

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
May 02 2023 11:09 AM
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 86310

APPELLANT'S OPENING BRIEF

Appeal From Denial of Post-Conviction Habeas Petition

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. Luis Angel Castro is represented by Steven S. Owens, Esq, of Steven S. Owens, LLC, who is a sole practitioner and there are no parent corporations for which disclosure is required pursuant to this rule.

DATED this 2nd day of May, 2023.

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JURISDICTIONAL STATEMENT

This appeal is from Findings of Fact, Conclusions of Law, and Order filed on March 6, 2023, which denied a petition for post-conviction relief from a criminal conviction pursuant to a guilty plea. 2 AA 254. Notice of Entry of Findings of Fact, Conclusions of Law, and Order was filed on March 8, 2023. 2 AA 253. Appellate jurisdiction in this case derives from NRAP 4(b)(1) and NRS 34.575(1). The Notice of Appeal was timely filed on March 21, 2023. 2 AA 264.

ROUTING STATEMENT

This matter is not presumptively assigned to the Court of Appeals because it is a postconviction appeal that does involve a challenge to a judgment of conviction or sentence for an offense that is a category A felony. See NRAP 17(b)(3).

STATEMENT OF THE ISSUES

- I. COUNSEL WAS INEFFECTIVE DURING PLEA NEGOTIATIONS FOR ADVISING CASTRO'S PARENTS THAT THE FOUR DEFENDANTS WOULD BE PROSECUTED SEPARATELY AND THAT CASTRO WOULD RECEIVE A PRISON SENTENCE OF 15 TO 25 YEARS IF HE ACCEPTED HIS PLEA.**

STATEMENT OF THE CASE

On April 12, 2016, Luis Angel Castro was charged along with other co-defendants by way of Information in Case C-16-314092-1 with Conspiracy to Commit Murder, Attempt Murder With Use of a Deadly Weapon, Mayhem With

Use of a Deadly Weapon, Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm, First Degree Kidnapping With Use of a Deadly Weapon Resulting in Substantial Bodily Harm, Extortion With Use of a Deadly Weapon, Robbery With Use of a Deadly Weapon, and First Degree Arson. 1 AA 1-6.

On February 4, 2019, Castro, represented by Attorney Warren Geller, pleaded guilty pursuant to a Guilty Plea Agreement to one count of First Degree Kidnapping Resulting in Substantial Bodily Harm, with the State retaining the right to argue for Life without the possibility of parole, and the Defense arguing for Life with the possibility of parole after 15 years. 1 AA 9-16. On March 26, 2019, Castro was adjudged guilty and was sentenced to Life without the possibility of parole. 1 AA 17-18. The judgment of conviction was filed on March 28, 2019. *Id.*

Castro filed a direct appeal where he was represented by Attorney Jean Schwartzer and his appeal was docketed as Case SC# 78643. 1 AA 19-26. After full briefing, the Nevada Court of Appeals issued an Order of Affirmance on August 12, 2020, and subsequently denied rehearing. *Id.* Remittitur issued on November 17, 2020. 1 AA 27.

On June 7, 2021, Castro filed a timely pro se Petition for Writ of Habeas Corpus and an Ex Parte Motion for Appointment of Counsel under Case A-21-835827-W. 1 AA 28-48, 49-52. The State was ordered to respond. 1 AA 53. Castro also filed a supplement to the petition, a memorandum of facts and law, a request for

judicial notice, an addendum to the petition, and a declaration in support of the petition. 1 AA 55-71, 72-76, 77-80, 81-84, 85-88. The State filed its response to the petition and supplemental brief on July 27, 2021. 1 AA 89-114. Castro filed a reply to the State's response on August 26, 2021. 1 AA 115-125. On September 21, 2021, Judge Jerry A. Wiese entered a written Order denying the Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel. 1 AA 127-150.

Representing himself, Castro filed a Notice of Appeal of that Order and his appeal was docketed as Case SC# 83680. 1 AA 151-155. On June 13, 2022, the Nevada Court of Appeals issued an Order Affirming in Part, Reversing in Part and Remanding. 1 AA 157-164. In its Order, the Nevada Court of Appeals affirmed the denial of all but one of Castro's habeas claims. *Id.* However, concerning the claim that counsel was ineffective for advising Castro's parents that the four defendants would be prosecuted separately and that Castro would receive a prison sentence of 15 to 25 years if he accepted the plea, the Nevada Court of Appeals reversed and remanded that claim for an evidentiary hearing. *Id.* Remittitur issued on July 8, 2022. 1 AA 165.

On August 11, 2022, undersigned counsel was appointed to the habeas case on remand. 1 AA 166-7. Counsel then filed a supplemental brief in support of the remanded issue on September 19, 2022. 1 AA 168-178. The State filed its response on November 22, 2022. 1 AA 179-184. An evidentiary hearing was held on January

20, 2023, at the conclusion of which the judge again denied the petition. 1 AA 185-250. Findings of Fact, Conclusions of Law and Order denying the petition were entered on March 6, 2023. 2 AA 254-263. Notice of Entry of Order was filed on March 8, 2023. 2 AA 253. Castro's timely Notice of Appeal was filed on March 21, 2023. 2 AA 264.

STATEMENT OF THE FACTS

At the evidentiary hearing, the following testimony was presented. Attorney Warren Geller testified that he represented Castro for about three years in his criminal case from preliminary hearing through to the eventual guilty plea in C-16-314092-1. 1 AA 188-9. He received a plea offer from the prosecutor around January 31 or February 1, 2019, which he communicated in an email to Castro's brother on February 2, 2019. 1 AA 189-90, 192. That email was subsequently marked and admitted as State's Exhibit 1. 1 AA 203; 2 AA 251-2. The terms of the plea offer were to plead to kidnapping with substantial bodily harm and the State would be free to argue for life without parole while Castro would argue for 15 years to life. 1 AA 190. When Castro learned of the plea offer he did not like it and did not want to plead guilty. 1 AA 192.

Geller was familiar with and met Castro's family members several times, specifically Castro's brother Jose Jr., his father Jose Sr., and his mother Angeles. 1 AA 192-3. Geller's main point of contact was through the brother Jose Jr. because

he was bilingual and could translate for the family, while the parents were the ones who actually hired Geller and funded their son's defense. *Id.* Castro's family played an active role in the case and Geller communicated with them over the telephone, email, and in person. *Id.* When asked whether he told the family that if Castro took the deal he would be prosecuted separate from the other co-defendants, Geller explained:

I don't recall saying separate in terms of like a separate hearing. But it would stand to reason that I would have said that the judge sentences each person delivers a different sentence to them individually even if it's in the same – the same criminal calendar.

1 AA 195. But that did not happen and each defendant received the same sentence of life without the possibility of parole on the same day without any differentiation for relative culpability or unique circumstances. *Id.* Factually, Castro was less culpable than his co-defendants and Geller had confirmed via video surveillance that Castro was not present for the some of the kidnapping and torture but had been away at a convenience store during part of it. 1 AA 195-6, 208.

When asked whether he told the parents that if Castro took the plea deal he would only get 15 to 25 years, Geller did not recall saying that. 1 AA 196. The State elicited that the email Geller sent to the brother Jose Jr. did not mention a term of years, only the two life options. 1 AA 203-4. But the email clearly states that one of those life options included parole eligibility at 15 years. 2 AA 251-2. In fact, the email makes mention of the judge picking "between 15 years and life." *Id.*

Geller also acknowledged telling the parents that Castro could get parole as early as 15 years and that it would be in Castro's best interest to take the deal. 1 AA 197. Geller admitted he may have discussed with the parents a fixed term of 15 years provided in the statute even if it was not available in the guilty plea agreement and there was a possibility, although unlikely, that the judge could sentence outside of the agreed range in the plea agreement. 1 AA 205. Geller believed his fee for representation in both justice court and district court was \$70,000 and he did not specifically remember asking the family for any more money unless it was for an expert witness or investigator. 1 AA 197-8. He did not recall knowing that the parents had to mortgage their home to pay his fee. *Id.*

Next, the father Jose Castro Sr. testified through a Spanish interpreter that he provided financial and emotional support to his son Luis Castro and took care of all the expenses. 1 AA 209-10. His son had been living at home prior to the crime and did not have funds of his own to hire an attorney. *Id.* Jose Sr. testified he paid \$85,000 to Attorney Warren Geller for the criminal defense of his son and Geller told him it would be another \$50,000 if the case went to another court. 1 AA 211. Jose Sr. had to borrow against his paid off home to pay the legal fees and it was difficult for he and his wife to meet the financial obligations for their son. *Id.* He communicated a lot with his son while in jail and provided emotional support as did his wife 1 AA 211-212.

Jose Sr. recalled Geller telling him about a plea deal for 15 to 25 years in prison. *Id.* This conversation took place in person at Geller's office with his son Jose Jr. translating. 1 AA 212-213. Geller said if his son Luis did not take the deal and was found guilty at trial, then the case would go to a different court and Jose Sr. would have to pay Geller another \$50,000. *Id.* So, he and his wife pressured their son to accept the plea deal. *Id.* Geller also told Jose Sr. that if his son took the deal he would be prosecuted separately from the other co-defendants. *Id.* Jose Sr. remembered that his son did not want to plead guilty, but Jose Sr. told him that he would have to look for his own way to defend himself because he could no longer afford to defend him. 1 AA 214. Because Geller had told him the deal was for 15 to 25 years, Jose Sr. persuaded and convinced his son to plead guilty. *Id.* If his son did not accept the plea, then Jose Sr. and his wife would have been angry with him and would have stopped supporting him in many ways. 1 AA 214-215.

Next, the mother Angeles Castro testified through a Spanish interpreter that Luis Castro was her son. 1 AA 218. She said that she and her husband Jose Sr. paid \$85,000 to Attorney Warren Geller to represent their son. 1 AA 219. Warren Geller communicated with her in person, by phone and by email with her other son Jose Jr. interpreting for her. *Id.* From Geller she understood that if her son Luis Castro pleaded guilty, he would get 15 to 25 years maximum or on the high end and this was the last opportunity to negotiate. *Id.* Geller also informed her that he had

arranged for the sentencing to be separate from the other co-defendants so that there would be a fair sentencing. 1 AA 220. She confirmed that initially her son did not want to take this plea bargain because he had always maintained that he did not commit what happened, but she and her husband could not let it continue because they did not have any more money. *Id.* She testified that Geller wanted another \$50,000 if her son did not accept the plea bargain because the case would then go to federal court. 1 AA 221-223. So, Geller told her to convince her son to take the plea deal as it was the best thing he could do, so she did not have to pay the \$50,000. *Id.* Because she had to take out a loan against her home to pay the attorney fees which were very high, she could not get into anymore debt and threatened to withdraw her financial and emotional support from her son if he did not plead guilty. *Id.* Although she believed in her son's innocence, she trusted that Geller knew best what to do. 1 AA 226.

Next, their son Jose Jr. testified that he would interpret what Warren Geller said into Spanish for his parents. 1 AA 227-228. As best as he could recall, the plea deal was for 15 to 25 years and Geller said that his brother Luis Castro would either be prosecuted separately or tried separately or that he would be sentenced separately from everybody else, as in not all at the same time. 1 AA 230. Geller also told him that if Luis Castro did not plead guilty, his parents would have to give him another \$50,000 to keep fighting the case at the next court level. 1 AA 231-232. Jose Jr.

testified that his parents did not have \$50,000 to give, so Geller said that pleading guilty was his best option. *Id.*

Finally, Appellant Castro took the stand and testified that when he first heard about the plea offer in this case about three days before trial was to start, that he did not want to accept it. 1 AA 235-236. He told Geller no over three consecutive days. *Id.* Geller told him that 15 to life was better than going to trial and that he would be sentenced separately. 1 AA 237. Castro knew his parents were in contact with Geller because he did not have money to hire his own attorney, but did not realize how strong the communication between them was. *Id.* Castro was dependent on his parents for financial support. 1 AA 237-238. When his parents spoke to him there was a lot of fighting because he did not want to take the deal and his parents said that they would not be able to support or help him anymore because Geller was asking for more money. *Id.* To hear his parents threaten to withdraw financial and emotional support if he did not plead guilty made Castro feel depressed and he did not know what to do anymore because they had always been a great influence in his life. *Id.* So, feeling like his back was against the wall, he decided to plead guilty so as not to lose his parents' help and support. 1 AA 239. If his parents had not threatened or influenced him in that way, then he would not have pleaded guilty and would have insisted on going to trial. *Id.*

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SUMMARY OF THE ARGUMENT

Attorney Warren Geller was hired by Castro's parents, Jose Sr. and Angeles Castro, to represent their son, Luis Angel Castro, in his criminal case. Geller told Castro's parents that a plea deal had been offered their son where if he pleaded guilty, he would receive a sentence of 15 to 25 years in prison and would be sentenced separately from his co-defendants. Upon this assurance, the parents used their considerable influence to persuade and induce their son to plead guilty and threatened the loss of their support if he did not accept the plea deal. Initially, Castro resisted the plea deal and wanted to go to trial instead, but Geller enlisted the parents help to convince their son to accept the plea deal which he eventually did. Castro felt coerced and pressured, and believed that he did not have any other alternative so he pleaded guilty and was sentenced to life without the possibility of parole the same as his codefendants despite a difference in his relative culpability. Counsel was ineffective in using the parents in this way and effectively coerced Castro's guilty plea. The district court judge erred in finding otherwise.

ARGUMENT

An indigent defendant possesses a constitutional right to reasonably effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), *cert. denied*, 471 U.S. 1004, 105 S. Ct. 1865 (1985). To state a claim of ineffective

assistance of counsel sufficient to invalidate a judgment of conviction, a convicted defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result of counsel's performance. *Strickland*, 466 U.S. at 687-88, 692, 104 S. Ct. at 2064-65, 2067. Prejudice is demonstrated where counsel's errors were so severe that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694, 104 S. Ct. at 2068. A “reasonable probability” is a probability sufficient to undermine confidence in the outcome of trial. *Id.* The defendant carries the affirmative burden of establishing prejudice. 466 U.S. at 693, 104 S. Ct. at 2067-68.

To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S.Ct. 366 (1985); *Kirksey v. State*, 112 Nev 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984).

A claim of ineffective assistance of counsel presents a mixed question of law and fact that is subject to independent review. *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). However, a district court's factual findings will be given deference by this court on appeal, so long as they are supported by substantial evidence and are not clearly wrong. *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). This Court reviews the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Appellant Castro was denied his right to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution as set forth in the following claim for relief, which the district court erred in denying.

I. COUNSEL WAS INEFFECTIVE DURING PLEA NEGOTIATIONS FOR ADVISING CASTRO'S PARENTS THAT THE FOUR DEFENDANTS WOULD BE PROSECUTED SEPARATELY AND THAT CASTRO WOULD RECEIVE A PRISON SENTENCE OF 15 TO 25 YEARS IF HE ACCEPTED HIS PLEA.

As a result of counsel's false or misunderstood assertions, Castro's parents threatened to withdraw support for Castro if he did not plead guilty, which effectively coerced him into doing so. This was the sole issue upon which the case was remanded for an evidentiary hearing. After conducting the evidentiary hearing, the district court judge erred in interpreting the facts and applying the law to deny this claim. Because the district court's findings are not supported by substantial evidence and are clearly wrong under the law, this Court should reverse on appeal.

Castro claims a combination of factors, when viewed based upon the totality of the circumstances, entitle him to withdraw his plea and proceed to trial. NRS 176.165 provides as follows:

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

Generally, a post-conviction Petition for Writ of Habeas Corpus is the appropriate remedy to challenge the validity of a guilty plea after sentencing. *Harris v. State*, 130 Nev. 435, 329 P.3d 619, 628 (2014). “[T]he burden [is] on the defendant to establish that his plea was not entered knowingly and intelligently” or that it was a product of coercion. *Id.*; *Gardner v. State*, 91 Nev. 443, 446–47, 537 P.2d 469 (1975).

The district court may grant a post-conviction motion to withdraw a guilty plea that was not entered knowingly and voluntarily in order to correct a manifest injustice. *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224 (2008). “In reviewing an attack on a guilty plea a court must consider whether the plea was voluntarily entered as well as whether, considered as a whole, the process by which the plea was obtained was fundamentally fair.” *Taylor v. Warden*, 96 Nev. 272, 274, 607 P.2d 587 (1980). Further, the Nevada Supreme Court has held the court should consider

the “totality of the circumstances.” *Rubio*, 124 Nev. at 1046; *see also Little v. Warden*, 117 Nev. 845, 851, 34 P.3d 540, 544 (2001).

Castro was also denied his right to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution in the entry of plea. Defendants are entitled to effective assistance of counsel in the plea-bargaining process, and in determining whether to accept or reject a plea offer. *Lafler v. Cooper*, 556 U.S. 156, 132 S. Ct. 1376 (2012); *see also McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1149 (1970) (Constitution guarantees effective counsel when accepting guilty plea). Similarly, a “defendant has the right to make reasonably informed decision whether to accept a plea offer.” *Turner v. Calderon*, 281 F.3d 851, 880 (9th Cir. 2002) (*quoting United States v. Day*, 969 F.2d 39, 43 (3rd Cir. 1992)).

Plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. *Missouri v. Frye*, 566 U.S. 134, 132 S.Ct. 1399, 1407 (2012). If counsel, in a private colloquy even suggests by “inuendo or inference” that defendant will receive probation if he pleads guilty, the plea may be involuntary because it was induced by an “inference of probation” supplied by the attorney. *Warden v. Craven*, 91 Nev. 485, 537 P.2d 1198 (1975). In the present case there was more than mere inuendo or inference, but

a promise to the parents, even if misunderstood, that Castro would be prosecuted separately from his co-defendants if he pleaded guilty and would only receive a sentence of 15 to 25 years in prison. The coercion then arises when the attorney ineffectively communicates the terms of the plea deal knowing and even requesting the parents, as agents of the attorney, to use their considerable influence and pressure to coerce the plea.

A guilty plea must be the voluntary expression of the defendant's own choice. *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463 (1970). The plea is void if it is "induced by promises or threats which deprive it of the nature of a voluntary act." *Machibroda v. United States*, 368 U.S. 487, 493, 82 S.Ct. 510 (1972). When a guilty plea is challenged as being the product of coercion, the concern is not solely with the subjective state of mind of the defendant, but also with the constitutional acceptability of the external forces inducing the guilty plea. See *United States v. Martinez*, 486 F.2d 15, 21 (5th Cir. 1973); see also *Miller v. Fenton*, 474 U.S. 104, 106 S. Ct. 445, 453 (1985). To determine voluntariness, the court examines the totality of the circumstances. *Brady*, 397 U.S. at 749.

For example, in *Iaea v. Sunn*, 800 F.2d 861 (9th Cir. 1986), even though the defendant was properly canvassed as to the range of punishment, the plea was reversed and remanded because counsel's erroneous sentencing promise to defendant and his family members pressured him into an unknowing and involuntary

plea. *See also, Tovar Mendoza v. Hatch*, 620 F.3d 1261 (10th Cir. 2010) (The trial attorney's grossly inaccurate statement to the defendant about the amount of time he would be required to serve if he pled guilty amounted to ineffective assistance of counsel and rendered the guilty plea involuntary). But for counsel's erroneous or misunderstood promise to the parents that Castro would be prosecuted separately and receive a sentence of 15 to 25 years in prison, the parents would not have induced and coerced their son and he would not have pleaded guilty but would have insisted on going to trial.

The judge's stated reason for denying the remanded claim was due to perceived inconsistencies in the testimony of Castro's family members. Specifically, the judge found that Jose Sr. understood there would be a lifetail after parole whereas Angeles understood there would be a 15 to 25 year maximum. 1 AA 247-8. The judge also found inconsistencies in the type and manner of communication with the attorney. *Id.* But any such inconsistencies are no basis for denying the claim. Rather, the inconsistencies actually support the idea that there was a significant language barrier and that Geller was improperly relying on the lay services of Jose Jr. to interpret the important details of the plea deal to the parents. Any inconsistencies prove that Geller's attempts at communication were ineffective. Yet, Geller knew and specifically requested that the parents would use their flawed understanding of the plea deal to influence and pressure Castro into pleading guilty.

The email was no substitute for the written guilty plea agreement in terms of clarity, especially since Geller was relying on Jose Jr. to correctly translate it. Where Geller had failed to convince his client to take the deal, the parents would succeed.

The judge specifically found that the parents misunderstood the email, but that this did not rise to the level of withdrawing the plea because Castro himself understood the correct terms of the plea deal. *Id.* But that is not the nature of the claim being made. It is not Castro's own understanding of the terms of the plea that is being challenged. Rather, the claim is that Geller used the parents to effectively coerce and pressure Castro into pleading guilty. The parents only pressured their son because Geller told them to and convinced them the plea deal was in their son's best interest.

Orally, the judge failed to rule at all on the correct issue of coercion. 1 AA 247-249. Even in the written findings subsequently prepared by the prosecutor, a claim of coercion is addressed but is denied on the basis of Geller's credibility. 2 AA 260-262. There was no ruling made on whether Castro's will was overborne by the influence and pressure of his parents in threatening to withdraw emotional and financial support which was induced by the attorney. *Id.* Nor was there a ruling made on whether counsel was ineffective in miscommunicating the correct terms of the plea agreement and enlisting the help of the parents to get their son to plead guilty, thereby indirectly coercing the plea. *Id.* Nowhere in the record did the judge

cite or attempt to distinguish *Iaea v. Sunn, supra*, which served as the legal basis for the appellate court's remand of this claim. The district court's findings are not entitled to deference by this court as they are not supported by substantial evidence and are clearly wrong. The district court's application of the law to those facts is reviewed de novo and is not premised upon pertinent and controlling legal precedent.

CONCLUSION

Wherefore, Castro respectfully requests this Court reverse the judgment of the district court below and direct that the petition for post-conviction relief be granted.

DATED this 2nd day of May, 2023.

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 4,438 words and 18 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2nd day of May, 2023.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 2, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ Steven S. Owens
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