In the Supreme Court of the State of Nevada

No. 85884

DAINE CRAWLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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

APPELLANT'S OPENING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

DAINE CRAWLEY, Appellant v. THE STATE OF NEVADA Respondent.	NO. 85884

APPELLANT'S OPENING BRIEF

I. JURISDICTIONAL STATEMENT

Appellant Crawley appeals from the District Court's Findings of Fact Conclusions of Law & Order in case A-20-816041 issued December 21, 2022 denying relief. 3AA679-699.

The judgment of conviction issued April 7, 2020 after he entered a plea agreement to a category C felony July 15, 2019. 1AA130-131.

Nevada law permits an appeal from a district court order refusing a new trial and or order on a writ action. See NRS §34.575; NRS §177.015(1)(c).

NRS 34.575 Appeal from order of district court granting or denying writ.

1. An applicant who, after conviction or while no criminal action is pending against the applicant, has petitioned the district court for a writ of habeas corpus and whose application for the writ is denied, may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the order and judgment of the district court, but the appeal must be made within 30 days after service by the court of written notice of entry of the order or judgment.

Sec. 4. **Jurisdiction of Supreme Court and court of appeals; appointment of judge to sit for disabled or disqualified justice or judge.**

1. The Supreme Court and the court of appeals have appellate jurisdiction in all civil cases arising in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. ….Nevada Const. art. VI §4. …

A timely proper notice of appeal was submitted on December 21, 2022. 3AA723-725. The due date for the Opening Brief and Appendices is April 26, 2023.

II. ROUTING STATEMENT

Daine Crawley's appeal is presumptively assigned to the Court of Appeals because pursuant to Nevada Rules of Appellate Procedure [NRAP] Rule 17(b)(3) and (7) it is an appeal from a postconviction civil writ of habeas corpus order [3AA664-684] denying relief from the judgment of conviction of a Category C felony. 1AA130-131. [Amended judgment of conviction 3AA700-703].

III. STATEMENT OF THE CASE

On June 13, 2019 the Las Vegas Justice Court in case 19F11843X held an Initial Appearance Hearing for Daine Crawley. 1AA1. He allegedly threatened people with a knife – who were walking to and in their cars by the Excalibur and Luxor casino parking lot on June 12 2019. 1AA73.

Probable cause was found, and counsel was provisionally appointed to him. Register of Actions 19F11843X. 1AA1. Standard bail was set at $5,000 / $5,000. The Criminal Complaint was filed in open court on June 17,

2019 charging him with Count 1: Assault with a Deadly Weapon a category B felony in violation of NRS 200.471; and Count 2: Carrying a Concealed Firearm or other Deadly Weapon a category C felony in violation of N.R.S. 202.350(1)(d)(3). 1AA10-11. At this hearing Mr. Crawley was advised of the charges in the criminal complaint and he waived reading. 1AA12. He was allowed out on house arrest with Electronic Monitoring. 1AA17. He failed to appear for his June 25 2019 hearing and a bench warrant order issued. 1AA18-19. He appeared in custody at his July 11 2019 hearing and unconditionally waived his right to a preliminary hearing. 1AA3-8.

He was bound over to District Court as charged in case C-19-341735-1. At his Initial Arraignment on July 15, 2019, with counsel Erika D. Ballou by his side, he entered a plea of guilty to Count 2 Carrying other Deadly Weapon Category C felony per NRS 202.350(1)(d)(3). Guilty Plea Agreement – 1AA22-29. Transcript of Hearing - 1AA30-36.

On August 27, 2019 a sealed PSI was eFiled. Mr. Crawley moved to dismiss his trial counsel, Ms. Ballou, by motion on October 28, 2019. 1AA37-41. There was an All Pending Motions hearing on November 13, 2019. 1AA42-51. Attorney Ballou moved for the Guilty Plea Agreement to be withdrawn and advised that there was incorrect information in the PSI and that a new evaluation needed to be done.

While he was out on his own recognizance for this case – he was apprehended at Neiman Marcus on August 9, 2019 trying to steal designer jeans. C-19-342881 Grand Larceny. Shortly before this case settled - he settled via plea the Neiman Marcus case on September 6, 2019

- terms stipulated to be concurrent with this yet unsentenced case C341735. 1AA84.

On November 19 2019 the State submitted their Notice of Intent to Seek Punishment as a Habitual Criminal. 1AA52-53.

On November 20 Carl Arnold confirmed as counsel to handle the plea withdrawal efforts. 1AA54-57. Given the habitual additur he was now facing a significant more amount of prison time. His plea agreement dismissed Count 1 Assault with a Deadly Weapon a category B Felony and he plead guilty to carrying a concealed firearm or other deadly weapon – a Category C felony.

A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than $10,000, unless a greater fine is authorized or required by statute.

The Plea agreement states in part …the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty (20) twenty years, life without the

possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

(With the small habitual criminal statute used to enhance his sentence he was ultimately sentenced to 84 months to 240 months or 7-20 years instead of the originally anticipated 1-5 years.)

There were two brief hearings on January 15 and 29, 2020 to check status. 1AA58-59; 1AA60-62. On January 31, 2020 Attorney Arnold submitted his Motion to Withdraw Guilty Plea. 1AA63-69. And the State filed their Opposition on February 14, 2020. 1AA69-74. Argument on the motion took place February 19, 2020. 1AA75-82. The Court made an immediate denial of the motion. It was decided Mr. Arnold would handle the Sentencing hearing at Mr. Crawley's request. The Court requested that any errors in the PSI to be addressed prior to sentencing. The State submitted their Sentencing Memorandum on March 3 2020. 1AA83-85.

On March 4, 2020 there was a hearing with argument on Small Habitual Criminal Treatment. 1AA86-103. A Supplemental PSI was eFiled confidential and sealed on March 24, 2020. [Transmitted pursuant to 4.12.23 Motion to the Supreme Court - approved 4.14.23.]

On April 1, 2020 the Sentencing Hearing took place before the Honorable Jacqueline M. Bluth.1AA104-125. Attorney Roger Bailey appeared with Mr. Crawley. Crawley was sentenced pursuant to the small habitual statute NRS 207.010(a) for this case which resulted in a sentence of 7-20 years for carrying the small pocketknife. (84 months to 240 months). 1AA124-125.

The Judgment of Conviction was filed April 7, 2020. 1AA130-131. Mr. Crawley filed a pro per notice of appeal. 1AA126-129.

On May 11, 2020 Attorney Arnold's appointment as Appellate Counsel for direct appeal was confirmed. He submitted his short Opening Brief on October 12, 2020.

1AA184-192. The 23 page appendix included the Information [1AA20-21], Guilty Plea Agreement [1AA22-29], Transcript of the Waiver of Preliminary Hearing [1AA3-8], Notice of Appeal [1AA126-129], and Judgment of Conviction. 1AA130-131]. The Attorney General responded with a brief and appendix on November 12, 2020. 1AA193-205, 206-207.

The Direct Appeal Order affirming judgment along with the Nevada Supreme Court Clerk's Certificate of Judgment Affirmed dated March 19, 2021 for Supreme Court Case #81011 and Remittitur issued in March and April 2021. 1AA217,-218; 219; 229. The Opinion was short and did not really reach the merits: "Crawley does not provide this court with transcripts of his plea canvass. Or the hearing on his motion to withdraw plea. These documents are necessary for this court's review of his claim. Therefore, we cannot conclude the district court abused its discretion by denying Crawley's presentence motion to withdraw his guilty plea…." 2AA267. So there is no real law of the case to speak of.

On June 4, 2020 Mr. Crawley filed a timely postconviction Petition for Writ of Habeas Corpus. A-20-816041-W. 1AA134-149. The Court ordered a Petition for Writ of Habeas Corpus June 9, 2020. 1AA150. Mr. Crawley submitted a second petition for writ of habeas corpus June 12, 2020. 1AA151-167. The State responded July 21, 2020. 1AA168-175. Among other things he argues that the second petition submitted June 12 2020 should not be considered. 1AA172-173. But if you go through a page by page comparison – you will see they are essentially the same. The Grounds listed are the same: Ground 1 Violation of 14th Amendment, Equal Protection Clause Due Process of Law Violation First Petition: 1AA141; Second Petition 1AA156. Ground 2 Violation of Amendment 6, Amendment 7, Amendment 5: First Petition 1AA142. Second Petition 1AA158. Ground 3: Violation of Administrative order 20-06 filed March 18 2020: First Petition: 1AA143. Second Petition: 1AA163. Ground 4: 8th Amendment Cruel and unusual punishment, 7th Amendment right to jury trial. First Petition: 1AA144.

Second Petition: No Ground 4. We will address this further on in the argument section.

With respect to the appointment of a postconviction writ of habeas corpus attorney there is confusion in that the minutes on August 26, 2020 are contradictory. 1AA178-180; 3AA699. "Mr. Bailey will accept the appointment today," but they conclude with Court Ordered, Carl Arnold Appointed as counsel." It is believed they were both with the CEGA Law Group at the time.

On March 18, 2021 Mr. Crawley filed a pro per supplement because he could not reach attorney Bailey or attorney Arnold or get a straight answer from the court as to why his action was at a standstill. 1AA189-214. 3AA398. The State Responded May 6, 2021. 1AA221-227.

A Minute Order was filed May 25, 2021 denying Mr. Crawley's petition as procedurally barred. 3AA701-702. The Order found: First there were claims that were direct appeal issues which is not allowed. And next, Mr. Crawley

had stepped in and filed the supplement himself even though attorney Carl Arnold and or Roger Bailey had been appointed on April 26, 2020.

Mr. Crawley filed a pro per Notice of Appeal for case 83136 on June 24, 2021 with several attachments 67 pages on a post-conviction petition for writ of habeas corpus form – court stamped by the Supreme Court July 1 2021. 2AA286. He also filed a motion to withdraw counsel with the Supreme Court on July 1 2021. 2AA342.

And a Case Appeal Statement was filed June 28 2021. 2AA291-292. A Motion to Withdraw Counsel was submitted July 8 2021. 2AA345-349. Findings of Fact, Conclusions of Law and Order issued July 22, 2021. 2AA350-356.

The appeal courts remanded the case – No. 83136-COA - on March 1, 2022. 2AA360-363.

They found that the District Court's Opinion that 'no ineffectiveness of trial counsel issues were raised in the

petition or subsequent arguments' was belied by the record. 2AA360.

Further because the record was unclear on who the appointed counsel was and there was not supporting documentation provided, they could not align with the District Court's finding that Mr. Crawley's pro se supplement filing in light of his attorney's inattention was fugitive. 2AA361. And because the District Court had deemed the postconviction action as meriting counsel – and that at least one of the issues raised was a sentencing issue creating a conflict of interest with the appointment of either attorney because both Bailey and Arnold had represented Crawley during the criminal case proper.

On March 28, 2022 this counsel Diane Lowe was appointed to represent Mr. Crawley for his postconviction writ of habeas corpus action. A-20-816041-W Daine Crawley, Plaintiff(s) vs. Warden Williams, HDSP, Defendant. 2AA372-377. On August 26, 2022 a Supplemental Brief to the Post-Conviction Petitions for Writ of Habeas Corpus was filed with attachments. Brief:

2AA378-4-8; Declaration of Crawley: 2AA382-400; Records and Letters: 2AA409-483; 3AA485- 3AA483-646.

The State's Response to this action was October 20, 2022. 3AA647-666. In it they claimed among other things that petitioner's 2nd and third pro per submissions adding to his initial petition for writ of habeas corpus should not be considered because the court did not grant permission for additions. 3AA661 referring to June 12, 2020 [1AA151-167] and March 18, 2021. Petition: 1AA213-247, Supplement: 1AA238-241, 2AA242-263. A Reply Brief was not ordered or submitted. An argument hearing was held November 28 2022. 3AA667-677. A Minute Order denying relief was issued December 21 2022. 3AA678. And on that same day an Amended Findings of Fact, Conclusions of Law and Order was issued. 3AA679-699. A timely notice of Appeal was submitted December 21, 2022. 3AA723-725. We filed the appeal to be timely though there were a couple small issues still to resolve. The court had proceeded to rule on the briefing while

neglecting the remaining issues mentioned at argument and for which there was a hearing scheduled on sentence credit and adding certified records to replace the uncertified records from one of Mr. Crawley's treatment providers. 3AA673. On January 10 2023 the certified records were ordered admitted. And on February 17, 2023 an Amended Judgement of Conviction was issued adding 199 days of sentence credit. 3AA700-703. 2AA428-484.

IV. STATEMENT OF THE FACTS

Mr. Crawley's 2 initial criminal charges (later reduced to 1 via plea) stem from allegations that he threatened people who were walking to and in their cars by the Excalibur and Luxor casino parking lot on June 12 2019. 1AA73.

Earlier that day leading up to his arrest - Mr. Crawley had been helping someone move to make a little money. 2AA421. He lost track of time, and this caused him to miss the opportunity to check

in to get a bed at Salvation Army and he had no place he could think of to go. 2AA421. He was riding the bus for a while and eventually he had them let him off at the Luxor Hotel. He thought he could hang out there for a couple hours at the Sports Book bar in the seating area. Within the hour he had fallen asleep. Security told him he had to leave the hotel. 2AA419. They grabbed his nearby backpack and tablet and said since he did not have an ID he could not have it back. They had security on bikes following him to make sure he fully left. Las Vegas police approached him as he was leaving the casino area. He reflexively ran from them and as he did; a vehicle grazed him. 2AA422. He was trying to protect himself pushing himself away from the car. So, he is wondering if that is what they were talking about for count 1. He had tried to end his life that day and had taken a large amount of Xanax, alprazolam and alcohol hoping he would not wake

up. 2AA422. 1AA123. So, he can't fully rule out that he was not cognizant of what was going on and what had transpired. 2AA422. NBH records state on April 27, 2019 Crisis assessment that he presented with extreme paranoia and delusional thinking. 2AA432.

This action stems from a June 12, 2019 incident near the Luxor.

For at least 48 of the times he had been to NBH that year, including before and after these charges, he was diagnosed with among other things an Active Adjustment Disorder unspecified F43.20(ICD-10). April 28, 2019 2AA435, April 29, 2019 2AA437… June 3 2019. 3AA509. June 20, 2020. 3AA511….

He can't figure out why the people in the parking lot would have said the things they did to the police unless there was another person running around in the parking lot and they just confused him for the other guy given he was running.

2AA423. Or if it was because he was pushing against the vehicle to get away from it and they mistook it for threats. Or if there was some sort of mental break. What he does definitely remember is he never had any intent to hurt anyone. He does recall earlier having about 4-5 fifths of new liquor bottles in his backpack that he was trying to sell And maybe he was approaching them trying to sell the bottles. He never got them back from police after he got locked up. Id.

When he was apprehended the police found a small knife on his belt. He did not even think of it as a knife it's so small; so, when they asked him whether he had a knife on him he said no. Literally it was a razor blade about the size of a pen cap if extended. 2AA423. He was arrested. He was later released out with electronic monitoring. It registers to your cell phone. And that was a problem because he had no home. 2AA423.

V. STANDARD OF REVIEW

This Court reviews the district court's application of the law de novo. State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012), cert. denied, 133 S. Ct. 988 (2013). Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). "…the appellate court reviews a claim of ineffective assistance of counsel de novo, as a mixed question of law and fact. The appellate court gives deference to the district court's factual findings, however, if not clearly erroneous and supported by substantial evidence.' Rubio v. State, 124 Nev. 1032, 1034, 194 P.3d 1224, 1226 (2008). Denial of an evidentiary hearing is reviewed for an abuse of discretion. The district court need not hold an evidentiary hearing where a claim or allegation is repelled or belied by the record, or "necessarily false." Mann v. State, 118 Nev.351 at 354-55, 46 P.3d 1228 at 1230 (2002). But a claim "is not 'belied by the

record' just because a factual dispute is created by the pleadings or affidavits filed during the postconviction proceedings. A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Id. at 354, 46 P.3d at 1230. Berry v. State, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015).

VI. SUMMARY OF THE ARGUMENT

Crawley committed to an unknowing plea due to the ineffectiveness of trial counsel. He then tried to have that plea withdrawn pretrial and that counsel was ineffective as well. Since it was pretrial – the general preclusions of entitlement to effective writ of habeas corpus counsel are not applicable. Caselaw on this issue specifically state 'post-conviction counsel'. "…there is no constitutional or statutory right to the assistance of counsel in noncapital *post-conviction proceedings*, and '[w]here there is no right to counsel there can

be no deprivation of effective assistance of counsel.'" Id. at 569, 331 P.3d at 870 (quoting McKague v. Warden, 112 Nev. 159 at 163–65, 912 P.2d 255 at 258).

Mr. Crawley also received prejudicially ineffective assistance of counsel at sentencing. A prisoner's inability to present an ineffective-assistance claim is of particular concern because the right to effective trial counsel is a bedrock principle in this Nation's justice system. Martinez v. Ryan, 566 U.S. 1, 2, 132 S. Ct. 1309, 1311-12 (2012).

VII. LEGAL ARGUMENT

The Sixth Amendment to the United States Constitution provides that, "[in]n all criminal prosecutions the accused shall enjoy the right … to have the Assistance of Counsel for his defense." This court has long recognized that 'the right to counsel is the right to effective assistance of counsel." Strickland v Washington, 466, U.S. 668, 104

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

To prove ineffective assistance of counsel, a petitioner must show: (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. The first prong of this test asks whether counsel's representation fell below an objective standard of reasonableness as evaluated from counsel's perspective at the time. The second prong asks whether there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. ..

When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and the spirit of the plea bargain. Id.

The Sixth Amendment to the United States Constitution provides that, "[in]n all criminal prosecutions the accused shall enjoy the right … to have the Assistance of Counsel for his defense." Strickland v Washington, 466, U.S. 668,

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

To prevail on a claim of ineffective assistance of trial counsel a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686, 104 S. Ct. at 2063-64; see also Love, 109 Nev at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for the counsel's errors there is a reasonable probability that the result of the proceedings would have been different. Strickland at 687-88, 694, 104 S. Ct at 2065, 2068. Warden, Nevada State Prison v Lyons, 100 Nev 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

The Nevada courts have adopted the "reasonably effective assistance" standard to govern ineffective assistance of counsel cases. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). The "reasonably effective

assistance" standard was articulated in Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984), and described by this court in State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993). Doleman v. State, 112 Nev. 843, 847, 921 P.2d 278, 280 (1996).

'An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense. In evaluating whether the performance of counsel was deficient in a constitutional sense the relevant question is whether counsel's representation fell below an objective standard of reasonableness. In considering prejudice, the appropriate inquiry is whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' Juan H. v. Allen, 408 F.3d 1262, 1266 (9th Cir. 2005). 'The Court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated that counsel was ineffective by a

preponderance of the evidence.' See Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). 'The preponderance of the evidence standard requires the trier of fact "to find that the existence of the contested fact is more probable than its nonexistence." Abbott v. State, 122 Nev. 715, 734, 138 P.3d 462, 475 (2006) (internal quotation marks omitted)'. Preponderance of evidence means: 'The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in most civil trials in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be." Black's Law Dictionary 1431 (Deluxe 11th Edition).

Nev. Rev. Stat. § 34.810(1)(a) establishes that a court must grant petitioner relief if he is able to show that his

conviction was upon a plea of guilty and the petitioner successfully proves that the plea was entered without effective assistance of counsel causing him prejudice. Gonzales v. State, 492 P.3d 556, 558 (Nev. 2021). It also allows relief for meritorious claims of ineffective assistance of counsel at sentencing. Id.

A District court may only set aside a conviction post-conviction sentence in order to correct "manifest injustice". NRS 176.165.

Nevada Revised Statutes (NRS) Chapter 176 Judgment and Execution - Withdrawal of Plea

NRS 176.165 When plea of guilty, guilty but mentally ill or nolo contendere may be withdrawn. Except as otherwise provided in this section, a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea.

Manifest injustice is a more difficult standard to prove than the pre conviction standard for plea withdrawal. Nev. Rev. Stat. §176.165 allows a defendant who has pleaded guilty, but not been sentenced, to petition the district court to withdraw his plea for any substantial reason that is "fair and just". Stevenson v. State, 354 P.3d 1277, 1278 (Nev. 2015). 'To correct manifest injustice, a court after sentence may set aside a judgment of conviction and permit a defendant to withdraw a plea. Nev. Rev. Stat. § 176.165. "A manifest injustice occurs where a defendant makes a plea involuntarily or without knowledge of the consequences of the plea—or where the plea is entered without knowledge of the charge or that the sentence actually imposed could be imposed." State v. James, 176 Wis. 2d 230, 500 N.W.2d 345, 348 (Wis. Ct. App. 1993) (internal quotation marks omitted). Bork v. State, 2016 Nev. App. Unpub. LEXIS 160, *1, 132 Nev. 948, 2016 WL 757117

"To establish prejudice in the context of challenging a guilty plea agreement based upon ineffective assistance of

counsel, Petitioner must demonstrate a reasonable probability that, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Molina v State, 120 Nev. 185, 190-191, 87 P.3d 533, 537 (2004). He can show this prejudice by a declaration affirming under oath this proposition and also by pointing to the strengths of his case now known - to support the believability of his declaration. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

The totality of the circumstances must demonstrate that a defendant pleaded guilty with knowledge of the direct consequences of his plea. Nollette v. State, 118 Nev. 341, 344, 46 P.3d 87, 89 (2002). Direct consequences are those ramifications that have "'a definite, immediate and largely automatic effect on the range of the defendant's punishment.'" Collateral consequences, by contrast, do not affect the length or nature of the punishment and are generally dependent on either the court's discretion, the

defendant's future conduct, or the discretion of a government agency.

Id.

A claim for habeas corpus relief is not belied by the record just because a factual dispute is created by the pleadings or affidavits filed during the post-conviction proceedings. A claim is belied when it is contradicted or proven to be false by the record as it existed at the time the claim was made. Mann v. State, 118 Nev. 351, 352, 46 P.3d 1228, 1228 (2002).

1. THE DISTRICT COURT ERRED IN FINDING THAT PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED INTO THE PLEA AGREEMENT. 3AA679-699 at 684-684.

The District Court wrongly makes a blanket assertion on the adequacy of the plea as knowing because of the court plea colloquy and signed form. The District Court is wrong because it does not account for the totality of the circumstances which must be reviewed to establish effectiveness of trial counsel. 3AA685. The Court says nothing to dispel the inaccuracies that were told him by his

counsel and omissions – just according to the Court since it was stated in the plea then you for all practical purposes cannot challenge it. But according to the law – it is not just one thing rather it is the totality of circumstances that are to be looked at and that is why we must have an evidentiary hearing to listen to what both say regarding what they discussed about the plea, the time exposure, and how the agreement impacted him at sentencing.

1. The court shall dismiss a petition if the court determines that:
(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.
Gonzales v. State, 492 P.3d 556, 559 (Nev. 2021).

See also: 'Although Toston was correctly informed of his limited right to a direct appeal in the written guilty plea agreement, see Davis, 115 Nev. at 19, 974 P.2d at 659, the record is not sufficient to belie his allegation that he did not pursue an appeal due to the alleged *misinformation from counsel*. Because Toston's

allegations are not belied by the record on appeal and, if true, it would entitle him to relief because prejudice would be presumed under Lozada, we cannot affirm the decision of the district court denying Toston's claim in the absence of an evidentiary hearing.' Toston v. State, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). Likewise – while Mr. Crawley's one dimensional plea agreement was placed on the record, it was not sufficient to determine whether things were said to him outside the presence of a court recorder and sworn signed document that resulted in an unknowing plea. We have outlined things by declaration which if true would merit relief. Declaration of Daine Crawley: 3AA409-427.

Petitioner very carefully outlines in his petition and sworn Declaration exactly why his attorney's errors led this to be an unknowing involuntary plea. Said errors resulted in him committing to a plea agreement that risked far more

imprisonment time than what he was led to believe could be possible under his circumstances.

Examples 2AA409-427:

> Declaration of Crawley: 57. I don't feel he explained the plea agreement to me sufficiently and this led to an unknowing plea on my part. It was my understanding if I showed that I had tried to get into programming the State would honor the spirit of the agreement and not seek habitual treatment at sentencing. 2AA425.
> 60. Though a habitual potential is stated in the plea agreement [4:1-2] I thought it was to be read in combination with the agreement that the State would not seek the habitual if he made good faith efforts to get treatment. I was also not advised that out of state convictions would count. Nor did I know that felony crimes from other states qualifying as gross misdemeanors out here would be counted as felonies. 2AA426.
> 62. I would not have accepted the plea agreement and instead would have insisted on going to trial had I known what I know now; but did not know because my representation was prejudicially ineffective. 2AA426.

See also argument hearing transcript and briefing materials. 3AA668:

MS. LOWE:

MS. LOWE: First and foremost with respect to the plea agreement, the State seems to imply that since he was told that he has an exposure of one to five years that anything

else is a collateral consequence of the plea. We disagree with that. 3AA668. Right. Direct consequence has the immediate and largely automatic effect on the range of the Defendant's punishment. 3AA669.

And he's stating that he was told if he participated or tried to participate in programming the State would not seek habitual treatment. He's stating he was not aware of other things with respect to the plea agreement either. For instance, that his out of state felonies which are misdemeanors would be treated as felonies in this state. He wasn't aware that they would be counted and he thought that his treatment at Nevada Behavioral Health was sufficient under the spirit of the agreement as per Gonzalez that it would be honored without raising the exposure from one to five years to seven to twenty years which is ultimately what he got for having a tiny little razor blade which he didn't even consider a knife on him. 3AA669.

The Supreme Court of Nevada will not invalidate a guilty plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1099, 13 P.3d 442, 443 (2000). Thus the errors were pertaining to direct consequences of the plea. "The totality of the circumstances must demonstrate that a defendant pleads guilty with knowledge of the direct consequences of his plea. Direct consequences are those ramifications that have a definite, immediate and largely automatic effect on the range of the defendant's punishment. Collateral consequences, by contrast, do not affect the length or nature of the punishment. Nollette v. State, 118 Nev. 341, 343, 46 P.3d 87, 89 (2002). "To establish prejudice in the context of challenging a guilty plea agreement based upon ineffective assistance of counsel, Petitioner must demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and

would have insisted on going to trial." Molina v State, 120 Nev. 185, 190-191, 87 P.3d 533, 537 (2004). Kirksey v State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

He can show this prejudice by a declaration affirming under oath this proposition and also by pointing to the strengths of his case now known - to support the believability of his declaration. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Mr. Crawley has affirmed this in his declaration. 2AA426.

Mr. Crawley's attorney ineffectively and prejudicially mislead him into believing that if he participated in programming – or made good efforts to do so after committing to the plea agreement - the State would not seek habitual treatment. Further the parameters of 'habitual treatment' was not adequately explained to him. Nor was he properly advised on how it related to the Gonzales 'spirit of the agreement' to forgo habitual if treatment was sought. 3AA426. .

Therefore, it was an unknowing involuntary plea due to ineffectiveness of his counsel. He was prejudiced because the misinformation given to him led him to take a plea agreement instead of taking his case to trial. This caused manifest injustice. With the habitual on the second count - possession of a dangerous weapon– he was getting more exposure than he would have on the two counts as charged. He states had he known this and that the State would not honor the spirit of their agreement on the habitual – he would not have taken the plea deal and instead would have insisted on a jury trial. 3AA409. 3AA426.

2. THE DISTRICT COURT ERRED IN FINDING THAT PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING. 3AA689-691.

The district court didn't seem to think much of the significant errors and omissions we pointed out in our

argument hearing regarding sentencing: Sentencing hearing transcript 1AA104-125:

MS. LOWE: And the next issue is with respect to sentencing. 3AA669. The State said at the sentencing hearing that here's a fellow whose criminal **felony** history has spanned almost twenty years. When the fact of the matter is as they concede in their response, but not fully, he had a misdemeanor operating while intoxicated in 2004. So they say well that's almost sixteen years, but his most recent felony or his earliest felony was in 2010, so that's a ten-year felony history when it should have been -- when it was stated as almost twenty-year felony history. 3AA669-670.

The District Court points to the fact that Defendant made a statement discussing some of the issues. As if to imply that negates the defense attorney's responsibility to speak to them and provide documentation supporting his mitigating factors. Because we know without backup documentation it is all seen by the court as conclusory fluff. 1AA119. We have provided that significant

documentation supporting mitigating factors which this court legally was required to consider as such. 2AA409-429:

Nevada Behavioral Health Records of Daine Crawley part 1 Supplement Attachment	2AA428-484
Nevada Behavioral Health Records of Daine Crawley part 2 Supplement Attachment	AA 485-517
Community Orthopedic Medical Letter re Treatment of Mr. Crawley	519-520
Declaration of Program Director of CrossRoads of Southern Nevada re Daine Crawley & their Operation James June	521-523
Medical Records of Daine Crawley from Crossroads Treatment	524-641
Clark County Detention Center Inquiry and Response re Release time of Daine Crawley	642-643
Completion of Program Letter Dated March 25, 2022 from Life Coach at Body, Mind, Soul, Support Solutions from Sharon Bachman	644-645 366-371
Daine Crawley Certificate of Achievement for Substance Abuse Counseling March 15 2020	3AA 646

And yet it did not seem to matter to the court. But judges are expected to follow the law and even if the attorney did not think that it is something that would help with that judge in light of their reputation – it does not take it out of the category of prejudicial ineffectiveness:

Correll v. Ryan, 539 F.3d 938, 949-51 (9th Cir. 2008).

The Probation and Parole PNP sentence recommendations would have been much lower if they had his Nevada Behavioral Health Records. If you turn to the last page of the PSI you can see that a downward deviation in sentencing may be appropriate if either the physical or mental disability check box is marked. Neither were checked and this is clearly wrong, ineffective and prejudicial of his trial counsel not to have this corrected. See page 14 of March 24 2020 supplemental PSI transmitted by motion. On the first PSI Physical Handicap is checked but again mental health issues remain unchecked. August 27 2019 PSI p. 13.

Mr. Correll's trial attorney trying to explain for the record why he took the approach to the sentencing hearing that he did for the Correll case: [A]s a practical matter, and certainly with Judge Howe [the trial judge], once he found out that this man was a sociopath or psychopath, whichever term you want to use, he didn't have a chance in a hundred of keeping from getting the death penalty. *'Cause even though he can claim that this is a mitigating*

factor the reality is that when you tell someone in society and certainly Judge Howe, the man is a sociopath, that dictates that he's the kind of person who should get the death penalty, that's what the thinking's going to be. This entire line of reasoning, however, presumes that the judge would not follow the law --speculation that is never appropriate and that is not supported by the record here. Id.

Crawley: I don't feel competent comments were offered on my behalf at sentencing tried to tell my attorneys some of the mitigating factors, but they did not spend time to get to know me or to listen. I tried calling them repeatedly, but they would not pick up. We had agreed that Attorney Arnold would handle my sentencing hearing; but instead, he sent his colleague to handle it – Roger Bailey. And as little as Carl Arnold knew about my background — Bailey knew even less. His fifteen-sentence lackluster statement on my behalf was devastating to me. 3AA426. The inattention and neglect of Crawley by all of his trial counsel and including the direct appeal is appalling. Even

the State admitted on the record that the first counsel was ineffective. And then the withdrawal efforts for the plea fall flat pretrial with a failure to present requisite certified documentation. And then Attorney Arnold and or Baily failed to file a Supplement at the postconviction level and Crawleys pro per supplement was dismissed by the court at a fugitive document. 3AA717. And then you get to the appeal level and trial counsel does not even provide the transcripts for the plea and sentencing hearing in his efforts to establish error so the Appellate court finds their hands are tied to the limited record and rules against Crawley. 1AA184-192. Appeal counsel Arnold only stepped in after Crawley filed a pro per notice of appeal. 2AA266-267. 1AA126-129. 3AA714, 715.

But despite all of this confusion, Crawley's pro per appeal succeeded and the appeal court reversed and remanded finding the court's findings belied by the record. 2AA360-363.

3. THE DISTRICT COURT ERRED IN NOT GRANTING AN EVIDENTIARY HEARING. 3AA691-693.

Because we have presented significant evidence that if true would entitle Mr. Crawley to relief an evidentiary hearing should have been granted to have parties state for the record the who what when where and why of it all.

With these principles in mind, we turn to the district court's denial of Berry's request for an evidentiary hearing, which we review for an abuse of discretion. *See Rubio v. State*, 124 Nev. 1032, 1047, 194 P.3d 1224, 1234 (2008). The district court need not hold an evidentiary hearing where a claim or allegation is repelled or belied by the record, or "necessarily false." *Mann*, 118 Nev. at 354-55, 46 P.3d at 1230. But a claim "is not 'belied by the record' just because a factual dispute is created by the pleadings or affidavits filed during the postconviction proceedings. A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." *Id.* at 354, 46 P.3d at 1230. Berry v. State, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015).

A postconviction habeas petitioner is entitled to an evidentiary hearing on any claims that if true would warrant relief as long as the claims are supported by specific factual allegations which the record does not belie or repel. Byford v. State, 123 Nev. 67, 68, 156 P.3d 691, 691 (2007).

VIII. CONCLUSION

Wherefore we ask that this court reverse the conviction of Mr. Crawley and order an evidentiary, new trial or a new sentencing hearing.

DATED this 26TH Day of April 2023.

Respectfully Submitted,

/s/ Diane C. Lowe
DIANE C. LOWE ESQ. Nevada Bar #14573

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more and contains 7,073words;

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP

28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26TH Day of April 2026.

Respectfully Submitted,

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NRAP 26.1 DISCLOSURE

Pursuant to Rule 26.1, Nevada Rules of Appellate Procedure, the undersigned hereby certifies to the Court as follows:

1. Appellant Daine Crawley is an individual and there are no corporations, parent or otherwise, or publicly held companies requiring disclosure under Rule 26.1;

2. Appellant Daine Crawley is represented in this matter by Diane C. Lowe, Esq., Nevada Bar #14573. He was represented by Carl Arnold #8358, Roger Bailey #12552, and Erika D Ballou #8365 at the trial level.

Respectfully Submitted,

/s/ Diane C. Lowe
DIANE C. LOWE ESQ. Nevada Bar #14573

CERTIFICATE OF SERVICE

In accordance with NRAP 25, I hereby certify and affirm that this document and the appendix were electronically filed with the Nevada Supreme Court on April 17 2023 and April 26, 2023. Electronic Service of the foregoing document and appendix shall be made in accordance with the Master Service list as follows:

Steven B. Wolfson Clark County District Attorney

Aaron D. Ford Attorney General Carson City