

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 86310

APPELLANT'S APPENDIX

Volume 1

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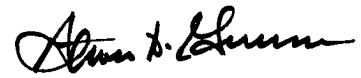
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Counsel for Respondent

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CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACOB J. VILLANI
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DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 4/14/16
10:00 AM
W. GELLER, ESQ.

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-16-314092 – 1-2-3-4

-vs-

DEPT NO: IV

LUIS ANGEL CASTRO, #1918366,
EDWARD HONABACH
aka Edward Joseph Honabach, #7029816,
FABIOLA JIMENEZ, #1957068,
LIONEL KING, #1983132

I N F O R M A T I O N

Defendant.

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That LUIS ANGEL CASTRO, EDWARD HONABACH aka Edward Joseph Honabach, FABIOLA JIMENEZ and LIONEL KING, the Defendant(s) above named, having committed the crimes of CONSPIRACY TO COMMIT MURDER (Category B Felony - NRS 200.010, 200.030, 199.480 - NOC 50038); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); MAYHEM WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.280, 193.165 - NOC 50045); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 -

1 NOC 50226); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
2 RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310,
3 200.320, 193.165 - NOC 50056); EXTORTION WITH USE OF A DEADLY WEAPON
4 (Category B Felony - NRS 205.320, 193.165 - NOC 50620); ROBBERY WITH USE OF A
5 DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and FIRST
6 DEGREE ARSON (Category B Felony - NRS 205.010 - NOC 50414), on or about the 7th day
7 of March, 2016, within the County of Clark, State of Nevada, contrary to the form, force and
8 effect of statutes in such cases made and provided, and against the peace and dignity of the
9 State of Nevada,

10 COUNT 1 - CONSPIRACY TO COMMIT MURDER

11 did willfully, unlawfully, and feloniously conspire with each other to commit murder,
12 by the Defendants committing the acts as set forth in Count 2, said acts being incorporated by
13 this reference as though fully set forth herein.

14 COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

15 did willfully, unlawfully, feloniously and with malice aforethought attempt to kill
16 JOSE ORTIZ-SALAZAR, a human being, with use of a deadly weapon, to-wit: a machete
17 and/or knife, by stabbing the said JOSE ORTIZ-SALAZAR about the body and/or by cutting
18 the said JOSE ORTIZ-SALAZAR's throat with said a machete and/or knife, the Defendant(s)
19 being criminally liable under one or more of the following principles of criminal liability, to-
20 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission
21 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
22 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)
23 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
24 Defendants aiding or abetting and/or conspiring to murder JOSE ORTIZ-SALAZAR,
25 Defendants acting in concert throughout.

26 COUNT 3 - MAYHEM WITH USE OF A DEADLY WEAPON

27 did willfully, maliciously, and feloniously deprive a person, to-wit: JOSE ORTIZ-
28 SALAZAR, of a body member and/or did disfigure or render a body member useless, to-wit:

1 a finger and/or fingernails, with use of a deadly weapon, to-wit: a machete and/or knife and/or
2 wire cutters, by severing the said JOSE ORTIZ-SALAZAR'S finger and/or removing his
3 fingernails, the Defendants being criminally liable under one or more of the following
4 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by
5 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
6 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
7 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
8 intent that this crime be committed, Defendants aiding or abetting and/or conspiring,
9 Defendants acting in concert throughout.

10 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
11 SUBSTANTIAL BODILY HARM

12 did willfully, unlawfully, and feloniously use force or violence upon the person of
13 another, to-wit: JOSE ORTIZ-SALAZAR, with use of a deadly weapon, to-wit: a machete
14 and/or knife, by stabbing the said JOSE ORTIZ-SALAZAR about the body with said a
15 machete and/or knife, resulting in substantial bodily harm to JOSE ORTIZ-SALAZAR, the
16 Defendants being criminally liable under one or more of the following principles of criminal
17 liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
18 commission of this crime, with the intent that this crime be committed, by counseling,
19 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
20 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
21 crime be committed, Defendants aiding or abetting and/or conspiring, Defendants acting in
22 concert throughout.

23 COUNT 5 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
24 RESULTING IN SUBSTANTIAL BODILY HARM

25 did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy,
26 abduct, conceal, kidnap, or carry away JOSE ORTIZ-SALAZAR, a human being, with the
27 intent to hold or detain the said JOSE ORTIZ-SALAZAR against his will, and without his
28 consent, for the purpose of committing murder and/or robbery, with use of a deadly weapon,

1 to-wit: a machete and/or knife and/or wire cutters, resulting in substantial bodily harm to JOSE
2 ORTIZ-SALAZAR, the Defendants being criminally liable under one or more of the following
3 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by
4 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
5 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
6 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
7 intent that this crime be committed, Defendants aiding or abetting and/or conspiring,
8 Defendants acting in concert throughout.

9 COUNT 6 - EXTORTION WITH USE OF A DEADLY WEAPON

10 did then and there willfully, feloniously and unlawfully make a verbal demand
11 directed to one JOSE ORTIZ-SALAZAR, for payment to Defendants of the sum of \$300.00
12 lawful money of the United States, which demand was accompanied by threats to do injury to
13 the person or property of JOSE ORTIZ-SALAZAR, and said threats being made with the intent
14 to extort and gain the above mentioned sum of money, with use of a deadly weapon, to-wit: a
15 machete and/or knife and/or wire cutters, the Defendants being criminally liable under one or
16 more of the following principles of criminal liability, to-wit: (1) by directly committing this
17 crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this
18 crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
19 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to
20 commit this crime, with the intent that this crime be committed, Defendants aiding or abetting
21 and/or conspiring, Defendants acting in concert throughout.

22 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

23 did willfully, unlawfully, and feloniously take personal property, to-wit: cigarettes,
24 from the person of JOSE ORTIZ-SALAZAR, or in his presence, by means of force or violence,
25 or fear of injury to, and without the consent and against the will of JOSE ORTIZ-SALAZAR,
26 with use of a deadly weapon, to-wit: a machete and/or knife, the Defendants being criminally
27 liable under one or more of the following principles of criminal liability, to-wit: (1) by directly
28 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with

1 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
2 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
3 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
4 aiding or abetting and/or conspiring, Defendants acting in concert throughout.

5 COUNT 8 - FIRST DEGREE ARSON

6 did willfully, unlawfully, maliciously, and feloniously set fire to, burn, and/or cause to
7 be burned, a certain residence, located at 1901 East Oakey Boulevard, Las Vegas, Clark
8 County, Nevada, by use of open flame and flammable and/or combustible materials, and/or by
9 manner and means unknown, the Defendants being criminally liable under one or more of the
10 following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or
11 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
12 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
13 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
14 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or
15 conspiring, Defendants acting in concert throughout.

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

19 BY

20 JACOB J. VILLANI
21 Chief Deputy District Attorney
22 Nevada Bar #011732
23
24
25
26
27
28

Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Dispatch
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records, 400 S. Martin Luther King Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Project Management & Video Bureau
CUSTODIAN OF RECORDS OR DESIGNEE	Las Vegas Fire Department
CUSTODIAN OF RECORDS OR DESIGNEE	Sunrise Hospital, 3186 Maryland Pkwy., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County School District
ALEXANDER, M.	LVMPD P#15223
ALLEN, Z.	Las Vegas Fire Department #204
AUSCHWITZ, J.	LVMPD P#5932
CHOCK, STEFAN M.D.	Sunrise Hospital, 3186 Maryland Pkwy., Las Vegas, NV
COURT INTERPRETER	200 Lewis Ave., Las Vegas, NV
DEVITO, A.	LVMPD P#15274
FASULO, T.	LVMPD P#13459
GRIFFIN, TIM	C/O Clark County District Attorney's Office
GUTIERREZ, AMADA	C/O Clark County District Attorney's Office

1	HALL, D.	Clark County School District Police #256
2	HERRING, N.	LVMPD P#9725
3	HEVEL, R.	Las Vegas Fire Department/Arson Investigation
4	KELVINGTON, A.	LVMPD P#8878
5	KING, C.	LVMPD P#14372
6	KWIATKOWSKI, TERRANCE M.D.	Sunrise Hospital, 3186 Maryland Pkwy., Las Vegas, NV
7	LACAZE, WILLIAM	C/O Clark County District Attorney's Office
8	LANDING, KHALIAH	C/O Clark County District Attorney's Office
9	LARINGTON, D.	LVMPD P#7858
10	LOVEETTE, J.	Las Vegas Fire Department #204
11	MAIORANA, DAVID	C/O Clark County District Attorney's Office
12	MARTINEZ, FRANCISCO	C/O Clark County District Attorney's Office
13	MARTINEZ, ROSIO	C/O Clark County District Attorney's Office
14	MENDEZ, ANTONIO	C/O Clark County District Attorney's Office
15	MENDOZA, A.	LVMPD P#15245
16	MURRAY, T.	LVMPD P#13458
17	NOGLE, K.	LVMPD P#8051
18	ORTEGA, MARCELO	C/O Clark County District Attorney's Office
19	ORTIZ-SALAZAR, JOSE	C/O Clark County District Attorney's Office
20	REZENDIS, YOSELIN	C/O Clark County District Attorney's Office
21	ROSARIO, NELSON	C/O Clark County District Attorney's Office
22	SALAZAR, GUADALUPE	C/O Clark County District Attorney's Office
23	SCHREIBER, P.	LVMPD P#13986
24	SCLIMENTI, M.	LVMPD P#6239
25	SHEPARD, DAVID	C/O Clark County District Attorney's Office
26	SPARKMAN, CHARLES	C/O Clark County District Attorney's Office
27	THEOBALD, R.	LVMPD P#6468
28	TOMASO, B.	LVMPD P#9488

1 VALENZUELA, G.

LVMPD P#8396

2 WATTS, JOSEPH OR DESIGNEE Clark County District Attorney's Office-Investigator

26 16F03770A/B/C/D /cc/L3
27 LVMPD EV#1603072804
28 (TK4)

ORIGINAL

GPA

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 04 2019

BY,

Vanessa Medina
VANESSA MEDINA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-16-314092-1
GPA
Guilty Plea Agreement
4813694



THE STATE OF NEVADA,
Plaintiff,

-vs-

LUIS ANGEL CASTRO,
#1918366

Defendant.

CASE NO: C-16-314092-1

DEPT NO: XXX

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310, 200.320 - NOC 50052)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

This offer is conditional upon all four (4) Defendants accepting their respective negotiations and being sentenced. All Parties agree the State will have the right to argue for Life without the possibility of Parole, and the Defense will argue for Life with the possibility of Parole after fifteen (15) years. All Parties agree that no one will seek the term of years.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

///

1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
3 by affidavit review, confirms probable cause against me for new criminal charges including
4 reckless driving or DUI, but excluding minor traffic violations, the State will have the
5 unqualified right to argue for any legal sentence and term of confinement allowable for the
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
8 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense(s) to which I now plead as set forth in Exhibit "1".

15 I understand that as a consequence of my plea of guilty The Court must sentence me to
16 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
17 FIFTEEN (15) years and a maximum term of not more than FORTY (40) years, OR for a
18 minimum term of not less than FIFTEEN (15) years and a maximum term of LIFE, OR LIFE
19 WITHOUT PAROLE. The minimum term of imprisonment may not exceed forty percent
20 (40%) of the maximum term of imprisonment. I understand that the law requires me to pay
21 an Administrative Assessment Fee.

22 I understand that, if appropriate, I will be ordered to make restitution to the victim of
23 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
24 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
25 reimburse the State of Nevada for any expenses related to my extradition, if any.

26 I understand that I am not eligible for probation for the offense to which I am pleading
27 guilty.

28 ///

1 I understand that I must submit to blood and/or saliva tests under the Direction of the
2 Division of Parole and Probation to determine genetic markers and/or secretor status.

3 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
4 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
5 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
6 and may receive a higher sentencing range.

7 I understand that if more than one sentence of imprisonment is imposed and I am
8 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
9 the sentences served concurrently or consecutively.

10 I understand that information regarding charges not filed, dismissed charges, or charges
11 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

12 I have not been promised or guaranteed any particular sentence by anyone. I know that
13 my sentence is to be determined by the Court within the limits prescribed by statute.

14 I understand that if my attorney or the State of Nevada or both recommend any specific
15 punishment to the Court, the Court is not obligated to accept the recommendation.

16 I understand that if the offense(s) to which I am pleading guilty was committed while I
17 was incarcerated on another charge or while I was on probation or parole that I am not eligible
18 for credit for time served toward the instant offense(s).

19 I understand that if I am not a United States citizen, any criminal conviction will likely
20 result in serious negative immigration consequences including but not limited to:

- 21 1. The removal from the United States through deportation;
- 22 2. An inability to reenter the United States;
- 23 3. The inability to gain United States citizenship or legal residency;
- 24 4. An inability to renew and/or retain any legal residency status; and/or
- 25 5. An indeterminate term of confinement, with the United States Federal
26 Government based on my conviction and immigration status.

26 ///

27 ///

28 ///

1 Regardless of what I have been told by any attorney, no one can promise me that this
2 conviction will not result in negative immigration consequences and/or impact my ability to
3 become a United States citizen and/or a legal resident.

4 I understand that the Division of Parole and Probation will prepare a report for the
5 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
6 sentencing, including my criminal history. This report may contain hearsay information
7 regarding my background and criminal history. My attorney and I will each have the
8 opportunity to comment on the information contained in the report at the time of sentencing.
9 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
10 comment on this report.

11 WAIVER OF RIGHTS

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

- 14 1. The constitutional privilege against self-incrimination, including the right
15 to refuse to testify at trial, in which event the prosecution would not be
 allowed to comment to the jury about my refusal to testify.
- 16 2. The constitutional right to a speedy and public trial by an impartial jury,
17 free of excessive pretrial publicity prejudicial to the defense, at which
18 trial I would be entitled to the assistance of an attorney, either appointed
 or retained. At trial the State would bear the burden of proving beyond
 a reasonable doubt each element of the offense(s) charged.
- 19 3. The constitutional right to confront and cross-examine any witnesses who
20 would testify against me.
- 21 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 22 5. The constitutional right to testify in my own defense.
- 23 6. The right to appeal the conviction with the assistance of an attorney,
24 either appointed or retained, unless specifically reserved in writing and
25 agreed upon as provided in NRS 174.035(3). I understand this means I
26 am unconditionally waiving my right to a direct appeal of this conviction,
 including any challenge based upon reasonable constitutional,
 jurisdictional or other grounds that challenge the legality of the
 proceedings as stated in NRS 177.015(4). However, I remain free to
 challenge my conviction through other post-conviction remedies
 including a habeas corpus petition pursuant to NRS Chapter 34.

27 ///

28 ///

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

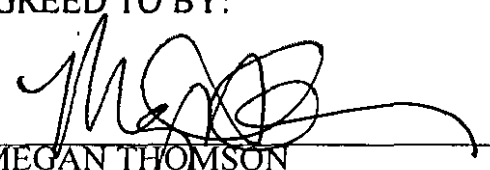
My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 4 day of February, 2019.



LUIS ANGEL CASTRO
Defendant

AGREED TO BY:



MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
charge(s) to which guilty pleas are being entered.
- 5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.
- 7 3. I have inquired of Defendant facts concerning Defendant's immigration status
and explained to Defendant that if Defendant is not a United States citizen any
8 criminal conviction will most likely result in serious negative immigration
consequences including but not limited to:
- 9 a. The removal from the United States through deportation;
- 10 b. An inability to reenter the United States;
- 11 c. The inability to gain United States citizenship or legal residency;
- 12 d. An inability to renew and/or retain any legal residency status; and/or
- 13 e. An indeterminate term of confinement, by with United States Federal
Government based on the conviction and immigration status.

14 Moreover, I have explained that regardless of what Defendant may have been
15 told by any attorney, no one can promise Defendant that this conviction will not
16 result in negative immigration consequences and/or impact Defendant's ability
to become a United States citizen and/or legal resident.

- 17 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
consistent with the facts known to me and are made with my advice to the
18 Defendant.
- 19 5. To the best of my knowledge and belief, the Defendant:
- 20 a. Is competent and understands the charges and the consequences of
pleading guilty as provided in this agreement,
- 21 b. Executed this agreement and will enter all guilty pleas pursuant hereto
22 voluntarily, and
- 23 c. Was not under the influence of intoxicating liquor, a controlled
24 substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

25 Dated: This 4 day of February, 2019.

26 
WARREN GELLER, ESQ

27 cc/L4

1 **AINF**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MEGAN THOMSON
6 Chief Deputy District Attorney
7 Nevada Bar #011002
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 **LUIS ANGEL CASTRO, #1918366,**
13 **EDWARD HONABACH**
14 **aka Edward Joseph Honabach, #7029816,**
15 **FABIOLA JIMENEZ, #1957068,**
16 **LIONEL KING, #1983132**

15 Defendant.

CASE NO. C-16-314092-1

DEPT NO. XXX

AMENDED
INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss:

18 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
19 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That LUIS ANGEL CASTRO, EDWARD HONABACH aka Edward Joseph
21 Honabach, FABIOLA JIMENEZ, and LIONEL KING, the Defendant(s) above named, having
22 committed the crime of **FIRST DEGREE KIDNAPPING RESULTING IN**
23 **SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310, 200.320 - NOC**
24 **50052)**, on or about the 7th day of March, 2016, within the County of Clark, State of Nevada,
25 contrary to the form, force and effect of statutes in such cases made and provided, and against
26 the peace and dignity of the State of Nevada, did willfully, unlawfully, and feloniously, seize,
27 confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away JOSE ORTIZ-
28 SALAZAR, a human being, with the intent to hold or detain JOSE ORTIZ-SALAZAR against

EXHIBIT "1" w:\2016\037\70\16F03770-AINF-(Castro_Luis)-001.docx

AA 0015

1 his will, and without his consent, for the purpose of committing murder and/or robbery,
2 resulting in substantial bodily harm to JOSE ORTIZ-SALAZAR, the Defendants being
3 criminally liable under one or more of the following principles of criminal liability, to-wit: (1)
4 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this
5 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
6 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)
7 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
8 Defendants aiding or abetting and/or conspiring, Defendants acting in concert throughout.

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

11 BY 
12

MEGAN THOMSON
13 Chief Deputy District Attorney
Nevada Bar #011002
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27 DA#16F03770X /cc/L4
28 LVMPD EV#1603072804
(TK)

Steven D. Grierson

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LUIS ANGEL CASTRO
#1918366

Defendant.

CASE NO. C-16-314092-1

DEPT. NO. XXX

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony) in violation of NRS 200.310, 200.320; thereafter, on the 26th day of March, 2019, the Defendant was present in Court for sentencing with counsel WARREN GELLER, ESQ., and good cause appearing,

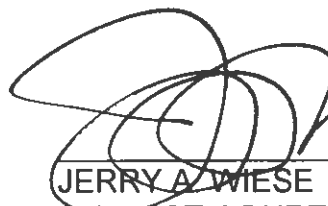
THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

1 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
2 Defendant is sentenced as follows: LIFE WITHOUT THE POSSIBILITY OF PAROLE
3 in the Nevada Department of Corrections (NDC).
4

5 DATED: 27 day of March, 2019.

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JERRY A. WIESE
DISTRICT COURT JUDGE

vm

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78643
District Court Case No. C314092

FILED

NOV 24 2020

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"Rehearing Denied."

Judgment, as quoted above, entered this 23 day of October, 2020.

JUDGMENT

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

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 12 day of August, 2020.

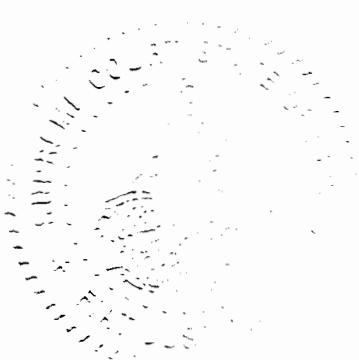
C-16-314092-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4936438



IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this November 17, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78643-COA

FILED


OCT 23 2020


ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Appellant did not object to the sentencing court's statement that credit for time served did not matter. He thus failed to preserve the presentence credit issue below. And, despite bearing the burden of demonstrating plain error, *see Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005), appellant failed to argue plain error in his opening brief on appeal. Accordingly, we declined to review this error on appeal.

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: November 17, 2020

Supreme Court Clerk, State of Nevada

By K. Mealy Deputy

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78643-COA

FILED

AUG 12 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Luis Angel Castro appeals from a judgment of conviction entered pursuant to a guilty plea of first-degree kidnapping resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

First, Castro claims the district court abused its discretion by failing to correct an error in his presentence investigation report (PSI). He argues that he objected to the error prior to being sentenced, the State stipulated to the error, and the district court refused to correct the error. However, his argument is not supported by the record on appeal.

The record plainly demonstrates that defense counsel informed the district court that "there is one stipulated correction to [Castro's] PSI. I don't believe there's any reason we wouldn't be able to put that on the record and then proceed." Defense counsel went on to explain that,

With respect to page 2, there are three boxes which the PSI author can check in this case with an X, indicating age at first arrest. On Mr. Castro's PSI, it's checked "19 or younger." That's not

substantiated by his arrest history later in the report. The parties have agreed to have that removed. And I believe a "24 and older" would be the appropriate box that should have been checked in that instance.

The State agreed with defense counsel's explanation. The district court stated, "Okay. That doesn't rise to the level of a *Stockmeier* issue, I don't believe."¹ And defense counsel responded, "I don't believe [so] either, Your Honor."

This record shows only that Castro wanted to put the error on the record and then proceed with the sentencing. It does not show that Castro asked the district court to make a correction to the PSI. Moreover, defense counsel explicitly agreed that the error did not rise to the level of a *Stockmeier* issue. We conclude that Castro forfeited this claim of error by specifically informing the district court that he wanted only to put the error on the record and then proceed with the sentencing, and we decline to review the error on appeal. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 49 (2018) ("[T]he decision whether to correct a forfeited error is discretionary.").

Second, Castro claims the district court abused its discretion by failing to award him 1,112 days' credit for time spent in presentence confinement. After imposing Castro's sentence, the district court stated, "So that will be the sentence. I don't think credit [for] time served matters. Anything else on the record, counsel?" Defense counsel responded "No."

¹See *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 255 P.3d 209 (2011).

Given this record, we conclude Castro forfeited this claim of error by failing to object in the court below and, because he has not argued plain error in this court, we decline to review this error on appeal. *See id.* at 50, 412 P.3d at 48.

Third, Castro claims his sentence constitutes cruel and unusual punishment for the following reasons. He did not have a history of violent offenses and was under the influence of drugs when he committed the crime. He was not aware that the crime would become so violent and left when it became violent. His DNA was not found on the weapon. He did not call the police because he was afraid that his codefendants would harm his family. He has PTSD symptoms; bipolar symptoms; and suffers from depression, anxiety, and drug addiction. And he once attempted suicide.

Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

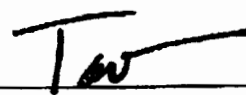
Here, Castro's life-without-the-possibility-of-parole sentence falls within the parameters of the relevant statute. *See* NRS 200.320(1)(a). He does not allege that the statute is unconstitutional. And we conclude

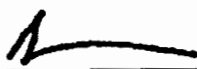
the sentence imposed is not grossly disproportionate to his crime and does not constitute cruel and unusual punishment.

Fourth, Castro claims cumulative error deprived him of a fair sentencing proceeding. However, we conclude Castro failed to demonstrate any error, so there is nothing to cumulate.

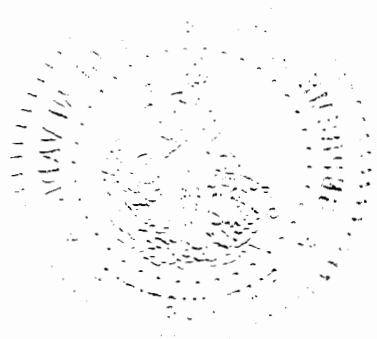
Having concluded Castro is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: November 17, 2020

Supreme Court Clerk, State of Nevada

By *K. M. [Signature]* Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78643
District Court Case No. C314092

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: November 17, 2020

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):
Hon. Jerry A. Wiese, District Judge
Jean J. Schwartzer
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 24 2020.

HEATHER UNGERMANN
Deputy District Court Clerk

**RECEIVED
APPEALS
NOV 23 2020
CLERK OF THE COURT**

1. Luis A. Castro
2. ESP-1214547
3. P.O. Box 1989
4. Ely, NV. 89301

FILED
JUN 07 2021

John J. Blum
CLERK OF COURT

5. IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE
6. OF NEVADA IN AND FOR THE COUNTY OF CLARK

7. LUIS ANGEL CASTRO,

8. PETITIONER,

9. vs

10. THE STATE OF NEVADA,

11. RESPONDENT,

CASE No. A-21-835827-W
DEPT. No. Dept. 30

12.
13. PETITION FOR WRIT OF HABEAS CORPUS

14. (POST CONVICTION - NRS 34.740)

15. AND TO WITHDRAW GUILTY PLEA

16. (PURSUANT TO NRS 176.165)

17.
18. PETITIONER, LUIS A. CASTRO, IN PRO SE, PURSUANT TO
19. NRS 34.740, NRS 176.165 AND THE NEVADA AND THE
20. UNITED STATES CONSTITUTIONS, RESPECTFULLY MOVES THIS
21. HONORABLE COURT TO WITHDRAW HIS GUILTY PLEA ENTERED
22. FEBRUARY 4TH 2019, ON THE BASES HE WAS DENIED OF HIS
23. RIGHT TO EFFECTIVE ASSISTANCE OR COUNSEL DURING
24. PLEA-BARGAINING PROCESS; AND THAT IT WAS INVOLUN-
25. TARY AND UNINTELLIGENTLY GIVEN. PETITIONER WAS NOT
26. COMPETENT TO ENTER THE PLEA BECAUSE OF HIS

1. SEVENTH GRADE EDUCATION, PSYCHIATRIC AND MEDICAL
2. CONDITIONS AT THE TIME OF THE PLEA.

3.

4. THIS PETITION IS FURTHER BASED ON DEFENSE
5. COUNSEL'S INEFFECTIVENESS, THE ACCOMPANYING
6. AFFIDAVITS, EXHIBITS, FACTS AND POINTS AND
7. AUTHORITIES.

8.

9. DATED THIS 12 DAY OF May, 2021


10.

11.

Respectfully Submitted,

12.

13.



PETITIONER, IN PRO SE

14.

15.

16.

17. PREPARED BY A TRANSIENT PRISONER

18. ON BEHALF OF LUIS A. CASTRO, PETITIONER

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1. POINTS AND AUTHORITIES

2. FACTUAL STATEMENTS

3.
4. PETITIONER, PLED GUILTY TO A POORLY NEGOTIATED PLEA
5. ON FEBRUARY 4TH 2019, JUST DAYS FOLLOWING SUICIDE
6. WATCH - MENTAL HEALTH CRISIS AT THE CLARK COUNTY -
7. DETENTION. THE PLEA MUST BE CONSIDERED INVALID, BECAUSE
8. IT WAS MADE WHILE PETITIONER WAS HEAVILY MEDICATED AND
9. NOT COMPETENT, NOR ABLE TO FULLY APPRECIATE, UNDERSTAND,
10. AND WAIVE HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS THE
11. COURT REMAINED OBLIVIOUS TO THE MOST VITAL ASPECT OF
12. THE PLEA COLLOQUY, WHICH CENTERED ON PETITIONER'S
13. PERCEPTION AND MENTAL HEALTH STATE AT THE TIME
14. THE PLEA WAS INDOCTED.

15. AN EVIDENTIARY HEARING WILL CLEARLY AND UNEQUIVOCALLY
16. ESTABLISH THAT THE MENTAL HEALTH CRISIS AND A NOWLY
17. PRESCRIBED AND SUBSTANTIALLY POWERFUL DAILY ANTI-PSYCHOTIC
18. MEDICATION HAD ADVERSELY AFFECTED AND IMPACTED HIS
19. COMPETENCY DURING THE PLEA, THEREFORE, HE COULD NOT
20. HAD INTELLIGENTLY UNDERSTOOD HIS RIGHTS AND HIS PLEA
21. WAS INVOLUNTARY THROUGH NO FAULT OF HIS OWN. THE
22. INVOLUNTARINESS, LACK OF INTELLIGIBILITY AND
23. INCOMPETENCE DURING THE PLEA COLLOQUY WERE ALL
24. ATTENTION EVADED TO PETITIONER'S MENTAL ILLNESS,
25. RECENT DISCHARGE FROM SUICIDE PRECAUTION CRISIS
26. AND CONSUMPTION OF THE ANTI-PSYCHOTIC MEDICATION.

1. I. PETITION TO WITHDRAW GUILTY PLEA

2.

3. NRS 176.165 provides: ... "THE COURT AFTER SENTENCING

4. MAY SET ASIDE THE JUDGMENT OF CONVICTION AND PERMIT

5. THE PETITIONER TO WITHDRAW THE PLEA"

6.

7. A GUILTY PLEA MUST BE VOLUNTARILY ENTERED AND IS

8. INVALID, IF MADE WHEN A DEFENDANT IS MENTALLY INCOMPETENT.

9. SPECIFICALLY IN THIS CASE, 'QUESTION AS TO WHETHER THE PLEA

10. WAS VOLUNTARILY ENTERED LET US TURN TO THE FACTS AND

11. CIRCUMSTANCES OF EACH OF THE PARTICULARS. SEE:

12. TAYLOR V. WARDEN, 96 NEV. AT 274. THE FOCUS OF THE

13. VOLUNTARINESS INQUIRY IS UPON THE FRAME OF MIND THE

14. DEFENDANT HAD AT THE TIME HE DECIDES HIS PLEA. AS IN

15. TAYLOR AT 274, THE COURT MUST EXAMINE THE DATA AVAI-

16. LABLE TO THE DEFENDANT'S MIND AND TAKE INTO ACCOUNT

17. THE STRAINS AND ANXIETIES OF A PERSON IN PETITIONER'S

18. POSITION.

19. THE STATE OF A MAN'S MIND LIKE MOST OTHER ISSUES

20. OF FACT IS DECIDED ON BASIS OF REASONABLE INFERENCES

21. DRAWN FROM THE KNOWN SURROUNDING FACTS AND CIRCUMSTANCES

22. AND TO SATISFY CONSTITUTIONAL MUSTER, ANY GUILTY PLEA

23. MUST BE MADE KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY

24. WAIVER OF DEFENDANT'S SIXTH AMENDMENT TO TRIAL BOYKIN

25. V. ALABAMA, 395 U.S. 239 (1969). IT IS RESPECTFULLY

26. SUBMITTED THAT PETITIONER, LUIS A. CASTRO, DID NOT HAVE

27.

28.

1. THE MENTAL CAPACITY OR FULLY UNDERSTAND HIS RIGHTS
2. AND DID NOT KNOW WHAT HE WAS FACING WHEN HE PLED
3. GUILTY, HE COULD NOT ENTER A VALID PLEA. SEE:
4. MEYER V STATE, 95 NEV. 885 (1979).

5. WHEN A PERSON IS PHYSICALLY OR PSYCHOLOGICALLY INCAPA-
6. CITATED, THERE IS ALWAYS SERIOUS DOUBT ABOUT HIS ABILITY
7. TO ENTER ANY PLEA. AN EVIDENTIARY HEARING WILL SHOW
8. THAT IN THIS CASE THE PETITIONER WAS UNDER THE INFLUENCE
9. OF A HEAVY ANTI-PSYCHOTIC MEDICATION, PRESCRIBED BY THE
10. JAIL'S HEALTH CARE PROVIDER, THIS MEDICATION IMPAIRED HIS
11. PERCEPTIONS AND APPRECIATION OF THE CONSEQUENCES OF
12. ACCEPTING THE GUILTY PLEA. THE COMBINED ADVERSITIES
13. HAD A PROFOUND IMPACT IN HIS ABILITY TO FULLY
14. UNDERSTAND AND VOLUNTARILY WAIVE HIS RIGHTS.
15. CONSEQUENTLY, WHEN HE ENTERED HIS PLEA, IT WAS NOT
16. A KNOWING AND INTELLIGENT PLEA.

17.
18. II. THE MORE CONCLUSORY RESPONSES PETITIONER
19. MADE DURING ALLOCATION DO NOT ESTABLISH
20. HE WAS COMPETENT TO ENTER A VOLUNTARY
21. PLEA OF GUILT TO THE CHARGE

22.
23. AT THE PLEA HEARING OF FEBRUARY 4TH 2019,
24. PETITIONER MADE THE STANDARD PERFUNCTORY CONCLUSORY
25. AFTER MOTION OF GUILT AS WELL AS THE AFFIRMATION HE
26. UNDERSTOOD ALL HIS RIGHTS. IT IS RESPECTFULLY SUBMITTED

1. A REVIEW OF THE TRANSCRIPTS OF THE PLEA HEARING WILL NOT
2. CLEARLY ESTABLISH THAT PETITIONER FULLY UNDERSTOOD HIS
3. RIGHTS. THEREFORE, ONLY AN EVIDENTIARY HEARING WILL
4. DEFINITELY ESTABLISH PETITIONER'S PSYCHOTIC CONDITION AT
5. THE TIME OF HIS PLEA, WHICH PRECLUDED HIS ABILITY TO
6. VOLUNTARILY AND INTELLIGENTLY PLEA GUILT.

7. CONSIDER WILKENS V. BOWENSON, 145 F.3d 1006, (8TH CIR 1998)
8. A CASE WHICH THE COURT HELD THAT THE DEFENDANT'S GUILTY
9. PLEA AND WAIVER OF PRESENTING MITIGATING EVIDENCE WAS
10. NOT KNOWING, VOLUNTARY AND INTELLIGENT, DESPITE THE
11. CANVASS THAT THE DEFENDANT FULLY UNDERSTOOD HIS RIGHTS.

12. IN CONSIDERING THE FACTS OF THIS CASE THE COURT
13. SHOULD FIND STRONG SIMILARITIES TO THE WILKEN'S CASE,
14. THE MERE FACT THAT THE PETITIONER, AN UNSOPHISTICATED
15. PERSON, WAS ABLE TO CORRECTLY ANSWER SIMPLE
16. QUESTIONS OF THE PLEA CANVASS- UNDER THE DEFENSE
17. COUNSEL'S DIRECTION, WAS NOT ENOUGH TO ESTABLISH
18. HE HAD A FULL UNDERSTANDING OF WHAT RIGHTS HE
19. WAS GIVING UP OR WHAT DUTIES HIS ATTORNEY FAILED
20. TO PERFORM. ESPECIALLY, AGAINST THE BASIC-DROP
21. OF A HISTORY OF DRUG ABUSE SINCE THE AGE OF —
22. THIRTEEN, A SEVENTH GRADE LEVEL EDUCATION - AN
23. OVERALL LOW LEVEL INTELLECTUAL FUNCTION, INHERITED
24. BI-POLAR AND ALL COMPOUNDED WITH HIS PSYCHOSIS.
25. HIS ATTORNEY WAS ABLE TO EASILY INSTRUCT AND/OR
26. MANIPULATE PETITIONER IN HOW TO ANSWER EVERY

27.

28.

1. QUESTION OF THE COURT BY SIMPLY RESPONDING 'YES'
2. TO EVERY QUESTION. HOWEVER, IN THE CANVASS OF
3. PLEA, PAGE 7, LINES 12 THRU 25, IT IS EASILY INFERRED
4. THAT THE PETITIONER WAS BEING POORLY ADVISED BY
5. MR. GELLER, DEFENSE COUNSEL. WHO DID NOT DISCUSS
6. ANY OF THE CONSEQUENCES TO HIS IMMIGRATION STATUS.
7. THEREFORE, A DEFENDANT'S PLEA MAY BE FOUND -
8. INVOLUNTARY, WHERE DEFENSE COUNSEL DID NOT
9. ADVISE HIM OF THE PLAUSIBLE REMOVAL FROM THE UNITED
10. STATES, AS REMOVAL IS NEARLY AN AUTOMATIC RESULT
11. FOR A BROAD CLASS OF NONCITIZEN OFFENDERS, AS IN
12. PADILLA VS KENTUCKY, 130 S. CT. 1473 (2010)

13. THE COURT MUST LOOK AT THE TOTALITY OF THE CIRCUMSTANCES
14. IN THE CASE TO DETERMINE WHETHER THE PETITIONER'S PLEA IN
15. THIS CASE WAS ACTUALLY A KNOWING, VOLUNTARY AND
16. INTELLIGENT WAIVER OF HIS RIGHTS. [SEE] STATE V. FREEZE,
17. 116 NEV. 1097, (2000); MCCONNELL V STATE, 125 NEV. 243,
18. (2009). MEYER V STATE, 95 NEV. 888 (1979) REQUIRES
19. THE WITHDRAW OF A GUILTY PLEA TO PREVENT 'MANIFEST
20. INJUSTICE'. FOR A GUILTY PLEA TO BE VALID IT MUST
21. HAVE BEEN ENTERED UNDER CIRCUMSTANCES THAT
22. WERE FUNDAMENTALLY FAIR. MEANS V STATE, -
23. 120 NEV. 1001, (2004) - THE TOTALITY OF THE FACTS
24. AND CIRCUMSTANCES OF THE PETITIONER'S PLEA OF
25. GUILT. THIS CASE REQUIRES THAT PETITIONER BE
26. ALLOWED TO WITHDRAW HIS PLEA BECAUSE IT WAS

27.

28.

1.. FUNDAMENTALLY UNFAIR AND MANIFESTED INJUSTICE,
2.. PARTICULARLY, BECAUSE DEFENSE COUNSEL TALK HIM
3.. INTO ACCEPTING A 'BLIND PLEA' THAT DID NOT BENEFIT
4.. HIM AT ALL.

5.. IN SHORT, JAIL RECORDS SHOULD ESTABLISH THAT
6.. CASTRO, WAS ON SUICIDAD PRECAUTION CRISIS PLACEMENT
7.. AND DISCHARGE WITH NEWLY PRESCRIBED ANTI-PSYCHOTIC
8.. MEDICATION, SHORTLY BEFORE TO THE PLEA. BASED ON
9.. PETITIONER'S PRIOR PSYCHIATRIC HISTORY, IT IS ONLY
10.. LOGICAL THAT THIS CHANGE HAD A SUBSTANTIAL COGNITIVE
11.. IMPACT ON HIM. THE COURT SHOULD HAVE BEEN ALERTED
12.. BY DEFENSE COUNSEL OF THE LIKELIHOOD OF INTERVENING
13.. MENTAL HEALTH FACTORS RELEVANT TO THE FAIR AND
14.. CONSTITUTIONAL DISPOSITION OF THIS ACTION.

15.. IN ADDITION, THE STATE WILL NOT BE PREJUDICED BY
16.. PETITIONER'S WITHDRAW OF HIS PLEA. THIS CASE IS NOT SO OLD
17.. THAT THE STATE WILL BE GRAVELY PREJUDICED; AND THE TOTALITY
18.. OF THE CIRCUMSTANCES MANIFEST INJUSTICE, WHICH SHOULD
19.. COMPEL WITHDRAW OF THE PLEA.

20..

21.. III. THE DISTRICT COURT IMPOSITION OF A LIFE WITHOUT
22.. POSSIBILITY OF PAROLE ON A FIRST TIME OFFENDER
23.. WAS THE RESULT OF AN INEFFECTIVE ASSISTANCE
24.. OF COUNSEL.

25..

26.. IT IS UNDERSTOOD THAT THE DISTRICT COURT HOLDS

27..

28..

1. WIDE DISCRETION TO DETERMINE THE IMPOSITION OF A
2. SENTENCE; AND WHILE THE SENTENCE IMPOSED ON
3. PETITIONER IS WITHIN THE STATUTORY LIMIT, IS NOT IN
4. THE BEST INTEREST OF JUDICIAL PROCEEDINGS.

5. MEANING, WHY SHOULD AN ACCUSED PLEA-OUT WHEN
6. THE CONSEQUENCES ARE FROM PETITIONER'S PERSPECTIVE
7. THE SAME AS IF HE HAD GONE TO TRIAL. IN FACT, THE
8. PETITIONER WAS IN FAVOR OF A TRIAL. BECAUSE ALTHOUGH
9. SALAZAR-ORTIZ'S TESTIMONY MAKES IT APPEAR THAT
10. CASTRO WAS PRESENT DURING THE ORDEAL, VIDEO FOOTAGE
11. FROM A CONVENIENCE STORE AND STATEMENT FROM A
12. WITNESS DEMONSTRATE THAT CASTRO ACTUALLY LEFT
13. WHILE THIS ORDEAL WAS OCCURRING. SEE HEREIN
14. PHOTO OF CASTRO IN THE CONVENIENCE STORE (7-11), DURING
15. THE ORDEAL. FURTHERMORE, CASTRO OFFERED TO TAKE A
16. POLYGRAPH TO PROVE HIS TRUTHFULNESS WHEN HE STATED
17. THAT HE DID NOT KNOW HOW VIOLENT THE ENCOUNTER
18. WOULD BE; ATTEMPTED TO STOP HIS CO-DEFENDANTS,
19. AND LEFT THE SCENE WHEN HE FAILED. CASTRO DID NOT
20. CALL THE POLICE, OUT OF FEAR FOR HIS FAMILY.

21. MOREOVER, THE TRIAL COULD HAD REVEALED THAT HE
22. WAS "NOT THE SHOTCALLER", AS THE PROSECUTION COACHED
23. SALAZAR-ORTIZ TO STATE,

24. IT WAS COUNSEL'S DEFICIENT PERFORMANCES THAT
25. DEPRIVED PETITIONER OF A TRIAL BY CAUSING HIM TO
26. ACCEPT THE STATE'S BLIND PLEA. DEFENSE COUNSEL

27.

28.

1. INTIMIDATED AND MISINFORMED PETITIONER'S MOTHER
2. IN ORDER TO FORCE PETITIONER TO ACCEPT THE PLEA.
3. SINCE IF HE DIDN'T ACCEPT THE PLEA SHE WOULD WITHDRAW
4. HER SUPPORT FROM HIM. COUNSEL ASSURED PETITIONER'S
5. MOTHER, THAT HE WILL RECEIVE A SENTENCE OF 15 YEARS
6. TO LIFE WITH THE POSSIBILITY OF PAROLE.

7. FURTHERMORE, PETITIONER WAS DENIED HIS SIXTH AMENDMENT
8. RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL DURING PLEA-
9. BARGAINING PROCESS. THIS IS 'EVIDENT' IN THE SENTENCE
10. IMPOSED ON PETITIONER, MEANING "HE DID NOT BENEFIT FROM
11. THE PLEA AGREEMENT" AND WAS DENIED DUE PROCESS OF LAW
12. AS A RESULT. SEE: JAE LEE V UNITED STATES, 132 S. CT 1958,
13. (2017); LAFLER V COOPER, 132 S. CT 1376, (2012); HILL, 474
14. U.S. AT 58, 106 S. CT 366

15. CASTRO'S SENTENCE SHOCKS THE CONSCIENCE WHEN CONSI-
16. DERING THAT **HE** DID NOT HAVE A HISTORY OF PRIOR CONVICTIONS
17. FOR VIOLENT OFFENSES (UNLIKE HIS CO-DEFENDANTS) AND HE WAS
18. ELSEWHERE (7-11 CONVENIENCE STORE) AND NOT AWARE THAT
19. THIS CRIME WOULD BECOME SO VIOLENT; PROOF OF CASTRO'S
20. UNINVOLVEMENT— DID NOT HARM THE VICTIM, IS IN THE FACT
21. THAT ONLY HIS CO-DEFENDANT'S DNA WAS FOUND ON THE
22. WEAPON. (ZAA 135-38). CASTRO DID NOT CALL THE POLICE
23. BECAUSE HE WAS SCARED THAT HIS CO-DEFENDANTS WOULD
24. HARM HIS FAMILY, GIVEN THAT THEY KNEW WHERE HIS
25. FAMILY BUSINESS WAS LOCATED. (ZAA 137).

26. ADDITIONALLY, CASTRO SUFFERS FROM PTSD SYMPTOMS

1. FROM BEING SEXUALLY ABUSED AS A CHILD BY AN UNCLE,
2. CONFIRMED BY CASTRO'S PARENTS; SUFFERS FROM BI-POLAR
3. DISORDER; SUFFERS FROM DEPRESSION, ANXIETY AND DRUG
4. ADDICTION; AND ATTEMPTED SUICIDE. (ZAA 147-48). THEREFORE,
5. HIS SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE IS SO
6. UNREASONABLE DISPROPORTIONATE TO THE OFFENSE AND CASTRO'S
7. ROLE IN THE OFFENSE AS TO SHOCK THE CONSCIENCE AND AMOUNTS
8. TO CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE
9. EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS
10. WELL AS ARTICLE I, SECTION 6 OF THE NEVADA CONSTITUTION.
11. SEE: ALURED V. STATE, 120 NEV. 410, 92 P.2d. AT 1253.

12. CASTRO IS NOT ARGUING THAT HIS SENTENCE IS AN ILLEGAL
13. SENTENCE UNDER NEVADA LAW, IT IS DISPROPORTIONATE
14. TO THE CRIME HE WAS CONVICTED OF - FIRST DEGREE
15. KIDNAPPING WITH SUBSTANTIAL BODILY HARM - AND HIS
16. ROLE IN SAID CRIME WHEREAS, FOR EXAMPLE, A DEFENDANT
17. ACTING ALONE CONVICTED OF FIRST DEGREE MURDER IS
18. GIVEN A CHANCE AT PAROLE IN TWENTY (20) YEARS. -
19. THEREFORE, CASTRO'S SENTENCE OF LIFE WITHOUT THE
20. POSSIBILITY OF PAROLE AMOUNTS TO CRUEL AND UNUSUAL
21. PUNISHMENT.

22. EVEN PAROLE AND PROBATION CONSIDERED PETITIONER'S
23. CHARACTER, NATURE AND HISTORY, WHEN IT RECOMMENDED
24. A SENTENCE OF 15 YEARS TO LIFE, WITH THE POSSIBILITY
25. OF PAROLE. WHILE THE SENTENCING RECOMMENDATION
26. PROVIDED IN CASTRO'S PSI IS NOT A BINDING UPON THE

27.

28.

1. DISTRICT COURT, IT REPRESENTS AN INTERJURISDICTIONAL
2. COMPARATIVE ANALYSIS AS THE PROPOSED SENTENCE IS
3. THE NORMAL PUNISHMENT FOR SIMILAR CRIMES IN OTHER
4. JURISDICTIONS.

5. GIVEN CASTRO'S HISTORY AND ACTUAL OVERALL NATURE
6. OF HIS INVOLVEMENT, THE SENTENCE IMPOSED IS GROSSLY
7. DISPROPORTIONATE. A SENTENCE OF 15 OR 20 TO LIFE,
8. WITH THE POSSIBILITY OF PAROLE WILL SERVE THE INTEREST
9. OF FAIR JUSTICE. CASTRO, HAD NO INVOLVEMENT IN THE
10. VIOLENT HARM ON THE VICTIM, AND AT THE END OF THE DAY
11. NO DEATH RESULTED.

12. ACCORDINGLY, THIS COURT SHOULD ALLOW PETITIONER TO
13. WITHDRAW HIS PLEA, OR IN THE ALTERNATIVE THAT THE
14. DISTRICT COURT IMPOSE THE SENTENCE LIFE WITH THE
15. POSSIBILITY OF PAROLE

16.

17. CONCLUSION

18.

19. BASED UPON THE ARGUMENTS HEREIN, PETITIONER'S
20. SENTENCE SHOULD BE VACATED, AND ALLOWED TO
21. WITHDRAW PLEA OR RE-SENTENCED TO LIFE WITH THE
22. POSSIBILITY OF PAROLE.

23.

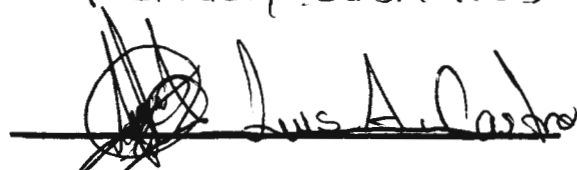
24. DATED THIS 12 DAY OF May , 2021

25.

Respectfully Submitted

26.

27.



Luis A. Castro

28.

VERIFICATION

I, LUIS ANGEL CASTRO, DO HEREBY STATE AND DECLARE
UNDER PENALTY OF PERJURY AND PURSUANT TO NEVADA
REVISED STATUTE 208.165 THAT THE STATEMENTS AND
FACTS IN THIS PETITION FOR WRIT OF HABEAS CORPUS AND
TO WITHDRAW GUILTY PLEA, ARE TRUE AND CORRECT,
AND TO THE BEST OF MY OWN PERSONAL KNOWLEDGE AND
BELIEF.

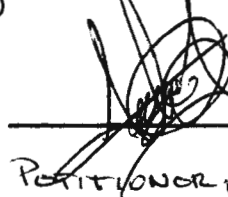
DATED THIS 12 DAY OF May, 2021


Luis A. Castro
PETITIONER, IN PRO SE

AFFIRMATION PURSUANT TO NRS 239B.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING
PETITION FOR WRIT OF HABEAS CORPUS AND TO WITHDRAW GUILTY
PLEA, DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF
ANY PERSON.

DATED THIS 12 DAY OF May, 2021


PETITIONER, IN PRO SE


CERTIFICATE OF SERVICE By MAIL

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I, Luis A. Castro, HEREBY CERTIFY PURSUANT TO N.R.C.P. 5(b), THAT ON THIS 12 DAY OF THE MONTH OF May, OF THE YEAR 2021, I MAILED A TRUE AND CORRECT COPY OF THE FOREGOING PETITION FOR WRIT OF HABEAS CORPUS - TO WITHDRAW GUILTY PLEA ADDRESSED TO:

ALEXANDER G. CHEN, ESQ.
CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV. 89155-2212

OFFICE OF THE ATTORNEY GENERAL
HEROES' MEMORIAL BUILDING
100 NORTH CARSON STREET
CARSON CITY, NV. 89701-4717



PETITIONER, IN PRO SE

PETITION

1. CURRENTLY IMPRISONED AT ELY STATE PRISON,
WHITE PINE COUNTY

2 THE JUDGMENT OF CONVICTION WAS ENTERED BY
THE EIGHTH JUDICIAL DISTRICT COURT, CLACK
COUNTY, LAS VEGAS, NEVADA

3 DATE OF JUDGMENT OF CONVICTION
MARCH 28, 2019

4. D.C. No. C-16-314092-1

5. (a) LENGTH OF SENTENCE: LIFE WITHOUT THE
POSSIBILITY OF PAROLE

6. NO, OTHER CONVICTION IS UNDER ATTACK IN
THIS MOTION.

7. NATURE OF THE OFFENSE INVOLVED IN
CONVICTION BEING CHALLENGED: ...
"FIRST DEGREE KIDNAPPING SUBSTANTIAL
BODILY HARM"

8. PLED GUILTY

1.. 9. PLED GUILTY UNDER THE ADVICE OF DEFENSE
2.. COUNSEL.
3..
4.. 10. NOT APPLICABLE
5..
6.. 11. TESTIFY - YES - ALLOCATION
7..
8.. 12. APPEALED THE JUDGMENT OF CONVICTION
9..
10.. 13. (a) THE SUPREME COURT OF THE STATE OF NEVADA
11.. (b) S.C.T. No. 78643
12.. (c) ORDER DENYING PETITION FOR REHEARING
13.. AFFIRMANCE OF SENTENCE
14.. (d) DATE OF RESULTS: OCTOBER 23, 2020
15..
16.. 14. NOT APPLICABLE
17..
18.. 15. NO, PREVIOUS PETITIONS, APPLICATIONS OR
19.. MOTIONS HAVE BEEN FILED WITH/IN THIS
20.. MATTER - JUDGMENT.
21..
22.. 16. NOT APPLICABLE
23..
24.. 17. NONE OF THE ISSUES - GROUNDS PRESENTED
25.. HEREIN BEEN RAISED IN ANY OTHER COURT
26..
27..
28..

18. THE ONLY ISSUE NOT PREVIOUSLY PRESENTED WAS
THE WITHDRAWAL OF GUILTY PLEA. PETITIONER WAS
DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING
THE PLEA-BARGAINING.

19. THIS PETITIONER CERTIFIES THAT THE PETITION
FOR WRIT OF HABEAS CORPUS-POST CONVICTION
RELIEF IS TIMELY FILED,

20. NO OTHER PETITION OR APPEAL IS PENDING
IN ANY COURT.

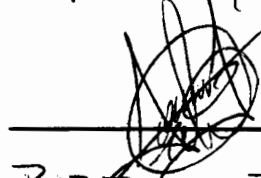
21. DEFENSE COUNSEL - WARREN GELDER
APPEAL COUNSEL - JEAN J. SCHWARTZ

22. NO OTHER MATTERS ARE PENDING
UPON COMPLETION OF THIS SENTENCE.

23. SEE THE ATTACHED FOLLOWING
FACTS AND ARGUMENTS.

24. DATED THIS 12 DAY OF May, 2021

25. Respectfully Submitted

26. 

27. PETITIONER, IN PRAISE

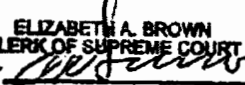
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78643-COA

FILED

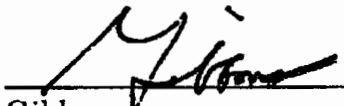
OCT 23 2020

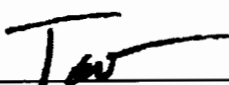
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.¹

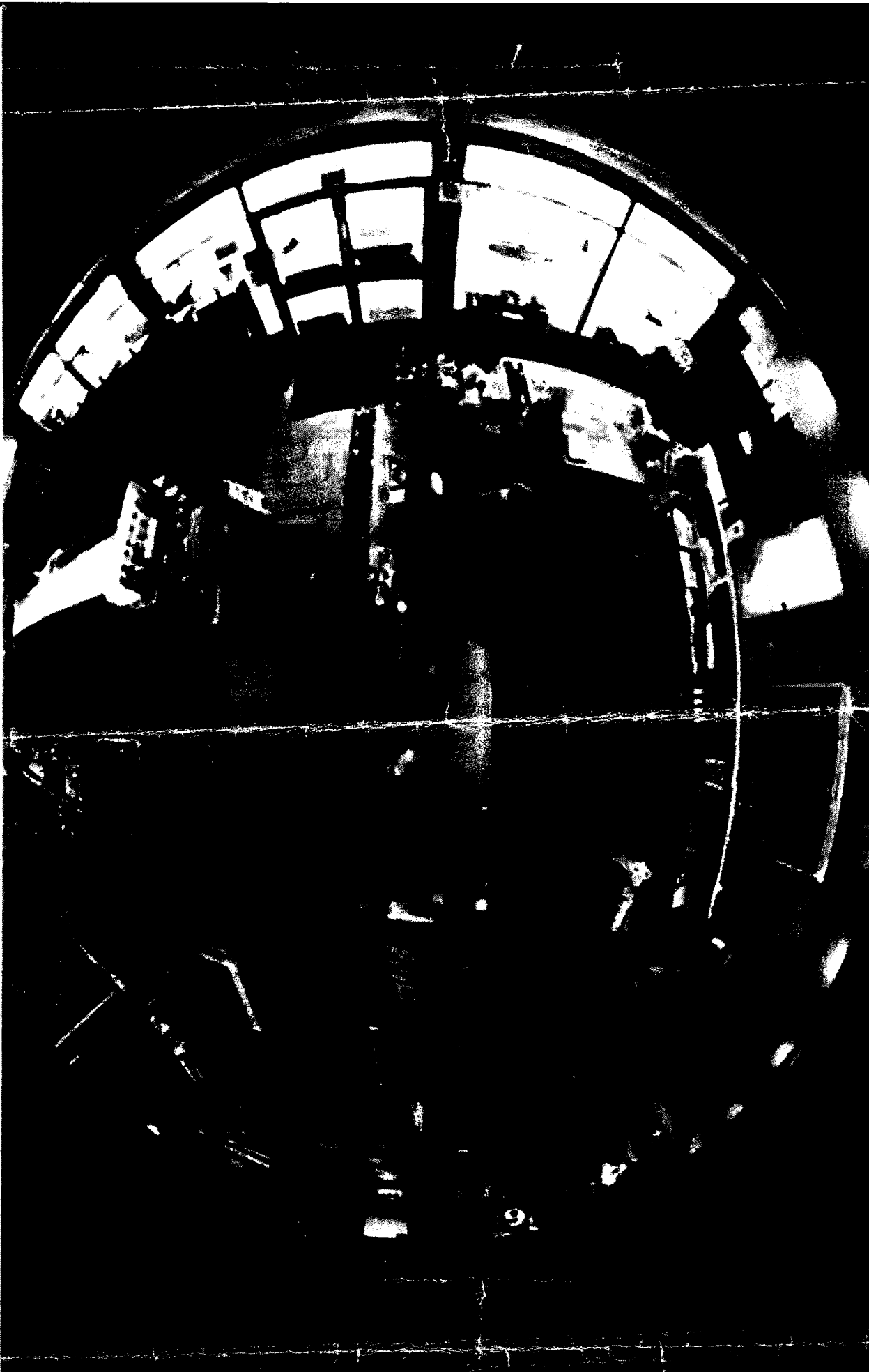

_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Appellant did not object to the sentencing court's statement that credit for time served did not matter. He thus failed to preserve the presentence credit issue below. And, despite bearing the burden of demonstrating plain error, *see Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005), appellant failed to argue plain error in his opening brief on appeal. Accordingly, we declined to review this error on appeal.



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LUIS MACASTRO
FARMER 1517
PO BOX 1989
ELY NV 89301

1517-1989

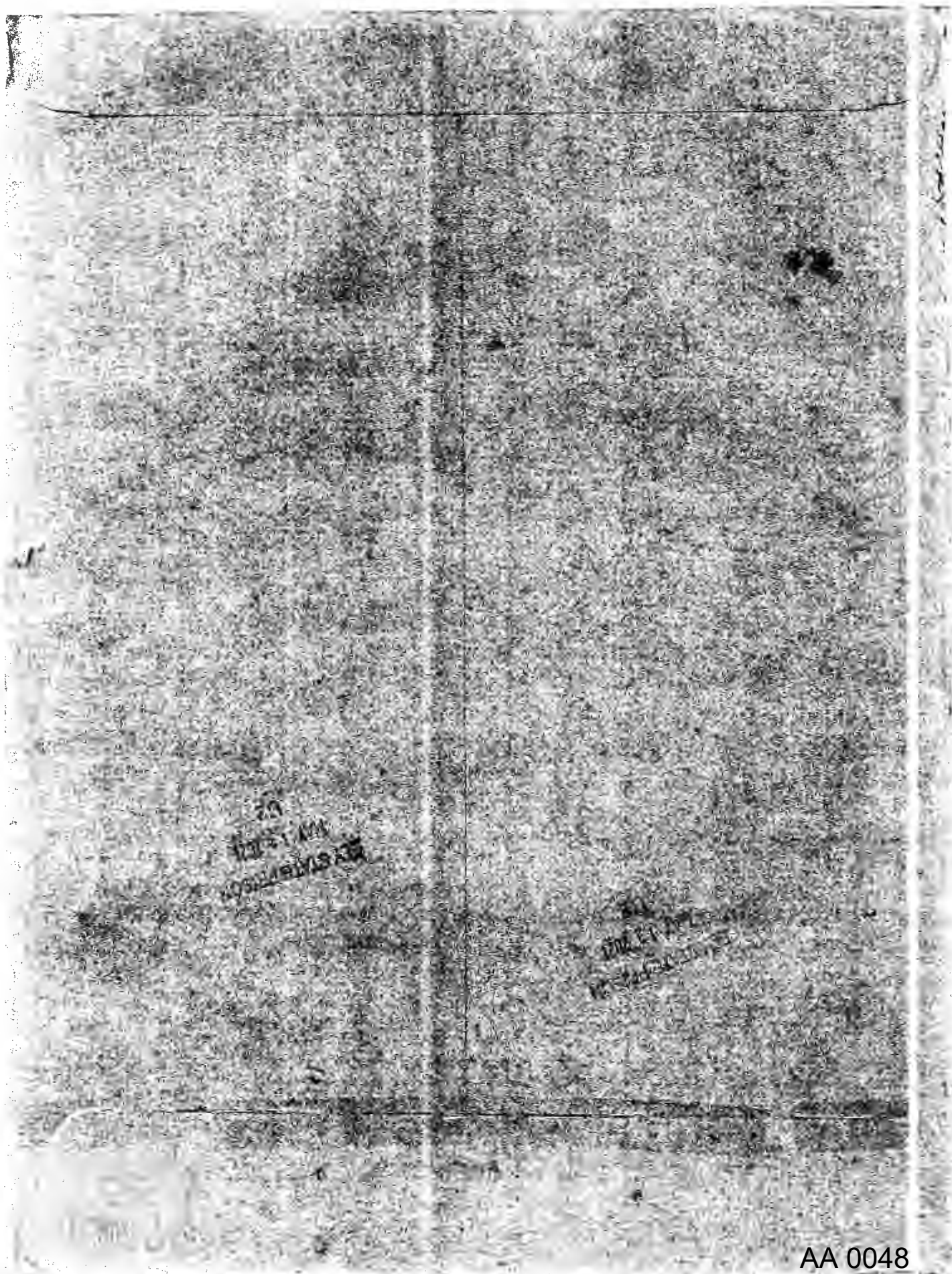
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FILED
JUN 07 2021

John T. Williams
CLERK OF COURT

1 LUIS A. CASTRO
2 E.S.P. #1214547
3 P.O. Box 1989
4 Ely, NV. 89301

5
6
7
8 IN THE EIGHTH DISTRICT COURT OF THE
9 STATE OF NEVADA IN AND FOR THE COUNTY OF CLATSOP

10
11 LUIS ANGEL CASTRO
12 Petitioner,

13 vs.

14
15 Warden; State of Nevada,
16 Respondents.

CASE NUMBER: **A-21-835827-W**
Dept. 30

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL AND
REQUEST FOR EVIDENTIARY
HEARING

17
18 COMES NOW, LUIS A. CASTRO the Petitioner, in proper person, and moves this Court
19 for its order allowing the appointment of counsel for Petitioner and for an evidentiary hearing. This
20 motion is made and based in the interest of justice.

21 Pursuant to NRS 34.750(1):

22 A petition may allege that the petitioner is unable to pay the costs of the
23 proceedings or to employ counsel. If the court is satisfied that the
24 allegation of indigency is true and the petitioner is not dismissed
25 summarily, the court may appoint counsel to represent the petitioner. In
26 making its determination, the court may consider, among other things, the
27 severity of the consequences facing the petitioner and whether:

- 28
- (a) The issues presented are difficult;
 - (b) The petitioner is unable to comprehend the proceedings, or

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MAY 20 2021

CLERK OF THE COURT

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(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at ELY STATE PRISON, is indigent and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Further, Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Dated this 12 day of May, 2021.

 Luis A. Castro
In Proper Person

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on May 12, 2021, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office

Address: 200 LEWIS AVENUE
LAS VEGAS, NEVADA
89155-2212

Warden - William Gitter

Address: P.O. Box 1989
ELY, NV. 89301


* Luis A. Castro
Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Ex Parte

MOTION FOR APPT. OF COUNSEL & REG. FOR EVIDENTIARY HEARING
(Title of Document)

filed in District Court Case number C-16-31-4092-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

X

Signature

May 12 2021

Date

LUIS ANGEL CASTRO

Print Name

IN PRO SE

Title

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Luis Angel Castro,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-21-835827-W
Department 30

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on June 07, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 26TH AUGUST, 2021, at the hour of 8:30
AM day of _____,

_____ o'clock for further proceedings.

Dated this 10th day of June, 2021



District Court Judge

**849 C80 B05B 0BA2
Jerry A. Wiese
District Court Judge**

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 6/11/2021

16 Luis Castro

#1214547

ESP

P.O. Box 1989

Ely, NV, 89301
17
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FILED

JUL 06 2021

James A. Hoffman
CLERK OF COURT

1 LUIS A. CASTRO
2 ESP-#1214547
3 P.O. Box 1989
4 Ely, NV, 89301

5 IN THE EIGHTH JUDICIAL DISTRICT COURT
6 OF THE STATE OF NEVADA IN AND FOR
7 THE COUNTY OF CLARK

8 LUIS ANGEL CASTRO,

9 PETITIONER,

10 vs

11 THE STATE OF NEVADA,

12 RESPONDENT.

CASE NO. A-21-835827W

DEPT. No 30

13
14 PETITIONER'S SUPPLEMENT TO
15 PETITION FOR WRIT OF HABEAS CORPUS

16
17 COME NOW PETITIONER, LUIS A. CASTRO, IN PRO SE,
18 SUBMITS-FILE THIS PETITIONER'S SUPPLEMENT TO
19 PETITION FOR WRIT OF HABEAS CORPUS. IN ADDITION,
20 TO ALL DOCUMENTS, PLEADINGS, TANGIBLE PAPERS
21 ARGUMENTS IN THIS CASE, PETITIONER ASSERTS
22 THAT HE WAS ROBBED OF HIS FIFTH, SIXTH AND
23 FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS.
24 ACCORDINGLY, BRINGS THE FOLLOWING CLAIMS:
25
26

RECEIVED

JUL - 6 2021

CLERK OF THE COURT

1 • GROUND ONE - VIOLATION OF PETITIONER'S
2 SIXTH AMENDMENT RIGHT TO EFFECTIVE
3 ASSISTANCE OF COUNSEL DURING PLEA
4 NEGOTIATIONS.

5
6 • GROUND TWO - THE COURT ABUSED IT'S
7 DISCRETION BY IMPOSING A DISPROPORTIONATE
8 SENTENCE THAT CONSTITUTED CRUEL AND
9 UNUSUAL PUNISHMENT, IN VIOLATION OF
10 THE EIGHTH AMENDMENT RIGHT

11
12 PROCEDURAL HISTORY

13
14 ON FEBRUARY 4TH 2019, LUIS ANGEL CASTRO -
15 PETITIONER, WAS CHARGED BY WAY OF AN AMENDED
16 INFORMATION IN CASE NO. C-16-314092-1 WITH
17 THE FOLLOWING:

- 18 • FIRST DEGREE KIDNAPPING RESULTING IN
19 SUBSTANTIAL BODILY HARM - NRS 200.310, 320.
20 CONTEMPORANEOUSLY IN CASE NO. C-16-314092-1-2-3-4,
21 CASTRO WAS CHARGED BY WAY OF INFORMATION WITH
22 THE FOLLOWING:
- 23 • CONSPIRACY TO COMMIT MURDER - NRS 200.010;
 - 24 • ATTEMPTED MURDER WITH USE OF DEADLY
25 WEAPON - NRS 200.010, 193.330, 165;
 - 26

1 • MAYHEM WITH USE OF A DEADLY WEAPON -

2 NRS 200.280, 193.165;

3 • BATTERY WITH THE USE OF A DEADLY WEAPON

4 RESULTING IN SUBSTANTIAL BODILY HARM -

5 NRS 200.481;

6 • FIRST DEGREE KIDNAPPING RESULTING IN

7 SUBSTANTIAL BODILY HARM - NRS 200.310;

8 • EXTORTION WITH USE OF A DEADLY WEAPON -

9 NRS 200.320, 193.165;

10 • ROBBERY WITH USE OF A DEADLY WEAPON -

11 NRS 200.380, 193.165

12 • FIRST DEGREE ARSON - NRS 205.010

13
14 ON FEBRUARY 4TH 2019, CASTRO PLED GUILT TO:

15 • ONE COUNT OF FIRST DEGREE KIDNAPPING

16 RESULTING IN SUBSTANTIAL BODILY HARM

17
18 DURING THE CANVAS OF THE PLEA SOME CONFUSION

19 EXISTED AS TO WHETHER OR NOT THE GUILTY PLEA WOULD

20 RESULT IN DEPORTATION. THE COURT ASKED CASTRO

21 IF HE HAD A CHANCE TO DISCUSS ANY IMMIGRATION -

22 ISSUES WITH HIS ATTORNEY, AND HAS THE ATTORNEY

23 ANSWERED ANY QUESTION HE MAY HAVE? CASTRO

24 RESPONDED "YES AND NO", 'but I'll just say Yes'.

25 (SEE CANVAS OF PLEA, PAGE 7, LINES 16 THRU 20). BESIDES

1 THE OBVIOUS, THE COURT SHOULD HAVE NOTED THAT
2 PETITIONER WAS NOT MENTALLY EQUIPPED TO -
3 COGNITIVELY ACCEPT THE PLEA. HE MERELY MADE
4 THE RESPONSES AS INSTRUCTED BY HIS DEFENSE
5 COUNSEL - MR. WARREN GELLER.

6 7 8 ARGUMENT

9 10 GROUND ONE

11 CASTRO WAS DENIED EFFECTIVE ASSISTANCE 12 OF COUNSEL DURING PLEA NEGOTIATIONS

13
14 MR. GELLER - DEFENSE COUNSEL INAPPROPRIATELY -
15 IMPROPERLY ADVISED PETITIONER'S MOST INFLUENTIAL
16 FAMILY MEMBER - HIS PARENTS TO INDUCE THE
17 ACCEPTANCE OF AN 'UNBARGAIN' PLEA AGREEMENT,
18 IN VIOLATION OF HIS FIFTH, SIXTH AND FOURTEENTH
19 AMENDMENT RIGHTS.

20
21 THE PLEA BARGAINING PROCESS IS A CRITICAL
22 STAGE OF A CRIMINAL PROSECUTION. IOWA V TOVAR,
23 541 U.S. 77, 81 (2004); AND BURGER V KEMP, -
24 483 U.S. 776, 803-804 (1987). ACCORDINGLY,
25 THE SIXTH AMENDMENT APPLIES TO REPRESENTATION

1 DURING THE PLEA-BARGAINING PROCESS. IN
2 JIM LEE VS UNITED STATES, 582 U.S., 137 S. CT.,
3 (2017), THE SUPREME COURT HELD THAT: "WHEN A
4 DEFENDANT CLAIMS THAT HIS COUNSEL'S DEFICIENT
5 PERFORMANCE DEPRIVED HIM OF A TRIAL BY CAUSING
6 HIM TO ACCEPT A PLEA, THE DEFENDANT CAN SHOW
7 PREJUDICE BY DEMONSTRATING A "REASONABLE
8 PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS HE
9 WOULD NOT HAVE [REDACTED] PLEADED GUILTY AND
10 WOULD HAVE INSISTED ON GOING TO TRIAL. [ALSO
11 SEE] MISSORI VS FRYE, 132 S. CT 1399, 1405 (2012)
12 AND HILL VS LOCKHART, 474 U.S. 52, 57 (1985)

13 THE DECISION TO PLEAD GUILTY OR CONTEST A
14 CRIMINAL CHARGE IS ORDINARILY THE MOST IMPORTANT
15 SINGLE DECISION IN ANY CRIMINAL CASE, - BORJA V.
16 KEANE, 99 F3d 492, 496-497 (2ND CIR. 1996). THIS
17 DECISION MUST BE COGNITIVELY MADE BY THE CLIENT.

18 THE UNITED STATES SUPREME COURT NOTED
19 THE IMPORTANCE OF *PLEA NEGOTIATIONS* IN
20 SANTOBELLO VS NEW YORK, 404 U.S. 257, 261 (1971).
21 AT THE END OF THE DAY, IT IS THE VERY NATURE OF
22 THIS PROCESS INVOLVES A "QUID PRO QUO". THE
23 GOVERNMENT AVOIDS THE TIME AND EXPENSE OF
24 A TRIAL AND THE DEFENDANT 'SECURES' A MORE
25 ADVANTAGEOUS OUTCOME. U.S. et al -

1 CARUSO V ZELENSKI, 689 F.2d 435, 438 (3rd Cir. 1982).

2

3 Here, ATTORNEY-MR. GELLER, WAS PAID \$85,000.00
4 DOLLARS TO DEFEND AND/OR NEGOTIATE A FAIR
5 SENTENCE ON BEHALF OF PETITIONER. HIS LACK
6 OF LEGAL REPRESENTATION WAS A DISGRACE AND
7 AMOUNTED TO BEGUILFMENT. THIS IS EVIDENT
8 IN THE LEGION OF ERRORS-FAILURES TO PROTECT
9 PETITIONER'S CONSTITUTIONAL RIGHTS AS
10 DEMONSTRATED IN THE OUTCOME OF THE TRIAL.

11 EVEN MORE EGBEGIOUS AND DISTURBING
12 IS HOW MR. GELLER, MISLED (LIED) TO CASTRO'S
13 PARENTS. (SEE ATTACHED AFFIDAVIT EXHIBIT 1)

14 MR. GELLER, FAILED TO SEVER CASTRO'S
15 CASE FROM THE OTHER DEFENDANTS THAT WERE
16 UNDER THE SAME INDICTMENT/INFORMATION; AND
17 AFTER HE GAVE PETITIONER'S THE ASSURANCE THAT
18 CASTRO WOULD BE PROSECUTED SEPARATELY.

19 IN ADDITION, MR. GELLER, FAILED TO OBJECT
20 AND/OR ARGUE THE COURT'S UNREASONABLE
21 DEMAND. THE DEMAND THAT THE ACCEPTANCE OF
22 THE PLEA WAS CONTINGENT UPON ALL FOUR (4)
23 DEFENDANTS ACCEPTING THEIR RESPECTIVE -
24 NEGOTIATIONS. (SEE GUILTY PLEA AGREEMENT,
25 PAGE 1, LINES 21 AND 22).

26

27

28

1 THE 'UNBARGAIN' PLEA AGREEMENT RESULTED
2 IN THE SAME, RATHER WORST OUTCOME HAD THE CASE
3 GONE TO TRIAL. BECAUSE THE PROSECUTION WOULD
4 HAVE HAD TO PROVE EACH OF THE ELEMENTS OF
5 CHARGES BROUGHT AGAINST THE PETITIONER,

6 IN WHICH CASE, CASTRO'S ROLE, ALIBI
7 AND LACK OF DNA EVIDENCE COULD HAVE HAD
8 AN ENORMOUS EFFECT ON THE JURORS. 'MORE'
9 STILL, CASTRO HAD LEFT THE ~~CO~~-DEPENDANTS
10 WHEN THEY STARTED TO BECOME VIOLENT.

11 FURTHERMORE, CASTRO'S CONSTITUTIONAL RIGHTS
12 COULD HAVE BEEN PRESERVED AND 'ALL' THE
13 FACTS OF THIS CASE WOULD HAVE BEEN REVEALED.
14 INCLUDING, THE PROSECUTION COACHING THE
15 VICTIM, TO IDENTIFY CASTRO AS ONE OF THE
16 PERSON WHOM ACTUALLY HARM HIM, STILL
17 MORE IMPORTANTLY, THE TRIAL COULD HAVE
18 SHOWN THAT CASTRO, LACKED THE MENTAL
19 CAPACITY TO ORCHESTRATE THE ORDEAL.

20 MR. GELLER, DEFENSE COUNSEL DID NOT
21 OBJECT TO THE MULTIPLE PREJUDICIAL STATEMENTS
22 MADE DURING THE PRELIMINARY HEARINGS!

23
24 MR. GELLER'S COUNSEL, CONSTITUTED AS A
25 'TRUMP CON - FRAUDULENT LEGAL REPRESENTATION,

1 He deceived Castro's Parents, Told them that
2 Castro's sentence will range between 15
3 to 25 years in prison, if he accepted the plea.

4 With this false assertion Mr & Mrs Castro,
5 threatened Petitioner with the loss of their
6 support if he didn't accept said offer. Left
7 with no alternative Petitioner accepted the
8 plea. If not for Mr. Geller's inappropriate
9 misleading advice to Petitioner's Parents,
10 Castro would have taken the case to trial.

11
12 Frankly, it is easy to infer that defense
13 counsel - Mr. Geller, intended all along
14 to convince Petitioner to plea out - accept
15 whatever the state offered. It is very
16 unlikely he spend more than ten (10)
17 hours working on this case, averaging
18 \$ 8,500.⁰⁰ dollars an hour. For this hourly
19 rate he could have tried to be an actual
20 effective attorney; or at the very, very
21 minimum negotiated the plea - sentence.

22
23 Therefore, it is clear that Castro received
24 ineffective assistance of counsel in violation
25 of his 5th, 6th and 14th Amendment rights.

Ground Two

THE COURT ABUSED IT'S DISCRETION
BY IMPOSING A DISPROPORTIONATE
SENTENCE, THAT CONSTITUTED CRUEL
AND UNUSUAL PUNISHMENT IN VIOLATION
OF THE EIGHTH AMENDMENT RIGHT.

CASTRO PLEADED GUILTY TO FIRST DEGREE
KIDNAPPING WITH SUBSTANTIAL BODILY HARM. CASTRO
DID NOT HAVE A HISTORY OF PRIOR CONVICTIONS
FOR VIOLENT OFFENSES, UNLIKE HIS CO-DEFENDANTS.
ALTHOUGH, HE WAS UNDER THE INFLUENCE OF DRUGS
AT THE TIME THE CRIME WAS COMMITTED HE LEFT
THE SCENE WHEN HIS CO-DEFENDANTS BECAME
VIOLENT. THIS IS SUPPORTED BY THE FACT THAT ONLY
HIS CO-DEFENDANTS DNA WAS FOUND ON THE WEAPON
AND AT SCENE OF THE CRIME, 2AA 135-38.

CASTRO DID NOT CALL THE POLICE BECAUSE HE
WAS SCARED THAT THE CO-DEFENDANT WOULD HARM
HIS FAMILY, SINCE THEY KNOW THE LOCATION OF
HIS FAMILY BUSINESS. 2AA 137.

ADDITIONALLY, CASTRO SUFFERS FROM PTSD
SYMPTOMS FROM BEING SEXUALLY ABUSED BY HIS
UNCLE, CONFIRMED BY CASTRO'S PARENTS; HE
ALSO SUFFERS FROM BIPOLAR SYMPTOMS, —

1 DEPRESSION, ANXIETIES, DRUG ADDICTION AND
2 ATTEMPTED SUICIDE. 2AA 147-48.

3 THEREFORE, HIS SENTENCE OF LIFE WITHOUT
4 THE POSSIBILITY OF PAROLE IS SO UNREASONABLY
5 DISPROPORTIONATE TO THE OFFENSE, PARTICULARLY,
6 CONSIDERING CASTRO'S ROLE - LACK OF PARTICIPATION
7 IN THE CRIME, AND NEVER HAD HE ENGAGED IN A
8 VIOLENT CONDUCT. THIS SENTENCE SHOCKS THE
9 CONSCIENCE AND AMOUNTS TO CRUEL AND -
10 UNUSUAL PUNISHMENT.

11 CASTRO IS NOT ARGUING THAT HIS SENTENCE IS
12 ILLEGAL UNDER NEVADA LAW, RATHER IT IS DIS-
13 PROPORTIONATE TO THE CRIME HE WAS CONVICTED,
14 AND HIS ROLE IN IT, WHEREAS, FOR EXAMPLE A
15 DEFENDANT ACTING ALONE CONVICTED OF FIRST
16 DEGREE MURDER CAN BE GIVEN A CHANCE AT
17 PAROLE IN TWENTY (20) YEARS.

18 CASTRO'S SENTENCE IS CONTRARY TO THE
19 PRECEDENCE SET IN ALLRED, 120 NEV. 410 AND
20 VIOLATES THE EIGHTH AMENDMENT TO THE UNITED
21 STATES CONSTITUTION, AS WELL AS ARTICLE I,
22 SECTION 6 OF THE NEVADA CONSTITUTION.
23 ALLRED V STATE, 120 NEV. 410, 92 P2d AT
24 1253.

25 PETITIONER IS SIMPLY SEEKING LIGHT AT THE
26

1 END OF THE TUNNEL.

2

3

4

JUSTIFICATION FOR EVIDENTIARY HEARING

5

6

7

8

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"A PETITIONER FOR POST-CONVICTION RELIEF IS ENTITLED TO AN EVIDENTIARY HEARING ONLY IF HE SUPPORTS HIS CLAIMS WITH SPECIFIC FACTUAL ALLEGATIONS THAT IF TRUE WOULD ENTITLE HIM TO RELIEF." THOMAS V. STATE, 120 N.W. 37, 44, 83 P.3d 818, 823 (2004).

IF GIVEN THE OPPORTUNITY CASTRO WILL TESTIFY REGARDING THE FACT THAT DEFENSE - COUNSEL - MR. WARREN GELLER, BAMBOOZLED AND IN APPROPRIATELY MISLED CASTRO'S PARENTS TO INDUCE PETITIONER TO ACCEPT THE PLEA OFFER OF 15 TO 25 YEARS IN PRISON. CASTRO'S PARENTS WILL TESTIFY THAT ON THE NOW KNOWN FALSE ASSURANCE, THREATEN PETITIONER WITH THE LOSS OF THEIR SUPPORT IF HE DIDN'T SIGN THE PLEA.

IN ADDITION, MR. AND MRS. CASTRO WILL TESTIFY THAT MR. GELLER ASSURED THEM THAT PETITIONER WOULD BE PROSECUTED -

1 SEPARATELY.

2

3 CASTRO'S PARENTS WILL FURTHER TESTIFY,
4 THAT WOULD HAD THEY BEEN INFORMED THAT THE
5 CONDITION OR RESULT OF THE PLEA AGREEMENT
6 WAS LIFE WITHOUT THE POSSIBILITY OF PAROLE,
7 THEY WOULD HAD INSISTED THAT THEIR SON TAKE
8 THE CASE TO TRIAL, ESPECIALLY, BECAUSE THE
9 TRIAL WOULD HAD REVEAL 'ALL' THE FACTS IN
10 THIS CASE, SUCH AS, ALL THREE (3) CO-DEFENDANTS
11 PROPENSITY FOR VIOLENCE; AND NOT TO BELITTLE THE
12 VICTIM'S INJURIES, BUT THE COURT AND THE JURORS
13 COULD HAVE ACKNOWLEDGE HIS CRIMINAL HISTORY
14 AND HIS PARTICIPATION IN THE MICRO UNDERGROUND
15 WORLD; AND CONSIDERED CASTRO'S LOW INTELLECTUAL
16 FUNCTION.

17

18 FURTHERMORE, MR & MRS CASTRO WILL TESTIFY
19 THAT THEY PAID MR. GELBERG W., \$85,000.00 -
20 DOLLARS REPRESENT-DEFEND PETITIONER IN
21 THIS CASE. THE VERY LEAST HE COULD HAD DONE
22 WAS TO NEGOTIATE AN APPROPRIATE SENTENCE,
23 LIFE WITH THE POSSIBILITY OF PAROLE WOULD
24 HAD BEEN A FAIR AND JUST SENTENCE WHEN
25 CONSIDERING CASTRO'S ROLE IN THE INCIDENT.

26

27

12 OF 15

28

AA 0066

1 AN EVIDENTIARY HEARING IS NEEDED TO
2 PRESENT TESTIMONY - EVIDENCE REGARDING THE
3 NATURE AND CIRCUMSTANCES OF HOW COUNSEL
4 INADEQUATELY COUNSELED CASTRO'S PARENTS
5 AND HIM REGARDING THE TERMS OF HIS PLEA
6 AGREEMENT. THIS EVIDENCE IS NECESSARY
7 IN ORDER FOR THE COURT TO DETERMINE IF
8 CASTRO WAS AFFORDED CONSTITUTIONALLY -
9 SUFFICIENT ADVISE SO THAT HE COULD -
10 INTELLIGENTLY AND KNOWINGLY WAIVE HIS IMPORTANT
11 CONSTITUTIONAL TRIAL, APPELLATE AND POST-
12 CONVICTION RIGHTS IN THE CONTEXT BROUGHT TO
13 BEAR IN PLEADING GUILTY TO FIRST DEGREE -
14 KIDNAPPING...

15 THERE EXIST NO INFORMATION IN THE RECORD TO
16 CONTRADICT SAID ASSERTIONS BECAUSE THE NATURE
17 AND SCOPE OF THE DISCUSSIONS HAD BY CASTRO'S
18 PARENTS, HIMSELF, AND MR. GELBER, WERE ONLY
19 WITNESSED BY EACH OTHER. THEREFORE, CASTRO IS
20 ENTITLED TO EXPAND THE RECORD OF THIS CASE
21 TO INCLUDE HIS TESTIMONY, THAT OF HIS PARENTS,
22 AND OF HIS TRIAL COUNSEL TO SUPPORT HIS CLAIMS.

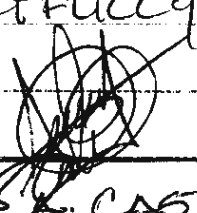
23
24
25
26
27
28

1 CONCLUSION

2
3 PETITIONER RESPECTFULLY REQUEST
4 THAT THIS COURT VACATE HIS CONVICTION
5 AND AFFORD HIM EFFECTIVE ASSISTANCE
6 OF COUNSEL TO EFFECTIVELY REPRESENT
7 CASTRO AT ALL CRITICAL STAGES OF HIS
8 CRIMINAL CASE. IN THE ALTERNATIVE
9 PETITIONER, WILL ACCEPT LIFE WITH
10 THE POSSIBILITY OF PAROLE, FOR HIS
11 PARTICIPATION - ROLE IN THIS MATTER.

12
13 DATED THIS 22ND DAY OF JUNE, 2021

14
15 Respectfully Submitted

16
17 
18 _____
19 LUIS A. CASTRO, # 1214547
20 PETITIONER, IN PRO SE
21

22 NOTE TO THE COURT

23 THIS PLEADING WAS PREPARED BY A TRANSIENT PRISONER
24 WHO IS SUBJECT TO BE TRANSFERRED AT ANY TIME,
25 CASTRO, LACKS THE BASIC SKILLS TO DEFEND HIMSELF
26 AN ATTORNEY SHOULD BE APPOINTED,

EXHIBIT-1

Jose A. Castro
Angeles Castro
3501 Kidd Street
North Las Vegas NV 89032

Re: Luis Angel Castro Morales

To whom this may concern:

We hired attorney Warren Geller in 2016, we paid \$85,000.00 for him to defend Luis Angel Castro Morales in the Case between the State of Nevada against Luis Angel Castro Morales, the Jose Ortiz Salazar Case where he was charged with numerous crimes.

We were told by the attorney that the case would be difficult and that all four defendants would be prosecuted separately.

After months of deliberation, we were told that a plea deal had been reached where Luis Angel Castro if pled guilty would receive a sentence of 15-25 years in prison. As Parents, we understand there are consequences to the actions taken by our Son, we advised Luis Angel Castro to take the deal instead of going thru trial, which he did.

Upon the sentencing of his case, all four defendants were charged together, not separately, all four defendants received the same outcome, Life in Prison.

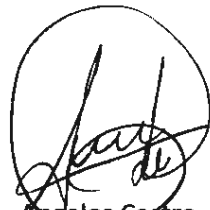
If we would have known that they would of all been charged together, we would have gone to trial, Luis Angel Castro signed a deal and to be charged separately, therefore I do not understand and until this day have not received a clear answer as in to why the Judge charged them together instead of each separately.

I am requesting the courts to open the case of Luis Angel Castro Morales and charge him separately, he did not receive a fair trial nor the opportunity to defend himself,

We understand and we do not deny that him being with the wrong crowd would get him into trouble, we ask what needs to be done to open his case again.

Attorney William Geller did not defend Luis Angel Castro Morales, took \$85,000.00 from us and ask you please open his case.


Jose Antonio Castro Moreno
Father of Luis Angel Castro Morales


Angeles Castro
Mother of Luis Angel Castro

AA 0069

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE
3 PRECEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY
4 NUMBER OF ANY PERSON.

5 DATED THIS 22 DAY OF JUNE, 2021

6

7

8


PETITIONER, LUIS A. CASTRO

9

10

11 CERTIFICATE OF SERVICE

12 I HEREBY CERTIFY THAT ON THE 22ND DAY OF JUNE,
13 2021, I SERVED A TRUE AND CORRECT COPY OF THE
14 ABOVE AND FOREGOING PETITIONER'S SUPPLEMENT TO
15 PETITIONER'S WRIT OF HABEAS CORPUS, FIRST CLASS
16 MAIL ADDRESSED TO THE FOLLOWING:

17 CLARK Co. DISTRICT ATTORNEY	NV ATTORNEY GENERAL
18 200 LEWIS AVENUE	100 NORTH CARSON ST.
19 LAS VEGAS, NV, 89155-2212	CARSON CITY, NV, 89701-4717

20

21

22

23


LUIS A. CASTRO, # 1214547

24

PETITIONER, IN PRO SE

25

26

27

28

FR: Mc Luis A. Castro
ESP # 1214547
P.O. Box 1989
Eliz, NV. 89301

To: Mc STEVEN D GUNSON
Clerk of the Court
200 Lewis Ave., 3rd Fl.
Las Vegas, Nevada
89155-1160

LEGAL MAIL



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02 JUN 28 2021

23

Heather S. Hermin
CLERK OF THE COURT

1 Luis A Castro
2 ESP # 1214547
3 P.O. Box 1989
4 Elko, NV, 89301

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 Luis Angel Castro,
8 Petitioner,

Case No A-21-83582FW

9 vs

Courtroom: 14A

10 State of Nevada,

11 Respondent,

12
13 MEMORANDUM OF FACTS AND LAW

14 IN SUPPORT OF PETITIONER'S MOTION

15 FOR APPOINTMENT OF COUNSEL...

16
17 PETITIONER, LUIS A. CASTRO, FILED PETITION FOR
18 WRIT OF HABEAS CORPUS, SEEKING POST-CONVICTION
19 RELIEF, ADDING MOTION TO WITHDRAW GUILTY
20 PLEA, PURSUANT TO NRS 34.740 AND 176.165.
21 THESE ARE BASED ON THE DENIAL OF HIS RIGHT
22 TO EFFECTIVE ASSISTANCE OF COUNSEL DURING
23 THE 'PLEA BARGAINING' PROCESS; AND THAT
24 PLEA WAS INVOLUNTARILY AND UNINTELL
25 GIVEN.

RECEIVED
JUL 15 2021
CLERK OF THE COURT

STATEMENT OF THE CASE

PETITIONER PLED GUILTY TO FIRST DEGREE KIDNAPPING
RESULTING IN BODILY HARM, BASED ON THE FALSE -
ASSERTIONS MADE BY TRIAL COUNSEL - WARREN GELLER,
TO HIS PARENTS; AND WHO WAS PAID \$85,000.00 TO
REPRESENT CASTRO IN THIS MATTER. MR. GELLER,
FALSELY ASSURED PETITIONER'S PARENTS THAT THEIR
SON'S LEGAL PROCEEDINGS WILL BE CONDUCTED SEPARATE
FROM THE CO-DEFENDANTS; AND IF HE ACCEPTED THE
PLEA AGREEMENT, HIS SENTENCE WOULD BE BETWEEN
15 TO 25 YEARS OF PRISON. UNDER THIS GUISE -
FALSE APPEARANCE, MR. AND MRS. CASTRO, FORCE
THEIR SON - PETITIONER TO SIGN THE PLEA.
HOWEVER, AFTER ACCEPTING THE PLEA AGREEMENT
PETITIONER WAS SENTENCED TO LIFE WITHOUT THE
POSSIBILITY OF PAROLE. IF PETITIONER'S PARENTS
WOULD HAD KNOWN THIS BEFOREHAND, THEY WOULD
NOT HAVE THROATENED - COERCED THEIR OWN SON
TO ACCEPT SUCH UNFAIR AND UNJUST SENTENCES,

ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR PETITIONER

IN DECIDING WHETHER TO APPOINT COUNSEL FOR AN INDIGENT
LITIGANT, THE COURT SHOULD CONSIDER THE FACTUAL

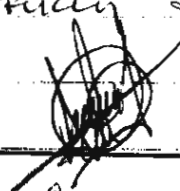
1 COMPLEXITY OF THE CASE, THE ABILITY OF THE INDIGENT
2 TO INVESTIGATE THE FACTS, THE EXISTENCE OF CON-
3 FICTING TESTIMONY, THE ABILITY OF THE INDIGENT
4 TO PRESENT HIS CLAIM(S) AND THE COMPLEXITY OF
5 THE LEGAL ISSUES. BROWN V. UNITED STATES, 623 F.2d. -
6 54, 61 (9TH CIR 1980); HAWKINS V BENNET, 423 F.2d, 948 -
7 (8TH CIR. 1970); ABDULLAH V GUNTER, 949 F.2d, 1032, 1035 -
8 (8TH CIR 1991).

9 PETITIONER'S WANT OF HABEAS CORPUS-POST CONVICTION RELIEF
10 HAS SOME MERIT. (CARMONA V. U.S. BUREAU OF PRISON, 243 F.3d. -
11 629, 632 (2ND CIR, 2001). EACH OF THESE FACTORS WEIGHS IN
12 FAVOR OF APPOINTMENT OF COUNSEL IN THIS CASE.

13
14 CONCLUSION
15

16 FOR THE AFOREMENTIONED REASONS THE COURT
17 SHOULD GRANT PETITIONER'S MOTION AND APPOINT
18 COUNSEL IN THIS CASE.

19
20 Respectfully Submitted.


21
22 
23 _____
24 LUIS A. CASTRO, #1214547

25 PETITIONER, IN PRO SE.
26
27
28

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 THE UNDERSIGNED HEREBY AFFIRMS THAT THE PRECEDING
3 ADDENDUM..., DECLARATION..., AND MEMORANDUM OF
4 FACT AND LAW..., DOES NOT CONTAIN THE SOCIAL SECURITY
5 NUMBER OF ANY PERSON.

6 DATED THIS 5TH DAY OF JULY, 2021


7
8
9 
Luis A. Castro, IN PR SE

10
11 CERTIFICATE OF SERVICE by MAIL

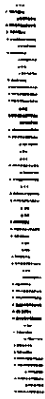
12 I, Luis A. Castro, HEREBY CERTIFY PURSUANT TO NRCF 5(b)
13 THAT ON THIS 5TH DAY OF JULY, 2021, I MAILED A TRUE AND
14 CORRECT COPY OF THE ADDENDUM..., DECLARATION..., AND
15 MEMORANDUM OF FACTS AND LAW, IN SUPPORT OF MOTION TO Appoint
16 COUNSEL ADDRESSED TO:

17
18 CLARK Co. DIST. ATT. 1
19 200 Lewis Ave., 2nd Fl.
20 Las Vegas, NV. 89155-2212

OFFICE OF THE ATTORNEY GENERAL
100 No. CARSON STREET
CARSON CITY, NV. 89701-4717

21
22
23 
24 Luis A. Castro, # 1214547
25 PETITIONER, IN PR SE
26
27
28

FE: Mrs. Lewis A. Castro
E.S.P. # 1214547
P.O. Box 1989
Ely, NV 89301



101

CLERK OF THE COURT
8th JUD. DIST. CT.
200 Lewis Ave., 3rd Fl.
Las Vegas, NV 89155-1160



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JUL 12 2021

CLERK OF THE COURT

AA 0076

07/14/2021

Heather S. Linn
CLERK OF THE COURT

1 LUIS A. CASTRO
2 ESP #1214541
3 P.O. Box 1989
4 ELY, NV. 89301

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 LUIS ANGEL CASTRO

8 PETITIONER,

9 VS

10 STATE OF NEVADA,

11 RESPONDENT.

CASE No. A-21-835827-W

COURTROOM: ~~XXX~~ (Dept 30)

12 JUDICIAL NOTICE

13
14
15 COMES NOW, PETITIONER, LUIS A. CASTRO, IN PRO. SEC, ASK THIS
16 COURT TO TAKE JUDICIAL NOTICE, PURSUANT TO NRS 47.130 -
17 MATTERS OF FACT, NRS 47.140 - MATTERS OF LAW, AND
18 NRS 47.170 TIME OF TAKING NOTICE, REQUESTING -
19 CLARIFICATION IN WHICH COURT THE EX PARTE MOTION
20 FOR APPOINTMENT OF COUNSEL AND REQUEST FOR AN
21 EVIDENTIARY HEARING WILL BE HEARD.

22 PETITIONER, IS A TYNO AT LAW, WHO FAILS TO
23 UNDERSTAND THE REASON FOR THE WRIT OF HABEAS
24 CORPUS IS BEING HEARD IN THIS COURT, WHICH
25 ON THE SAME DATE AND TIME AUGUST 26, 2021, 8:30 AM

CLERK OF THE COURT

JUL 12 2021

RECEIVED

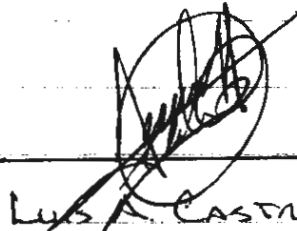
1 THE EX PARTE MOTION FOR APPOINTMENT OF COUNSEL
2 WILL BE HEARD/ADJUDGE ELSEWHERE - COURTROOM 14A.

3
4 CONCLUSION

5
6 THEREFORE, THIS PETITIONER HUMBLY AND
7 RESPECTFULLY REQUEST CLARIFICATION OF
8 THE AFOREMENTIONED PLEADINGS, AS TO WHICH
9 COURT WILL HAVE THE CONTROLLING DECISION.

10
11 DATED THIS 5TH JULY, 2021

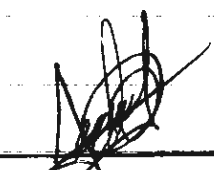
12
13 Respectfully Requested

14
15 
16 _____

17 LUIS A. CASTRO, #1214547
18 PETITIONER, IN PRO SE

AFFIRMATION Pursuant to NRS 239B.030

THE UNDERSIGNED HEREBY AFFIRMS THAT THE PRECEDING
JUDICIAL NOTICE, DOES NOT CONTAIN THE SOCIAL
SECURITY NUMBER OF ANY PERSON.
DATED THIS 5TH DAY OF July, 2021

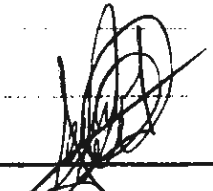

Luis A. Castro, In Pro Se

CERTIFICATE OF SERVICE BY MAIL

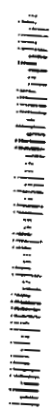
I, Luis A. Castro, HEREBY CERTIFY pursuant to NRS 5(b)
THAT ON THIS 5TH DAY OF July, 2021, I MAILED A TRUE AND
CORRECT COPY OF THE Judicial Notice, ADDRESSED TO;

Cedar Co, Dist Atty.
200 Lewis Ave, 2nd Fl
Las Vegas, NV 89155-2212

OFFICE OF THE Atty Gen.
100 No Carson St
Carson City NV 89701-4717


Luis A. Castro, # 1214547
PETITIONER, IN Pro Se

Fe: Mrs. Luis A. Castro
E.S.P. # 1214547
P.O. Box 1989
Ecuy, NV. 89301



101
CLERK OF THE COURT
8TH JUD. DIST. CT.
200 Lewis Ave., 3rd Fl.
Las Vegas, NV.
89155-1160



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02 4W
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JUL 12 2021
CLERK OF THE COURT

Heather S. Lumin
CLERK OF THE COURT

1 LUIS A. CASTRO
2 ESP-#1214547
3 P.O. Box 1989
4 ELI, NV 89301

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 LUIS ANGEL CASTRO,
8 Petitioner,
9 vs
10 STATE OF NEVADA,
11 Respondent,

CASE No. A-21-835827-W
COURTROOM 14A

12
13 ADDENDUM TO PETITIONER'S EX PARTE MOTION
14 FOR APPOINTMENT OF COUNSEL AND
15 REQUEST FOR AN EVIDENTIARY HEARING
16

17 THE PRO SE PETITIONER, LUIS A. CASTRO, HEREBY RESPECT-
18 FULLY REQUEST THAT THIS COURT ADDITIONALLY CONSIDER
19 THE ATTACHED MEMORANDUM OF FACTS AND LAW IN -
20 SUPPORT OF HIS MOTION FOR THE APPOINTMENT OF
21 COUNSEL AND PETITIONER'S DECLARATION IN SUPPORT OF
22 SAID MOTION SCHEDULED TO BE HEARD IN THIS COURT
23 ON AUGUST 26, 2021, 8:30 AM.

24
25 PETITIONER BELIEVES THAT THE ADDITIONAL INFORMATION RECEIVED -


26 JUL 12 2021

1 WILL HELP THE COURT CONCLUDE THE NEED FOR
2 APPOINTMENT OF COUNSEL IN THIS CASE, THAT IS,
3 BESIDES THE COMPLEXITIES OF THIS CASE, WHICH
4 THE DENIAL OF COUNSEL WOULD AMOUNT TO A —
5 DENIAL OF DUE PROCESS, [BROWN V. UNITED STATES,
6 623 F.2d. 54, 61 (9TH CIR 1980)], PETITIONER'S VERY
7 LIMITED EDUCATION LEAVES HIM INCAPABLE OF
8 PRESENTING HIS CLAIMS IN SUCH A WAY THAT THE
9 COURT CAN AFFORD HIM A FAIR HEARING. SEE:
10 HAWKINGS V BENNET, 423 F.2d. 948 (8TH CIR 1970).

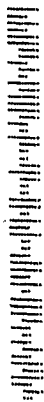
11
12 THEREFORE, PETITIONER RESPECTFULLY REQUEST
13 THAT THIS COURT APPOINT COUNSEL IN THE INTEREST
14 OF JUSTICE AND REASONS STATED HEREIN.

15
16 DATED THIS 5TH DAY OF JULY, 2021

17
18 RESPECTFULLY SUBMITTED.

19
20
21 
22 LUIS A. CASTRO, # 1214547
23 PETITIONER, IN PRO SE
24
25
26
27
28

Fr. Mrs. Luis A. Castro
E.S.P. # 1214547
P.O. Box 1989
Ely, NV. 89301



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101 Clerk of the Court
8th Juv. Dist. Ct.
200 Lewis Ave., 3rd Fl.
Las Vegas, NV, 89155-1160

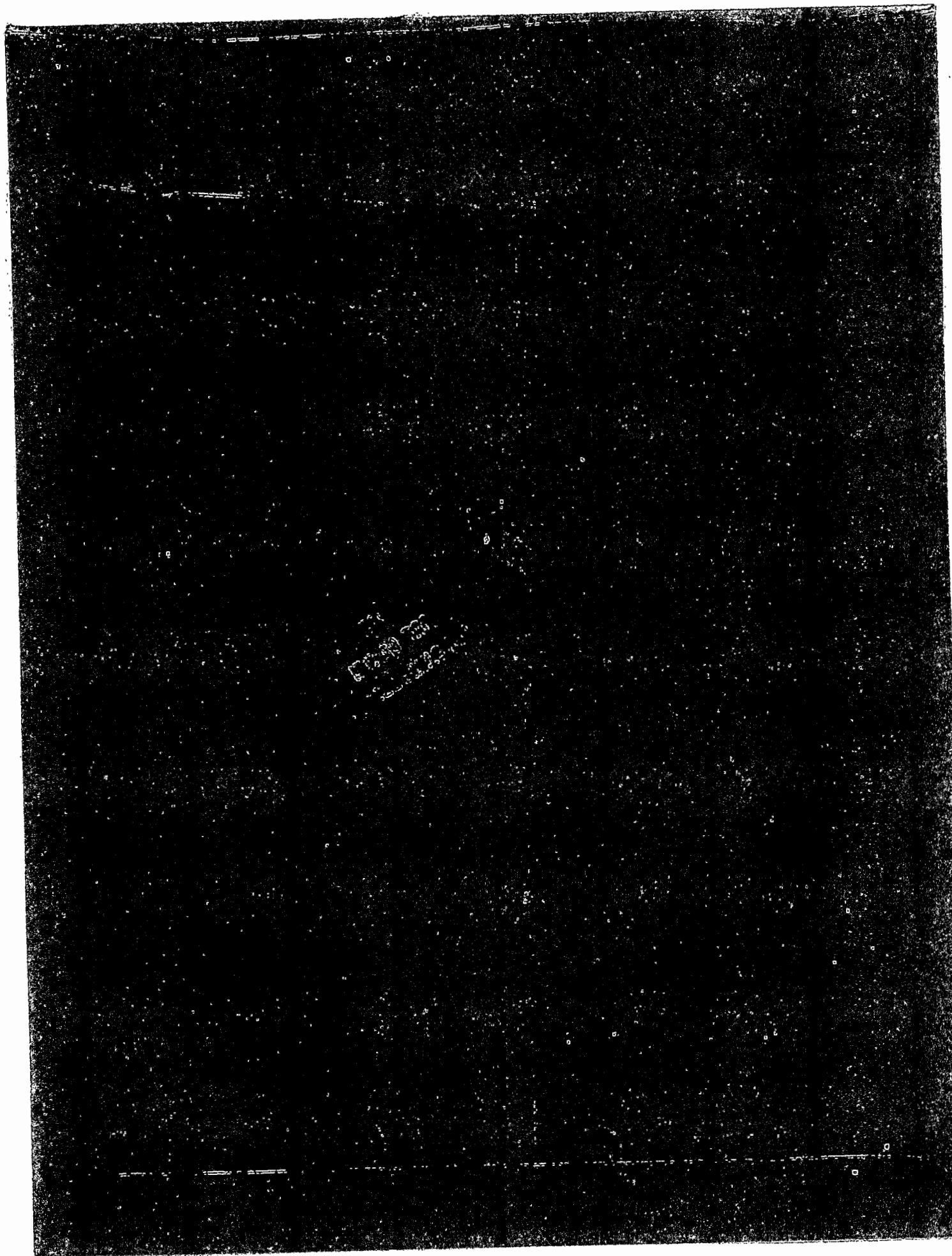
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JUL 12 2021

CLERK OF THE COURT

CONFIDENTIAL



Heather S. Hemin
CLERK OF THE COURT

27

1 Luis A. Castro
2 ESP-#1214547
3 P.O. Box 1989
4 Elko, NV. 89301

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 Luis Angel Castro,

8 Petitioner,

9 vs

Case No. A-21-835827-W

Courtroom. 14A

10 State Of Nevada,

11 Respondent,

12

13 DECLARATION IN SUPPORT OF PETITIONER'S
14 EX PARTE MOTION FOR APPOINTMENT OF COUNSEL
15 AND REQUEST FOR AN EVIDENTIARY HEARING
16

17 Luis Angel Castro States:

18

19 I, I AM THE PETITIONER IN THE ABOVE ENTITLED CASE.

20 I MAKE THIS DECLARATION IN SUPPORT OF MY MOTION FOR
21 APPOINTMENT OF COUNSEL

22

23 2. THE MOTION IN THIS CASE ALLEGES PETITIONER HAS
24 A LOW INTELLECTUAL FUNCTION. CONFIRMED BY
25 SHARON JONES-FORESTER, Phd. Neuropsychologist

26

27

28

CLERK OF THE COURT

JUL 12 2021

RECEIVED

1 IN HER REPORT TO THE COURT, DATED March, 14, 2019.

2

3 3. THIS IS A COMPLEX CASE BECAUSE IT CONTAINS SEVERAL
4 DIFFERENT CLAIMS AND EACH OF THEM INVOLVES THE
5 INEFFECTIVE ASSISTANCE OF COUNSEL.

6

7 4. THIS CASE MAY REQUIRE EXPERT TESTIMONY OF
8 A PSYCHIATRIST.

9

10 5. PETITIONER IS LIKELY TO DEMAND A JURY TRIAL.

11

12 6. THIS CASE REQUIRES AN EVIDENTIARY HEARING,
13 DUE TO ASSERTIONS MADE BY TRIAL COUNSEL -
14 MR. GELLER OUTSIDE THE RECORD. THE DISCUSSIONS
15 BETWEEN PETITIONER'S PARENTS, MR. GELLER,
16 AND HIMSELF WERE ONLY WITNESSED BY EACH OTHER.
17 PETITIONER SHOULD BE ENTITLED TO EXPAND THE RECORD
18 TO INCLUDE MR. WARREN GELLER'S FALSE -
19 STATEMENTS TO PETITIONER'S PARENTS, WHICH HAD
20 A DIRECT EFFECT ON THE COERCION CONDUCTED
21 OF CASTRO'S ACCEPTANCE OF PLEA.

22

23 7. THE TESTIMONIES MAY BE IN SHARP CONFLICT
24 SINCE PETITIONER ALLEGES THAT IF NOT FOR TRIAL
25 COUNSEL'S FALSE ASSERTIONS TO HIS PARENTS

26

27

28

1 HE WOULD NOT HAVE TAKEN THE PLEA, AND HE
2 WOULD HAVE TAKEN THE CASE TO TRIAL.

3

4 8. PETITIONER DOES NOT HAVE A HIGH SCHOOL
5 DIPLOMA, NOR A G.E.D.; AND DOES NOT HAVE
6 ANY LEGAL EDUCATION OR NOTABLE UNDERSTAND-
7 ING OF THE LAW.

8

9 9. PETITIONER IS SERVING THE IMPOSED -
10 SENTENCE IN ADMINISTRATIVE SEGREGATION.
11 FOR THIS REASON HE HAS VERY LIMITED
12 ACCESS TO LEGAL MATERIALS, AND HAS NO WAY
13 TO ACQUIRE HELP FROM THE PRISONERS WHO
14 ARE ASSIGNED TO THE ELY STATE PRISON -
15 LAW LIBRARY.

16

17 10. FOR THE RECORD: ALL PLEADINGS, AND
18 MOTION PREPARED TO DATE, HAVE BEEN
19 COMPLETED ON BEHALF OF MR. CASTRO,
20 BY A 'TRANSIENT PRISONER', WHO IS
21 SUBJECT TO TRANSFER AT ANY MOMENT,

22 THEREFORE, THIS PETITIONER REQUIRES
23 FAIR AND EFFECTIVE ASSISTANCE OF COUNSEL
24 TO PRESENT THE ENTIRETY OF HIS CASE TO
25 THE COURT

26

27

28

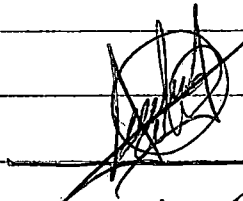
1 10. As set forth in the Memorandum submitted
2 with the Motion, these facts, along with the
3 legal merits of Petitioner's claims, support
4 the Appointment of Counsel to represent him.
5

6 Therefore, Petitioner's Ex Parte Motion
7 for Appointment of Counsel and Evidentiary
8 Hearing should be granted.
9

10 DATED this 5th day of July, 2021
11

12 Pursuant to NRS 208.165, I declare
13 under penalty of perjury that the
14 aforementioned is true and correct
15
16

17 Respectfully Submitted
18

19
20 

21 Luis A. Castro, #1214547

22 Petitioner, In Pro Se
23
24
25
26



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN NIMAN
6 Deputy District Attorney
7 Nevada Bar #14408
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 LUIS ANGEL CASTRO,
16 #1918366

17 Plaintiff,

18 -vs-

19 THE STATE OF NEVADA

20 Defendant.

CASE NO: A-21-835827-W

DEPT NO: XXX

21 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**
22 **CORPUS (POST CONVICTION - NRS 34.740) AND TO WITHDRAW GUILTY**
23 **PLEA (PURSUANT TO NRS 176.165), AND SUPPLEMENTAL BRIEF IN SUPPORT**
24 **OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**

25 DATE OF HEARING: AUGUST 26, 2021

26 TIME OF HEARING: 8:30 AM

27 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
28 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the
attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus
(Post Conviction - NRS 34.740) and to Withdraw Guilty Plea (Pursuant to NRS 176.165), and
Supplemental Brief in Support of Petitioner's Petition for Writ of Habeas Corpus.

This response is made and based upon all the papers and pleadings on file herein, the
attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by this Honorable Court.

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 10, 2016, Luis Angel Castro (hereinafter "Petitioner") was charged by way
4 of Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B
5 Felony); Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ;
6 Count 3 - Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon
7 Resulting in Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping
8 with Use of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly
9 Weapon (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B
10 Felony) ; Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-
11 defendants.

12 On April 12, 2019, Petitioner was bound up to the District Court on all charges
13 following a preliminary hearing.

14 After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled
15 guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping
16 Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea
17 Agreement ("GPA"): "This offer is condition upon all four (4) Defendants accepting their
18 respective negotiations and being sentenced. All Parties agree the State will have the right to
19 argue for Life without the possibility of Parole, and the Defense will argue for Life with the
20 possibility of Parole after fifteen (15) years. All Parties agree that no one will seek a term of
21 years."

22 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24, 2019,
23 Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro ("Petitioner's
24 Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life without the
25 possibility of Parole in the Nevada Department of Corrections.

26 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's Judgment of
27 Conviction. Remittitur issued on November 17, 2020.

28 //

1 On June 7, 2021, Petitioner filed a pro per Petition for Writ of Habeas Corpus (Post-
2 Conviction) ("Petition"), a Motion for Appointment of Counsel, and a Request for an
3 Evidentiary Hearing on the Petition. On July 6, 2021, Petitioner filed a Supplement to Petition
4 for Writ of Habeas Corpus ("Supplemental Petition").¹ On July 14, 2021, Petitioner filed
5 Memorandum of Facts and Law In Support of Petitioner's Motion for Appointment of Counsel
6 ("Memo In Support") and various other pleadings.

7 STATEMENT OF FACTS

8 At sentencing, the district court relied on the following facts contained on pages 6-7 of
9 Petitioner's Presentence Investigation Report ("PSI"):

10 On March 7, 2016, officers received a call in reference to a residential
11 fire and of a male with a slit throat exiting the same residence. The caller
12 reported that the victim was possibly tied up.

13 Paramedics arrived on the scene and advised there were several
14 citizens around the victim attempting to provide first aid. The paramedics
15 observed that the victim had both legs bound together by a cord at his
16 ankles and knees. The paramedics removed the bindings. The victim had
17 several injuries including: multiple stab wounds to his chest, back and right
18 arm, his right pinky finger was partially amputated, his fingernails were
19 pulled off from his right index and middle fingers, there was a laceration to
20 his right thumb and a deep laceration to his throat/neck. The paramedics
21 reported that it appeared that the victim was tortured. The victim was
22 treated by paramedics and transported to a local hospital. The victim was
23 unable to be interviewed the night of the incident as he was undergoing
24 numerous surgeries and was heavily sedated.

25 Officers and detectives arrived on the scene and set a perimeter around
26 the crime scene while firefighters battled the residential fire. Detectives
27 interviewed each witness individually on scene. All witnesses confirmed
28 that they noticed the residence on fire and when they pulled over to assist,
they observed the victim with his legs bound, with several injuries. On
March 8, 2016, detectives canvassed the area and spoke to surrounding
neighbors. The neighbors advised seeing a pickup truck with two males and
two females at the victim's residence.

¹ Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a petitioner from filing any additional pleadings or supplements, except for those specifically provided for in subsections (2)-(4), unless ordered by the Court. Because Petitioner's Supplemental Petition and Memo in Support were filed after he filed his Petition and filed without leave of this Court, the pleadings should be stricken and/or any new claims or allegations contained therein should not be summarily denied.

1 Detectives arrived to the local hospital to attempt to speak to the
2 victim. He was unable to speak due to his injuries; however, he was
3 responsive and wished to attempt to provide information to the detectives.
4 He was able to provide information regarding his identity and his
5 girlfriend's identity. When asked how many suspects committed the crime
6 against him, he raised four fingers. When asked who committed the crime
7 against him, the victim mouthed the name Angel Castro, who was
8 identified as a defendant Luis Angel Castro.

9 Detectives were able to make contact with the victim's girlfriend. She
10 stated that on March 6, 2016, her vehicle had broken down while the victim
11 was driving it and he asked his friend Angel Castro for a tow back to his
12 girlfriend's home. The victim's girlfriend stated that the victim told her he
13 was going to pay Mr. Castro \$50.00 in United States currency for the tow.
14 She stated on March 7, 2016 the victim was still at her residence with a
15 mechanic when Mr. Castro arrived in a pickup truck with two other males.
16 Mr. Castro demanded the tow money from the victim and the other male
17 made mention that he had a firearm inside the truck. The victim then agreed
18 to leave with the three males in the truck. The victim's girlfriend reported
19 that she had not heard from the victim for several hours so she attempted
20 to contact several friends of his to see if anyone had heard from him. One
21 of his friends told her that the victim had contacted him asking for \$300.00
22 in United States currency. He stated that he heard a female in the
23 background apparently coaching him on what to say.

24 Detectives returned to the hospital and continued to interview the
25 victim. The victim reported he was taken in a pickup truck to an unknown
26 house. Once at the home, Mr. Castro bound the victim's hands/wrists and
27 ankles/knees. He stated that he remembers making three phone calls asking
28 for \$300.00 in United States currency. The victim reported that one of the
males cut his finger and hand with a machete and stabbed him multiple
times about his body with a knife. He reported that all four suspects cut his
throat/neck. The victim stated that he was tortured before, during and after
he made the phone calls. He reported after the four suspects took turn
cutting his throat/neck, the victim faked as if he died. After believing the
victim was dead, the unknown male started the fire and all the suspects left
the house. Once all the suspects left, the victim stated he was able to get
out of the home, where he was assisted by people going by. The victim
stated that the only thing the suspects took from him was a pack of
cigarettes.

During the course of the investigation, detectives were able to identify
the co-defendant Edward Honabach as the driver of the pickup truck. Both
the victim and his girlfriend were able to identify Angel Castro and Edward
Honabach from a lineup. Detectives went to Mr. Honabach's residence and
took Mr. Honabach and Mr. Castro into custody. Also, present at the
residence were two females. One of the females was identified as the co-
defendant Fabiola Jimenez. A photo lineup with Ms. Jimenez in it was

1 presented to the victim who confirmed that Ms. Jimenez was present and
2 involved in his torture. A search of Mr. Honabach's residence was
3 completed where detectives found numerous knives inside the home and
4 the vehicle. They also found a machete and twine inside the vehicle.

5 On March 10, 2016, detectives interviewed Ms. Jimenez. She
6 confessed to being present during the brutal attempt murder and arson
7 where the incident occurred. Her version of the incident was similar to the
8 victim's account. She stated that on March 7, 2016, Mr. Honabach, Mr.
9 Castro and an unknown male went to pick up the victim. Ms. Jimenez
10 reported that the victim owed \$200.00 in United States currency for a drug
11 debt. A short time later, Mr. Honabach, Mr. Castro and the unknown male
12 arrived with the victim to the residence the incident occurred at. Ms.
13 Jimenez was already present at the residence as Mr. Castro and Mr.
14 Honabach had dropped her off prior to picking up the victim. Once inside
15 the residence, Mr. Honabach and Mr. Castro confronted the victim about
16 the money he owed them. The victim told them he was working on getting
17 the money and asked Mr. Honabach and Mr. Castro for another week to
18 pay off the debt. Mr. Honabach and Mr. Castro became physical with the
19 victim and forced him into a chair and bound his hands and legs with rope
20 found in the home. Ms. Jimenez reported that Mr. Honabach, Mr. Castro
21 and the unknown male started punching the victim. Mr. Honabach then
22 brandished a pocket knife and stabbed the victim three times in his right
23 shoulder area. The victim pleaded for them to stop. Mr. Honabach asked
24 Mr. Castro what he wanted to do and Mr. Castro stated "we have gone this
25 far, let's finish it." At that point, Mr. Honabach pulled the victim's hair and
26 Mr. Castro took the knife and cut the victim's throat. Ms. Jimenez advised
27 that they all believed the victim to be dead so began to gather paper
28 materials and household chemicals which they poured on the victim. Mr.
Castro told Ms. Jimenez to leave the residence at that point and she did.
She stated that before she left she saw Mr. Honabach and Mr. Castro with
lighters in their hands. Once outside, Ms. Jimenez saw the flames coming
from the house and that is when Mr. Honabach and Mr. Castro left the
residence. They then got into the vehicle and left. Ms. Jimenez reported she
did not know where the unknown male had gone. She stated that she did
believe the victim was dead and confirmed that she did not call the police
to stop the brutal attack. Ms. Jimenez denied participating in the actual
stabbing or setting the house on fire. Initially, she denied being with Mr.
Castro and Mr. Honabach; however, eventually did admit being present at
the house during the attack and that she does not like the victim.

On March 10, 2016, Angel Castro was arrested and transported to
Clark County Detention Center where he was booked accordingly.

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ARGUMENT

A Writ of Habeas Corpus is the mechanism for a person who believes he or she is unlawfully being “committed, detained, confined or restrained of his or her liberty” to “inquire into the cause of imprisonment or restraint.” NRS 34.360. Claims other than challenges to the validity of a guilty plea and ineffective assistance of trial and appellate counsel must be raised on direct appeal “or they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Where a petitioner does not show good cause for failure to raise claims of error upon direct appeal, the district court is not obliged to consider their merits in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975). Further, substantive claims—even those disguised as ineffective assistance of counsel claims—are beyond the scope of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). A proper petition for post-conviction relief must set forth specific factual

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1 allegations supporting the claims made and cannot rely on conclusory claims for relief. N.R.S.
2 34.735(6). Failure to do so will result in a dismissal of the petition. Id.

3 **I. PETITIONER IS NOT ENTITLED TO WITHDRAW HIS GUILTY PLEA**

4 Petitioner argues that his guilty plea was involuntary because he was mentally
5 incompetent during the plea canvass and “did not have the mental capacity or fully understand
6 his rights and did not know what he was facing when he pled guilty.” Petition at 4-5. In support
7 of this claim, Petitioner explains that he was on suicide watch in the days before his entry of
8 plea and that his suicidality renders him incapable of knowingly pleading guilty. Id. at 3.
9 Petitioner claims that his responses during the plea canvass do not establish that he
10 competently entered his plea because he did not understand the consequences of his plea. Id.
11 at 5-6. Petitioner believes that an evidentiary hearing will establish that his mental condition
12 at the time he entered his plea rendered his plea invalid. Id. at 6. Petitioner’s claim is belied by
13 the record.

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

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

23 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
24 774, 476 P.2d 950 (1970)).

25 The presence and advice of counsel is a significant factor in determining the
26 voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975). A
27 plea of guilty is presumptively valid, particularly where it is entered into on the advice of
28 counsel, and the burden is on a defendant to show that the plea was not voluntarily entered.
Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535
P.2d 1295, 1295 (1975)); Jeziarski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991).

1 This standard requires the court accepting the plea to personally address the defendant
2 at the time he enters his plea in order to determine whether he understands the nature of the
3 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
4 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
5 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
6 formal setting, such as that occurring between an official sitting in judgment of an accused at
7 plea. Id. During a plea canvass of the contents of a GPA, the trial court must personally
8 address a defendant to determine whether he understands the nature of the charges to which
9 he is pleading. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). While no
10 uniform language is required, Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404
11 (1973), requires the record reflect the following: 1) the defendant knowingly waived his
12 privilege against self-incrimination, the right to trial by jury, and the right to confront his
13 accusers; 2) the plea was voluntary, was not coerced, and was not the result of a promise of
14 leniency; 3) the defendant understood the consequences of his plea and the range of
15 punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of the
16 crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970). Importantly, “the record
17 must affirmatively disclose that a defendant is entering his plea understandingly and
18 voluntarily.” Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970).

19 Even when courts endeavor to give defendants who hastily entered their plea the
20 opportunity to withdraw their plea, defendants cannot claim that the pressure of time or a fast
21 approaching trial coerced them into accepting a plea. Stevenson v. State, 131 Nev. 598, 605,
22 354 P.3d 1277, 1281 (2015) (citing Miles v. Dorsey, 61 F.3d 1459, 1470 (10th Cir. 1995)).
23 “Undue coercion occurs when a ‘defendant is induced by promises or threats which deprive
24 the plea of the nature of a voluntary act.’” Id. Time constraints and pressure exist in every
25 criminal case, are hallmarks of pretrial discussions and do not individually or in the aggregate
26 make a plea involuntary. Id. at 605, 354 P.3d at 1281 (quoting Miles, 61 F.3d at 1470). Instead,
27 the key inquiry for determining the validity of a plea is “whether the plea itself was a voluntary
28

1 and intelligent choice among the alternative courses of action open to the defendant.” Id. at
2 604-05, 354 P.3d at 1281, (quoting Doe v. Woodford, 508 F. 3d 563, 570 (9th Cir. 2007)).

3 Here, as an initial matter, Petitioner attempts to draw similarities between this case and
4 Wilkens v. Bowerson, 145 P.3d 1006 (8th Cir. 1998).² Petition at 6. Eighth Circuit case law is
5 irrelevant and inapplicable here, particularly in light of the fact that the totality of the
6 circumstances establish that Petitioner’s plea was voluntarily, knowingly, and intelligently
7 entered.

8 Regardless, the totality of the circumstances establish that Petitioner’s plea was
9 knowingly and voluntarily entered. First, Petitioner signed his GPA and affirmed that he was
10 “signing this agreement voluntarily, after consultation with [his] attorney, and [was] not acting
11 under duress or coercion[.]” GPA, at 5. Petitioner further affirmed that he was not “under the
12 influence of any intoxicating liquor, a controlled substance or other drug which would in any
13 manner impair [his] ability to comprehend or understand [the] agreement or the proceedings
14 surrounding [the] entry of [the] plea.” GPA, at 5.

15 Next, despite Petitioner’s claim to the contrary, his answers during his plea colloquy
16 were not perfunctory affirmations. Petitioner’s answers during the plea canvass further belies
17 any claim that Petitioner was not competent to plead guilty or did not understand what he was
18 pleading guilty to:

19 THE COURT: Have you seen a copy of the amended information I this case
20 charging you with first degree kidnapping resulting in substantial bodily harm which
21 is a category A. Have you seen that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did you have a chance to read that and discuss it with your attorney?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: With regard to that charge, first degree kidnapping resulting in
26 substantial bodily harm, how do you plead, guilty or not guilty?

27 THE DEFENDANT: Guilty.

28 THE COURT: Before I can accept your plea of guilty, I have to be convinced that
your plea is freely and voluntarily made. Are you making your plea freely and
voluntarily?

THE DEFENDANT: Yes, I am, sir.

² It appears that Petitioner has miscited this case because, despite the State’s best efforts, it has been unable to locate this case.

1 THE COURT: Has anybody forced you or coerced you to enter that plea?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you making that plea because you're, in fact, guilty of that charge?

4 THE DEFENDANT: Yes, sir

5 [...]

6 THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated February 4. Did you read and sign that today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you understand it before you signed it?

9 THE DEFENDANT: Yes, sir.

10 [...]

11 THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter this plea?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you currently under the influence of any alcohol, medication, narcotics or any substance that might affect your ability to understand these documents or the process that we're going through?

14 THE DEFENDANT: No, sir.

15 Recorder's Transcript of Hearing – Entry of Plea (“RT: EOP”), at 45-6 (February 4, 2019)
(emphasis added).

16 Additionally, Petitioner's allegation that his plea was invalid because he was on suicide
17 watch in the days preceding his guilty plea is nothing but a bare and naked claim that his
18 unsupported by the record. According to the sentencing memorandum filed by counsel prior
19 to sentencing, Petitioner received three neuropsychological evaluations on February 21, March
20 5, and March 7, 2019, after he entered his plea. Petitioner's Sentencing Memo at 11. However,
21 the only suicide attempt mentioned in those evaluations is an incident from years prior to
22 Petitioner's incarceration. Id. at 15. Therefore, the claim that Petitioner was on suicide watch
23 is unfounded and belied by the report *provided by the defense* in preparation of sentencing.
24 Accordingly, Petitioner's claim that he was not competent to plead guilty fails.

25 **II. PETITIONER'S GUILTY PLEA WAS ENTERED INTO WITH EFFECTIVE**
26 **ASSISTANCE OF COUNSEL**

27 Petitioner argues that trial counsel was ineffective during the plea process because (1)
28 counsel did not inform him of the possible immigration consequences; (2) counsel should have

1 revealed that Petitioner was not the "shotcaller" and was not at the convenience store when
2 the charged crimes were committed; (3) counsel intimidated Petitioner and lied to Petitioner's
3 mother in order to get Petitioner to plead guilty; (4) that counsel promised him a sentence of
4 fifteen (15) years to life; and (4) because he was ultimately sentenced to a term of life without
5 the possibility of parole, which he believed rendered his plea invalid because "he did not
6 benefit from the plea agreement." Petition at 9-10. Additionally, Petitioner acknowledges that
7 his sentence is legal but believes that his sentence is disproportionate and shocks the
8 conscience because he did not have any prior criminal history, there was no evidence of his
9 DNA at the crime scene, and Petitioner suffers from various mental conditions. Id. at 10-11.
10 Petitioner's claim fails.

11 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
12 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
13 defense." The United States Supreme Court has long recognized that "the right to counsel is
14 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
15 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
16 (1993).

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

28 //

1 The court begins with the presumption of effectiveness and then must determine
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
4 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
5 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
6 537 P.2d 473, 474 (1975). Counsel cannot be ineffective for failing to make futile objections
7 or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

8 Based on the above law, the role of a court in considering allegations of ineffective
9 assistance of counsel is "not to pass upon the merits of the action not taken but to determine
10 whether, under the particular facts and circumstances of the case, trial counsel failed to render
11 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
12 (1978). This analysis does not mean that the court should "second guess reasoned choices
13 between trial tactics nor does it mean that defense counsel, to protect himself against
14 allegations of inadequacy, must make every conceivable motion no matter how remote the
15 possibilities are of success." Id. To be effective, the constitution "does not require that counsel
16 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
17 cannot create one and may disserve the interests of his client by attempting a useless charade."
18 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

19 "There are countless ways to provide effective assistance in any given case. Even the
20 best criminal defense attorneys would not defend a particular client in the same way."
21 Strickland. 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after
22 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,
23 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
24 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's
25 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
26 conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

27 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
28 plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d

1 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant must
2 show that there is a “reasonable probability that, but for counsel’s errors, he would not have
3 pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59,
4 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923
5 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).
6 Ultimately, while it is counsel’s duty to candidly advise a defendant regarding a plea offer, the
7 decision of whether or not to accept a plea offer is the defendant’s. Rhyne v. State, 118 Nev.
8 1, 8, 38 P.3d 163, 163 (2002). Further, substantive claims—even those disguised as ineffective
9 assistance of counsel claims—are beyond the scope of habeas and waived. NRS 34.724(2)(a);
10 Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

11 Here, Petitioner’s signature on his GPA and answers during his plea canvass belie any
12 claim of ineffective assistance of counsel. Taking each challenge in turn, first, Petitioner’s
13 claim that counsel did not discuss the consequences of a plea on Petitioner’s immigration status
14 it is completely unfounded and belied by the record. By signing the GPA, where Petitioner
15 affirmed that he did understand the immigration consequences. GPA, at 3-4. Moreover, during
16 the plea canvass, Petitioner and his attorney discussed the immigration consequences:

17 THE COURT: Based on all the facts and circumstances, are you satisfied
18 with the services of your attorney?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you a U.S. citizen?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you understand that there are some charges that have
23 adverse immigration consequences and may result in deportation?

24 THE DEFENDANT: That is correct.

25 THE COURT: Have you had the chance to discuss any immigration issues
26 with your attorney, and he’s answered any questions you have?

27 THE DEFENDANT: To this point, yes and no, but I’ll just say yes.

28 **MR. GELLER: Judge, I can represent to the Court, I’ve been in touch
with his immigration attorney, and we’ve been in communication. I did
let my client know today, as well as previously, that there’s substantial
probability he’ll be deported after he serves a period of incarceration.**

THE COURT: Do you understand that?

THE DEFENDANT: Yes, sir.

1 THE COURT: You sill agree with the terms as set forth in the guilty plea
2 agreement?

3 THE DEFENDANT: Yes.

4 RT: EOP, at 7-8 (emphasis added).

5 Further, this claim is belied by the record at sentencing. In the Sentencing Memo,
6 counsel stated, "the parole board may deem it appropriate to release him to Immigration and
7 Customs Enforcement for removal from the United States." Petitioner's Sentencing Memo at
8 7-8. During sentencing, counsel also referenced the possibility of Petitioner's deportation to
9 Mexico multiple times and even used that fact to argue in favor of possible parole. Recorder's
10 Transcript of Proceedings Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019).
11 Specifically, counsel stated, "There is an ICE hold. If...the Court...granted the defense's
12 request for parole eligibility at 15 years...the parole board would have the option to say, you
13 know what federal government, now you can take Mr. Castro and deport him to Mexico...if
14 the Court sentences him to life without, no matter what the circumstances are, we're always
15 going to be paying for his incarceration." Id. at 7-8. Additionally, Petitioner addressed the
16 court and made no mention that he was never informed of or advised about potential
17 immigration consequences. Id. at 10-11. Therefore, Petitioner's claim that he was not aware
18 of the consequences of immigration fails as it is belied by the record.

19 Second, Petitioner's claim that counsel should have challenged the evidence against
20 him is nothing but a substantive claim disguised as a claim of ineffective assistance of counsel.
21 Regardless, Petitioner's guilty plea waived counsel's duty to challenge the evidence against
22 him. Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.
23 It is therefore inappropriately raised in the instant Petition and suitable only for summary
24 denial.

25 Additionally, when Petitioner signed the GPA, he acknowledged that he understood
26 that he was waiving his right to a jury trial:

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

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

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.

GPA at 4.

Moreover, during the plea canvass, Petitioner confirmed that he was waiving his right to challenge the evidence at trial:

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf. You understand that?

THE DEFENDANT: I understand, sir.

RT: EOP, at 5-6.

Further, Petitioner has failed to articulate what other investigations or challenges to the evidence counsel should have engaged in prior to Petitioner's guilty plea that would have resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This failure is fatal. Hill, 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot be deemed ineffective.

Third, Petitioner's claim that counsel intimidated and lied in order to induce Petitioner into pleading guilty is a bare and naked allegation suitable only for summary denial. In signing the GPA, Petitioner confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was] satisfied by the services provided by [his] attorney."

Specifically, Petitioner further confirmed that he was satisfied with counsel during his plea canvass and affirmed that he had not been threatened into pleading guilty:

THE COURT: Did you have a chance to read [the amended information] and discuss it with your attorney?

THE DEFENDANT: Yes, I have.

1 [...]

2 THE COURT: Before I can accept your plea of guilty, I have to be convinced
3 that your plea is freely and voluntarily made. Are you making your plea freely
4 and voluntarily?

5 THE DEFENDANT: Yes, I am, sir.

6 THE COURT: Has anybody forced you or coerced you to enter that plea?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you making that plea because you're, in fact, guilty of that charge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody made any promises or guarantees to you other than
11 what's been stated in open court and what's contained in the guilty plea agreement?

12 THE DEFENDANT: No, sir.

13 [...]

14 THE COURT: You had a chance to discuss [the guilty plea agreement] with your
15 attorney, and he answered any questions you might have about it?

16 THE DEFENDANT: Yes, I have.

17 [...]

18 THE COURT: Do you have any questions that you want to ask of myself or the
19 State or your counsel before we proceed?

20 THE DEFENDANT: No, sir.

21 ...

22 THE COURT: Based on all the facts and circumstances, are you satisfied with
23 the services of your attorney?

24 THE DEFENDANT: Yes, sir.

25 RT: EOP, at 4-7.

26 Accordingly, any claim of threats or dissatisfaction must fail.

27 Fourth, Petitioner's claim that counsel promised him a sentence of fifteen (15) years to
28 life, or any other sentence, is a bare and naked claim that is entirely belied by the record.
Petitioner's signed GPA first states that pursuant to the negotiations, while counsel could argue
for a sentence of fifteen (15) years to life, Petitioner understood he was not guaranteed that
sentence:

I have not been promised or guaranteed any particular sentence by
anyone. I know that my sentence is to be determined by the Court within
the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both
recommend any specific punishment to the Court, the Court is not obligated
to accept the recommendation.

GPA at 3.

1 Petitioner's answers during the plea canvass further confirms that Petitioner understood
2 the terms of the negotiations and belie any claim that he believed he would receive a particular
3 sentence:

4 THE COURT: Do you understand that in the guilty plea agreement it says
5 that the possibility of sentence is 15 to 40 years or for minimum of 15 years
6 and a maximum of life or life without parole? Do you understand that those
7 are the options?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that sentencing is strictly up to the Court,
10 and nobody can promise you probation, leniency, or any kind of special
11 treatment; correct?

12 THE DEFENDANT: That's correct.

13 RT: EOP, at 6.

14 While counsel indeed argued during sentencing that Petitioner should receive a
15 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did not
16 honor that request does not render counsel deficient. Accordingly, any claim that he was
17 promised a sentence outside of the negotiations contained in the GPA are belied by the record.

18 Fifth. Petitioner's claim that his sentence of life without the possibility of parole
19 suggests that counsel was ineffective during the plea negotiations fails. In preparation for
20 sentencing, counsel filed a sixty-eight (68) page sentencing memo, which included a detailed
21 history of Petitioner's upbringing, a neuropsychological evaluation that was completed at
22 Attorney Geller's request, and multiple letters of support for Petitioner. In this sentencing
23 memo, Attorney Geller made a passionate argument for the possibility of parole based on all
24 of the applicable mitigating factors. Petitioner's Sentencing Memo at 6-8. Counsel then made
25 a similarly passionate argument during the sentencing hearing highlighting (1) Petitioner's
26 lack of criminal history; (2) childhood trauma that led to self-medicating with drugs; (3) the
27 support Petitioner had from his family; (4) Parole and Probation's recommended sentence of
28 fifteen (15) years to life; (5) Petitioner's consistent claim that he was not one of the people
who handled the weapon or touched the victim; (6) DNA results showing that Petitioner's
DNA was not on the weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance
camera footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.

1 That the Court was not moved by counsel's argument does not render counsel deficient.
2 Indeed, the record is clear that the district court acknowledged that while a defendant's lack of
3 criminal history and obvious substance abuse problems tend to incline the court to be merciful
4 at sentence, neither factor negated the "horrific crimes" committed:

5 I want to be merciful, but at the same time, I know that justice has to
6 be done. And we have a victim who, but for the fact that he lived against
7 what you all thought -- my understanding is not only was he tortured and
8 mutilated in this room for a period of time, for a period of hours, but that
9 everybody thought he was dead, tried to burn the house down around him.
And if you had been successful in this, this would have been a capital
murder case and you all would be looking at potentially a capital sentence.

10 I have a hard time with the pictures that I've seen and the horrible
11 injuries that were inflicted upon this poor victim. I understand that he is not
12 the pillar of our community either, but that doesn't justify the things that
were done to him over \$50. And that almost makes it worse because that
was the basis for this, is him not being able to come up with \$50.

13 [...]

14 I understand that that is a difficult sentence for you to have to deal
15 with. It's a difficult sentence for me to have to give, but I don't see any
16 redeeming qualities. I would like to be merciful, but I don't think that this
is a crime that -- I don't think the community wants you back out on the
streets.

17 Id. at 23-24.

18 Notably, Petitioner was sentenced with his three (3) co-defendants, all of whom entered
19 into the same plea negotiations, and all of whom received the same sentence of life without
20 the possibility of parole. Of the other co- defendants, only co-defendant Edward Honabach
21 filed a Post-Conviction Writ of Habeas Corpus ("Honabach's Petition"). See Honabach v.
22 William Gittere, A-20-812948-W, Petition Post-Conviction Writ of Habeas Corpus filed
23 March 27, 2020). In that Honabach's Petition, Honabach made a similar claim to those
24 contained in this instant Petition, in that he claimed his plea was involuntarily entered and his
25 counsel was ineffective because he was not advised that he could receive life without the
26 possibility of parole. Id. The Court summarily denied Honabach's Petition, finding that the
27 Guilty Plea Agreement and the record of plea canvass proceedings demonstrate that
28 Honabach's "guilty plea was made freely and voluntarily, and that he understood the nature of

1 the offense and the consequences of his plea.” Horabach v. William Gittere, A-20-812948-W,
2 Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23, 2020). Because Petitioner
3 raises factually similar claims, signed the same Guilty Plea Agreement, and was canvassed
4 during the same proceeding as Honabach, the Court’s reasoning and denial of Honabach’s
5 petition suggests that Petitioner’s instant petition should be summarily denied.

6 **A. Petitioner’s sentence does not constitute cruel and unusual punishment.**

7 Petitioner’s claim that his sentence amounts to cruel and unusual punishment fails.
8 Petitioner bases this claim on the fact that he did not have prior convictions, that he briefly left
9 the scene during the commission of the crime, that his DNA was not found on the weapon, and
10 his history of mental illness. Petition, at 9-10. Petitioner does not contest the legality of the
11 imposed sentence, but rather its excessiveness. Id. at 9

12 As an initial matter, this is not a claim of ineffective assistance of counsel, nor is it a
13 challenge to the validity of Petitioner’s guilty plea. Accordingly, it should have been raised on
14 direct appeal, is beyond the scope of habeas proceedings and therefore waived. Franklin, 110
15 Nev. at 752, 877 P.2d at 1059. Indeed, this claim was raised and rejected by the Nevada Court
16 of Appeals:

17 Third, Castro claims his sentence constitutes cruel and unusual punishment
18 for the following reasons. He did not have a history of violent offenses and
19 was under the influence of drugs when he committed the crime. He was not
20 aware that the crime would become so violent and left when it became
21 violent. His DNA was not found on the weapon. He did not call the police
22 because he was afraid that his codefendants would harm his family. He has
23 PTSD symptoms; bipolar symptoms; and suffers from depression, anxiety,
24 and drug addiction. And he once attempted suicide.

25 [...]

26 Here, Castro's life-without-the-possibility-of-parole sentence falls within
27 the parameters of the relevant statute. *See* NRS 200.320(1)(a). He does not
28 allege that the statute is unconstitutional. And we conclude the sentence
imposed is not grossly disproportionate to his crime and does not constitute
cruel and unusual punishment.

29 Order of Affirmance, State v. Castro, Docket No: 78643-COA, at 3-4 (filed August 12, 2020).

30 Accordingly, this claim is barred by the doctrine of law of the case. “The law of a first
appeal is law of the case on all subsequent appeals in which the facts are substantially the

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

13 To the extent that the Court considers Petitioner’s claim, it still fails. Petitioner
14 acknowledges that his sentence is legal but believes that his sentence is disproportionate and
15 shocks the conscience because he did not have any prior criminal history, there was no
16 evidence of his DNA at the crime scene, and Petitioner suffers from various mental conditions.
17 Id. at 10-11. Petitioner’s claim fails. The Eighth Amendment to the United States Constitution
18 as well as Article 1, Section 6 of the Nevada Constitution prohibit the imposition of cruel and
19 unusual punishment. The Nevada Supreme Court has stated that “[a] sentence within the
20 statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is
21 unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock
22 the conscience.’” Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v.
23 State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 95
24 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)). As long as the sentence is within the limits set
25 by the legislature, a sentence will normally not be considered cruel and unusual. Glegola v.
26 State, 110 Nev. 344, 871 P.2d 950 (1994).

27 Additionally, the Nevada Supreme Court has granted district courts “wide discretion”
28 in sentencing decisions, which will not be disturbed “[s]o long as the record does not

1 demonstrate prejudice resulting from consideration of information or accusations founded on
2 facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92
3 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A district
4 court's sentencing determination will not be disturbed on appeal absent an abuse of discretion.
5 Randell v. State, 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610
6 P.2d 722 (1980)).

7 In addressing cruel and unusual punishment, the United States Supreme Court in Solem
8 v. Helm, laid out three (3) factors to consider when determining if a defendant's sentence is
9 grossly disproportionate to the crime: 1) the gravity of the offense and harshness of the penalty;
10 2) sentences of other defendants for the same crime in the same jurisdiction; and 3) sentences
11 for the same crime in other jurisdictions. 463 U.S. 277, 290-91, 103 S.Ct. 3001, 3010 (1983).

12 The Nevada Supreme Court has never invalidated a sentence based on Solem. In Houk
13 v. State, the defendant received a total of five (5) consecutive ten (10) year sentences, for a
14 conviction of three (3) counts of “issuance of no account check” and two (2) counts of “uttering
15 forged instrument.” 103 Nev. 659, 747 P.2d 1376 (1987). Recognizing the substantial
16 deference owed the legislature and sentencing courts, the Houk Court concluded that the
17 defendant's sentence was proportionate to their crimes. Id. at 664, 747 P.2d at 1379.
18 Specifically, the Court rejected the defendant's claim that their sentence was cruel and unusual
19 under the Solem factors, and instead reinforced the Nevada standard that “a sentence of
20 imprisonment that is within the statutory limits is not considered cruel and unusual
21 punishment.” Id. at 664, 747 P.2d at 1378 (citing Schmidt v. State, 94 Nev. 665, 584 P.2d 695
(1978)).

22 The Nevada Supreme Court has consistently echoed its standard of review for claims
23 of excessive criminal sentences: “[r]egardless of its severity, a sentence that is ‘within the
24 statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is
25 unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock
26 the conscience.’” Harte v. State, 132 Nev. 410, 373 P.3d 98 (2016)(internal quotations
27 omitted). The Harte Court also expressly held that it will “not review nondeath sentences for
28 excessiveness.” Id.

1 Here, Petitioner's sentence does not amount to cruel and unusual punishment. In
2 pleading guilty, Petitioner acknowledged that the State would have the right to argue for a
3 sentence of life without the possibility of parole. While Petitioner may view that sentence as a
4 harsh penalty, Petitioner was involved in the kidnapping, torturing, and mutilation of the
5 victim and an attempt to burn down the location of the crime after the defendants believed the
6 victim had died. Sentencing Proceedings at 23. In fact, the sentencing judge stated, "if you had
7 been successful in this, this would have been a capital murder case and you all would be
8 looking at potentially a capital sentence. Id. Therefore, the harshness of the penalty imposed
9 is not disproportionate to the crime.

10 Additionally, despite what Petitioner believes amount to mitigating factors, all of these
11 facts were provided to the Court in both the Sentencing Memorandum and the sentencing
12 argument. The Court considered all of these factors and, nonetheless, sentenced Petitioner and
13 all other defendants to life without the possibility of parole based on the horrific facts of the
14 crimes. Sentencing Proceedings at 6-10 & 23-24. Accordingly, Petitioner's claim fails.

15 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

16 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
17 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
18 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
19 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right
20 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to
21 counsel provision as being coextensive with the Sixth Amendment to the United States
22 Constitution." McKague specifically held that, with the exception of NRS 34.820(1)(a)
23 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
24 "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at
25 164, 912 P.2d at 258.

26 The Nevada Legislature has, however, given courts the discretion to appoint post-
27 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and
28 the petition is not dismissed summarily." NRS 34.750. NRS 34.750 reads:

A petition may allege that the Defendant is unable to pay the costs of the
proceedings or employ counsel. If the court is satisfied that the allegation of

1 indigency is true and the petition *is not dismissed summarily*, the court may
2 appoint counsel at the time the court orders the filing of an answer and a
return. In making its determination, the court may consider whether:

- 3 (a) The issues are difficult;
4 (b) The Defendant is unable to comprehend the proceedings; or
5 (c) Counsel is necessary to proceed with discovery.

6 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
7 determining whether to appoint counsel.

8 More recently, the Nevada Supreme Court examined whether a district court
9 appropriately denied a defendant's request for appointment of counsel based upon the factors
10 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
11 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
12 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
13 filed a pro se post-conviction petition for writ of habeas corpus and requested counsel be
14 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
15 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court
16 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
17 decision should be reversed and remanded. Id. The Court explained that the petitioner was
18 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
19 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
20 because petitioner had represented he had issues with understanding the English language
21 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
22 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
23 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
24 were severe and his petition may have been the only vehicle for which he could raise his
claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
may have required additional discovery and investigation beyond the record. Id.

25 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
26 appointed. As a preliminary matter, Petitioner's request should be summarily denied because
27 all of his claims are belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502,
28 686 P.2d 222, 225 (1984). Notwithstanding summary dismissal of the Petition, Petitioner's

1 request for counsel should still be denied as he has failed to meet any of the additional statutory
2 factors under NRS 34.750.

3 Petitioner has failed to include any factual allegations in the initial Petition that
4 demonstrate counsel should be appointed. Although the consequences Petitioner faces are
5 severe as he is serving life without the possibility of parole, that fact alone does not require the
6 appointment of counsel. The issues are not difficult because Petitioner's claims are meritless
7 and belied by the record as discussed *supra*. Despite the claims' futility, Petitioner does not
8 and cannot demonstrate that he had any trouble raising the issues.

9 Additionally, there has been no indication that Petitioner is unable to comprehend the
10 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the
11 English language, here Petitioner has failed to demonstrate any inability to understand these
12 proceedings. There is also no indication from the record that Petitioner cannot comprehend the
13 instant proceedings as he managed to file a Motion to Withdraw Counsel, this instant Petition,
14 and two supplemental pleadings without the assistance of counsel.

15 Finally, counsel is not necessary to proceed with further discovery in this case.
16 Petitioner himself indicates that he has provided the Court with the information needed to grant
17 him relief. Due to habeas relief not being warranted, there is no need for additional discovery,
18 let alone counsel's assistance to conduct such investigation. Therefore, Petitioner's request
19 should be denied.

20 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

28 //

1 The Nevada Supreme Court has held that if a petition can be resolved without
2 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
3 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
4 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
5 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
6 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
7 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
8 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
9 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
10 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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

25 Here, Petitioner is not entitled to an evidentiary hearing. All of the Petitioner’s factual
26 assertions are belied by the record in this case. Every claim is nothing but a bare and naked
27 assertion that is repelled by the record. As all of Petitioner’s claims fail, he has likewise failed
28 to demonstrate that the record needs to be expanded through an evidentiary hearing. Therefore,

1 the Petition can be resolved on the pleadings and an evidentiary hearing is not required, nor is
2 Petitioner entitled to one.

3 **CONCLUSION**

4 For the foregoing reasons, the State respectfully requests this Court DENY Petitioner's
5 Defendant's Petition for Writ of Habeas Corpus (Post Conviction - NRS 34.740) and to
6 Withdraw Guilty Plea (Pursuant to NRS 176.165), and Supplemental Brief in Support of
7 Petitioner's Petition for Writ of Habeas Corpus.

8 DATED this 26th day of July, 2021.

9 Respectfully submitted,

10 STEVEN B. WOLFSON
11 Clark County District Attorney
12 Nevada Bar #1563

13 BY  for

14 JOHN NIMAN
15 Deputy District Attorney
16 Nevada Bar #14408

17 **CERTIFICATE OF MAILING**

18 I hereby certify that service of the above and foregoing was made this 27th day of
19 July 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 LUIS ANGEL CASTRO
21 ESP #1214547
22 P.O. BOX 1989
23 ELY, NV 89301

24 BY 

25 Secretary for the District Attorney's Office

26
27
28 16F03770A/JN/clh/L3

Alvin S. Shuman
CLERK OF THE COURT

1 LUIS A CASTRO
2 ESR #1214547
3 P.O. Box 1989
4 Elko, NV. 89301

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 LUIS ANGEL CASTRO,

8 PETITIONER,

9 ✓

10 THE STATE OF NEVADA,

11 RESPONDENT,

CASE NO. A-21-835827-W

DEPT. NO. 30

12
13 REPLY TO STATE'S RESPONSE TO PETITIONER'S
14 PETITION FOR WRIT OF HABEAS CORPUS AND TO
15 WITHDRAW OF GUILTY PLEA AND SUPPLEMENT
16 TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS
17

18 COMES NOW, PETITIONER, LUIS A. CASTRO, IN PRO SE,
19 HEREBY SUBMITS THIS REPLY TO THE STATE'S RESPONSE TO
20 PETITIONER'S WRIT OF HABEAS CORPUS - NRS 34, 740,
21 SUPPLEMENT IN SUPPORT OF SAME - NRECR - RULE 15,
22 AND WITHDRAW GUILTY PLEA, PURSUANT TO NRS 176.165,
23 ALONG WITH AN ADDENDUM, DECLARATION AND
24 MEMORANDUM OF FACTS AND LAW IN SUPPORT
25 OF PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL.

1 IN REPLYING TO THE STATE'S RESPONSE TO
2 PETITIONER'S WRIT AND VARIOUS SUBSEQUENT PLEADINGS,
3 PETITIONER RESPECTFULLY ASK THE COURT NOT TO HOLD HIM
4 TO THE SAME STRINGENT STANDARDS THAT ARE REQUIRED
5 FROM ATTORNEYS, HAINES VS KERNER, 404 U.S. 519, 520 (1972);
6 U.S. VS WEEKS, 653 F.3d 1188, 1206 (10th Cir. 2011) ---,
7 MOTION CONSTRUCTED LIBERALLY TO INCLUDE ADDITIONAL
8 CLAIM(S) OF INEFFECTIVE ASSISTANCE OF COUNSEL.
9 THIS REPLY IS BASED ON ALL DOCUMENTS, PLEADINGS
10 AND RECENT MOTIONS) FILED, AND POINTS AND AUTHORITIES
11 IN SUPPORT,

12 13 PROCEDURAL HISTORY

14
15 ON FEBRUARY 4TH 2019, CASTRO PLED GUILTY TO ONE
16 COUNT OF FIRST DEGREE KIDNAPPING RESULTING IN -
17 SUBSTANTIAL BODILY HARM, FOLLOWED BY THE IMPOSITION
18 OF A SENTENCE, LIFE WITHOUT THE POSSIBILITY OF -
19 PAROLE, ON MARCH 27, 2019.

20 ON NOVEMBER 24, 2020, THE NEVADA SUPREME
21 COURT AFFIRMED PETITIONER'S JUDGMENT OF CONVICTION.
22 REMITTITUR ISSUED, ACCORDING TO THE DEPUTY DISTRICT
23 ATTORNEY JOHN NIMMO, ON NOVEMBER 27, 2020

24 ON MAY 12, 2021, PETITIONER MAILED TO THE
25 EIGHTH JUDICIAL DISTRICT COURT, POST CONVICTION

1 PETITION FOR WRIT OF HABEAS CORPUS, MOTION TO WITHDRAW
2 PLEA, EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND
3 REQUEST FOR EVIDENTIARY HEARING, WHICH WERE NOT FILED
4 UNTIL JUNE 7TH, 2021

5 ON JUNE 22, 2021, CASTRO, MAILED PETITIONER'S
6 SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS,
7 WHICH WAS FILED ON JULY 6, 2021

8 ON JULY 5, 2021, CASTRO, HANDED TO AN ELY STATE
9 PRISON OFFICER, AN ADDENDUM TO PETITIONER'S EX
10 PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST
11 FOR AN EVIDENTIARY HEARING, INCLUDING A DECLARATION
12 AND MEMORANDUM OF FACTS AND LAW IN SUPPORT,
13 THOSE WERE RECEIVED BY THE CLERK'S COURT ON,
14 JULY 12, 2021, AND FILED ON JULY 14, 2021

15 16 ARGUMENT

17
18 THE STATE ARGUES IN THEIR RESPONSE (PAGE 6, LINES
19 4 TO 6) "... THE VALIDITY OF THE GUILTY PLEA AND INEFFEC-
20 TIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL MUST
21 BE RAISED ON DIRECT APPEAL, OR WAIVED IN SUBSE-
22 QUENT PROCEEDINGS. THIS IS AN EGREGIOUS DENIAL
23 OF DUE PROCESS OF LAW. BECAUSE THE ATTORNEY(S)
24 HAVE COMPLETE CONTROL OF THE ISSUES THAT ARE TO
25 BE PRESENTED ON DIRECT APPEAL," AND THEY HAVE

1 TENDENCY OF COVERING UP EACH OTHERS DEFICIENCIES,
2 SOME QUITE DISGRACEFUL. IT IS PERPLEXING AND
3 DOUBTFUL THAT AN APPELLATE COUNSEL WOULD -
4 ADDRESS HIS OWN INEFFECTIVENESS WHILE HE/SHE
5 PREPARES BRIEF ON DIRECT APPEAL, ON BEHALF OF
6 HIS/HER CLIENT.

7 THE SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSIS-
8 TANCE OF COUNSEL DURING PLEA-BARGAINING, IS
9 NOT A SUGGESTION, IS A CONSTITUTIONALLY GUARANTEED
10 RIGHT. IN JACOB LEE VS U.S., 582 U.S. — (2017)
11 THE SUPREME COURT HELD: WHEN A DEFENDANT CLAIM
12 THAT HIS COUNSEL'S DEFICIENT PERFORMANCE DE-
13 PRIVED HIM OF A TRIAL, BY CAUSING HIM TO ACCEPT
14 A PLEA, THE DEFENDANT CAN SHOW PREJUDICE BY DEMONS-
15 TRATING A 'REASONABLE PROBABILITY' THAT BUT FOR
16 COUNSEL'S ERROR (IMPROPER PROMISES) HE WOULD NOT
17 HAVE PLEADED GUILTY AND WOULD HAVE INSISTED ON
18 GOING TO TRIAL. SEE: HILL V LOCHART 474 U.S. 52, 59,
19 106 S. CT. 366 (1985); MISSOURI MO. V FRYE 132 S. CT. -
20 1399, 1403 (2012) - INEFFECTIVENESS OF COUNSEL
21 TEST EXTENDS TO COUNSEL'S CONDUCT DURING
22 PLEA NEGOTIATIONS.

23 FURTHERMORE, THE DECISION TO PLEAD GUILTY OR
24 CONTEST A CRIMINAL CHARGE IS ORDINARILY THE MOST
25 IMPORTANT DECISION IN ANY CRIMINAL CASE. THIS
26

1 DECISION MUST BE COGNITIVELY MADE BY THE CLIENT. HERE,
2 THE CLIENT - CASTRO, HAS SIGNIFICANT DEVELOPMENT DIF-
3 FICULTY AND PSYCHOLOGICAL DEVELOPMENT "PLATEAUED"
4 AT HIS TEENAGE YEARS. THEREFORE, HIGHLY SUSCEPTIBLE
5 TO SUGGESTION - EASILY MANIPULATED, A MARIONETTE IN
6 THE HANDS OF DEFENSE COUNSEL, BORIA VS KEANE, -
7 99 F.3d 492, 496-97 (2ND CIR 1996).

8 THE UNITED STATES SUPREME COURT NOTED THE IMPOR-
9 TANCE OF 'PLEA NEGOTIATIONS' IN SANTOBELLO V NEW YORK,
10 404 U.S. 257, 261 (1971). AT THE END OF THE DAY, IT IS
11 THE VERY NATURE OF THIS PROCESS INVOLVES A "QUID -
12 PRO QUID". THE GOVERNMENT AVOIDS THE TIME AND
13 EXPENSE OF A TRIAL AND THE DEFENDANT SECURES A
14 FAIR OUTCOME. U.S. ex rel CARUSO V. ZELENSKI,
15 689 F.2d 435, 438 (3RD CIR 1982).

16 HERE, TRIAL ATTORNEY - MR. GELLER, WAS PAID
17 \$85,000.00 DOLLARS TO DEFEND AND/OR NEGOTIATE A
18 FAIR/JUST SENTENCE ON BEHALF OF PETITIONER.
19 INSTEAD, MR. GELLER'S REPRESENTATION CONSISTED
20 IN A LEGION OF ERRORS - FAILURES TO PROTECT PETITIONER'S
21 CONSTITUTIONAL RIGHTS. SUCH AS, FAILURE TO EXPLAIN TO
22 THE COURT WHY THE SENTENCE LIFE WITHOUT THE
23 POSSIBILITY OF PAROLE WAS/IS "SUBSTANTIVELY -
24 UNREASONABLE." PARTICULARLY, WHEN THE COURT
25 IN ITS CONSIDERATION OF PETITIONER'S SENTENCE

1 ATTRIBUTED INCORRECTLY THE CO-DEFENDANTS CRIMINAL
2 RECORDS AND OTHER PENDING MATTERS TO HIM.

3 MR. GELLER, FAILED TO SEVER CASTRO'S CASE
4 FROM THE OTHER DEFENDANTS THAT WERE UNDER THE SAME
5 INDICTMENT/INFORMATION; AND AFTER HE GAVE THE
6 ASSURANCE THAT HIS CASE WOULD BE PROSECUTED
7 SEPARATELY, MR. GELLER, GAVE PETITIONER'S PARENTS
8 THIS ASSURANCE, (SEE: ATTACH AFFIDAVIT IN PETITIONER'S
9 SUPPLEMENT, FILED JULY 6TH 2021)

10 DEFENSE COUNSEL FAILED TO OBJECT AND/OR ARGUE
11 THE COURT'S ABUSE OF DISCRETION, WHEN IT UNREA-
12 SONABLY DEMANDED THAT THE ACCEPTANCE OF THE
13 PLEA WAS CONTINGENT UPON ALL FOUR (4) DEFENDANTS
14 ACCEPTING THEIR RESPECTIVE NEGOTIATIONS, (SEE -
15 GUILTY PLEA AGREEMENT, PAGE 1, LINES 21 AND 22).

16 FURTHERMORE, THE 'UNBARGAIN' PLEA AGREEMENT
17 RESULTED IN THE SAME, RATHER, WORST OUTCOME
18 HAD THE CASE GONE TO TRIAL, BECAUSE THE -
19 PROSECUTION WOULD HAVE HAD TO PROVE EACH OF
20 THE ELEMENTS OF THE CHARGES BROUGHT AGAINST
21 THE PETITIONER, IN WHICH CASE CASTRO'S ALIBI
22 AND LACK OF D.N.A EVIDENCE COULD HAVE HAD
23 AN ENORMOUS EFFECT ON THE JURORS. ESPECIALLY,
24 WHEN THEY LEARN THAT CASTRO LEFT WITH THE
25 CO-DEFENDANTS STARTED TO BECOME VIOLENT. -

1 CASTRO'S CONSTITUTIONAL RIGHTS COULD HAVE
2 BEEN PRESERVED AND 'ALL' THE FACTS OF THIS CASE
3 COULD HAVE BEEN REVEALED. INCLUDING, THE PROSECUTION'S
4 COACHING THE VICTIM, TO IDENTIFY CASTRO AS
5 ONE OF THE ASSAILANTS, EVEN MORE IMPORTANTLY,
6 THE TRIAL IN ALL LIKELIHOOD, WOULD HAVE SHOWN
7 THAT CASTRO, LACKED THE MENTAL CAPACITY TO -
8 ORCHESTRA THE ORDEAL.

9 DEFENSE COUNSEL DID NOT OBJECT ONCE,
10 TO THE MANY PREJUDICIAL STATEMENTS MADE
11 DURING THE PRELIMINARY HEARINGS.

12 THE MOST EGREGIOUS CONDUCT BY TRIAL COUNSEL,
13 WAS THE DECEITFUL ALLEGATION HE MADE TO CASTRO'S
14 PARENTS. HE TOLD THEM THAT CASTRO'S SENTENCE
15 WILL RANGE BETWEEN 15 TO 25 YEARS, IF HE
16 ACCEPTED THE PLEA. WITH THIS FALSE ASSERTION
17 MR. AND MRS. CASTRO, THREATEN PETITIONER WITH
18 THE LOSS OF THEIR SUPPORT IF HE FAIL TO ACCEPT
19 THE GUILTY PLEA AGREEMENT. IF NOT FOR TRIAL
20 COUNSEL'S INAPPROPRIATE AND MISLEADING ADVICE
21 TO PETITIONER'S PARENTS, CASTRO WOULD HAVE
22 TAKEN THE CASE TO TRIAL. FRANKLY, IT IS EASY
23 TO INFER THAT DEFENSE COUNSEL INTENDED ALL
24 ALONG TO CONVINCE PETITIONER TO PLEA OUT-ACCEPT
25 WHATEVER THE STATE OFFERED. YOU WOULD

1 THINK THAT \$85,000.⁰⁰ DOLLARS, WOULD MOVE AN
2 ATTORNEY TO AT LEAST NEGOTIATE ON BEHALF OF HIS
3 CLIENT AN ACTUAL PLEN AGREEMENT - SENTENCE
4 MORE FAVORABLE CONSIDERING THE ACTUAL PARTICI-
5 PATION OF HIS CLIENT IN THE CRIME COMMITTED,
6 THEREFORE, IT IS CLEAR, THAT CASTRO RECEIVED
7 INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF
8 HIS 5TH, 6TH AND 14TH AMENDMENTS.

9
10 THE NEVADA RULES OF CIVIL PROCEDURES, RULE 15,
11 ALLOWS A PARTY TO AMEND AND SUPPLEMENT -
12 PLEADINGS; AND NRS 34.750 (3) ALLOW THE
13 APPOINTED COUNSEL BY THE COURT TO FILE AND
14 SUPPLEMENTAL PLEADINGS. HERE, PETITIONER,
15 IS ASSISTED BY A FELLOW PRISONER, BECAUSE
16 CASTRO DOES NOT HAVE THE MENTAL CAPACITY
17 TO HELP HIMSELF. (EL MEDINA, AS VERY LITTLE
18 UNDERSTANDING OF THE LAW, AND IS SUBJECT TO BE
19 TRANSFERRED AT ANY DAY NOW).


20 AS PREVIOUSLY MENTIONED, PETITIONER,
21 HAS THE MATURITY OF A TEENAGER AT BEST, THEREFORE,
22 IS INCAPABLE TO PROSECUTE THIS CASE TO THE
23 COURT. APPOINTMENT OF COUNSEL, IS THE ONLY
24 HUMANLY FAIR SOLUTION.

1 CONCLUSION

2
3 WHEREFORE, PETITIONER PRAYS AND RESPECT-
4 FULLY REQUEST THAT THIS HONORABLE COURT
5 'GRANT' PETITION FOR WRIT OF HABEAS CORPUS-
6 POST CONVICTION, NRS 34,740, AND TO WITHDRAW
7 GUILTY PLEA, PURSUANT TO NRS 176.165 AND PERMIT
8 ~~THE~~ SUPPLEMENT HIS CLAIMS AS STATED. HEREIN, THE
9 ERRORS OF COUNSEL, DEFINE THE INADEQUATE
10 REPRESENTATION OF PETITIONER'S CASE.

11
12 DATED THIS 18TH DAY OF AUGUST, 2021

13
14 Respectfully Submitted

15
16 
17 _____
18 LUIS A. CASTRO, 1214547

19 PETITIONER, IN PRO SE

20 Ely STATE PRISON

21 P.O. Box 1989

22 Ely, NV. 89301

23 Prepared By

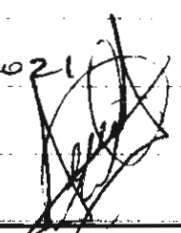
24 ALBERT MEDINA, 74738
25 ON BEHALF OF

26 L.A. CASTRO.

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRE-
3 CEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY
4 NUMBER OF ANY PERSON.

5
6 DATED THIS 18TH DAY OF AUGUST 2021

7 
8
9 Luis A. Castro, # 1214547
10

11 CERTIFICATE OF SERVICE BY MAIL

12
13 I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND
14 FOREGOING WAS MAILED ON THIS 18TH DAY OF AUGUST 2021,
15 BY HANDING IT TO AN ELY STATE PRISON OFFICER, WHO WILL
16 DEPOSIT A COPY IN THE U.S. MAIL, POSTAGE PREPAID
17 ADDRESSED TO:

18 MR. JOHN NIMAN

19 DEPUTY DIST. ATTY.

20 P.O. BOX 552212

21 LAS VEGAS, NV

22 89155-2212

CLERK OF THE COURT

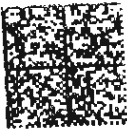
8TH JUD. DIST. COURT

P.O. BOX 551160

LAS VEGAS, NV. 89155-1160

23
24 
25 Luis A. Castro, # 1214547
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Mr Lewis A Carbo
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Elko Nevada, 89301



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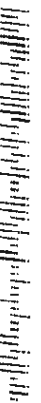
AUG 24 2021

CITY OF ELKO, NEVADA

Clerk of the Court
8th Judicial District Court
200 Lewis Avenue, 3rd Fl.
P.O. Box 551160
Las Vegas Nv. 89155-1160

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NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LUIS CASTRO,

Petitioner,

Case No: A-21-835827-W

Dept. No: XXX

vs.

STATE OF NEVADA,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on September 21, 2021, 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 September 23, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 23 day of September 2021, 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:

Luis Castro # 1214547
P.O. Box 1989
Ely, NV 89301

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heather S. Smith
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

LUIS ANGEL CASTRO,)	
)	
Petitioner,)	CASE NO.: A-21-835827-W
)	DEPT. NO.: XXX
vs.)	
)	ORDER RE: PETITION FOR WRIT
STATE OF NEVADA,)	OF HABEAS CORPUS AND RE:
)	PLAINTIFF'S MOTION FOR
Defendant.)	APPOINTMENT OF COUNSEL AND
)	FOR EVIDENTIARY HEARING

INTRODUCTION

The above-referenced matter is scheduled for a hearing on September 23, 2021, with regard to Petitioner Luis Castro's Petition for Writ of Habeas Corpus. Pursuant to the Administrative Orders of this Court, and N.R.Cr.P. 8(2), this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On March 10, 2016, Luis Angel Castro (hereinafter "Petitioner") was charged by way of Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B Felony); Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ; Count 3 - Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping with Use of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly Weapon (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B Felony); Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-defendants.

On April 12, 2019, Petitioner was bound up to the District Court on all charges following a preliminary hearing. After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea Agreement ("GPA"), the offer was contingent upon all four (4) Defendants accepting their respective negotiations and being

1 sentenced. All Parties agreed that the State would have the right to argue for Life
2 without the possibility of Parole, and the Defense will argue for Life with the possibility
3 of Parole after fifteen (15) years. All Parties agreed that no one would seek a term of
4 years. (See GPA).

5 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24,
6 2019, Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro
7 ("Petitioner's Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life
without the possibility of Parole in the Nevada Department of Corrections.

8 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's
9 Judgment of Conviction. Remittitur issued on November 17, 2020.

10 Petitioner Luis A. Castro sent his pro per Petition for Writ of Habeas Corpus and
11 to Withdraw Guilty Plea and a separate Ex Parte Motion for Appointment of Counsel
12 and Request for Evidentiary Hearing on May 12, 2021. Thereafter, both were received
13 by the Clerk of Court and e-filed on June 7, 2021. On June 22, 2021, Petitioner sent a
14 Supplement to Petition for Writ of Habeas Corpus, which was received by the Clerk of
15 Court and e-filed on July 6, 2021.

16 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

17 Petitioner seeks to withdraw his guilty plea entered on 2/4/19 on the basis he
18 was denied his right to effective assistance of counsel during the plea-bargain process,
19 and that his plea was not given voluntarily or intelligently. Petitioner states he was not
20 competent to enter the plea because of his seventh-grade education, and his psychiatric
and medical conditions at the time of his plea.

21 First, Petitioner asserts that at the time he entered his guilty plea, "he was
22 heavily medicated and not competent, nor able to fully appreciate, understand, and
23 waive his fundamental Constitutional rights." He further states that "the Court
24 remained oblivious to the most vital aspect of the plea colloquy, which centered on his
25 perception and mental health state at the time the plea was induced." (See Petition at
26 pg. 3 of 14). Moreover, an evidentiary hearing will clearly establish that the mental
27 health "crisis and a newly prescribed and substantially powerful daily antipsychotic
28 medication had adversely affected and impacted his competency during the plea." *Id.*

1 Petitioner argues that a review of the transcripts of the plea hearing will not
2 clearly establish he fully understood his rights. Only an evidentiary hearing will
3 definitely establish his psychotic condition at the time of his plea, which precluded his
4 ability to voluntarily and intelligently plea guilty. Petitioner cites to *Wilkins v.*
5 *Bowersox*, 145 F.3d 1006 (8th Cir. 1998), as support for his argument. Petitioner
6 argues that he is an unsophisticated person who was able to correctly answer simple
7 questions during the plea canvas at defense counsel's direction, but that is not enough
8 to establish that he fully understood what rights he gave up or what duties his attorney
9 failed to perform.

10 Given his seventh-grade education, history of drug abuse, and inherited bipolar
11 disorder, Petitioner asserts that his attorney, Mr. Warren Geller, was able to easily
12 instruct and/or manipulate him to answer every question of the Court by simply
13 responding "yes" to every question. He suggests that on page 7 of the plea canvass,
14 there is evidence that he was poorly advised by counsel. Petitioner argues that Mr.
15 Geller did not discuss any of the immigration consequences of a guilty plea with
16 Petitioner, and consequently, the plea must be found involuntary.

17 Petitioner argues his guilty plea must be withdrawn because it was
18 fundamentally unfair and manifested injustice, because Mr. Geller "talk[ed] him into
19 accepting a 'blind plea' that did not benefit him at all." Petitioner suggests that he was
20 on suicide crisis placement and then discharged with newly prescribed anti-psychotic
21 medication, shortly before the plea, and Mr. Geller should have alerted the Court that
22 these changes had a substantive cognitive impact on him. Further, Petitioner argues
23 that the State will not be prejudiced by his withdrawal of plea because the case is "not
24 so old" and the totality of the circumstance's manifest injustice.

25 According to Petitioner, Mr. Geller intimidated and misinformed Petitioner's
26 mother, in order to force Petitioner into accepting a plea, because otherwise she would
27 withdraw her support from him. Petitioner alleges that Mr. Geller assured his mother
28 that he would receive a sentence of 15 years to life with the possibility of parole.
Because he did not receive a benefit from the plea agreement, Petitioner's Sixth
Amendment rights were violated.

1 Petitioner takes issue with the District Court's decision to sentence him to life
2 without the possibility of parole. While he understands the Court had wide discretion to
3 impose a sentence and that the sentence imposed on him was within the statutory limit,
4 Petitioner argues his sentence is not in the best interest of judicial proceedings.

5 Petitioner argues that it doesn't make sense for him to take a plea for a sentence that
6 would have been the same had he gone to trial. Had this case gone to trial, the evidence
7 would have revealed that he played a minimal role in the crime, that he tried to stop his
8 co-defendants, the only reason he did not call the police was out of fear for his family,
and that there was no DNA evidence.

9 He argues that the ultimate sentence imposed shocks the conscience given his
10 lack of prior convictions for violent offenses, the fact he left the scene, and that he was
11 not aware the crime would become violent. Petitioner states that his sentence of life
12 without the possibility of parole "is so unreasonably disproportionate to the offense and
13 [his] role in the offense as to shock the conscience and amounts to cruel and unusual
14 punishment in violation of the Eighth Amendment of the United States Constitution
and Article I, Section VI of the Nevada Constitution." (See Petition at pg. 11 of 14.)

15 In his "Supplemental Petition," Petitioner focuses on Mr. Geller's alleged
16 ineffective assistance of counsel. Petitioner argues that Mr. Geller was ineffective by
17 failing "to object and/or argue the Court's unreasonable demand. The demand that the
18 acceptance of the plea was contingent upon all four (4) Defendants accepting their
19 respective negotiations." (See Supplemental Petition at pg. 6 of 15).

20 Petitioner again states that the plea agreement resulted in the same, or a worse
21 outcome than if the case had gone to trial, because the State would not have been able
22 to prove its case. Had the case gone to trial, the "facts" would have been revealed,
23 including that the prosecution coached the victim into identifying Petitioner as one of
24 the people who harmed him. And trial could have shown Petitioner lacked the mental
capacity to orchestrate the ordeal.

25 According to Petitioner, Mr. Geller's counsel constituted "as a 'Trump Con'-
26 fraudulent legal representation," because he told Petitioner's parents that the sentence
27 would range between 15 to 25 years in prison if he accepted. Petitioner stated that his
28 parents then threatened him with loss of support if he did not accept the offer, which
left him no alternative but to take the guilty plea. Mr. Geller was paid \$85,000.00 to

1 defend and/or negotiate a fair sentence on behalf of petitioner. Petitioner stated Mr.
2 Geller failed to sever Petitioner's case from the co-defendants, and provided a "lack of
3 legal representation" which "was a disgrace and amounted to beguilement." (See
4 Supplemental Petition at pg. 6 of 15).

5 Petitioner argues that it is "very unlikely [Mr. Geller] spen[t] more than ten
6 hours working on this case, averaging \$8,500.00 an hour. For this hourly rate he could
7 have tried to be an effective attorney or at the very, very minimum, negotiated the plea-
8 sentence." (See Supplemental Petition at pg. 8 of 15.)

9 In his Supplement, Petitioner again argues that the Court's sentence was
10 disproportionate, and constituted cruel and unusual punishment in violation of the
11 Eighth Amendment.

12 Finally, Petitioner also argues that an evidentiary hearing is necessary so that his
13 parents can testify about Mr. Geller's alleged promise to induce Petitioner to accept the
14 plea offer. The evidence is necessary in order for the Court to determine if Petitioner
15 was afforded constitutionally sufficient advice so that he could intelligently and
16 knowingly waive his important constitutional trial.

17 The Court notes that the Petitioner attached as an exhibit to his Supplement, a
18 letter allegedly from his parents supporting his arguments regarding Mr. Geller.

19 With regard to the Petitioner's request for appointment of counsel, Petitioner
20 argues that the Court should consider that his Writ of Habeas Corpus has real merit.
21 Further, the Court should consider the factual complexity of this case, the ability of the
22 indigent to investigate the facts, the existence of conflicting testimony, the ability of the
23 indigent to present his claim(s) and the complexity of the legal issues.

24 In Return, the State first notes the procedural and factual background of this
25 matter and the underlying criminal case. Because Petitioner's Supplemental Petition
26 and Memo in Support were filed after he filed this Petition and filed without leave of
27 Court, the State argues those pleading should be stricken and/or any new claims or
28 allegations contained therein should be summarily denied, pursuant to NRS 34.750 (5).
Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a
petitioner from filing any additional pleadings or supplements, except for those
specifically provided for in subsections (2)-(4), unless ordered by the Court.

1 With regard to Petitioner's argument that his guilty plea was involuntary
2 because he was mentally incompetent during the plea canvass and "did not have the
3 mental capacity or fully understand his rights and did not know what he was facing
4 when he pled guilty," the State contends this claim is belied by the record.
5 To determine whether a guilty plea was voluntarily entered, the Court will review the
6 totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at 271,
7 721 P.2d at 367. A proper plea canvass should reflect that:

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

14 *Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86
15 Nev. 774, 476 P.2d 950 (1970)).

16 As an initial matter, Petitioner attempts to draw similarities between this case
17 and *Wilkins v. Bowersox*, 145 P.3d 1006 (8th Cir. 1998), but the State argues that
18 Eighth Circuit case law is irrelevant and inapplicable here, particularly in light of the
19 fact that the totality of the circumstances establish that Petitioner's plea was
20 voluntarily, knowingly, and intelligently entered. First, Petitioner signed his GPA and
21 affirmed that he was "signing this agreement voluntarily, after consultation with [his]
22 attorney, and [was] not acting under duress or 'coercion[.]'" (GPA, at pg. 5.) Petitioner
23 further affirmed that he was not "under the influence of any intoxicating liquor-, a
24 controlled substance or other drug which would in any manner impair [his] ability to
25 comprehend or understand [the] agreement or the proceedings surrounding [the] entry
26 of [the] plea." (GPA, at pg. 5).

27 Next, despite Petitioner's claim to the contrary, his answers during his plea
28 colloquy were not perfunctory affirmations. Petitioner's answers during the plea
canvass further bely any claim that Petitioner was not competent to plead guilty or did
not understand what he was pleading guilty to. See Recorder's Transcript of Hearing-
Entry of Plea ("RT: EOP"), at 45-6 (February 4, 2019).

Additionally, Petitioner's allegation that his plea was invalid because he was on
suicide watch in the days preceding his guilty plea is nothing but a bare and naked
allegation that his unsupported by the record. According to the sentencing

1 memorandum filed by counsel prior to sentencing, Petitioner received three
2 neuropsychological evaluations on February 21, March 5, and March 7, 2019, after he
3 entered his plea. (Petitioner's Sentencing Memo at pg. 11). However, the only suicide
4 attempt mentioned in those evaluations is an incident from years prior to Petitioner's
5 incarceration. *Id.* at 15. Therefore, the claim that Petitioner was on suicide watch is
6 unfounded and belied by the reports provided by the defense in preparation for
7 sentencing. Accordingly, Petitioner's claim that he was not competent to plead guilty
8 fails.

9 In response to Petitioner's argument that the guilty plea was entered into with
10 effective assistance of counsel, the State argues that this also fails. Petitioner
11 acknowledges that his sentence is legal but believes that his sentence is disproportion
12 and shocks the conscience because he did not have any prior criminal history, there was
13 no evidence of his DNA at the crime scene, and Petitioner suffers from various mental
14 conditions, and this also fails. The State argues that Petitioner's signature on his GPA
15 and answers during his plea canvass belie any claim of ineffective assistance of counsel.
16 Petitioner claims that his counsel did not discuss the consequences of the plea on
17 Petitioner's immigration status, but this is completely unfounded and belied by the
18 record. By signing the GPA, Petitioner affirmed that he did understand the
19 immigration consequences. (See GPA, at pgs. 3-4). Moreover, during the plea canvass,
20 Petitioner and his attorney discussed the immigration consequence. (See RT: EOP, at
21 7-8). Additionally, this claim is belied by the record at sentencing. In the Sentencing
22 Memo, counsel stated, "the parole board may deem it appropriate to release him to
23 Immigration and Customs Enforcement for removal from the United States." (See
24 Petitioner's Sentencing Memo at 7-8). During sentencing, Petitioner's counsel
25 referenced the possibility of Petitioner's deportation to Mexico multiple times and even
26 used that fact to argue in favor of possible parole. Recorder's Transcript of Proceedings
27 Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019). Specifically, counsel
28 stated, "There is an ICE hold. If...the Court...granted the defense's request for parole
eligibility at 15 years...the parole board would have the option to say, you know what
federal government, now you can take Mr. Castro and deport him to Mexico...if the
Court sentences him to life without, no matter what the circumstances are, we're always
going to be paying for his incarceration." *Id.* at 7-8. Additionally, Petitioner addressed

1 the court and made no mention that he was never informed of or advised about
2 potential immigration consequences. (*Id.* at 10- 11). Therefore, Petitioner's claim that
3 he was not aware of the consequences of immigration fails as it is belied by the record.

4 With regard to Petitioner's argument that counsel intimidated and lied to
5 Petitioner's parents, in order to induce Petitioner into pleading guilty, this is a bare and
6 naked allegation suitable only for summary denial. In signing the GPA, Petitioner
7 confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty
8 plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was]
9 satisfied by the services provided by [his] attorney." Additionally, when Petitioner
10 signed the GPA, he acknowledged that he understood that he was waiving his right to a
11 jury trial. (GPA at 4). Moreover, during the plea canvass, Petitioner confirmed that he
12 was waiving his right to challenge the evidence at trial. (RT: EOP, at 5-6). Further,
13 Petitioner has failed to articulate what other investigation or challenge to the evidence
14 counsel should have engaged in, prior to Petitioner's guilty plea that would have
15 resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This
16 failure is fatal. *Hill*. 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot
17 be deemed ineffective. Specifically, Petitioner further confirmed that he was satisfied
18 with counsel during his plea canvass and affirmed that he had not been threatened into
19 pleading guilty RT: EOP, at 4-7.

20 Petitioner's claim that counsel promised him a sentence of fifteen (15) years to
21 life, or any other sentence, is a bare and naked claim that is entirely belied by the
22 record. Petitioner's signed GPA first states that pursuant to the negotiations, while
23 counsel could argue for a sentence of fifteen (15) years to life, Petitioner understood he
24 was not guaranteed that sentence. GPA at 3. Petitioner's answers during the plea
25 canvass further confirms that Petitioner understood the terms of the negotiations and
26 belie any claim that he believed he would receive a particular sentence RT: EOP, at 6.
27 While counsel indeed argued during sentencing that Petitioner should receive a
28 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did
not honor that request does not render counsel deficient.

Petitioner's claim that his sentence of life without the possibility of parole
suggests that counsel was ineffective during the plea negotiations fails. Counsel filed a
sixty-eight (68) page sentencing memo, which included a detailed history of

1 Petitioner's upbringing, a neuropsychological evaluation that was completed at
2 Attorney Geller's request, and multiple letters of support for Petitioner. In this
3 sentencing memo, Attorney Geller made a passionate argument for the possibility of
4 parole based on all of the applicable mitigating factors. Petitioner's Sentencing Memo
5 at 6-8.

6 Counsel then made a similarly passionate argument during the sentencing
7 hearing highlighting (1) Petitioner's lack of criminal history; (2) childhood trauma that
8 led to self-medicating with drugs; (3) the support Petitioner had from his family; (4)
9 Parole and Probation's recommended sentence of fifteen (15) years to life; (5)
10 Petitioner's consistent claim that he was not one of the people who handled the weapon
11 or touched the victim; (6) DNA results showing that Petitioner's DNA was not on the
12 weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance camera
13 footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.
14 Indeed, the record is clear that the district court acknowledged that while a defendant's
15 lack of criminal history and obvious substance abuse problems tend to incline the court
16 to be merciful at sentence, neither factor negated the "horrific crimes" committed. *Id.*
17 at 23-24.

18 Further, the State also notes that Petitioner was sentenced with his three co-
19 defendants, all of whom entered into the same plea negotiations, and all of whom
20 received the same sentence of life without the possibility of parole. Of the other co-
21 defendants, only co-defendant Edward Honabach filed a Post-Conviction Writ of
22 Habeas Corpus ("Honabach's Petition"). See *Honabach v. William Gittere*, A-20-
23 812948-W, Petition Post-Conviction Writ of Habeas Corpus filed March 27, 2020). In
24 Honabach's Petition, Honabach made similar claims to those contained in this instant
25 Petition, in that he claimed his plea was involuntarily entered and his counsel was
26 ineffective because he was not advised that he could receive life without the possibility
27 of parole. *Id.* The Court summarily denied Honabach's Petition, finding that the Guilty
28 Plea Agreement and the record of plea canvass proceedings demonstrate that
Honabach's "guilty plea was made freely and voluntarily, and that he understood the
nature of the offense and the consequences of his plea." *Honabach v. William Gittere*,
A-20-812948-W, Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23,
2020). Because Petitioner raises factually similar claims, signed the same Guilty Plea

1 Agreement, and was canvassed during the same proceeding as Honabach, the Court's
2 reasoning and denial of Honabach's petition suggests that Petitioner's instant petition
3 should be summarily denied.

4 With regard to Petitioner's claim that his sentence is cruel and unusual, this is
5 not a claim of ineffective assistance of counsel, nor is it a challenge to the validity of
6 Petitioner's guilty plea. Accordingly, it should have been raised on direct appeal, and is
7 beyond the scope of habeas proceedings and therefore waived. *Franklin*, 110 Nev. at
8 752, 877 P.2d at 1059. Further, Petitioner already raised this claim which was rejected
9 by the Nevada Court of Appeals.

10 The Court of Appeals already ruled that although Castro claimed his sentence
11 constitutes cruel and unusual punishment, the sentence falls within the parameters of
12 the relevant statute. See NRS 200.320(1)(a). He did not allege that the statute is
13 unconstitutional, and the Court concluded that the sentence imposed was not grossly
14 disproportionate to his crime and did not constitute cruel and unusual punishment.
15 Order of Affirmance, *State v. Castro*, Docket No: 78643-COA, at 3-4 (filed August 12,
16 2020).

17 Based on this ruling by the Court of Appeals, the State argues that this claim is
18 barred by the doctrine of law of the case. "The law of a first appeal is law of the case on
19 all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91
20 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343. 455
21 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more
22 detailed and precisely focused argument subsequently made after reflection upon the
23 previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,
24 issues previously decided on direct appeal may not be reargued in a habeas petition.
25 *Pellegrini v. State*, 117 Nev. 860, 879, 34P.3d519, 532 (2001) (citing *McNelson v. State*,
26 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
27 overrule the Nevada Supreme Court. NEV. CONST. Art. VI§ 6. Accordingly, by simply
28 continuing to file petitions with the same arguments, Petitioner's claim is barred by the
doctrine of the law of the case. *Id.*; *Hall v. State*, 91Nev.314, 316, 535 P.2d 797, 799
(1975).

The Eighth Amendment to the United States Constitution as well as Article I,
Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual

1 punishment. The Nevada Supreme Court has stated that "[a] sentence within the
2 statutory limits is not 'cruel and unusual punishment unless the statute fixing
3 punishment is unconstitutional or the sentence is so unreasonably disproportionate to
4 the offense as to shock the conscience.'" *Allred v. State*, 120 Nev. 410, 92 P.2d 1246,
5 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)
6 (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).
7 As long as the sentence is within the limits set by the legislature, a sentence will
8 normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev. 344, 871 P.2d
9 950 (1994).

10 The Nevada Supreme Court has consistently echoed its standard of review for
11 claims of excessive criminal sentences: "[r]egardless of its severity, a sentence that is
12 'within the statutory limits is not 'cruel and unusual punishment unless the statute
13 fixing punishment is unconstitutional or the sentence is so unreasonably
14 disproportionate to the offense as to shock the conscience.'" *Harte v. State*, 132 Nev.
15 410, 373 P.3d 98 (2016) (internal quotations omitted). The *Harte* Court also expressly
16 held that it will "not review nondeath sentences for excessiveness." *Id.* In this case,
17 Petitioner acknowledged as part of his guilty plea that the State would have the right to
18 argue for a sentence of life without the possibility of parole. While Petitioner views that
19 sentence as harsh, he was involved in the kidnapping, torturing, and mutilation of the
20 victim and an attempt to burn down the location of the crime after the defendants
21 believed the victim had died. In fact, the sentencing judge stated, "if you had been
22 successful in this, this would have been a capital murder case and you all would be
23 looking at potentially a capital sentence." Therefore, the harshness of the penalty
24 imposed is not disproportionate to the crime. Further, in sentencing, the Court did
25 consider all of the mitigating factors Petitioner raises again here.

26 As for Petitioner's request for appointment of counsel, the State argues that
27 Petitioner has not demonstrated that counsel should be appointed pursuant to NRS
28 34.750. Additionally, Petitioner's request should be summarily denied because all of his
claims are belied and repelled by the record. *Hargrove v. State*, 100 Nev. 498, 502, 686
P.2d 222, 225 (1984). Petitioner has failed to include any factual allegations in the
initial Petition that demonstrate counsel should be appointed. Although the
consequences Petitioner faces are severe as he is serving life without the possibility of

1 parole, that fact alone does not require the appointment of counsel. The issues are not
2 difficult because Petitioner's claims are meritless and belied by the record as discussed
3 supra. Despite the claims' futility, Petitioner does not and cannot demonstrate that he
4 had any trouble raising the issue

5 Additionally, there has been no indication that Petitioner is unable to
6 comprehend the proceedings here. He managed to file a Motion to Withdraw Counsel,
7 this instant Petition, and two supplemental pleadings without the assistance of counsel.
8 Finally, counsel is not necessary to proceed with further discovery in this case.
9 Petitioner himself indicates that he has provided the Court with the information
10 needed to grant him relief. Due to habeas relief not being warranted, there is no need
11 for additional discovery, let alone counsel's assistance to conduct such investigation

12 Lastly, the State argues that Petitioner is not entitled to an evidentiary hearing.
13 All of the Petitioner's factual assertions are belied by the record in this case. Every
14 claim is nothing but a bare and naked assertion that is repelled by the record. As all of
15 Petitioner's claims fail, he has likewise failed to demonstrate that the record needs to be
16 expanded through an evidentiary hearing. Therefore, the Petition can be resolved on
17 the pleadings and an evidentiary hearing is not required, nor is Petitioner entitled to
18 one.

19 In Reply, Petitioner argues that it is perplexing and doubtful that an appellate
20 counsel would address his own ineffectiveness while he/she prepare[s] [a] brief on
21 direct appeal, on behalf of his/her client. He states that he is entitled to appointment of
22 counsel under the Sixth Amendment of the United States Constitution. Petitioner
23 summarizes the same arguments he made in his other briefing, and adds that the
24 appointment of counsel is "the only humanly fair solution."

25 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

26 As the "plea canvass" is at issue here, the Court herein reviews the entire plea
27 canvass pertaining to this Petitioner, as follows:

28 THE COURT: Okay. I've got to do a plea canvas with each of you individually.
I'm just going to do them in the order that they're in the pleadings. So We'll do
Luis Angel Castro first. The rest of you can sit down if you want.

Mr. Castro, give me your full legal [name].

THE DEFENDANT: Luis Angel Castro Morales.

THE COURT: How old are you, sir?

THE DEFENDANT: 32.

THE COURT: How far did you go in school.

1 THE DEFENDANT: Tenth grade.

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

3 THE DEFENDANT: The best I can.

4 THE COURT: What does that mean?

5 THE WITNESS: Yes.

6 THE COURT: Have you seen a copy of the amended information in this case
7 charging you with first degree kidnapping resulting in substantial bodily harm,
8 which is a category A. Have you seen that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you have a chance to read that and discuss it with your
11 attorney?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: With regard to that charge, first degree kidnapping resulting in
14 substantial bodily harm, how do you plead, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Before I can accept your plea of guilty, I have to be convinced that
17 your plea is freely and voluntarily made. Are you making your plea freely and
18 voluntarily?

19 THE DEFENDANT: Yes, I am, sir.

20 THE COURT: Has anybody forced you or coerced you to enter that plea?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you making that plea because you're, in fact, guilty of that
23 charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anybody made any promises or guarantees to you other than
26 what's been stated in open court and what's contained in the guilty plea
27 agreement?

28 THE DEFENDANT: No, sir.

THE COURT: In looking at the guilty plea agreement, it looks like you signed
this on page 5. It's dated February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he
answered any questions you might have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read
and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain
important constitutional rights like the right to be able to confront your accuser,
go to trial and put on evidence on your own behalf. You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical
distress that's caused you to enter this plea?

THE DEFENDANT: No, sir.

1 THE COURT: Are you currently under the influence on any alcohol, medication,
2 narcotics or any substance that might affect your ability to understand these
documents or the process that we're going through?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you understand that in the guilty plea agreement it says that
the possibility of sentence is 15 to 40 years or for minimum of 15 years and a
5 maximum of life or life without parole? Do you understand that those are the
options?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that sentencing is strictly up to the Court, and
nobody can promise you probation, leniency, or any kind of special treatment;
correct?

8 THE DEFENDANT: That's correct.

9 THE COURT: Do you have any questions that you want to ask of myself or the
State or your counsel before we proceed?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has your attorney made any promises to you that are not
contained in the guilty plea agreement?

12 THE DEFENDANT: No, sir.

13 THE COURT: Based on all the facts and circumstances, are you satisfied with the
services of your attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you a U.S. citizen?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you understand that there are some charges that have adverse
immigration consequences and may result in deportation?

18 THE DEFENDANT: That is correct.

19 THE COURT: Have you had the chance to discuss any immigration issues with
your attorney, and he's answered any questions you have?

20 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

21 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his
immigration attorney, and we've been in communication. I did let my client
know today, as well as previously, that there's a substantial probability he'll be
deported after he serves a period of incarceration.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You still agree with the terms as set forth in the guilty plea
agreement?

25 THE DEFENDANT: Yes.

26 THE COURT: So I have to go through the amended information with you to
make sure that there's a factual basis for your plea. According to the
information, it says that,

27 "On or about the 7th day of March 2016 in Clark County, Nevada, contrary to the
laws of the State of Nevada, you did willfully, unlawfully, feloniously seize,
confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away Jose Ortiz
Salazar, a human

28 being, with the intent to hold or detain Jose Ortiz Salazar against his will and
without his consent for the purpose of committing murder and/or robbery with

1 substantial bodily harm. The defendants being criminally liable under one or
2 more of the following princip[les] of criminal liability, to wit: One, by directly
3 committing the crime or by; two, aiding or abetting in the commission of the
4 crime with the intent that the crime be committed by counseling, encouraging,
5 hiring, commanding, inducing or otherwise procuring the other to commit the
6 crime; and/or, three, pursuant to conspiracy to commit the crime with the intent
7 that the crime be committed, the defendants aiding or abetting or conspiring,
8 defendants acting in concert throughout." Is that what you did?

9 THE DEFENDANT: According to this, yes.

10 THE COURT: The question is, is that what you did?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Because, I mean, if you don't think that's what you did, then
13 you can't be freely and voluntarily accepting the plea.

14 THE DEFENDANT: Yes.

15 THE COURT: You agree that's what you did; correct?

16 THE WITNESS: Yes.

17 THE COURT: All right. The Court hereby finds the defendant's plea of guilty is
18 freely and voluntarily made. He appears to understand the nature of the offense
19 and the consequences of the plea. I'll therefore accept your plea of guilty. We'll
20 refer this to the Division of Parole and Probation for preparation of the PSI.

21 We'll set for sentencing hearing for --

22 THE CLERK: March 26th, 8:30.

23 Transcript of Plea Canvass, 2/4/19.

24 In determining whether a guilty plea was voluntarily entered, the Court reviews
25 the totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at
26 271, 721 P.2d at 367. A proper plea canvass should reflect that:

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

29 *Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86
30 Nev. 774, 476 P.2d 950 (1970)).

31 The requirements of a proper plea canvass were met in the canvass conducted by
32 the Court on February 4, 2019.

33 Pursuant to NRS 34.810, "The court shall dismiss a petition if the court
34 determines that: (a) the petitioner's conviction was upon a plea of guilty . . . and the
35 petition is not based upon an allegation that the plea was involuntarily or unknowingly

1 entered or that the plea was entered without effective assistance of counsel.” NRS
2 34.810(1)(a).

3 Although the Defendant pled guilty, he is alleging that his plea was involuntary
4 or unknowingly entered, and he further is arguing ineffective assistance of counsel.

5 In considering a challenge relating to “ineffective assistance of counsel,” the U.S.
6 Supreme Court has stated the following:

7 Judicial scrutiny of counsel's performance must be highly deferential. It is all too
8 tempting for a defendant to second-guess counsel's assistance after conviction or
9 adverse sentence, and it is all too easy for a court, examining counsel's defense
10 after it has proved unsuccessful, to conclude that a particular act or omission of
11 counsel was unreasonable. *Cf. Engle v. Isaac*, 456 U.S. 107, 133–134, 102 S.Ct.
12 1558, 1574–1575, 71 L.Ed.2d 783 (1982). A fair assessment of attorney
13 performance requires that every effort be made to eliminate the distorting
14 effects of hindsight, to reconstruct the circumstances of counsel's challenged
15 conduct, and to evaluate the conduct from counsel's perspective at the time.
16 Because of the difficulties inherent in making the evaluation, a court must
17 indulge a strong presumption that counsel's conduct falls within the wide range
18 of reasonable professional assistance; that is, the defendant must overcome the
19 presumption that, under the circumstances, the challenged action “might be
20 considered sound trial strategy.” See *Michel v. Louisiana*, supra, 350 U.S., at
21 101, 76 S.Ct., at 164. There are countless ways to provide effective assistance in
22 any given case. Even the best criminal defense attorneys would not defend a
23 particular client in the same way. See Goodpaster, *The Trial for Life: Effective*
24 *Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.Rev. 299, 343 (1983).

18 *Strickland v. Washington*, 466 U.S. 668, 689-690, 104 S.Ct. 2052, 2066 (1984).

19 The Court indicated that there is a two-prong test: The first prong is “whether,
20 in light of all the circumstances, the identified acts or omissions were outside the wide
21 range of professionally competent assistance,” recognizing that “counsel is strongly
22 presumed to have rendered adequate assistance and made all significant decisions in
23 the exercise of reasonable professional judgment.” *Strickland* at 690. The second
24 prong is that “The defendant must show that there is a reasonable probability that, but
25 for counsel’s unprofessional errors, the result of the proceeding would have been
26 different. A reasonable probability is a probability sufficient to undermine confidence
27 in the outcome.” *Strickland* at 694.

28 Performance of counsel is judged against an objective standard for
reasonableness and is deficient when it falls below that standard. *State v. Powell*, 122
Nev. 751, 759, 138 P.3d 453, 458 (2006); *Means v. State*, 120 Nev. 1001, 103 P.3d 25
(2004); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102 (1996).

1 The Nevada Supreme Court has stated the following relating to the “prejudice”
2 requirement:

3 In meeting the “prejudice” requirement, the defendant must show a reasonable
4 probability that, but for counsel's errors, the result of the trial would have been
5 different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068. When a conviction is
6 the result of a guilty plea, [t]he second, or “prejudice,” requirement ... focuses on
7 whether counsel's constitutionally ineffective performance affected the outcome
8 of the plea process. In other words, in order to satisfy the “prejudice”
9 requirement, the defendant must show that there is a reasonable probability
10 that, but for counsel's errors, he would not have pleaded guilty and would have
11 insisted on going to trial.

12 *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)
13 (emphasis added); see also *State v. Langarica*, 107 Nev. 932, 933, 822 P.2d
14 1110, 1111 (1991), cert. denied, 506 U.S. 924, 113 S.Ct. 346, 121 L.Ed.2d 261
15 (1992). “A reasonable probability is a probability sufficient to undermine
16 confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068.

17 *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102 (1996).

18 In a very recent case, the Nevada Supreme Court summarized the analysis which
19 the Court should undertake when considering an ineffective assistance claim. The
20 Court stated the following:

21 To prove ineffective assistance of counsel, a petitioner must show “(1) that
22 counsel's performance was deficient, and (2) that the deficient performance
23 prejudiced the defense.” *Kirksey*, 112 Nev. at 987, 923 P.2d at 1107 (internal
24 quotation marks omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 687,
25 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The first prong of this test asks whether
26 counsel's representation fell “below an objective standard of reasonableness” as
27 evaluated from counsel's perspective at the time. *Id.* at 987-88, 923 P.2d at 1107.
28 The second prong asks whether there is “a reasonable probability that, but for
counsel's errors, the result of the [proceeding] would have been different.” *Id.* at
988, 923 P.2d at 1107. We give deference to the district court's factual findings if
supported by substantial evidence and not clearly erroneous, but we review 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). Both components of the inquiry must be
shown. *Strickland*, 466 U.S. at 697, 104 S.Ct. 2052.

29 *Gonzales v. State*, 137 Nev.Adv.Op. 40 (7/29/21).

30 With regard to the Petitioner's argument that the Court's sentence constitutes
31 “cruel and unusual punishment,” the Court of Appeals has already addressed that
32 argument, and their decision is the Law of the Case. The Court of Appeals stated the
33 following:

34 . . . Castro claims his sentence constitutes cruel and unusual punishment for the
35 following reasons. He did not have a history of violent offenses and was under

1 the influence of drugs when he committed the crime. He was not aware that the
2 crime would become so violent and left when it became violent. His DNA was
3 not found on the weapon. He did not call the police because he was afraid that
4 his codefendants would harm his family. He has PTSD symptoms; bipolar
5 symptoms; and suffers from depression, anxiety, and drug addiction. And he
6 once attempted suicide.

7 Regardless of its severity, a sentence that is within the statutory limits is
8 not “cruel and unusual punishment unless the statute fixing punishment is
9 unconstitutional or the sentence is so unreasonably disproportionate to the
10 offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d
11 282, 284 (1996)(quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,
12 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01
13 (1991)(plurality opinion)(explaining the Eighth Amendment does not require
14 strict proportionality between crime and sentence; it forbids only an extreme
15 sentence that is grossly disproportionate to the crime).

16 Here, Castro’s life-without-the-possibility-of-parole sentence falls within
17 the parameters of the relevant statute. See NRS 200.320(1)(a). He does not
18 allege that the statute is unconstitutional. And we conclude the sentence
19 imposed is not grossly disproportionate to his crime and does not constitute
20 cruel and unusual punishment.

21 (*Castro v. Nevada*, Court of Appeals, Order of Affirmance dated 12/12/20, Case 78643-
22 COA).

23 As indicated above, the Eighth Amendment to the United States Constitution as
24 well as Article I, Section 6 of the Nevada Constitution prohibit the imposition of cruel
25 and unusual punishment. The Nevada Supreme Court has stated that “[a] sentence
26 within the statutory limits is not ‘cruel and unusual punishment unless the statute
27 fixing punishment is unconstitutional or the sentence is so unreasonably
28 disproportionate to the offense as to shock the conscience.’” *Allred v. State*, 120 Nev.
410, 92 P.2d 1246, 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d
282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220,
221-22 (1979))). And, as long as the sentence is within the limits set by the legislature, a
sentence will normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev.
344, 871 P.2d 950 (1994). Petitioner argues now that his sentence is disproportionate
and shocks the conscience. While he may not have used the “buzz words,” of “shocks
the conscience” in his appeal, the Court of Appeals previously held that the sentence
was “not grossly disproportionate to his crime and does not constitute cruel and
unusual punishment.” *Castro v. Nevada*, Court of Appeals, Order of Affirmance dated
12/12/20, Case 78643-COA. The Court of Appeals already analyzed the Eighth

1 Amendment argument of “cruel and unusual punishment,” and found against the
2 Petitioner on that issue. That ruling is the law of the case. *Hall v. State*, 91 Nev. 314,
3 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343. 455 P.2d 34,
4 38 (1969)).

5 Although the Petitioner is now unhappy with his sentence, the Guilty Plea
6 Agreement (GPA) that he entered into specifically indicated the following:

7 This offer is conditional upon all four (4) Defendants accepting their
8 respective negotiations and being sentenced. All Parties agree the State will
9 have the right to argue for Life without the possibility of Parole, and the Defense
will argue for Life with the possibility of Parole after fifteen (15) years. All
parties agree that no one will seek the term of years.

10 GPA filed 2/4/19, at pg. 1.

11 At the Sentencing Hearing, defense counsel argued for Life “with” the possibility
12 of parole, and the State argued for Life “without” the possibility of parole. The
13 arguments were exactly what the Defendant agreed the arguments would be. When the
14 Court sentenced each of the Defendants, the Court stated the following:

15 I want to be merciful, but at the same time, I know that justice has to be
16 done. And we have a victim who, but for the fact that he lived against what you
17 all thought -- my understanding is not only was he tortured and mutilated in this
18 room for a period of time, for a period of hours, but that everybody thought he
was dead, tried to burn the house down around him. And if you had been
successful in this, this would have been a capital murder case and you all would
be looking at potentially a capital sentence.

19 I have a hard time with the pictures that I've seen and the horrible
20 injuries that were inflicted upon this poor victim. I understand that he is not the
21 pillar of our community either, but that doesn't justify the things that were done
to him over \$50. And that almost makes it worse because that was the basis for
this, is him not being able to come up with \$50.

22 So I'm going to go ahead and sentence each of you to life in the
23 Nevada Department of Corrections without the possibility of parole. I
24 understand that that is a difficult sentence for you to have to deal with. It's a
25 difficult sentence for me to have to give, but I don't see any redeeming qualities.
I would like to be merciful, but I don't think that this is a crime that -- I don't
26 think the community wants you back out on the streets. So that will be the
sentence. I don't think credit time served matters.

26

27 (Transcript of Sentencing Hearing 3/26/19, pgs. 23-24).

28 The Petitioner argues that his plea was not entered freely and voluntarily, but his
claim is belied by the record, as set forth above. He acknowledged, both in his GPA and

orally before the Court, what the possibilities would be, and he acknowledged that sentencing was strictly up to the Court. Further he acknowledged that he had discussed immigration issues with his attorney, and that he still wanted to enter into the GPA, and accept the terms thereof. Based on the GPA and the plea canvass, and the totality of the circumstances in the case, the Court finds that the Defendant's guilty plea was made freely and voluntarily, and that he understood the nature of the offense and the consequences of his plea.

The Petitioner's argument that counsel promised the Petitioner and Petitioner's family that he would receive fifteen (15) years to life, is a bare and naked allegation that is unsupported in the record, and is actually belied by the record. Both the GPA signed by the Petitioner, as well as the oral plea canvass, specifically informed the Petitioner that the State would be arguing for life without the possibility of parole, and that sentencing was at the discretion of the Judge.¹ Petitioner argues, and submitted a letter from his parents, suggesting that counsel made misrepresentations to Petitioner's parents, but his parents did not accept the plea – Defendant did. And there is no evidence that Defendant's plea was anything but knowing, willing, and voluntary.

Further, Petitioner's argument that counsel was ineffective for failing to inform him of the immigration consequences of his plea, is equally belied by the record. ²

¹ The GPA specifically states, "I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation." (See GPA at pg. 3). Additionally, in the oral plea canvass, the following interaction occurred:

THE COURT: Do you understand that in the guilty plea agreement it says that the possibility of sentence is 15 to 40 years or for minimum of 15 years and a maximum of life or life without parole? Do you understand that those are the options?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that sentencing is strictly up to the Court, and nobody can promise you probation, leniency, or any kind of special treatment; correct?

THE DEFENDANT: That's correct.

(See Plea Canvass of 2/4/19.)

² In the GPA, signed by the Defendant, he agreed to the following:

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious negative immigration consequences including but not limited to:

1. The removal from the United States through deportation; . . .

. . . .

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

. . . .

(See GPA at pg. 3)

Additionally, during the oral plea canvass, the following took place:

THE COURT: Are you a U.S. citizen?

THE DEFENDANT: No, sir.

1 In reviewing the Petitioner's arguments regarding ineffective assistance of
2 counsel, in totality, the Court finds and concludes that the Petitioner has failed to meet
3 the standard set forth in *Strickland*. The Court finds that there is insufficient evidence
4 to support the conclusion that counsel's actions were objectively unreasonable.
5 Further, there is insufficient evidence suggesting that the result of the proceeding
6 would have been different if counsel had said or done things differently. Consequently,
7 there is no prejudice to the Defendant.

8 Inasmuch as the Petition requested a "withdrawal of plea," such request is
9 improper for a Writ of Habeas Corpus, but insofar as the issues have been addressed
10 herein, the request is denied.

11 Petitioner argues that at the time he entered his guilty plea he was heavily
12 medicated, not competent, and not able to understand the Constitutional rights he was
13 waiving. Such allegations are bare and naked allegations, and are belied by the record.³

14 THE COURT: Do you understand that there are some charges that have adverse immigration consequences
15 and may result in deportation?

16 THE DEFENDANT: That is correct.

17 THE COURT: Have you had the chance to discuss any immigration issues with your attorney, and he's
18 answered any questions you have?

19 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

20 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his immigration attorney, and
21 we've been in communication. I did let my client know today, as well as previously, that there's a substantial
22 probability he'll be deported after he serves a period of incarceration.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You still agree with the terms as set forth in the guilty plea agreement?

26 THE DEFENDANT: Yes.

27 (See transcript of plea canvass 2/4/19).

28 ³ The Petitioner was asked about his "understanding," and whether he was under the "influence" of anything at the time
of the plea canvass, and he stated as follows:

THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated
February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he answered any questions you might
have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional
rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf.
You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter
this plea?

THE DEFENDANT: No, sir.

1 Petitioner requests an Evidentiary Hearing, but the issues he believes require an
2 evidentiary hearing have already been addressed by the Court, and the Petitioner's
3 arguments are belied by the record. Consequently, the Court does not believe that an
4 Evidentiary Hearing would be necessary, and instead it would be a waste of judicial
5 resources.

6 With regard to the Petitioner's request for appointment of counsel, NRS 171.188
7 provides that an indigent defendant may request appointment of counsel, and pursuant
8 to NRS 178.397, an indigent defendant accused of a felony or gross misdemeanor is
9 entitled to counsel at every stage of the proceedings, from the initial appearance
10 through appeal, unless he waives such appointment. But pursuant to *Coleman v.*
11 *Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991), there is no Sixth Amendment
12 right to post-conviction counsel. See also *McKague v. Warden*, 112 Nev. 159, 163, 912
13 P.2d 255, 258 (1996). NRS 34.750 provides the Court with discretion to appoint post-
14 conviction counsel, after considering whether 1) the issues presented are difficult; 2)
15 the petitioner is unable to comprehend the proceedings; or 3) counsel is needed to
16 proceed with discovery. In analyzing these factors, this Court finds and concludes that
17 while many issues have been raised in the Petition, they do not appear to be "complex"
18 issues. The Petition is comprehensive and somewhat organized, especially for a pro-se
19 Petitioner, and consequently, the Court cannot find that Petitioner would be "unable to
20 comprehend the proceedings," or need assistance in filing any documents, as he
21 appears to be very capable of doing so on his own. Finally, there is not even a

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THE COURT: Are you currently under the influence on any alcohol, medication, narcotics or any substance
that might affect your ability to understand these documents or the process that we're going through?

THE DEFENDANT: No, sir.

(See transcript of plea canvass 2/4/19).

1 suggestion that discovery is necessary. Consequently, the Petitioner's request for
2 appointment of counsel must be denied.

3 **ORDER/CONCLUSION**

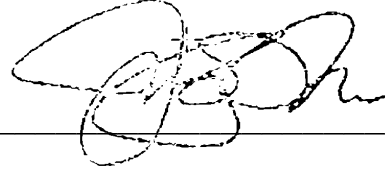
4 Based upon the foregoing, and good cause appearing,

5 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is hereby
6 DENIED. Petitioner's request for an Evidentiary Hearing is also DENIED. And finally,
7 Petitioner's request for appointment of counsel is also DENIED.

8 The Court requests that the State process the Notice of Entry relative to this
9 Order.

10 Because this matter has been decided on the pleadings, the hearing scheduled
11 for 9/23/21 will be taken off calendar, and consequently, there is no need for any
12 parties or attorneys to appear.

13 Dated this 21st day of September, 2021

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17 4F9 B1F 0283 78E0
18 Jerry A. Wiese
19 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 9/22/2021

16 Luis Castro

#1214547
ESP
P.O. Box 1989
Ely, NV, 89301

17
18
19 Steven Wolfson

Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, NV, 89155
21
22
23
24
25
26
27
28

Case No. A-21-835827-W

Dept. No. 30

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

LUIS CASTRO

Petitioner/Plaintiff,

vs.

STATE OF NEVADA

Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that LUIS CASTRO, Petitioner/Defendant
above named, hereby appeals to the Court of Appeals for the State of Nevada from the final
judgment / order (PETITION FOR WRIT OF HABEAS CORPUS AND RE:

PLAINTIFF'S MOTION FOR APPL. OF COURSE & FOR EVIDENTIARY HEARING)

Entered in this action on the 21ST day of September, 2021.

Dated this 8TH day of OCTOBER, 2021.

 Luis A. Castro

NDOC # 1214547

Appellant - Pro Per
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

CLERK OF THE COURT

OCT 18 2021

RECEIVED

CERTIFICATE OF SERVICE BY MAIL

I, Luis Castro, hereby certify pursuant to Rule 5(b) of the NRCPP, that on this 8th day of October, 2021, I served a true and correct copy of the above-entitled Notice of Appeal postage prepaid and addressed as follows:

AARON FORD
NEVADA ATTORNEY GENERAL
100 No. Carson St.
Carson City, NV.
89701-4712

STEVEN WOLFSON
CLARK Co. DISTRICT ATTORNEY
2100 LEWIS AVE, 3RD FL.
LAS VEGAS, NV.
89155-2212

Signature

Print Name Luis Castro #124547

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO NRS 239B.030

I, Luis Castro, NDOC# 1214547,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 8th DAY OF October, 20 21.

SIGNATURE: 

INMATE PRINTED NAME: Luis Castro

INMATE NDOC # 1214547

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

For Mr. Luis Castro
ESP-#1214547
P.O. Box 1989
ELY, NV 89301

10. Clerk of the Court
200 Lewis Ave., 3rd FL.
Las Vegas, Nevada
89155-1160

Las Vegas P&DC 89199
FRI 15 OCT 2021 PM



AA10164

1/11/11

10-14-21

2/6/21

Boysen

Good Mail
Confidential



IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 83680
District Court Case No. A835827; C314092

FILED

JUL 11 2022

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 13th day of June, 2022.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this July 08, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

A-21-835827-W
CCJAR
NV Supreme Court Clerks Certificate/Judgm
4998738



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83680-COA

FILED

JUN 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

***ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING***

Luis Angel Castro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2021, and a supplement filed on July 6, 2021. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Castro claims the district court erred by denying his claims challenging the validity of his guilty plea without first conducting an evidentiary hearing. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "to correct a manifest injustice." NRS 176.165. "A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted). A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this

court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Castro claimed he did not enter his guilty plea voluntarily and intelligently because he has low intellectual functioning, has impaired mental health, and was on antipsychotic medication. Castro's bare claim failed to specify what he did not understand regarding the entry of his plea. Moreover, during his plea canvass, Castro informed the court that he read the charging document, discussed it with counsel, and read and understood the plea agreement before signing it. Castro also informed the court that he was not suffering from any emotional distress that caused him to enter his plea and that he was not under the influence of any medication that might affect his ability to understand the documents or the plea process. Based on the totality of the circumstances, Castro failed to demonstrate his plea was not entered voluntarily and intelligently. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Castro also claimed he did not enter his guilty plea knowingly and voluntarily due to the ineffective assistance of counsel. 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 (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 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review 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).

First, Castro claimed counsel was ineffective for failing to move to sever his case from his codefendants' cases or challenge the "package deal" plea offers, which were conditioned on each codefendant accepting their respective negotiations. Castro failed to allege facts that demonstrate a motion to sever or a challenge to the package deal plea offer would have been successful. See NRS 174.165 (providing when a defendant is entitled to a severed trial); *Rowland v. State*, 118 Nev. 31, 44, 39 P.3d 114, 122 (2002) (describing when a court should sever the trial of jointly indicted defendants); see also *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (providing "there is no constitutional right to plea bargain"); *United States v. Caro*, 997 F.2d 657, 659 (9th Cir. 1993) (providing that "package deal plea agreements" are not per se impermissible despite the additional risk of coercion). Accordingly, Castro failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Castro claimed counsel was ineffective for allowing him to enter into a plea agreement that resulted in a prison sentence of life without the possibility of parole. Castro claimed that the evidence supported going to trial and that his sentence meant he did not benefit from the plea-bargaining process. In both the written plea agreement and plea canvass, Castro acknowledged he could be sentenced to life without the possibility of parole. The decision whether to enter the plea was Castro's. *See McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) ("Although counsel certainly owes a duty to advise his client whether to plead guilty, counsel does not have the authority to override a defendant's decision to plead guilty."). And Castro did not allege that counsel's advice was objectively unreasonable based on what counsel knew or should have known at the time Castro entered his plea. *See Strickland*, 466 U.S. at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."). Accordingly, Castro failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial but for counsel's actions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Castro claimed 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. Castro alleged that, based on these

false assertions, his parents threatened to withdraw their support for him if he did not plead guilty, which effectively coerced him into doing so. The district court found that this claim was bare and unsupported by the record and that any such representation made to Castro's parents by counsel was irrelevant as Castro and not his parents accepted the plea deal. The district court's findings of fact are not supported by substantial evidence in the record before this court. Rather, Castro included with his supplement a letter signed by his parents wherein they alleged that they hired Castro's counsel who told them that all four defendants would be prosecuted separately and if Castro pleaded guilty, he would receive a sentence of 15 to 25 years in prison.

Moreover, Castro supported his argument with specific factual allegations that were not belied by the record and, if true, would have entitled him to relief. *See Iaea v. Sunn*, 800 F.2d 861, 863, 868 (9th Cir. 1986) (reversing and remanding to the district court to determine the coercive impact of petitioner's brother's threat to withdraw petitioner's bail after counsel "communicated her strong belief that Iaea should accept the plea bargain through Iaea's brother Christopher because she knew that Iaea relied on his brother for help and guidance"). Therefore, we conclude the district court erred by denying this claim without conducting an evidentiary hearing. Accordingly, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this claim.

Next, Castro argues the district court erred by declining to appoint postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). Because the district court granted

Castro leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, see NRS 34.745(1), (4), Castro met the threshold requirements for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). In light of this court's disposition, we direct the district court to reconsider whether the appointment of counsel is warranted.

Next, Castro claims the district court erred by not addressing his supplemental petition. The record demonstrates the district court ruled on the claims contained in Castro's supplemental petition. We therefore conclude Castro is not entitled to relief on this claim.

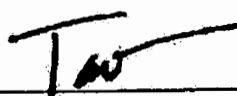
Next, Castro claims the district court erred by inaccurately embellishing the sentencing memorandum counsel filed. Castro claims the sentencing memorandum was only eight pages in length, not 68 as stated by the district court in its order. The substantive part of the memorandum is only eight pages in length but included numerous attachments offered in support of counsel's argument that Castro be sentenced to a prison term of 15 years to life. The entire pleading, including exhibits, is 68 pages long. Even had the district court misstated the length of the sentencing memorandum, Castro fails to demonstrate how the alleged error affected his substantial rights. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). We therefore conclude Castro is not entitled to relief on this claim.


Finally, Castro claims for the first time on appeal that counsel was ineffective for failing to investigate, counsel was ineffective for failing to inform the trial-level court that Castro was intellectually and emotionally slow and did not participate in harming the victim, the trial-level court and

counsel erred by accepting Castro's plea without Castro first admitting to the elements of the crime, the sentencing court incorrectly considered Castro's criminal history at sentencing, and the district court erred by hearing Castro's petition because it presided over Castro's trial-level proceedings. Castro did not raise these claims below, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Castro filed a motion on May 24, 2022, to clarify and/or correct the notice of rejection issued by the Nevada Supreme Court on May 11, 2022. The motion is granted as follows: The notice indicated that the State's answering brief and notice of appearance were rejected because they were filed in the incorrect court. The State subsequently filed the notice of appearance and answer in this court on May 11, 2022. Castro indicates that as of May 16, 2022, he has not received a copy of the notice of appearance or answering brief. This court's order issued on April 11, 2022, instructed Castro to file any reply brief 15 days after the date of the answering brief. Castro's reply brief was filed on May 26, 2022. Accordingly, we take no further action on this motion.

cc: Hon. Jerry A. Wiese, District Judge
Luis Angel Castro
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 83680
District Court Case No. A835827; ~~CS14092~~

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: July 08, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):
Luis Angel Castro
Clark County District Attorney \ John T. Afshar
Hon. Jerry A. Wiese, Chief Judge

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 11 2022.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

JUL 11 2022

CLERK OF THE COURT

Heather S. Smith

CLERK OF THE COURT

ORDR

STEVEN S. OWENS, ESQ
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, Nevada 89074
Telephone: (702) 595-1171
owenscrimlaw@gmail.com
Attorney for Petitioner Luis Angel Castro

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LUIS ANGEL CASTRO,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO.: A-21-835827-W
DEPT NO.: VII

ORDER APPOINTING COUNSEL

This matter having come before the Court on August 11, 2022, and the Court being fully advised in the premises and good cause appearing,

IT IS HEREBY ORDERED that Steven S. Owens be appointed to represent Mr. Luis Angel Castro in case number A-21-835827-W to pursue habeas relief.

Dated this 16th day of August, 2022


DISTRICT COURT JUDGE

Respectfully Submitted,

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352

278 42D 2B91 630E
Linda Marie Bell
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 7

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

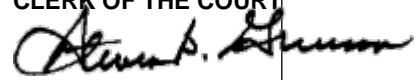
14 Service Date: 8/16/2022

15 Steven Owens

owenscrimlaw@gmail.com

16 Steven Wolfson

motions@clarkcountyda.com



SUPP
STEVEN S. OWENS, ESQ
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, Nevada 89074
Telephone: (702) 595-1171
owenscrimlaw@gmail.com
Attorney for Petitioner Luis Angel Castro

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LUIS ANGEL CASTRO,

Petitioner,

vs.

STATE OF NEVADA,

Respondents.

CASE NO.: A-21-835827-W
DEPT NO.: VII

**SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)**

COMES NOW, Petitioner, LUIS ANGEL CASTRO, by and through his counsel of record, STEVEN S. OWENS, ESQ., and hereby submits his Supplemental Brief in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

This Supplement is made and based upon the pleadings and papers on file herein, the Points and Authorities attached hereto, and any oral arguments adduced at the time of hearing this matter.

///

///

///

///

1 DATED this 19th day of September, 2022.

2 Respectfully submitted

3
4 /s/ Steven S. Owens, Esq.
5 STEVEN S. OWENS, ESQ.
6 Nevada Bar No. 4352
7 1000 N. Green Valley #440-529
8 Henderson, Nevada 89074
9 (702) 595-1171

10 Attorney for Petitioner
11 LUIS ANGEL CASTRO

12 **STATEMENT OF THE CASE**

13 On April 12, 2016, Luis Angel Castro was charged along with other co-defendants by
14 way of Information in Case C-16-314092-1 with Conspiracy to Commit Murder, Attempt Murder
15 With Use of a Deadly Weapon, Mayhem With Use of a Deadly Weapon, Battery With Use of a
16 Deadly Weapon Resulting in Substantial Bodily Harm, First Degree Kidnapping With Use of a
17 Deadly Weapon Resulting in Substantial Bodily Harm, Extortion With Use of a Deadly Weapon,
18 Robbery With Use of a Deadly Weapon, and First Degree Arson.

19 On February 4, 2019, Castro, represented by Attorney Warren Geller, pleaded guilty
20 pursuant to a Guilty Plea Agreement to one count of First Degree Kidnapping Resulting in
21 Substantial Bodily Harm, with the State retaining the right to argue for Life without the possibility
22 of parole, and the Defense arguing for Life with the possibility of parole after 15 years. On March
23 26, 2019, Castro was adjudged guilty and was sentenced to Life without the possibility of parole.
24 The judgment of conviction was filed on March 28, 2019.

25
26 Castro filed a direct appeal where he was represented by Attorney Jean Schwartzer and
27 his appeal was docketed as Case SC# 78643. After full briefing, the Nevada Court of Appeals

1 issued an Order of Affirmance on August 12, 2020, and subsequently denied rehearing.
2 Remittitur issued on November 17, 2020.

3 On June 7, 2021, Castro filed a timely pro se Petition for Writ of Habeas Corpus and
4 Motion for Appointment of Counsel under Case A-21-835827-W. He then filed supplemental
5 briefs and the State responded. On September 21, 2021, Judge Jerry A. Wiese entered a written
6 Order denying the Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel.
7

8 Representing himself, Castro filed a Notice of Appeal of that Order and his appeal was
9 docketed as Case SC# 83680. On June 13, 2022, the Nevada Court of Appeals issued an Order
10 Affirming in Part, Reversing in Part and Remanding. In its Order, the Nevada Court of Appeals
11 affirmed the denial of all but one of Castro's habeas claims. However, concerning Castro's
12 claim that counsel was ineffective for advising Castro's parents that the four defendants would
13 be prosecuted separately and that Castro would receive a prison sentence of 15 to 25 years if he
14 accepted the plea, the Nevada Court of Appeals reversed and remanded that claim for an
15 evidentiary hearing. Remittitur issued on July 8, 2022. On August 11, 2022, undersigned
16 counsel was appointed to the habeas case A-21-835827-W, and now files this supplemental
17 brief.
18

19 **STATEMENT OF FACTS**

20 Attorney Warren Geller was hired by Castro's parents, Jose and Angeles Castro, and
21 was paid \$85,000 to defend and represent their son, Luis Angel Castro, in the criminal case C-
22 16-314092-1. See Exhibit 1, attached hereto. Mr. Geller told Castro and his parents that all
23 four codefendants would be prosecuted separately. However, no motion to sever was ever filed
24 and all defendants remained charged together. Castro's parents were also told that a plea deal
25 had been offered where if Castro pleaded guilty, he would receive a sentence of 15 to 25 years
26
27
28

1 in prison. Upon this assurance, the parents used their considerable influence to persuade and
2 induce their son to plead guilty and threatened the loss of their support if he did not accept the
3 plea deal. Thereafter, Castro felt coerced and pressured, and believed that he did not have any
4 other alternative so he pleaded guilty and was sentenced to life without the possibility of parole.

5 ARGUMENT

6
7 In this case, Castro submits a combination of factors, when viewed based upon the
8 totality of the circumstances, entitle him to withdraw his plea and proceed to trial. NRS
9 176.165 provides as follows:

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

15 Generally, a post-conviction Petition for Writ of Habeas Corpus is the appropriate remedy to
16 challenge the validity of a guilty plea after sentencing. *Harris v. State*, 130 Nev. Adv. Rep. 47,
17 329 P.3d 619, 628 (2014). “[T]he burden [is] on the defendant to establish that his plea was not
18 entered knowingly and intelligently” or that it was a product of coercion. *Id.*; *Gardner v. State*,
19 91 Nev. 443, 446–47, 537 P.2d 469 (1975).

20 The district court may grant a post-conviction motion to withdraw a guilty plea that was
21 not entered knowingly and voluntarily in order to correct a manifest injustice. *Rubio v. State*,
22 124 Nev. 1032, 1039, 194 P.3d 1224 (2008). Manifest injustice may also be demonstrated by a
23 “failure to adequately inform a defendant of the consequences of his plea.” *Id.* Citing *Paine v.*
24 *State*, 110 Nev. 609, 619, 877 P.2d 1025, 1031 (1994) *overruled on other grounds by Leslie v.*
25 *Warden*, 118 Nev. 773, 780–81, 59 P.3d 445–46 (2002).

The Court must set aside a guilty plea when the record does not disclose that the defendant understood the elements of the offense and the defendant did not make a factual statement constituting admission to the charge. *Tiger v. State*, 98 Nev. 555, 558, 654 P.2d 1031 (1982); *Love v. State*, 99 Nev. 147, 148, 659 P.2d 876 (1983); *Barlow v. State*, 99 Nev. 197, 198, 660 P.2d 1005 (1983). “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).

Petitioner 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)).

To state a claim of ineffective assistance of counsel that is sufficient to invalidate a judgment of conviction, petitioner must demonstrate that: 1) counsel's performance fell below an objective standard of reasonableness, and 2) counsel's errors were so severe that they rendered the verdict unreliable. *Lozada v. State*, 110 Nev. 349, 353, 871 P. 2d 944, 946 (1994). (Citing *Strickland v. Washington*, 466 U. S. 668, 104 S. Ct. 205, (1984)). To establish prejudice

1 resulting from trial counsel's inaction or omission, a defendant who pleaded guilty must
2 demonstrate a reasonable probability that he would not have pleaded guilty and would have
3 insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366 (1985); *Kirksey v.*
4 *State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). *See also Kirksey v. State*, 112 Nev. 980,
5 923 P.2d 1102 (1997).

6
7 Plea bargains have become so central to the administration of the criminal justice
8 system that defense counsel have responsibilities in the plea bargain process, responsibilities
9 that must be met to render the adequate assistance of counsel that the Sixth Amendment
10 requires in the criminal process at critical stages. *Missouri v. Frye*, 566 U.S. 134, 132 S.Ct.
11 1399, 1407 (2012). “[A]s a general rule, defense counsel has the duty to communicate formal
12 offers from the prosecution to accept a plea on terms and conditions that may be favorable to
13 the accused.” *Id.*, 132 S.Ct. at 1408. To show prejudice from ineffective assistance of counsel
14 where a plea offer has lapsed or been rejected because of counsel's deficient performance,
15 defendants must demonstrate a reasonable probability they would have accepted the earlier plea
16 offer had they been afforded effective assistance of counsel. *Id.*, 132 S.Ct. at 1409. Defendants
17 must also demonstrate a reasonable probability the plea would have been entered without the
18 prosecution canceling it or the trial court refusing to accept it, if they had the authority to
19 exercise that discretion under state law. *Id.* To establish prejudice in this instance, it is
20 necessary to show a reasonable probability that the end result of the criminal process would
21 have been more favorable by reason of a plea to a lesser charge or a sentence of less prison
22 time. *Id.* In such situations, the appropriate remedy may be to resentence the defendant in
23 accord with the prior plea offer which was wrongly rejected. *Lafler v. Cooper*, 566 U.S. 156,
24 132 S.Ct. 1376, 1388-89 (2012).

1 If counsel, in a private colloquy with a defendant, even suggests by “inuendo or
2 inference” that defendant will receive probation if he pleads guilty, the plea may be involuntary
3 because it was induced by an “inference of probation” supplied by the attorney. *Warden v.*
4 *Craven*, 91 Nev. 485, 537 P.2d 1198 (1975). In the present case there was much more than
5 mere inuendo or inference, but an explicit promise that Castro would be prosecuted separately
6 from his co-defendants and if he pleaded guilty, he would receive a sentence of 15 to 25 years
7 in prison. Furthermore, the error was compounded by communicating the sentencing promise
8 to Castro’s parents who counsel knew he relied upon for help and guidance. For example, in
9 *Iaea v. Sunn*, 800 F.2d 861 (9th Cir. 1986), even though the defendant was properly canvassed
10 as to the range of punishment, the plea was reversed and remanded because counsel’s erroneous
11 sentencing promise to defendant and his family members pressured him into an unknowing and
12 involuntary plea. See also, *Tovar Mendoza v. Hatch*, 620 F.3d 1261 (10th Cir. 2010) (The trial
13 attorney’s grossly inaccurate statement to the defendant about the amount of time he would be
14 required to serve if he pled guilty amounted to ineffective assistance of counsel and rendered
15 the guilty plea involuntary). But for counsel’s erroneous promise to Castro and his parents that
16 he would be prosecuted separately and receive a sentence of 15 to 25 years in prison, the
17 parents would not have induced and coerced their son and he would not have pleaded guilty but
18 would have insisted on going to trial.

19 The Nevada Court of Appeals held that this claim can not be simply dismissed as bare
20 and unsupported by the record or because any such representations made to Castro’s parents by
21 counsel were irrelevant. Rather, the Court held that Castro had included with his petition a
22 letter signed by his parents. See Exhibit 1. Also, the Court, citing *Iaea v. Sunn*, *infra*, held that
23 Castro had supported his argument with specific factual allegations that were not belied by the
24

1 record which, if true, would have entitled him to relief. Therefore, an evidentiary hearing is
2 required, and the petition must be granted if this court finds the allegations are true.

3 **CONCLUSION**

4 Wherefore, Castro respectfully requests this Court conduct an evidentiary hearing and
5 thereafter grant his Petition due to the ineffective assistance of counsel and invalid plea.
6

7 Dated this 19th day of September, 2022.

8 Respectfully Submitted,

9
10 /s/ Steven S. Owens, Esq.
11 STEVEN S. OWENS, ESQ.
12 Nevada Bar No. 4352
13 1000 N. Green Valley #440-529
Henderson, Nevada 89074
(702) 595-1171

14 Attorney for Petitioner
15 LUIS ANGEL CASTRO
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Exhibit 1

EXHIBIT-1

Jose A. Castro
Angeles Castro
3501 Kidd Street
North Las Vegas NV 89032

Re: Luis Angel Castro Morales

To whom this may concern:

We hired attorney Warren Geller in 2016, we paid \$85,000.00 for him to defend Luis Angel Castro Morales in the Case between the State of Nevada against Luis Angel Castro Morales, the Jose Ortiz Salazar Case where he was charged with numerous crimes.

We were told by the attorney that the case would be difficult and that all four defendants would be prosecuted separately.

After months of deliberation, we were told that a plea deal had been reached where Luis Angel Castro if pled guilty would receive a sentence of 15-25 years in prison. As Parents, we understand there are consequences to the actions taken by our Son, we advised Luis Angel Castro to take the deal instead of going thru trial, which he did.

Upon the sentencing of his case, all four defendants were charged together, not separately, all four defendants received the same outcome, Life in Prison.


If we would have known that they would of all been charged together, we would have gone to trial, Luis Angel Castro signed a deal and to be charged separately, therefore I do not understand and until this day have not received a clear answer as in to why the Judge charged them together instead of each separately.

I am requesting the courts to open the case of Luis Angel Castro Morales and charge him separately, he did not receive a fair trial nor the opportunity to defend himself,

We understand and we do not deny that him being with the wrong crowd would get him into trouble, we ask what needs to be done to open his case again.

Attorney William Geller did not defend Luis Angel Castro Morales, took \$85,000.00 from us and ask you please open his case.

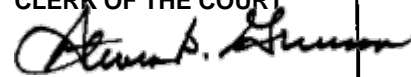

Jose Antonio Castro Moreno
Father of Luis Angel Castro Morales


Angeles Castro
Mother of Luis Angel Castro

AA 0177

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1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN AFSHAR
6 Chief Deputy District Attorney
7 Nevada Bar #14408
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 LUIS CASTRO,
13 #1214547

14 Defendant.

CASE NO: A-21-835827-W

DEPT NO: VII

15 **STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL PETITION FOR**
16 **WRIT OF HABEAS CORPUS (POST-CONVICTION)**

17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
18 District Attorney, through JOHN AFSHAR, Chief Deputy District Attorney, and hereby
19 submits the attached Points and Authorities in Response to Defendant's Supplemental Petition
20 for Writ of Habeas Corpus (Post-Conviction).

21 This response is made and based upon all the papers and pleadings on file herein, the
22 attached points and authorities in support hereof, and oral argument at the time of hearing, if
23 deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 10, 2016, Luis Castro (hereinafter "Petitioner") was charged by way of
4 Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B Felony);
5 Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ; Count 3 -
6 Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon Resulting in
7 Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping with Use
8 of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly Weapon
9 (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B Felony)
10 ; Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-defendants.

11 On April 12, 2019, Petitioner was bound up to the District Court on all charges
12 following a preliminary hearing.

13 After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled
14 guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping
15 Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea
16 Agreement ("GPA"): "This offer is conditioned upon all four (4) Defendants accepting their
17 respective negotiations and being sentenced. All Parties agree the State will have the right to
18 argue for Life without the possibility of Parole, and the Defense will argue for Life with the
19 possibility of Parole after fifteen (15) years. All Parties agree that no one will seek a term of
20 years."

21 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24, 2019,
22 Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro ("Petitioner's
23 Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life without the
24 possibility of Parole in the Nevada Department of Corrections.

25 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's Judgment of
26 Conviction. Remittitur issued on November 17, 2020.

27 On June 7, 2021, Petitioner filed a pro per Petition for Writ of Habeas Corpus (Post-
28 Conviction) ("Petition"), a Motion for Appointment of Counsel, and a Request for an

1 Evidentiary Hearing on the Petition. On July 6, 2021, Petitioner filed a Supplement to Petition
2 for Writ of Habeas Corpus ("Supplemental Petition").¹ On July 14, 2021, Petitioner filed
3 Memorandum of Facts and Law In Support of Petitioner's Motion for Appointment of Counsel
4 ("Memo In Support") and various other pleadings. On July 27, 2021, the State filed a Response
5 to the Petition, Supplemental Petition, Memo In Support, and various pleadings. Petitioner
6 filed a Reply on August 26, 2021. This Court denied the Petition, Motion for Appointment of
7 Counsel, and Request for an Evidentiary Hearing on September 21, 2021.

8 Petitioner appealed the denial of his Petition on October 19, 2021. Following appellate
9 briefing, on July 8, 2022, the Nevada Court of Appeals affirmed in part, reversed in part, and
10 remanded to the district court the denial of the Petition. The Court of Appeals held that this
11 court correctly denied Petitioner's claims that (1) he did not enter his plea knowingly and
12 voluntarily due to "low intellectual functioning," (Order at 2) (2) counsel was ineffective for
13 failing to move to sever his case or challenge the contingent plea offers, (Order at 3), and (3)
14 counsel was ineffective for allowing him to entered into a pela agreement that resulted in a
15 prison sentence of life without the possibility of parole, (Order at 4). The Court further
16 concluded that this Court correctly disregarded Petitioner's supplemental petition. (Order at
17 6), and that this Court did not "inaccurately embellish" the sentencing memorandum (Id.)
18 However, the Court of Appeals held that this Court erred by denying Petitioner's claim that
19 counsel advised his parents that all four co-defendants would be prosecuted separately, and
20 that counsel advised Petitioner's parents that he would receive a prison sentence of 15 to 25
21 years if he accepted the plea, and that Petitioner's parents coerced him into pleading guilty
22 without conducting an evidentiary hearing. (Order at 4-5.). Because the Court of Appeals held
23 that this Court erred with respect to that claim, the Court further ordered this court to reconsider
24 whether Petitioner should be appointed counsel. (Order at 6.)

25 Subsequent to the Court of Appeals remanding the case, this Court appointed counsel.
26 Counsel filed a supplemental petition for writ of habeas corpus on September 19, 2022.
27 ("Second Supplemental Petition") The State's response follows.
28

ARGUMENT

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The United States Supreme Court has long recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant must show that there is a “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). A defendant is not entitled to relief on claims which are belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

In the Second Supplemental Petition, Petitioner claims that there was “an explicit promise that Castro would be prosecuted separately from his co-defendants and if he pleaded guilty, he would receive a sentence of 15 to 25 years in prison.” Second Supplemental Petition at 7. Petitioner also represents that his parents coerced him into pleading guilty. Id.

Both of these claims are belied by the record, as Petitioner represented to this Court that he had not been promised any other sentence than that which was reflected by the GPA, and that “no one” had coerced him into pleading guilty.

THE COURT: Before I can accept your plea of guilty, I have to be convinced that your plea is freely and voluntarily made. Are you making your plea freely and voluntarily?

THE DEFENDANT: Yes, I am, sir.

1 THE COURT: Has anybody forced you or coerced you to enter that plea?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you making that plea because you're, in fact, guilty of that charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anybody made any promises or guarantees to you other than
6 what's been stated in open court and what's contained in the guilty plea agreement?

7 THE DEFENDANT: No, sir.

8 ...
9 THE COURT: Do you understand that in the guilty plea agreement it says
10 that the possibility of sentence is 15 to 40 years or for minimum of 15 years
11 and a maximum of life or life without parole? Do you understand that those
12 are the options?

13 THE DEFENDANT: Yes, sir.

14 Recorder's Transcript: Entry Of Plea, at 4-7.

15 I have not been promised or guaranteed any particular sentence by
16 anyone. I know that my sentence is to be determined by the Court within
17 the limits prescribed by statute.

18 I understand that if my attorney or the State of Nevada or both
19 recommend any specific punishment to the Court, the Court is not obligated
20 to accept the recommendation.

21 GPA at 3.

22 Notwithstanding the fact that Petitioner represented to this Court that he had not been
23 coerced and that no promises outside that which was contained within the GPA were extended,
24 the Court of Appeals held that this Court is required to hold an evidentiary hearing to determine
25 whether Petitioner's claims are credible.

26 //

27 //

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1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests this Court DENY Petitioner's
3 Petition for Writ of Habeas Corpus following an evidentiary hearing.

4 DATED this 22nd day of November, 2022.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #1565

9 BY



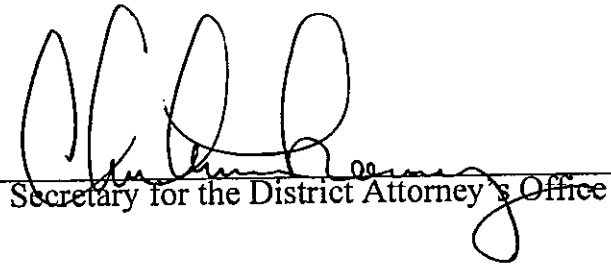
10 JOHN AFSHAR
11 Chief Deputy District Attorney
12 Nevada Bar #14408

13 CERTIFICATE OF ELECTRONIC SERVICE

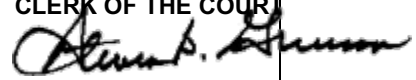
14 I hereby certify that service of the State's Response to Defendant's Supplemental
15 Petition for Writ of Habeas Corpus (Post-Conviction), was made this 22nd day of
16 November 2022, electronic filing to:

17 Steven S. Owens, Esq.
18 owenscrimlaw@gmail.com

19 BY:

20 
21 Secretary for the District Attorney's Office
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16F03770A/clh/L3



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LUIS CASTRO,

Defendant,

CASE NO. A-21-835827-W

DEPT. NO. XVII

BEFORE THE HONORABLE JENNIFER SCHWARTZ,

DISTRICT COURT JUDGE

FRIDAY, JANUARY 20, 2023

RECORDER'S CORRECTED TRANSCRIPT OF PROCEEDINGS:

ALL PENDING MOTIONS

APPEARANCES:

For the State:

MEGAN S. THOMSON

Chief Deputy District Attorney

For the Defendant:

STEVEN S. OWENS, ESQ,

Also Appearing:

YUL HAASMAN

LORENA OROZCO

Court Certified Spanish Interpreters

RECORDED BY: DELORIS SCOTT, COURT RECORDER

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1 **Las Vegas, Nevada; Friday, January 20, 2023**

2
3 [Proceeding commenced at 9:07 a.m.]

4 THE COURT CLERK: Calling case A-21-835827-W, Luis
5 Castro versus State of Nevada.

6 THE COURT: Good morning.

7 MR. OWENS: Good morning.

8 THE COURT: Do you need counsel to place presence on the
9 record?

10 THE COURT CLERK: If they don't mind.

11 THE COURT: Okay. Everyone place -- put their name and
12 stuff on the record.

13 MR. OWENS: Steve Owens for the petitioner, bar number
14 4352.

15 THE COURT INTERPRETER: Yul Haasman, Court Certified
16 Interpreter. And the numbers are on the record.

17 THE COURT: Okay.

18 MS. THOMSON: Megan Thomson for the State, 11002.

19 THE COURT: So we are here on an evidentiary hearing on
20 Mr. Castro's petition for writ of habeas corpus. Did either party want to
21 invoke the exclusionary rule before we continue, or is there any
22 housekeeping matter? How do you want to do it?

23 MS. THOMSON: I would ask to invoke.

24 THE COURT: Okay.

25 MR. OWENS: It's fine.

1 THE COURT: There's still four people in the courtroom. Are
2 they anticipated to be witnesses?

3 MR. OWENS: I don't know them. I think they're family
4 members. One's the wife of a witness. The other three, I don't know
5 who they are.

6 THE COURT: Okay.

7 MR. OWENS: Nephews, sister-in-laws.

8 THE COURT: Okay.

9 MR. OWENS: I don't intend to call any of them.

10 MS. THOMSON: That's fine.

11 THE COURT: Okay. All right. We're ready to proceed.

12 MR. OWENS: I will call Warren Geller.

13 THE COURT: Okay.

14 THE COURT CLERK: Please raise your right hand.

15 **WARREN GELLER**

16 [Having been called as a witness and being first duly sworn,
17 testified as follows:]

18 THE COURT CLERK: Please state and spell your first and
19 last name for the record, please.

20 THE WITNESS: Warren Geller, W-A-R-R-E-N, Geller is G-E-
21 L-L-E-R.

22 **DIRECT EXAMINATION**

23 BY MR. OWENS:

24 Q Mr. Geller, you're a criminal defense attorney here in town?

25 A Yes.

1 Q You recognize the gentleman seated immediately to my right?

2 A Yeah.

3 Q -- the petitioner in this matter, Mr. Luis Castro?

4 A Yes, I do.

5 Q In fact you represented him in the underlying criminal case for
6 about three years; is that correct?

7 A Approximately three years sounds about right, yes.

8 Q And just for the record that was case C-16-314092-1. You
9 were -- your representation of Mr. Geller was continuous all the way
10 from prelim all the way up through guilty plea; is that correct?

11 A You misspoke, I think you meant Mr. Castro. Um --

12 Q Yes.

13 A There was a brief break. We charge one fee for
14 representation at the Justice Court level and a separate fee for
15 representation at the District Court level. And I believe there was a very
16 brief period of time in between Justice Court and District Court where I
17 wasn't on the case. I believe Mr. Fumo's office was appointed briefly in
18 District Court and then the family retained me for District Court
19 representation and I subbed back in.

20 Q Okay. Thank you for that clarification. So according to
21 Odyssey, the Defendant entered into a guilty plea on February 4th of
22 2019. That's about what, four years ago? Can you recall how long
23 before that an offer had been extended that eventually was accepted in
24 this case, sir?

25 A I can give a rough estimate. I reviewed some of my notes and

1 emails prior to coming in today, and I noticed that on what I believed
2 was Saturday, February 2nd, I sent an email to the Defendant's brother
3 outlining what the proposed negotiation was. So I'm surmising that I
4 probably spoke to Ms. Thomson, the prosecutor, on the case maybe the
5 Friday preceding me sending that email. I can't say that with absolute
6 certainty which day it was though.

7 Q Okay.

8 A So that would've been Friday, February the 1st, 2019.

9 Q Now is that the Ms. Thomson who is here today for the
10 prosecution?

11 A Yes. It is Megan Thomson, yes.

12 Q Oh, okay. In this criminal case, there was four defendants in
13 total; right?

14 A That is correct, yes.

15 Q Do you remember the terms of what this plea offer were?

16 A Yes. It was going to be a kidnapping, I believe, with
17 substantial bodily harm. The State was going to be arguing to the Judge
18 that they wanted life without the possibility of parole. And then the
19 defendants would be trying to get the Judge to sentence them to life with
20 possibility of parole at 15 years.

21 Q And then this plea agreement or plea proposal was
22 conditioned on all defendants accepting the offer, and no one was going
23 to argue for a term of years; correct?

24 A That's my recollection, yes.

25 Q All right. So if you reviewed notes on February 2nd of 2019

1 indicating you made this communication to the brother about the offer,
2 and then we've got the Defendant pleading on February 4th. Can you
3 walk me through what happened in between? How did you
4 communicate the offer to the -- the client, I guess?

5 A Okay. So the client at that time would've been in CCDC and
6 most of our communications were through contact visits, although, he
7 did have the ability to call into my office. I would probably have to refer
8 to my notes to give you the date that I visited him to discuss the offer.
9 I've got them digitized on an iPad here, but I can't recall otherwise
10 specifically what day it was without referring to those notes.

11 Q Okay. So we got two to three days in there.

12 A Yes.

13 Q Was there a lot of back and forth before the Defendant
14 accepted the plea bargain? Or was it just like you communicated the
15 offer, and he accepted?

16 A Preceding this most recent offer that we are discussing right
17 now, there was a lot back and forth about what possible outcomes could
18 be and negotiations. I submitted several proposed negotiations
19 including him doing a polygraph and things like that to the State. And
20 my recollection was that the State was not interested; they rejected
21 those.

22 So regarding your question on the February 2nd -- or excuse
23 me, the offer that I believe would've come in on February the 1st of 2019,
24 I probably would have to refer to my notes to be able to testify regarding
25 how many times I might have visited the client or spoke with him

1 concerning that offer.

2 Q Okay. Just in general, was it more than once? Was it a lot?
3 Do you have a memory of a lot of back and forth?

4 A Given the time period between when I sent the email to the
5 brother and then if it was February 4th was the entry of plea, I would
6 estimate there might have been at most three times, but possibly only
7 two.

8 Q Okay. And just to help refresh your memory maybe a little
9 more, I obviously wasn't there; Ms. Thomson was. But in Odyssey
10 there's a court minute on January 31st, where one of the other attorneys
11 in open court, I believe you were there, represented to the Judge there's
12 an offer on the table, and it needed to be communicated to his client. So
13 I'm assuming perhaps, is it possible that even though there was a letter
14 to Jose, the brother, on February 2nd, you maybe had the offer a day or
15 two just before that?

16 A Absolutely possible, yes.

17 Q Okay. When you first communicated this offer that was
18 eventually accepted, did the Defendant want to take it?

19 A I don't think that he was thrilled about it of course, like most
20 people in that situation, you want obviously something where you're
21 getting the most leniency possible. So I -- to my recollection he didn't
22 like either option, you know, he really didn't want to go to trial or take
23 that offer.

24 Q Okay. Now he's got some family members. You mentioned
25 Jose, and apparently you sent Jose, the brother, an email. But there's

1 also some parents, a mother and a father. Are they -- I believe that's
2 Jose Senior and the mother is Angeles Castro. Have you -- did you
3 meet with them at all?

4 A Yes, I met with them several times. And my contact with the
5 family was largely through Jose, the client's brother. Because Jose is
6 bilingual, and the parents speak limited English, and I speak limited
7 Spanish, so Jose was generally my main point of contact to
8 communicate things through.

9 Q And the parents were funding the defense they -- they're the
10 ones that actually hired you; is that right?

11 A That is correct.

12 Q And so you kept a lot of communication with the parents or
13 very little after they provided you -- they hired you, did they keep an
14 active role in the case or were they kind of out of the picture?

15 A I would say they kept a pretty active role in the case. Again, if
16 I were to give you the exact amount of communications, I would have to
17 refer to my notes which are almost 150 pages. But just kind of
18 subjectively answering the question, I would say they were pretty active.

19 Q How did you communicate with the parents, over the phone, in
20 person or only through that email that you sent to the brother?

21 A Over the phone, via email with the brother, and also they
22 would on occasion come down to the office and meet with me in person
23 as well.

24 Q Okay. And the bilingual brother, Jose, was always there to of
25 kind of translate and help with communications?

1 A You know, I don't want to say we're a hundred percent certain
2 he was always there. I also have bilingual staff, and it's possible there
3 were instances when the parents came, and Jose was not there, and my
4 staff was helping me speak with them.

5 Q Okay. Did you recommend to the petitioner in this case that
6 he take that plea deal?

7 A I did, yes.

8 Q And what did you say to him to recommend this to him or
9 persuade him to take it?

10 A The gist of what it was was that his chances of having a better
11 outcome at trial were very minimal. And that we could avoid the Court
12 hearing a lot of the gruesome details at least in painstaking detail over
13 the course of, you know, over a week of trial. And then also if he
14 entered a plea, he might get some benefit from the Court for taking
15 responsibility as opposed to perhaps testifying at the trial and denying
16 that he was responsible for this. That would've been the gist of what I
17 would've told him.

18 Q And were those the same sorts of things that you told to his
19 parents?

20 A Yes, technically to answer your question. It was
21 communicated largely via an email to his brother which I would surmise
22 was in turn described to the parents.

23 Q Okay. Do you remember communicating to the parents either
24 through Jose or one of your staff, that if the petitioner took this deal that
25 he would be prosecuted or sentenced separate from the other co-

1 defendants in this case?

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

6 Q Yet that didn't happened in this case, different sentences for
7 each defendant? They all received the same sentence; right? Life
8 without?

9 A Yes, they did.

10 Q And they were all sentenced on the same day; correct?

11 A Yes. That's my recollection. All four defense attorneys were
12 there.

13 Q So you told the parents that you expected different sentences
14 to reflect the relative culpability of each of these defendants?

15 A That's not exactly correct. It's, you know, I would've and I
16 don't have a specific memory, but just based on habit and that sort of
17 thing, I would've told them that certainly it's possible that everybody gets
18 the same sentence. But it's also possible what you just asked, that they
19 would get different sentences depending on the culpability, criminal
20 history, things of that nature.

21 Q And you believed Jose's situation was a little different from his
22 co-defendants in that there was evidence he wasn't present for all of the
23 commission of the crime? He'd gone to a convenience store or
24 something for part of it; is that correct?

25 A That's correct. There were some things that arguably were a

1 little more aggravating and some things that were little bit more
2 mitigating like you just referenced. The fact that he did go to a
3 convenience store which we were able to verify through surveillance
4 video that was subpoenaed.

5 Q Hold on just a minute.

6 [Pause in the Proceeding]

7 BY MR. OWENS:

8 Q And just for the record I'm probably getting the names
9 confused between Jose and Luis. Jose is the brother. Luis is the
10 petitioner in this case; is that correct?

11 A That's right, Luis. And I think I answered your question with
12 the same miscommunication. And sometimes we would refer to the
13 Defendant or/the petitioner as Angel because that was his middle name
14 as well, so.

15 Q Okay. Very good. All right. Did you -- do you remember
16 telling the parents that if Angel, the petitioner, took this deal he would
17 get 15 to 25 years?

18 A No, I don't recall saying that -- that, no.

19 Q That was certainly something that you were going to argue for
20 though; correct?

21 A I don't believe a 15 to 25 would've been on the table. I think
22 the plan would've been to argue for -- I want to say 15 to life if I'm not
23 mistaken.

24 Q Okay. But in layman's terms he might do a minimum of 15
25 years before getting out and being eligible for parole even though he's

1 got a lifetail, correct?

2 A That's correct. And I would've communicated that was a
3 possible outcome, yes.

4 Q So when the parents remember 15 to 25, maybe they're not
5 talking about necessarily in terms of years but a 15 to life sentence
6 where he did a minimum of 15 to 25 years before he gets out. Is that
7 something you might've been telling the parents you were hoping to get?

8 A Yes, I might've told them that he could parole as early as 15
9 years if the Judge saw fit and the parole board.

10 Q You recall telling the parents that they needed to persuade
11 their son, Angel, to take this plea bargain?

12 A I don't recall specifically saying that they needed to persuade
13 him to. But I'm not going to deny that I may have said I think that it
14 would be in his interest if he took the deal or something along those
15 lines.

16 Q All right. You mentioned you were on the case in Justice
17 Court and then maybe off, and then you got back on. Do you remember
18 receiving \$85,000 from the parents to fund the criminal defense in this
19 case?

20 A No, my recollection was that the Justice Court fee, which
21 would include going through sentencing if the case settled in Justice
22 Court, would've been \$20,000, and then the trial fee, once we get into
23 District Court would've been 50. So my recollection would've been that
24 we should've received a total of 70,000 for the full representation.

25 Q Okay. So 70,000. It didn't go to trial, though; it plead guilty;

1 correct?

2 A That's correct.

3 Q All right. And at the time that the parents and the petitioner,
4 Angel, are weighing this negotiation, did you tell the parents that they
5 would need to offer up more money to continue with the case?

6 A No, I shouldn't have said anything like that because the
7 \$50,000 was a flat fee as oppose to an hourly. So whether the case
8 actually goes through trial or settles, it would've been the same.

9 Q And so if they recall you asking for another 50,000 if the
10 Defendant didn't take the deal, if they remember that, that's not
11 something you recall doing or saying?

12 A It's not something I recall doing unless there were some issue
13 about funding for some other service like an expert witness or
14 something. No, I don't have a specific memory of that, and I do know
15 that I got the office of appointed counsel to pay for the doctor that did a
16 psychological evaluation. So I don't know where that particular number
17 would come into play. And I know they did hire an investigator through
18 my office for one period of time. But I don't think another 50,000 would
19 seem appropriate for auxiliary services.

20 A You know the parents had to mortgage their home to pay for
21 the criminal defense?

22 Q I may have at one time been aware of that, but I don't recall
23 that today.

24 A Did you remember telling the parents that if Defendant didn't
25 take the deal, and they couldn't come up with another \$50,000 then

1 another lawyer would have to take over the case?

2 Q No, that does not sound like something I would've said under
3 the circumstances.

4 A Pass the witness.

5 **CROSS-EXAMINATION**

6 BY MS. THOMSON:

7 Q So you were asked questions about there having been prior
8 offers, and you having to make the counteroffers that I essentially
9 rejected. Do you recall sort of that line of questioning?

10 A I do.

11 Q Okay. And do you recall that as we were coming up to the
12 calendar call wherein all parties announced ready with the caveat that
13 there was likely a negotiation that would occur, that we were having a
14 discussion about potential negotiations still?

15 A Yes, that sounds correct. I believe it negotiated right on the
16 count of the 11th hour.

17 Q Okay. And is it your recollection that we actually negotiated
18 the first morning of trial?

19 A No, I don't think we started jury selection or anything like that.

20 Q Let me -- is it your recollection that the day that the plea was
21 entered, if it had not gone forward, there would've been a jury panel
22 brought in?

23 A In fairness, that sounds correct. But it -- for all I know it
24 could've been on the calendar call a few days prior to jury trial. I really --
25 I'd have to look at some notes or Odyssey --

1 Q Okay.

2 A -- to confirm that we were like it was literally the first day of
3 trial.

4 Q And do you have notes with you?

5 A I do, I have access to the internet as well for -- with respect to
6 access to Odyssey, yes.

7 Q And would it make you feel more comfortable in responding if
8 you looked at those notes?

9 A Sure, if I could.

10 Q Absolutely.

11 A Okay. I think I'm going to have to refer to Odyssey rather than
12 my notes if that make -- if that's all right?

13 Q Yes.

14 A Okay. So I'm get -- go ahead and get online and get on that.

15 Q While you are logging on to Odyssey, do you recall your
16 original counter to me being the charge but the full right to argue,
17 meaning you could argue for the term of years, and I would have the
18 ability to argue for life without?

19 A That certainly sounds familiar, yes.

20 Q Okay. And then my response was nope, there's going to be a
21 lifetail?

22 A That sounds correct.

23 Q Okay. In your practice when you're making counteroffers, will
24 you have a discussion with your client and/or your clients' family about a
25 counteroffer before you make it, or will you make it, and then try and

1 discuss it with whoever the appropriate parties are if it's accepted by the
2 State?

3 A Usually I would talk to the client at least first at an absolute
4 minimum. Although, you know, and sometimes a client will just give me
5 a general framework and when, you know, things might be happening
6 really quickly like in Justice Court or when I was Deputy Public Defender
7 you kind of get a sense and you can kind of counteroffer off a sentence.
8 This case however, this wasn't something that would've happened very
9 quickly. This was a case that was very involved so my expectation
10 would've been that everything that I suggested in terms of proposed
11 negotiation would've at least first gone to the client. Maybe I would've
12 also advise the family, but I can't say for certain, you know, one hundred
13 percent of the instances.

14 Q Okay. So knowing that you made the original counter of a full
15 right to argue on both sides, it's reasonable for you to assert that you
16 had at least one conversation with the Defendant that this is the counter
17 you're offering? Is this something that he would be comfortable with if
18 the State were willing to accept it?

19 A Yes, I would've, at a minimum, at least had that one
20 conversation.

21 Q And so that conversation would've included the possibility of a
22 term of years?

23 A Yes, yes.

24 Q Okay. And then once the response to your counter came to
25 you saying there must be a lifetail, you would've had follow up

1 conversations?

2 A Yes, I would've had to convey that to the client at an absolute
3 minimum, of course, to go through the guilty plea agreement. But even
4 prior to that before the State would've draft it up to make sure that he
5 wanted to do that.

6 Q And then in this case, do you remember having the
7 conversation about it being limited to a lifetail sentence with family
8 members also?

9 A What I definitely recall, because I was reviewing my notes last
10 night was that I sent an email on February 2nd outlining the full details
11 associated with the proposed settlement to Jose, the brother. And I
12 don't have a specific memory of whether or not I followed up and spoke
13 with other family members in addition to Jose. It's possible it might be in
14 my notes, but I can say with certainty that I at least emailed the brother
15 at a minimum.

16 Q Did you have a like main contact with the family, or was
17 everyone sort of like equal footing in terms of your communications?

18 A No, my main contact was with the petitioner's brother, Jose,
19 because his English skills, you know, he was perfectly bilingual in
20 Spanish and English, and so it was easier for me to contact him and
21 describe things. And then he often would relay to the family, or in some
22 instances they'd all be in my office together.

23 Q Okay. So you relied on him to convey information if you didn't
24 have all of them together?

25 A That's right. He was my main point of contact with the

1 petitioner's family.

2 Q Okay. And you referenced an email. My I approach your
3 clerk? Sorry, Judge, that had a comma or a pause. May I approach
4 your clerk?

5 THE COURT: Sure. Yes.

6 [Counsel conferring with Court staff]

7 BY MS. THOMSON:

8 Q Showing you what's been marked as State's proposed Exhibit
9 1. Is this the email that you're referring to?

10 A Yes, it is.

11 Q And you provided a copy of that to myself and Mr. Owens, this
12 morning?

13 A Yes, I did.

14 MS. THOMSON: I move for admission of State's proposed
15 Exhibit 1?

16 MR. OWENS: No objection.

17 THE COURT: All right. Submitted.

18 BY MS. THOMSON:

19 Q And the content of this email is you're explaining the potential
20 exposure, the possibility, and sentencings, and what the offer is to Jose;
21 correct?

22 A That's correct. It was written to Jose and explaining the things
23 you just mentioned.

24 Q Within that email, is there any mention of the term of years
25 that is statutorily a possible sentence?

1 A No, there's no mention of that. I just mentioned the two
2 options that were outlined in the guilty plea agreement.

3 Q Okay. And so that would've been your closest in time
4 communication with the family about what the potential sentences
5 would've been on an offer that was pending?

6 A Just for clarification, closest in time to entry of plea?

7 Q Yes, thank you.

8 A Okay. If I could refer to my notes, I do have that date pulled
9 up. It does appear that chronologically after sending the email that I
10 have a note where I called Jose on February the 2nd, and my note reads:

11 "I followed up on my email and explained to him and his
12 parents who were in the room." I assumed that my note meant in the
13 room at his residence where I called him. So it sounds like there was a
14 verbal follow up via phone call after the email, so I can at least say with
15 confidence there was the phone call after the email.

16 Q Would you ever send an email such as the one that we have
17 now marked as State's Exhibit 1, and then follow up with a phone call
18 that contained different information?

19 A I would follow up perhaps and contain additional information
20 but not contradictory information. So there might be different information
21 if they asked me things that aren't in the email about what prison would
22 he go to. That's different information but not contradictory to what's in
23 the email.

24 Q Is it possible that during that conversation you would've
25 discussed what statutorily could have been the penalties even if they

1 were not possible in the negotiation, meaning the State allows for this
2 term of years; however, the negotiation is that he will receive a lifetail.

3 A It is possible that I described options that were not available
4 via the guilty plea agreement, but that otherwise if they looked it up on
5 statute, they would see that in anticipation of any questions they might
6 have if they went that route and looked up the statute, yes.

7 Q But you would not have said the Court can sentence to this,
8 given the nature of the GPA?

9 A That's right. I would not have said that the Court, well
10 technically I might've said that sometimes Courts can break the GPA,
11 but if I went down that road, I would've said that they should certainly not
12 expect that. Because this would be a case where the Court would be
13 not following the plea agreement to give the Defendant a more lenient
14 sentence, and that's not something you should expect in this
15 circumstance.

16 Q Okay. Do you recall if at the time of calendar call you had
17 been paid in full for trial, or for the District Court representation?

18 A I strongly suspect I was, but I would have to check our
19 financial records to confirm that. But generally speaking, we would want
20 to be paid in full by the -- before the trial begins.

21 Q Okay. And would you have announced ready for trial at the
22 calendar call if you had not been paid in full?

23 A Probably so, if the payments were very close. What I try -- my
24 practice is that I don't want to be in a position where I'm withdrawing
25 particularly where there's multiple co-defendants and all these lawyers

1 are involved, for financial reasons. So I try to set up the payments
2 where it's -- we're confident that by the time we get to calendar call that
3 even if a little balance is owed it's not going to be something where I'm
4 trying to withdraw from the case or delay it because it's just kind of poor
5 form, particularly when you're dealing with so many different lawyers on
6 the same case.

7 Q So knowing that this ultimate negotiation that was reached
8 sort of was born within say a week of that trial, and that that calendar
9 call occurred within that timeframe, are you comfortable in certainty
10 knowing that you announced ready that you would not have said if you
11 don't accept this, I'm going to withdraw?

12 A Yes, I'm confident that I did not say either accept this, or I'm
13 no longer your lawyer. I will no longer be your lawyer. I wouldn't have
14 said that.

15 Q Okay. And in fact in the email that you provided you included
16 a paragraph about if the offer is not accepted I'm obviously still going to
17 be a zealous advocate at trial. It's just that we've sort of have an uphill
18 battle; is that a fair summary?

19 A Yes, that's a fair summary. I wanted to make sure that they
20 understood that if he wanted to kind of roll the dice and go to trial, that I
21 wasn't going to be doing it begrudgingly or halfhearted.

22 Q Okay. If you were owed money such as was being -- you're
23 being questioned by Mr. Owens the, I need another 50,000 for trial,
24 would that have been something you would've included in that email?

25 A Yes, hypothetical, yes. But I probably if that was the one thing

1 that was going to cause me to withdraw from the case, it would've had to
2 come up. So that would've been a natural place for it to come up, yes.

3 Q In your practice, fair to say, that this is not the only co-
4 defendant case where you represent one of two or more co-defendants?

5 A Although I can't think of a single example off the top of my
6 head on the spot, I'm very confident that I've had plenty of cases
7 involving co-defendants, yes.

8 Q And in both your actual practice and in observation and
9 through your time in the Public Defender's Office, while it will happen
10 that they are sentenced at -- on separate court dates because of bench
11 warrants or waiting for results from specialty courts, things like that. Is it
12 traditional that co-defendants are sentenced on the same date?

13 A I would say that in the majority of circumstances co-
14 defendants are sentenced on the same date particularly in cases
15 involving victim speakers. Because the States or the Court doesn't want
16 them to feel like they have to come in multiple times, or they're going to
17 miss out on the sentence of defendant A, if they just watch defendant B.
18 So it's not hundred percent of the time, but that is generally what would
19 happen, yes.

20 Q So you would not have advised either the Defendant or his
21 family that the sentencing dates would have been separate dates?

22 A Not under these circumstances. If there had been an error on
23 the PSI that was a big *Stockmeier* issue or something, then I might have
24 said hey this could cause them to be separate. But I don't recall
25 anything about this particular case that would suggest they would be

1 sentenced on different dates.

2 Q But it is both expected and part of the judicial ethic that a
3 Court must sentence a defendant on that defendant's facts not sort of
4 the spillover of the co-defendants from being sentenced at the same
5 time?

6 A Yes, I mean that's kind of -- I would say sort of the culture of it.
7 I don't know if there's a judicial ethic code on point for that, but that's my
8 understanding as sort of the culture of the court system in this regard.

9 Q Okay. And so you would have reasonably given the advice
10 that Mr. Castro would be sentenced as a unit rather than sort of a group
11 with his co-defendants?

12 A Yes, as pointed out in the email. I was planning on and did
13 put together a sentencing memorandum where I was trying to
14 distinguish him from the other defendants including things like reduced
15 culpability for leaving and going to the 7-Eleven, and possibly a woman
16 by the name of *Sherry Aguilar's* [phonetic] case during some of this
17 kidnap and torture. As well as some other things regarding his mental
18 health or kind of his, I guess to say, his level of intelligence that sort a
19 thing which was analyzed by Dr. Sharon Forrester.

20 Q And you mentioned Ms. Aguilar, is it fair to say that at the time
21 of trial you had lost contact with her?

22 A Based on my review of the email, it does look like at that time I
23 had lost contact with her. I recall that several times she changed her
24 phone number and I believe her residence. So she was an alibi witness
25 or partial alibi witness not for the whole period. But I believe at the time

1 that I sent the email which would've been, I believe, on the eve of the
2 trial, I had lost contact with her.

3 Q Okay. And so that would've been a factor in discussions
4 about whether the negotiation may be in his best interest now that your
5 defense is handicapped in that way, if you don't have her to testify?

6 A It would've been a factor; although, I will say I was not too
7 thrilled about her proposed testimony. My impression was is that, given
8 the timeframes and everything that she might not had been a great
9 witness, but, nonetheless, you know, it was something that I think we
10 were planning on offering.

11 Q Okay. I'll pass the witness.

12 MR. OWENS: Nothing further, Judge.

13 THE COURT: Okay. You're excused.

14 [Off the record discussion]

15 MR. OWENS: Next call the father, Jose Antonio Castro.

16 THE COURT CLERK: Madame Interpreter, I am going to
17 swear you in first.

18 [Lorena Orozco was sworn in by the Clerk to interpret Spanish into
19 English and English into Spanish]

20 THE COURT CLERK: And, sir, can I have you raise your right
21 hand?

22 **JOSE ANTONIO CASTRO MORENO**

23 [Having been called as a witness and being first duly sworn, testified
24 through the Interpreter as follows:]

25 THE COURT CLERK: Please state and spell your first and

1 last name for the record please.

2 THE COURT CLERK: Can I just have him spell the last
3 name.

4 THE WITNESS: Jose Antonio Castro, C-A-S-T-R-O.

5 THE COURT CLERK: Thank you.

6 **DIRECT EXAMINATION**

7 BY MR. OWENS:

8 Q Go ahead and have a seat. Is it all right if I call you Mr.
9 Castro?

10 A Yes.

11 Q Mr. Castro, do you recognize the individual seated next to me
12 as your son, Luis Angel Castro?

13 A He's my son.

14 Q Did you provide him financial and emotional support when he
15 had his underlying criminal charge that we are here to talk about today?

16 A Yes, I took care of everything of all the expenses.

17 Q Prior to the crime occurring in this case, had your son, Luis
18 Angel been living with you and your wife at your house?

19 A Yes, he did live with us.

20 Q To your knowledge, did your son have funds to hire his own
21 attorney?

22 A No.

23 Q How much -- so you and your wife hired attorney Warren
24 Geller, who you saw here today earlier in court; is that correct?

25 A Yes, that's correct.

1 Q How much to do you recall paying to Mr. Geller for the criminal
2 defense of your son?

3 A Near \$85,000.

4 Q Was that for the Justice Court preliminary hearing or for the
5 subsequent potential trial in District Court or for both?

6 A No, it was only for court. He said that if it went to a different
7 court it would be \$50,000 more.

8 Q More than you'd already paid?

9 A Yes.

10 Q How did you come up with the \$85,000 that you paid Mr.
11 Geller?

12 A My house was paid off, and I refinanced it.

13 Q Did that create a financial burden for you at all?

14 A Yes, because only my wife and I work. And we cover all the
15 expenses, so for me it was very difficult.

16 Q How close are you to your son, seated here, at the time this
17 crime occurred and as he was in prison been represented by Mr. Geller?

18 A What do you mean? I didn't understand.

19 Q Did you have a lot of communication with your son once he
20 was arrested or not much?

21 A Yes, I had a lot of communication.

22 Q To your knowledge, did your son have very much emotional
23 support other than you and your wife while he was in prison or in jail
24 awaiting trial?

25 A No, because it was just my wife and I, and my son, but more

1 so my wife and I.

2 Q And your other son is Jose; is that correct?

3 A Yes, Junior.

4 Q There was a guilty plea that was eventually entered in this
5 case. Do you remember being told that that was going to happen?

6 A Yes, I remember that one of the last few times that we saw
7 him, the attorney said that it had to be 15 to 25 years with the
8 opportunity to get out. Something around that.

9 Q So Warren Geller told you that if he took the deal, if your son
10 took the deal, he would get out in 15 to 25 years?

11 A Yes, that's what I remember he said. And that if he lost the
12 case, or if that he was not guilty, that it would go to a different court, and
13 then what he was offering was going to be lost. And so then for him to --
14 if this didn't happened, he would have to go to a different court. And I
15 don't remember exactly how he would call it, but he would say that it
16 was a different court. Then I would have to pay him another \$50,000.
17 So for me and my wife, it was difficult. So we, my wife and I, we
18 pressured my son so that he would take or accept this decision.

19 Q Let me ask you another question. This conversation where
20 Warren Geller told you that if your son, if he took the deal, will get 15 to
21 25 years, was that over the telephone, was it in person, was it in an
22 email? How did it take place?

23 A He would not send me or my wife any emails. He would send
24 them to my son, but when he said that, we were in his office.

25 Q And Jose was translating that conversation in Mr. Geller's

1 office?

2 A Every time we went to see the attorney he would go with us.
3 He would go with us, and that time he went with us.

4 Q Okay. And that occurred how long before the guilty plea was
5 entered?

6 A I don't remember clearly, but I think it was about two weeks
7 prior of the court date.

8 Q Okay. Did Mr. Geller also tell you that if the -- if your son took
9 this deal, that he would be prosecuted separately from the other co-
10 defendants?

11 A That was a conversation that we had. Because he said that
12 he was going to separate it because he had not been the entire time --
13 hundred percent of the time along with the other guys. And that he
14 would get what was coming to him for the time that he was there
15 different from the other guys that were there hundred percent of the
16 time.

17 Q Okay. Did Mr. Geller say anything about another lawyer
18 having to take over the case if your son did not plead guilty?

19 A He said that it was difficult if he didn't accept the guilty plea or
20 accept that he was guilty. And then I said, well maybe we can get a
21 different attorney. And he said that well that would be difficult because
22 the case would be far along in the process, and then later on I would
23 have to be the attorney as well.

24 Q Do you recall whether or not your son wanted to take this
25 particular plea offer?

1 A No, every time we spoke to him he did not want to take the
2 deal --

3 MS. THOMSON: Objection. Hearsay.

4 MR. OWENS: I'll rephrase it.

5 BY MR. OWENS:

6 Q Without telling me what your son said, was it your
7 understanding that your son wanted to plead guilty or not?

8 A No, he did not want to plead guilty.

9 Q What did you think he should do about this plea bargain?

10 A To seek or look for his own method to defend himself because
11 I could no longer afford to defend him.

12 Q Did you try to persuade or convince your son to plead guilty?

13 A With what the attorney told me about the 15 to 25 years, yes,
14 that's what he told me, and that's what I wanted for him.

15 Q What did you say to your son to convince him to plead guilty?

16 A To sign, to plead guilty, because I could no longer continue. I
17 would longer be able to come up with another 50,000 to defend him.

18 Q Did you pressure or threatened your son to plead guilty?

19 A I didn't threatened him, but I did pressure him.

20 Q What about besides financial support, what about your
21 emotional support of your son if he did not plead guilty?

22 A Well, I imagine it would have to be difficult because we would
23 be angry with him.

24 Q Why would you be angry with him?

25 A Because he was not -- he would not take the decision that the

1 attorney was telling us.

2 Q Did you let your son know that you were angry with him if he
3 did not plead guilty?

4 A Well, perhaps not in that way but we would stop supporting
5 him in many ways. Many things.

6 MR. OWENS: I'll pass the witness.

7 **CROSS-EXAMINATION**

8 BY MS. THOMSON:

9 Q You said that prior to being arrested your son was living with
10 you?

11 A Yes.

12 Q Was Edward Honabach also living with you?

13 A No.

14 Q Okay. Was anyone not in your family living with you?

15 A No one.

16 Q Okay. Would it surprise you if the evidence in this case
17 showed that in fact your son was living with Edward Honabach, not with
18 you?

19 A No, because I still went to pick him up at the house where
20 they all lived. All of them lived in a house together, and sometimes I
21 would pick him up when he would get off work.

22 Q You were talking about the attorney having told you that there
23 will be another \$50,000 if the case had to go to a different court. Am I
24 accurately kind of paraphrasing that?

25 A Yes, that's what he told me.

1 Q And my understanding from your testimony was that he told
2 you that it would go to a different court if your son pled not guilty and
3 was found guilty at trial; is that correct?

4 A How do you mean? I didn't understand?

5 Q Okay. My understanding from your testimony, and I may have
6 misunderstood, was that the attorney told you that if your son pled not
7 guilty or was convicted, the case would go to a different court?

8 A Yes. If he did not plead guilty to and accept -- take those 15
9 to 25 years then it -- that it would go to a different court, and we would
10 lose that proposal. And it would be whatever that other Court would
11 give.

12 Q Okay. You indicated that the last time you saw Mr. Geller was
13 roughly two weeks prior to the entry of plea?

14 A Yes.

15 Q Do you remember having any conversations with him through
16 your son after that face to face meeting, before the entry of plea?

17 THE COURT INTERPRETER: I'm sorry. May you -- the
18 Interpreter ask for a repetition of the question?

19 MS. THOMSON: Sorry.

20 BY MS. THOMSON:

21 Q Do you recall having any phone conversations with Mr. Geller,
22 through your son, after that face to face meeting, but before the entry
23 plea?

24 A Yes, he would speak to my son.

25 Q Okay. And would you discuss what was happening in Angel's

1 case with Jose?

2 A Yes.

3 Q Okay. And so would Jose convey to you information that was
4 being received from Mr. Geller?

5 A Yes.

6 MS. THOMSON: Pass the witness.

7 MR. OWENS: Nothing further.

8 THE COURT: All right. You're excused. Thank you for your
9 testimony.

10 THE COURT INTERPRETER: Your Honor, may I make a
11 clarification?

12 THE COURT: Clarification on?

13 THE COURT INTERPRETER: On -- I believe the gentleman
14 said when -- I said when he would get off work but I believe -- I don't
15 know who would get off work?

16 THE COURT: Did anyone -- does anyone want any
17 clarification on that bit of testimony?

18 MR. OWENS: Getting off work?

19 MS. THOMSON: It was the -- where he had lived at the time.
20 I don't know that it matters.

21 MR. OWENS: It doesn't matter to me.

22 MS. THOMSON: He'd pick him up when someone got off
23 work.

24 THE COURT INTERPRETER: Okay. Thank you.

25 THE COURT: All right.

1 MR. OWENS: Next witness is the mother, Angeles Castro.

2 [Pause in the proceedings]

3 THE COURT CLERK: Need to swear you in again.

4 [Lorena Orozco was sworn in by the Clerk to interpret Spanish into
5 English and English into Spanish]

6 THE COURT CLERK: And then, can I have you raise right
7 hand?

8 **ANGELES CASTRO**

9 [having been called as a witness and being first duly sworn, testified
10 through the Interpreter as follows:]

11 THE COURT CLERK: Please state and spell your first and
12 last name for the record, please.

13 THE WITNESS: Angeles Castro.

14 THE COURT CLERK: Can I get the first name spelled?

15 THE WITNESS: Angeles Castro, A-N-G-E-L-E-S.

16 THE COURT CLERK: Thank you.

17 **DIRECT EXAMINATION**

18 MR. OWENS: You may be seated.

19 THE COURT: Have a seat.

20 BY MR. OWENS:

21 Q Okay. Ms. Castro, you are the mother to my client seated
22 next to me, Luis Angel Castro; is that correct?

23 A Correct.

24 Q And your husband is Jose Antonio Castro who just testified?

25 A Correct.

1 Q Is true that together you and your husband hired attorney
2 Warren Geller to represent your son in this criminal case?

3 A That's right.

4 Q Do you recall how much money you and your husband paid to
5 Warren Geller for this representation?

6 A \$85,000.

7 Q Do you recall that your son pleaded guilty in this case?

8 A Yes, because we convinced him to.

9 Q How long before he pled guilty, did you hear that there was an
10 offer of negotiation?

11 A It could be about one week or two weeks before the last court
12 date that the attorney told us the -- about the negotiations that could be
13 had.

14 Q Okay. When the attorney told you this, was it in person, was it
15 by phone, was it by email? How was it communicated to you?

16 A By all three methods. In person, by email, and on the
17 telephone with my son, Jose Antonio, which is the -- my son who
18 interpreted every time that we spoke to him.

19 Q So what promises did Mr. Geller make to you if your son
20 pleaded guilty?

21 A He told us that it was the last offer that if he signed he would
22 get 15 to 25 years maximum or on the high end. And that it was the last
23 opportunity to negotiate because he had spoken to the District Attorney.

24 Q Did Mr. Geller say anything about being prosecuted or
25 sentenced separately?

1 A Yes, that's what he explained to us because there was a lot of
2 evidence that said that my son had or our son had not been there the
3 entire time. That there was video that he had been at 7-Eleven. That
4 there was DNA evidence where he had not used the weapon that had
5 been used in the crime.

6 Q What did Mr. Geller say to you about getting a separate
7 sentence? What did you expect it to be?

8 THE COURT INTERPRETER: I'm sorry, can The Interpreter
9 ask for repetition of that, please?

10 THE COURT: Yes.

11 THE WITNESS: Okay. The attorney told us it was maximum
12 of 15 to 25 years. That he had arranged for the sentencing to be
13 separate from the other people that had been processed, so that there
14 would be a fair sentencing.

15 BY MR. OWENS:

16 Q To your knowledge, did your son, Luis, want to take this plea
17 bargain initially?

18 A No. No, because he always maintained that he did not
19 commit what happened. He, yes accepted that he had been with these
20 persons but that he not done the things -- that they had done. And he
21 did not agree. He wanted it to continue, but we could not let it continue
22 because we didn't have any more money. They were asking us for
23 more money and we didn't have it.

24 Q How much more money did Mr. Geller ask you for?

25 A \$50,000.

1 Q What was your understanding of what that money was for?

2 A So that it would go to -- you finish one court and it goes to
3 Federal Court?

4 Q Okay. Did Mr. Geller ask you to try to convince your son,
5 Luis, to accept this plea bargain?

6 A That's correct. He told us to convince him. That it was last
7 thing he could do now.

8 Q Did you think that this was the best thing for your son to do, to
9 accept this plea bargain?

10 A Based on what attorney Geller -- how he explained it, that with
11 the 15 to 25 years max, and also with the deduction of the three years
12 that he had already served and also if he had good conduct, then it
13 could be even less.

14 Q Going back to the \$50,000, did Mr. Geller say he would need
15 that by the next court date, if the Defendant did not plead guilty?

16 A Correct. Because at the time that we did not accept or Luiggi
17 did not accept what he was offering, then the case would have to be
18 begun all over again. And his services only took us that far.

19 Q Was it at that time Mr. Geller talked about another attorney
20 coming on to the case, if your son didn't plead guilty?

21 A Yes, but then once he got sentenced, then he referred us to a
22 female attorney for the appeal.

23 Q Oh. Okay. Was it your understanding that the \$50,000 was
24 for the appeal or for Federal Court, or was it for Mr. Geller, by the next
25 court date?

1 A That money was to be for the case because he explained to
2 us that if my son did not accept that sentence then it would go to the
3 Federal Court. And that that was what that money was for to initiate the
4 case again.

5 Q Yeah. But your son pleaded guilty, so you didn't have to pay
6 the 50,000; correct?

7 A Correct.

8 [Colloquy between counsel and the defendant]

9 Q Just for the record, you referred to your son as Luigi, is that
10 just a family nickname for him?

11 A Correct, sorry.

12 Q What did you say to your son, Luis, in order to convince him to
13 accept this plea bargain?

14 A We explained to him that the attorney had told us that that
15 was the best thing that he could accept. And that if he didn't do it -- and
16 Angel got very upset with us very angry with us because he knew that if
17 we went further he could prove and --

18 THE COURT INTERPRETER: May the Interpreter ask for
19 clarification or repetition?

20 THE COURT: Of course.

21 THE WITNESS: My son got very angry because if it
22 continued then my son could demonstrate his innocence, and that's why
23 he did not want to accept?

24 BY MR. OWENS:

25 Q Were you angry with your son when he didn't want to plead

1 guilty?

2 A No, the attorney spoke to us in a way letting us know that that
3 was the best thing for our son and for us to let our son know the very
4 same thing.

5 Q Did you threaten to withdraw your financial and emotional
6 support from your son if he did not plead guilty?

7 A Yes, because we already had requested a hard money loan
8 over our house and the payment was very high, and we could not --
9 cannot get into anymore debt.

10 MR. OWENS: Pass the witness

11 **CROSS-EXAMINATION**

12 BY MS. THOMSON:

13 Q You indicated that the attorney communicated with you in
14 person, by email, and over the phone with your son. Did he ever send
15 you emails directly, or were they to your son?

16 A Maybe he sent me one, but he would send them to my son.
17 Maybe he sent me one explaining things, but my son is the one who
18 would always read them.

19 Q Okay. And you indicated that you had a conversation with the
20 attorney about the negotiation. About how long before the entry of plea
21 was that?

22 A We had very many interviews with the attorney. He would
23 always show us the videos of what had happened. We exposed or gave
24 him the story of our son ever since he was little. He -- I always asked
25 him also to please have a doctor see him. He explained to us that could

1 not be done, that there was a diagnosis that had been made through a
2 doctor, a psychiatrist that saw him.

3 Q I think I'm going to interrupt because I think that my question
4 wasn't clear because I'm not getting the answer that's responsive. You
5 were aware that your son pled guilty; correct?

6 A Correct.

7 Q When was the last time before he pled guilty that you talked to
8 the attorney either through your son, or in person, or had a
9 communication via email?

10 A It was one or two weeks before the sentence, and it was in
11 person.

12 Q Okay. When was the last time you talked to the attorney
13 before the entry of plea?

14 A Two days before -- one day before.

15 Q Okay. Do you remember if that was in person, over the
16 phone, or via email?

17 A In person. For us it was very important to have knowledge of
18 what was going to happen with our son.

19 Q And your son, was -- Jose, was with you for that
20 conversation?

21 A The whole time.

22 Q And Jose was sort of your interpreter for that conversation; is
23 that fair?

24 A Correct.

25 Q Okay. You -- was that the conversation wherein the attorney

1 told you that he would need \$50,000 by the next court date?

2 A Correct. Because he had told us that that was the last
3 opportunity there was and if -- not then the case would be closed and
4 then the case would then move on to start it again.

5 Q Okay. I just want to make sure I'm understanding. He told
6 you in that conversation about two days before the entry of plea, that he
7 needed \$50,000 in two days?

8 A Correct. That if my son did not accept to plead guilty, then it
9 would go to Federal Court, and it would be a new case for him.

10 Q Okay. But that's was not that you had to pay \$50,000 in two
11 days?

12 A Oh, no. It was if my -- If we did not accept or if my son did not
13 accept to plead guilty.

14 Q Okay. Was it your understanding in your conversations with
15 the attorney that it was his belief that there was a very small likelihood,
16 or it was very improbable that your son would be found not guilty at trial?

17 A Correct. He told us that there was every opportunity or
18 possibility because of the evidence that had been obtained. That if --

19 THE COURT INTERPRETER: I'm sorry. Can I ask for
20 repetition please?

21 THE COURT: Of course.

22 THE WITNESS: That if my son did not plead guilty the
23 attorney -- that if he did not plead guilty, then there was a possibility of
24 him getting 15 to 25 years because he had been with the rest of the
25 group.

1 BY MS THOMSON:

2 Q So your understanding from the attorney was that if your son
3 went to trial he would get 15 to 25 years?

4 A No, that was the sentence that my son had to accept the day -
5 - of the last day of court.

6 Q Based upon your conversation with the attorney, did you
7 convey to your son that you'd thought it was in his best interest to accept
8 the negotiation that was offered?

9 A The attorney convinced us. He told us that we should
10 convince our son that that was the best thing for him, because he had
11 already negotiated that with the District Attorney.

12 Q Would you have attempted to convince your son if you'd
13 thought that it was not in your son's best interest?

14 A The case was in the attorney's hands, and he knew what was
15 the best decision, and we believed that he knew what he was doing.
16 And when he told us to convince our son, we believed that was the best
17 thing, so that's why we convinced him.

18 Q Okay. So you also believed it was in his best interest at that
19 time?

20 A If it were up to me, I would never -- I would say that he was
21 innocent -- always say that he was innocent and he would never have to
22 be sentenced. But the case was with an attorney, and we believed that
23 he knew what was best for him, and that's why we had him as an
24 attorney. We had his representation.

25 MS. THOMSON: I have no further questions.

1 MR. OWENS: Nothing further.

2 THE COURT: Okay. Thank you for your testimony. You're

3 excused.

4 THE WITNESS: Thank you.

5 MR. OWENS: Next witness is Jose Jr., Castro.

6 THE COURT: This would be the son?

7 MR. OWENS: The son who is bilingual, --

8 THE COURT: Okay.

9 MR. OWENS: -- speaks English.

10 **JOSE CASTRO, JR.**

11 THE COURT CLERK: Please raise your right hand for me.

12 [Having been called as a witness and being first duly sworn,

13 testified as follows:]

14 THE COURT CLERK: Please state and spell your first and

15 last name for the record, please.

16 THE WITNESS: Jose Antonio Castro. And spell my last

17 name?

18 THE COURT CLERK: Yes.

19 THE WITNESS: Jose Antonio Castro, C-A-S-T-R-O.

20 THE COURT CLERK: Thank you.

21 THE COURT: You can have a seat.

22 THE WITNESS: Thank you, ma'am.

23 **DIRECT EXAMINATION**

24 BY MR. OWENS:

25 Q Mr. Castro, this is your brother seated next to me, Luis Angel

1 Castro; is that correct?

2 A Yes, correct.

3 Q And that was your mother and father who just testified in
4 here?

5 A Yes, correct.

6 Q You have the same name as your father, so you're the Junior?

7 A Yes.

8 Q You remember your parents hired an attorney, Warren Geller,
9 to represent your brother in this criminal action?

10 A Yes.

11 Q Because your parents are predominantly Spanish speakers,
12 did you serve a role as a translator between the attorney and your
13 parents?

14 A Time to time.

15 Q Were you there when your brother pled guilty?

16 A I wasn't -- I don't think he pled. I don't remember him pleading
17 guilty. I remember him being sentenced.

18 Q Okay. Do you remember discussions with the attorney about
19 your brother pleading guilty?

20 A Yes, it was -- it was better for him to plead guilty because he
21 going to have a -- my parents paid Warren Geller --

22 Q Okay. Let me stop you first. You remember there was more
23 than one instance of communicating with the attorney?

24 A Yes.

25 Q That happened in person, over the telephone?

1 A In person --

2 Q By email?

3 A In person.

4 Q In person? Are you thinking of one instance in particular, or
5 were there several?

6 A There were several, several.

7 Q Okay. In fact there was an email today that you were shown;
8 is that correct?

9 A Yes.

10 Q And that was from Mr. Geller to you?

11 A Yes, correct.

12 Q And when you would get information from Mr. Geller, you
13 would then communicate that to your parents in Spanish; is that correct?

14 A Yes, I would let them know. But my parents hired Warren
15 Geller, not me to take the case or representation or more than anything
16 give legal advice. It was his -- more than anything -- I wasn't hired for
17 translating.

18 Q Right.

19 A I don't work for Warren Geller. It was -- I think is more official
20 his job to communicate with my parents not to me.

21 Q Right. But you where there in the room when Warren Geller
22 would speak to your parents, and so you heard the words in English
23 coming from Mr. Geller?

24 A Correct.

25 Q What was your understanding of what Mr. Geller promised if

1 your brother pled guilty?

2 A Fifteen to 25 with possibility of parole.

3 Q Okay. Was there anything about the --

4 THE COURT: I'm sorry. Can he repeat that? I missed that.

5 I'm sorry. Is that -- can you say what was your understanding was?

6 THE WITNESS: Fifteen to 25 years with the possibility of
7 parole.

8 THE COURT: Okay. Thank you.

9 BY MR. OWENS:

10 Q That was your understanding of the sentence that your brother
11 would get if he pled guilty?

12 A Yes.

13 Q Did Mr. Geller say anything about being prosecuted
14 separately if he pled guilty?

15 A There -- I don't understand if he said prosecuted separately or
16 trialed separately, or how it was. He just did mentioned separately.

17 Q What did you understand separately to be if he pled guilty,
18 what would be separate?

19 A He would be sentence -- my brother would be sentence
20 separately from everybody else.

21 Q Okay. And again, what to you was your understanding of
22 separately? Was that on different days, or different sentences, or not all
23 at the same time, or what?

24 A Not all at the same time.

25 Q Okay. Do you recall Mr. Geller saying something about

1 \$50,000?

2 A Yes, after -- if my brother did not take the first court, the option
3 of that 15 to 25, that he was going to lose that option and might be have
4 a further sentence. So, and Mr. Warren Geller said -- if he takes another
5 court or goes in to another court, he would request another \$50,000 for
6 his representation.

7 Q Okay. Do you know how much your parents had paid Warren
8 Geller for trial?

9 A I believe it was like -- or like 80 plus thousand dollars.

10 Q All right. So Mr. Geller did mentioned 50,000 that was for
11 another --

12 A Additional.

13 Q An additional. But that was to represent him in another court
14 after the trial or --

15 A Or if my brother wanted to keep fighting it.

16 Q If he wanted to keep fighting it. Okay.

17 A Yeah, not take the first option.

18 Q Did your parents have another \$50,000?

19 A No, no.

20 Q Did Mr. Geller say anything about another lawyer having to
21 come on the case if your brother did not plead guilty?

22 A He would say that the best option were for him to keep having
23 the case since he was -- it was already advanced into, and he had
24 further knowledge into him. So the best bet would be to keep with him
25 and pay him the extra 50,000 if we decided to have another court.

1 Q Did Mr. Geller say anything about your parents that they
2 should convince their son to plead, or was he just relaying what the
3 terms of the plea agreement were?

4 A It would be the best option. Because if he did not plead or
5 take that option, the first option, and the second court he said that it
6 could be -- if we waived off that option, it can be having further sentence
7 or bigger sentence.

8 Q These conversations with Mr. Geller, how long before a guilty
9 plea did they take place; do you recall?

10 A Or meaning like as the last time we saw him before our
11 brother's sentencing?

12 Q You're not even sure when he pled guilty, huh?

13 A No. I was just there, and it was like, he got sentenced.

14 Q When he got sentenced.

15 A Mm - hmm.

16 Q These discussions about the negotiations and pleading guilty,
17 how long did they go on for, these telephone calls, meeting in person?
18 Was it all in one day? Did it take place --

19 A It took -- it took several times. We went to his office several
20 times, and he kept saying it'll be the best bet for my brother to plead
21 guilty. And or else if he didn't and go to a further court or another court,
22 he might lose that option from the 15 to 25 years, and he can get a
23 longer sentencing.

24 MR. OWENS: All right. Court's indulgence.

25 THE COURT: Sure.

1 MR. OWENS: Pass the witness.

2 **CROSS-EXAMINATION**

3 BY MS. THOMSON:

4 Q When you had the conversation about the 15 to 25 with the
5 possibility of parole, was that in person, over the phone, or over email?

6 A In person.

7 Q Okay. Do you remember after that conversation having other
8 communications with the attorney whether in person, over the phone, or
9 via email?

10 A Mostly it was over -- person.

11 Q Okay. After that 15 to 25, I recognize it was mostly in person,
12 do you remember talking to him on the phone?

13 A Just to set up appointments.

14 Q Okay. You never had any conversations about potential
15 sentences?

16 A No, it was just to make appointments.

17 Q Okay. Do you remember having any emails from him about
18 potential negotiations, after that in-person conversation where you had
19 the 15 to 25?

20 A It was just more about information about my brother's case.

21 Q Okay.

22 MS. THOMSON: May I approach your clerk briefly?

23 THE COURT: Of course. Are you looking for this?

24 MS. THOMSON: I am.

25 THE COURT: Okay.

1 BY MS. THOMSON:

2 Q At the time that this case was going on, so in roughly February
3 of 2019, was your email tonycastro.jc@gmail.com?

4 A Yes.

5 Q Do you remember receiving an email from the attorney that
6 you reviewed this morning?

7 A Yes, I received it.

8 Q Okay. And is there anything in that email that talks about 15
9 to 25?

10 A It does, 15.

11 Q Okay. So your understanding in that in person conversation,
12 was it the same as your understanding from that email?

13 A Yes.

14 MS. THOMSON: Pass the witness.

15 MR. OWENS: Nothing further.

16 THE COURT: All right. Thank you for your testimony. You're
17 excused.

18 THE WITNESS: Thank you.

19 MR. OWENS: All right. Last witness, Judge. And is the
20 petitioner, Luis Castro.

21 [Colloquy between the Court and Clerk]

22 THE COURT: Okay. And Lorena, you've already been sworn
23 in, so we don't have to swear you in again. But the same promise and
24 oath remains. Okay?

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LUIS CASTRO

THE COURT CLERK: Sir, can I have you raise your right hand?

[Having been called as a witness and being first duly sworn,
testified through the Interpreter as follows:]

THE COURT CLERK: Please state and spell your first and last name for the record please.

THE WITNESS: Luis A Castro, L-U-I-S A C-A-S-T-R-O.

THE COURT CLERK: Thank you.

THE COURT: Mr. Castro, do you want to use the Interpreter for purposes of your testimony today?

THE WITNESS: Yeah.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. OWENS:

Q Mr. Castro, you pleaded guilty in this matter on February 4th, 2019; does that sound familiar?

A Yes.

Q When you first heard about this particular plea offer that you eventually accepted, did you want to take it?

A No, I did not want to accept it.

Q And how did you hear about the plea offer first?

A It was three days before going to court to get the jury, yeah.

Q And why didn't you want to take the plea bargain?

A Because at the end of the day when Mr. Geller explained to

1 me about the second option -- because there were two options on the
2 contract. So because --

3 THE COURT INTERPRETER: I'm sorry. May I ask for
4 repetition it's kind of long?

5 THE COURT: That's fine.

6 THE INTERPRETER: I'm sorry.

7 THE WITNESS: Because when he offered both things, I saw
8 that there was nothing convenient about my participation, so I said no.

9 BY MR. OWENS:

10 Q Okay. When you say the two things, are you talking about the
11 15 to life, or the life without as being the two sentencing options?

12 A From 15 to life and life without getting out.

13 Q So you told Mr. Geller no, you would not accept that
14 negotiation; is that correct?

15 A That's correct.

16 Q Did you thereafter hear from your parents about that
17 negotiation?

18 A Yes, but that was after the second day because the first day --
19 well he went to see me three days in a row. First day he went to see me
20 I had said no, and he had been telling me take this, and I said no. And I
21 said to him, okay, get to -- if I'm going to sign the contract, then get them
22 to put 10 to life, and then I'll sign even for deportation, and that's it.
23 Then I'll do that.

24 Q But that didn't happen, did it?

25 A No, because when he returned he said that he had sent an

1 email to the DA And that's from then is when he said that once again --
2 he had taken my file. He had told me, I want you to take this, and I said,
3 no, because if it's that way then I'll just -- it's better for me to go to trial.
4 And that's when he said, no, look, this is good for you. Take this
5 because you don't have a record. Take the 15 to life because it's good
6 take this in that -- it was good to take that in that way because since I
7 don't have a criminal history. And then from there is when he started
8 talking to me about how they were going to sentence me separately
9 from all of this, with all of this. So that's when I told him okay something
10 -- give me a chance to talk to my parents. I told him let me see what
11 they advise me to do. And from there I'll make a decision but -- so that
12 he would come back the next day.

13 Q Let me ask another question.

14 A Okay.

15 Q Did you know that Mr. Geller was talking to your parents?

16 A I did know that he was in contact with my parents, but I didn't
17 know how strong the communication was, because -- but I did know that
18 they were in communication because they had paid for the case.

19 Q Did you have money to hire your own attorney?

20 A No.

21 Q Were you employed prior to going into the jail?

22 A I was working, but it was with my parents. And when I started
23 doing drugs, then I separated myself a lot from the family business
24 because it was to avoid embarrassing them with the type of work that it
25 was.

1 Q Were you dependent on your parents for financial support?

2 A Yes.

3 Q So tell me about your parents talking to you about the plea
4 bargain. That happened more than once? Just one phone call, or was it
5 in person, or what?

6 A It was simply a call because when I spoke to my parents,
7 there was a lot of fighting because I told my parents, look I don't want to
8 take this. So that's when my parents say, you know what, son, if you
9 don't take this we can't handle you anymore. If you don't take this we
10 can't --

11 THE COURT INTERPRETER: What was the last part?

12 THE WITNESS: We can't help you anymore. If you don't take
13 this, then forget about us because the attorney is asking for more money
14 if this goes to trial.

15 BY MR. OWENS:

16 Q Do you recall how much more money that he was asking for?

17 A No, I never knew how much it was. I'm just finding out today
18 now that how much it was. And honestly I never knew how much they
19 had paid for the case, or how they paid for it, truly or honestly.

20 Q How did that make you feel, when your parents said they
21 would withdraw financial and emotional support if you didn't plea?

22 A I felt depressed. I felt a lot of things because mentally I didn't
23 know what to do anymore because they've always been a great or big
24 influence in my life. And when they told me that, I said, well, too bad,
25 we'll just leave in God's hands. And so that's why when the following

1 day Mr. Geller went to see me, then I did have a conversation with him,
2 and I said hey, is there another possibility or something else? And that's
3 when he took out my file and he said, look, this is what they're offering.
4 He said that it was seventy-five percent chance that they're going give
5 this because you don't have a criminal history. So that's probably what
6 they're going to give you because you don't have a criminal history, and
7 if you also behave well 9 out of 10 times, they'll parole you, and then you
8 get deported. And then that's when you can start your life, or restart
9 your life.

10 Q So what made you change your mind and decide ultimately to
11 plead guilty?

12 A Well, I didn't see that Mr. Geller had the desire to represent
13 me in the trial. And more with my parents' influence when they told me
14 that then, so then I felt that my back was against the wall, so then I took
15 the decision because for the same reason because my parents have
16 always helped me. And the system when you're locked up, they don't
17 give you good things to eat and they don't give you a lot of things, so
18 and that's why -- because if you -- if it weren't for them with the way they
19 feed me right now, believe me, I'm thin. I'll be thin.

20 Q Okay. Let me ask you another question here. If your parents
21 had not said the things they did and persuaded you to plead guilty,
22 would you still have pled guilty, or would you have insisted on going to
23 trial?

24 A Oh, I would've taken it to trial if they hadn't done that.
25 Because like I'm saying, unfortunately -- like Mr. Geller explained to me -

1 - the way Mr. Geller explained it to me in a different scenario is that if
2 two people go to rob a bank and the one person stays outside in the car,
3 and the other person goes inside and does all the ruckus and all that,
4 and then they get caught, then both people are equally sentenced or
5 responsible for the crime. So that's what he told me, that by association
6 that's why everything -- all this was happening to me. So then like I'm
7 saying, that twisted everything in my mentality.

8 MR. OWENS: Okay, thank you. I will pass the witness.

9 MS. THOMSON: Court's indulgence.

10 THE COURT: Sure.

11 **CROSS-EXAMINATION**

12 BY MS. THOMSON:

13 Q In your conversation with Mr. Geller about the negotiations,
14 you indicated that he told you that there was a seventy-five percent
15 chance that you would get the possibility of parole; correct?

16 A I'm sorry. Once again, because when you were both --

17 Q In your conversation with Mr. Geller about the plea
18 negotiation, he told you there was a seventy-five percent chance that
19 you would get the possibility of parole; correct?

20 A Not opportunity, but guarantee.

21 Q Okay. Seventy-five percent chance you were guaranteed?

22 A That they were going to give me 15 to life.

23 Q Okay. Which you understood included a twenty-five percent
24 chance that you would get life without the possibility of parole?

25 A Well, yes.

1 MS. THOMSON: Okay. Pass the witness.
2 MR. OWENS: Nothing further.
3 THE COURT: Okay. Thank you for your testimony, sir.
4 MR. OWENS: That concludes the State's or the --
5 THE COURT: Bad habit.
6 MR. OWENS: -- the petitioner's case.
7 THE COURT: Ms. Thomson?
8 MS. THOMSON: I have no witnesses.
9 THE COURT: Okay.
10 Okay, so evidence has concluded. Did you want to do
11 arguments now, or did you want to brief it? What would the parties
12 prefer? I'm okay with either. I'm just --
13 MR. OWENS: I would like to --
14 THE COURT: -- giving you both the option.
15 MR. OWENS: -- I would like to argue it now. I think we
16 already briefed it, unless the Court wants further briefing?
17 THE COURT: I don't. I just wanted to make sure there was
18 nothing else you wanted to provide in writing, but I'm -- we can continue
19 and have oral arguments right now.
20 MR. OWENS: Okay.
21 THE COURT: All right. Mr. Owens.
22 MR. OWENS: Judge, I'm sure it's a very, very difficult
23 decision whether to plead guilty or to go to trial especially in a case as
24 serious as this with such dire consequences in this. And I'm sure it's
25 quite common to have family members and friends advise a defendant

1 and communicate with them and give their interpretation.

2 This issue already came through on habeas and the District
3 Court Judge just summarily denied it and said no, that's -- it's not
4 enough misrepresentation or coercion or threats from family members,
5 that's not going to get the job done. There's no grounds for this, it's
6 belied by the record or whatever.

7 And it was up on appeal. That's why we are here. The Court of
8 Appeals said no, no, no and they cited a 9th Circuit case that I cited in
9 my supplemental brief. I don't know how to pronounce it. It's *I-a-e-a v.*
10 *Sunn* from the 9th Circuit. And that's the legal authority for the argument
11 here, which is a little different maybe then many cases, and maybe it's a
12 practice that has gotten bit out of hand.

13 But when you have a defense attorney encourage the family
14 members to really come between the communications directly from the
15 attorney to the client and enlist the help of family members to be the go-
16 between, then we have this chain of communication and the
17 interpretation from English to Spanish didn't help. But the parents get
18 some misinformation or some incomplete information from the attorney,
19 and they relate that to their son who it's a little different then maybe what
20 the attorney had said or what's in the guilty plea agreement.

21 But we've got the parents threatening to withdraw that
22 financial support. It was a little unclear about the \$50,000 exactly when
23 that was due, but the parents understood that if their son did not plead
24 guilty they would have to cough up another 50,000, if their son were to
25 fight this. Maybe it was down in the future, maybe it was Federal Court,

1 maybe it was to Mr. Geller for the appeal, but at some point if their son
2 did not plead guilty, it was going to cost them another \$50,000 that they
3 simply didn't have. They'd mortgaged their home, and so they put a lot
4 of pressure, too much pressure on their son.

5 We have to -- we acknowledge there's pressure in every
6 situation, but you could have so much pressure that if over -- it wears
7 down a defendant's understanding. He had been strong in not wanting
8 to plead guilty. But it was when his parents, at the behest of the defense
9 attorney, pressured him further and threatened to withdraw that financial
10 support leaving him without an attorney, without a means to afford an
11 attorney. He was dependent on his parents for that. And leaving him
12 without the emotional support, he's been in jail for three years at this
13 point. If they're going to cut off support and are angry at him for not
14 pleading guilty and saying that he's stubborn and that he should plead, it
15 wore him down. It overcame his free will, so that the subsequent plea
16 really was not free anymore and was coerced and given under duress.

17 That's the argument that we are advancing here today. That's
18 I believe the understanding of my client and his parents of how this went
19 down. And how the system, and through utilized the parents to convince
20 him to plead guilty when in truth and fact he did not want to plead guilty
21 and wanted to take this case to trial.

22 And the 9th Circuit case gives us the legal authority for saying
23 that that undermines the validity of the plea. The Court of Appeals sent
24 it back down here and said, if these allegations are true, then the
25 defendant is entitled to relief. That's the standard for getting an

1 evidentiary hearing. I think we've established that the allegations are
2 true. The parents testified consistent with their letter to -- that had been
3 attached to the supplemental habeas proceedings that they had
4 pressured their son to plead guilty.

5 So that's the --that's what we're hanging our hat on here and
6 saying the plea was involuntarily, not of free will, and counsel was
7 ineffective in utilizing the parents in this matter to convince the
8 Defendant to plead guilty. Thank you.

9 THE COURT: Thank you, Mr. Owens.

10 MS. THOMSON: And, Your Honor, I don't see it exactly how
11 Mr. Owens says. Certainly, the Defendant had contact with his parents,
12 and there's no doubt that Mr. Geller had communications with the
13 parents about what he deemed to be best course of action. But really
14 that email, I think provides the best insight into the communications.

15 While he certainly expresses that his belief is that trial is not
16 going to be successful and that the risk is in excess of what he faced in
17 entering the plea and asked the parents to sort of explain that to the
18 Defendant.

19 There's no indication that he had the parents -- nor did the
20 parents even testify that they were told -- or that they did threatened the
21 Defendant. Certainly they can make their choices about what support
22 they want to give. They gave him quite a bit of support leading through.
23 And I think is clear from the testimony of the witnesses that the
24 Defendant was never going to be left without an attorney. Even in the
25 least clear, the father's testimony of the need for the 50,000, it was if you

1 don't pay us this additional 50,000, he's going to get a new attorney and
2 you have to start over. It's not that he was going to be left without an
3 attorney, it's just he would be left without Mr. Geller. Which is -- even if
4 we assume from that perspective which would tend to suggest he
5 believed that it was for a trial, it's still not without an attorney.

6 Additionally, the family factual scenario should not be held
7 against any party. The Defendant understood that his parents were
8 paying the bill. The parents understood their scope of ability to do so.
9 And that should not weigh into if it's unfair pressure when it's a factual
10 we can't do this anymore. It's not you have to plead guilty because you
11 won't have an attorney. We knew he would have an attorney, they knew
12 he would have an attorney. And quite frankly I think it's clear from the
13 testimony that the statement that it was being made had to do with an
14 appeal if he was unsuccessful at trial, not that he was going to be left
15 high and dry at trial even.

16 At this point the evidence certainly suggests that his parents
17 encouraged him to take the offer. However, even after that
18 encouragement, the Defendant testified about going over the GPA with
19 his attorney, discussing the possibilities of outcome, and being clear that
20 he had at least twenty-five percent chance of receiving the sentence that
21 he did receive. I don't see that what we have presented provides the
22 Court with a sufficient basis of an overpowering of his will, particularly
23 given the strength of his unwillingness to take a negotiation prior to that.
24 And the fact that he was still discussing seventy-five percent versus
25 twenty-five percent, discussing the risks in the guilty plea. It wasn't my

1 parents told me to do this, so I'm just going to sign it. They're still
2 discussing the actual benefits and drawbacks in reviewing the guilty plea
3 agreement.

4 At this point, it's the State's position that defense has not
5 shown that the Defendant was not entering that plea freely and
6 voluntarily. I'll ask the Court to deny.

7 MR. OWENS: Just briefly --

8 THE COURT: Deny the petition?

9 MS. THOMSON: Yes. Thank you.

10 THE COURT: Okay.

11 MR. OWENS: Just briefly in rebuttal.

12 It's not so much that the Defendant did not understand the
13 terms of the plea bargain, or that the attorney had miscommunicated
14 necessarily to him, although Mr. Geller had promised him a separate
15 sentence; whatever that was, but it's more so that the parents didn't
16 understand the terms of the plea agreement. There was no indication
17 they had ever seen the plea agreement in writing and signed it like the
18 Defendant did.

19 Warren Geller made representations to them orally that
20 resulted in their false or incorrect or inaccurate understanding of what
21 the guilty plea agreement was, and what Mr. Geller was promising what
22 the Defendant could get about this term of 15 to 25 years. And it's that
23 misinformation to the parents now that they used at Mr. Geller's request
24 to convince their son to plead guilty, when Mr. Geller could not get the
25 Defendant to plead guilty. He used the parents with false information to

1 lean more heavily on the Defendant to have him plead guilty. I think
2 that's what's going on here.

3 And when the State says that the family dynamics really
4 shouldn't matter, you know, about the voluntariness of a plea as a
5 prosecutor, I think I would've agree, but the Court of Appeals reversed
6 this. I think they're saying that the family dynamics do matter. To the
7 Defendant, to all defendants, the family dynamics do matter. This is a
8 family decision when the parents are footing the bill on this. This is their
9 son and you have these family relationships going on, you have to take
10 into account these influences and pressures and stresses that are on
11 the Defendant. And I think it rose here to a level beyond what is normal
12 or should be allowed in the law.

13 Parents may not have said, come out and said that they
14 threatened their son, or the Defendant here didn't say the parents per
15 say threatened him, but again this is -- they're his parents. This is their
16 son. They still love each other. I don't think they're going to use those
17 terms. I think that's a legal terminology to threaten. I think what we
18 heard here was that the pressure and coercion of withdrawing financial
19 support and emotional support, arises to the coerce and threat and
20 duress that the law requires as a legal conclusion. I'll submit it with that.

21 THE COURT: So. I'm going to deny the petition, and this is
22 the reason why I'm going to deny this petition. I believe that there was
23 actually inconsistent testimony from both Jose Castro Senior as well as
24 his wife, Angeles Castro, and even to an extent their son. The dad
25 stated that he was going to -- that he believed there was a possibility if

1 he, Mr. Castro here, the petitioner, the Defendant accept the offered
2 negotiation. That he would be paroled after 15 to 25 years. But he
3 believed that there was going to be a lifetail. And he may not have said
4 lifetail exactly, but certainly was the impression that he would be
5 released but on a parole type thing, not just released from custody.

6 And that the mom, Angeles, testified that she was under the
7 belief that it was going to be a 15 to 25 year maximum, meaning no
8 lifetail. And then there was inconsistencies regarding their last
9 communications with Mr. Geller and how it was done. And again, that's
10 where Mr. Castro Jr. therein lies inconsistencies too, stating that there
11 was -- someone said that there were telephone conversations prior.
12 Some of them said there were only in-person conversations. But then
13 we have the email that belies the record that there was an email
14 communication between the two of them, and Mr. Geller's notes stating
15 that there was a telephone conversation. So I think with the
16 inconsistencies available, or excuse me -- inconsistencies that certainly
17 been proffered that even the communication had -- was clearly an
18 electronic communication followed up by a phone call.

19 And additionally that email specifically states that Mr. Castro
20 here, the petitioner, was looking at either life with the possibility of parole
21 after 15 years, or life without the possibility 15, or life without of parole.
22 And that Mr. Geller and his electronic email stated that in this particular
23 case the State had no middle -- I'm sorry, the Court had no middle
24 ground, and had to choose between either 15 years of life or life without.
25 I think that they misunderstood Mr. Geller's email, but their

1 misunderstanding, I don't think gives rise to Mr. Castro here, the
2 petitioner, of him having the ability to withdraw his plea.

3 Mr. Castro here, stated that he knew that those were the two
4 options. He never testified that his parents gave him the impression that
5 he was actually going to be given an opportunity of 15 to 25. He knew
6 what his possibilities were. He knew that he had the possibility of life
7 without the possibility of parole, and I don't even think that the parents
8 subjective reliance upon what they believed Mr. Geller told them is
9 worthy of the Defendant, the petitioner, being allowed to withdraw his
10 plea.

11 So basically what I'm saying is, although, they may have
12 misunderstood the email, the email specifically and clearly states that
13 his two options were either 15 to life or life without the possibility of
14 parole should he accept the offered negotiation. That Mr. Geller would
15 continue to represent Mr. Castro, if he chose not to accept the offer of
16 negotiation. And even though they may have been hopeful that there
17 would be an alternative resolution, that is not sufficient in order for the
18 petitioner to have his petition, excuse me, granted.

19 So I'm going to -- hopefully, that is not a muddled record.
20 Hopefully, that is clear enough for purposes of this record and potential
21 appeals of my decision, but I'm going to deny the petition, and that's it.

22 MS. THOMSON: Thank you.

23 MR. OWENS: Will the State prepare the findings of fact?

24 THE COURT: State will do so.

25 MS. THOMSON: Yep.

1 MR. OWENS: May I stay on for the appeal, if the Defendant
2 desires to appeal?

3 THE COURT: Of course.

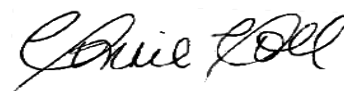
4 MR. OWENS: Thank you.

5 THE COURT: All right. Good luck to you, sir.

6 [Proceeding concluded at 11:10 Am.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed
21 the audio/video proceedings in the above-entitled case to the best of my
22 ability.



23 _____
24 Connie Coll
25 Court Recorder/Transcriber

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:

AARON FORD
Nevada Attorney General

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.