

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

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Case No. 85955

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RESPONDENT'S APPENDIX

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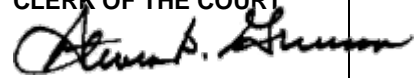
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1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 LARENZO PINKEY,
9 aka Lorenzo Pinkney, and
10 ADRIAN POWELL,

11 Defendants.

CASE NO. C-17-327767-1, 2

DEPT. XXVIII

12 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

13 TUESDAY, JULY 31, 2018

14 **RECORDER'S TRANSCRIPT OF**
15 **JURY TRIAL - DAY 2**
16 **GUILTY PLEA AGREEMENTS**

17
18 APPEARANCES:

19 For the Plaintiff:

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney
MICHAEL DICKERSON, ESQ.
Deputy District Attorney

22 For Defendant Pinkney:

BENJAMIN DURHAM, ESQ.

23 For Defendant Powell:

MICHAEL KANE, ESQ.

24
25 RECORDED BY JUDY CHAPPELL, COURT RECORDER

1 Tuesday, July 31, 2018 - Las Vegas, Nevada

2 [Proceedings begin at 1: 41 p.m.]

3 [Out of the presence of the Jury]

4
5 THE MARSHAL: Remain seated. Come to order. The trial again is in
6 session.

7 THE COURT: Okay. Case C327767, State of Nevada versus Lorenzo
8 Pinkney and Adrian Powell. Let the record reflect Defendants are present.

9 Counsel, state your appearance.

10 MR. DURHAM: Ben Durham on behalf of Mr. Pinkney, Your Honor. He's
11 present in custody.

12 MR. KANE: Michael Kane on behalf of Mr. Powell.

13 MR. GIORDANI: John Giordani and Mike Dickerson on behalf of the State.

14 THE COURT: Okay. It's my understanding that the Defendants have
15 decided to accept a guilty plea agreement?

16 MR. DURHAM: That's correct, Your Honor. I can state briefly the
17 substance of the negotiations, and I believe they're identical as to both.

18 MR. GIORDANI: Yes.

19 MR. DURHAM: Mister -- regarding Mr. Pinkney and Mr. Powell, they'll be
20 entering guilty pleas to the counts as charged in the amended indictment. The
21 State at the time of sentencing retains the full right to argue; however, they agree
22 not to seek a life sentence on any of the counts that the Defendants are pleading
23 guilty to.

24 The State will agree not to file charges on the ten separate event
25 numbers that are listed on page 2 of the plea agreement, but the State does retain

1 the right to argue the facts and circumstances surrounding those events. The
2 Defense will take no position at sentencing regarding those event numbers. These
3 agreements are contingent upon Mr. Pinkney and Mr. Powell entering guilty pleas
4 in this case.

5 MR. GIORDANI: And following through to sentencing and adjudication.

6 THE COURT: Okay. I'm going to do these one at a time and very,
7 hopefully, carefully. Let's start off, Mr. Pinkey --

8 MR. DURHAM: Your Honor, for the record, his last name is Pinkney, with
9 an N.

10 THE COURT: Oh.

11 MR. DURHAM: I'm guessing there was a typo along the way.

12 THE COURT: Pinkney? Okay. Then tell me how --

13 MR. DURHAM: Pinkney.

14 THE COURT: Tell me how it actually is spelled.

15 MR. DURHAM: Under the AKA in the caption, that's the correct spelling.

16 THE COURT: Oh. P-I-N-K-N-E-Y, Pinkney. Did I say that right this time?

17 MR. DURHAM: Yes, thank you.

18 THE COURT: Okay. Well, let's make it easy. Sir, state your full name and
19 spell it.

20 DEFENDANT PINKEY: Lorenzo Pinkney, L-A-R-E-N-Z-O; last name
21 Pinkney, P-I-N-K-N-E-Y.

22 THE COURT: And how old are you?

23 DEFENDANT PINKNEY: I'm 22, Your Honor.

24 THE COURT: How far did you go in school?

25 DEFENDANT PINKNEY: I never got my high school diploma or I never

1 got a GED, but I'm planning on getting that.

2 THE COURT: Do you have any sort of learning disability of any kind?

3 DEFENDANT PINKNEY: Yes, I grew up with a learning disability. I had
4 an IEP, and I grew up with a lot like behavior, like my behavior. I got the
5 information on that, too. Benjamin, he got status on that stuff, stating that type of
6 stuff.

7 THE COURT: Okay. Do you read, write and understand the English
8 language?

9 DEFENDANT PINKNEY: Yes.

10 THE COURT: And English your primary language?

11 DEFENDANT PINKNEY: Yes, sir.

12 THE COURT: Have you been treated recently for any mental illness or
13 addiction of any kind?

14 DEFENDANT PINKNEY: I have in the past, but not recently.

15 THE COURT: Okay. Has anyone ever suggested to you that be treated for
16 mental illness or an emotional condition?

17 DEFENDANT PINKNEY: Well, yeah, but -- and no. I say yeah and no.
18 It's a yeah on the -- on the mental affect, it has been where they wanted me to get
19 treated, but I just hadn't.

20 THE COURT: Okay. Are you currently under the influence of any drug,
21 medication or alcoholic beverage?

22 DEFENDANT PINKNEY: No, sir.

23 THE COURT: Have you been on any medication during your time in jail?

24 DEFENDANT PINKNEY: No, sir.

25 THE COURT: Have you received a copy of the indictment -- or the guilty

1 plea agreement?

2 DEFENDANT PINKNEY: Yes, I have.

3 THE COURT: Have you discussed this case with your attorney?

4 DEFENDANT PINKNEY: Yes.

5 THE COURT: Are you satisfied with his representation and the advice
6 given to you by your attorney?

7 DEFENDANT PINKNEY: Yes, I have. Or, yes, I am. Sorry.

8 THE COURT: Okay. And as to the guilty plea agreement, are you
9 pleading guilty to Counts 1 through 8, conspiracy to commit robbery --

10 MR. GIORDANI: No, 1 and 8.

11 THE COURT: Oh, 1 and 8, sorry, conspiracy to commit robbery. Counts 2
12 and 9, burglary while in possession of a deadly weapon, and Counts 3 and 13, first
13 degree kidnapping with the use of a deadly weapon, and Counts 4, 5, 6, 7, 10, 11
14 and 14, robbery with the use of a deadly weapon, and Count 12, unlawful taking of
15 a vehicle?

16 DEFENDANT PINKNEY: Yes, I do.

17 THE COURT: And do you understand all the -- have you read a copy of
18 the guilty plea agreement?

19 DEFENDANT PINKNEY: Yes, I read over it, sir.

20 THE COURT: And do you understand everything contained in the guilty
21 plea agreement?

22 DEFENDANT PINKNEY: Yes.

23 THE COURT: And you had an opportunity to discuss this with your
24 attorney?

25 DEFENDANT PINKNEY: Yes.

1 THE COURT: And if you had any questions, did he answer your
2 questions?

3 DEFENDANT PINKNEY: Yes, he did.

4 THE COURT: Do you have any questions of me regarding that at this
5 time?

6 DEFENDANT PINKNEY: No, Your Honor.

7 THE COURT: And as to the charges in the guilty plea agreement that I
8 just discussed, how are you -- or how are you pleading?

9 DEFENDANT PINKNEY: Pleading guilty.

10 THE COURT: And is it because in truth and in fact you committed the
11 charges listed in the guilty plea agreement?

12 DEFENDANT PINKNEY: Yes.

13 THE COURT: Are you making this plea freely and voluntarily?

14 DEFENDANT PINKNEY: Yes, I am, sir.

15 THE COURT: Has anyone forced or threatened you or anyone close to
16 you to get you to enter this plea?

17 DEFENDANT PINKNEY: No, sir.

18 THE COURT: Has anyone made any promises other than what's stated in
19 the guilty plea agreement to get you to answer this guilty plea agreement?

20 DEFENDANT PINKNEY: No.

21 THE COURT: And do you understand that as a part of the guilty plea
22 agreement, although you are not admitting to these crimes, that the State will be
23 allowed to argue these crimes as I'm about to list for you at the time of sentencing?
24 And I'll go through these each, so you understand. They're all contained on page 2
25 of the guilty plea agreement.

1 That, one, an armed robbery at 7-Eleven located 4800 West
2 Washington on June 5th; two armed robbery at Roberto's located at 6650
3 Las [sic] -- in Las Vegas on June 14th; three, an armed robbery at Pepe's Taco,
4 1401 North Decatur on June 18th; four, an armed robbery at Roberto's located at
5 2685 Eastern on July 1st; five, an armed robbery at Pizza Bakery located at 6475
6 West Charleston on August 12th.

7 Six, an armed robbery at Terrible Herbst's located at 6380 West
8 Charleston on August 17th; seven, an armed robbery at Rebel located at 6400
9 West Lake Mead on August 17th; eight, an armed robbery at Roberto's located at
10 6820 West Flamingo on August 24th; nine, an armed robbery at Roberto's located
11 at 907 North Rainbow on August 24th; ten, an armed robbery at Pepe's Taco
12 located at 1401 North Decatur on August 25th.

13 Do you understand by signing this guilty plea agreement, you're not
14 admitting to these additional ten robberies, however, the State will be allowed to
15 use those at time of sentencing? Do you understand that?

16 DEFENDANT PINKNEY: Yes.

17 THE COURT: And you're agreeable to the same? You're agreeable to
18 that?

19 DEFENDANT PINKNEY: Yes, I am.

20 THE COURT: Okay. And I'm showing you a copy -- actually, the original --

21 THE CLERK: It's a copy. I have the original.

22 THE COURT: Okay. I'm showing you -- it's the wrong one. All right.
23 That's the right one, yes. The original of the guilty plea agreement, and on page 7,
24 is this your signature?

25 DEFENDANT PINKNEY: Yes, it is.

1 THE COURT: Okay. Before you signed it, again, did you read and discuss
2 it with your attorney?

3 DEFENDANT PINKNEY: Yes.

4 THE COURT: And again, just to be clear, did you understand everything
5 contained in the guilty plea agreement?

6 DEFENDANT PINKNEY: Yes, I did, sir.

7 THE COURT: Do you understand that the constitutional rights you're
8 giving up by -- do you understand that there are constitutional rights you are giving
9 up by entering a guilty plea agreement?

10 DEFENDANT PINKNEY: Yes, sir.

11 THE COURT: And do you understand that you have a right to appeal on
12 reasonable constitutional, jurisdictional or other grounds that challenge the legality
13 of the proceedings?

14 DEFENDANT PINKNEY: Yes, sir.

15 THE COURT: What's the range of punishment on this?

16 MR. GIORDANI: It's different for the different counts.

17 MR. DURHAM: Do you want me to state that or --

18 MR. GIORDANI: I can --

19 THE COURT: Yeah, go ahead and state the range.

20 MR. DURHAM: Your Honor, on Counts of 1 and 8, the sentencing range is
21 1 to 6 years in the Nevada Department of Corrections. On the Counts of 2 and 9,
22 burglary while in possession of a deadly weapon, the potential sentence is 2 to 15
23 years in the Nevada Department of Corrections. First degree kidnapping with use
24 of a deadly weapon, the potential sentence as set forth in the plea agreement is
25 5 to life or 5 to 15, with an equal -- I'm sorry, with a consecutive 1 to 15 for the

1 deadly weapon enhancement.

2 On the robbery counts, the potential sentence is 2 to 15 years, plus a
3 consecutive 1 to 15. And the unlawful taking of a vehicle is a gross misdemeanor,
4 with a sentence of up to 364 days in the Clark County Detention Center.
5 I've -- for the record, I've explained to my client that the minimum possible
6 sentence in this case that he could receive is six years on the bottom end.

7 THE COURT: And the maximum ?

8 MR. DURHAM: The maximum is a lot. We -- we didn't calculate that.

9 THE COURT: Because of the multiple counts?

10 MR. DURHAM: Correct.

11 THE COURT: Do you understand the range of punishment?

12 DEFENDANT PINKNEY: Yes, sir.

13 THE COURT: Okay. I think we better put that on max range in there.

14 MR. GIORDANI: If I may, Your Honor?

15 THE COURT: Go ahead.

16 MR. GIORDANI: As long as both Mr. Pinkney and Mr. Powell understand
17 the range for each count --

18 THE COURT: Okay.

19 MR. GIORDANI: -- as just described by Mr. Durham as set forth.

20 THE COURT: Okay.

21 MR. GIORDANI: And then also they understand sentencing is completely
22 up to the Court, and if the Court can count -- either run the counts concurrent or
23 run the counts consecutive.

24 THE COURT: Okay. That's the next sentences of my script, even though
25 I've got all this memorized. So you understand the individual range of punishments

1 on each of the counts?

2 DEFENDANT PINKNEY: I wasn't told the maximum, but I understand.

3 THE COURT: No, the range for each of the counts.

4 DEFENDANT PINKNEY: Yes, sir.

5 THE COURT: And do you understand that sentencing is entirely up to me?

6 DEFENDANT PINKNEY: Yes, sir.

7 THE COURT: I can -- it's at my discretion. And do you understand that the
8 counts can be run consecutively or concurrently? Once again, that's up to me.

9 DEFENDANT PINKNEY: Yes, sir.

10 THE COURT: And no one is in an position to promise you probation,
11 leniency or any special treatment; do you understand that?

12 DEFENDANT PINKNEY: Oh, yeah, I understand that, sir.

13 THE COURT: And in the -- do I need to restate the information, what
14 exactly he did?

15 MR. DURHAM: Your Honor, pursuant to the plea agreement, we will be
16 willing to stipulate to the factual basis as set forth in the amended indictment.
17 From our perspective, it wouldn't be necessary.

18 THE COURT: Do you want me to go through it?

19 MR. GIORDANI: Or he could just say it in his own words. I mean, it
20 encompasses two events over the course of like three hours, so --

21 THE COURT: Okay. What is it you did on or about -- where's the date?

22 MR. DURHAM: December 28th, 2017, Your Honor.

23 THE COURT: Thank you. What is it that you did to cause you to plead
24 guilty?

25 DEFENDANT PINKNEY: I committed -- I went to an establishment, and I

1 committed two robberies, two more robberies, sir.

2 THE COURT: What were the establishments?

3 DEFENDANT PINKNEY: It was a Pepe's, and another one was
4 Walgreen's, sir.

5 THE COURT: All right. Do you have any questions you'd like to ask me or
6 your attorney before I accept this plea?

7 DEFENDANT PINKNEY: No, sir. Not questions, sir, no.

8 THE COURT: The Court finds the Defendant's plea of guilty is freely and
9 voluntarily made, and the Defendant understands the nature of the offenses and
10 the consequences of his plea and, therefore, accepts the guilty plea. The matter is
11 referred to Parole & Probation for a PSI report.

12 MR. GIORDANI: Your Honor, before you move on, can I ask one more
13 thing of the Court?

14 THE COURT: Sure.

15 MR. GIORDANI: Just with regard to your first few questions of Mr.
16 Pinkney where he indicated he had an IEP, a learning program, learning disabilities
17 growing up, can we just be clear on the record that Mr. Pinkney had sufficient time
18 with his attorney -- it's been a couple hours, I think, since we broke and started
19 really getting into the meat of this -- understood fully both the written words and,
20 you know, the conversations that he had with his attorney.

21 MR. DURHAM: Your Honor, I signed the certificate of counsel, which
22 indicates that I believe he's fully competent to enter the plea; that I went over it with
23 him.

24 THE COURT: Okay.

25 MR. DURHAM: And so I would just ask the Court to adopt that as part of

1 the plea agreement.

2 THE COURT: That's fine, and I certainly think I've asked him three times at
3 least now if he had any questions regarding this, and he's advised me that he does
4 not. And you had plenty of time, for the record, to go over this with your attorney
5 since it's now 1:30 and you first met with him approximately 11:00 a.m., correct?

6 DEFENDANT PINKNEY: Yes.

7 THE COURT: You had plenty of time to discuss this?

8 DEFENDANT PINKNEY: Yes, sir.

9 THE COURT: And once again, you have no questions regarding the
10 agreement?

11 DEFENDANT PINKNEY: No, sir.

12 THE COURT: All right. Thank you.

13 MR. DURHAM: Thank you.

14 THE COURT: I find it's freely and voluntarily entered into. The Defendant
15 is remanded. Okay. Now --

16 MR. DURHAM: Sorry, Your Honor, I didn't get the sentencing date.

17 THE CLERK: Do we want to do it together?

18 MR. GIORDANI: Yeah.

19 MR. DURHAM: Yeah.

20 MR. GIORDANI: Can we have 90?

21 THE CLERK: You want 90 days?

22 MR. GIORDANI: Yeah.

23 THE CLERK: Okay. Let me see what we've got here. 90 days would be
24 the end of October. We can do October -- how about October 22nd? It's not quite
25 90, but --

1 MR. GIORDANI: That works. October 22nd?

2 THE CLERK: 22nd, and sentencings are at 9:30.

3 THE COURT: Okay. Mr. Powell. Are you ready, counsel?

4 DEFENDANT POWELL: Yes, Your Honor.

5 [Court and Clerk confer]

6 THE COURT: Is Mr. Powell pleading also to the taking of the --

7 THE CLERK: Oh, okay. That's what I -- they just handed me this, so --

8 THE COURT: Okay.

9 THE CLERK: I need that on the original, though.

10 MR. DURHAM: Yeah.

11 THE COURT: Yeah.

12 THE CLERK: So we need to --

13 MR. KANE: Here are the originals.

14 THE CLERK: Yeah, and initial it.

15 MR. GIORDANI: And Madam Clerk, Mr. Powell has indicated he wants

16 about 50 days for sentencing. We're fine with that. We just --

17 THE CLERK: Oh, a different date?

18 MR. GIORDANI: I have a couple days to work around it. If you can get us

19 a 50-day date, and I'll tell you if that works.

20 THE CLERK: Okay.

21 MR. GIORDANI: Same date for both, I guess, if that's okay with Mister --

22 THE CLERK: Oh, you want the same day for both?

23 MR. GIORDANI: Yes. So forget what I said about 90 and just give us 50,

24 if you don't mind.

25 THE CLERK: Okay. Bless you.

1 MR. DICKERSON: Thank you.

2 THE CLERK: 50 days is going to be -- we can go to -- too October 1st,
3 looks like, or does that sound good?

4 MR. GIORDANI: No. September 1st?

5 THE CLERK: No. 50 days, September -- okay. They have it our further.
6 Okay. So you want September? Let me see what it looks like then. How about
7 September 12th?

8 MR. GIORDANI: That works.

9 MR. DURHAM: Thank you, Madam Clerk.

10 THE CLERK: Is that good?

11 MR. GIORDANI: Yes.

12 MR. DURHAM: Yes.

13 THE CLERK: September 12th, and that's 9:30.

14 [Court and Clerk confer]

15 MR. KANE: An, Judge, just for the record, they are identical other than,
16 obviously, the Defendants' names.

17 THE CLERK: The interlineation --

18 MR. GIORDANI: That's correct. We struck lines 22, 23, unlawful taking of
19 a vehicle, he was never charged with that. Mr. Powell's never charged with that.

20 MR. DICKERSON: Both Defense counsel and myself have initialed the
21 interlineation on the first page, Your Honor.

22 THE COURT: Okay. Fine. Mr. Powell, will you state and spell your name
23 for the record.

24 DEFENDANT POWELL: Adrian Powell, A-D-R-I-A-N, P-O-W-E-L-L.

25 THE COURT: And --

1 MR. KANE: I'll come over here.

2 [Court and Court Recorder confer]

3 THE COURT: Sure. Okay. Mr. Powell, how hold are you?

4 DEFENDANT POWELL: I'm 23 years old. I'll be 24 on Thursday.

5 THE COURT: How far did you go in school?

6 DEFENDANT POWELL: I graduated high school.

7 THE COURT: And do you have any learning disability?

8 DEFENDANT POWELL: No, Your Honor.

9 THE COURT: Do you read, write and understand the English language?

10 DEFENDANT POWELL: Yes, Your Honor.

11 THE COURT: And is English your primary language?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: Have you been treated recently for any mental illness or

14 addiction of any kind?

15 DEFENDANT POWELL: No, Your Honor.

16 THE COURT: Has anyone ever suggested you should be treated for

17 mental health?

18 DEFENDANT POWELL: No, Your Honor.

19 THE COURT: Are you currently under the influence of any drug,

20 medication or alcohol?

21 DEFENDANT POWELL: No, Your Honor.

22 THE COURT: Have you been on any medication during your stay in jail?

23 DEFENDANT POWELL: Yes, Your Honor.

24 THE COURT: What medication?

25 DEFENDANT POWELL: Remeron.

1 THE COURT: What is -- what type of medication is that?
2 DEFENDANT POWELL: It treats depression.
3 THE COURT: How do you feel today?
4 DEFENDANT POWELL: I feel excellent, Your Honor.
5 THE COURT: Do you understand what's happening?
6 DEFENDANT POWELL: Yes, Your Honor.
7 THE COURT: Does the medication affect your ability to understand what's
8 going on today?
9 DEFENDANT POWELL: No, Your Honor.
10 THE COURT: Are you under any other effects of the medication?
11 DEFENDANT POWELL: No, Your Honor.
12 THE COURT: Have you received a copy of the guilty plea agreement?
13 DEFENDANT POWELL: Yes, Your Honor.
14 THE COURT: Did you read the guilty plea agreement?
15 DEFENDANT POWELL: Yes, Your Honor.
16 THE COURT: Did you understand everything in the guilty plea agreement?
17 DEFENDANT POWELL: Yes, Your Honor.
18 THE COURT: Have you discussed this case with your attorney?
19 DEFENDANT POWELL: Yes, Your Honor.
20 THE COURT: Are you satisfied with the representation and advice given
21 to you by your attorney?
22 DEFENDANT POWELL: Yes, Your Honor.
23 THE COURT: As to the charges in the guilty plea agreement, how do you
24 plead?
25 DEFENDANT POWELL: I plead guilty, Your Honor.

1 THE COURT: I'm making this plea freely and voluntarily?

2 DEFENDANT POWELL: Yes, Your Honor.

3 THE COURT: Has anyone forced or threatened you or anyone close to
4 you to get you to enter this plea?

5 DEFENDANT POWELL: No, Your Honor.

6 THE COURT: Has anyone made any promises other than what's in the
7 guilty plea agreement to get you to enter the plea?

8 DEFENDANT POWELL: No, Your Honor.

9 THE COURT: I have before me the guilty plea agreement, and I'm going to
10 hold this up, on page 7, is this your signature?

11 DEFENDANT POWELL: Yes, Your Honor.

12 THE COURT: Did you understand everything contained in the guilty plea
13 agreement?

14 DEFENDANT POWELL: Yes, Your Honor.

15 THE COURT: And do you understand that as part of the guilty plea
16 agreement, although you are not pleading guilty to these alleged offenses, the
17 State will be allowed to argue then at the time of sentencing?

18 DEFENDANT POWELL: Yes, Your Honor.

19 THE COURT: And I'm going to go through, again, all ten of these because
20 the State will be allowed to discuss them at the time of sentencing. Number one,
21 an armed robbery at 7-Eleven located on 4800 West Washington on June 5th.
22 Number two, an armed robbery at Roberto's located at 6650 Vegas Drive on
23 June 14th; armed robbery at Pepe's Taco located at 1401 North Decatur on June
24 18th; an armed robbery at Roberto's located at 2685 South Eastern on July 1st; an
25 armed robbery at Pizza Bakery located 6475 West Charleston on August 12th; an

1 armed robbery at Terrible Herbst's located at 6380 West Charleston on
2 August 17th; an armed robbery at Rebel located at 6400 West Lake Mead on
3 August 17; an armed robbery at Roberto's located at 6820 West Flamingo on
4 August 24th; an armed robbery at Roberto's located at 907 North Rainbow on
5 August 24th; an armed robbery at Pepe's Tacos located at 1401 North Decatur on
6 August 25th. All of those were in 2017.

7 Do you understand that all of those may be argued at the time of
8 sentencing, although you're not pleading guilty to those charges?

9 DEFENDANT POWELL: Yes, Your Honor.

10 THE COURT: So I don't know if I asked you, before you sign this plea
11 agreement, did you read it and discuss it with your attorney?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: Do you understand everything contained in this agreement?

14 DEFENDANT POWELL: Yes, Your Honor.

15 THE COURT: You understand that there are certain constitutional rights
16 that you're giving up by entering the guilty plea agreement?

17 DEFENDANT POWELL: Yes, Your Honor.

18 THE COURT: You understand that you have a right to appeal on
19 reasonable constitutional, jurisdictional or other grounds that challenge the legality
20 of the proceedings?

21 DEFENDANT POWELL: Yes, Your Honor.

22 THE COURT: And, again, do you understand the range of punishment?
23 And counsel --

24 DEFENDANT POWELL: Yes, Your Honor.

25 THE COURT: Well, we're going to go through and put these on the record,

1 so it's clear.

2 MR. KANE: That's Counts 1 and 8, Your Honor. They carry with it a 1 to 6
3 range; Counts 2 and 9, 2 to 15. Counts 3 and 13, 5 to life or 5 to 15, plus a
4 consecutive term of 1 to 15 for deadly weapon enhancement. Counts 4, 5, 6, 7,
5 10, 11 and 14, they're 2 to 15; a term of 1 to 15 for use of deadly weapon
6 enhancement.

7 THE COURT: Do you understand the range for each of those counts?

8 DEFENDANT POWELL: Yes, Your Honor.

9 THE COURT: Do you understand that sentencing is entirely up to me?

10 DEFENDANT POWELL: Yes, Your Honor.

11 THE COURT: And do you understand that, again, it's up to me as to
12 whether any or whether all of those counts run consecutively or concurrently?

13 DEFENDANT POWELL: Yes, Your Honor.

14 THE COURT: And no one is in a position to promise you leniency or
15 special treatment of any kind?

16 DEFENDANT POWELL: Yes, Your Honor.

17 THE COURT: In the information in the indictment, it says -- or what is it
18 that you did on the 28th of September to cause you to plead guilty?

19 DEFENDANT POWELL: I went into two establishments, Your Honor, and I
20 committed the armed robbery.

21 THE COURT: And those establishments a -- is this Roberto's --

22 MR. KANE: Pepe's -- Pepe's and Walgreen's.

23 THE COURT: Pepe's and Walgreen's. Thank you. Pepe's and
24 Walgreen's?

25 DEFENDANT POWELL: Yes, Your Honor.

1 THE COURT: You went in those establishments and committed the
2 armed robberies?

3 DEFENDANT POWELL: Yes, Your Honor.

4 THE COURT: And do you have any questions you'd like to ask me or your
5 attorney before I accept this plea?

6 DEFENDANT POWELL: No, Your Honor.

7 THE COURT: Anything that I left out?

8 MR. GIORDANI: No.

9 THE COURT: Okay. And also for the record, you had approximately two
10 hours to discuss all of this -- maybe longer than that now -- with your attorney
11 before accepting this?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: And without telling me what they were, your attorney
14 answered all your questions regarding the guilty plea agreement?

15 DEFENDANT POWELL: Yes, Your Honor.

16 THE COURT: Okay. The Court finds the Defendant's plea of guilty is
17 freely and voluntarily made and the Defendant understands the nature of the
18 offenses and the consequences of his plea and, therefore, accepts the plea of
19 guilty. The matter is referred to Department of Parole & Probation for a PSI.
20 What's the date for sentencing?

21 THE CLERK: September 12th at 9:30.

22 THE COURT: Defendant is remanded into custody. So what I'm going to
23 do after the Defendants leave is bring them in, release them. You guys all want to
24 talk to them, you're free to do so. Anything else?

25 MR. GIORDANI: No, Your Honor. Thank you.

1 MR. DURHAM: No. Thank you, Your Honor.

2 THE COURT: All right. Thank you. And counsel and you guys were
3 extremely professional, and I appreciate that, so --

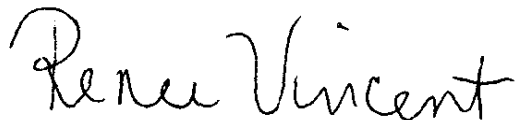
4 MR. DICKERSON: Thank Your Honor. Thank you for your patience today.

5 THE COURT: No problem.

6 MR. KANE: Thank you, Judge.

7 [Proceeding concluded at 1:47 a.m.]
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17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio-visual recording of the proceeding in the above entitled case to the
19 best of my ability.

20 
21

22 _____
23 Renee Vincent, Court Recorder/Transcriber
24
25

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent

Supreme Court No. 79037
District Court Case No C327767

FILED

JUN 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: June 05, 2020

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend
Chief Assistant Clerk

cc (without enclosures):

Hon. Ronald J. Israel, District Judge
Monique A. McNeill
Clark County District Attorney

RECEIPT FOR REMITTITUR

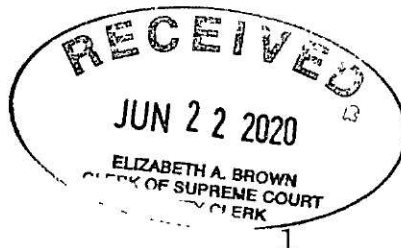
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 16 2020.

Deputy 
District Court Clerk

RECEIVED
APPEALS

JUN 16 2020

CLERK OF THE COURT



20-21235
RA 022

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 79037
District Court Case No C327767

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to conduct an evidentiary hearing on Powell's presentence motion to withdraw his guilty plea."

Judgment, as quoted above, entered this 11 day of May, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 05, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend
Chief Assistant Clerk

EXHIBIT X

EXHIBIT X

**REPORT OF BREACH OF DIVERSION PROGRAM CONSENT CONTRACT
FILE NOS. OBC19-0982 and OBC20-0266**

I. PROBATION MONITOR & DATE OF REPORT

- A. Monitor: Louise Watson
- B. Original Assistant Bar Counsel: Phillip Pattee
- C. Submitted Date: August 24, 2021

II. RESPONDENT INFORMATION:

Roy Nelson III, Esq.
Bar No. 7842
8530 W. Charleston, #100
Las Vegas, NV 89117
702-776-7676
rnelsoniii@yahoo.com

III. CHARGING DOCUMENT:

Diversion Program Consent Contract (**Exhibit 1**)

(Effective December 1, 2019, to November 1, 2021, although not signed until February 12, 2020)

IV. DETAILS OF VIOLATION:

During the period of Diversion, Respondent was to:

- Complete the recovery program at Las Vegas Recovery Center ("LVRC");
- Attend two AA meetings a week whenever possible, but no less than eight per month;
- Attend two one-hour programs per month, such as 2-step/recovery meetings; and
- Submit quarterly reports attesting to his compliance and certifying that he had no further incidents involving alcohol and in compliance with any treatment recommended by a licensed substance abuse counselor.

In a letter dated January 5, 2020, Respondent provided proof that he had completed the LVRC program on October 21, 2019 (**Exhibit 2**). He also reported that his mother had died at the end of November 2019 after a brief illness, and I subsequently waived his quarterly report due March 1, 2020, as Respondent noted that he had not been able to attend meetings due to his mother's passing.

Thereafter, Respondent has had to be reminded each time a report is due and has not fully complied with his requirements.

Quarterly Report due 6/1/20

On June 12, 2020, I sent an email to Respondent reminding him that his quarterly report was overdue (**Exhibit 3**).

Respondent provided a report on June 20, 2020, that included a letter from his Sponsor and his counselor (**Exhibit 4**).

In an email exchange dated June 19, 2020, I advised Respondent that I would accept the letter from his Sponsor for this quarter but going forward he would need to submit a proper report attesting to his compliance and providing logs of his attendance at meetings (**Exhibit 5**).

Quarterly Report due 9/1/20

On September 11, 2020, I sent an email to Respondent reminding him that his quarterly report was overdue (**Exhibit 6**). I gave Respondent until September 25, 2020, to submit his report.

On October 23, 2020, I sent a follow up letter to Respondent via regular and certified mail advising him that the file would be referred to Bar Counsel if he didn't submit his report within 14 days (**Exhibit 7**).

Respondent provided a report dated November 1, 2020, that again included a letter from his counselor and Sponsor (**Exhibit 8**). Respondent appeared to blame the delay in providing his report over concerns regarding his father's health.

Quarterly Report due 12/1/20

I did not pursue this report due to the lateness of the report for the prior quarter. I did speak with Respondent on November 24, 2020, at what time he appeared to be doing well.

Quarterly Report due 3/1/21

On March 2, 2021, I sent an email to Respondent reminding him that his quarterly report was due on March 1, 2021. Respondent replied that he had been in the hospital over the weekend, but he would send in his report (**Exhibit 9**).

On March 8, 2021, Respondent faxed over a letter indicating that he would be providing letters regarding his compliance (**Exhibit 10**). Respondent faxed over a second letter on March 10, 2021, that included letters from two sponsors, and reported that he had an anxiety attack on February 18, 2021 (**Exhibit 11**).

On April 9, 2021, I sent an email reminding him that I still need a letter from his counselor and proof of attendance at AA meetings. Respondent replied that he had been in the hospital for issues with his heart and then contracted Covid (**Exhibit 12**).

Quarterly Report due 6/1/21

On June 1, 2021, Respondent sent an email to Phil Pattee stating that he had not been in his office since March due to health issues (**Exhibit 13**). Respondent sought additional time to “submit everything to your investigator.”

On June 2, 2021, I sent an email to Respondent agreeing to give him an extension until June 16, 2021, to provide his quarterly report. As the hospitalizations he referenced, if true, would have affected his ability to attend AA meetings during the quarter, I asked him to provide medical records to support his hospitalizations (**Exhibit 14**). I also reminded him that he still needed to provide proof of attendance at AA meetings for the prior quarter.

On June 16, 2021, Respondent sent an email suggesting that he was not in compliance with the Contract and had regressed in his recovery, as he planned to attend an in-patient facility in Utah (**Exhibit 15**). I asked Respondent to provide documentation to confirm his admittance into the facility.

On June 19, 2021, Respondent sent a follow up email stating that he didn't go to the facility but was continuing to work with his counselor (**Exhibit 16**). He also noted he wasn't taking any cases.

On July 29, 2021, I sent a letter to Respondent giving him 14 days to provide a written response detailing his compliance with the Contract and proof of his ongoing recovery efforts (**Exhibit 17**).

On August 18, 2021, Respondent claimed that he had attended an inpatient facility in Utah and would provide confirmation that he had completed the program (**Exhibit 18**). As of today, he has not provided documentation confirming that he attended.

Other Relevant Information:

In one letter from March 2021, he referenced a wife, but I understood that his current issues, in part, stemmed from a 2019 divorce. In researching the matter, I discovered that Respondent had re-married on January 2, 2021. His new wife filed a Complaint for Annulment on January 21, 2021, indicating that she was drunk at the time of the marriage and that Respondent is a serious alcoholic (**Exhibit 19**). The annulment has not been finalized.

Conclusion:

We have not received any additional grievances regarding Respondent, but he clearly continues to have problems with alcohol and has violated the terms of his Contract.

Exhibits:

1. Executed Diversion Agreement
2. January 5, 2020, letter from Respondent
3. June 12, 2020, email to Respondent
4. June 20, 2020, letter from Respondent
5. June 19, 2020, email exchange with Respondent
6. September 11, 2020, email to Respondent
7. October 23, 2020, letter to Respondent
8. November 1, 2020, letter from Respondent
9. March 2, 2021, email exchange with Respondent
10. March 8, 2021, letter from Respondent
11. March 10, 2021, letter from Respondent
12. April 9-11, 2021, email exchange with Respondent
13. June 1, 2021, email from Respondent
14. June 2, 2021, email to Respondent
15. June 18, 2021, email exchange with Respondent
16. June 19, 2021, email from Respondent
17. July 29, 2021, letter to Respondent
18. August 19, 2021, email from Respondent
19. Complaint for Annulment filed January 21, 2021

EXHIBIT 1

1 In Re: Discipline of)
2) Grievance File: OBC19-0982
3)
4 ROY NELSON, III, ESQ.,)
5 Bar No. 7842.)
6)

6 **DIVERSION PROGRAM CONSENT CONTRACT**

7 Attorney Roy Nelson, III, ("Respondent") hereby consents to the following contract with the
8 State Bar of Nevada ("State Bar") as an alternative to disciplinary sanctions pursuant to Supreme Court
9 Rule ("SCR") 105.5 (Diversion and Mentoring Programs). This contract is in connection with
10 Grievance File No. OBC19-0982. The terms of this contract are as follows:

11 1. The period of the contract shall remain in effect for two (2) years, from December 1,
12 2019, through November 1, 2021.

13 2. Respondent's compliance with the conditions set forth herein shall be monitored by and
14 through the Office of Bar Counsel.

15 3. Respondent is entering this contract as an alternative to disciplinary sanctions.

16 4. The contract is contingent upon the following terms:

17 (a) Respondent shall complete the recovery program, in which he currently is enrolled,
18 through the Las Vegas Recovery Center ("LVRC");

19 (b) Following successful completion of above-reference program at LVRC, Respondent
20 shall, during the Diversion:

21 a. Attend two (2) AA meetings a week whenever possible, but no less than eight (8) per
22 month;

23 b. Attend two (2) one-hour programs per month, such as a twelve-step/recovery
24 meetings.
25

1 (c) Respondent shall submit quarterly reports to the Office of Bar Counsel for two (2) years
2 commencing on December 1, 2019. Quarterly reports must be submitted no later than the first (1st) day
3 of **December, March, June, and September**, and the final report submitted **December 1, 2021**
4 attesting to his compliance with the conditions referenced herein. The quarterly reports submitted by
5 the Respondent shall certify that he has had no further incidents involving alcohol and is in compliance
6 with any treatment recommended by a licensed substance abuse counselor.

7 (d) With Respondent's first quarterly report, Respondent must submit an assessment from a
8 licensed substance abuse counselor to determine whether he has any issues regarding alcohol
9 dependency. Respondent shall be responsible for obtaining the assessment. Respondent must
10 complete any treatment program recommended by the licensed substance abuse counselor, if
11 applicable, and provide status updates with his quarterly reports. Respondent shall sign any necessary
12 releases for the State Bar to obtain that information.

13 5. If the Office of Bar Counsel determines that Respondent failed to comply with the terms
14 of this contract, Respondent shall be notified of the alleged breach of the contract and provided fourteen
15 (14) days after receipt of such notice to submit a written response. The Office of Bar Counsel may
16 withdraw the notice of alleged breach based upon Respondent's written response and related
17 communications pursuant to SCR 105.5(6).

18 6. If the notice is not withdrawn, this matter shall be submitted to a Formal Hearing Panel
19 to hear the matter and issue an order, pursuant to the process detailed in SCR 105.5(6). Bar Counsel
20 shall notify Respondent of such request by serving the notice of hearing on Respondent. The hearing
21 panel shall convene within thirty (30) days of the request. In proceedings for alleged breach, Bar
22 Counsel shall have the burden to establish any breach of this agreement by a preponderance of the
23 evidence. Respondent shall have the burden to establish justification for any such breach by a
24 preponderance of the evidence. Bar counsel retains the right to move the Nevada Supreme Court
25

1 directly for relief where appropriate. Should the panel determine that the contract was breached, the
2 panel shall terminate the contract and impose the applicable alternative sanctions.

3 7. The baseline for the alternative sanction to be imposed if the contract is breached and a
4 panel terminates the contract is suspension. Respondent agrees that ABA Standard 4.41 provides the
5 appropriate baseline. ABA Standard 4.41 states that Suspension is generally appropriate when a lawyer
6 knowingly:

7 Fails to perform services for a client and causes injury or potential injury to a client; or
8 Engages in a pattern of neglect which causes injury or potential injury to a client.

9 8. In aggravation, Respondent:

10 a. Had substantial experience in the practice of law (SCR 102.5(1)(i) (Aggravation
11 and mitigation)).

12 9. In mitigation, Respondent:

- 13 a. Has no prior professional discipline (SCR 102.5(2)(a));
14 b. Has an absence of a dishonest or selfish motive (SCR 102.5(2)(b));
15 c. Made full and free disclosure to the State Bar and ultimately cooperated with its
16 investigation, and accepted responsibility for his actions (SCR 102.5(2)(e))
17 d. A chemical dependency contributed to the misconduct; and
18 e. Has remorse for his actions (SCR 102.5(m)).

19 10. Given the baseline standard and the aggravating and mitigating standards, the parties
20 agree that the appropriate suspension term is six (6) months of actual suspension if the diversion
21 contract is breached.

22 11. Any other reports or complaints received by the Office of Bar Counsel alleging
23 Respondent's professional misconduct shall be regularly processed in accordance with SCR 105
24 (Procedure on receipt of complaint).
25

12. While this Contract remains in effect, the above-referenced Grievance File shall remain confidential. However, the Grievant may be advised of Respondent's participation in the Diversion Program, if applicable.

13. Respondent must maintain current contact information with the Office of Bar Counsel including a phone number(s) where he can be reached at all times.

14. Respondent's successful completion of this contract shall result in the dismissal of Grievance File No. OBC19-0982 and the related records shall be processed in accordance with SCR 121.

Acknowledgment and Consent

Respondent has read the terms and conditions of this contract and understands the contract in its entirety. Respondent understands that this contract is contingent upon acceptance by a Disciplinary Panel and the Nevada Supreme Court. Respondent acknowledges that she can retain an attorney to review this contract and has chosen to sign this contract without counsel.

DATED this _____ day of _____, 2020

Roy Nelson, III, Esq., Respondent
Bar No. 7842
(702) 204-8158

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Acknowledgment and Consent

Respondent has read the terms and conditions of this contract and understands the contract in its entirety. Respondent understands that this contract is contingent upon acceptance by a Disciplinary Panel and the Nevada Supreme Court. Respondent acknowledges that she can retain an attorney to review this contract and has chosen to sign this contract without counsel.

DATED this 12th day of FEBRUARY 2020


Roy Nelson, III, Esq., Respondent
Bar No. 7842
(702) 204-8158

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Approval of Office of Bar Counsel

The Diversion Program Consent Contract regarding Roy Nelson, III, Esq., for Grievance File No. OBC19-0982 is hereby approved as to its form and content.

DATED this 13th day of FEBRUARY, 2020.

STATE BAR OF NEVADA



Phillip J. Pattee, Assistant Bar Counsel
Nevada Bar No. 4012
3100 W. Charleston Blvd. Suite 100
Las Vegas, Nevada 89102
(702) 382-2200