

Steven D. Grierson

JARELL WASHINGTON #1245028
H.D.S.P. / 7A-30
P.O. BOX 650
INDEPENDENCE, NEV. 89070

IN PROPER PERSON

Electronically Filed
Dec 27 2022 08:20 AM
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

JARELL WASHINGTON,
PETITIONER.

CASE No.: C-19-341380-1
DEPT. No.: X

VS.

NOTICE OF APPEAL

THE STATE OF NEVADA,
RESPONDENT.

COMES NOW, PETITIONER, JARELL WASHINGTON,
IN HIS PROPER PERSON AND FILES THE INSTANT: NOTICE
OF APPEAL, FROM THE NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER: ELECTRONICALLY
FILED: 11/14/2022. THIS APPEAL TO THE NEVADA SUPREME
COURT FROM THE DECISION OR ORDER OF THE DISTRICT
COURT IS MADE IN GOOD FAITH.

DATED: THIS 20TH DAY OF NOVEMBER, 2022.

RESPECTFULLY SUBMITTED:

Jarell Washington

JARELL WASHINGTON #1245028
H.D.S.P. / 7A
P.O. BOX 650
INDEPENDENCE, NEVADA
89070

IN PROPER PERSON

- (1) -

RECEIVED
DEC 20 2022
CLERK OF THE COURT

CERTIFICATE OF SERVICE:

I, JARELL WASHINGTON, DO HEREBY SWEAR AND DO DEPOSE, UNDER PENALTY OF PERJURY; I DID MAIL THE INSTANT: NOTICE OF APPEAL A TRUE AND CORRECT COPY- TO THE RESPONDENTS; POSTAGE PREPAID AT HIGH DESERT STATE PRISON MAILROOM; DATED 20 NOVEMBER, 2022.

SIGNED: *Jarell Washington*

JARELL WASHINGTON # 1245028

3 APR 68 WASHINGTON # 1245020
H.A.S.P. / 7430
P.O. Box 650
INDIAN SPRINGS, NEVADA 89070

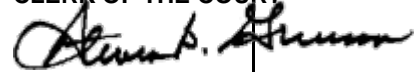
3762

89101-630000

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200 DEEDS ABOVE
LAS VEGAS, NEVADA 89155

TO: DEANAL Justice Center
COUNT CLERK
CLERK JUDICIAL DISTRICT
COUNT



1 ASTA

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3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 JARELL WASHINGTON
14 aka JARRELL WASHINGTON,

15 Defendant(s),

Case No: C-19-341380-1

Dept No: X

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Jarell Washington

20 2. Judge: Tierra Jones

21 3. Appellant(s): Jarell Washington

22 Counsel:

23 Jarell Washington #1245028
24 P.O. Box 650
25 Indian Springs, NV 89070

26 4. Respondent: The State of Nevada

27 Counsel:

28 Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: June 26, 2019

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

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 82896

12. Child Custody or Visitation: N/A

Dated This 23 day of December 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Jarell Washington

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. C-19-341380-1**

State of Nevada
vs
Jarell Washington

§
§
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§

Location: **Department 10**
Judicial Officer: **Jones, Tierra**
Filed on: **06/26/2019**
Case Number History:
Cross-Reference Case Number: **C341380**
Defendant's Scope ID #: **2665695**
Grand Jury Case Number: **19AGJ043x**
ITAG Case ID: **2116503**
Supreme Court No.: **82896**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON	200.030.2	F	08/19/2007	Subtype:	Homicide
Filed As: MURDER WITH USE OF A DEADLY WEAPON	F	6/25/2018		Case Status:	05/05/2022 Closed
Arrest: 06/26/2019					
2. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	08/19/2007		

Related Cases

A-22-856529-W (Writ Related Case)

Statistical Closures

05/05/2022 Other Manner of Disposition - Criminal
03/18/2022 Other Manner of Disposition - Criminal
05/12/2021 Other Manner of Disposition - Criminal
05/06/2021 Guilty Plea with Sentence (before trial) (CR)

Warrants

Indictment Warrant - Washington, Jarell (Judicial Officer: Silva, Cristina D.)

07/09/2019 12:54 PM Returned - Served

06/26/2019 11:00 AM Active

Fine: \$0


Bond: **\$1,000,000.00** Any**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number C-19-341380-1
Court Department 10
Date Assigned 09/08/2020
Judicial Officer Jones, Tierra

PARTY INFORMATION






		Lead Attorneys
Defendant	Washington, Jarell	Pro Se
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

06/26/2019  Indictment
[2] Indictment













In
#2

CASE SUMMARY
CASE NO. C-19-341380-1














06/26/2019	 Warrant <i>[3] Indictment Warrant</i>	In #2
06/27/2019	 Indictment Warrant Return <i>[1]</i>	In #1
07/10/2019	 Transcript of Proceedings <i>[4] Reporter's Transcript of Proceedings, Grand Jury Hearing, June 25, 2019</i>	In #4
07/24/2019	 Notice of Department Reassignment <i>[5] Notice of Department Reassignment</i>	In #2
12/31/2019	 Notice of Witnesses and/or Expert Witnesses <i>[6] State's Notice of Witnesses and/or Expert Witnesses</i>	In #6
01/21/2020	 Receipt of Copy <i>[7] Receipt of Copy</i>	In #7
01/24/2020	 Supplemental Witness List <i>[8] State's Supplemental Notice of Witnesses and/or Expert Witnesses</i>	In #8
01/31/2020	 Receipt of Copy <i>[9] Receipt of Copy</i>	In #9
02/06/2020	 Supplemental Witness List <i>[10] State's Second Supplemental Notice of Expert Witnesses and/or Expert Witnesses</i>	In #1
02/10/2020	 Amended Indictment <i>[11] Amended Indictment</i>	In #1
02/10/2020	 Guilty Plea Agreement <i>[12] Guilty Plea Agreement</i>	In #1
02/12/2020	 Notice of Department Reassignment <i>[13] Notice of Department Reassignment</i>	In #1
02/18/2020	 Motion to Dismiss Counsel Party: Defendant Washington, Jarell <i>[14]</i>	In #1
03/27/2020	 PSI <i>[15]</i>	In #1
04/02/2020	 Receipt of Copy Filed by: Plaintiff State of Nevada <i>[16] Receipt of Copy</i>	In #1

CASE SUMMARY














CASE NO. C-19-341380-1

07/16/2020	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>[17] Redorder's Transcript of Hearing Re: DA Request: Entry of Plea Heard on February 10, 2020</i>	In #1
08/13/2020	 Motion to Withdraw Plea Filed By: Defendant Washington, Jarell <i>[18] Defendant Jarell Washington's Motion to Withdraw Guilty Plea</i>	In #1
08/28/2020	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>[19] State's Opposition to Defendant's Motion to Withdrawn Guilty Plea</i>	In #1
09/02/2020	 Reply Filed by: Defendant Washington, Jarell <i>[20] Defendant Jarell Washington's Reply to the State's Opposition to Defendant's Motion to Withdraw Guilty Plea</i>	In #2
09/08/2020	Case Reassigned to Department 10 <i>Case Reassignment from Judge Douglas W. Herndon to Judge Tierra Jones</i>	
09/08/2020	 Notice of Change of Hearing <i>[21] Notice of Change of Hearing</i>	In #2
12/11/2020	 Motion Filed By: Defendant Washington, Jarell <i>[22] Defendant's Motion for Release on his Own Recognizance or in the Alternative Motion to Set Reasonable Bail</i>	In #2
12/11/2020	 Clerk's Notice of Hearing <i>[23] Notice of Hearing</i>	In #2
12/15/2020	 Opposition <i>[24] State's Opposition to Defendant's Motion for Release on his Own Recognizance and the State's Countermotion to Remand Defendant without Bail</i>	In #2
02/22/2021	 Order <i>[25] Order for Transcript</i>	In #2
02/23/2021	 Transcript of Proceedings <i>[26] Recorder's Transcript of Proceeding re Calendar Call - Thursday, February 6, 2020</i>	In #2
03/23/2021	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>[27] Order Denying Defendant's Motion to Withdraw Guilty Plea</i>	In #2
05/06/2021	 Judgment of Conviction <i>[28] Judgment of Conviction (Plea of Guilty)</i>	In #2
05/07/2021	 Notice of Appeal (Criminal) Party: Defendant Washington, Jarell	In #2






CASE SUMMARY**CASE NO. C-19-341380-1**

	<i>[29] Notice of Appeal</i>	
05/07/2021	 Case Appeal Statement Filed By: Defendant Washington, Jarell <i>[30] Case Appeal Statement</i>	In #2
05/07/2021	 Request Filed by: Defendant Washington, Jarell <i>[31] Request for Transcripts of Proceedings</i>	In #2
05/12/2021	 Order Filed By: Defendant Washington, Jarell <i>[32] Order</i>	In #2
05/18/2021	 Recorders Transcript of Hearing <i>[33] Recorder's Transcript of Hearing: Indictment Warrant Return - Initial Arraignment; July 9, 2019</i>	In #2
05/20/2021	 Recorders Transcript of Hearing <i>[34] Recorder's Transcript of Hearing: Status Check: Confirmation of Counsel - Arraignment Continued: July 24, 2019</i>	In #2
05/20/2021	 Recorders Transcript of Hearing <i>[35] Recorder's Transcript of Hearing: Motion to Dismiss Counsel: March 12, 2020</i>	In #2
05/20/2021	 Recorders Transcript of Hearing <i>[36] Recorder's Transcript of Hearing: Status Check: Motion to Withdraw Plea: July 10, 2020</i>	In #2
05/28/2021	 Recorders Transcript of Hearing <i>[37] Recorder's Transcript of Hearing Re: August 1, 2019 - Status Check: Trial Setting</i>	In #2
05/28/2021	 Recorders Transcript of Hearing <i>[38] Recorder's Transcript of Hearing Re: October 3, 2019 - Status Check: Trial Readiness</i>	In #2
05/28/2021	 Recorders Transcript of Hearing <i>[39] Recorder's Transcript of Hearing Re: December 5, 2019 - Status Check: Trial Readiness</i>	In #2
05/28/2021	 Recorders Transcript of Hearing <i>[40] Recorder's Transcript of Hearing Re: January 7, 2020 - Status Check: Trial Readiness</i>	In #4
05/28/2021	 Recorders Transcript of Hearing <i>[41] Recorder's Transcript of Hearing Re: January 16, 2020 - Status Check: Trial Readiness</i>	In #4
06/24/2021	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>[42] Recorder's Transcript of Hearing Re: Status Check; Confirmation of Counsel heard March 26, 2020</i>	In #4
06/25/2021	 Recorders Transcript of Hearing <i>[43] Recorders Transcript of Argument March 17, 2021</i>	In #4

CASE SUMMARY
CASE NO. C-19-341380-1

06/29/2021	 Transcript of Proceedings Party: Defendant Washington, Jarell <i>[44] Recorder's Transcript of Proceedings re Evidentiary Hearing - Friday, February 19, 2021</i>	In #4
06/29/2021	 Transcript of Proceedings Party: Defendant Washington, Jarell <i>[45] Recorder's Transcript of Proceedings re Sentencing - Friday, April 16, 2021</i>	In #4
08/06/2021	 Transcript of Proceedings Party: Defendant Washington, Jarell <i>[46] Recorder's Transcript of Proceedings re Motion to Withdraw - Friday, September 11, 2020</i>	In #4
08/06/2021	 Transcript of Proceedings Party: Defendant Washington, Jarell <i>[47] Recorder's Transcript of Proceedings re Motion for OR - Wednesday, December 16, 2020</i>	In #4
08/06/2021	 Transcript of Proceedings Party: Defendant Washington, Jarell <i>[48] Recorder's Transcript of Proceedings re Hearing - Friday, March 5, 2021</i>	In #4
08/06/2021	 Transcript of Proceedings <i>[49] Recorder's Transcript of Proceedings re Hearing - Wednesday, March 10, 2021</i>	In #4
08/23/2021	 Transcript of Proceedings Party: Defendant Washington, Jarell <i>[50] Recorder's Transcript of Proceedings re Hearing - Friday, April 2, 2021</i>	In #5
03/18/2022	 Amended Judgment of Conviction <i>[51] Amended Judgment of Conviction</i>	In #5
04/12/2022	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>[52] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed and Remand</i>	In #5
04/14/2022	 Motion Filed By: Defendant Washington, Jarell <i>[53] Motion to Withdraw As Counsel</i>	In #5
04/14/2022	 Clerk's Notice of Hearing <i>[54] Notice of Hearing</i>	In #5
05/05/2022	 Order Granting Motion <i>[55] Order Granting Motion to Withdraw as Counsel</i>	In #5
05/06/2022	 Certificate of Mailing Filed By: Defendant Washington, Jarell <i>[56] Certificate Of Mailing</i>	In #5
		In

CASE SUMMARY
CASE NO. C-19-341380-1

08/05/2022	 Affidavit Filed By: Defendant Washington, Jarell <i>[57] Affidavit of Jarell Washington</i>	#5
11/08/2022	 Findings of Fact, Conclusions of Law and Order <i>[58] Findings of Fact, Conclusions of Law and Order</i>	In #5
11/14/2022	 Notice of Entry <i>[59] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	In #5
12/21/2022	 Notice of Appeal (Criminal) <i>[60] Notice of Appeal</i>	In #6
12/23/2022	 Case Appeal Statement <i>Case Appeal Statement</i>	In #6

DISPOSITIONS





02/10/2020	Disposition (Judicial Officer: Adair, Valerie) 2. ROBBERY WITH USE OF A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence:
02/10/2021	Plea (Judicial Officer: Jones, Tierra) 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:
04/16/2021	Disposition (Judicial Officer: Jones, Tierra) 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:
04/16/2021	Adult Adjudication (Judicial Officer: Jones, Tierra) 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON 08/19/2007 (F) 200.030.2 (DC50011) PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
Term: Minimum:120 Months, Maximum:300 Months
Consecutive Enhancement:For Weapons Enhancement, Minimum:72 Months, Maximum:180 Months
Credit for Time Served: 680 Days
Other Fees
1. , \$3,580.00 To Victims of Crime
Fee Totals:
Administrative
Assessment Fee 25.00
\$25
DNA Fee \$150 150.00
Genetic Marker
Analysis AA Fee 3.00
\$3
Fee Totals \$ 178.00

HEARINGS

CASE SUMMARY

CASE NO. C-19-341380-1

06/26/2019	 Grand Jury Indictment (11:00 AM) (Judicial Officer: Silva, Cristina D.) MINUTES Warrant 06/26/2019 Inactive Indictment Warrant Matter Heard; Journal Entry Details: <i>Brian Contreras, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 19AGJ043X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-19-341380-1, Department III. State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, \$1,000,000.00 BAIL with high level electronic monitoring; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment. Upon Court's inquiry, the State advised there are no material witness warrants to quash. COURT FURTHER ORDERED, Exhibits 1-15 to be lodged with the Clerk of the Court. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done. I.W. (CUSTODY) 07/09/19 9:00 A.M. INITIAL ARRAIGNMENT (DEPT III) ;</i> SCHEDULED HEARINGS Initial Arraignment (07/09/2019 at 9:00 AM) (Judicial Officer: Herndon, Douglas W.)
07/09/2019	Initial Arraignment (9:00 AM) (Judicial Officer: Herndon, Douglas W.) Matter Continued;
07/09/2019	Indictment Warrant Return (9:00 AM) (Judicial Officer: Herndon, Douglas W.) Events: 06/27/2019 Indictment Warrant Return Matter Heard;
07/09/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Herndon, Douglas W.) Matter Heard; Journal Entry Details: <i>INDICTMENT WARRANT RETURN... INITIAL ARRAIGNMENT... Mr. Kocka informed the Court he was retained in Justice Court and has not been retained beyond that, adding he has spoken with the Defendant's family who was supposed to come and meet him, however they have not done so. COURT ADVISED the arraignment could be continued two weeks to verify if the Defendant is planning on retaining Mr. Kocka or if the Public Defender's Office needed to be appointed. COURT ORDERED, arraignment CONTINUED. Mr. Kocka indicated he provided a copy of the Indictment to the Public Defender's Office. COURT FURTHER ORDERED, the case will remain in Department Three pending reassignment. CUSTODY 7/24/19 9:30 A.M. ARRAIGNMENT CONTINUED... STATUS CHECK: CONFIRMATION OF COUNSEL;</i>
07/24/2019	Status Check: Confirmation of Counsel (9:30 AM) (Judicial Officer: Herndon, Douglas W.) Matter Heard;
07/24/2019	Arraignment Continued (9:30 AM) (Judicial Officer: Herndon, Douglas W.) Set Status Check;
07/24/2019	 All Pending Motions (9:30 AM) (Judicial Officer: Herndon, Douglas W.) Matter Heard; Journal Entry Details: <i>STATUS CHECK: CONFIRMATION OF COUNSEL... ARRAIGNMENT CONTINUED... Deputy District Attorney Giancarlo Pesci present on behalf of the State. Deputy Public Defender Kathleen Hamers present. Mr. Kocka stated Drew Christensen's Office appointed him as counsel of record. COURT STATED they asked the Public Defender's Office to run a conflicts check in case they were appointed. DEFENDANT WASHINGTON ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for status check. Upon Court's inquiry, Mr. Kocka stated the transcripts have been filed. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. Mr. Pesci stated the matter has gone before the Death Review Committee and the State is not seeking death. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 21. CUSTODY 8/1/19 8:30 A.M. STATUS CHECK: TRIAL SETTING (DEPT 21) ;</i>
08/01/2019	 Status Check: Trial Setting (9:30 AM) (Judicial Officer: Adair, Valerie) Trial Date Set; Journal Entry Details:

CASE SUMMARY

CASE NO. C-19-341380-1

Colloquy regarding trial date. Mr. Kocka advised he believes the forensics will be done soon. COURT ORDERED, matter SET for trial. CUSTODY 10/3/19 9:30 AM STATUS CHECK: TRIAL READINESS 2/6/20 9:30 AM CALENDAR CALL 2/10/20 9:00 AM JURY TRIAL ;

10/03/2019



Status Check: Trial Readiness (9:30 AM) (Judicial Officer: Adair, Valerie)

10/03/2019, 12/05/2019, 01/07/2020, 01/16/2020

Continued;

Continued;

Continued;

Matter Heard;

Journal Entry Details:

Mr. Kocka announced ready for trial. However, he spoke with Mr. Portz this morning and he suggested attending a settlement conference with Judge Bell, noting he would speak to his client this afternoon. COURT SO NOTED.

CUSTODY;

Continued;

Continued;

Continued;

Matter Heard;

Journal Entry Details:

Mr. Kocka advised an offer was extended last Friday and he will be meeting with the Defendant to convey the offer this week. Additionally, Mr. Kocka advised he is meeting with the State for a file review this Friday at 10 am and noted he is prepared for trial. COURT ORDERED, matter CONTINUED. CUSTODY CONTINUED TO: 1/16/20 9:30 AM;

Continued;

Continued;

Continued;

Matter Heard;

Journal Entry Details:

Mr. Kocka advised he just received the DNA report, has all discovery, and anticipates receiving an offer soon. COURT ORDERED, matter CONTINUED. CUSTODY CONTINUED TO: 1/7/20 9:30 AM;

Continued;

Continued;

Continued;

Matter Heard;

Journal Entry Details:

Mr. Kocka advised there are still outstanding forensics on the fire arm and he and DA Portz have been discussing negotiations. Upon Court's inquiry, counsel indicated there is no outstanding discovery and trial will take two to three weeks, plus the penalty phase. Upon Court's further inquiry, counsel indicated they have not discussed waiving the penalty phase. CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED. CUSTODY CONTINUED TO: 12/5/19 9:30 AM;

02/06/2020



Calendar Call (9:30 AM) (Judicial Officer: Jones, Tierra)

Trial Date Set;

Journal Entry Details:

Counsel announced ready but indicated Deft. is requesting a continuance. Deft. stated he needed time to look over the discovery. Counsel advised they had provided Deft. with the Grand Jury transcripts. Colloquy regarding case history. State indicated ready, 20-25 witnesses, and up to 8 days for trial. COURT ORDERED, trial date SET for Department 3. CUSTODY 2/10/20 1:30 PM JURY TRIAL CLERK'S NOTE: The Court Clerk confirmed the trial start time with Department 3 and was informed trial would begin at 1:30 p.m., not 1:00 p.m. as the Court ordered. /mt;

02/06/2020



Minute Order (3:30 PM) (Judicial Officer: Herndon, Douglas W.)

Minute Order - No Hearing Held;

Journal Entry Details:

The instant case is a Homicide Team case originally assigned to District Court Department 21. The case was set for trial to begin February 10, 2020, and the parties were prepared for trial. Because DC 21 was unavailable for trial, the matter needed to be reassigned. Administrative Order 17-05 gives this court, as the Homicide Team Case Management Judge, the authority to assign out in the first instance, and then reassign as necessity requires, all homicide cases. Because the case is a Homicide Team case, procedure dictates that efforts first be made to reassign the case within the Homicide Case Team. This court is available to take the trial. Therefore, based on the totality of circumstances present, this Court, as Homicide Team Case Management Judge and pursuant to Administrative Order 17-05, ORDERS the reassignment of the instant case to DC 3. Trial date stands for February 10, 2020 2/10/2020 1:30 P.M. JURY TRIAL;

CASE SUMMARY

CASE NO. C-19-341380-1

02/10/2020



Request (9:30 AM) (Judicial Officer: Herndon, Douglas W.)

DA Request: Entry of Plea

Plea Entered; DA Request: Entry of Plea

Journal Entry Details:

Amended Indictment FILED IN OPEN COURT... Mr. Kocka stated he met with the Defendant yesterday afternoon, and he did reach out to the District Attorney and the Defendants wish to negotiate the case, however after meeting with the Defendant this morning, the Defendant is requested to renew his Motion from Calendar Call to dismiss him as counsel. Mr. Kocka stated the reason the Defendant is requesting to dismiss him as counsel, is the Defendant does not feel that his is prepared for trial, and that the Defendant does not have all of his Discovery. Mr. Kocka stated his concern regarding the case, and the cold hit, and the witness who will testify, adding the Defendant has seen all of the Discovery, he just does not have it in his possession. Mr. Portz objected to the removal of Mr. Kocka, adding this would cause a delay, and these representations were made at Calendar Call, and was denied, pointing out the Discovery has been provided since the indictment, and the Defense has been ready to proceed with trial. Mr. Portz stated they have a pending Guilty Plea Agreement, and if the plea is not accepted the State would request to proceed with trial this afternoon, adding there are about 20-25 witnesses who have traveled from out of state. Mr. Kocka informed the Court he did provide the Transcripts from the Grand Jury, so the Defendant is aware of the testimony. COURT STATED ITS FINDINGS, and ORDERED, Request to Withdraw Counsel DENIED, pointing out the request is tardy, and the Court will not revisit what Judge Adair has previously ordered; the case will proceed to trial this afternoon. Mr. Kocka stated after speaking with the Defendant he wishes to take the deal, and requested time to review the Guilty Plea Agreement with the Defendant. MATTER TRAILED. MATTER RECALLED. All parties present as before. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFENDANT WASHINGTON ARRAIGNED AND PLED GUILTY TO MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing; trial date VACATED. COURT FURTHER ORDERED, case to remain in Department Three. NDC 4/1/2020 9:30 A.M. SENTENCING ;

02/10/2020

CANCELED Jury Trial (1:30 PM) (Judicial Officer: Adair, Valerie)

Vacated - per Judge

03/12/2020



Motion to Dismiss (9:00 AM) (Judicial Officer: Herndon, Douglas W.)

Motion to Dismiss Counsel

Motion Granted; Motion to Dismiss Counsel

Journal Entry Details:

Upon Court's inquiry, Mr. Kocka didn't know the Motion was on calendar today, until he checked Odyssey. Defendant stated he felt like he was mislead and coerced, adding he promised Discovery and he has not received it, pointing out he is fighting for his life. COURT ORDERED, Motion to Dismiss Counsel GRANTED, not to due to a conflict between Mr. Kocka and Defendant, however with the interest that the Defendant is expressing in his request to withdraw plea. COURT ORDERED matter REFERRED to the Office of Appointed Counsel; status check SET. CUSTODY 3/26/2020 9:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL 4/1/2020 9:00 A.M. SENTENCING;

03/26/2020



Status Check: Confirmation of Counsel (3:30 PM) (Judicial Officer: Herndon, Douglas W.)

Set Status Check;

Journal Entry Details:

Defendant not present. Ms. Stewart stated they can confirm as counsel of record, however they do not have the file yet. COURT ORDERED, Defendant's presence WAIVED as they informed the Jail he did not need to be present today; status check SET and the Court will reach out to Mr. Kocka to have the file provided to Ms. Stewart. COURT FURTHER ORDERED, sentencing date VACATED as the Defendant is looking to withdraw his plea. CUSTODY 5/1/2020 1:45 P.M. STATUS CHECK: MOTION TO WITHDRAW PLEA;

04/03/2020

CANCELED Sentencing (1:45 PM) (Judicial Officer: Herndon, Douglas W.)

Vacated - per Judge

07/10/2020



Status Check (1:45 PM) (Judicial Officer: Herndon, Douglas W.)

Status Check: Motion to Withdraw Plea

Matter Heard;

Journal Entry Details:

Mr. Ericsson stated he went through the discovery and met with Defendant; the Defendant still wants to proceed with his Motion to Withdraw Plea. Mr. Ericsson requested 30 days to supplement Defendant's motion. COURT ORDERED, Supplement to Motion DUE 8/7/21; State's Opposition DUE 8/21/20; Reply DUE 8/28/20 and hearing SET thereafter. CUSTODY 9/9/20 9:30 AM MOTION TO WITHDRAW PLEA CLERK'S NOTE: Clerk inadvertently set Motion on the incorrect date. The correct date is 9/9/20 at 9:30 am. Minute Order emailed to Erika Mendoza, erika.mendoza@clarkcountydacountyda.com, and Tom Ericsson, tom@oronozlawyers.com. Additionally, Court Recorder was

CASE SUMMARY

CASE NO. C-19-341380-1

directed to produce transcript dated 2/10/20.;

08/14/2020



Minute Order (1:45 PM) (Judicial Officer: Herndon, Douglas W.)

Minute Order - No Hearing Held;

Journal Entry Details:

COURT STATED the instant matter is pending briefing and decision on a motion to withdraw plea; adding the matter is currently set for hearing on September 9, 2020. COURT ADVISED parties have reached out to the Court with a stipulation and agreement to modify the current briefing schedule, and ORDERED briefing schedule SET as follows: Defendant s Supplemental Motion due on or before August 14, 2020; Sates Response due on or before August 28, 2020; Defendant's reply due on or before September 4, 2020. COURT FURTHER ORDERED hearing date STANDS. custody 9/11/2020 1:45 P.M. MOTION TO WITHDRAW PLEA ;

09/11/2020



Motion to Withdraw Plea (1:45 PM) (Judicial Officer: Jones, Tierra)

Matter Heard;

Journal Entry Details:

APPEARANCES CONTINUED: Deft. present Via Video, from the Jail. Mr. Portz present Via Video, on behalf of the State, Via Video. Mr. Ericsson present Via Video, on behalf of Deft., through Bluejeans technology. Court noted an evidentiary hearing needs to be set. Counsel advised they will need two and a half hours for the hearing. Court further noted the Court will have to contact Judge Bell and get a date, since deft. is in custody and they have to get video time from the Jail. Further, the Court's staff will let counsel know far enough out, for counsel to subpoena their witnesses. CUSTODY ;

11/20/2020

CANCELED Evidentiary Hearing (8:00 AM) (Judicial Officer: Jones, Tierra)

Vacated

12/16/2020



Motion for Own Recognizance Release/Setting Reasonable Bail (8:30 AM) (Judicial Officer: Jones, Tierra)

Defendant's Motion for Release on his Own Recognizance or in the Alternative Motion to Set Reasonable Bail

Denied;

Journal Entry Details:

All parties present via BlueJeans. Arguments by counsel and statement by Defendant. Court advised it will be making a determination if the plea is withdrawn in February. As such, COURT ORDERED, bail STANDS and Defendant's Motion for Release on his Own Recognizance or in the Alternative Motion to Set Reasonable Bail DENIED. CUSTODY CLERK'S NOTE: Minutes prepared upon a review of the JAVS recording. /mk 12/30/20;

02/19/2021



Evidentiary Hearing (11:00 AM) (Judicial Officer: Jones, Tierra)

Matter Heard;

Journal Entry Details:

APPEARANCES CONTINUED: Deft. present via video, from the Jail. Mr. Ericsson present via video, on behalf of deft., through bluejeans technology. HEARING HELD: Mr. Kocka Sworn and testified. Deft. Sworn and testified. Following testimony, COURT ORDERED, matter CONTINUED for Argument and Decision, on the date given. Upon Court's inquiry, regarding the transcript of the Calendar Call in DC21. Mr. Portz advised he may have to order that. Court directed Mr. Portz to prepare an order for transcript of the 2-06-20 Calendar Call, from DC21. Court noted without the transcript the Court will not require counsel to argue today, until counsel has an opportunity to review the transcript. Court to reach out to DC21. CUSTODY 03/05/21 8:30 A.M. ARGUMENT / DECISION;

03/05/2021



Argument (8:30 AM) (Judicial Officer: Jones, Tierra)

03/05/2021, 03/10/2021, 03/17/2021

Argument..Decision

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

APPEARANCES CONTINUED: Parties present via video, through bluejeans technology. Following arguments by counsel, Court noted the a Decision will issue. Further Court noted a status check date will be given in the order. CUSTODY ;

Matter Continued;

Matter Continued;

Denied;




Journal Entry Details:

COURT NOTED this matter would be continued for the Judge to preside over. COURT ORDERED, matter

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-19-341380-1

	<p><i>CONTINUED. CUSTODY CONTINUED TO: 03/17/21 8:30 AM;</i></p> <p>Matter Continued;</p> <p>Matter Continued;</p> <p>Denied;</p> <p>Journal Entry Details:</p> <p><i>Kenneth Portz, Esq. and Thomas Ericcson, Esq. present via Bluejeans video conference. Deft. present in-custody via Bluejeans video conference. Upon Court's inquiry, Mr. Ericcson requested a continuance to review the transcripts with Deft. COURT SO ORDERED. CUSTODY CONTINUED TO 03.10.2021 8:30 AM;</i></p>
03/19/2021	<p> Minute Order (8:00 AM) (Judicial Officer: Jones, Tierra)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>Following review of the papers and pleadings on file herein, hearing evidence at an evidentiary hearing, and considering the arguments of counsel, COURT ORDERED, Defendant s Motion to Withdraw Plea is DENIED. The COURT FINDS that Defendant insisted on proceeding to trial on multiple occasions and defense counsel was prepared to proceed to trial. The COURT FURTHER FINDS that Defendant s request to continue the trial date was denied on February 6, 2020. The COURT FURTHER FINDS that Defendant acknowledged receipt of an offer from the State on January 7, 2020 and accepted said offer on February 10, 2020, more than a month after receiving said offer; after his request to renew his motion to continue the trial was denied. The COURT FURTHER FINDS that Defendant was thoroughly canvassed regarding the plea agreement and never indicated that he did not wish to accept the agreement or that he was under duress during the plea canvass. Defendant argues that he was promised probation by his lawyer, if he accepted the negotiation. This claim is belied by the record, as the Court thoroughly canvassed the Defendant regarding the sentence and notified him that he was not eligible for probation for the offense to which he was pleading guilty. The COURT FINDS that there has been insufficient evidence presented to determine that the Defendant s plea was not knowing, willing, and voluntary. As such, the Defendant s Motion to Withdraw Guilty Plea is DENIED. The State is ordered to prepare an Order consistent with the Court s ruling and submit it to the Court for signature within 10 days of receipt of this Court s order. This case will be set for status check: sentencing date on April 2, 2021 at 8:30 a.m. 04/02/21 8:30 A.M. STATUS CHECK: SENTENCING Clerk's Note: This Minute Order was electronically served by Courtroom Clerk, Teri Berkshire, to all registered parties for Odyssey File & Serve. /tb ;</i></p>
04/02/2021	<p> Sentencing (8:30 AM) (Judicial Officer: Jones, Tierra)</p> <p>04/02/2021, 04/16/2021</p> <p>Continued;</p> <p>Defendant Sentenced;</p> <p>Journal Entry Details:</p> <p><i>APPEARANCES CONTINUED: Deft. present via video, from the Jail. Ms. Fleck submitted a binder from the victim's family to the Court. DEFT. WASHINGTON ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Arguments by counsel. Statements by deft. Victim speakers Sworn statements given. Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3,580.00 Restitution to Victims of Crime, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED to a MINIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MAXIMUM of THREE HUNDRED (300) MONTHS in the Nevada Department of Corrections (NDC); Plus a CONSECUTIVE MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC); for Weapons Enhancement, with 680 DAYS credit for time served. The Court has considered all of the factors under NRS 193.165 in determining the length of additional penalty to be imposed for the weapons enhancement. Binder returned to counsel. BOND if any, EXONERATED. NDC ;</i></p> <p>Continued;</p> <p>Defendant Sentenced;</p> <p>Journal Entry Details:</p> <p><i>APPEARANCES CONTINUED: Parties present via video, through bluejeans technology. Upon Counsel's request, COURT ORDERED, Sentencing SET on the date given. Court noted the Motion to Withdraw Guilty Plea was Denied. CUSTODY 04/16/21 8:30 A.M. SENTENCING;</i></p>
05/05/2022	<p> Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer: Jones, Tierra)</p> <p><i>Motion to Withdraw As Counsel</i></p> <p>Granted;</p> <p>Journal Entry Details:</p> <p><i>APPEARANCES CONTINUED: Mr. Oronoz present via video on behalf of deft. through bluejeans technology. Deft. not present and in the Nevada Department of Corrections. COURT ORDERED, Motion to Withdraw as Counsel, GRANTED. Court directed Mr. Oronoz to forward the file to deft. CUSTODY ;</i></p>

DATE

FINANCIAL INFORMATION

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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-19-341380-1

Defendant Washington, Jarell

Total Charges

178.00

Total Payments and Credits

0.00

Balance Due as of 12/23/2022

178.00

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JARELL WASHINGTON,
aka Jarrell Washington, #2665695,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-22-856529-W

C-19-341380-1

DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: October 17, 2022
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 17TH day of October, 2022, Petitioner not being present, not being represented by counsel, Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through CHRISTOPHER PANDELIS, Chief Deputy District Attorney, and this Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law.

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On June 26, 2019, the State filed an Indictment charging Jarell Washington aka Jarrell
4 Washington (hereinafter “Petitioner”) with Murder With Use of a Deadly Weapon (Category
5 A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and Robbery With Use of a Deadly
6 Weapon (Category B Felony - NRS 200.380, 193.165 - NOC 50138). On July 24, 2019,
7 Petitioner was arraigned, pled not guilty, and waived his right to a speedy trial.

8 At calendar call on February 6, 2020, both the State and defense counsel, Frank Kocka,
9 Esq., announced ready for trial. However, Petitioner requested to continue trial to obtain and
10 review discovery. The District Court denied that request, finding that Mr. Kocka had provided
11 Petitioner with discovery and that Mr. Kocka was prepared to go to trial.

12 On the morning of February 10, 2020, the same day trial was set to begin, the District
13 Court held a hearing at the request of both parties for Petitioner to enter a guilty plea. Instead
14 of pleading guilty, Petitioner renewed his request to continue trial and moved to dismiss Mr.
15 Kocka as counsel. The District Court denied Petitioner’s motion and stated that trial would
16 proceed that afternoon should Petitioner choose not to plead guilty pursuant to the offer the
17 State had made. After speaking with his attorney, Petitioner chose to accept the State’s offer.

18 On February 10, 2020, a Guilty Plea Agreement (hereinafter “GPA”) was filed and
19 Petitioner pled guilty to Second Degree Murder With Use of a Deadly Weapon (Category A
20 Felony- NRS 200.010, 200.030(2), 193.165- NOC 50011) with the State retaining the right to
21 argue at rendition of sentence.

22 On February 18, 2020, Petitioner filed a pro per Motion to Dismiss Counsel. On March
23 12, 2020, the Court held a hearing to address Petitioner’s pro per Motion to Dismiss Counsel.
24 Defense counsel had not been served with the motion and was unaware Petitioner had filed it.
25 During the hearing, Petitioner expressed a desire to withdraw his guilty plea. The Court
26 granted Petitioner’s Motion to Dismiss Counsel but stated that it was granting the Motion
27 strictly due to Petitioner’s desire to withdraw his plea, not due to any of Petitioner’s alleged
28 issues with Mr. Kocka. A status check was set for appointment of counsel.

1 New counsel, James Oronoz, Esq., was appointed and Petitioner subsequently filed a
2 Motion to Withdraw Guilty Plea on August 13, 2020. On August 28, 2020, the State filed an
3 Opposition. On September 2, 2020, Petitioner filed a Reply. On February 19, 2021, the District
4 Court conducted an evidentiary hearing during which both Mr. Kocka and Petitioner testified.
5 On March 17, 2021, the Court heard arguments from both parties, and on March 19, 2021, the
6 District Court denied Petitioner's Motion to Withdraw Guilty Plea. The Order Denying
7 Petitioner's Motion to Withdraw Guilty Plea was filed on March 23, 2021.

8 On April 16, 2021, Petitioner was sentenced to pay \$3,580.00 Restitution to Victims of
9 Crime and to serve a minimum of one hundred twenty (120) months and a maximum of three
10 hundred (300) months in the Nevada Department of Corrections (hereinafter "NDOC") plus a
11 consecutive minimum of seventy-two (72) months and a maximum of one hundred eighty
12 (180) months in the NDOC for the deadly weapon enhancement, with six hundred eighty (680)
13 days credit for time served. The District Court also made a record that it considered all the
14 factors under NRS 193.165 in determining the length of the additional penalty to be imposed
15 for the deadly weapon enhancement.

16 The Judgment of Conviction was filed on May 6, 2021. Petitioner filed a Notice of
17 Appeal on May 7, 2021. On March 15, 2022, the Nevada Court of Appeals affirmed
18 Petitioner's Judgment of Conviction and the District Court's denial of Petitioner's Motion to
19 Withdraw Guilty Plea. Remittitur issued on April 11, 2022.

20 On August 5, 2022, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
21 Conviction) (hereinafter "Petition"), Request for Evidentiary Hearing, Memorandum of Points
22 and Authorities in Support (hereinafter "Memorandum"), and Affidavit of Jarrell Washington.
23 The State's filed its Response on September 20, 2022. On October 17, 2022, the Court denied
24 the Petition and Request for Evidentiary Hearing.

25 **FACTUAL SYNOPSIS**

26 On August 19, 2007, Cory Iascone, a Palo Verde High School student, and Andrew
27 Brock were at Cory Iascone's mother's house when he received a call from Petitioner.
28 Petitioner, a Cimmaron Memorial High School student, had contacted Cory Iascone to

1 purchase marijuana. Cory Iascone regularly sold approximately one (1) quarter pound of
2 marijuana every two (2) weeks. Cory Iascone told Andrew Brock that he needed to leave his
3 mother's house to sell Petitioner an ounce of marijuana. Andrew Brock told Cory Iascone he
4 wanted to be dropped off at his house when they left to sell Petitioner marijuana. Cory Iascone
5 and Andrew Brock agreed that they would first stop at Petitioner's house, as he was located
6 on the way to Andrew Brock's house, and then Andrew Brock would be dropped off.

7 Cory Iascone and Andrew Brock arrived at Petitioner's house at around 12:30 p.m.,
8 and Petitioner was waiting outside. Andrew Brock did not know Petitioner but believed that
9 Cory Iascone was familiar with him. Petitioner came to the car window and told Cory Iascone
10 and Andrew Brock that the marijuana was for his cousin, and his cousin would be available to
11 buy it at 2:00 p.m. Cory Iascone told Petitioner he could ride around with him and Andrew
12 Brock while they were waiting for Petitioner's cousin. Petitioner got in the seat behind Cory
13 Iascone, who was driving his mother's car, and the three (3) teenagers left Petitioner's house.
14 While waiting for Petitioner's cousin, both Cory Iascone and Andrew Brock received calls to
15 sell smaller amounts of marijuana, and the three (3) men drove to meet those buyers. At one
16 point, the three (3) men met a buyer at a Chevron gas station, and Cory Iascone went inside to
17 purchase supplies to smoke a "blunt". While Andrew Brock and Petitioner were waiting in the
18 car, Petitioner asked Andrew Brock questions about he and Cory Iascone selling marijuana,
19 which Andrew Brock found strange. Cory Iascone returned to the car, and the three (3) men
20 drove around listening to music and smoking marijuana on the way to drop Andrew Brock off
21 at his house.

22 Cory Iascone and Petitioner dropped Andrew Brock off at his house near the cross
23 streets of Lake Mead and Rampart at 2:26 p.m. Andrew Brock exited the car, told Cory Iascone
24 that he would call him later, and Cory Iascone drove away with Petitioner. Andrew Brock
25 stated that when Cory Iascone and Petitioner dropped him off, Cory Iascone had between \$250
26 and \$325 and an ounce of marijuana in a black backpack that he always carried. Andrew Brock
27 never knew Cory Iascone to own or possess a firearm.

1 Later that afternoon, Las Vegas Metropolitan Police Department (hereinafter
2 “LVMPD”) crime scene analyst Randal McLaughlin was called to a homicide scene in the
3 area of Point Conception Drive just east of Rampart Blvd, in the Desert Shores community.
4 Police found Cory Iascone dead in the driver’s seat of his mother’s vehicle with a single
5 gunshot wound to the head. The vehicle was in the middle of the westbound travel lane of
6 Point Conception, and the passenger side door was open. There was \$20 in the center console
7 of the vehicle, but otherwise police located no money, marijuana, firearms, or a backpack in
8 the vehicle. In Cory Iascone’s lap was his cell phone and a live .25 caliber bullet. An
9 investigation into Cory Iascone’s murder followed but the case ultimately went cold.

10 On August 18, 2018, Michael Cutright, a cooperating witness, came forward and met
11 with Detectives to provide information on a 2007 murder. Michael Cutright and Petitioner
12 were friends who attended Cimarron Memorial High School together and both played on the
13 basketball team. Michael Cutright told detectives that in the summer of 2007, he got a call
14 from Petitioner who told him that Petitioner was down the street from Michael Cutright’s
15 home in Desert Shores and needed to be picked up. On the phone, Petitioner was breathing
16 hard, panicked, and was on the verge of crying. Petitioner told Michael Cutright that he would
17 give him money and/or marijuana, but he needed Michael Cutright to come and get him.

18 Michael Cutright was driving out of his neighborhood to pick up Petitioner, when he
19 nearly hit Petitioner who was sprinting towards his car. Petitioner got in the car sweating,
20 crying, out of breath, and carrying a black backpack. Petitioner told Michael Cutright thank
21 you, that he had marijuana, and that he loved him. Michael Cutright asked Petitioner what was
22 wrong, and Petitioner said he had just shot “a little white boy” that he was trying to rob.
23 Petitioner told Michael Cutright that he shot the “white boy” in the head while they were in
24 his car because he had reached for a gun when Petitioner tried to rob him. Michael Cutright
25 believed that Petitioner told him he had shot the victim with a .22 caliber gun that Petitioner
26 had thrown in a lake following the murder. Michael Cutright then drove Petitioner back to
27 Petitioner’s house and dropped him off. The two never spoke of the incident again.

1 Following the information provided by Michael Cutright, LVMPD Detective Kenneth
2 Hefner determined that the firearm used in the murder was likely thrown in Lake Lindsey in
3 Desert Shores. Search and Rescue volunteers with LVMPD performed multiple dives in Lake
4 Lindsey before finding a Raven MP-25 semi-automatic pistol in .25 auto caliber. LVMPD
5 firearms detail forensic scientist Glenn Davis was able to return the firearm to a state in which
6 a bullet could be fired from the barrel. Glenn Davis determined through analysis of
7 microscopic markings that the bullet recovered from Cory Iascone's autopsy was fired by the
8 same gun found in Lake Lindsey. Based on this information, Petitioner was indicted by a
9 Grand Jury on June 25, 2019.

10 ANALYSIS

11 In Ground One, Petitioner alleges ineffective assistance of counsel and that his guilty
12 plea was not a knowing, intelligent and voluntary waiver of rights. Petition at 6. He further
13 alleges that he felt confused, pressed for time, under duress, in a panic and pled guilty out of
14 frustration. Petition at 7. In his Memorandum, Petitioner claims that he was not allowed to
15 review all of the discovery in his case. Memorandum at 5-8. He claims that his counsel insisted
16 he plead guilty, only visited with him several times while he was in custody, refused to file
17 any motions on his behalf prior to trial, and was not prepared for trial. Memorandum at 8-9.
18 Petitioner further contends that he felt trapped and desperate and as soon as he got back to his
19 cell on the day he entered the plea, and he began preparing a motion for a new attorney so he
20 could withdraw his plea and go to trial. Memorandum at 9. Finally, Petitioner alleges that his
21 counsel led him to believe that he could receive probation if he pled guilty, and that he was
22 coerced into pleading guilty on the basis of a false promise. Memorandum at 10.

23 **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

24 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
26 defense." The United States Supreme Court has long recognized that "the right to counsel is
27 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
28

1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

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

14 The court begins with the presumption of effectiveness and then must determine
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
16 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 Based on the above law, the role of a court in considering allegations of ineffective
26 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
27 whether, under the particular facts and circumstances of the case, trial counsel failed to render
28 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

(1978). This analysis does not mean that the court should “second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success.” Id. To be effective, the constitution “does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

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

The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
4 petition to be dismissed.” (emphasis added).

5 When a conviction is the result of a guilty plea, a defendant must show that there is a
6 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
7 would have *insisted* on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
8 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
9 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

10 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
11 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
12 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is
13 entered into on the advice of counsel, and the burden is on a defendant to show that the plea
14 was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v.
15 State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397,
16 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly advise a defendant
17 regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant’s.
18 Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

19 **A. Petitioner Received The Discovery To Which He Was Entitled**

20 In his Memorandum, Petitioner repeatedly claims that he was not allowed to review all
21 of the discovery in his case. Memorandum at 5-8.

22 Petitioner alleged at his entry of plea that he was not prepared for trial because he did
23 not have a hard copy of all discovery. Petitioner was in receipt of all discovery in the State’s
24 possession at the time of Indictment. Supplemental forensic testing results were provided to
25 defense at the time of their distribution by the various forensic laboratories of the LVMPD.
26 On December 5, 2019, Petitioner acknowledged receipt of the final forensic results in the case.

27 To the extent Petitioner suggests that he should be entitled to withdraw the plea because
28 he was not prepared for trial due to not being given a hard copy of all discovery, case law

1 clearly belies the argument. Courts routinely find defendants do not have a right to their own
2 personal copy of discovery materials. People v. Krueger, 296 P.3d 294 (Colo. 2012); U.S. v.
3 Shrake, 515 F.3d 743 (7th Cir. 2008); State v. Marks, 297 Kan. 131, 289 P.3d 1102 (2013);
4 State v. Thompson, 141 Ohio St.3d 254, 23 N.E.3d 1096 (Ohio 2014). The United States
5 Supreme Court has specifically found that defendants are not constitutionally entitled to
6 discovery. Weatherford v. Bursey, 429 U.S. 545, 97 S.Ct. 837 (1977); Gray v. Netherland,
7 518 U.S. 152, 116 U.S. 152 (1996). Some jurisdictions even affirmatively preclude
8 defendants' possession of materials related to their cases pre-trial. See People v. Savage, 361
9 Ill. App. 3d 750, 757 (2005).

10 In this case, Mr. Kocka testified at the evidentiary hearing he had strategic reasons for
11 not providing a hard copy of certain portions of discovery to Petitioner for him to take back to
12 the Clark County Detention Center (hereinafter "CCDC"):

13 MR. KOCKA: Number one, as addressed both at the calendar call and also the
14 morning of trial, I made a very clear record that it is my policy, especially in
15 cases like this where the entire case revolves around a witness with, shall we
16 say, ulterior motives, a snitch, giving information as to the whereabouts of the
murder weapon and my client's involvement, I did not want him having that in
jail where others could have access to it. And as we've often seen, corroborate
the statement for their own benefit.

17 Number two, Mr. Washington required glasses, and we had a great deal of
18 difficulty getting glasses to him. I, on a number of occasions, dealt with Post-10
19 with the nurses trying to get him his prescription glasses because he could not
20 read without his glasses. And it was my fear that him having someone read the
21 discovery to him would not only accelerate the possibility of someone finding
the discovery but learning about the discovery and be -- the possibility of one of
the inmates becoming opportunistic and corroborating the State's case against
Mr. Washington. So, I did not give him the specific part of discovery which
22 entailed the actual details regarding the statements that were given by the snitch
in this case.

23 Recorder's Transcript of Proceedings: Evidentiary Hearing dated February 19, 2021
24 (hereinafter "RT Hearing") at 10.

25 Mr. Kocka did not want to jeopardize Petitioner's case by allowing a fellow inmate to
26 obtain information and use that information to their advantage by corroborating information
27 given by the State's criminal informant. Mr. Kocka had explained this reasoning multiple
28 times previously, at the calendar call and at the entry of plea on the day of trial. At Petitioner's

1 entry of plea, the District Court agreed with Mr. Kocka's rationale while noting the fact that
2 CCDC rules would preclude Petitioner from having certain items of discovery:

3 THE COURT: So here's the thing, Mr. Washington. There are, in my mind at
4 least, it should be very rare that an attorney gives a client in a detention center
5 all of their discovery, because my record of trials is replete with informants
6 coming in and testifying. And a lot of times those folks end up having their
7 discovery in the detention center and you question whether or not these guys are
8 getting a hold of your discovery or figuring things out and becoming snitches or
whether or not they truly had conversations with the defendant they are
testifying against. **And there's certain things that the jail won't let you have
anyway. So I think Mr. Kocka is very appropriate in telling you that there
are very good reasons not to give you that discovery, so that doesn't
constitute any type of grounds to continue the trial.**

9 Recorder's Transcript of Hearing Re: DA Request: Entry Of Plea dated February 10, 2020
10 (hereinafter "RT Plea") at 5.

11 Finally, Mr. Kocka explained at the evidentiary hearing the extent to which he went to
12 ensure that Petitioner was fully apprised of the discovery, despite not giving him a hard copy
13 of some specific information:

14 MR. PORTZ: And the week following the calendar call and the buildup to trial,
15 did you continue to meet with your client?

16 MR. KOCKA: I did. And as a matter of fact, I met with him the day before trial
17 was to start, which was on Sunday, brought my entire trial notebook with me
18 again, we went through everything, and at that point, we had discussions with
19 regard to the reasons he felt he was not ready to go to trial. And he said he did
20 not have anything, didn't know anything. And at that point, I sat and I broke
down everything with him with regard to the specific phone calls that were made
on the date of the murder. There's long series of phone calls, we went through
those. We went through also that very concerning bit of evidence that I alluded
to earlier with regard to one of his family members.

21 We went through the forensics. We went through the testimony of the, lack of a
22 better word again, snitch witness. And also, **Mr. Washington had the benefit
since very early on, he had the entire Grand Jury transcript. I gave him the
entire hard copy, so he would know at least the basis of the testimony, not
only of the police officers, but also the snitch witness.** And so, what he was
23 facing, should that witness get on the stand, we went over that yet again. And it
24 was actually during that meeting on Sunday at the jail, prior to starting trial on
Monday, that he told me at that point he wanted to take the deal.

25 RT Hearing at 20-21.

26 Petitioner had the information he needed to be prepared for trial. Mr. Kocka broke down
27 the entire case for Petitioner. Petitioner had a hard copy of the Grand Jury testimony and police
28 reports that would provide the basis for witness testimony. Accordingly, Petitioner's allegation

1 that he did not have necessary discovery is belied by the record and a lack of hard copies of
2 some specific discovery is an insufficient reason to continue trial or withdraw his guilty plea.
3 Therefore, this claim is denied.

4 **B. Petitioner Cannot Demonstrate That Counsel Was Ineffective For Failing To**
5 **Conduct An Independent Investigation**

6 Petitioner claims that his counsel failed to perform an independent investigation of the
7 case in order for him to make an informed, voluntary, knowing and intelligent waiver of rights
8 to proceed to trial. Petition at 7. He also claims that his counsel insisted he plead guilty, only
9 visited with him several times while he was in custody, refused to file any motions on his
10 behalf prior to trial, and was not prepared for trial. Memorandum at 8-9.

11 A defendant who contends his attorney was ineffective because he did not adequately
12 investigate must show how a better investigation would have rendered a more favorable
13 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A defendant
14 who contends his attorney was ineffective because he did not adequately investigate must
15 show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S.
16 at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation
17 would have revealed and how it would have altered the outcome of the trial. See State v. Love,
18 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

19 “[D]efense counsel has a duty ‘to make reasonable investigations or to make a
20 reasonable decision that makes particular investigations unnecessary.’” State v. Love, 109 Nev.
21 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066).
22 A decision “not to investigate must be directly assessed for reasonableness in all the
23 circumstances, applying a heavy measure of deference to counsel’s judgment.”” Id. Moreover,
24 “[a] decision not to call a witness will not generally constitute ineffective assistance of
25 counsel” Id. at 1145, 865 P.2d at 328.

26 According to the above legal authority, a defendant must allege with specificity what
27 the investigation would have revealed and how it would have altered the outcome of the case.
28 However, Petitioner provides no specific evidence to this Court that counsel did not conduct

1 an adequate investigation. Petitioner does not provide any specific factual allegations to
2 support his claim other than his own self-serving conclusory statements. Therefore,
3 Petitioner's claim is bare, naked and insufficiently pled. Hargrove, 100 Nev. at 502, 686 P.2d
4 at 225, Maresca, 103 Nev. at 673, 748 P.2d at 6.

5 Petitioner also claims that his counsel only visited with him several times while he was
6 in custody. Memorandum at 8. A defendant is not entitled to a particular "relationship" with
7 his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no
8 requirement for any specific amount of communication as long as counsel is reasonably
9 effective in his or her representation. See Id. Again, this assertion is bare, naked and
10 unsupported by specific facts, but rather a conclusory statement. Petitioner provides no
11 specific facts to support his assertion and fails to show how it affected the outcome of his case.
12 Hargrove, 100 Nev. at 502, 686 P.2d at 225. There is no requirement for any specific amount
13 of communication as long as counsel is reasonably effective in his or her representation.
14 Petitioner actually admits that his counsel visited him several times while he was in custody.
15 This claim is further belied by Mr. Kocka's evidentiary hearing testimony in which he details
16 a number of jail visits to Petitioner during the pendency of the case.

17 With regard to Petitioner's claim that his counsel insisted he plead guilty, it was
18 Petitioner's decision to plead guilty in this case, not counsel's. Mr. Kocka's extensive
19 testimony at the prior evidentiary hearing made that abundantly clear. Ultimately, while it is
20 counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether
21 or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163
22 (2002). It was Petitioner's decision and his decision alone whether or not to plead guilty. He
23 could have challenged the State's evidence by going forward to trial, but he did not.

24 Concerning Petitioner's contention that counsel did not but should have filed various
25 pretrial motions, counsel cannot be ineffective for failing to make futile objections or
26 arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel
27 has the "immediate and ultimate responsibility of deciding if and when to object, which
28 witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38

1 P.3d 163, 167 (2002). This includes decisions on which, if any, motions need to be filed. There
2 is no mandatory requirement that counsel must file a certain number of pretrial motions.

3 Finally, Petitioner's allegation that his counsel was not prepared for trial is belied by
4 the evidentiary hearing transcript. Mr. Kocka testified numerous times during the hearing that
5 he was prepared to go to trial. See RT Hearing at 16, 18 and 23. Mr. Kocka announced ready
6 for trial on both January 7, 2020, and January 16, 2020. Mr. Kocka made the same
7 representations at Petitioner's entry of plea on the morning trial was to begin when Petitioner
8 requested a continuance:

9 MR. KOCKA: In my opinion, I -- I've done this for about 34 years now, Judge.
10 **We have adequately prepared for the case** and I have told my client absolutely
every element that would be relative to his defense in the State's case.

11 RT Plea at 4.

12 Mr. Kocka further explained his level of preparedness at the evidentiary hearing:

13 Q: And is it also correct that on January 7th, 2020, again per the Court minutes,
14 you announced that you were prepared to go to trial, the trial that would be set
on February 10th?

15 A: That's correct.

16 Q: All right. And in the weeks leading up to trial, was it your understanding that
17 both parties had come to the conclusion that this would likely go to trial in early
February, so we would begin preparation in earnest for trial itself?

18 A: Correct.

19 Q: Okay. So, then the weeks leading up to trial, did you have conversations with
20 me and my co-Counsel about various pretrial issues, witness coordination,
etcetera?

21 A: I did, yes.

22 Q: And did you also hold meetings with your client during the course of that
23 time?

24 A: With my client and also my client's family. There was one particular piece
25 of evidence after the discovery [indiscernible] and the forensics that caused me
26 great concern, I actually met with members of his family because that specific
27 part of the evidence had to do with a family member of Mr. Washington's. And
28 based upon the discovery that was given to me by the State and statements by
that family member caused me great concern regarding the weapon. And once
the weapon was forensically able to be tied to the bullet that was found in the
Decedent, that caused me great concern. And during that two-week period, I met
with Mr. Jarrel Washington, his brother, and various members of the family
regarding that specific piece of evidence.

1 Q: Okay. And then at the calendar call in this case, did you in fact announce
ready?

2 A: I did.

3 **Q: Okay. Was there any legal reason to continue the case or were you fully**
4 **prepared to go forward?**

5 **A: I was fully prepared.**

6 RT Hearing at 16-18.

7 The options available to Petitioner were clear. He could accept the State's offer and
8 plead guilty, or he could go to trial with an experienced criminal defense attorney who was
9 fully prepared for trial. When faced with these two (2) reasonable options, the record reflects
10 that Petitioner freely, voluntarily, and knowingly chose to plead guilty. Controlling case law
11 is clear that Petitioner cannot assert that the imminence of trial alone coerced him into
12 accepting a plea, especially when he had a viable option to proceed to trial with a prepared
13 attorney. Accordingly, any argument that Petitioner was confused, pressed for time, under
14 duress, in a panic, and pled guilty out of frustration is without merit and is denied.

15 **II. PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS PLEA**

16 **A. Petitioner's Challenge To The Validity Of His Plea Is Barred By The Doctrines Of**
17 **Res Judicata And Law Of The Case**

18 The doctrine of res judicata precludes a party from re-litigating an issue which has been
19 finally determined by a court of competent jurisdiction. Exec. Mgmt. v. Ticor Titles Ins. Co.,
20 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (citing Univ. of Nev. v. Tarkanian, 110 Nev.
21 581, 598, 879 P.2d 1180, 1191 (1994)); see also Sealfon v. United States, 332 U.S. 575, 578,
22 68 S. Ct. 237, 239 (1948) (recognizing the doctrine's availability in criminal proceedings).
23 "The doctrine is intended to prevent multiple litigation causing vexation and expense to the
24 parties and wasted judicial resources." Id.

25 On August 13, 2020, Petitioner filed a prior Motion to Withdraw Guilty Plea. On March
26 19, 2021, the Court denied the Motion after conducting an evidentiary hearing on February
27 19, 2021, at which Petitioner and Mr. Kocka testified to the same issues Petitioner is again
28 raising in the instant Petition. Petitioner now attempts to relitigate the same issues already

1 litigated and decided prior to sentencing. Therefore, the Petition is barred by the doctrine of
2 res judicata.

3 Moreover, “the law of a first appeal is law of the case on all subsequent appeals in
4 which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798
5 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of
6 the law of the case cannot be avoided by a more detailed and precisely focused argument
7 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at
8 799. Under the law of the case doctrine, issues previously decided on direct appeal may not
9 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532
10 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).
11 Furthermore, this Court cannot overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6.
12 See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
13 in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

14 On March 15, 2022, the Nevada Court of Appeals affirmed Petitioner’s Judgment of
15 Conviction and the District Court’s denial of Petitioner’s pre-sentence Motion to Withdraw
16 Guilty Plea. The same issues being raised in the instant Petition were again raised on appeal
17 and have already been rejected by the Nevada Court of Appeals. Therefore, the Petition is
18 also barred by the law of the case doctrine.

19 **B. Standard of Review After Sentencing**

20 This is the applicable standard of review at this stage of the proceedings. Pursuant to
21 NRS 176.165, after sentencing, a defendant’s guilty plea can only be withdrawn to correct
22 “manifest injustice.” See also Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The
23 law in Nevada establishes that a plea of guilty is presumptively valid, and the burden is on a
24 defendant to show that the plea was not voluntarily entered. Bryant v. State, 102 Nev. 268,
25 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295,
26 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily.
27 Baal, 106 Nev. at 72, 787 P.2d at 394.

28 //

1 To determine whether a guilty plea was voluntarily entered, the Court will review the
2 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
3 P.2d at 367. A proper plea canvass should reflect that:

4 [T]he defendant knowingly waived his privilege against self-
5 incrimination, the right to trial by jury, and the right to confront
6 his accusers; (2) the plea was voluntary, was not coerced, and was
7 not the result of a promise of leniency; (3) the defendant
understood the consequences of his plea and the range of
punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

8 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
9 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
10 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
11 107, 107 (1975).

12 This standard requires the court accepting the plea to personally address the defendant
13 at the time he enters his plea in order to determine whether he understands the nature of the
14 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
15 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
16 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
17 formal setting, such as that occurring between an official sitting in judgment of an accused at
18 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
19 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
20 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
21 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
22 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
23 1463, 1470 (1970).

24 **C. Standard of Review Before Sentencing**

25 Petitioner also cites to Stevenson v. State, 131 Nev. 598, 354 P.3d 1277(2015), which
26 applies to motions to withdraw guilty pleas before sentencing. When a defendant moves to
27 withdraw a guilty plea before sentencing, the district court must examine the totality of the
28 circumstances to determine whether the plea was valid and consider whether the defendant

1 has any fair and just reason to withdraw their plea. NRS 176.165; State v. Second Judicial
2 Dist. Court (Bernardelli), 85 Nev. 381, 385, 455 P.2d 923, 926 (1969); Bryant, 102 Nev. at
3 271, 721 P.2d at 367; Stevenson, 131 Nev. at 599-600, 354 P.3d at 1278. A plea of guilty is
4 presumptively valid, particularly where it is entered into on the advice of counsel. Jezierski v.
5 State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The defendant has the burden of proving
6 that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272,
7 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980); Housewright v.
8 Powell, 101 Nev. 147, 710 P.2d 73 (1985).

9 In determining whether a guilty plea is knowingly and voluntarily entered, the court
10 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102
11 Nev. at 271, 721 P.2d at 367. “A district court may not simply review the plea canvass in a
12 vacuum.” Mitchel, 109 Nev. at 141, 848 P.2d at 1062. While a more lenient standard applies
13 pre-sentence motions to withdraw a guilty plea, Molina v. State, 120 Nev. 185, 191, 87 P.3d
14 533, 537 (2004); a defendant has no right to withdraw his plea merely because the State failed
15 to establish actual prejudice. See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521
16 (1994).

17 The proper standard set forth in Bryant requires the trial court to personally address a
18 defendant at the time he enters his plea in order to determine whether he understands the nature
19 of the charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev. 1097, 1105, 13
20 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas “do not require the
21 articulation of talismanic phrases.” Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404
22 (1973). It requires only “that the record affirmatively disclose that a defendant who pleaded
23 guilty entered his plea understandingly and voluntarily.” Brady v. United States, 397 U.S. 742,
24 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).
25 Specifically, the record must affirmatively show the following: 1) the defendant knowingly
26 waived his privilege against self-incrimination, the right to trial by jury, and the right to
27 confront his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a
28 promise of leniency; 3) the defendant understood the consequences of his plea and the range

1 of punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of
2 the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970). Importantly, “the
3 record must affirmatively disclose that a defendant is entering his plea understandingly and
4 voluntarily.” Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970).
5 Consequently, in applying the “totality of circumstances” test, the most significant factors for
6 review include the plea canvass and the written guilty plea agreement. See Hudson v. Warden,
7 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

8 When the Nevada Supreme Court decided Stevenson v. State, it explained that district
9 courts must consider the totality of the circumstances to determine whether permitting
10 withdrawal of a guilty plea before sentencing would be fair and just. Stevenson v. State, 131
11 Nev. 598, 354 P.3d 1277(2015). In doing so, the Court explained that Crawford v. State’s, 117
12 Nev. 718, 30 P.3d 1123 (2001), holding is more narrow than contemplated by NRS 176.165
13 and disavowed an analysis focused solely upon whether the plea was knowing, voluntary, and
14 intelligent in determining the validity of the plea. However, the Court in Stevenson also held
15 that the appellant had failed to present a fair and just reason favoring withdrawal of his plea,
16 and therefore affirmed his judgment of conviction. 131 Nev at 603, 354 P.3d at 1281.

17 In Stevenson, the Nevada Supreme Court found that none of the reasons presented
18 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members
19 of his defense team lied about the existence of the video in order to induce him to plead guilty.
20 Id. The Court found similarly unconvincing Stevenson’s contention that he was coerced into
21 pleading guilty based on the compounded pressures of the district court’s evidentiary ruling,
22 standby counsel’s pressure to negotiate a plea, and time constraints. Id. As the Court noted,
23 undue coercion occurs when a defendant is induced by promises or threats which deprive the
24 plea of the nature of a voluntary act. Id. (quoting Doe v. Woodford, 508 F. 3d 563, 570 (9th
25 Cir. 2007)). Time constraints and pressure exist in every criminal case, are hallmarks of
26 pretrial discussions, and do not individually or in the aggregate make a plea involuntary. Id. at
27 605, 354 P.3d at 1281 (quoting Miles v. Dorsey, 61 F.3d 1459, 1470 (10th Cir. 1995)). Instead,
28 the key inquiry for determining the validity of a plea is “whether the plea itself was a

1 voluntary and intelligent choice among the alternative courses of action open to the
2 defendant.” Id. at 604-05, 354 P.3d at 1281 (quoting Doe, 508 F. 3d at 570).

3 The Nevada Supreme Court also rejected Stevenson’s implied contention that
4 withdrawal was warranted because he made an impulsive decision to plead guilty without
5 knowing definitively whether the video could be viewed. Id. at 604-05, 354 P.3d at 1281. The
6 Court made clear that one of the goals of the fair and just analysis is to allow a hastily entered
7 plea made with unsure heart and confused mind to be undone, not to allow a defendant to make
8 a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he
9 believes that he made a bad choice in pleading guilty. Id. at 604-05, 354 P.3d at 1281-82
10 (quoting United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991)). After considering
11 the totality of the circumstances, the Court found no difficulty in concluding that Stevenson
12 failed to present a sufficient reason to permit withdrawal of his plea. Id. at 605, 354 P.3d at
13 1282. Permitting him to withdraw his plea under the circumstances would allow the solemn
14 entry of a guilty plea to become a mere gesture, a temporary and meaningless formality
15 reversible at the defendant’s whim, which the Court cannot allow. Id. (quoting United States
16 v. Barker, 514 F. 2d 208, 222 (D.C. Cir. 1975)).

17 **D. Petitioner Knowingly, Intelligently And Voluntarily Entered His Guilty Plea**

18 Petitioner alleges that his guilty plea was not a knowing, intelligent and voluntary
19 waiver of rights. Petition at 6. He claims that he felt confused, pressed for time, under duress,
20 in a panic and pled guilty out of frustration. Petition at 7. Petitioner further contends that he
21 felt trapped and desperate and as soon as he got back to his cell on the day he entered the plea,
22 he began preparing a motion for a new attorney so he could withdraw his plea and go to trial.
23 Memorandum at 9. Finally, Petitioner alleges that his counsel led him to believe that he could
24 receive probation if he pled guilty, and that he was coerced into pleading guilty on the basis
25 of a false promise. Memorandum at 10. Petitioner’s allegations are belied by the record.

26 Petitioner knowingly, intelligently and voluntarily signed his GPA on February 10,
27 2020, and in doing so, he affirmed that he understood the nature and consequences of pleading

28 //

1 guilty. First, Petitioner acknowledged that he was waiving his constitutional rights related to
2 his right to proceed to a jury trial:

3 WAIVER OF RIGHTS

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

6 1. The constitutional privilege against self-incrimination, including the right
7 to refuse to testify at trial, in which event the prosecution would not be allowed
8 to comment to the jury about my refusal to testify.

9 2. The constitutional right to a speedy and public trial by an impartial jury,
10 free of excessive pretrial publicity prejudicial to the defense, at which trial I
11 would be entitled to the assistance of an attorney, either appointed or retained.
12 At trial the State would bear the burden of proving beyond a reasonable doubt
13 each element of the offense(s) charged.

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

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

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

18 6. The right to appeal the conviction with the assistance of an attorney,
19 either appointed or retained, unless specifically reserved in writing and agreed
20 upon as provided in NRS 174.035(3). I understand this means I am
21 unconditionally waiving my right to a direct appeal of this conviction, including
22 any challenge based upon reasonable constitutional, jurisdictional or other
23 grounds that challenge the legality of the proceedings as stated in NRS
24 177.015(4). However, I remain free to challenge my conviction through other
25 post-conviction remedies including a habeas corpus petition pursuant to NRS
26 Chapter 34.

27 GPA at 4.

28 The section of the Guilty Plea Agreement entitled "Voluntariness of Plea" further
delineates the following statements that Petitioner affirmed as true and accurate:

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

13 GPA at 4-5 (emphasis added).

14 Petitioner's claim that defense counsel led him to believe that he could receive
15 probation if he pled guilty, and he was coerced into pleading guilty based on a false promise
16 (Memorandum at 10) is belied by the record. In his GPA, Petitioner attested that he was freely
17 and voluntarily pleading guilty and that he was not being coerced as a result of promises of
18 leniency, except those contained in the GPA. The GPA explicitly stated that he would not be
19 eligible for probation: "I understand that I am not eligible for probation for the offense to
20 which I am pleading." GPA at 2.

21 After the signed GPA was filed in open court, the District Court orally canvassed
22 Petitioner regarding the terms and consequences of his plea. Again, Petitioner affirmed that
23 his plea of guilty was free and voluntary and that he was not relying on anything other than
24 the terms of the GPA in making his decision:

25 THE COURT: Before I accept your plea I need to make sure it's freely and
26 voluntarily made, is it?

27 THE DEFENDANT: Yes.

28 THE COURT: Anybody force you or threaten you in any way to get you to
plead guilty today?

THE DEFENDANT: No, sir.

THE COURT: Anybody make any promises to you other than the plea
negotiations to get you to plead guilty today?

THE DEFENDANT: No, sir.

1 RT Plea at 9.

2 After clarifying that his plea was being entered freely and voluntarily, the District Court
3 reiterated to Petitioner that he was not eligible for probation:

4 **THE COURT: All right. You understand that you're not eligible for**
5 **probation, so that means you have to serve a prison sentence on the case.**

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

7 RT Plea at 10.

8 The District Court then gave Petitioner an opportunity to have any terms or
9 consequences of pleading guilty that were unclear explained to him:

10 THE COURT: All right. Anything you don't understand about the plea
11 agreement or have any questions about?

11 THE DEFENDANT: No, sir.

12 RT Plea at 10.

13 Mr. Kocka, as an officer of the Court, testified at the February 19, 2021 evidentiary
14 hearing that he fully discussed the plea negotiations with Petitioner:

15 MR. PORTZ: And you discussed -- well, I guess, just go through what you
16 would -- what you would have discussed with Mr. Washington in January when
you conveyed what the State's offer was with him.

17 MR. KOCKA: What I would have discussed with him is what the charge
18 entailed, what the State would have to prove in order to substantiate the second-
19 degree murder, because of course, if it did go through a guilty plea, he would
20 have to acknowledge the facts that support the charge. So, we went through the
21 elements of the charge of second degree. We talked about that with regards to
22 what the State would have to prove if we went to trial with the charge that he
23 was currently facing. The benefit of accepting the deal in terms of what the
sentence here would include versus what he was currently charged with. And
also, based upon the facts in the case whether or not it was a strategically wise
decision to accept the State's offer based upon what the State had evidence-wise
and what they could prove, and the potential likelihood of the State being
successful in coming back with a conviction on a higher charge.

24 RT Hearing at 13.

25 Petitioner clearly understood the terms of the GPA as they were explained to him by
26 the District Court, Mr. Kocka, and the written GPA. Petitioner affirmed both orally and in
27 writing that he was entering his guilty plea freely, intelligently, knowingly and voluntarily.

28 //

1 Accordingly, any claim that Petitioner was confused, pressed for time, under duress, in a panic
2 and pled guilty out of frustration is belied by the record and is denied.

3 **E. Petitioner Had Sufficient Time To Review And Consider The State's Offer Before**
4 **Accepting The Offer**

5 Petitioner's allegation that he was pressed for time and in a panic misconstrues the
6 record entirely. Petitioner had over a month to consider the State's offer before he ultimately
7 accepted it on February 10, 2020. Mr. Kocka testified at the evidentiary hearing that Petitioner
8 received the State's offer on January 3, 2020:

9 Q: Okay. And in fact, on January 7th, 2020, more than a month before trial, you
10 had put on the record, and it's in the minutes, that you had received an offer from
the State on February 3rd of 2020; does that sound right?

11 A: That sounds -- actually, I believe that we received the offer January 3rd, not
12 February 3rd, 2020.

13 Q: You're right, I misspoke, I apologize. January 3rd, 2020 --

14 A: Uh-huh.

15 Q: -- is what you put on the record. So, that's --

16 A: Right, and --

17 Q: -- five weeks prior to trial, not the morning of trial, in which you received
that offer?

18 **A: That is correct. And once I received the offer on January 3rd, I relayed**
19 **it to my client, which I believe he at some point -- I believe it was around**
20 **January 7th acknowledged in court that he did receive the offer. So, there**
21 **was a period of about four or five days that -- since the time that it was**
relayed to me that I did discuss it with him, and he acknowledged receiving
the offer.

22 Q: Okay. And that was the same offer that he ultimately entered a plea deal to
on February 10th?

23 A: Correct.

24 Q: Okay. So, he had had that particular offer for at least four weeks, give or take,
25 to mull over?

26 A: Correct.

27 RT Hearing at 11-12.

28 //

1 After Mr. Kocka relayed the State's offer to Petitioner in early January, Petitioner
2 rejected it and elected to proceed to trial. The State therefore did not prepare a written GPA,
3 as there would be no reason to prepare a GPA for a rejected offer. See RT Hearing at 14.
4 However, on February 9, 2020, the day before trial was set to begin, Mr. Kocka contacted the
5 State and indicated that Petitioner now wished to accept the offer extended in early January:

6 MR. KOCKA: ... and it was actually during that meeting on Sunday at the jail,
7 prior to starting trial on Monday, that he told me at that point he wanted to take
8 the deal.

9 MR. PORTZ: And that would be the deal that the State had offered back in early
10 January?

11 A: That's correct. And after going through everything with him and confirming
12 he wanted to take the deal, I actually left the jail. And I'm sure you recall this
13 on Sunday afternoon, I got ahold of you on your cellphone and quite literally
14 had to -- you were very reluctant to re-offer the deal, and I had to do quite a bit
15 of begging to actually get the deal back for him. And that's why we did not have
16 -- or I did not have the benefit of the guilty plea agreement prior to Monday
17 morning at trial because it was not in existence until your staff had the
18 opportunity to put it together for me Monday morning.

19 RT Hearing at 21-22.

20 After Petitioner indicated through Mr. Kocka that he wanted to accept the negotiations,
21 the State then prepared the written GPA and an Amended Indictment to reflect the exact same
22 offer that was extended on January 3, 2020. The District Court made accommodations to take
23 the plea the next morning before trial was set to begin.

24 On February 10, 2020, rather than entering his plea as planned, Petitioner moved to
25 continue trial, which the District Court denied finding that parties were ready for trial. The
26 Court then gave Mr. Kocka time to discuss the written GPA with Petitioner. At the evidentiary
27 hearing, Mr. Kocka explained in detail the discussion he had with Petitioner regarding taking
28 the guilty plea or going to trial:

STATE: Okay. After he denied that request, did the Court explain to Mr.
Washington, you can either go to trial or if the State keeps the offer open, you
can take it, but one way or the other, you wanted a trial, you're getting a trial. If
you want the deal, we can take it; we can deal?

MR KOCKA: Correct.

Q: And after that, did you meet again with Mr. Washington in private?

A: I did.

1 Q: And would you discuss what happened during that meeting?

2 A: During that meeting, I said we're prepared to go to trial. I actually had the
3 trial notebook there with me because if we had not dealt it, I anticipated in a
4 couple hours we were about ready to start. And I believe we actually had an
5 opportunity to meet back in the holding cell. He indicated to me that he did want
6 to take the guilty plea. At that point, I did have the benefit of having the guilty
7 plea, and we went through it line by line. He signed it, and after that Judge
8 Herndon canvassed him.

6 Q: When you went through it line by line, did he have any questions for you that
7 you were unable to answer?

8 A: No.

9 Q: Did he appear to understand everything contained in the guilty plea
10 agreement as you described it to him?

10 A: Yes.

11 RT Hearing at 22-23.

12 After taking time to go over the written GPA and speak with Mr. Kocka, and after
13 having over a month to consider the terms of the plea, Petitioner chose to accept the
14 negotiations. The case was recalled and the District Court canvassed Petitioner as to whether
15 he had time to review the State's offer and whether he wanted to accept it:

16 THE COURT: We will be on the record. 341380. Mr. Washington is here with
17 his attorney, Mr. Kocka. My understanding, Mr. Washington, is that you decided
18 to go ahead and accept the negotiations that had been offered by the State.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. We do have an Amended Indictment that was filed this
20 morning charging one count of second-degree murder with use of a deadly
21 weapon. My understanding, sir, is that you've agreed to plead guilty to that
22 charge, correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That as part of the negotiation, the State retains the full right to
24 argue at the time of sentencing. You and your attorney will also have the right
25 to argue at the time of sentencing as to what the sentence should be. You
26 understand that?

25 THE DEFENDANT: Yes, sir.

26

27 THE COURT: You've received a copy of the plea agreement and attached to
28 that is an Amended Indictment. That's what lists the charge that you're pleading
to; is that correct?

THE DEFENDANT: Yes, sir.

1 **THE COURT: Have you had a chance to discuss that your charge and your**
2 **case with your attorney, Mr. Kocka?**

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

4 THE COURT: And when you were discussing the charges and your case, did
5 you all have discussions about the four different levels of a homicide charge,
6 meaning first degree murder, second degree murder, voluntary manslaughter and
7 involuntary manslaughter?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And you're comfortable that you understand all of
10 those?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you comfortable that you understand, with this particular
13 charge that you're going to be pleading guilty to, what this charge is saying that
14 you did wrong.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How do you plead to the one count of second-degree murder with
17 use of a deadly weapon?

18 THE DEFENDANT: Guilty.

19 ...

20 THE COURT: I have before me a written plea agreement which looks like you
21 signed it on page 5. Did you sign that sir?

22 THE DEFENDANT: Yes, sir.

23 **THE COURT: Did you have a chance to read the document before you**
24 **signed it?**

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

26 **THE COURT: And was your attorney available to answer any questions**
27 **you had before you signed it?**

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

THE COURT: Do you believe you understood everything in it?

THE DEFENDANT: Yes, sir.

RT Plea at 7-9.

The Court then gave Petitioner the opportunity to ask his attorney or the Court any other
questions he had regarding the agreement:

THE COURT: ... Okay. You have any questions for me or your attorney before
I accept your plea?

1 THE DEFENDANT: No, sir.

2 **THE COURT: All right. Anything you don't understand about the plea**
3 **agreement or have any questions about?**

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

5 RT Plea at 10-11.

6 Petitioner affirmed during his plea canvass that he understood the charges to which he
7 was pleading guilty, the sentencing range for those charges, and that he had the opportunity to
8 read, discuss and understand his GPA prior to signing it and pleading guilty. Not only had
9 Petitioner discussed the State's offer with Mr. Kocka over the month he had to consider it, but
10 the Court also gave Petitioner time directly before entering his plea to discuss it with Mr.
11 Kocka and gave him the opportunity to ask the Court any questions about his plea. To suggest
12 that Petitioner was pressed for time and in a panic is incorrect. More importantly, even if it
13 were true, it is not grounds to withdraw a plea as Petitioner still had sufficient time to discuss
14 the plea with Mr. Kocka. Thus, any argument that Petitioner did not have adequate time to
15 review the State's offer prior to pleading guilty is belied by the record, without merit and is
16 denied.

17 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

18 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

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

28 The Nevada Supreme Court has held that if a petition can be resolved without
expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
allegations, which, if true, would entitle him to relief unless the factual allegations are repelled

1 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
2 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
3 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
4 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
5 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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

20 Based on the substance of the instant Petition and accompanying filings and the record
21 in this case, Petitioner is not entitled to an evidentiary hearing. Petitioner’s allegations that his
22 counsel was ineffective and that his plea was not knowingly, intelligently and voluntarily
23 entered has already been litigated in a previous Motion to Withdraw Plea and on appeal. The
24 same allegations were the subject of a prior evidentiary hearing on February 19, 2021 where
25 Petitioner’s counsel testified at length to all of the same issues. A further expansion of the
26 record is not warranted because all of Petitioner’s claims are belied by the record and lack
27 merit. Therefore, Petitioner has failed to demonstrate that an expansion of the record is
28 warranted and his request for an evidentiary hearing is denied.

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Dated this 8th day of November, 2022

DISTRICT JUDGE

6F8 F10 F255 CCF0
Tierra Jones
District Court Judge

TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Jarell Washington, Plaintiff(s)

CASE NO: A-22-856529-W

7 vs.

DEPT. NO. Department 10

8 State of Nevada, Defendant(s)

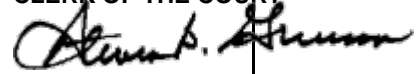
9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/8/2022

15 dept 10 LC

dept10lc@clarkcountycourts.us



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JERELL WASHINGTON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-19-341380-1

Dept No: X

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

PLEASE TAKE NOTICE that on November 8, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on November 14, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 14 day of November 2022, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Jerell Washington # 1245028
P.O. Box 650
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JARELL WASHINGTON,
aka Jarrell Washington, #2665695,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-22-856529-W

C-19-341380-1

DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: October 17, 2022
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 17TH day of October, 2022, Petitioner not being present, not being represented by counsel, Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through CHRISTOPHER PANDELIS, Chief Deputy District Attorney, and this Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law.

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On June 26, 2019, the State filed an Indictment charging Jarell Washington aka Jarrell
4 Washington (hereinafter “Petitioner”) with Murder With Use of a Deadly Weapon (Category
5 A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and Robbery With Use of a Deadly
6 Weapon (Category B Felony - NRS 200.380, 193.165 - NOC 50138). On July 24, 2019,
7 Petitioner was arraigned, pled not guilty, and waived his right to a speedy trial.

8 At calendar call on February 6, 2020, both the State and defense counsel, Frank Kocka,
9 Esq., announced ready for trial. However, Petitioner requested to continue trial to obtain and
10 review discovery. The District Court denied that request, finding that Mr. Kocka had provided
11 Petitioner with discovery and that Mr. Kocka was prepared to go to trial.

12 On the morning of February 10, 2020, the same day trial was set to begin, the District
13 Court held a hearing at the request of both parties for Petitioner to enter a guilty plea. Instead
14 of pleading guilty, Petitioner renewed his request to continue trial and moved to dismiss Mr.
15 Kocka as counsel. The District Court denied Petitioner’s motion and stated that trial would
16 proceed that afternoon should Petitioner choose not to plead guilty pursuant to the offer the
17 State had made. After speaking with his attorney, Petitioner chose to accept the State’s offer.

18 On February 10, 2020, a Guilty Plea Agreement (hereinafter “GPA”) was filed and
19 Petitioner pled guilty to Second Degree Murder With Use of a Deadly Weapon (Category A
20 Felony- NRS 200.010, 200.030(2), 193.165- NOC 50011) with the State retaining the right to
21 argue at rendition of sentence.

22 On February 18, 2020, Petitioner filed a pro per Motion to Dismiss Counsel. On March
23 12, 2020, the Court held a hearing to address Petitioner’s pro per Motion to Dismiss Counsel.
24 Defense counsel had not been served with the motion and was unaware Petitioner had filed it.
25 During the hearing, Petitioner expressed a desire to withdraw his guilty plea. The Court
26 granted Petitioner’s Motion to Dismiss Counsel but stated that it was granting the Motion
27 strictly due to Petitioner’s desire to withdraw his plea, not due to any of Petitioner’s alleged
28 issues with Mr. Kocka. A status check was set for appointment of counsel.

1 New counsel, James Oronoz, Esq., was appointed and Petitioner subsequently filed a
2 Motion to Withdraw Guilty Plea on August 13, 2020. On August 28, 2020, the State filed an
3 Opposition. On September 2, 2020, Petitioner filed a Reply. On February 19, 2021, the District
4 Court conducted an evidentiary hearing during which both Mr. Kocka and Petitioner testified.
5 On March 17, 2021, the Court heard arguments from both parties, and on March 19, 2021, the
6 District Court denied Petitioner's Motion to Withdraw Guilty Plea. The Order Denying
7 Petitioner's Motion to Withdraw Guilty Plea was filed on March 23, 2021.

8 On April 16, 2021, Petitioner was sentenced to pay \$3,580.00 Restitution to Victims of
9 Crime and to serve a minimum of one hundred twenty (120) months and a maximum of three
10 hundred (300) months in the Nevada Department of Corrections (hereinafter "NDOC") plus a
11 consecutive minimum of seventy-two (72) months and a maximum of one hundred eighty
12 (180) months in the NDOC for the deadly weapon enhancement, with six hundred eighty (680)
13 days credit for time served. The District Court also made a record that it considered all the
14 factors under NRS 193.165 in determining the length of the additional penalty to be imposed
15 for the deadly weapon enhancement.

16 The Judgment of Conviction was filed on May 6, 2021. Petitioner filed a Notice of
17 Appeal on May 7, 2021. On March 15, 2022, the Nevada Court of Appeals affirmed
18 Petitioner's Judgment of Conviction and the District Court's denial of Petitioner's Motion to
19 Withdraw Guilty Plea. Remittitur issued on April 11, 2022.

20 On August 5, 2022, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
21 Conviction) (hereinafter "Petition"), Request for Evidentiary Hearing, Memorandum of Points
22 and Authorities in Support (hereinafter "Memorandum"), and Affidavit of Jarrell Washington.
23 The State's filed its Response on September 20, 2022. On October 17, 2022, the Court denied
24 the Petition and Request for Evidentiary Hearing.

25 **FACTUAL SYNOPSIS**

26 On August 19, 2007, Cory Iascone, a Palo Verde High School student, and Andrew
27 Brock were at Cory Iascone's mother's house when he received a call from Petitioner.
28 Petitioner, a Cimmaron Memorial High School student, had contacted Cory Iascone to

1 purchase marijuana. Cory Iascone regularly sold approximately one (1) quarter pound of
2 marijuana every two (2) weeks. Cory Iascone told Andrew Brock that he needed to leave his
3 mother's house to sell Petitioner an ounce of marijuana. Andrew Brock told Cory Iascone he
4 wanted to be dropped off at his house when they left to sell Petitioner marijuana. Cory Iascone
5 and Andrew Brock agreed that they would first stop at Petitioner's house, as he was located
6 on the way to Andrew Brock's house, and then Andrew Brock would be dropped off.

7 Cory Iascone and Andrew Brock arrived at Petitioner's house at around 12:30 p.m.,
8 and Petitioner was waiting outside. Andrew Brock did not know Petitioner but believed that
9 Cory Iascone was familiar with him. Petitioner came to the car window and told Cory Iascone
10 and Andrew Brock that the marijuana was for his cousin, and his cousin would be available to
11 buy it at 2:00 p.m. Cory Iascone told Petitioner he could ride around with him and Andrew
12 Brock while they were waiting for Petitioner's cousin. Petitioner got in the seat behind Cory
13 Iascone, who was driving his mother's car, and the three (3) teenagers left Petitioner's house.
14 While waiting for Petitioner's cousin, both Cory Iascone and Andrew Brock received calls to
15 sell smaller amounts of marijuana, and the three (3) men drove to meet those buyers. At one
16 point, the three (3) men met a buyer at a Chevron gas station, and Cory Iascone went inside to
17 purchase supplies to smoke a "blunt". While Andrew Brock and Petitioner were waiting in the
18 car, Petitioner asked Andrew Brock questions about he and Cory Iascone selling marijuana,
19 which Andrew Brock found strange. Cory Iascone returned to the car, and the three (3) men
20 drove around listening to music and smoking marijuana on the way to drop Andrew Brock off
21 at his house.

22 Cory Iascone and Petitioner dropped Andrew Brock off at his house near the cross
23 streets of Lake Mead and Rampart at 2:26 p.m. Andrew Brock exited the car, told Cory Iascone
24 that he would call him later, and Cory Iascone drove away with Petitioner. Andrew Brock
25 stated that when Cory Iascone and Petitioner dropped him off, Cory Iascone had between \$250
26 and \$325 and an ounce of marijuana in a black backpack that he always carried. Andrew Brock
27 never knew Cory Iascone to own or possess a firearm.

1 Later that afternoon, Las Vegas Metropolitan Police Department (hereinafter
2 “LVMPD”) crime scene analyst Randal McLaughlin was called to a homicide scene in the
3 area of Point Conception Drive just east of Rampart Blvd, in the Desert Shores community.
4 Police found Cory Iascone dead in the driver’s seat of his mother’s vehicle with a single
5 gunshot wound to the head. The vehicle was in the middle of the westbound travel lane of
6 Point Conception, and the passenger side door was open. There was \$20 in the center console
7 of the vehicle, but otherwise police located no money, marijuana, firearms, or a backpack in
8 the vehicle. In Cory Iascone’s lap was his cell phone and a live .25 caliber bullet. An
9 investigation into Cory Iascone’s murder followed but the case ultimately went cold.

10 On August 18, 2018, Michael Cutright, a cooperating witness, came forward and met
11 with Detectives to provide information on a 2007 murder. Michael Cutright and Petitioner
12 were friends who attended Cimarron Memorial High School together and both played on the
13 basketball team. Michael Cutright told detectives that in the summer of 2007, he got a call
14 from Petitioner who told him that Petitioner was down the street from Michael Cutright’s
15 home in Desert Shores and needed to be picked up. On the phone, Petitioner was breathing
16 hard, panicked, and was on the verge of crying. Petitioner told Michael Cutright that he would
17 give him money and/or marijuana, but he needed Michael Cutright to come and get him.

18 Michael Cutright was driving out of his neighborhood to pick up Petitioner, when he
19 nearly hit Petitioner who was sprinting towards his car. Petitioner got in the car sweating,
20 crying, out of breath, and carrying a black backpack. Petitioner told Michael Cutright thank
21 you, that he had marijuana, and that he loved him. Michael Cutright asked Petitioner what was
22 wrong, and Petitioner said he had just shot “a little white boy” that he was trying to rob.
23 Petitioner told Michael Cutright that he shot the “white boy” in the head while they were in
24 his car because he had reached for a gun when Petitioner tried to rob him. Michael Cutright
25 believed that Petitioner told him he had shot the victim with a .22 caliber gun that Petitioner
26 had thrown in a lake following the murder. Michael Cutright then drove Petitioner back to
27 Petitioner’s house and dropped him off. The two never spoke of the incident again.

Following the information provided by Michael Cutright, LVMPD Detective Kenneth Hefner determined that the firearm used in the murder was likely thrown in Lake Lindsey in Desert Shores. Search and Rescue volunteers with LVMPD performed multiple dives in Lake Lindsey before finding a Raven MP-25 semi-automatic pistol in .25 auto caliber. LVMPD firearms detail forensic scientist Glenn Davis was able to return the firearm to a state in which a bullet could be fired from the barrel. Glenn Davis determined through analysis of microscopic markings that the bullet recovered from Cory Iascone's autopsy was fired by the same gun found in Lake Lindsey. Based on this information, Petitioner was indicted by a Grand Jury on June 25, 2019.

ANALYSIS

In Ground One, Petitioner alleges ineffective assistance of counsel and that his guilty plea was not a knowing, intelligent and voluntary waiver of rights. Petition at 6. He further alleges that he felt confused, pressed for time, under duress, in a panic and pled guilty out of frustration. Petition at 7. In his Memorandum, Petitioner claims that he was not allowed to review all of the discovery in his case. Memorandum at 5-8. He claims that his counsel insisted he plead guilty, only visited with him several times while he was in custody, refused to file any motions on his behalf prior to trial, and was not prepared for trial. Memorandum at 8-9. Petitioner further contends that he felt trapped and desperate and as soon as he got back to his cell on the day he entered the plea, and he began preparing a motion for a new attorney so he could withdraw his plea and go to trial. Memorandum at 9. Finally, Petitioner alleges that his counsel led him to believe that he could receive probation if he pled guilty, and that he was coerced into pleading guilty on the basis of a false promise. Memorandum at 10.

I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

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

1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

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

14 The court begins with the presumption of effectiveness and then must determine
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
16 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 Based on the above law, the role of a court in considering allegations of ineffective
26 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
27 whether, under the particular facts and circumstances of the case, trial counsel failed to render
28 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

(1978). This analysis does not mean that the court should “second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success.” Id. To be effective, the constitution “does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

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

The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
4 petition to be dismissed.” (emphasis added).

5 When a conviction is the result of a guilty plea, a defendant must show that there is a
6 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
7 would have *insisted* on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
8 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
9 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

10 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
11 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
12 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is
13 entered into on the advice of counsel, and the burden is on a defendant to show that the plea
14 was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v.
15 State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397,
16 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly advise a defendant
17 regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant’s.
18 Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

19 **A. Petitioner Received The Discovery To Which He Was Entitled**

20 In his Memorandum, Petitioner repeatedly claims that he was not allowed to review all
21 of the discovery in his case. Memorandum at 5-8.

22 Petitioner alleged at his entry of plea that he was not prepared for trial because he did
23 not have a hard copy of all discovery. Petitioner was in receipt of all discovery in the State’s
24 possession at the time of Indictment. Supplemental forensic testing results were provided to
25 defense at the time of their distribution by the various forensic laboratories of the LVMPD.
26 On December 5, 2019, Petitioner acknowledged receipt of the final forensic results in the case.

27 To the extent Petitioner suggests that he should be entitled to withdraw the plea because
28 he was not prepared for trial due to not being given a hard copy of all discovery, case law

1 clearly belies the argument. Courts routinely find defendants do not have a right to their own
2 personal copy of discovery materials. People v. Krueger, 296 P.3d 294 (Colo. 2012); U.S. v.
3 Shrake, 515 F.3d 743 (7th Cir. 2008); State v. Marks, 297 Kan. 131, 289 P.3d 1102 (2013);
4 State v. Thompson, 141 Ohio St.3d 254, 23 N.E.3d 1096 (Ohio 2014). The United States
5 Supreme Court has specifically found that defendants are not constitutionally entitled to
6 discovery. Weatherford v. Bursey, 429 U.S. 545, 97 S.Ct. 837 (1977); Gray v. Netherland,
7 518 U.S. 152, 116 U.S. 152 (1996). Some jurisdictions even affirmatively preclude
8 defendants' possession of materials related to their cases pre-trial. See People v. Savage, 361
9 Ill. App. 3d 750, 757 (2005).

10 In this case, Mr. Kocka testified at the evidentiary hearing he had strategic reasons for
11 not providing a hard copy of certain portions of discovery to Petitioner for him to take back to
12 the Clark County Detention Center (hereinafter "CCDC"):

13 MR. KOCKA: Number one, as addressed both at the calendar call and also the
14 morning of trial, I made a very clear record that it is my policy, especially in
15 cases like this where the entire case revolves around a witness with, shall we
16 say, ulterior motives, a snitch, giving information as to the whereabouts of the
murder weapon and my client's involvement, I did not want him having that in
jail where others could have access to it. And as we've often seen, corroborate
the statement for their own benefit.

17 Number two, Mr. Washington required glasses, and we had a great deal of
18 difficulty getting glasses to him. I, on a number of occasions, dealt with Post-10
19 with the nurses trying to get him his prescription glasses because he could not
20 read without his glasses. And it was my fear that him having someone read the
21 discovery to him would not only accelerate the possibility of someone finding
the discovery but learning about the discovery and be -- the possibility of one of
the inmates becoming opportunistic and corroborating the State's case against
Mr. Washington. So, I did not give him the specific part of discovery which
entailed the actual details regarding the statements that were given by the snitch
in this case.

22
23 Recorder's Transcript of Proceedings: Evidentiary Hearing dated February 19, 2021
24 (hereinafter "RT Hearing") at 10.

25 Mr. Kocka did not want to jeopardize Petitioner's case by allowing a fellow inmate to
26 obtain information and use that information to their advantage by corroborating information
27 given by the State's criminal informant. Mr. Kocka had explained this reasoning multiple
28 times previously, at the calendar call and at the entry of plea on the day of trial. At Petitioner's

1 entry of plea, the District Court agreed with Mr. Kocka's rationale while noting the fact that
2 CCDC rules would preclude Petitioner from having certain items of discovery:

3 THE COURT: So here's the thing, Mr. Washington. There are, in my mind at
4 least, it should be very rare that an attorney gives a client in a detention center
5 all of their discovery, because my record of trials is replete with informants
6 coming in and testifying. And a lot of times those folks end up having their
7 discovery in the detention center and you question whether or not these guys are
8 getting a hold of your discovery or figuring things out and becoming snitches or
whether or not they truly had conversations with the defendant they are
testifying against. **And there's certain things that the jail won't let you have
anyway. So I think Mr. Kocka is very appropriate in telling you that there
are very good reasons not to give you that discovery, so that doesn't
constitute any type of grounds to continue the trial.**

9 Recorder's Transcript of Hearing Re: DA Request: Entry Of Plea dated February 10, 2020
10 (hereinafter "RT Plea") at 5.

11 Finally, Mr. Kocka explained at the evidentiary hearing the extent to which he went to
12 ensure that Petitioner was fully apprised of the discovery, despite not giving him a hard copy
13 of some specific information:

14 MR. PORTZ: And the week following the calendar call and the buildup to trial,
15 did you continue to meet with your client?

16 MR. KOCKA: I did. And as a matter of fact, I met with him the day before trial
17 was to start, which was on Sunday, brought my entire trial notebook with me
18 again, we went through everything, and at that point, we had discussions with
19 regard to the reasons he felt he was not ready to go to trial. And he said he did
20 not have anything, didn't know anything. And at that point, I sat and I broke
down everything with him with regard to the specific phone calls that were made
on the date of the murder. There's long series of phone calls, we went through
those. We went through also that very concerning bit of evidence that I alluded
to earlier with regard to one of his family members.

21 We went through the forensics. We went through the testimony of the, lack of a
22 better word again, snitch witness. And also, **Mr. Washington had the benefit
since very early on, he had the entire Grand Jury transcript. I gave him the
entire hard copy, so he would know at least the basis of the testimony, not
only of the police officers, but also the snitch witness.** And so, what he was
23 facing, should that witness get on the stand, we went over that yet again. And it
24 was actually during that meeting on Sunday at the jail, prior to starting trial on
Monday, that he told me at that point he wanted to take the deal.

25 RT Hearing at 20-21.

26 Petitioner had the information he needed to be prepared for trial. Mr. Kocka broke down
27 the entire case for Petitioner. Petitioner had a hard copy of the Grand Jury testimony and police
28 reports that would provide the basis for witness testimony. Accordingly, Petitioner's allegation

1 that he did not have necessary discovery is belied by the record and a lack of hard copies of
2 some specific discovery is an insufficient reason to continue trial or withdraw his guilty plea.
3 Therefore, this claim is denied.

4 **B. Petitioner Cannot Demonstrate That Counsel Was Ineffective For Failing To**
5 **Conduct An Independent Investigation**

6 Petitioner claims that his counsel failed to perform an independent investigation of the
7 case in order for him to make an informed, voluntary, knowing and intelligent waiver of rights
8 to proceed to trial. Petition at 7. He also claims that his counsel insisted he plead guilty, only
9 visited with him several times while he was in custody, refused to file any motions on his
10 behalf prior to trial, and was not prepared for trial. Memorandum at 8-9.

11 A defendant who contends his attorney was ineffective because he did not adequately
12 investigate must show how a better investigation would have rendered a more favorable
13 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A defendant
14 who contends his attorney was ineffective because he did not adequately investigate must
15 show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S.
16 at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation
17 would have revealed and how it would have altered the outcome of the trial. See State v. Love,
18 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

19 “[D]efense counsel has a duty ‘to make reasonable investigations or to make a
20 reasonable decision that makes particular investigations unnecessary.’” State v. Love, 109 Nev.
21 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066).
22 A decision “not to investigate must be directly assessed for reasonableness in all the
23 circumstances, applying a heavy measure of deference to counsel’s judgment.”” Id. Moreover,
24 “[a] decision not to call a witness will not generally constitute ineffective assistance of
25 counsel” Id. at 1145, 865 P.2d at 328.

26 According to the above legal authority, a defendant must allege with specificity what
27 the investigation would have revealed and how it would have altered the outcome of the case.
28 However, Petitioner provides no specific evidence to this Court that counsel did not conduct

1 an adequate investigation. Petitioner does not provide any specific factual allegations to
2 support his claim other than his own self-serving conclusory statements. Therefore,
3 Petitioner's claim is bare, naked and insufficiently pled. Hargrove, 100 Nev. at 502, 686 P.2d
4 at 225, Maresca, 103 Nev. at 673, 748 P.2d at 6.

5 Petitioner also claims that his counsel only visited with him several times while he was
6 in custody. Memorandum at 8. A defendant is not entitled to a particular "relationship" with
7 his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no
8 requirement for any specific amount of communication as long as counsel is reasonably
9 effective in his or her representation. See Id. Again, this assertion is bare, naked and
10 unsupported by specific facts, but rather a conclusory statement. Petitioner provides no
11 specific facts to support his assertion and fails to show how it affected the outcome of his case.
12 Hargrove, 100 Nev. at 502, 686 P.2d at 225. There is no requirement for any specific amount
13 of communication as long as counsel is reasonably effective in his or her representation.
14 Petitioner actually admits that his counsel visited him several times while he was in custody.
15 This claim is further belied by Mr. Kocka's evidentiary hearing testimony in which he details
16 a number of jail visits to Petitioner during the pendency of the case.

17 With regard to Petitioner's claim that his counsel insisted he plead guilty, it was
18 Petitioner's decision to plead guilty in this case, not counsel's. Mr. Kocka's extensive
19 testimony at the prior evidentiary hearing made that abundantly clear. Ultimately, while it is
20 counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether
21 or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163
22 (2002). It was Petitioner's decision and his decision alone whether or not to plead guilty. He
23 could have challenged the State's evidence by going forward to trial, but he did not.

24 Concerning Petitioner's contention that counsel did not but should have filed various
25 pretrial motions, counsel cannot be ineffective for failing to make futile objections or
26 arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel
27 has the "immediate and ultimate responsibility of deciding if and when to object, which
28 witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38

1 P.3d 163, 167 (2002). This includes decisions on which, if any, motions need to be filed. There
2 is no mandatory requirement that counsel must file a certain number of pretrial motions.

3 Finally, Petitioner's allegation that his counsel was not prepared for trial is belied by
4 the evidentiary hearing transcript. Mr. Kocka testified numerous times during the hearing that
5 he was prepared to go to trial. See RT Hearing at 16, 18 and 23. Mr. Kocka announced ready
6 for trial on both January 7, 2020, and January 16, 2020. Mr. Kocka made the same
7 representations at Petitioner's entry of plea on the morning trial was to begin when Petitioner
8 requested a continuance:

9 MR. KOCKA: In my opinion, I -- I've done this for about 34 years now, Judge.
10 **We have adequately prepared for the case** and I have told my client absolutely
every element that would be relative to his defense in the State's case.

11 RT Plea at 4.

12 Mr. Kocka further explained his level of preparedness at the evidentiary hearing:

13 Q: And is it also correct that on January 7th, 2020, again per the Court minutes,
14 you announced that you were prepared to go to trial, the trial that would be set
on February 10th?

15 A: That's correct.

16 Q: All right. And in the weeks leading up to trial, was it your understanding that
17 both parties had come to the conclusion that this would likely go to trial in early
February, so we would begin preparation in earnest for trial itself?

18 A: Correct.

19 Q: Okay. So, then the weeks leading up to trial, did you have conversations with
20 me and my co-Counsel about various pretrial issues, witness coordination,
etcetera?

21 A: I did, yes.

22 Q: And did you also hold meetings with your client during the course of that
23 time?

24 A: With my client and also my client's family. There was one particular piece
25 of evidence after the discovery [indiscernible] and the forensics that caused me
26 great concern, I actually met with members of his family because that specific
27 part of the evidence had to do with a family member of Mr. Washington's. And
28 based upon the discovery that was given to me by the State and statements by
that family member caused me great concern regarding the weapon. And once
the weapon was forensically able to be tied to the bullet that was found in the
Decedent, that caused me great concern. And during that two-week period, I met
with Mr. Jarrel Washington, his brother, and various members of the family
regarding that specific piece of evidence.

1 Q: Okay. And then at the calendar call in this case, did you in fact announce
ready?

2 A: I did.

3 **Q: Okay. Was there any legal reason to continue the case or were you fully**
4 **prepared to go forward?**

5 **A: I was fully prepared.**

6 RT Hearing at 16-18.

7 The options available to Petitioner were clear. He could accept the State's offer and
8 plead guilty, or he could go to trial with an experienced criminal defense attorney who was
9 fully prepared for trial. When faced with these two (2) reasonable options, the record reflects
10 that Petitioner freely, voluntarily, and knowingly chose to plead guilty. Controlling case law
11 is clear that Petitioner cannot assert that the imminence of trial alone coerced him into
12 accepting a plea, especially when he had a viable option to proceed to trial with a prepared
13 attorney. Accordingly, any argument that Petitioner was confused, pressed for time, under
14 duress, in a panic, and pled guilty out of frustration is without merit and is denied.

15 **II. PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS PLEA**

16 **A. Petitioner's Challenge To The Validity Of His Plea Is Barred By The Doctrines Of**
17 **Res Judicata And Law Of The Case**

18 The doctrine of res judicata precludes a party from re-litigating an issue which has been
19 finally determined by a court of competent jurisdiction. Exec. Mgmt. v. Ticor Titles Ins. Co.,
20 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (citing Univ. of Nev. v. Tarkanian, 110 Nev.
21 581, 598, 879 P.2d 1180, 1191 (1994)); see also Sealfon v. United States, 332 U.S. 575, 578,
22 68 S. Ct. 237, 239 (1948) (recognizing the doctrine's availability in criminal proceedings).
23 "The doctrine is intended to prevent multiple litigation causing vexation and expense to the
24 parties and wasted judicial resources." Id.

25 On August 13, 2020, Petitioner filed a prior Motion to Withdraw Guilty Plea. On March
26 19, 2021, the Court denied the Motion after conducting an evidentiary hearing on February
27 19, 2021, at which Petitioner and Mr. Kocka testified to the same issues Petitioner is again
28 raising in the instant Petition. Petitioner now attempts to relitigate the same issues already

1 litigated and decided prior to sentencing. Therefore, the Petition is barred by the doctrine of
2 res judicata.

3 Moreover, “the law of a first appeal is law of the case on all subsequent appeals in
4 which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798
5 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of
6 the law of the case cannot be avoided by a more detailed and precisely focused argument
7 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at
8 799. Under the law of the case doctrine, issues previously decided on direct appeal may not
9 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532
10 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).
11 Furthermore, this Court cannot overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6.
12 See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
13 in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

14 On March 15, 2022, the Nevada Court of Appeals affirmed Petitioner’s Judgment of
15 Conviction and the District Court’s denial of Petitioner’s pre-sentence Motion to Withdraw
16 Guilty Plea. The same issues being raised in the instant Petition were again raised on appeal
17 and have already been rejected by the Nevada Court of Appeals. Therefore, the Petition is
18 also barred by the law of the case doctrine.

19 **B. Standard of Review After Sentencing**

20 This is the applicable standard of review at this stage of the proceedings. Pursuant to
21 NRS 176.165, after sentencing, a defendant’s guilty plea can only be withdrawn to correct
22 “manifest injustice.” See also Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The
23 law in Nevada establishes that a plea of guilty is presumptively valid, and the burden is on a
24 defendant to show that the plea was not voluntarily entered. Bryant v. State, 102 Nev. 268,
25 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295,
26 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily.
27 Baal, 106 Nev. at 72, 787 P.2d at 394.

28 //

1 To determine whether a guilty plea was voluntarily entered, the Court will review the
2 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
3 P.2d at 367. A proper plea canvass should reflect that:

4 [T]he defendant knowingly waived his privilege against self-
5 incrimination, the right to trial by jury, and the right to confront
6 his accusers; (2) the plea was voluntary, was not coerced, and was
7 not the result of a promise of leniency; (3) the defendant
understood the consequences of his plea and the range of
punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

8 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
9 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
10 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
11 107, 107 (1975).

12 This standard requires the court accepting the plea to personally address the defendant
13 at the time he enters his plea in order to determine whether he understands the nature of the
14 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
15 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
16 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
17 formal setting, such as that occurring between an official sitting in judgment of an accused at
18 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
19 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
20 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
21 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
22 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
23 1463, 1470 (1970).

24 **C. Standard of Review Before Sentencing**

25 Petitioner also cites to Stevenson v. State, 131 Nev. 598, 354 P.3d 1277(2015), which
26 applies to motions to withdraw guilty pleas before sentencing. When a defendant moves to
27 withdraw a guilty plea before sentencing, the district court must examine the totality of the
28 circumstances to determine whether the plea was valid and consider whether the defendant

1 has any fair and just reason to withdraw their plea. NRS 176.165; State v. Second Judicial
2 Dist. Court (Bernardelli), 85 Nev. 381, 385, 455 P.2d 923, 926 (1969); Bryant, 102 Nev. at
3 271, 721 P.2d at 367; Stevenson, 131 Nev. at 599-600, 354 P.3d at 1278. A plea of guilty is
4 presumptively valid, particularly where it is entered into on the advice of counsel. Jezierski v.
5 State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The defendant has the burden of proving
6 that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272,
7 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980); Housewright v.
8 Powell, 101 Nev. 147, 710 P.2d 73 (1985).

9 In determining whether a guilty plea is knowingly and voluntarily entered, the court
10 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102
11 Nev. at 271, 721 P.2d at 367. “A district court may not simply review the plea canvass in a
12 vacuum.” Mitchel, 109 Nev. at 141, 848 P.2d at 1062. While a more lenient standard applies
13 pre-sentence motions to withdraw a guilty plea, Molina v. State, 120 Nev. 185, 191, 87 P.3d
14 533, 537 (2004); a defendant has no right to withdraw his plea merely because the State failed
15 to establish actual prejudice. See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521
16 (1994).

17 The proper standard set forth in Bryant requires the trial court to personally address a
18 defendant at the time he enters his plea in order to determine whether he understands the nature
19 of the charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev. 1097, 1105, 13
20 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas “do not require the
21 articulation of talismanic phrases.” Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404
22 (1973). It requires only “that the record affirmatively disclose that a defendant who pleaded
23 guilty entered his plea understandingly and voluntarily.” Brady v. United States, 397 U.S. 742,
24 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).
25 Specifically, the record must affirmatively show the following: 1) the defendant knowingly
26 waived his privilege against self-incrimination, the right to trial by jury, and the right to
27 confront his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a
28 promise of leniency; 3) the defendant understood the consequences of his plea and the range

1 of punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of
2 the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970). Importantly, “the
3 record must affirmatively disclose that a defendant is entering his plea understandingly and
4 voluntarily.” Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970).
5 Consequently, in applying the “totality of circumstances” test, the most significant factors for
6 review include the plea canvass and the written guilty plea agreement. See Hudson v. Warden,
7 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

8 When the Nevada Supreme Court decided Stevenson v. State, it explained that district
9 courts must consider the totality of the circumstances to determine whether permitting
10 withdrawal of a guilty plea before sentencing would be fair and just. Stevenson v. State, 131
11 Nev. 598, 354 P.3d 1277(2015). In doing so, the Court explained that Crawford v. State’s, 117
12 Nev. 718, 30 P.3d 1123 (2001), holding is more narrow than contemplated by NRS 176.165
13 and disavowed an analysis focused solely upon whether the plea was knowing, voluntary, and
14 intelligent in determining the validity of the plea. However, the Court in Stevenson also held
15 that the appellant had failed to present a fair and just reason favoring withdrawal of his plea,
16 and therefore affirmed his judgment of conviction. 131 Nev at 603, 354 P.3d at 1281.

17 In Stevenson, the Nevada Supreme Court found that none of the reasons presented
18 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members
19 of his defense team lied about the existence of the video in order to induce him to plead guilty.
20 Id. The Court found similarly unconvincing Stevenson’s contention that he was coerced into
21 pleading guilty based on the compounded pressures of the district court’s evidentiary ruling,
22 standby counsel’s pressure to negotiate a plea, and time constraints. Id. As the Court noted,
23 undue coercion occurs when a defendant is induced by promises or threats which deprive the
24 plea of the nature of a voluntary act. Id. (quoting Doe v. Woodford, 508 F. 3d 563, 570 (9th
25 Cir. 2007)). Time constraints and pressure exist in every criminal case, are hallmarks of
26 pretrial discussions, and do not individually or in the aggregate make a plea involuntary. Id. at
27 605, 354 P.3d at 1281 (quoting Miles v. Dorsey, 61 F.3d 1459, 1470 (10th Cir. 1995)). Instead,
28 the key inquiry for determining the validity of a plea is “whether the plea itself was a

1 voluntary and intelligent choice among the alternative courses of action open to the
2 defendant.” Id. at 604-05, 354 P.3d at 1281 (quoting Doe, 508 F. 3d at 570).

3 The Nevada Supreme Court also rejected Stevenson’s implied contention that
4 withdrawal was warranted because he made an impulsive decision to plead guilty without
5 knowing definitively whether the video could be viewed. Id. at 604-05, 354 P.3d at 1281. The
6 Court made clear that one of the goals of the fair and just analysis is to allow a hastily entered
7 plea made with unsure heart and confused mind to be undone, not to allow a defendant to make
8 a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he
9 believes that he made a bad choice in pleading guilty. Id. at 604-05, 354 P.3d at 1281-82
10 (quoting United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991)). After considering
11 the totality of the circumstances, the Court found no difficulty in concluding that Stevenson
12 failed to present a sufficient reason to permit withdrawal of his plea. Id. at 605, 354 P.3d at
13 1282. Permitting him to withdraw his plea under the circumstances would allow the solemn
14 entry of a guilty plea to become a mere gesture, a temporary and meaningless formality
15 reversible at the defendant’s whim, which the Court cannot allow. Id. (quoting United States
16 v. Barker, 514 F. 2d 208, 222 (D.C. Cir. 1975)).

17 **D. Petitioner Knowingly, Intelligently And Voluntarily Entered His Guilty Plea**

18 Petitioner alleges that his guilty plea was not a knowing, intelligent and voluntary
19 waiver of rights. Petition at 6. He claims that he felt confused, pressed for time, under duress,
20 in a panic and pled guilty out of frustration. Petition at 7. Petitioner further contends that he
21 felt trapped and desperate and as soon as he got back to his cell on the day he entered the plea,
22 he began preparing a motion for a new attorney so he could withdraw his plea and go to trial.
23 Memorandum at 9. Finally, Petitioner alleges that his counsel led him to believe that he could
24 receive probation if he pled guilty, and that he was coerced into pleading guilty on the basis
25 of a false promise. Memorandum at 10. Petitioner’s allegations are belied by the record.

26 Petitioner knowingly, intelligently and voluntarily signed his GPA on February 10,
27 2020, and in doing so, he affirmed that he understood the nature and consequences of pleading

28 //

1 guilty. First, Petitioner acknowledged that he was waiving his constitutional rights related to
2 his right to proceed to a jury trial:

3 WAIVER OF RIGHTS

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

6 1. The constitutional privilege against self-incrimination, including the right
7 to refuse to testify at trial, in which event the prosecution would not be allowed
8 to comment to the jury about my refusal to testify.

9 2. The constitutional right to a speedy and public trial by an impartial jury,
10 free of excessive pretrial publicity prejudicial to the defense, at which trial I
11 would be entitled to the assistance of an attorney, either appointed or retained.
12 At trial the State would bear the burden of proving beyond a reasonable doubt
13 each element of the offense(s) charged.

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

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

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

18 6. The right to appeal the conviction with the assistance of an attorney,
19 either appointed or retained, unless specifically reserved in writing and agreed
20 upon as provided in NRS 174.035(3). I understand this means I am
21 unconditionally waiving my right to a direct appeal of this conviction, including
22 any challenge based upon reasonable constitutional, jurisdictional or other
23 grounds that challenge the legality of the proceedings as stated in NRS
24 177.015(4). However, I remain free to challenge my conviction through other
25 post-conviction remedies including a habeas corpus petition pursuant to NRS
26 Chapter 34.

27 GPA at 4.

28 The section of the Guilty Plea Agreement entitled "Voluntariness of Plea" further
delineates the following statements that Petitioner affirmed as true and accurate:

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

13 GPA at 4-5 (emphasis added).

14 Petitioner's claim that defense counsel led him to believe that he could receive
15 probation if he pled guilty, and he was coerced into pleading guilty based on a false promise
16 (Memorandum at 10) is belied by the record. In his GPA, Petitioner attested that he was freely
17 and voluntarily pleading guilty and that he was not being coerced as a result of promises of
18 leniency, except those contained in the GPA. The GPA explicitly stated that he would not be
19 eligible for probation: "I understand that I am not eligible for probation for the offense to
20 which I am pleading." GPA at 2.

21 After the signed GPA was filed in open court, the District Court orally canvassed
22 Petitioner regarding the terms and consequences of his plea. Again, Petitioner affirmed that
23 his plea of guilty was free and voluntary and that he was not relying on anything other than
24 the terms of the GPA in making his decision:

25 THE COURT: Before I accept your plea I need to make sure it's freely and
26 voluntarily made, is it?

27 THE DEFENDANT: Yes.

28 THE COURT: Anybody force you or threaten you in any way to get you to
plead guilty today?

THE DEFENDANT: No, sir.

THE COURT: Anybody make any promises to you other than the plea
negotiations to get you to plead guilty today?

THE DEFENDANT: No, sir.

1 RT Plea at 9.

2 After clarifying that his plea was being entered freely and voluntarily, the District Court
3 reiterated to Petitioner that he was not eligible for probation:

4 **THE COURT: All right. You understand that you're not eligible for**
5 **probation, so that means you have to serve a prison sentence on the case.**

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

7 RT Plea at 10.

8 The District Court then gave Petitioner an opportunity to have any terms or
9 consequences of pleading guilty that were unclear explained to him:

10 THE COURT: All right. Anything you don't understand about the plea
11 agreement or have any questions about?

11 THE DEFENDANT: No, sir.

12 RT Plea at 10.

13 Mr. Kocka, as an officer of the Court, testified at the February 19, 2021 evidentiary
14 hearing that he fully discussed the plea negotiations with Petitioner:

15 MR. PORTZ: And you discussed -- well, I guess, just go through what you
16 would -- what you would have discussed with Mr. Washington in January when
you conveyed what the State's offer was with him.

17 MR. KOCKA: What I would have discussed with him is what the charge
18 entailed, what the State would have to prove in order to substantiate the second-
19 degree murder, because of course, if it did go through a guilty plea, he would
20 have to acknowledge the facts that support the charge. So, we went through the
21 elements of the charge of second degree. We talked about that with regards to
22 what the State would have to prove if we went to trial with the charge that he
23 was currently facing. The benefit of accepting the deal in terms of what the
sentence here would include versus what he was currently charged with. And
also, based upon the facts in the case whether or not it was a strategically wise
decision to accept the State's offer based upon what the State had evidence-wise
and what they could prove, and the potential likelihood of the State being
successful in coming back with a conviction on a higher charge.

24 RT Hearing at 13.

25 Petitioner clearly understood the terms of the GPA as they were explained to him by
26 the District Court, Mr. Kocka, and the written GPA. Petitioner affirmed both orally and in
27 writing that he was entering his guilty plea freely, intelligently, knowingly and voluntarily.

28 //

1 Accordingly, any claim that Petitioner was confused, pressed for time, under duress, in a panic
2 and pled guilty out of frustration is belied by the record and is denied.

3 **E. Petitioner Had Sufficient Time To Review And Consider The State's Offer Before**
4 **Accepting The Offer**

5 Petitioner's allegation that he was pressed for time and in a panic misconstrues the
6 record entirely. Petitioner had over a month to consider the State's offer before he ultimately
7 accepted it on February 10, 2020. Mr. Kocka testified at the evidentiary hearing that Petitioner
8 received the State's offer on January 3, 2020:

9 Q: Okay. And in fact, on January 7th, 2020, more than a month before trial, you
10 had put on the record, and it's in the minutes, that you had received an offer from
the State on February 3rd of 2020; does that sound right?

11 A: That sounds -- actually, I believe that we received the offer January 3rd, not
12 February 3rd, 2020.

13 Q: You're right, I misspoke, I apologize. January 3rd, 2020 --

14 A: Uh-huh.

15 Q: -- is what you put on the record. So, that's --

16 A: Right, and --

17 Q: -- five weeks prior to trial, not the morning of trial, in which you received
that offer?

18 **A: That is correct. And once I received the offer on January 3rd, I relayed**
19 **it to my client, which I believe he at some point -- I believe it was around**
20 **January 7th acknowledged in court that he did receive the offer. So, there**
21 **was a period of about four or five days that -- since the time that it was**
relayed to me that I did discuss it with him, and he acknowledged receiving
the offer.

22 Q: Okay. And that was the same offer that he ultimately entered a plea deal to
on February 10th?

23 A: Correct.

24 Q: Okay. So, he had had that particular offer for at least four weeks, give or take,
25 to mull over?

26 A: Correct.

27 RT Hearing at 11-12.

28 //

1 After Mr. Kocka relayed the State's offer to Petitioner in early January, Petitioner
2 rejected it and elected to proceed to trial. The State therefore did not prepare a written GPA,
3 as there would be no reason to prepare a GPA for a rejected offer. See RT Hearing at 14.
4 However, on February 9, 2020, the day before trial was set to begin, Mr. Kocka contacted the
5 State and indicated that Petitioner now wished to accept the offer extended in early January:

6 MR. KOCKA: ... and it was actually during that meeting on Sunday at the jail,
7 prior to starting trial on Monday, that he told me at that point he wanted to take
8 the deal.

9 MR. PORTZ: And that would be the deal that the State had offered back in early
10 January?

11 A: That's correct. And after going through everything with him and confirming
12 he wanted to take the deal, I actually left the jail. And I'm sure you recall this
13 on Sunday afternoon, I got ahold of you on your cellphone and quite literally
14 had to -- you were very reluctant to re-offer the deal, and I had to do quite a bit
15 of begging to actually get the deal back for him. And that's why we did not have
16 -- or I did not have the benefit of the guilty plea agreement prior to Monday
17 morning at trial because it was not in existence until your staff had the
18 opportunity to put it together for me Monday morning.

19 RT Hearing at 21-22.

20 After Petitioner indicated through Mr. Kocka that he wanted to accept the negotiations,
21 the State then prepared the written GPA and an Amended Indictment to reflect the exact same
22 offer that was extended on January 3, 2020. The District Court made accommodations to take
23 the plea the next morning before trial was set to begin.

24 On February 10, 2020, rather than entering his plea as planned, Petitioner moved to
25 continue trial, which the District Court denied finding that parties were ready for trial. The
26 Court then gave Mr. Kocka time to discuss the written GPA with Petitioner. At the evidentiary
27 hearing, Mr. Kocka explained in detail the discussion he had with Petitioner regarding taking
28 the guilty plea or going to trial:

STATE: Okay. After he denied that request, did the Court explain to Mr.
Washington, you can either go to trial or if the State keeps the offer open, you
can take it, but one way or the other, you wanted a trial, you're getting a trial. If
you want the deal, we can take it; we can deal?

MR KOCKA: Correct.

Q: And after that, did you meet again with Mr. Washington in private?

A: I did.

1 Q: And would you discuss what happened during that meeting?

2 A: During that meeting, I said we're prepared to go to trial. I actually had the
3 trial notebook there with me because if we had not dealt it, I anticipated in a
4 couple hours we were about ready to start. And I believe we actually had an
5 opportunity to meet back in the holding cell. He indicated to me that he did want
6 to take the guilty plea. At that point, I did have the benefit of having the guilty
7 plea, and we went through it line by line. He signed it, and after that Judge
8 Herndon canvassed him.

6 Q: When you went through it line by line, did he have any questions for you that
7 you were unable to answer?

8 A: No.

9 Q: Did he appear to understand everything contained in the guilty plea
10 agreement as you described it to him?

10 A: Yes.

11 RT Hearing at 22-23.

12 After taking time to go over the written GPA and speak with Mr. Kocka, and after
13 having over a month to consider the terms of the plea, Petitioner chose to accept the
14 negotiations. The case was recalled and the District Court canvassed Petitioner as to whether
15 he had time to review the State's offer and whether he wanted to accept it:

16 THE COURT: We will be on the record. 341380. Mr. Washington is here with
17 his attorney, Mr. Kocka. My understanding, Mr. Washington, is that you decided
18 to go ahead and accept the negotiations that had been offered by the State.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. We do have an Amended Indictment that was filed this
20 morning charging one count of second-degree murder with use of a deadly
21 weapon. My understanding, sir, is that you've agreed to plead guilty to that
22 charge, correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That as part of the negotiation, the State retains the full right to
24 argue at the time of sentencing. You and your attorney will also have the right
25 to argue at the time of sentencing as to what the sentence should be. You
26 understand that?

25 THE DEFENDANT: Yes, sir.

26

27 THE COURT: You've received a copy of the plea agreement and attached to
28 that is an Amended Indictment. That's what lists the charge that you're pleading
to; is that correct?

THE DEFENDANT: Yes, sir.

1 **THE COURT: Have you had a chance to discuss that your charge and your**
2 **case with your attorney, Mr. Kocka?**

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

4 THE COURT: And when you were discussing the charges and your case, did
5 you all have discussions about the four different levels of a homicide charge,
6 meaning first degree murder, second degree murder, voluntary manslaughter and
7 involuntary manslaughter?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And you're comfortable that you understand all of
10 those?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you comfortable that you understand, with this particular
13 charge that you're going to be pleading guilty to, what this charge is saying that
14 you did wrong.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How do you plead to the one count of second-degree murder with
17 use of a deadly weapon?

18 THE DEFENDANT: Guilty.

19 ...

20 THE COURT: I have before me a written plea agreement which looks like you
21 signed it on page 5. Did you sign that sir?

22 THE DEFENDANT: Yes, sir.

23 **THE COURT: Did you have a chance to read the document before you**
24 **signed it?**

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

26 **THE COURT: And was your attorney available to answer any questions**
27 **you had before you signed it?**

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

THE COURT: Do you believe you understood everything in it?

THE DEFENDANT: Yes, sir.

RT Plea at 7-9.

The Court then gave Petitioner the opportunity to ask his attorney or the Court any other
questions he had regarding the agreement:

THE COURT: ... Okay. You have any questions for me or your attorney before
I accept your plea?

1 THE DEFENDANT: No, sir.

2 **THE COURT: All right. Anything you don't understand about the plea**
3 **agreement or have any questions about?**

4 THE DEFENDANT: No, sir.

5 RT Plea at 10-11.

6 Petitioner affirmed during his plea canvass that he understood the charges to which he
7 was pleading guilty, the sentencing range for those charges, and that he had the opportunity to
8 read, discuss and understand his GPA prior to signing it and pleading guilty. Not only had
9 Petitioner discussed the State's offer with Mr. Kocka over the month he had to consider it, but
10 the Court also gave Petitioner time directly before entering his plea to discuss it with Mr.
11 Kocka and gave him the opportunity to ask the Court any questions about his plea. To suggest
12 that Petitioner was pressed for time and in a panic is incorrect. More importantly, even if it
13 were true, it is not grounds to withdraw a plea as Petitioner still had sufficient time to discuss
14 the plea with Mr. Kocka. Thus, any argument that Petitioner did not have adequate time to
15 review the State's offer prior to pleading guilty is belied by the record, without merit and is
16 denied.

17 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

18 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

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

28 The Nevada Supreme Court has held that if a petition can be resolved without
expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
allegations, which, if true, would entitle him to relief unless the factual allegations are repelled

1 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
2 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
3 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
4 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
5 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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

20 Based on the substance of the instant Petition and accompanying filings and the record
21 in this case, Petitioner is not entitled to an evidentiary hearing. Petitioner’s allegations that his
22 counsel was ineffective and that his plea was not knowingly, intelligently and voluntarily
23 entered has already been litigated in a previous Motion to Withdraw Plea and on appeal. The
24 same allegations were the subject of a prior evidentiary hearing on February 19, 2021 where
25 Petitioner’s counsel testified at length to all of the same issues. A further expansion of the
26 record is not warranted because all of Petitioner’s claims are belied by the record and lack
27 merit. Therefore, Petitioner has failed to demonstrate that an expansion of the record is
28 warranted and his request for an evidentiary hearing is denied.

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Dated this 8th day of November, 2022

DISTRICT JUDGE

6F8 F10 F255 CCF0
Tierra Jones
District Court Judge

TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jarell Washington, Plaintiff(s)

CASE NO: A-22-856529-W

7 vs.

DEPT. NO. Department 10

8 State of Nevada, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/8/2022

15 dept 10 LC

dept10lc@clarkcountycourts.us

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 26, 2019

C-19-341380-1 State of Nevada
vs
Jarell Washington

June 26, 2019 11:00 AM Grand Jury Indictment

HEARD BY: Silva, Cristina D.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: PORTZ, KENNETH Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Brian Contreras, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 19AGJ043X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-19-341380-1, Department III.

State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, \$1,000,000.00 BAIL with high level electronic monitoring; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment.

Upon Court's inquiry, the State advised there are no material witness warrants to quash. COURT FURTHER ORDERED, Exhibits 1-15 to be lodged with the Clerk of the Court. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done.

I.W. (CUSTODY)

07/09/19 9:00 A.M. INITIAL ARRAIGNMENT (DEPT III)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 09, 2019

C-19-341380-1 State of Nevada
vs
Jarell Washington

July 09, 2019

9:00 AM

All Pending Motions

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Kocka, Frank	Attorney
	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- INDICTMENT WARRANT RETURN... INITIAL ARRAIGNMENT...

Mr. Kocka informed the Court he was retained in Justice Court and has not been retained beyond that, adding he has spoken with the Defendant's family who was supposed to come and meet him, however they have not done so. COURT ADVISED the arraignment could be continued two weeks to verify if the Defendant is planning on retaining Mr. Kocka or if the Public Defender's Office needed to be appointed. COURT ORDERED, arraignment CONTINUED. Mr. Kocka indicated he provided a copy of the Indictment to the Public Defender's Office. COURT FURTHER ORDERED, the case will remain in Department Three pending reassignment.

CUSTODY

7/24/19 9:30 A.M. ARRAIGNMENT CONTINUED... STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 24, 2019

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

July 24, 2019

9:30 AM

All Pending Motions

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT: Kocka, Frank Attorney
 Washington, Jarell Defendant

JOURNAL ENTRIES

- STATUS CHECK: CONFIRMATION OF COUNSEL... ARRAIGNMENT CONTINUED...

Deputy District Attorney Giancarlo Pesci present on behalf of the State. Deputy Public Defender Kathleen Hamers present.

Mr. Kocka stated Drew Christensen's Office appointed him as counsel of record. COURT STATED they asked the Public Defender's Office to run a conflicts check in case they were appointed. DEFENDANT WASHINGTON ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for status check. Upon Court's inquiry, Mr. Kocka stated the transcripts have been filed. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. Mr. Pesci stated the matter has gone before the Death Review Committee and the State is not seeking death. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 21.

CUSTODY

8/1/19 8:30 A.M. STATUS CHECK: TRIAL SETTING (DEPT 21)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 01, 2019

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

August 01, 2019 9:30 AM Status Check: Trial Setting

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Athena Trujillo

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Kocka, Frank	Attorney
	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Colloquy regarding trial date. Mr. Kocka advised he believes the forensics will be done soon.
COURT ORDERED, matter SET for trial.

CUSTODY

10/3/19 9:30 AM STATUS CHECK: TRIAL READINESS

2/6/20 9:30 AM CALENDAR CALL

2/10/20 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 03, 2019

C-19-341380-1 State of Nevada
vs
Jarell Washington

October 03, 2019 9:30 AM Status Check: Trial
Readiness

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Athena Trujillo
Shannon Reid

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Kocka, Frank	Attorney
	Palal, Binu G.	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Mr. Kocka advised there are still outstanding forensics on the fire arm and he and DA Portz have been discussing negotiations. Upon Court's inquiry, counsel indicated there is no outstanding discovery and trial will take two to three weeks, plus the penalty phase. Upon Court's further inquiry, counsel indicated they have not discussed waiving the penalty phase. CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 12/5/19 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 05, 2019

C-19-341380-1 State of Nevada
vs
Jarell Washington

December 05, 2019 9:30 AM Status Check: Trial
Readiness

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Athena Trujillo

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Kocka, Frank	Attorney
	Scarborough, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Kocka advised he just received the DNA report, has all discovery, and anticipates receiving an offer soon. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 1/7/20 9:30 AM

January 07, 2020

Minutes Date: June 26, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 16, 2020

C-19-341380-1 State of Nevada
vs
Jarell Washington

**January 16, 2020 9:30 AM Status Check: Trial
Readiness**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Louisa Garcia

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT: Kocka, Frank Attorney
PORTZ, KENNETH Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Mr. Kocka announced ready for trial. However, he spoke with Mr. Portz this morning and he suggested attending a settlement conference with Judge Bell, noting he would speak to his client this afternoon. COURT SO NOTED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 06, 2020

C-19-341380-1 State of Nevada
vs
Jarell Washington

February 06, 2020 9:30 AM Calendar Call

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Michaela Tapia

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Kocka, Frank	Attorney
	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Counsel announced ready but indicated Deft. is requesting a continuance. Deft. stated he needed time to look over the discovery. Counsel advised they had provided Deft. with the Grand Jury transcripts. Colloquy regarding case history. State indicated ready, 20-25 witnesses, and up to 8 days for trial. COURT ORDERED, trial date SET for Department 3.

CUSTODY

2/10/20 1:30 PM JURY TRIAL

CLERK'S NOTE: The Court Clerk confirmed the trial start time with Department 3 and was informed trial would begin at 1:30 p.m., not 1:00 p.m. as the Court ordered. /mt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 06, 2020

C-19-341380-1 State of Nevada
vs
Jarell Washington

February 06, 2020 3:30 PM Minute Order

HEARD BY: Herndon, Douglas W. **COURTROOM:** Chambers

COURT CLERK: Kory Schlitz

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The instant case is a Homicide Team case originally assigned to District Court Department 21. The case was set for trial to begin February 10, 2020, and the parties were prepared for trial. Because DC 21 was unavailable for trial, the matter needed to be reassigned. Administrative Order 17-05 gives this court, as the Homicide Team Case Management Judge, the authority to assign out in the first instance, and then reassign as necessity requires, all homicide cases. Because the case is a Homicide Team case, procedure dictates that efforts first be made to reassign the case within the Homicide Case Team. This court is available to take the trial. Therefore, based on the totality of circumstances present, this Court, as Homicide Team Case Management Judge and pursuant to Administrative Order 17-05, ORDERS the reassignment of the instant case to DC 3. Trial date stands for February 10, 2020

2/10/2020 1:30 P.M. JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 10, 2020**

C-19-341380-1 State of Nevada
vs
Jarell Washington

**February 10, 2020 9:30 AM Request DA Request: Entry of
Plea**

HEARD BY: Herndon, Douglas W.**COURTROOM:** RJC Courtroom 16C**COURT CLERK:** Kory Schlitz**RECORDER:** Stacey Ray**REPORTER:****PARTIES**

PRESENT:	Kocka, Frank	Attorney
	Mendoza, Erika	Attorney
	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Amended Indictment FILED IN OPEN COURT...

Mr. Kocka stated he met with the Defendant yesterday afternoon, and he did reach out to the District Attorney and the Defendants wish to negotiate the case, however after meeting with the Defendant this morning, the Defendant is requested to renew his Motion from Calendar Call to dismiss him as counsel. Mr. Kocka stated the reason the Defendant is requesting to dismiss him as counsel, is the Defendant does not feel that his is prepared for trial, and that the Defendant does not have all of his Discovery. Mr. Kocka stated his concern regarding the case, and the cold hit, and the witness who will testify, adding the Defendant has seen all of the Discovery, he just does not have it in his possession. Mr. Portz objected to the removal of Mr. Kocka, adding this would cause a delay, and these representations were made at Calendar Call, and was denied, pointing out the Discovery has been provided since the indictment, and the Defense has been ready to proceed with trial. Mr. Portz stated they have a pending Guilty Plea Agreement, and if the plea is not accepted the State would

request to proceed with trial this afternoon, adding there are about 20-25 witnesses who have traveled from out of state. Mr. Kocka informed the Court he did provide the Transcripts from the Grand Jury, so the Defendant is aware of the testimony. COURT STATED ITS FINDINGS, and ORDERED, Request to Withdraw Counsel DENIED, pointing out the request is tardy, and the Court will not revisit what Judge Adair has previously ordered; the case will proceed to trial this afternoon. Mr. Kocka stated after speaking with the Defendant he wishes to take the deal, and requested time to review the Guilty Plea Agreement with the Defendant. MATTER TRAILED.

MATTER RECALLED. All parties present as before. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFENDANT WASHINGTON ARRAIGNED AND PLED GUILTY TO MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing; trial date VACATED. COURT FURTHER ORDERED, case to remain in Department Three.

NDC

4/1/2020 9:30 A.M. SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 12, 2020**

C-19-341380-1 State of Nevada
vs
Jarell Washington

March 12, 2020**9:00 AM****Motion to Dismiss****Motion to Dismiss
Counsel****HEARD BY:** Herndon, Douglas W.**COURTROOM:** RJC Courtroom 16C**COURT CLERK:** Kory Schlitz**RECORDER:** Stacey Ray**REPORTER:****PARTIES**

PRESENT:	Kocka, Frank	Attorney
	Mendoza, Erika	Attorney
	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Kocka didn't know the Motion was on calendar today, until he checked Odyssey. Defendant stated he felt like he was mislead and coerced, adding he promised Discovery and he has not received it, pointing out he is fighting for his life. COURT ORDERED, Motion to Dismiss Counsel GRANTED, not to due to a conflict between Mr. Kocka and Defendant, however with the interest that the Defendant is expressing in his request to withdraw plea. COURT ORDERED matter REFERRED to the Office of Appointed Counsel; status check SET.

CUSTODY

3/26/2020 9:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL

4/1/2020 9:00 A.M. SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 26, 2020

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

March 26, 2020

3:30 PM

**Status Check:
Confirmation of Counsel**

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Kory Schlitz

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT:	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Stewart, Rachael E.	Attorney
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Defendant not present. Ms. Stewart stated they can confirm as counsel of record, however they do not have the file yet. COURT ORDERED, Defendant's presence WAIVED as they informed the Jail he did not need to be present today; status check SET and the Court will reach out to Mr. Kocka to have the file provided to Ms. Stewart. COURT FURTHER ORDERED, sentencing date VACATED as the Defendant is looking to withdraw his plea.

CUSTODY

5/1/2020 1:45 P.M. STATUS CHECK: MOTION TO WITHDRAW PLEA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 10, 2020

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

July 10, 2020 1:45 PM Status Check

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Louisa Garcia

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Pesci, Giancarlo Attorney
 State of Nevada Plaintiff
 Washington, Jarell Defendant

JOURNAL ENTRIES

- Mr. Ericsson stated he went through the discovery and met with Defendant; the Defendant still wants to proceed with his Motion to Withdraw Plea. Mr. Ericsson requested 30 days to supplement Defendant's motion. COURT ORDERED, Supplement to Motion DUE 8/7/21; State's Opposition DUE 8/21/20; Reply DUE 8/28/20 and hearing SET thereafter.

CUSTODY

9/9/20 9:30 AM MOTION TO WITHDRAW PLEA

CLERK'S NOTE: Clerk inadvertently set Motion on the incorrect date. The correct date is 9/9/20 at 9:30 am. Minute Order emailed to Erika Mendoza, erika.mendoza@clarkcountynvda.com, and Tom Ericsson, tom@oronozlawyers.com. Additionally, Court Recorder was directed to produce transcript dated 2/10/20.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 14, 2020

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

August 14, 2020 1:45 PM Minute Order

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Stacey Ray

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT STATED the instant matter is pending briefing and decision on a motion to withdraw plea; adding the matter is currently set for hearing on September 9, 2020. COURT ADVISED parties have reached out to the Court with a stipulation and agreement to modify the current briefing schedule, and ORDERED briefing schedule SET as follows: Defendant s Supplemental Motion due on or before August 14, 2020; Sates Response due on or before August 28, 2020; Defendant's reply due on or before September 4, 2020. COURT FURTHER ORDERED hearing date STANDS.

custody

9/11/2020 1:45 P.M. MOTION TO WITHDRAW PLEA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 11, 2020

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

September 11, 2020 1:45 PM Motion to Withdraw Plea

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 PORTZ, KENNETH Attorney
 State of Nevada Plaintiff
 Washington, Jarell Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Deft. present Via Video, from the Jail. Mr. Portz present Via Video, on behalf of the State, Via Video. Mr. Ericsson present Via Video, on behalf of Deft., through Bluejeans technology.

Court noted an evidentiary hearing needs to be set. Counsel advised they will need two and a half hours for the hearing. Court further noted the Court will have to contact Judge Bell and get a date, since deft. is in custody and they have to get video time from the Jail. Further, the Court's staff will let counsel know far enough out, for counsel to subpoena their witnesses.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 16, 2020

C-19-341380-1 State of Nevada
vs
Jarell Washington

**December 16, 2020 8:30 AM Motion for Own
Recognizance
Release/Settting Reasonable
Bail**

HEARD BY: Jones, Tierra

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire
Madalyn Kearney

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Ericsson, Thomas A.	Attorney
	Mendoza, Erika	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- All parties present via BlueJeans.

Arguments by counsel and statement by Defendant. Court advised it will be making a determination if the plea is withdrawn in February. As such, COURT ORDERED, bail STANDS and Defendant's Motion for Release on his Own Recognizance or in the Alternative Motion to Set Reasonable Bail DENIED.

CUSTODY

CLERK'S NOTE: Minutes prepared upon a review of the JAVS recording. /mk 12/30/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 19, 2021

C-19-341380-1 State of Nevada
vs
Jarell Washington

February 19, 2021 11:00 AM Evidentiary Hearing

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 PORTZ, KENNETH Attorney
 State of Nevada Plaintiff
 Washington, Jarell Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Deft. present via video, from the Jail. Mr. Ericsson present via video, on behalf of deft., through bluejeans technology.

HEARING HELD: Mr. Kocka Sworn and testified. Deft. Sworn and testified. Following testimony, COURT ORDERED, matter CONTINUED for Argument and Decision, on the date given. Upon Court's inquiry, regarding the transcript of the Calendar Call in DC21. Mr. Portz advised he may have to order that. Court directed Mr. Portz to prepare an order for transcript of the 2-06-20 Calendar Call, from DC21. Court noted without the transcript the Court will not require counsel to argue today, until counsel has an opportunity to review the transcript. Court to reach out to DC21.

CUSTODY

03/05/21 8:30 A.M. ARGUMENT / DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 05, 2021

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

March 05, 2021 8:30 AM Argument

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Ro'Shell Hurtado

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Ericsson, Thomas A.	Attorney
	PORTZ, KENNETH	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- Kenneth Portz, Esq. and Thomas Ericcson, Esq. present via Bluejeans video conference. Deft. present in-custody via Bluejeans video conference.

Upon Court's inquiry, Mr. Ericcson requested a continuance to review the transcripts with Deft.
COURT SO ORDERED.

CUSTODY

CONTINUED TO 03.10.2021 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 10, 2021

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

March 10, 2021 8:30 AM Argument

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Natalie Ortega

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Oronoz, James A. Attorney
 PORTZ, KENNETH Attorney
 State of Nevada Plaintiff
 Washington, Jarell Defendant

JOURNAL ENTRIES

- COURT NOTED this matter would be continued for the Judge to preside over. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 03/17/21 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 17, 2021

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

March 17, 2021 8:30 AM Argument

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 PORTZ, KENNETH Attorney
 State of Nevada Plaintiff
 Washington, Jarell Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Parties present via video, through bluejeans technology.

Following arguments by counsel, Court noted the a Decision will issue. Further Court noted a status check date will be given in the order.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 19, 2021**

C-19-341380-1

State of Nevada

vs

Jarell Washington

March 19, 2021**8:00 AM****Minute Order****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, hearing evidence at an evidentiary hearing, and considering the arguments of counsel, COURT ORDERED, Defendant s Motion to Withdraw Plea is DENIED. The COURT FINDS that Defendant insisted on proceeding to trial on multiple occasions and defense counsel was prepared to proceed to trial. The COURT FURTHER FINDS that Defendant s request to continue the trial date was denied on February 6, 2020. The COURT FURTHER FINDS that Defendant acknowledged receipt of an offer from the State on January 7, 2020 and accepted said offer on February 10, 2020, more than a month after receiving said offer; after his request to renew his motion to continue the trial was denied. The COURT FURTHER FINDS that Defendant was thoroughly canvassed regarding the plea agreement and never indicated that he did not wish to accept the agreement or that he was under duress during the plea canvass. Defendant argues that he was promised probation by his lawyer, if he accepted the negotiation. This claim is belied by the record, as the Court thoroughly canvassed the Defendant regarding the sentence and notified him that he was not eligible for probation for the offense to which he was pleading guilty. The COURT FINDS that there has been insufficient evidence presented to determine that the Defendant s plea was not knowing, willing, and voluntary. As such, the Defendant s Motion to Withdraw Guilty Plea is DENIED. The State is ordered to prepare an Order consistent with the Court s ruling and submit it to the Court for signature within 10 days of receipt of this Court s order.

This case will be set for status check: sentencing date on April 2, 2021 at 8:30 a.m.

04/02/21 8:30 A.M. STATUS CHECK: SENTENCING

Clerk's Note: This Minute Order was electronically served by Courtroom Clerk, Teri Berkshire, to all registered parties for Odyssey File & Serve. /tb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 02, 2021

C-19-341380-1 State of Nevada
vs
Jarell Washington

April 02, 2021 8:30 AM Sentencing

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Ericsson, Thomas A.	Attorney
	Mendoza, Erika	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Parties present via video, through bluejeans technology.

Upon Counsel's request, COURT ORDERED, Sentencing SET on the date given. Court noted the Motion to Withdraw Guilty Plea was Denied.

CUSTODY

04/16/21 8:30 A.M. SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 16, 2021**

C-19-341380-1 State of Nevada
vs
Jarell Washington

April 16, 2021 8:30 AM Sentencing

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Ericsson, Thomas A.	Attorney
	Fleck, Michelle	Attorney
	State of Nevada	Plaintiff
	Washington, Jarell	Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Deft. present via video, from the Jail.

Ms. Fleck submitted a binder from the victim's family to the Court. DEFT. WASHINGTON ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Arguments by counsel. Statements by deft. Victim speakers Sworn statements given. Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3,580.00 Restitution to Victims of Crime, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED to a MINIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MAXIMUM of THREE HUNDRED (300) MONTHS in the Nevada Department of Corrections (NDC); Plus a CONSECUTIVE MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC); for Weapons Enhancement, with 680 DAYS credit for time served. The Court has considered all of the factors under NRS 193.165 in determining the length of additional penalty to be imposed for the weapons enhancement. Binder returned to counsel.

C-19-341380-1

BOND if any, EXONERATED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 05, 2022

C-19-341380-1 State of Nevada
 vs
 Jarell Washington

**May 05, 2022 9:00 AM Motion to Withdraw as
Counsel**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Beverly, Leah C Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Oronoz present via video on behalf of deft. through bluejeans technology.

Deft. not present and in the Nevada Department of Corrections. COURT ORDERED, Motion to Withdraw as Counsel, GRANTED. Court directed Mr. Oronoz to forward the file to deft.

CUSTODY

Defendant(s): JARELL WASHINGTON, aka, Jarrell Washington, #2665695

Case No(s): 19AGJ043X (TRACKS TO DC III)

Charge(s): (1) CT - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony
- NRS 200.010, 200.030, 193.165 - NOC 50001)
(1) CT - ROBBERY WITH USE OF A DEADLY WEAPON (Category B
Felony - NRS 200.380, 193.165 - NOC 50138)

Def. Counsel(s): FRANCIS KOCKA

7/9 @ 900

WARRANT (1 WEEK) \$1,000,000 w/ high level monitoring

DEFT IN CUSTODY @ CCDC (19F07694X - PH 6/27 IN JC 2)

LVJC CASE TO BE DSM'D: 19F07694X

Exhibits:

- WA 1. Proposed Indictment
- WA 2. Photo
- WA 3. Photo
- WA 4. Photo
- WA 5. Photo
- WA 6. Photo
- WA 7. Photo
- WA 8. Photo
- WA 9. Photo
- WA 10. Photo
- WA 11. Photo
- WA 12. Photo
- WA 13. Photo
- WA 14. Photo
- WA 15. Photo

Exhibits 1 - 15 to be lodged with the Clerk of the Court.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

JARELL WASHINGTON
aka JARRELL WASHINGTON,

Defendant(s).

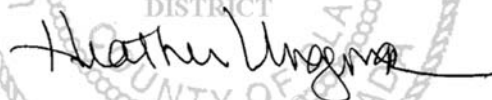
Case No: C-19-341380-1

Dept No: X

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of December 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

