

NOASC  
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**ATTORNEY FOR OSCAR GOMEZ**

Electronically Filed  
Mar 14 2023 09:20 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

Case No.: A-20-815035-W  
(C-16-316959-1)

vs.

Department II

OSCAR GOMEZ,  
  
Defendant

**NOTICE OF APPEAL**

Notice is hereby given that OSCAR GOMEZ, by and through his  
counsel JIM HOFFMAN, appeals the order denying his PCR petitions entered by  
the District Court on March 7, 2023.

DATED: March 9, 2023

/s/ Jim Hoffman

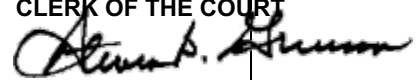
**JIM HOFFMAN, ESQ.**

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DATED: March 9, 2023

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JIM HOFFMAN, ESQ.



ASTA-CRM  
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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

vs.

OSCAR GOMEZ,  
  
Defendant

Case No.: A-20-815035-W  
(C-16-316959-1)

Department IX

**CASE APPEAL STATEMENT**

1. Name of appellant: **Oscar Gomez**
2. Judge issuing order appealed from: **The Honorable Carli Kierny**
3. Appellant and counsel for appellant: **Oscar Gomez; Jim Hoffman, PO Box 231246, Las Vegas, NV 89105**
4. Respondents and counsel for respondents: **Warden/State of Nevada; Clark County District Attorney, 200 Lewis Ave., Las Vegas, NV 89101; Attorney General of Nevada, 555 E. Washington Ave., #3900, Las Vegas, NV 89101.**
5. Identify any lawyers not licensed in Nevada: **N/A**
6. How was appellant represented in prior proceedings: **Appellant filed the PCR petition pro se and was unrepresented through the disposition of most of the issues; counsel was then appointed to represent appellant at the evidentiary hearing on the remaining issue. Counsel continued to represent appellant through the Court of Appeals proceedings and on remand.**
7. How is appellant represented on appeal: **Appellant is represented by appointed counsel.**
8. Was appellant granted leave to proceed in forma pauperis: **No**

CASE APPEAL STATEMENT - 1

9. Date proceedings commenced in district court: **Appellant's first PCR petition was filed May 24, 2020.**

10. Brief description of the proceedings below: **Appellant was previously convicted and filed a direct appeal. After that appeal's disposition, he timely filed a pro se PCR petition with the district court along with two other petitions. Counsel was then appointed and an evidentiary hearing was conducted, after which the court denied the claims. The Court of Appeals remanded for further proceedings, after which the petition was again denied.**

11. Has the case previously been before the court: **Yes, via direct appeal (Docket 76487) and one prior round of habeas appeals (83690).**

12. Does the appeal involve child custody: **No**

13. Does the case involve a possibility of civil settlement: **No**

DATED: March 9, 2023

/s/ Jim Hoffman

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JIM HOFFMAN, ESQ.

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this CASE APPEAL STATEMENT was served on the Clark County District Attorney's Office on March 9, 2023, via e-service to [PDMotions@ClarkCountyDA.com](mailto:PDMotions@ClarkCountyDA.com).

DATED: March 9, 2023

/s/ Jim Hoffman

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JIM HOFFMAN, ESQ.

# CASE SUMMARY

## CASE NO. A-20-815035-W

Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

§  
§  
§  
§  
§  
§

Location: **Department 2**  
Judicial Officer: **Kierny, Carli**  
Filed on: **05/14/2020**  
Case Number History:  
Cross-Reference Case Number: **A815035**  
Supreme Court No.: **83690**

### CASE INFORMATION

**Related Cases**  
C-16-316959-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

**Statistical Closures**  
03/07/2023 Other Manner of Disposition

Case Status: **03/07/2023 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-20-815035-W  
Court Department 2  
Date Assigned 04/04/2022  
Judicial Officer Kierny, Carli

### PARTY INFORMATION

**Plaintiff** **Gomez, Oscar**

*Lead Attorneys*

**Hoffman, James I.**  
*Retained*  
702-483-1816(W)

**Defendant** **State of Nevada**






**Wolfson, Steven B**  
*Retained*  
702-671-2700(W)

### DATE

### EVENTS & ORDERS OF THE COURT

### INDEX







#### EVENTS

05/14/2020	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Gomez, Oscar [1] <i>Post Conviction</i>	
05/14/2020	 Memorandum of Points and Authorities Filed By: Plaintiff Gomez, Oscar [2]	
05/14/2020	 Motion for Appointment of Attorney Filed By: Plaintiff Gomez, Oscar [3] <i>Motion to Appoint Counsel and for Evidentiary Hearing</i>	
05/14/2020	 Order for Petition for Writ of Habeas Corpus [4] <i>Order for Petition for Writ of Habeas Corpus</i>	
06/23/2020	 Response Filed by: Defendant State of Nevada [5] <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion for Appointment of Counsel and Request for Evidentiary Hearing</i>	

**CASE SUMMARY**  
**CASE NO. A-20-815035-W**

09/14/2020	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Gomez, Oscar <i>[6] Post Conviction</i>
10/15/2020	 Order for Production of Inmate <i>[7] Order for Production of Inmate via Video Conference of Inmate Oscar Gomez, Jr., BAC #1200302</i>
12/20/2020	 Order for Production of Inmate <i>[8] Order for Production of Inmate via Video Conference</i>
01/04/2021	Case Reassigned to Department 9 <i>Judicial Reassignment to Judge Cristina Silva</i>
02/04/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Gomez, Oscar <i>[10] "Original" Petition for Writ of Habeas Corpus</i>
02/05/2021	 Order for Petition for Writ of Habeas Corpus <i>[11] Order for Petition for Writ of Habeas Corpus</i>
02/17/2021	 Clerk's Notice of Hearing <i>[12] Notice of Hearing</i>
03/23/2021	 Response <i>[13] State's Response to Defendant's "Original" Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/04/2021	 Order for Production of Inmate <i>[14] Order for Production of Inmate Oscar Gomez, #1200302</i>
06/09/2021	 Order for Production of Inmate <i>[15]</i>
08/02/2021	 Order for Production of Inmate <i>[16] Order for Production via Video Conference of Inmate Oscar Gomez, BAC #1200302</i>
10/21/2021	 Notice of Appeal (Criminal) Party: Plaintiff Gomez, Oscar <i>[17] Notice of Appeal</i>
11/03/2021	 Case Appeal Statement Filed By: Plaintiff Gomez, Oscar <i>[18] Case Appeal Statement</i>
11/12/2021	 Ex Parte Order <i>[19] Ex Parte Order for Transcripts</i>
11/23/2021	 Recorders Transcript of Hearing <i>[20] Recorder's Transcript Of Hearing Re: Evidentiary Hearing Heard On August 20, 2021</i>
12/06/2021	 Decision and Order

**CASE SUMMARY**  
**CASE NO. A-20-815035-W**

	<i>[21] Decision</i>
12/08/2021	 Notice of Entry of Order Filed By: Defendant State of Nevada <i>[22] Notice of Entry of Order</i>
02/08/2022	 Request Filed by: Plaintiff Gomez, Oscar <i>[23] Transcript Request Form</i>
03/29/2022	 Recorders Transcript of Hearing <i>[24] RECORDER'S TRANSCRIPT OF HEARING: STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING. HEARD ON FEBRUARY 12, 2021</i>
03/29/2022	 Recorders Transcript of Hearing <i>[25] RECORDER'S TRANSCRIPT OF HEARING: STATUS CHECK RE: CONFIRMATION OF COUNSEL: JAMES HOFFMAN. STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING. HEARD ON MARCH 5, 2021</i>
03/30/2022	 Recorders Transcript of Hearing <i>[26] Recorder's Transcript of Hearing Re: September 22, 2020 - Petition for Writ of Habeas Corpus; Motion for Appointment of Counsel and Request for Evidentiary Hearing</i>
03/30/2022	 Recorders Transcript of Hearing <i>[27] Recorder's Transcript of Hearing Re: October 29, 2020 - Status Check Re: Setting of Evidentiary Hearing</i>
03/30/2022	 Recorders Transcript of Hearing <i>[28] Recorder's Transcript of Hearing Re: December 15, 2020 - Status Check Re: Setting of Evidentiary Hearing</i>
04/04/2022	Case Reassigned to Department 2 <i>Judicial Reassignment - From Judge Cristina D. Silva to Judge Carli Kierny</i>
09/21/2022	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[29] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
09/28/2022	 Motion Filed By: Plaintiff Gomez, Oscar <i>[30] Motion to Place on Calendar</i>
10/01/2022	 Clerk's Notice of Hearing Party: Plaintiff Gomez, Oscar <i>[31] Notice of Hearing</i>
10/20/2022	 Response <i>[32] State's Response to Claims Four Through Six of Defendant's Original Petition for Writ of Habeas Corpus</i>
12/07/2022	 Notice Filed By: Plaintiff Gomez, Oscar <i>[33] Notice of Non-Supplementation</i>
03/07/2023	 Final Accounting

**CASE SUMMARY**  
**CASE NO. A-20-815035-W**

[34] Findings of Fact, Conclusions of Law and Order

03/09/2023



Notice of Appeal (Criminal)

Party: Plaintiff Gomez, Oscar

[35] Notice of Appeal

03/09/2023



Case Appeal Statement

Filed By: Plaintiff Gomez, Oscar

[36] Case Appeal Statement

**DISPOSITIONS**

09/21/2022

**Clerk's Certificate** (Judicial Officer: Kierny, Carli)

Debtors: Oscar Gomez (Plaintiff)

Creditors: State of Nevada (Defendant)

Judgment: 09/21/2022, Docketed: 09/21/2022

Comment: Supreme Court No. 83690; Appeal Dismissed

**HEARINGS**

09/22/2020

**Petition for Writ of Habeas Corpus** (1:45 PM) (Judicial Officer: Adair, Valerie)

Decision Made;

09/22/2020

**Motion for Appointment of Attorney** (1:45 PM) (Judicial Officer: Adair, Valerie)

Status Check Re: Setting of Evidentiary Hearing

Decision Made;

09/22/2020



**All Pending Motions** (1:45 PM) (Judicial Officer: Adair, Valerie)

Matter Heard;

Journal Entry Details:

*PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING Court stated matters will be decided on the briefs. Further, the Court rejects all arguments but is considering possibility of an evidentiary hearing as to concurrent time verses consecutive time was adequately discussed with Deft. by counsel, ORDERED, matters UNDER ADVISEMENT and minute order will issue. NDC CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, S.D.C.C., P.O. Box 208, Indian Springs, NV 89070. aw;*

10/13/2020



**Decision** (11:00 AM) (Judicial Officer: Adair, Valerie)

Decision Regarding Deft's Petition for Writ of Habeas Corpus

Minute Order - No Hearing Held; Decision Regarding Deft's Petition for Writ of Habeas Corpus

Journal Entry Details:

*Defendant's Petition for Writ of Habeas Corpus will be scheduled for an evidentiary hearing on the sole issue of whether counsel failed to inform Defendant that he faced consecutive time for the deadly weapon enhancement. This matter is set for a status check to schedule the evidentiary hearing on Thursday, October 29 at 3:30. The State is directed to prepare an order to transport for Defendant's physical or remote appearance. NDC 10/29/2020 3:30 PM STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, S.D.C.C., P.O. Box 208, Indian Springs, NV 89070. aw;*

10/29/2020



**Status Check** (3:30 PM) (Judicial Officer: Silva, Cristina D.)

10/29/2020, 12/15/2020, 02/12/2021, 03/05/2021

Status Check Re: Setting of Evidentiary Hearing

Matter Continued; Status Check Re: Setting of Evidentiary Hearing

Matter Continued; Status Check Re: Setting of Evidentiary Hearing

Matter Continued; Status Check Re: Setting of Evidentiary Hearing

Matter Continued; Status Check Re: Setting of Evidentiary Hearing

Evidentiary Hearing set on 04/27/21

Matter Continued; Status Check Re: Setting of Evidentiary Hearing

# CASE SUMMARY

## CASE NO. A-20-815035-W

Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Evidentiary Hearing set on 04/27/21

Journal Entry Details:

*Deputy District Attorney Chris Hamner present on behalf of the State. COURT STATED there was a Petition for Writ of Habeas Corpus and Request for Evidentiary hearing that was addressed in September of 2020, and there was another Writ filed. Upon Court's inquiry, Defendant stated with regards to the September hearing, he was never transported, and he submitted another Petition, and there is a third one. COURT ADVISED the Defendant the original Petition is still pending, and ORDERED, the Motion to Join filed on February 4, 2021 STRICKEN. COURT FURTHER STATED the original Petition was never addressed by the previous Judge. COURT STATED the matter was taken under advisement with Judge Adair, and then a decision was made on October 13, 2020 that a limited evidentiary hearing would be set regarding whether or not the Defendant was informed he would be sentenced to consecutive time for the deadly weapon portion, and the matter was supposed to be set for hearing and the Defendant was never transported. COURT STATED the question of whether or not the Defendant needed an attorney appointed has also never been addressed. COURT ORDERED, matter REFERRED to the Office of Appointed Counsel for an appointment of counsel; matter SET for status check; matter CONTINUED. COURT DIRECTED the State to file a Transport Order. NDC 3/5/2021 11:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL... STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING.. 4/7/221 11:00 A.M. PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: A copy of this Minute Order has been e-mailed to the Office of Appointed Counsel (2-16-2021 ks);*

Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Evidentiary Hearing set on 04/27/21

Journal Entry Details:

*Court noted matter is on calendar today to explain to Def. about setting evidentiary hearing and ORDERED, matter CONTINUED. State to prepare order to transport or for Def. to appear remotely. Mr. Villani stated there have been two separate orders done and one of those was for today's hearing. NDC CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, SDCC, P.O. Box 208, Indian Springs, NV 89070. aw;*

Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Matter Continued; Status Check Re: Setting of Evidentiary Hearing  
Evidentiary Hearing set on 04/27/21

Journal Entry Details:

*Court noted remote appearance was requested and could not be accommodated for today. Further, Def. needs to be present for the Court to explain to him what is going on and ORDERED, matter CONTINUED. State to prepare order for Def. to appear remotely. NDC CONTINUED TO: 12/15/2020 3:30 PM CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, SDCC, P.O. Box 208, Indian Springs, NV 89070. aw;*

03/05/2021

**Status Check: Confirmation of Counsel (1:30 PM)** (Judicial Officer: Silva, Cristina D.)

*Confirmation of Counsel: Jim Hoffman*

Matter Heard; Confirmation of Counsel: Jim Hoffman

03/05/2021



**All Pending Motions (1:30 PM)** (Judicial Officer: Silva, Cristina D.)

Matter Heard;

Journal Entry Details:

*STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING... STATUS CHECK: CONFIRMATION OF COUNSEL: JIM HOFFMAN... Monti Levi Esq. also present. Upon Court's inquiry, Mr. Hoffman stated he can confirm as counsel of record. COURT STATED their inclination is to set this matter for a status check in two weeks to set an evidentiary hearing. Mr. Hoffman stated that would be enough time. Mr. Palal stated he contacted Ms. Levy to be present today to expedite the process of setting the hearing. COURT ADVISED a status check will need to be set due to the mater needing to be calendared for a special setting through CCDC, and DIRECTED parties to meet and figure out dates they would be available to have the limited hearing and contact Chambers once done. Mr. Hoffman stated he reviewed the minutes, and inquired if this hearing only pertained to the first Petition the Defendant filed.*


# CASE SUMMARY

CASE NO. A-20-815035-W


*COURT STATED it would be helpful and necessary to address the other pending Petitions, and suggested Mr. Hoffman look at the Petitions to see if there are grounds for them to be considered, and to meet and confer with the State. COURT ORDERED, Status Check CONTINUED. NDC 3/19/2021 11:00 A.M. STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING;*


04/07/2021 **Petition for Writ of Habeas Corpus (11:00 AM)** (Judicial Officer: Silva, Cristina D.)  
Hearing Set;


04/07/2021 **Motion (11:00 AM)** (Judicial Officer: Silva, Cristina D.)  
*Plaintiff's Motion to Join*  
Matter Heard; Plaintiff's Motion to Join

04/07/2021  **All Pending Motions (11:00 AM)** (Judicial Officer: Silva, Cristina D.)  
Matter Heard;  
Journal Entry Details:  
*PETITION FOR WRIT OF HABEAS CORPUS... PLAINTIFF'S MOTION TO JOIN... Defendant not present and in custody in the Nevada Department of Corrections. COURT STATED since the documents were filed Pro Per they are considered rouge documents. Mr. Hoffman informed the Court the Defendant filed the Petitions before he was appointed as counsel of record, adding he was going to submit on the pleadings, and not have any oral argument. Mr. Palal stated he did file a response that addressed both Petitions, and parties are ready to have a hearing. Mr. Hoffman informed the Court the Defendant's mother and sister may want to testify during the hearing, and he is ready to proceed. COURT ORDERED, Evidentiary Hearing set for April 27, 2021 STANDS. Mr. Palal informed the Court they filed a transport order when the hearing was set. COURT SO NOTED. NDC 4/27/2021 1:30 P.M. EVIDENTIARY HEARING;*

04/27/2021 **CANCELED Evidentiary Hearing (1:30 PM)** (Judicial Officer: Silva, Cristina D.)  
*Vacated - per Attorney or Pro Per*

05/14/2021  **Status Check (1:30 PM)** (Judicial Officer: Silva, Cristina D.)  
*Status Check: EVD Hearing*  
Matter Heard;  
Journal Entry Details:  
*APPEARANCES CONTINUED: Counsel present via video, through bluejeans technology. Mr. Gomez not present. Colloquy regarding evidentiary hearing date, and transporting defendants for in-person hearings. COURT ORDERED, the tentative hearing date will be 7-20-21. Further, the dept. will reach out to counsel to confirm the date evidentiary hearing date. Mr. Palal will confirm with the attorney witness. Mr. Hoffman advised Mr. Gomez is okay with appearing via video, from the prison. Court so noted. ;*

05/27/2021  **Minute Order (12:00 PM)** (Judicial Officer: Silva, Cristina D.)  
Minute Order - No Hearing Held;  
Journal Entry Details:  
*Counsel for Petitioner was instructed to prepare an Order for Production of Inmate for Video Appearance and submit it to the department for signature. The order has not been received. Petitioner is hereby ordered to submit an Order for Production of Inmate for Video Appearance to the DC9 inbox. CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (5/27/2021 ks).;*

08/10/2021  **Evidentiary Hearing (9:00 AM)** (Judicial Officer: Silva, Cristina D.)  
OPI not received in time to produce petitioner  
Unavailability of room at NDOC  
Off Calendar;  
Journal Entry Details:  
*Monti Levy Esq. also present as prior counsel; Defendant not present and in custody in the Nevada Department of Corrections. COURT ADVISED this matter was set for a special evidentiary hearing at 9:00 a.m., and the time is now 9:50 a.m., adding the Court has spent*

# CASE SUMMARY

## CASE NO. A-20-815035-W

almost the last hour trying to get in contact with NDOC, who informed them they did not set up the video conference, and now it is too late to transport the Defendant to the room. COURT FURTHER STATED the Defendant did not want to be transported to CCDC for this hearing, and requested Mr. Hoffman speak with the Defendant, adding they will not reset this hearing today, however directed parties to meet and confer to figure out a new time to set this hearing for, and then to reach out to chambers. COURT FURTHER ORDERED, matter OFF CALENDAR. NDC;

08/20/2021

### **Evidentiary Hearing** (11:00 AM) (Judicial Officer: Silva, Cristina D.)

Matter Heard;

Journal Entry Details:

COURT STATED the matter is set for an evidentiary hearing regarding whether or not the Defendant understood if he was pleading to consecutive or concurrent time between the counts. EXCLUSIONARY RULE INVOKED. Testimony and exhibits presented. (See Worksheets). Mr. Hoffman argued that the relationship between Ms. Levy and the Defendant's family was difficult, and Ms. Levy was eager to be completed with case, and didn't thoroughly explain the offer to the Defendant and requested the Defendant's sentence be vacated. Upon Court's inquiry, Mr. Hoffman stated with regards to the entry of plea the Defendant felt rushed and pressured to entering into it. Mr. Palal argued what there is an implication the Defendant was rushed, the deal that was conveyed to the Defendant was the same offer from October 17, 2017 and then was accepted on 10/17/2021 was same offer on April 19, 2018. Mr. Palal further argued Ms. Levy testified she reviewed the length of the sentence with the Defendant multiple times. COURT STATED they would like to review the information provided through the Petition and testimony today, and ORDERED, matter SET for Decision. COURT ADVISED the Defendant's presence can be waived at the continued hearing date. NDC 9/17/2021 1:30 P.M. DECISION RE: PETITION FOR WRIT OF HABEAS CORPUS;

09/17/2021

### **Decision** (1:30 PM) (Judicial Officer: Silva, Cristina D.)

Denied;

Journal Entry Details:

Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Michelle Fleck present on behalf of the State. COURT ORDERED, Defendant's presence WAIVED as he requested not to be transported for the hearing. COURT STATED a hearing was conducted regarding the Petition for Writ of Habeas Corpus, and the Court heard testimony in regards to whether the Defendant understood the terms of his negotiations, specifically the consecutive time to follow the second with use, and consecutive time with regards to the deadly weapon enhancement. COURT FURTHER STATED there was testimony from his prior attorney Monti Levy who testified she visited the Defendant over twenty times, discussed the sentence with the Defendant multiple times, and discussed sentencing ranges, adding she testified she wrote down the sentencing ranges in order to explain the consequences of the plea, and the explanation of the deadly weapon, and the consequences of the enhancement. COURT ADDITIONALLY STATED there was representations there was not a good relationship between Ms. Levy and the Defendant's family, however it did not impact her conveyance of offer; adding testimony was heard from Defendant, who testified Ms. Levy did not explain what the deadly weapon enhancement meant, and what it could run consecutive or concurrent, adding the sentence was no explained to Defendant. COURT ORDERED, Post Conviction Petition for Writ of Habeas Corpus DENIED, and FINDS Ms. Levy's testimony to be credible, that the sentence and the consequences of the sentence were explained to the Defendant, not only prior to change of plea, however by Mr. Palal as well in terms of how the sentences would run. Mr. Hoffman stated the Defendant filed three Post Conviction Petitions and requested the Court include their rulings on the other aspects of the Petition when they prepare the order, not just regarding the evidentiary hearing. NDC;

10/12/2022

### **Motion** (9:30 AM) (Judicial Officer: Kierny, Carli)

Motion to Place on Calendar

#### MINUTES

Hearing Set;

Journal Entry Details:

Colloquy regarding the Court of Appeals dismissal. Court advised counsel that the transcript would be ordered and reviewed as to the three grounds not yet determined. COURT ORDERED, MATTER SET FOR ARGUMENT. 11/9/22 9:30 AM ARGUMENT;

**CASE SUMMARY**  
**CASE NO. A-20-815035-W**

**SCHEDULED HEARINGS**



**Hearing** (11/09/2022 at 9:30 AM) (Judicial Officer: Kierny, Carli)

11/09/2022



**Hearing** (9:30 AM) (Judicial Officer: Kierny, Carli)

**MINUTES**

Briefing Schedule Set;

Journal Entry Details:

*Mr. Hoffman stated that the Deft. was not transported for these proceedings. Mr. Beaumont submitted on the pleadings. Mr. Hoffman stated that he requested if he could provide supplemental briefing on the Court noted as to claims 4, 5 and 6 in the Deft's pro per request, COURT FINDS, claim 4 is without merit and the case cited was inapplicable and ORDERED DENIED. As to claim 5, petitioner offers no factual allegations as to how his 14th and 9th amendment rights were violated as well as the privileges and immunities clause, failure to set forth any specific factual allegations requires summary dismissal of the claim and ORDERED, DENIED. As to claim 6, the Supreme Court previously ruled upon deciding that it did not violate double jeopardy and ids therefore DENIED. Court further set a hearing for argument following the submission of supplemental briefing. 1/25/23 9:30 AM ARGUMENT;*

**SCHEDULED HEARINGS**

**CANCELED Argument** (01/25/2023 at 9:30 AM) (Judicial Officer: Kierny, Carli)

*Vacated*

01/25/2023

**CANCELED Argument** (9:30 AM) (Judicial Officer: Kierny, Carli)

*Vacated*

## DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A-20-815035-W

Dept. XXI

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Oscar Gomez	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

May 14, 2020

Date

Prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.

Statistically Closed: USUR CV Other Manner of Disposition (USUR OT)

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

2 **PROCEDURAL HISTORY**

3 On August 3, 2016, OSCAR GOMEZ, JR. (hereinafter "Petitioner") was charged by  
4 way of Information with one count of Murder With Use of a Deadly Weapon (Category A  
5 Felony – NRS 200.010, 200.030, 193.165) for actions committed on or about June 24, 2016.

6 On April 19, 2018, pursuant to negotiations, the State filed an Amended Information  
7 charging Petitioner with one count of Second-Degree Murder With Use of a Deadly Weapon.  
8 A signed Guilty Plea Agreement was also filed in open court. On June 14, 2018, Petitioner  
9 was sentenced to ten years to life in the Nevada Department of Corrections, with a consecutive  
10 term of ninety-six (96) to two hundred forty (240) months for the use of a deadly weapon.  
11 Petitioner received 716 days credit for time served. The Judgment of Conviction was filed on  
12 June 22, 2018.

13 On July 18, 2018, Petitioner filed a Notice of Appeal. On May 15, 2019, the Nevada  
14 Court of Appeals affirmed Petitioner's Judgment of Conviction. Remittitur issued on June 20,  
15 2019.

16 On May 14, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
17 Conviction). Petitioner contemporaneously filed a Motion for Appointment of Counsel and  
18 Request for Evidentiary Hearing. On June 23, 2020, the State filed its Response.

19 On September 22, 2020, the Court considered the matter on the briefings, and stated  
20 that it rejected all of Petitioner's arguments, except for the argument about whether counsel  
21 adequately discussed concurrent or consecutive prison time with Petitioner. Thereafter, on  
22 October 13, 2020, the Court issued a Minute Order, scheduling an evidentiary hearing "on the  
23 sole issue of whether counsel informed [Petitioner] that he faced consecutive time for the  
24 deadly weapon enhancement."

25 On February 4, 2021, Petitioner filed an "Original" Petition for Writ of Habeas Corpus  
26 (Post-Conviction). The Court construed Petitioner's this filing as a supplemental pleading to  
27 the Petition that he filed on May 14, 2020. On March 5, 2021, the Court granted Petitioner's

28 ///

1 request for counsel, and Mr. James Hoffman, Esq. confirmed as counsel. On March 23, 2021,  
2 the State filed its Response to the “Original” Petition for Writ of Habeas Corpus.

3 On August 20, 2021, the Court held an evidentiary hearing on the aforementioned  
4 issue— whether counsel adequately discussed concurrent versus consecutive prison time with  
5 Petitioner. On September 17, 2021, the Court denied the Petition. On December 6, 2021, the  
6 Court filed its Decision and Order.

7 On October 21, 2021, Petitioner filed a Notice of Appeal. On September 21, 2022, the  
8 Nevada Court of Appeals dismissed the appeal due to finding that the Court’s December 6,  
9 2021 Order did not resolve all of the claims raised by Petitioner. Specifically, the Court of  
10 Appeals found that the Court’s order did not resolve claims four through six raised in the  
11 “Original Petition for Writ of Habeas Corpus” filed on February 4, 2021. See Gomez v. State,  
12 No. 83690-COA (Order Dismissing Appeal, Aug. 26, 2022).

13 On October 12, 2022, this Court set the matter for argument regarding claims four  
14 through six raised in the “Original Petition for Writ of Habeas Corpus” filed on February 4,  
15 2021. On October 20, 2022, the State filed its Response, which addressed claims four through  
16 six. On November 9, 2022, this Court denied claims four through six, for the reasons stated  
17 below.

## 18 ANALYSIS

### 19 **I. CLAIMS FOUR, FIVE, AND SIX EXCEED THE SCOPE OF PERMISSIBLE** 20 **CLAIMS WHEN A PETITIONER’S CONVICTION IS THE RESULT OF A** 21 **GUILTY PLEA**

22 Due to having entered a guilty plea, Petitioner is strictly limited regarding the types of  
23 claims he may raise when requesting habeas relief. Dismissal of a postconviction petition for  
24 writ of habeas corpus is mandatory when “[t]he petitioner’s conviction was upon a plea of  
25 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea  
26 was involuntarily or unknowingly entered or that the plea was entered without effective  
27 assistance of counsel.” NRS 34.810(1)(a). Claims Four through Six do not concern  
28 ineffectiveness of counsel or the voluntariness of Petitioner’s guilty plea. Petition, at 21-23.

1 Claims Four and Six challenge the validity of the deadly weapon enhancement statute. Claim  
2 Five alleges violations of Petitioner's rights under the Fourteenth and Ninth Amendments, and  
3 the Privileges and Immunities clause. These claims are summarily denied due to falling outside  
4 the parameters of NRS 34.810(1)(a). Furthermore, these claims could have been raised on  
5 direct appeal, and consequently are waived on habeas review. See Franklin v. State, 110 Nev.  
6 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115  
7 Nev. 148, 979 P.2d 222 (1999).

## 8 **II. PETITIONER'S CLAIMS ARE WITHOUT MERIT**

9 Even if Petitioner's claims were not barred from consideration due to the restrictions of  
10 NRS 34.810(1)(a), Petitioner would not be entitled to relief because his claims lack merit. In  
11 Claim Four, Petitioner alleges that the imposition of the deadly weapon enhancement violates  
12 his due process rights. Petition, at 21. He appears to contend that NRS 193.165—the deadly  
13 weapon enhancement statute—is unconstitutionally vague. His sole attempt to support this  
14 claim appears to be a citation to a federal case relating to the validity of federal statute 18  
15 U.S.C. 924(c). As Petitioner was not sentenced pursuant to any federal statute in this case, this  
16 case is obviously inapplicable. Furthermore, the Nevada Supreme Court has previously ruled  
17 that NRS 193.165 is not unconstitutionally vague. Woofert v. O'Donnell, 91 Nev. 756, 762,  
18 542 P.2d 1396, 1400 (1975). Moreover, by entering into the Guilty Plea Agreement, Petitioner  
19 agreed to imposition of the deadly weapon enhancement. See Breault v. State, 116 Nev. 311,  
20 313, 996 P.2d 888, 889 (2000) (stating that where a defendant enters a knowing and voluntary  
21 guilty plea, the Court “will not permit the defendant to manipulate the judicial system” by  
22 alleging error in the sentence imposed pursuant to the guilty plea agreement). Accordingly,  
23 this claim is denied.

24 In Claim Five, Petitioner alleges violations of his rights under the Fourteenth and Ninth  
25 Amendments, as well as the Privileges and Immunities Clause. Petition, at 22. He offers no  
26 factual allegation as to how these rights were supposedly violated. This failure to set forth  
27 specific factual allegations requires summary dismissal of this claim. NRS 34.735. “A  
28 petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make


specific factual allegations that if true would entitle him to relief.” Colwell v. State, 118 Nev. 807, 813, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001)). See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare or naked allegations are insufficient to entitle a defendant to post-conviction relief). Accordingly, this claim is denied.

In Claim Six, Petitioner appears to allege that imposition of the deadly weapon enhancement violates his Fifth Amendment protection against double jeopardy. Petition, at 23. The Nevada Supreme Court has previously held that the deadly weapon enhancement contained in NRS 193.165 does not violate double jeopardy. Nevada Dep’t Prisons v. Bowen, 103 Nev. 477, 479–81, 745 P.2d 697, 698–99 (1987); Woofter, 91 Nev. at 761–62, 542 P.2d at 1399–400. Accordingly, this claim is denied.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that claims four through six of the “Original Petition for Writ of Habeas Corpus” filed on February 4, 2021, shall be, and are, hereby denied.

Dated this 7th day of March, 2023



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

**4EA 72B 935D 9BFC**  
**Carli Kierny**  
**District Court Judge**

BY /s/ KAREN MISHLER  
KAREN MISHLER  
Chief Deputy District Attorney  
Nevada Bar #013730

///

///

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1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of the foregoing, was made this 7th day of March 2023, by  
3 Electronic Filing to:

4 JIM HOFFMAN, ESQ.  
5 E-mail: [Jim.hoffman.esq@gmail.com](mailto:Jim.hoffman.esq@gmail.com)

6  
7 /s/ Janet Hayes  
8 Secretary for the District Attorney's Office  
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28 16F10719A/KM/jh/GU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Oscar Gomez, Plaintiff(s)

CASE NO: A-20-815035-W

7 vs.

DEPT. NO. Department 2

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 Final Accounting was served via the court's electronic eFile system to  
13 all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/7/2023

15 Jim Hoffman

jim.hoffman.esq@gmail.com

16 Dept 9 Law Clerk

dept09lc@clarkcountycourts.us

17 District Attorney

PDMotions@ClarkCountyDA.com

18 Heather Ungermann

ungermannh@clarkcountycourts.us

19 Jennifer Garcia

jennifer.garcia@clarkcountyda.com

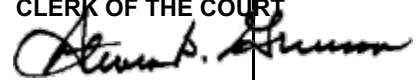
20 Binu Palal

binu.palal@clarkcountyda.com

21 Dept 2 Law Clerk

dept02lc@clarkcountycourts.us

22  
23  
24  
25  
26  
27  
28



NEFF

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

OSCAR GOMEZ,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-20-815035-W

Dept No: II

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

**PLEASE TAKE NOTICE** that on March 7, 2023, 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 March 13, 2023.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 13 day of March 2023, 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:

Oscar Gomez # 1200302  
P.O. Box 208  
Indian Springs, NV 89070

Jim Hoffman, Esq.  
P.O. Box 231246  
Las Vegas, NV 89105

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

Statistically Closed: USUR CV Other Manner of Disposition (USUR OT)

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

2 **PROCEDURAL HISTORY**

3 On August 3, 2016, OSCAR GOMEZ, JR. (hereinafter "Petitioner") was charged by  
4 way of Information with one count of Murder With Use of a Deadly Weapon (Category A  
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9 was sentenced to ten years to life in the Nevada Department of Corrections, with a consecutive  
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15 2019.

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9 2021 Order did not resolve all of the claims raised by Petitioner. Specifically, the Court of  
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17 below.

## 18 ANALYSIS

### 19 **I. CLAIMS FOUR, FIVE, AND SIX EXCEED THE SCOPE OF PERMISSIBLE** 20 **CLAIMS WHEN A PETITIONER’S CONVICTION IS THE RESULT OF A** 21 **GUILTY PLEA**

22 Due to having entered a guilty plea, Petitioner is strictly limited regarding the types of  
23 claims he may raise when requesting habeas relief. Dismissal of a postconviction petition for  
24 writ of habeas corpus is mandatory when “[t]he petitioner’s conviction was upon a plea of  
25 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea  
26 was involuntarily or unknowingly entered or that the plea was entered without effective  
27 assistance of counsel.” NRS 34.810(1)(a). Claims Four through Six do not concern  
28 ineffectiveness of counsel or the voluntariness of Petitioner’s guilty plea. Petition, at 21-23.

1 Claims Four and Six challenge the validity of the deadly weapon enhancement statute. Claim  
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5 direct appeal, and consequently are waived on habeas review. See Franklin v. State, 110 Nev.  
6 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115  
7 Nev. 148, 979 P.2d 222 (1999).

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10 NRS 34.810(1)(a), Petitioner would not be entitled to relief because his claims lack merit. In  
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12 his due process rights. Petition, at 21. He appears to contend that NRS 193.165—the deadly  
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15 U.S.C. 924(c). As Petitioner was not sentenced pursuant to any federal statute in this case, this  
16 case is obviously inapplicable. Furthermore, the Nevada Supreme Court has previously ruled  
17 that NRS 193.165 is not unconstitutionally vague. Woofert v. O'Donnell, 91 Nev. 756, 762,  
18 542 P.2d 1396, 1400 (1975). Moreover, by entering into the Guilty Plea Agreement, Petitioner  
19 agreed to imposition of the deadly weapon enhancement. See Breault v. State, 116 Nev. 311,  
20 313, 996 P.2d 888, 889 (2000) (stating that where a defendant enters a knowing and voluntary  
21 guilty plea, the Court “will not permit the defendant to manipulate the judicial system” by  
22 alleging error in the sentence imposed pursuant to the guilty plea agreement). Accordingly,  
23 this claim is denied.

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26 factual allegation as to how these rights were supposedly violated. This failure to set forth  
27 specific factual allegations requires summary dismissal of this claim. NRS 34.735. “A  
28 petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make


specific factual allegations that if true would entitle him to relief.” Colwell v. State, 118 Nev. 807, 813, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001)). See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare or naked allegations are insufficient to entitle a defendant to post-conviction relief). Accordingly, this claim is denied.

In Claim Six, Petitioner appears to allege that imposition of the deadly weapon enhancement violates his Fifth Amendment protection against double jeopardy. Petition, at 23. The Nevada Supreme Court has previously held that the deadly weapon enhancement contained in NRS 193.165 does not violate double jeopardy. Nevada Dep’t Prisons v. Bowen, 103 Nev. 477, 479–81, 745 P.2d 697, 698–99 (1987); Woofert, 91 Nev. at 761–62, 542 P.2d at 1399–400. Accordingly, this claim is denied.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that claims four through six of the “Original Petition for Writ of Habeas Corpus” filed on February 4, 2021, shall be, and are, hereby denied.

Dated this 7th day of March, 2023



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

**4EA 72B 935D 9BFC**  
**Carli Kierny**  
**District Court Judge**

BY /s/ KAREN MISHLER  
KAREN MISHLER  
Chief Deputy District Attorney  
Nevada Bar #013730

///

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///

1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of the foregoing, was made this 7th day of March 2023, by  
3 Electronic Filing to:

4 JIM HOFFMAN, ESQ.  
5 E-mail: [Jim.hoffman.esq@gmail.com](mailto:Jim.hoffman.esq@gmail.com)

6  
7 /s/ Janet Hayes  
8 Secretary for the District Attorney's Office  
9  
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11  
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28 16F10719A/KM/jh/GU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Oscar Gomez, Plaintiff(s)

CASE NO: A-20-815035-W

7 vs.

DEPT. NO. Department 2

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 Final Accounting was served via the court's electronic eFile system to  
13 all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/7/2023

15 Jim Hoffman

jim.hoffman.esq@gmail.com

16 Dept 9 Law Clerk

dept09lc@clarkcountycourts.us

17 District Attorney

PDMotions@ClarkCountyDA.com

18 Heather Ungermann

ungermannh@clarkcountycourts.us

19 Jennifer Garcia

jennifer.garcia@clarkcountyda.com

20 Binu Palal

binu.palal@clarkcountyda.com

21 Dept 2 Law Clerk

dept02lc@clarkcountycourts.us

22  
23  
24  
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26  
27  
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September 22, 2020

Minutes Date: September 22, 2020

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**October 13, 2020**

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A-20-815035-W	Oscar Gomez, Plaintiff(s) vs. State of Nevada, Defendant(s)
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<b>October 13, 2020</b>	<b>11:00 AM</b>	<b>Decision</b>	<b>Decision Regarding Deft's Petition for Writ of Habeas Corpus</b>
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**HEARD BY:** Adair, Valerie

**COURTROOM:** Chambers

**COURT CLERK:** April Watkins

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Defendant's Petition for Writ of Habeas Corpus will be scheduled for an evidentiary hearing on the sole issue of whether counsel failed to inform Defendant that he faced consecutive time for the deadly weapon enhancement. This matter is set for a status check to schedule the evidentiary hearing on Thursday, October 29 at 3:30. The State is directed to prepare an order to transport for Defendant's physical or remote appearance.

NDC

10/29/2020 3:30 PM STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING

CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, S.D.C.C., P.O. Box 208, Indian Springs, NV 89070. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**October 29, 2020**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**October 29, 2020      3:30 PM      Status Check      Status Check Re:  
Setting of  
Evidentiary Hearing**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** April Watkins

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:** Rinetti, Dena I. Attorney

**JOURNAL ENTRIES**

- Court noted remote appearance was requested and could not be accommodated for today. Further, Deft. needs to be present for the Court to explain to him what is going on and ORDERED, matter CONTINUED. State to prepare order for Deft. to appear remotely.

NDC

CONTINUED TO: 12/15/2020 3:30 PM

CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, SDCC, P.O. Box 208, Indian Springs, NV 89070. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**December 15, 2020**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**December 15, 2020      3:30 PM      Status Check      Status Check Re:  
Setting of  
Evidentiary Hearing**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** April Watkins

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:** Villani, Jacob J.      Attorney

**JOURNAL ENTRIES**

- Court noted matter is on calendar today to explain to Deft. about setting evidentiary hearing and ORDERED, matter CONTINUED. State to prepare order to transport or for Deft. to appear remotely. Mr. Villani stated there have been two separate orders done and one of those was for today's hearing.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, SDCC, P.O. Box 208, Indian Springs, NV 89070. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus****COURT MINUTES****February 12, 2021**

A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

**February 12, 2021      1:30 PM      Status Check      Status Check Re:  
Setting of  
Evidentiary Hearing**

**HEARD BY:** Silva, Cristina D.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Kory Schlitz**RECORDER:** Gina Villani**REPORTER:****PARTIES****PRESENT:** Gomez, Oscar      Plaintiff**JOURNAL ENTRIES**

- Deputy District Attorney Chris Hamner present on behalf of the State.

COURT STATED there was a Petition for Writ of Habeas Corpus and Request for Evidentiary hearing that was addressed in September of 2020, and there was another Writ filed. Upon Court's inquiry, Defendant stated with regards to the September hearing, he was never transported, and he submitted another Petition, and there is a third one. COURT ADVISED the Defendant the original Petition is still pending, and ORDERED, the Motion to Join filed on February 4, 2021 STRICKEN. COURT FURTHER STATED the original Petition was never addressed by the previous Judge. COURT STATED the matter was taken under advisement with Judge Adair, and then a decision was made on October 13, 2020 that a limited evidentiary hearing would be set regarding whether or not the Defendant was informed he would be sentenced to consecutive time for the deadly weapon portion, and the matter was supposed to be set for hearing and the Defendant was never transported. COURT STATED the question of whether or not the Defendant needed an attorney appointed has also never been addressed. COURT ORDERED, matter REFERRED to the Office of Appointed Counsel for an appointment of counsel; matter SET for status check; matter CONTINUED. COURT DIRECTED the State to file a Transport Order.

NDC

3/5/2021 11:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL... STATUS CHECK RE:  
SETTING OF EVIDENTIARY HEARING..

4/7/221 11:00 A.M. PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: A copy of this Minute Order has been e-mailed to the Office of Appointed Counsel  
(2-16-2021 ks)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

**March 05, 2021**

A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

**March 05, 2021                      1:30 PM                      All Pending Motions**

**HEARD BY:** Silva, Cristina D.

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Kory Schlitz

**RECORDER:** Gina Villani

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Gomez, Oscar	Plaintiff
	Hoffman, James I.	Attorney
	Palal, Binu G.	Attorney

## JOURNAL ENTRIES

- STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING... STATUS CHECK:  
CONFIRMATION OF COUNSEL: JIM HOFFMAN...

Monti Levi Esq. also present.

Upon Court's inquiry, Mr. Hoffman stated he can confirm as counsel of record. COURT STATED their inclination is to set this matter for a status check in two weeks to set an evidentiary hearing. Mr. Hoffman stated that would be enough time. Mr. Palal stated he contacted Ms. Levy to be present today to expedite the process of setting the hearing. COURT ADVISED a status check will need to be set due to the mater needing to be calendared for a special setting through CCDC, and DIRECTED parties to meet and figure out dates they would be available to have the limited hearing and contact Chambers once done. Mr. Hoffman stated he reviewed the minutes, and inquired if this hearing only pertained to the first Petition the Defendant filed. COURT STATED it would be helpful and necessary to address the other pending Petitions, and suggested Mr. Hoffman look at the Petitions to see if there are grounds for them to be considered, and to meet and confer with the State. COURT ORDERED, Status Check CONTINUED.

NDC

3/19/2021 11:00 A.M. STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**April 07, 2021**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**April 07, 2021      11:00 AM      All Pending Motions**

**HEARD BY:** Silva, Cristina D.      **COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Kory Schlitz

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

**PRESENT:** Hoffman, James I.      Attorney  
Palal, Binu G.      Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS... PLAINTIFF'S MOTION TO JOIN...

Defendant not present and in custody in the Nevada Department of Corrections.

COURT STATED since the documents were filed Pro Per they are considered rouge documents. Mr. Hoffman informed the Court the Defendant filed the Petitions before he was appointed as counsel of record, adding he was going to submit on the pleadings, and not have any oral argument. Mr. Palal stated he did file a response that addressed both Petitions, and parties are ready to have a hearing. Mr. Hoffman informed the Court the Defendant's mother and sister may want to testify during the hearing, and he is ready to proceed. COURT ORDERED, Evidentiary Hearing set for April 27, 2021 STANDS. Mr. Palal informed the Court they filed a transport order when the hearing was set. COURT SO NOTED.

NDC

4/27/2021 1:30 P.M. EVIDENTIARY HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 14, 2021**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**May 14, 2021      1:30 PM      Status Check**

**HEARD BY:** Silva, Cristina D.      **COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

**PRESENT:** Hoffman, James I.      Attorney  
Palal, Binu G.      Attorney

**JOURNAL ENTRIES**

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

Mr. Gomez not present. Colloquy regarding evidentiary hearing date, and transporting defendants for in-person hearings. COURT ORDERED, the tentative hearing date will be 7-20-21. Further, the dept. will reach out to counsel to confirm the date evidentiary hearing date. Mr. Palal will confirm with the attorney witness. Mr. Hoffman advised Mr. Gomez is okay with appearing via video, from the prison. Court so noted.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 27, 2021**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**May 27, 2021      12:00 AM      Minute Order**

**HEARD BY:** Silva, Cristina D.      **COURTROOM:** Chambers

**COURT CLERK:** Kory Schlitz

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Counsel for Petitioner was instructed to prepare an Order for Production of Inmate for Video Appearance and submit it to the department for signature. The order has not been received. Petitioner is hereby ordered to submit an Order for Production of Inmate for Video Appearance to the DC9 inbox.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (5/27/2021 ks).

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 10, 2021**

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A-20-815035-W	Oscar Gomez, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

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**August 10, 2021      9:00 AM      Evidentiary Hearing**

**HEARD BY:** Silva, Cristina D.      **COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Kory Schlitz

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Hoffman, James I.	Attorney
	Palal, Binu G.	Attorney

**JOURNAL ENTRIES**

- Monti Levy Esq. also present as prior counsel; Defendant not present and in custody in the Nevada Department of Corrections.

COURT ADVISED this matter was set for a special evidentiary hearing at 9:00 a.m., and the time is now 9:50 a.m., adding the Court has spent almost the last hour trying to get in contact with NDOC, who informed them they did not set up the video conference, and now it is too late to transport the Defendant to the room. COURT FURTHER STATED the Defendant did not want to be transported to CCDC for this hearing, and requested Mr. Hoffman speak with the Defendant, adding they will not reset this hearing today, however directed parties to meet and confer to figure out a new time to set this hearing for, and then to reach out to chambers. COURT FURTHER ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 20, 2021**

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A-20-815035-W	Oscar Gomez, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

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**August 20, 2021      11:00 AM      Evidentiary Hearing**

**HEARD BY:** Silva, Cristina D.      **COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Kory Schlitz

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gomez, Oscar	Plaintiff
	Hoffman, James I.	Attorney
	Palal, Binu G.	Attorney

**JOURNAL ENTRIES**

- COURT STATED the matter is set for an evidentiary hearing regarding whether or not the Defendant understood if he was pleading to consecutive or concurrent time between the counts. EXCLUSIONARY RULE INVOKED. Testimony and exhibits presented. (See Worksheets). Mr. Hoffman argued that the relationship between Ms. Levy and the Defendant's family was difficult, and Ms. Levy was eager to be completed with case, and didn't thoroughly explain the offer to the Defendant and requested the Defendant's sentence be vacated. Upon Court's inquiry, Mr. Hoffman stated with regards to the entry of plea the Defendant felt rushed and pressured to entering into it. Mr. Palal argued what there is an implication the Defendant was rushed, the deal that was conveyed to the Defendant was the same offer from October 17, 2017 and then was accepted on 10/17/2017 was same offer on April 19, 2018. Mr. Palal further argued Ms. Levy testified she reviewed the length of the sentence with the Defendant multiple times. COURT STATED they would like to review the information provided through the Petition and testimony today, and ORDERED, matter SET for Decision. COURT ADVISED the Defendant's presence can be waived at the continued hearing date.

NDC

9/17/2021 1:30 P.M. DECISION RE: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**September 17, 2021**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**September 17, 2021      1:30 PM      Decision**

**HEARD BY:** Silva, Cristina D.

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Kory Schlitz

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

**PRESENT:** Hoffman, James I.      Attorney

**JOURNAL ENTRIES**

- Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Michelle Fleck present on behalf of the State.

COURT ORDERED, Defendant's presence WAIVED as he requested not to be transported for the hearing. COURT STATED a hearing was conducted regarding the Petition for Writ of Habeas Corpus, and the Court heard testimony in regards to whether the Defendant understood the terms of his negotiations, specifically the consecutive time to follow the second with use, and consecutive time with regards to the deadly weapon enhancement. COURT FURTHER STATED there was testimony from his prior attorney Monti Levy who testified she visited the Defendant over twenty times, discussed the sentence with the Defendant multiple times, and discussed sentencing ranges, adding she testified she wrote down the sentencing ranges in order to explain the consequences of the plea, and the explanation of the deadly weapon, and the consequences of the enhancement. COURT ADDITIONALLY STATED there was representations there was not a good relationship between Ms. Levy and the Defendant's family, however it did not impact her conveyance of offer; adding testimony was heard from Defendant, who testified Ms. Levy did not explain what the deadly weapon enhancement meant, and what it could run consecutive or concurrent, adding the sentence was no explained to Defendant. COURT ORDERED, Post Conviction Petition for Writ of Habeas Corpus DENIED, and FINDS Ms. Levy's testimony to be credible, that the sentence and the

consequences of the sentence were explained to the Defendant, not only prior to change of plea, however by Mr. Palal as well in terms of how the sentences would run. Mr. Hoffman stated the Defendant filed three Post Conviction Petitions and requested the Court include their rulings on the other aspects of the Petition when they prepare the order, not just regarding the evidentiary hearing.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**October 12, 2022**

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A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**October 12, 2022      9:30 AM      Motion**

**HEARD BY:** Kierny, Carli      **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:**  
Jill Chambers

**RECORDER:** Jessica Kirkpatrick

**REPORTER:**

**PARTIES**

**PRESENT:** Hoffman, James I.      Attorney  
Luzaich, Elissa      Attorney

**JOURNAL ENTRIES**

- Colloquy regarding the Court of Appeals dismissal. Court advised counsel that the transcript would be ordered and reviewed as to the three grounds not yet determined. COURT ORDERED, MATTER SET FOR ARGUMENT.

11/9/22 9:30 AM ARGUMENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

November 09, 2022

A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

**November 09, 2022      9:30 AM      Hearing**

**HEARD BY:** Kierny, Carli

**COURTROOM:** RJC Courtroom 12B

**COURT CLERK:**

Jill Chambers

**RECORDER:** Jessica Kirkpatrick

**REPORTER:**

## PARTIES

**PRESENT:** Beaumont, Austin C. Attorney  
Hoffman, James I. Attorney

## JOURNAL ENTRIES

- Mr. Hoffman stated that the Deft. was not transported for these proceedings.

Mr. Beaumont submitted on the pleadings. Mr. Hoffman stated that he requested if he could provide supplemental briefing on the

Court noted as to claims 4, 5 and 6 in the Deft's pro per request, COURT FINDS, claim 4 is without merit and the case cited was inapplicable and ORDERED DENIED.

As to claim 5, petitioner offers no factual allegations as to how his 14th and 9th amendment rights were violated as well as the privileges and immunities clause, failure to set forth any specific factual allegations requires summary dismissal of the claim and ORDERED, DENIED.

As to claim 6, the Supreme Court previously ruled upon deciding that it did not violate double jeopardy and ids therefore DENIED.

Court further set a hearing for argument following the submission of supplemental briefing.

1/25/23 9:30 AM ARGUMENT

## EXHIBIT(S) LIST

Case No.: A-20-815035-W

Hearing / Trial Date: 8/20/2021

Dept. No.: 9

Judge: Cristina D. Silva

Court Clerk: Kory Schlitz

**Plaintiff:** Oscar Gomez

Recorder / Reporter: Gina Villani

Counsel for Plaintiff: James Hoffman

**VS.**

Defendant: State of Nevada

Counsel for Defendant: Binu Palal

## HEARING / TRIAL BEFORE THE COURT

State's EXHIBITS

[illegible]

# 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; CIVIL COVER SHEET; 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

OSCAR GOMEZ,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),


Case No: A-20-815035-W

Dept No: IX

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 13 day of March 2023.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

