

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 86310

RESPONDENT'S ANSWERING BRIEF

**Appeal From a Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(3) because it is a postconviction appeal that involves a challenge to a category A felony.

STATEMENT OF THE ISSUE(S)

1. Whether the district court correctly held that Castro's counsel properly advised Castro's parents regarding individualized sentencing;
2. Whether the district court correctly held that Castro's counsel did not advise Castro's parents that he would receive only a sentence of 15-25 years if he pled guilty;

3. Whether the district court correctly denied Castro's claim that his parents coerced him into pleading guilty by threatening to withdraw support.

STATEMENT OF THE CASE

On March 10, 2016, Luis Castro (hereinafter "Castro") 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). 2 Appellant's Appendix (AA) 255. He was one (1) of four (4) co-defendants. Id.

On April 12, 2019, Castro was bound up to the district court on all charges following a preliminary hearing. Id.

After four (4) continued trial dates, Castro and his co-defendants ultimately pled guilty on the first day of trial. Id. Castro pled guilty to one count of First-Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony). Id. Pursuant to the Guilty Plea Agreement ("GPA"): "This offer is conditioned upon all four (4) Defendants accepting their respective negotiations and being sentenced. Id. 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 a term of years." Id.

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

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

On June 7, 2021, Castro filed a pro per Petition for Writ of Habeas Corpus (Post-Conviction) ("Petition"), a Motion for Appointment of Counsel, and a Request for an Evidentiary Hearing on the Petition. Id. On July 6, 2021, Castro filed a Supplement to Petition for Writ of Habeas Corpus ("Supplemental Petition"). Id. 255-56. On July 14, 2021, Castro filed Memorandum of Facts and Law In Support of Castro's Motion for Appointment of Counsel ("Memo In Support") and various other pleadings. Id. 256. On July 27, 2021, the State filed a Response to the Petition, Supplemental Petition, Memo In Support, and various pleadings. Id. Castro filed a Reply on August 26, 2021. Id. The Court denied the Petition, Motion for Appointment of Counsel, and Request for an Evidentiary Hearing on September 21, 2021. Id.

Castro appealed the denial of his Petition on October 19, 2021. Id. Following appellate briefing, on July 8, 2022, the Nevada Court of Appeals affirmed in part, reversed in part, and remanded to the district court the denial of the Petition. Id. The Court of Appeals held that the district court correctly denied Castro’s claims that (1) he did not enter his plea knowingly and voluntarily due to “low intellectual functioning,” (2) counsel was ineffective for failing to move to sever his case or challenge the contingent plea offers, and (3) 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. Id. The Court of Appeals further concluded that the district court correctly disregarded Castro’s supplemental petition, and that it did not “inaccurately embellish” the sentencing memorandum. Id. However, the Court of Appeals held that the district court erred by denying Castro’s claim that counsel advised his parents that all four co-defendants would be prosecuted separately, and that counsel advised Castro’s parents that he would receive a prison sentence of 15 to 25 years if he accepted the plea, and that Castro’s parents coerced him into pleading guilty without conducting an evidentiary hearing. Id. Because the Court of Appeals held that the district court erred with respect to that claim, the Court of Appeals further ordered the district court to reconsider whether Castro should be appointed counsel. Id.

Subsequent to the Court of Appeals remanding the case, the district court appointed counsel. Id. Counsel filed a supplemental petition for writ of habeas corpus on September 19, 2022. Id. The State responded on November 22, 2022. Id. Castro did not file a reply. Id. 256-57. The Court set an evidentiary hearing, which was held on January 20, 2023. Id. 257. Following the hearing, the Court denied the remaining claims. Id. On March 6, 2023, the Findings of Fact, Conclusion or Law and Order was filed. Id. 254-63. Notice of Entry of Order was filed on March 8, 2023. Id. 253. Castro filed his Notice of Appeal on March 21, 2023. Id. 264-66.

STATEMENT OF FACTS

The Court relied on the following factual synopsis in sentencing Castro. Presentence Investigation Report (hereinafter, “PSI”) at 5-6.

Records provided by the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

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

Paramedics arrived on the scene and advised there were several citizens around the victim attempting to provide first aid. The paramedics observed that the victim had both legs bound together by a cord at his ankles and knees. The paramedics removed the bindings. The victim had several injuries including: multiple stab wounds to his chest, back and right arm, his right pinky finger was partially amputated, his fingernails were pulled off from his right index and middle fingers, there was a laceration to his right thumb and a deep laceration to his throat/neck. The paramedics reported that it appeared that the victim was tortured. The victim was treated by paramedics and transported to a local hospital. The victim was unable to be interviewed the

night of the incident as he was undergoing numerous surgeries and was heavily sedated.

Officers and detectives arrived on the scene and set a perimeter around the crime scene while firefighters battled the residential fire. Detectives interviewed each witness individually on scene. All witnesses confirmed 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.

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

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

Detectives returned to the hospital and continued to interview the victim. The victim reported he was taken in a pickup truck to an unknown house. Once at the home, Mr. Castro bound the victim's hands/wrists and ankles/knees. He stated that he remembers making three phone calls asking 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 presented to the victim who confirmed that Ms. Jimenez was present and involved in his torture. A search of Mr. Honabach's residence was completed where detectives found numerous knives inside the home and the vehicle. They also found a machete and twine inside the vehicle.

On March 10, 2016, detectives interviewed Ms. Jimenez. She confessed to being present during the brutal attempt murder and arson where the incident occurred. Her version of the incident was similar to the victim's account. She stated that on March 7, 2016, Mr. Honabach, Mr. Castro and an unknown male went to pick up the victim. Ms. Jimenez reported that the victim owed \$200.00 in United States currency for a drug debt. A short time later, Mr. Honabach, Mr. Castro and the unknown male arrived with the victim to the residence the incident occurred at. Ms. Jimenez was already present at the residence as Mr. Castro and Mr. Honabach had dropped her off prior to picking up the victim. Once inside the residence, Mr. Honabach and Mr. Castro confronted the victim about the money he owed them. The victim told them he was working on getting the money and asked Mr. Honabach and Mr. Castro for another week to pay off the debt. Mr. Honabach and Mr. Castro became physical with the victim and forced him into a chair and bound his hands and legs with rope found in the home. Ms. Jimenez reported that Mr. Honabach, Mr. Castro and the unknown male started punching the victim. Mr. Honabach then brandished a pocket knife and stabbed the victim three times in his right shoulder area. The victim pleaded for them to stop. Mr. Honabach asked Mr. Castro what he wanted to do and Mr. Castro stated "we have gone this far, let's finish it." At that point, Mr. Honabach pulled the victim's hair and Mr. Castro took the knife and cut the victim's throat. Ms. Jimenez advised that they all believed the victim to be dead so began to

gather paper 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.

PSI 5-6.

SUMMARY OF THE ARGUMENT

The district court did not err in finding that Castro's counsel Mr. Geller was not ineffective by coercing his parents into pressuring Castro to plead guilty. The district court correctly found that Mr. Geller advised Castro's parents each defendant would receive an individualized sentence, but not that each defendant would have an individual sentencing hearing. Moreover, the district court correctly found that Mr. Geller correctly advised Castro's parents that Castro would receive a sentence of life with the possibility of parole after fifteen (15) years, or life without the possibility of parole. Mr. Geller did not advise Castro's parents that he would receive only a sentence of 15-25 years if he plead guilty. Furthermore, the district court found that Castro's parents did not threaten to withdraw support from Castro if he

did not plead guilty. Lastly, the district court did not err in interpreting the facts and applying the law to Castro's case.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews a district court's application of the law de novo, and gives deference to a district court's factual findings in habeas matters. State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012), cert. denied, 133 S. Ct. 988 (2013). This Court reviews a district court's denial of a post-conviction motion to withdraw guilty plea (as a habeas petition) for abuse of discretion. Rubio v. State, 124 Nev. 1032, 1039, 194 P.3d 1224, 1234 (2008). A district court may grant a post-conviction motion to withdraw a guilty plea to correct a "manifest injustice." Id. "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). This Court must give deference to the factual findings made by the district court if they are supported by the record. Little v. Warden, 117 Nev. 845, 854, 34 Pd. 3d 540, 546 (2001).

II. THE DISTRICT COURT CORRECTLY HELD THAT CASTRO'S COUNSEL PROPERLY ADVISED CASTRO'S PARENTS REGARDING INDIVIDUALIZED SENTENCING.

Castro complains that he was denied his right to effective assistance of counsel in the entry of his guilty plea because his attorney informed his parents that if he pled guilty that he would be prosecuted separately from the co-defendants and that

he would receive a sentence of 15 to 25 years in prison.¹ AOB 15. Castro claims that this was coercive because his attorney used this “miscommunication” to get his parents to influence and pressure him into pleading guilty. Id.

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

¹ Although Castro argues that Mr. Geller advised his parents that he would be “prosecuted” separately, the testimonies taken at the evidentiary hearing do not support such a claim. Instead, Castro seems to have adopted a “sentencing” argument, which the district court correctly denied.

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).

The district court found that counsel advised Castro’s parents that each defendant would receive an individualized sentence, but not that each defendant would have an individual sentencing hearing. 2 AA 257-58. The district court’s findings are supported by the following testimony and evidence.

At the evidentiary hearing Castro’s counsel, Mr. Warren Geller, Esq, testified. 1 AA 188-209. Castro’s father, Jose Castro, Sr., testified. Id. 209-18. Castro’s mother, Angeles Castro, testified. Id. 218-27. Castro’s brother, Jose Castro, Jr., testified. Id. 227-34. Finally, Castro testified. Id. 235-41. Castro and both his parents needed the assistance of a Spanish interpreter to testify at the hearing. Id. 209, 218, 235.

During the hearing Mr. Geller testified that he did not recall saying that Castro would receive a separate sentencing hearing from the co-defendants but did recall explaining that each defendant received an individualized sentence. Id. 195. Mr. Geller testified that there were facts in the case that were both a little more aggravating and a little more mitigating, and that the Court may have imposed different sentences based on that. Id. 195-96. Mr. Geller understood, through many

years of practice, that the majority of the time co-defendants are sentenced together on the same date, especially when there are victim speakers. Id. 207-08. He did not recall anything about this case that would have caused the Court to sentence Castro on a separate date, or that he told the family that would happen. Id. Based on this testimony, the district court found that Mr. Geller adequately explained to Castro's parents that while each sentence would be individualized the case was not to be altogether separated.

When Castro's brother Jose Jr., and mother and father testified, the Court found that it was possible that there was a misunderstanding between Mr. Geller and Castro's parents. Id. 258. During the evidentiary hearing Castro's parents needed a translator to have their testimony interpreted. The communications between Mr. Geller and Castro's parents leading up to Castro's plea agreement required the use of a translator. 1 AA 228. Since there were multiple communications between the parties and a language barrier it is possible that there was miscommunication regarding Mr. Geller's communication with Castro's parents.

However, the issue presented before the district court was whether Castro's counsel promised his parents that he would be sentenced separately from his co-defendant. Based on Mr. Geller's testimony the district court correctly determined that Mr. Geller did not misrepresent the communication that he explained to Castro's

parents that each defendant received an individualized sentence, and not that each defendant would receive an individualized sentencing hearing.

Furthermore, the district court was able to review an email that showed Mr. Geller provided Castro's family with the correct terms of his negotiations with the prosecutor. 1 AA 251-52; 2 AA 260. Also, the district court reviewed notes that indicate an email was sent, and that Mr. Geller followed up with a phone call to the family, which also reflected that the correct negotiations were communicated to Castro's parents. 2 AA 260. As such, the district court correctly held Castro's argument that his counsel made a promise to his parents that he would be sentenced separately from his co-defendants was false. Id. 257-58.

Because the district court found that Mr. Geller properly informed Castro's family that each defendant would receive an individualized sentence, but not that each defendant would have an individual sentencing hearing, the court correctly concluded that Mr. Geller conveyed the accurate terms of the negotiations with the prosecutor to Castro's parents.

The district court found that it was possible that there was a miscommunication between Mr. Geller and Castro's family which led them to believe Castro was going to be sentenced separately from the other co-defendants. Id. 260. Castro argues that the judge's reason for denying the remand claim was due to inconsistencies in the testimony of Castro's family. AOB 16. Castro states that

such inconsistencies support the idea that there was a significant language barrier, and that Mr. Geller was improperly relying on the lay service of Jose Jr. to interpret the important details of the plea deal to the parents. Id. However, Castro's argument is paradoxical. On one hand Castro argues that using Jose Jr., as a translator was insufficient to relay Castro's legal matters. Conversely, he claims that Jose Jr's translation was sufficient to "pressure" his parents into getting him to plead guilty. Moreover, if such a miscommunication did occur the court found that Mr. Geller did not perform deficiently, nor entice Castro's parents to coerce Castro to plead guilty because Mr. Geller accurately conveyed the information to Castro's parents. Mr. Geller's correct advice to Castro's parents could not have been used to coerce his parents into pressuring Castro to pled guilty. Thus, the district court did not err in finding that Castro's parents were coerced by Mr. Geller nor did it err in finding counsel was not ineffective.

III. THE DISTRICT COURT CORRECTLY HELD THAT CASTRO'S COUNSEL DID NOT ADVISE CASTRO'S PARENTS THAT HE WOULD RECEIVE ONLY A SENTENCE OF 15-25 YEARS IF HE PLED GUILTY.

Castro argues that Mr. Geller falsely promised his parents that if he plead guilty, he would receive a sentence of only 15 to 25 years in prison, and that Mr. Geller used this false promise to coerce his parents into pressuring him to pled guilty. AOB 15. The district court found that Castro's counsel advised his parents that Castro would receive a sentence of life with the possibility of parole after fifteen

(15) years, or life without the possibility of parole. 2 AA 258-60. The district court denied Castro's claim that his counsel promised that if he plead guilty, he would receive a sentence of only 15 to 25 years in prison. Id. The district court's findings are supported by the following testimony and evidence.

Mr. Castro Sr. testified that, during a meeting with Mr. Geller, Mr. Geller told him that if Castro accepted the negotiations, he would face a sentence of 15-25 years with the opportunity to get out, or something to that effect. 1 AA 212. Because Mr. Geller does not speak Spanish, these negotiations occurred with the assistance of a translator. Id. 212-13. Mr. Castro Sr. testified that Mr. Geller would not send emails to him or his wife but did send emails to his son, would meet with them in person, and spoke with them over the phone through his son. Id. 212-13, 16-17.

Mrs. Castro testified that Mr. Geller told her "in person, by email, and on the telephone" about the negotiations. Id. 219, 223. She understood the negotiations to be 15-25 years maximum. Id. She testified that they had "very many interviews" with Mr. Geller. Id. 223. When Mrs. Castro met with Mr. Geller, their son Jose interpreted for them. Id. at 224-25.

Castro's brother, Jose Castro Jr., testified that he acted as a translator between his parents and Mr. Geller from "time to time" and that when Mr. Geller would communicate with him he would let his parents know. Id. at 228-30. He testified that the conversation where Mr. Geller said Castro was facing a 15-25 year sentence

occurred in person. Id. 233. He testified that when Mr. Geller emailed it was just “information about [Castro’s] case.” Id. He testified that he received an email, and that his understanding from the email was the same as the conversation in person, that Castro would receive a sentence of 15-25 years. Id. at 233-34.

Castro testified that Mr. Geller explained he had two options, a 15 to life sentence, and a life without the possibility of parole sentence. Id. at 52. Mr. Geller explained the offer to the Castro informing him that there was a 75% chance Castro would get a 15-to-life sentence. Id. 238-40. Mr. Geller further explained that because Castro did not have a criminal history he would probably receive the lower sentence and, if he behaved well in prison, would be paroled early and deported. Id. Consequently, there was a 25% chance he would get a sentence of life without the possibility of parole. Id. 240. Mr. Geller explained that an accomplice was liable for the same sentence as a perpetrator. Id. 239-40.

Mr. Geller testified that he had emailed Castro’s brother the proposed negotiation on Saturday, February 2nd. Id. 190, 202. That email was entered into evidence and considered by the Court. Id. 203. The two potential sentences were life without the possibility of parole, and life with the possibility of parole after 15 years, and the offer was contingent on all defendants accepting. Id. 190. In addition to the email, Mr. Geller’s notes indicated that there was a follow-up call with the family explaining the offer. Id. 204. Mr. Geller testified that there “was a lot of back and

forth” between the defense and the State regarding an offer, but that the State had rejected his proposed negotiations. Id. 191. He testified that at one point he had asked for a right to argue on both sides, but that the State rejected the offer and insisted on a life-tail sentence. Id. 200-202. He testified that he met with the family several times, largely through Jose, and that they would meet in person, talk via email, and over the phone. Id. 193-94. Mr. Geller testified that he advised Castro to accept the plea negotiations because there was little chance of a better outcome at trial and, by accepting the negotiations, they could “avoid the Court hearing a lot of the gruesome details” in painstaking detail over the course of trial, and that they might get some benefit from the Court in sentencing by accepting responsibility. Id. 194. He explained this to Castro’s brother via email. Id. He testified that he did not tell Castro’s parents that Castro would receive a 15–25-year sentence, because that offer was not on the table, but that he might do a minimum of 15 years before being released on parole. Id. 196-97.

The district court credited Mr. Geller’s testimony that he did not tell Castro’s parents that if Castro took the plea deal, he would receive a sentence of only 15-25 years. The district court was able to gain further insight into the communications between Mr. Geller and Castro’s parents from the information Mr. Geller provided in the email sent to Castro’s family on February 2, 2019. 2 AA 251-52. The district court reviewed this email which provided, “At sentencing the judge will have two

options for each defendant: life with parole eligible at 15 years, or life with no chance at parole.” Id. 251. Thus, the email shows that Mr. Geller did not communicate to Castro’s parents that if he pled guilty, he would be sentenced to only 15-25 years.

Castro argues that the email submitted into evidence during the evidentiary hearing was not a substitute for the written plea agreement in terms of clarity especially since Mr. Geller was relying on Jose Jr. to correctly translate it. AOB 17. However, the district court was not using the email as a substitute for the written plea agreement. Rather, the district court reviewed the email because it showed that Mr. Geller was properly advising Castro’s family and not coercing them as Castro claims. And, in any event, the written plea agreement clearly spelled out the terms of the offer – “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.” 1 AA 9.

As discussed above, the district court determined that it was possible that there was a miscommunication between Mr. Geller and Castro’s parents because there was a language barrier between the parties, a translator was needed, and there were multiple communications between them. Regardless, the email and Mr. Geller’s notes indicated that an email was sent, and that Mr. Geller followed up with a phone call to the family, reflecting the correct negotiations. Accordingly, the district court

did not err in finding that Castro's argument that Mr. Geller promised his parents that if he plead guilty Castro would receive a sentence of only 15 to 25 years in prison was false.

Because the district court found that Mr. Geller properly informed Castro's family that Castro would receive a sentence of life with the possibility of parole after fifteen (15) years, or life without the possibility of parole, the court correctly concluded that Mr. Geller conveyed the accurate terms of the negotiations with the prosecutor to Castro's parents. As such Mr. Geller's alleged promise that Castro would receive a sentence of only 15-25 years could not have been used to coerce his parents into pressuring him to pled guilty. Thus, the district court did not err in finding that Castro's parents were coerced by Mr. Geller nor did it err in finding counsel was not ineffective.

Castro argues that there was no ruling made on whether counsel was ineffective in miscommunicating the correct terms of the plea agreement. AOB 17. However, the district court did make such a ruling as discussed above.

Furthermore, Castro argues that the District Judge did not cite or attempt to distinguish Iaea v. Sunn, 800 F.2d 861 (9th Cir. 1986), which served as the legal basis for the Appellate Court's remand of his case. AOB 17-18. The district court did not need to distinguish this case because the purpose of Iaea was to interpret Strickland, which the district court did analyze. Here the district court found (1) counsel did not

give erroneous advice, and (2) Castro was not coerced. As such, nothing in Iaea was relevant following the evidentiary hearing.

Even if Iaea applied, decisions of federal district court and panels of the federal circuit court of appeals are not binding on state Supreme Court. Blanton v. N. Las Vegas Mun. Ct., 103 Nev. 623, 748 P.2d 494 (1987), aff'd sub nom. Blanton v. City of N. Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989). Here, the district court was under no obligation to cite or distinguish from Iaea because it is a case from the federal circuit which is not binding authority on State Courts. Thus, the district court did not err in interpreting the facts and applying the law.

IV. THE DISTRICT COURT CORRECTLY DENTIED CASTRO'S CLAIM THAT HIS PARENTS COERCED HIM INTO PLEADING GUILTY BY THREATENING TO WITHDRAW SUPPORT.

Castro argues that as a result of counsel's false or misunderstood assertions, Castro's parents threatened to withdraw support for Castro if he did not plead guilty, which effectively coerced him into doing so. AOB 12.

Guilty pleas are valid if both 'voluntary' and 'intelligent. Brady v. United States, 397 U.S. 742, 747, 90 S. Ct. 1463, 1468, 25 L. Ed. 2d 747 (1970). A guilty plea must be both knowing and voluntary, because it waives constitutional right to jury trial, right to confront one's accusers, and privilege against self-incrimination. Parke v. Raley, 506 U.S. 20, 113 S. Ct. 517, 121 L. Ed. 2d 391 (1992). The guidelines for voluntariness of guilty pleas require only that the record affirmatively show that

the defendant entered his plea understandingly and voluntarily. Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001) (overruled on other grounds). A guilty plea is knowing and voluntary if the defendant “has a full understanding of both the nature of the charges and the direct consequences arising from a plea of guilty.” Rubio v. State, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008).

Undue coercion in entering a guilty plea occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act, not where a court makes a ruling later determined to be incorrect. Stevenson v. State, 131 Nev. 598, 354 P.3d 1277 (2015). A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. Machibroda v. United States, 368 U.S. 487, 493, 82 S. Ct. 510, 513, 7 L. Ed. 2d 473 (1962). To determine voluntariness, the court must examine all of the relevant circumstances surrounding it. Brady, 397 U.S. at 749, 90 S.Ct. at 1470, 25 L. Ed. 2d 747.

The district court found that Castro’s parents did not coerce him into pleading guilty by threatening to withdraw support. The district court’s findings are supported by the following testimony and evidence.

At the evidentiary hearing, Mr. Castro Sr., testified that Mr. Geller informed him that if Castro chose not to accept the negotiations, the proceedings would transfer to a different court, and this would cost an additional \$50,000. 1 AA 216. Being told this, Mr. Castro Sr., testified that he encouraged Castro to accept the plea

agreement. Id. 214. Conversely, Mr. Geller testified that he never recalled saying that if the parents could not come up with an additional \$50,000 that he would have to get another lawyer. Id. 198-99. Mr. Geller believed he had been paid in full by the time the trial was to begin when Castro pled guilty. Id. 205-06. Additionally, the email Mr. Geller sent Castro's family clearly indicated that he would continue to represent Castro even if he rejected the plea negotiations. 2 AA 251-52.

Castro testified that he had only one phone call with his parents about accepting the negotiations, and they explained that if he did not accept the negotiations, they could not help him anymore. 1 AA 237. Castro testified that he did not know how much money his parents paid for the case or how they paid for it before the day of the evidentiary hearing. Id. 237-38. Castro also testified that when he pled guilty he knew the two potential sentences, was informed by Mr. Geller of the two potential sentences, and that he entered into the plea knowing those were the options. Id. 237-240. Also, Castro's plea agreement shows that he entered the plea voluntarily. Id. 9-12.

Castro argues that his claim of coercion was denied by the district court on the basis of Mr. Geller's credibility. However, Castro fails to demonstrate how the district court erred in finding Mr. Geller's testimony erroneous. The district court found Mr. Geller's testimony more credible than that of Mr. Castro, Sr. because he had the email to show how he communicated to Castro's family. Also, Castro only

had one phone call with his parents about accepting the negotiations and did not know how much money his parents paid Mr. Geller. The district court correctly determined that this did not show that Castro's parents threatened to withdraw support if Castro did not plead guilty. Instead, this showed the district court that Mr. Castro Sr., misunderstood Mr. Geller, and then recommended Castro to accept the plea negotiations. This also showed that Castro was not aware of any financial hardship that his parents may have been experiencing at the time. Even if Mr. Castro Sr., did tell Castro that if Castro did not accept the negotiations, he "could not help him anymore," this was not as a result of any information Mr. Geller conveyed to Castro's parents, it did not affect Mr. Geller's representation of Castro (because Mr. Geller had been paid in full and would continue representing Castro either way,) and was, at most, a single fleeting comment that Castro neither claimed nor demonstrated overbore his will such that he was forced to plead guilty. Furthermore, the district court found that Castro's family members testified inconsistently regarding their understanding of the offer, and even what form various meetings took. 2 AA 260. This negatively impacted the credibility of their testimony. Thus, the district court did not err when it found that Castro was not unduly coerced into entering the plea.

Castro argues that there was no ruling made on whether his will was overborne by the influence and pressure of his parents in threatening to withdraw emotional

and financial support which was induced by the attorney. AOB 17. However, the district court did make a ruling on this claim as discussed above.

CONCLUSION

The State respectfully requests that this Court affirm the district court's denial of his petition for writ of habeas corpus (post-conviction).

Dated this 31st day of May, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 6,309 words and 24 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 31st day of May, 2023.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 31st day of May, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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