule, I don't know about the state court, but, well, it
3 is, if you don't adhere to the promise, they send the case
4 back.

5 The promise of the prosecutor was that he would
6 argue no less than six years maximum, 72 months, and the
7 Court gave 240 months. I have difficulty with that, but that
8 has nothing to do with counsel's performance. It's my
9 understanding Mr. Ohlson withdrew shortly thereafter, after
10 the sentencing.

11 MS. NOBLE: That's correct, your Honor.

12 THE COURT: So where does that leave us? I don't
13 find ineffective assistance of counsel. I have no
14 explanation whatsoever even given the statements made by the
15 judge about the heinousness of this particular killing and he
16 answered that by 10 to life, making it consecutive to the
17 California case, but then going above the recommended and
18 agreed upon maximum of 72 months. I would reduce it to
19 72 months, but I'm not sure I can do that here.

20 MS. NOBLE: Your Honor, I would submit,
21 respectfully, the Court cannot do that here. This hearing
22 was remanded by the Court of Appeals for a limited purpose
23 and that was solely to analyze the ineffective assistance of
24 counsel claim that remained from the prior habeas

1 proceedings. There would be no ground for a resentencing or
2 a reopening of the other claims either with respect to the
3 habeas petition or the original sentencing.

4 THE COURT: That's why I started with a question,
5 that question. And how about you, counsel, do you agree?

6 MS. OLDENBURG: I do agree, however, that was not
7 brought on direct appeal, that issue, and I suppose Mr. King
8 can go back and try to bring that forward, but he's facing
9 some significant procedural bars.

10 THE COURT: It's in the record now. But that is
11 my decision, then. Mr. King did not have enough evidence to
12 substantiate his claim. So, counsel, you prevailed, do the
13 order.

14 MS. NOBLE: Yes, your Honor.

15 THE COURT: All right. Anything else?

16 MS. NOBLE: Not from the State, your Honor.

17 THE COURT: All right. Court will be in recess.

18 --oOo--
19
20
21
22
23
24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on November 21, 2022, at the hour of
8 1:30 p.m., and took verbatim stenotype notes of the
9 proceedings had upon the hearing in the matter of THE STATE
10 OF NEVADA, Plaintiff, vs. DVAUGHN KEITHAN KING, Defendant,
11 Case No. CR12-1160, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 85, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 29th day of November 2022.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

Code: 2280
VICTORIA T. OLDENBURG
OLDENBURG LAW OFFICE
P.O. Box 17422
Reno, Nevada 89511
Telephone: (775) 971-4245
Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

D'VAUGHN KEITHAN KING,

Petitioner,

v.

Case No. CR12-1160

THE STATE OF NEVADA,

Dept. No. 7

Respondent.

_____ /

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

COMES NOW, Victoria T. Oldenburg, appointed attorney for Petitioner D'Vaughn Keithan King, ("Petitioner"), and hereby moves this Honorable Court to allow Ms. Oldenburg to withdraw as counsel of record pursuant to NRPC Rule 1.16.

Counsel was appointed to represent Petitioner on his Petition for Writ of Habeas Corpus on June 7, 2019. Over the last several months the level of communication between counsel and Mr. King has degraded to the point where little to no meaningful communication is had. At the November 21, 2022 evidentiary hearing held on Petitioner's Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), which the court dismissed at the hearing,¹ Petitioner informed counsel that he had filed two bar complaints against counsel and one civil action.

¹ As of this date a written order dismissing the Petition and Supplemental Petition has not been filed.

Counsel was appointed through the conflict group which appointment includes the responsibility to file an appeal on Petitioner's behalf. Obviously, Petitioner has lost confidence in counsel's ability to represent him on any matters relevant to an appeal. Upon information and belief, the relationship between attorney and client has degraded to such a point that neither attorney nor client feels that the continued representation of Petitioner by counsel would be helpful to Petitioner's appeal of the court's denial of his Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction).

As such, counsel respectfully requests this Honorable Court to allow her to withdraw as Petitioner's appointed counsel.

SUBMITTED THIS 16th day of December, 2022.

/s/ Victoria T. Oldenburg
Victoria T. Oldenburg
Nevada Bar No. 4770

**DECLARATION OF VICTORIA T. OLDENBURG, ESQ. IN SUPPORT OF MOTION TO
WITHDRAW AS ATTORNEY OF RECORD**

I, Victoria T. Oldenburg, declare:

1. I am an attorney licensed to practice law within the State of Nevada.
2. I am the attorney of record in the above-captioned matter.
3. I have read the foregoing motion and I am familiar with the contents thereof; that the same is true of my own knowledge, except for those matters stated therein based upon information and belief and, as to those matters, I believe the to be true and correct.
4. This motion is not made for any improper purpose but to address the needs and Constitutional protections of the client.

Dated this 16th day of December, 2022.



Victoria T. Oldenburg

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned affirms that this Motion to Withdraw as Attorney of Record does not contain the social security number of any person.

DATED this 16th day of December, 2022.

/s/ Victoria T. Oldenburg
Victoria T. Oldenburg
Nevada Bar No. 4770

CERTIFICATE OF SERVICE

I, Victoria T. Oldenburg, hereby declare and state as follows:

I am over the age of eighteen years, a member of Oldenburg Law Office in the County of Washoe, State of Nevada, and I am not a party to this action.

On the 16th day of December 2022 I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Jennifer P. Noble, Chief Appellate Deputy
Washoe County District Attorney's Office
P.O. Box 11130
Reno, NV 89520

/s/ Victoria T. Oldenburg
Victoria T. Oldenburg

Nevada Bar No. 4770

CODE No. 3665

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

D'VAUGHN KEITHAN KING,

Petitioner,

Case No. CR12-1160

v.

Dept. No. 7

THE STATE OF NEVADA,

Respondent.

_____ /

ORDER DENYING PETITION

On November 22, 2017, the Honorable David A. Hardy entered an Order Dismissing Petition for Writ of Habeas Corpus (Post-Conviction) ("Order"). Petitioner timely appealed the Order to the Nevada Supreme Court in Nevada Supreme Court Case No. 74703. The case was transferred to the Court of Appeals of the State of Nevada which issued an Order of Reversal and Remand on March 14, 2019.

The Court of Appeals found the district court erred by not holding an evidentiary hearing on Petitioner's claim that trial counsel was ineffective for failing to present expert psychological testimony in mitigation at sentencing. In the Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), prior habeas counsel argued that expert witness Dr. Martha Mahaffey was expected to testify that had the psychological

evaluation been presented, it would have shown a low risk to re-offend, and that Petitioner was amenable to treatment and rehabilitation. Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) at 5:8-10. Petitioner further alleged that “other mitigating psychological evidence such as the impact of Mr. King’s ADHD, learning disabilities, drug abuse, and childhood would have been presented indicating the need for rehabilitation.” *Id.* at 5:10-12. After the reversal and remand, an evidentiary hearing was held on November 21, 2022.

Findings of Fact and Conclusions of Law

At the beginning of the hearing, Petitioner’s counsel informed the Court that although prior post-conviction counsel had alleged that Dr. Mahaffey would testify that Petitioner was a low risk to re-offend, Dr. Mahaffey had never evaluated Petitioner. TOP, Evidentiary Hearing, November 21, 2022, 6. Counsel had successfully sought and obtained an evaluation by another qualified expert, clinical psychologist Dr. Sharon Hixon-Brenenstall, Ph.D. However, Petitioner was dissatisfied with the result of the evaluation, and with appointed counsel’s performance. *Id.*, 8-11. His counsel explained that after Petitioner was dissatisfied with Dr. Hixon-Brenenstall’s evaluation, she reached out to another expert, Dr. Paglini who declined to do a second evaluation. *Id.*, 12-13. The Court declined Petitioner’s request to remove Ms. Oldenburg as counsel.

Dr. Hixon-Brenenstall testified that she conducted a psychological evaluation risk assessment on February 11th, 2020 at the Northern Nevada Correctional Facility. *Id.*, 31. She related that Petitioner reported being abused by his parents as a child, and witnessed domestic violence and substance abuse. She testified that such circumstances can impact an individual’s emotional and social development. *Id.*, 35. She further testified that Petitioner demonstrated below average and grade range in reading and mathematics. *Id.* Dr. Hixon-Brenenstall further opined that testing revealed that Petitioner suffers from post-traumatic stress disorder, depression, and anxiety. *Id.* 36-

37. She assessed Petitioner as a moderate to moderately high risk to re-offend, based on his history of drug use and lifestyle behaviors. *Id.*, 38. She also reported that he reportedly had been receptive to some interventions and classes in prison, which indicated that he could be receptive to additional rehabilitative services. *Id.*, 39-40.

On cross-examination, Dr. Hixon-Brenenstall acknowledged a portion of her report which opined that Petitioner struggles with managing stress in positive ways, and may be vulnerable to behaving in self-defeating ways, such as substance abuse. *Id.*, 43. She further testified that Petitioner had a lengthy history of poly-substance abuse. *Id.* In response to the Court's questions, she indicated that Petitioner presented well, answered her questions appropriately, and understood the purpose of the evaluation. *Id.*, 53-54.

Petitioner's trial attorney, John Ohlson, Esq., also testified. Mr. Ohlson informed the Court that he practiced criminal defense for approximately 40 years prior to his retirement. *Id.*, 56. He testified that he did not seek a psychological evaluation for Petitioner, because the offense in this case arose out of a drug debt, and it would have been "difficult with a straight face to stand up in court and say that the defendant's motivations were rooted in a psychological or emotional condition." *Id.*, 57-58.

This Court evaluates Petitioner's ineffective assistance of counsel claim pursuant *Strickland v. Washington*, 466 U.S. 668 (1984). This Court's evaluation begins with the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland, supra; Harrington v. Richter*, 562 U.S. 86 (2011). The Supreme Court further explained that the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* Within the context of this strong presumption, the petitioner must demonstrate, by a preponderance of evidence, that his counsel's performance was deficient, falling below an objective standard of reasonableness, and that counsel's

deficient performance prejudiced the defense. *Means v. State*, 120 Nev.1001, 1012, 103 P.3d 25, 33 (2004).

This Court may evaluate the questions of deficient performance and prejudice in either order and need not consider both issues if the defendant fails to make a sufficient showing on one. Where a petitioner claims he is entitled to relief due to ineffective assistance of counsel, he must demonstrate the facts underlying such a claim by a preponderance of the evidence; the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Having considered the pleadings, the testimony adduced at the evidentiary hearing, and heard the testimony of Dr. Hixon-Brenenstall, and Mr. Ohlson, the Court finds that Petitioner has not demonstrated by a preponderance of the evidence that Mr. Ohlson's representation was objectively unreasonable. The Court further finds that Petitioner has not demonstrated prejudice. The record reveals that the late Honorable Patrick Flanagan based the sentence imposed on the facts of the offense, as well as Petitioner's criminal history, and a psychiatric evaluation opining that Petitioner was a moderate to moderately high risk to re-offend would not have materially affected Judge Flanagan's decision.

GOOD CAUSE APPEARING, the Petition is DENIED.

Dated this 2 day of January, 2023.



DISTRICT JUDGE for
Senior Judge Polaha