

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMARENE COLEMAN,
Appellant(s),

vs.

GABRIELA NAJERA, WARDEN;
AARON D. FORD, ATTORNEY
GENERAL; STATE OF NEVADA; AND
STEVEN B. WOLFSON, D.A.,
Respondent(s),

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Case No: A-23-868466-W

Docket No: 86923

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
DEMARENE COLEMAN #1007335,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

A-23-868466-W Demarene Coleman, Plaintiff(s) vs. Warden Najera, Defendant(s)

I N D E X

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original copy

DEMARENE COLEMAN, 1007335
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

FILED
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CLERK OF COURT

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

DEMARENE COLEMAN,

Petitioner,

vs.

Warden NAJERA
ARON FORD ATTORNEY GENERAL
THE STATE OF NEVADA
STEVEN B. WOLFSON, D.A. et al
Respondent(s).

Case No.

A-23-868466-W

Dept. No.

Dept. 6

Docket

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED

APR 13 2023

CLERK OF THE COURT

1 Failure to raise all grounds in this petition may preclude you from filing future petitions
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one
9 copy must be filed with the clerk of the district court for the county in which the conviction
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the
12 attorney general's office, and one copy to the district attorney of the county in which you were
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.
14 Copies must conform in all particulars to the original submitted for filing.

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: S.D.C.C. Clark County Nevada

18 2. Name the location of court which entered the judgment of conviction under attack: District
19 Court Clark County Nevada

20 3. Date of judgment of conviction: August, 20, 2007

21 4. Case number: C215295

22 5. (a) Length of sentence: max Fifty (50) year with Min parole eligibility Twenty
23 20 years

24 (b) If sentence is death, state any date upon which execution is scheduled: _____

25 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
26 this motion:

27 Yes _____ No X If "Yes", list crime, case number and sentence being served at this time: _____

28 7. Nature of offense involved in conviction being challenged: First Degree Murder
& Battery with use of a Deadly Weapon

1 8. What was your plea? (Check one)

2 (a) Not guilty ☐

3 (b) Guilty ☒

4 (c) Nolo contendere ☐

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: The

7 G.P.A. negotiated was 20 to 50 years. None existence under NRS
8 200.030. Degree of Murder; penalties

9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

10 (a) Jury ☐

11 (b) Judge without a jury ☐

12 11. Did you testify at trial? Yes ☐ No ☐

13 12. Did you appeal from the judgment of conviction?

14 Yes ☐ No ☐

15 13. If you did appeal, answer the following:

16 (a) Name of court:

17 (b) Case number or citation:

18 (c) Result:

19 (d) Date of appeal:

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: Mention to withdraw
22 guilty plea was not - appealed - Counsel of Defense dropped
23 case

24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
25 filed any petitions, applications or motions with respect to this judgment in any court, state or
26 federal? Yes ☒ No ☐

27

28

16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: District court Clark County, Nevada

(2) Nature of proceedings: _____

(3) Grounds raised: Breach of Plea Agreement

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ____ No X

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to each

result: N/A

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ____ No X

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations or any written opinion or date of orders entered pursuant to each

result: N/A

(c) As to any third or subsequent additional application or motions, give the same information as above, list them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes ___ No X

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ___ No ___

8 Citation or date of decision: _____

9 (e) If you did not appeal from the adverse action on any petition, application or motion,
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response
12 may not exceed five handwritten or typewritten pages in length). Did not Understand legal

13 _____
14 Alternatives

15 17. Has any ground being raised in this petition been previously presented to this or any other
16 court by way of petition for habeas corpus, motion or application or any other post-conviction
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: I. A. C.

19 _____
20 (b) The proceedings in which these grounds were raised: _____

21 _____
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in
25 length). _____

26 No Counsel to attack the First I. A. C. Claim

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). I was advised to plead Guilty to a Illegal Sentence
7 that did not exist under Applicable Law

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
10 (You must relate specific facts in response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five
12 handwritten or typewritten pages in length). I was advised, Incorrectly, by Counsel
13 to plead guilty to A Sentence Not Authorized by Law under NRS
14 200.030

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes ___ No X

18 If "Yes", state what court and the case number: _____

19 _____

20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Carmine Coloucci

22 _____

23 _____

24 22. Do you have any future sentences to serve after you complete the sentence imposed by the
25 judgment under attack?

26 Yes ___ No X If "Yes", specify where and when it is to be served, if you know: _____

27 _____

Discussion

Petitioner was overcharged from the very beginning. Not one of the states witness testified to the elements of premeditation required by NRS 200.030.1(a-c) for First degree Murder. At best, the evidence produced at the preliminary hearing reveals that the homicide was necessary to prevent victim Tanzie Austin from continuing to attack victim Monica Ramsey and her Daughter Meshia Ramsey with the use of force likely to produce Great bodily injury or death.

Further complicating the legal and Factual issues involved in this case is the prosecutors collusion with defense counsel and the judge to trick petitioner into pleading guilty by promising a statutory unauthorized sentence as consideration in exchange for the guilty plea.

Factual History

On 7/10/05 Victim Monica Bamsey came to Petitioner's Apartment on a Bicycle. Victim Bamsey informed petitioner that his girlfriend Montelle Motley was involved in a physical altercation with Porcha Johnson at the local mobil gas station.

Petitioner proceeded to drive to the mobil gas station, upon arrival to the gas station petitioner broke up the fight between the two women. After the fight petitioner and his girlfriend followed Porcha Johnson back to the area of the Apartment that Porcha Johnson shared with her boyfriend Victim Tanzie Austin. Petitioner wanted to speak with Victim Tanzie Austin to ensure that there would be no reprisal or consequence to the fight, as petitioner stood talking to victim Tanzie Austin Victim Monica Bamsey arrived to the location on the Bicycle. Victim Tanzie Austin and Victim Monica Bamsey began to fight for reason unknown to petitioner. Petitioner did not intervene until victim Tanzie Austin Body Slammed victim Monica Bamsey twice; also Attempting to attack victim Monica Bamsey's minor child Meshia Bamsey who tried to stop Tanzie Austin from Assaulting her mother.

Factual History, Continue

1 The state's only effort to reach the Mens Rea
2 necessary for First Degree Murder is a claim
3 that petitioner received a phonecall from his
4 girlfriend Montelle Motley before the fight in
5 which he was allegedly instructed to bring
6 that thing (Firearm) with him to the store.
7 (see) preliminary hearing transcript for direct
8 examination of Porcha Johnson; page 7 at 16-18.
9 The phones records of petitioner were pulled
10 revealing that no such call was made by Montelle
11 Motley or received by petitioner. This case is the
12 story of prosecutorial misconduct on every level
13 of the prosecution. First the prosecutor's ignored
14 the evidence in overcharging petitioner. Next the
15 prosecution coached Porcha Johnson to lie on the
16 stand. Then the State Tricked Petitioner into
17 accepting a guilty plea by offering a sentence
18 more lenient than authorized for First Degree
19 Murder. Both the trial attorney and judge
20 played their illegal roles in the conspiracy.

Introduction

Petitioner was charged with First Degree Murder in Violation of NRS 200.030. Prosecutors offered a sentence not authorized by law to induce a guilty plea. Prosecutors further interfered with my lawyer's ability to effectively represent me by colluding with defense counsel to convince me to plead guilty to a illegal sentence. Trial counsel advised me incorrectly regarding the applicable sentence for First Degree Murder. The offers made in the plea agreement were not within the law. The trial judge abused her discretion in accepting the plea. The judge admitted on the record that she believed that I plead guilty because of the plea negotiations. (See Exhibit #1 Entry of Plea pg 2, line 4 transcript of judge acceptance of plea) However, as a matter of law, the offers made for sentencing in the negotiation were illegal and intentionally vague. The judge then proceeded to change the sentence in the written illegal agreement that I signed to a legal sentence under the statute. (see; Exhibit #2 GPA pg 1, line 22, pg 2 line 12. Such an agreement can not be held to have been made knowing, intelligently and voluntarily. The prosecutor's actions in this case constitute outrageous government conduct. All officers of the Court participated in

Introduction continues

Fraud on the Court. & Fraud in the Inducement.
All officers of the court colluded to deprive me
of my right to the fair Adjudication of my case.
They took unfair advantage of my age and
relative lack of experience with Criminal
justice system to Fraudulently deprive me of
my right to jury Trial.

23. (a) GROUND ONE Illegal Plea Offer; Fraud In The
Inducement of the G.P.A; violates 6th Amendment
right to Effective Assistance of Counsel; Violates 14th Amendment
To not be deprived of life, liberty or property without due
Process of Law.

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): In
United State of America V. Harold C. Spear, United
States Court of Appeals For the 9th Circuit 753 F.
3d 964; 2014 U.S. App. Lexis 10465;

we have "stead fast applied the rule that any lack
of clarity in a plea agreement should be construed
against the government as drafter..."

United States V. Cope, 527 F.3d 944, 951 (9th cir 2008)
(quoting United States V. Transfiguration, 442 F.3d
1222, 1228 (9th cir 2006) (Internal quotation marks
omitted)

In United States V Lee, 725 F.3d 1159,
1166 (9th cir 2013) (Per Curiam) we look to "What the
defendant reasonably understood to be the terms of
the agreement when he pleaded guilty (quoting
United States V. Deha Fuente, 8 F.3d 1333, 1337
(9th cir 1993) (Internal quotation marks omitted)

Ground #1 Argument Continue

The reason why I accepted the deal from the beginning, as explained by my lawyer, was that I would be allowed to earn good time work credits on my minimum parole eligibility. The Offer on the first page of the agreement was simply 20 to 50 years with no mention of a minimum to be served before becoming eligible for parole (see; Guilty Plea Agreement Exhibit #2 pg 1, Line 22).

The Offer on page two of the plea agreement was 20 to 50 years with parole eligibility beginning after 2 years. Though slightly different than the offer on page 1 - Trial Attorney advised me that if I accepted the deal I was already eligible for parole because I had been incarcerated for 2 years. Trial Counsel advised me that I would probably be required to do about 10 years before being granted parole. The prosecutors had no authority to offer either of the sentences it offered. (See; NRS 200.030 Degrees of Murder: Penalties, Exhibit #3 pg 1 (4)(b)(2)(B)) & pg 2 (5)(A)(b)) It was also ineffective assistance of Counsel in advising me erroneously about applicable Sentencing Statutes.

Ground #1 Argument: Continue

1
2 Requiring the government to bear responsibility for
3 the lack of Clarity is particularly appropriate
4 in this case. Looking at the plea agreement as
5 it existed when I signed it - neither of the offers
6 made were Authorized by the Applicable Sentencing
7 Statute. petitioner asserts that this is proof of
8 the Collusion between the state and trial attorneys
9 to railroad me. How can two veteran prosecutors and a
10 seasoned trial attorney all miss the fact that the
11 sentence offered was not Authorized by law. Such
12 proposition is absurd. The plea agreement was intenti-
13 onally ambiguous and illegal to induce a guilty plea.

14
15 The governments present inability to fulfill
16 its promise does not mean that it did not
17 breach the plea agreement. See; United States
18 V. Cook, 668 F.2d 317, 320 (7th circuit 1982) A plea
19 induced by an unfulfilled promise is not less
20 subject to challenge than one induced by a
21 valid promise which the Government simply
22 fail to fulfill" (Citing Brady V. United States, 397
23 U.S. 742, 755, 25 L. Ed. 2d 747, 90 S.Ct. 1463 (1970))

Ground #1 Argument Continue

In order to establish a claim for fraud in the inducement to enter a contract, a party must establish the following by clear and convincing evidence;

(1) A representation: one can clearly see that the offer of 20 to 50 years on page one of the G.P.A and 20 to 50 with parole eligibility in (2) twenty years on page two is not sanctioned by the statute and Ambiguous at best. (see; Exhibit #2 G.P.A pg 1 Line 22 & pg 2. Line 2;) (see; Exhibit #3 Degree of Murder - Penalties)

(2) It Falsity; the sentences offered in G.P.A are not Authorized by N.B.S 200.030. (see; Exhibit #3 Degree of Murder Penalties, pg 1 (4)(b)(1), pg 2, (2) (3) (5);

(3) It Materiality; not being properly advised of the consequence to the plea the authorized sentence is certainly material to the guilty plea;

(4) Either knowledge of Its Falsity or a reckless disregard of its truth, The prosecutors, as trained professional, knew or reasonably should have known the rule of law regarding Sentencing;

Ground #1, Argument Continues

(5) Intent that the representation be acted upon;
This element is axiomatic;

(6) The hearer's ignorance of its falsity; Petitioner is a layman. At the entry of the plea petitioner was a 21 year old young man with nothing on his record but a gross misdemeanor for carrying a concealed weapon. There is no reason that petitioner would have known appropriate penalties for first degree Murder;

(7) The Hearer's reliance on its truth; Petitioner believed that the prosecutors accurately represented the statute. petitioner also believed that trial Counsel gave petitioner effective assistance in approving and encouraging such plea;

(8) The hearer's right to rely thereon; petitioner had a right under the 6th Amendment to effective assistance of Counsel; and

(9) The hearer's consequent and proximate injury; As a result of petitioner reliance that the representation of the Sentencing Statute were true - petitioner pled guilty on a false premise. The proximate injury and prejudice is petitioner's loss of the right to trial by jury.

Ground #1 Argument Continues

Ordinarily to be actionable, a statement must relate to a present or pre-existing fact, and cannot be predicated on unfulfilled promises or statements as to future events. *Davis V. Upton*, 250 S.C. 288 291, 157 S.E. 2d 567, 568 (1967)

"However, where one promise to do a certain thing, having at the time no intention of keeping his agreement, it is fraudulent misrepresentation of a fact, and actionable as such." *Id.* (citation omitted) "[E]ntering into an agreement, with no intention of keeping such agreement, constitutes Fraudulent Misrepresentation."

However mere breach of contract does not constitute Fraud. *Adam V. C.J. Creel and Sons, Inc.*, 320 S.C. 274, 277, 465 S.E. 2d 84, 85 (1995).

A future promise is not Fraudulent unless such promise was part of a general design or plan, existing at the time, to induce a party to enter into a contract or act as he or she otherwise would not have acted to his or her injury. *Bishop Logging Co. V John Deer Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E. 2d 183, 187 (ct. App 1995) (quoting *Coleman V Stevens* 124 S.C. 8, 16 117 S.E. 305, 307 (1923)).

Ground #1 Argument Continue

1
2 "Evidence of mere nonperformance of a promise
3 is not sufficient to establish either Fraud or a lack
4 of intent to perform" Woods V. State 314 S.C. 501,
5 506. 431 S.E.2d 260, 263 (Ct. App 1993) (citation omitted).
6 An inference of a lack of intent to perform a
7 promise can only be made when nonobservance of
8 a promise is [xxxio] Coupled with other evidence.
9 Turner V. Milliman, 392 S.C. 116 Here lack of intent
10 to perform is established by nonperformance,
11 lack of clarity in the G.P.A, Citing erroneous
12 punishment for First degree murder, Leaving out
13 complete consequences of plea and; Colluding with
14 trial attorney. The State knew that the offers
15 made in the G.P.A were unenforceable. The State
16 entered into this agreement for the sole purpose
17 of trapping petitioner into a bargain that it had no
18 intention of keeping. The intention from the begin-
19 ing was only to secure my signature on a deal
20 then change the terms of the Agreement.
21
22
23
24
25
26
27

23. (b) GROUND TWO: Prosecutors Interfered with Defense
lawyer ability to effectively Represent me. Violates 6th
amendment right to Counsel. Violates 14th Amendment to due
process of law

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Any
lack of Clarity in a plea agreement is construed against
the government as the drafters, United States V. Cope
(Supra).

Strickland set forth in Lawyer's Addition Head
note 22:

In certain 6th amendment Context, prejudice is pre-
sumed. See H/11. Actual or Constructive denial of
Counsel is legally presumed to result in prejudice.
So are various kinds of state interference with
Counsel's assistance. See; United States V. Cronin, ante,
at 659 and note 25. Prejudice in these circumstances
is so likely that case-by-case inquiry into prejudice
is not worth the Cost. Ante, a 658. Moreover, Such
circumstances involve impairments of the sixth
Amendment right that are easy to identify and, for
that reason and because the prosecution is directly
responsible, easy for the government to Fix.

Ground#2 Argument Conti

The two illegal offers are different thus cannot be construed as clerical error. The state prosecutors drafted and illegal plea deal, colluded with Defense attorney and took unfair advantage of petitioners age and lack of experience with the criminal justice system. petitioner simply did not know the inappropriateness of such offers to a charge of first degree murder. correct legal advise from counsel was non-existent because he was actively conspiring with the prosecution.

23. (c) GROUND THREE: Trial Counsel's advise to Plead guilty was not Authorized by law Violates 6th Amendment right to Counsel

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

Quoting the United States Supreme Court in Hill V. Lockhart, 106 S.ct. 366;

"Where as here, a defendant is represented by Counsel during the plea process and enters his plea upon the advise of counsel, The Voluntariness of the plea depends on whether Counsel's advise was within the range of Competence demanded of attorney in criminal case" McMann V. Richardson, 397 U.S. 759, 771, 25 L.Ed 2d 763, 90 S.ct 1441 (1990). We explained in Tollet V. Henderson, 411 U.S. 258, 36 L. Ed 2d 235, 39 S.ct. 1602 (1973), a defendant who pleads guilty ~~§ 209~~ upon advise of Counsel, "May only attack the voluntary and intelligent character of the guilty plea by showing that the advise recieved by counsel was not within the standards set forth in McMann" Id. at 267, 36 L. Ed 2d 235, 39 S.ct. 1602.

Ground #3 Argument Conti

In McMann V. Richardson 90 S.Ct. 1441, the Supreme Court said in pertinent part:

"... It is no dinigration of the right to trial to hold that when the defendant waives state court remedies and admits his guilt, he does so "under the laws existing", further he assumes the risk of ordinary error in either his or his attorneys assesment of the law and the facts... unless he can allege and prove serious derelictions on the part of counsel sufficient to show that his plea was not after all knowing and intelligent"

Your Honor the sentences offered in the plea agreement do not reflect the applicable punishment for 1st degree murder in place at the time. It follows that there can be no ordinary error in the attorney's assesment of the law of which I was erroneously advised. The guilty plea agreement, as it existed when I signed it, proves that there was serious derelictions on the part of counsel to prove that my plea after all was not knowing and intellegent.

Ground #3 Argument Continue

In Hill (Supra) the defendant alleged that the trial Counsel was ineffective for incorrectly advising him of his parole eligibility. Although counsel's advise on parole eligibility was wrong, The court rejected that such erroneous advise constituted prejudice. In this case parole eligibility is not the crux of my argument. Twenty (20) to Fifty (50) years; 20 to 50 with parole eligibility in 2 years and; And a definite term of 50 years with parole eligibility in 20 years are all very different sentences. The first two sentences offered in the plea agreement are not only different from the last, but they are also illegal. petitioner asserts that the advise of Counsel to plead to an agreement that offered an illegal sentence was Ineffective assistance of counsel. Counsel's erroneous advise to plead guilty also establishes prejudice as required in Hill. But for the erroneous advise of counsel I would have proceeded to trial. Defense Counsel's erroneous advise to plead guilty is also proof that the trial Attorney was in collusion with the Deputy District Attorney and judge to deprive me of a fair Trial.

Ground #3 Argument Cont;

A defense attorney who abandons his loyalty to his Client and effectively joins the state in an effort to attain a conviction or death sentence suffers from a obvious conflict of interest. Such Attorneys, like (*783) unwanted counsel, "represents the defendant only through a tenuous and unacceptable fiction." **Ferrell v. California** 422 U.S. 821 45 L.Ed. 562, 95 S.Ct. 2525 (1975). In fact, an attorney burdened by a conflict between his client's interest and his own sympathies to the prosecutions position is considerably worse than an attorney with loyalty to other defendants, because the interest of the state and the defendant are necessarily in opposition.

23. (d) GROUND FOUR: Plea Agreement are Contractual in
Nature. In Violation of 14th Amendment to U.S.
Constitution

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Citin-
g United State of America V. Alberto De la Fuente & E.
3d 1333 & Santobello V New York, 404 U.S. 257
Petitioner plead guilty to First degree Murder
in violation of NRS 200.030. Petitioner was sentenced
to a definite term of 50 years with parole eligibili-
ty beginning in 20 years (see; Exhibit #4 J.O.C pg 2 line 1).

On the record, through trial Counsel, petitioner bargained
and negotiated for a different plea; The negotiated
plea was 20 to 50 years or 20 to 50 years with parole
eligibility beginning in 2 years. In exchange the state
agreed to not pursue the harsher penalties of death;
Life without possibility of parole, life with the possibility
of parole with eligibility beginning after 20 years or a
definite term of 50 years with parole eligibility in 20 years.
NRS 200.030 (4)(b)(1)(2)(3) (see; Exhibit #2 pg 1, pg 2). The
State also agreed 2-10 years on Count 2 For Battery
with use of a deadly weapon and not to oppose
Concurrent time between Counts.

Ground #4 Argument, Continue.

A degree of Confusion is created by apparently making two offers in one plea agreement. Is the offer of 20 to 50 years on page one a separate and distinct offer from that on page two which proffers a definite term of 50 years with parole eligibility beginning after 2 years? Are the sentences even legal? What is the significance of the judge changing the definite term of 50 years with parole eligibility after 2 years to 50 years with parole eligibility in 20 years after petitioner had already signed the deal? What is the remedy?

The question of whether the offers appearing on page one and two of the G.P.A. are separate and distinct is irrelevant because they are both illegal. Petitioner contends that this is evidence of fraud in the factum and fraud in the inducement of the guilty plea. Neither offer was authorized by the statute. NRS 200.030

Ground #4 Argument Continue

In Collusion with trial Attorney & the judge, the prosecutor's used the illegal offers to trick petitioner into accepting a plea bargain to First Degree Murder under the guise that petitioner would be eligible for parole in 2-10 years. After accepting the illegal offer the judge then changed the proffered plea bargain to a definite term of 50 years with parole eligibility in 20 years.

The offers in the G.P.A are Fraud in the inducement Trial Attorney & the language in G.P.A lead petitioner to believe that he would be eligible for parole in 2 to 10 years.

The Supreme Court of Nevada in *Jessica Williams V The state of Nevada Dept of Correction* 402 P.3d 1260; 2017 Nev. Lexis 97; 133 Nev. Adv. Rep. 75. The Supreme Court of Nevada rules on the difference between Nevada's Sentences and their Significance to parole eligibility:

Ground#4 Argument Continue

"The issue before us is a matter of statutory interpretation." Statutory interpretation is a matter of law subject to de novo review. "State v. Catania, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). The goal of statutory interpretation "is to give effect to the legislature's intent." "Hobb v. State, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011). To ascertain the legislature's intent, we look to the statute's plain language. Id. "[W]hen a statute's language is clear and unambiguous, the apparent intent must be given effect as there is no room for construction." Edington v. Edington, 119 Nev. 577, 582-83, 80 P.3d 1282, 1286 (2003). This Court avoid(s) statutory interpretation that renders language meaningless or superfluous. "Hobbs, 127 Nev. at 237, 251 P.3d at 179 and whenever possible ... will interpret a rule or statute in harmony with other rules or statutes." Watson Bounds v. Eight Judicial Dist. Court, 131 Nev. adv. op. 79, 358 P.3d 228, 232 (2015) (quotation mark omitted).

Ground #4 Argument Continue

NRS 209.4465(7) provides that credits earned pursuant to NRS 209.4465; (a) "[M]ust be deducted from [a prisoner's] maximum term" of imprisonment and (b) "apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." The first part of subsection 7(b) establishes a general rule the credits earned pursuant to NRS 209.4465 apply to eligibility for parole. The second part of Subsection 7(b) sets forth a limitation. The general rule does not apply if the offender "was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." Thus if the sentencing statute did not specify a minimum sentence that had to be served before parole eligibility credits should be deducted from the prisoners minimum sentence, making an inmate eligible for parole sooner than he or she would have been without the credits....

Ground #4 Argument Continue

This case is not about parole eligibility. This case is about the prosecution holding out the offer of earlier parole eligibility to induce the guilty plea thereby depriving petitioner of his right to trial by jury pursuant to the 6th Amendment to the U.S. Constitution.

The problem is the Plain Language used in the Sentencing Statute at issue here in contrast to the language used in the G.P.A. The legislature has used language in the sentencing statute that

expressly requires a particular sentence be served before a person becomes eligible for parole. (See:

Exhibit #3 pp. 1, 2 (4)(b)(2)(3) NRS 200.030) listing

sentencing options for first degree murder, including "life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served" or "a definite term of 50 years with

eligibility for parole beginning when a minimum of 20 years has been served {402 P. 2d 1264}. According

to the plain language of the G.P.A. there was no restriction to petitioner immediately earning NRS 200.44

(5)(a) credits if offer "one" were controlling. If offer "two" were controlling petitioner would still be earning

credit towards his minimum parole eligibility because petitioner had been incarcerated for 2½ years when

the offer was made. Offer number 1 of the illegal offer in the G.P.A. does not describe the sentence

Ground#4 Argument Continue

as a definite term of 50 years as the statute truthfully does. The prosecutors, trial attorney, and the judge all played their role in the trap set by the prosecutor. The prosecutor intentionally gave the wrong impression in the G.P.A.

Any ambiguity in the plea should be construed against the government as drafter "United States V. Cope, 527 F.3d 944, 951 (9th Cir 2008) (quoting United States V. Transfiguration, 442 F.3d 1222, 1228 (9th Cir 2006))

Plea Agreement Are Contractual in Nature

See United States of America V. Albeto De la Fuente 8 F.3d 1333 : III "Plea Agreements are Contractual in nature and are measured by contract law standards. "United States V. Keller, 902 F.2d 1391, 1393 (9th Cir 1990). In Construing an agreement, the court must determine what the defendant Reasonably understood to be the terms of the agreement when he pleaded guilty. See: United States V. ~~8 F.3d 1338~~ Anderson, 970 F.2d 602, 607 (9th Cir 1992) amended; 990 F.2d 1163 (1993); United States V. Packwood, 848 F.2d 1009, 1011 (9th Cir 1988). As with other contracts Provisions of plea agreements are occasionally ambiguous; the government "ordinarily must bear responsibility for any lack of clarity" Id.; CF. United States V. Read 778 F.2d 1437, 1441 (9th Cir 1985)

Ground #4 Argument Continue

§1993 U.S. App. Lexis 113 ("Responsible public servant who recognizes the desirability of clarity would avoid... use" of vague language in plea agreements) cert denied, 479 U.S. 835, 93 L.Ed. 2d 75, 107 S.Ct 131 (1986). Construing ambiguities in favor of defendant makes sense in light of parties respective bargaining power and expertise. petitioner places emphasis on expertise.

In *Marby v. Johnson*, 467 U.S. 504 Justice Stevens delivered the unanimous opinion of the United States Supreme Court;

... "A plea of Guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court prosecutor, or his own counsel must stand unless induced by threats or promise or perhaps by promise that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes)" *Id.* at 755 (quoting *Shelton v. United States*, 246 F.2d 571, 572 N.2 (CA5 1957) (En banc) (inturn quoting 242 F.2d 101 115 (Tuttle, J. dissenting to panel opinion)) rev'd on other grounds 356 U.S. 26 (1958).

Ground #4 Argument Continue

"The plea must, of course, be voluntary and knowing and if it was induced by promises, the essence of those promises must, in some way, be made known" *Id.*, at 261-262. It follows that when the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty under a false premise, and hence his conviction can not stand; "[w]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

petitioner understands that he can not compel specific performance for imposition of a sentencing agreement that is illegal.

In the case before the bench the illegal offers were used as both fraud in the inducement and consideration. Consideration defined as; something (as an act or forbearance of the promise thereof) done or given for the act or promise of another, being that the offers in the plea agreement were illegal, the state in essence has given nothing in exchange for petitioners plea of guilty. Such a contract is voidable.

Ground #4 Argument Continuee

Pursuant to the Supreme Court of the United States in Santobello v. New York, 404 U.S. 257:

"On Timely Application, the court will vacate a plea of guilty shown to have been unfairly obtained or given through ignorance, fear, or inadvertence. Such an application does not involve any question of guilt or innocence" ... Id., at 224.

... "or if he had been tricked by the prosecutor through misrepresentation into pleading then his due process rights were offended." The judge changing the terms of the plea agreement at sentencing is of no consequence. It is not what petitioner reasonably understood the sentence to be at sentencing but what petitioner understood the sentence to be when plead guilty. See; United States v. § 8 F.3d 1333 Anderson, 970 F.2d 602, 607 (9th cir) amended, 990 F.2d 1163 (1993); United States v. Packwood, 848 F.2d 1009, 1011 (9th cir 1988)

Remedy

Douglas, J., Concurring, joined the opinion of the court, and expressed the view that where a "plea bargain was not kept by the prosecutor, the sentence must be vacated and the state court should decide in light of the circumstances of each case whether due process required (1) That there

Ground#4 Argument Continue

1
2 be specific performance of the plea bargain, or (2)
3 that the defendant be given the option to go to trial
4 on the charges, the defendant's preference to be
5 given considerable, if not controlling, weight in choosing
6 the appropriate remedy. Santobello v. New York
7 404 U.S. 257.

Ground #5

23. (E) GROUND Five Prosecutor's Actions Constitute
Outrageous Government Conduct Violates 14th Amen
dment right to due process of Law

23. (E) SUPPORTING FACTS (Tell your story briefly without citing cases or law): In
United States of America V. Michael O'Connor et al,
In the United States Court of Appeals for the Ninth
Circuit, 737 F.2d 814, 1984 U.S. App. Lexis 20603; 15
Fed. R. Evid. Serv. (Callaghan) 2021 Ca. Nos. 827566, 8275
73, 82-1574, 82-1575 July 12, 1984, Decided
July, 12 1983, Argued and Submitted

§ 1984 U.S. App. Lexis 4 3 B. Due Process Analysis

The Supreme Court has indicated that there
may be situations "in which the conduct of law
enforcement officials is so outrageous that due
process principles would absolutely bar the governme-
nt from involving judicial process to obtain a convic-
tion" United States V. Russell 411 U.S. 423, 431-32, 36
L. Ed. 2d 366, 93 S. Ct 1637 (1973); accord Hampton V.
United States, 425 U.S. 484, 492-93, 48 L. Ed. 2d 113, 96 S. Ct
1646 (1976) (Powell, J. Concurring)

We have stated that prosecution is barred "When
the government's conduct is so grossly shocking and
so outrageous as to violate the universal sense

Ground #5. Continue

of justice." United States V Ramirez, 710 F.2d 535, 539 (9th cir 1983) (quoting United States V. Ryan, 548 F.2d 782, 789 (9th cir. 1976) Cert denied, 430 U.S. 965, 52 L.Ed.2d 356, 97 S.Ct. 1644 (1977).

Your Honor the facts in this case are simply astounding and completely outrageous.

(#1.) There were two separate and distinct offers in the plea agreement. Both were compelling because they offered the possibility of petitioner serving much less time in prison being able to earn work credits on his minimum parole eligibility under the construction of NRS 209.4465 in the year 1997. However, neither sentence offered in the plea agreement signed was authorized by law. The plea agreement was drafted by two seasoned prosecutors.

(#2.) The defense counsel procured petitioner's signature on this illegal plea agreement. At this point we simply must presume the counsel to be ineffective. Why? Because the deal is illegal! We're mentioning only the facts revealed by the official court record. What was the agreement as it existed when I signed it?

Ground #5, Cont

(3;) With no intervening time or delay the illegal deal was presented to the judge for approval. The judge promptly changed the terms of the agreement to a legal sentence under the law. The judge, however, refused to allow petitioner to withdraw from the deal.

These facts alone imply that there was something underfoot that was not justice or due process of law. Are we to believe that these four legal professionals had no idea of the adverse cumulative impact of the circumstance on the involuntary nature of the plea? This Court should reject such construction.

For lack of a better term your Honor, these four legal professional represented a lynch mob all of their actions constitute fraud on the court.

The motive was to induce a guilty plea with an illegal offer then refuse to allow petitioner to back out of the deal. The prosecutors role in this travesty of justice constitute outrageous government conduct. The prosecutor's actions are offensive to the fundamental sense of fairness embodied in the 14th Amendment to the United States Constitution.

23. (F) GROUND SIX All officer of the Court participated
In Fraud on the Court. Violates 14th Amendment to
due process of Law.

23. (F) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Courts
have inherent equity power to vacate judgments
obtained by fraud. Chambers v. Nasco, Inc., 501
U.S. 32, 44, 111 S.Ct 2123, 115 L.Ed. 2d 27 (1991); In re
Lavander, 180 F.3d 1114, 1118-19 (9th Cir 1999). Rule 60(b)
also; Nev. R. Civ. P. 60(b)'s "Saving Clause". Price v. Dunn
106 Nev. 100, 104, 787 P.2d 785, 787 (1990). Governs relief from
a judgment or order, provides No time limit on Courts
power to set aside judgment based on a finding of
fraud on the Court. 11 Charles Allen Wright and
Arthur B. Miller, federal practice and procedure § 287D
(2d ed. 1987).

Most but not all fraud on the Court involves a scheme
by one party to hide a key fact from the Court and
the opposing party. for example see; Lavander, 180 F.3d
at 1116-17 and Pumphrey v. K.W. Thopson Tool Co., 62 F.3d
1128, 1130 (9th Cir 1995).

In this case there was definately a scheme to
hide something. What was being hidden was the truth
of the Sentencing Statute.

Ground #6, cont

The prosecutor's, Defense Attorney, and the Judge all played their roles. The prosecution set the trap with the illegal offer. Defense attorney advised petitioner to enter the illegal agreement with erroneous advise about the sentencing statute. The judge closed the trap by not allowing petitioner to withdraw from the ill-gotten deal.

23. (G) GROUND SEVEN Abuse Of Judges Discretion
Accepting The Ill-Gotten Plea Agreement
Violate Due Process Clause of The 14th Amendment
to The U.S. Constitution

23. (G) SUPPORTING FACTS (Tell your story briefly without citing cases or law): On page one of the Guilty Plea Agreement (G.P.A) the deal is simply 20 to 50 years. There's no mention of a definite term of 50 years with parole eligibility beginning in any number of years. (See; Exhibit #2 For G.P.A, pg 1, Line 22, 23) The G.P.A does not list all of the possible sentences for first degree murder. The only possible sentences listed by the prosecutor are life without the possibility of parole or a definite term of 50 years with eligibility for parole beginning a Twenty (2) years plus an equal and consecutive term for use of a deadly weapon (See; Exhibit # pg 1, Line 27, & pg 2, of G.P.A.). In addition to leaving out two possible punishments of death and life with the possibility of parole, The prosecutor wrote that parole eligibility begin in Twenty (2) years. Trial Counsel told me that the intended number of years at which I would become eligible for parole was two years. Counsel said that twenty year's was a Clerical error.

Stating on page 4, line 16 of the Exhibit #1 E.O.P the judge ask the Following:

ADDITIONAL FACTS OF THE CASE:

Ground #7 Argument Continue

1
2 ... There's no use of a deadly weapon?

3 Ms Pieper; No

4 Mr. Collucci; No use

5
6 The Court; Okay, so this is messed up. All right, so
7 if you look on page two of the guilty plea agreement
8 it says on line two; plus an equal and consecutive
9 term for use of a deadly weapon. I'm going to take
10 that out right? ...

11 ... Continued on line 24 of the E.O.P;

12
13 So wouldn't there be, as to Count 1, life with, life
14 without, and a term of years, and that's not all in
15 here.

16
17 Mr Sweetin; That's true, judge. There would be -- it
18 would either be life without the possibility of parole --

19
20 The Court; which we have here, or a definite
21 term of 50 years with parole eligibility beginning
22 at 20 years, or life with the possibility of parole
23 eligibility at 20 years.

24
25 Mr. Sweeten; Twenty years

26
27 Ms. Pieper; Twenty years

Ground# 7 Argument Continue

1 The Court; So I'm going to write that in here and
2 -- afterwards but I want to ask you if you under
3 stand; I know the deal is to recommend to me the
4 term of 50 years with parole eligibility beginning at
5 20, but I need for you to understand that there are
6 three possibilities here. One is life with parole eligibility
7 at 20 years, one is life with no parole, or the term of
8 years which is 20 to 50;

9
10
11 The Defendant; Yes

12
13 on page 5, line 19, of Exhibit #1; E.O.P.

14
15 ... The Court; Okay, and do you understand that
16 I am going to write the third option into this guilty
17 plea agreement and I'm going to put my initials by
18 it so that you -- and this record will also indicate
19 that you've been advised of all the Possible Punishments
20 that you face. Do you understand?

21
22 The Defendant; Yes Yes.

23
24 First off this portion of the argument may be better
25 suited for ground 2 in which petitioner asserts that
26 prosecutors in this case interfered with defense
27 counsels ability to effectively represent petitioner

Ground #7 Argument Continue

1 by colluding with defense counsel to induce a guilty
2 plea to an illegal plea offer. Before the Judge
3 stood, prosecutor's Sweetin & Pieper demonstrating
4 that they had Full knowledge of the applicable
5 punishment for First Degree Murder. They were both
6 able to cite punishment without consulting The
7 First Degree Murder statute. Or if the statute was
8 consulted, the information of the appropriate penalty
9 was available to the prosecutors. Yet these two
10 professional prosecutor's did not use their knowledge
11 in drafting a G.P.A free of ambiguities. The proposition
12 is absurd, petitioner asserts the prosecutors intention-
13 ally lied on the applicable statute to induce the guilty
14 plea. The judge abused her discretion by accepting
15 a plea with such obvious Flaws; in which the judge
16 actually changed what was written by the prosecutors
17 and professionally reviewed by defense Counsel (supposedly)
18 before reaching the judge.

19
20 The judge obliterated any belief that I would be eligible
21 for parole sooner by correcting the Flaws in the G.P.A.
22 The ambiguity being created by:

23
24 1) The prosecutor's not using the language of the Sente-
25 ncing Statute in the G.P.A;

26
27 2) The judge striking equal + separate time for the use of
28

Ground # 7 Argument Continue

A deadly weapon from the G.P.A.;

3) Writting in the third sentencing option of life with the possibility of parole and; leaving out the Fact that a possible consequence is the death penalty.

4) Changing parole eligibility from Twenty (2) years to Twenty (20) years

The actions taken by the judge do not cure the defects in the plea agreement. Additionally there are four possible penalties to First degree murder not three. The last possible consequence being death by execution; NRS 200.030(4)(a).

The way in which the guilty plea was drafted leaves room for interpretation; Some where between 20 to 50 years with no mention of when parole eligibility in Twenty (2) years, or life without the possibility of parole if found guilty at trial.

First they induced the plea with illegal offers then changed the terms of the agreement after I signed

ADDITIONAL FACTS OF THE CASE:

Ground #7 Argument Continue

petitioner contends that he should be allowed to withdraw is guilty plea. Petitioner was not advised of all consequence to the plea. The plea agreement was induced by Fraud. Trial counsel & prosecutor colluded to induce a guilty plea to an illegal offer. As a contractual agreement there was plain and reversible error.

Abuse of Discretion

Johnson V. United States, 398 A. 2d 354;

... A) Discretion signifies choice. First the decision-maker exercising discretion has the ability to chose from a range of permissable conclusions.

... In this sense the core of "discretion" as a jurisprudential [xx12] concept is the absence of a hard and Fast rule that fixes the results produced under varying sets of facts. Langnes V. Green, 282 U.S. 531, 541, 75 L. Ed 520, 51 S. Ct 243 (1931)

... An area of trial court discretion is a pasture in which the judge can roam and graze freely rendering rulings his appellate betters might not have made. unless and until the higher court fences off a corner of the pasture by announcing that a rule of law covers the situation and has been violated. Until that occurs, the trial judge, wielding discretionary

ADDITIONAL FACTS OF THE CASE:

Ground[#] 7 Argument Continue

power, need not be right by appellate court lights in order to be upheld. even if the appellate judges disagree with his call, they will defer to him [Bosenberg judicial Discretion, Supra at 650]

In the case at bench the question is whether a rule of law covers the issues raised in which the trial judge exercised her discretion? IF the rule of law does cover the issues of discretion and the judge has not followed it, the argument can then be made that the judge abused her discretion. First is the ambiguity of the plea agreement itself. The Rule of Law express in United States of America V. Alberto De la Fuente United States court of Appeals 8 F.3d 1333, ...; the government ordinarily must bear responsibility for any lack of clarity. Construing ambiguities in favor of the defendant makes sense in light of the the parties respective bargaining power & expertise.

B) Second, the guilty plea does not list all of the possible penalties for First Degree murder. Death by execution and Life without the possibility of parole were left out. See; NRS 200.030 (4) (a) (b) (1) (2) (3). Waivers of Constitutional

ADDITIONAL FACTS OF THE CASE:

Ground[#] 7 Argument Continue

rights must be voluntary but must be knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. See; *Brookhart v. Janis*, 348 U.S. 1 (1966); *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275 (1942); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) *Patton v. United States*, 281 U.S. 276, 312 (1930)

c) Third, are the changes made to the G.P.A. by the judge at the entry of the plea. In order for the court to truly understand what transpired here, the court must understand the timeline. Trial Counsel presented the plea agreement with illegal offers that promised parole eligibility earlier, petitioner signed the deal that was intentionally vague and ambiguous. After petitioner signed - the deal was immediately presented to the judge, then changed the terms of the agreement. So much so, that overall, the document bears no resemblance to the one that petitioner signed. In *United States v. Park Quan*, 789 F.2d 711. The United States Court of Appeals for the Ninth Circuit made the following ruling; In determining whether a plea agreement has been broken, we look to what the defendant reasonably understood when entered his guilty plea. *Id.* If disputed, the terms of the

ADDITIONAL FACTS OF THE CASE:

Grown #7 Argument Continue

The agreement will be determined by objective standards. I.D. "A plea agreement is contract law standards." [714] United States v. Bead, 778 F.2d 1437, 1441 (9th cir 1985). This determination is a question of fact to be resolved by the District ct.

Fourth the judge made the following statement at the onset of the hearing to enter the guilty Plea:

"All right, we're on the record in state of Nevada against Demarene Coleman. Mr. Coleman who is present with Mr. Colucci, and we have Mr. Sweetin and Ms. Pieper for the state; and it's my understanding that this matter is negotiated. (See; exhibit #1, pg 2 Line 5, 6 for the transcript of E.O.P (entry of plea)).

I ask this Court; if the judge has acknowledged that the matter is negotiated—then by what authority does the judge proceed to completely change the terms of the agreement? The changes made by the judge render the document no longer recognizable as the one signed by the petitioner. In other words, the consideration for which petitioner has entered his plea of guilty has

Ground #7 Argument Continue

been Changed. The plea agreement, as I under stood it when I signed it, was for either 20 to 50 years with parole eligibility beginning immediately or a definite term of 50 years with parole eligibility beginning in two years. The rule of law that govern these issues is expressed in Santobello v New York, 404 U.S. 257; when a petitioner bargains for a negotiated plea of a particular nature.

In United States v Keller, 902 F.2d 1391 the United States Court of appeals made the the following ruling: plea agreements are contractual in nature and are measured by Contract - law standards. United States v. Read, 778 F.2d 1437, 1441 (9th Cir. 1985) Cert. denied 479 U.S. 835 93 L. Ed 2d 75, 107 S. Ct. 131 (1986). To determine whether a plea agreement is violated, the court must look to what [xx5] the parties "reasonably understood to be the terms of the agreement." This is a question of fact to be resolved by the district court under the clearly erroneous standard. United State v. Krasn, 614 F.2d 1229, 1237 (9th Cir 1980)

As this court can see the rule of law covers each of the issues in which petitioner asserts that the court abused it discretion in not

Ground #7 Argument Continue

applying the law. Continuing with Johnson v. United States, 398 A.2d 354. The District of Columbia Court of appeals ruled;

... Generally the factual record must be capable of supporting the determination reached by the trial court. the facts may foreclose one or more of the options otherwise available to the trial court. Indeed, the facts may leave the trial court with but one option it may choose without abusing its discretion, all other having been ruled out. (Bradford [xx22] Brown v. United States, Supra at 561

... The judge can accept, reject, or defer a decision concerning the plea in his or her discretion... United States v. Floyd, 1F.3d 867, United States Court of Appeals for the Ninth Circuit.

In the case at bench, the trial judge had no choice than to refuse to accept a negotiated plea **plaged** with ambiguities and false representations of the law.

Conclusion

Wherefore, based on the foregoing facts, arguments, and authorities, Mr. COLEMAN respectfully requests that this honorable court reverse the judgment below and remand with instructions to entertain the merits of his petition for Writ of Habeas Corpus.

Given the veracity of This petition for writ of Habeas Corpus (Post-Conviction) petitioner is Requesting the following relief:

To have the conviction of First Degree Murder Dropped to Voluntary Manslaughter, or to have the "Illegal Ill-Gotten Plea Agreement Withdrawn and Proceed to Jury Trial

For these aforementioned reason It is More Than Evident that petitioner Is Entitled to The Relief Requested or any relief Deemed necessary. petitioner ask that this court Grants his writ of habeas Corpus

Respectfully Submitted
D. Coleman # 1007335

1 WHEREFORE, DEMARENE COLEMAN prays that the court grant (Post-Conviction)
2 relief to which he may be entitled in this proceeding

3 EXECUTED at SDC.C.
4 on the 13 day of March, 2023.

5
6 D. Coleman
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is
10 the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is
11 true and correct of his own personal knowledge, except as to those matters based on information and
12 belief, and to those matters, he believes them to be true.

13
14 D. Coleman
15 Signature of Petitioner

16
17
18 _____
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, Demarene Coleman, hereby certify, pursuant to NRCP 5(b), that on this 13
day of March, 2023, I mailed a true and correct copy of the foregoing, "Petition For
Writ OF Habeas Corpus (Post-Conviction)"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clerk of Court
200 Lewis Ave 3rd
Floor Las Vegas, NV
89155-1160

District Attorney's-
Office 200 Lewis
Ave Las Vegas NV 89155
2212

Attorney General Aaron Ford
555 E. Washington Avenue #
3100 Las Vegas, NV 89101

CC: FILE

DATED: this 13 day of March, 2023

DEMARENE COLEMAN #1007335
D. Coleman #1007335

/In Propria Personam

Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition

For Writ OF Habeas Corpus (Post-Conviction)
(Title of Document)

filed in District Court Case number C215295

☐ 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.

D. Coleman
Signature

3/13/23
Date

Demarene Coleman
Print Name

Post-Conviction
Title

Exhibit 1

Exhibit #1

ORIGINAL

TRAN

CLERK OF THE COURT

JUL 24 3 05 PM '07

FILEDDISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEMARENE COLEMAN,

Defendant.

CASE NO. C215295

DEPT. V

BEFORE THE HONORABLE JACKIE GLASS, DISTRICT COURT JUDGE
MAY 29, 2007**RECORDER'S TRANSCRIPT OF HEARING RE: --
ENTRY OF PLEA****APPEARANCES:**

For the State:

JAMES R. SWEETIN, ESQ.
DANIELLE K. PIEPER, ESQ.
Deputy District Attorneys

For the Defendant:

CARMINE J. COLUCCI, ESQ.

RECORDED BY: RACHELLE HAMILTON, COURT RECORDER

CLERK OF THE COURT

RECEIVED
JUL 24 2007

1 TUESDAY, MAY 29, 2007

2
3 THE COURT: All right, we're on the record in State of Nevada against
4 Demarene Coleman. Mr. Coleman who is present with Mr. Colucci, and we
5 have Mr. Sweetin and Ms. Pieper for the State; and it's my understanding the
6 matter is negotiated.

7 Mr. Coleman, is Demarene Coleman your true name?

8 THE DEFENDANT: Demarene Coleman, Your Honor.

9 THE COURT: Well, okay, sorry. Demarene Coleman, is that your true
10 name?

11 THE DEFENDANT: Yes.

12 THE COURT: How old are you?

13 THE DEFENDANT: Twenty-one.

14 THE COURT: Okay, I need you to just speak up. Let's move the
15 microphone over a little bit.

16 All right, Mr. Coleman, how old are you?

17 THE DEFENDANT: Twenty-one.

18 THE COURT: How far have you gone in school?

19 THE DEFENDANT: Eleventh grade.

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

21 THE DEFENDANT: Yes.

22 THE COURT: I have a copy of an amended information -- thank you --
23 that contains the charges of first degree murder and battery with use of a
24 deadly weapon. Did you receive this document?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you read it over?

2 THE DEFENDANT: [Indiscernible]

3 THE COURT: I need you to just to speak up a little more.

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand both of those charges?

6 THE DEFENDANT: Yes.

7 THE COURT: All right, as to Count 1, first-degree murder, how do you
8 plead?

9 THE DEFENDANT: Guilty.

10 THE COURT: And as to Count 2, battery with use of a deadly weapon,
11 how do you plead?

12 THE DEFENDANT: Guilty.

13 THE COURT: The negotiation is as follows: both parties agree to
14 recommend 20 to 50 years in the Nevada Department of Corrections and the
15 State will not oppose -- and that would be on the murder count.

16 MR. COLUCCI: Right.

17 THE COURT: And the State will not oppose concurrent time between
18 the counts. Is that your complete understanding of what the negotiations are?

19 THE DEFENDANT: Yes.

20 THE COURT: Is anybody forcing you to plead guilty?

21 THE DEFENDANT: [Indiscernible]

22 THE COURT: I need you just to speak up a little --

23 THE DEFENDANT: No.

24 THE COURT: You're pleading guilty freely and voluntarily?

25 THE DEFENDANT: Yes.

1 THE COURT: All right, I have a guilty plea agreement here and on page
2 five there's a signature line with a signature above your name. Did you sign
3 this?

4 THE DEFENDANT: Yes.

5 THE COURT: Before you signed it did you read it over?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you understand everything in it?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that as a result of your plea you're
10 giving up certain valuable constitutional rights; those rights were listed for you
11 in your guilty plea agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you also understand as to Count 1 that you face a -
14 these are the following options that you face: life without the possibility of
15 parole, or a definite term of 50 years with eligibility for parole beginning at 20
16 years. There's no use of a deadly weapon?

17 MS. PIEPER: No.

18 MR. COLUCCI: No use.

19 THE COURT: Okay, so this is messed up. All right, so if you look on
20 page two of the guilty plea agreement it says on line two: plus and equal and
21 consecutive term for use of a deadly weapon. I'm going to take that out, right?

22 MR. COLUCCI: Yes.

23 MS. PIEPER: Yes.

24 THE COURT: So wouldn't there be, as to Count 1, life with, life
25 without, and a term of years, and that's not all in here.

1 MR. SWEETIN: That's true, Judge. There would be -- it would either
2 be life without the possibility of parole --

3 THE COURT: Which we have in here, or a definite term of 50 years
4 with parole eligibility beginning at 20 years, or life with the possibility of parole
5 with parole eligibility being at 20 years.

6 MR. SWEETIN: Twenty years.

7 MS. PIEPER: Twenty years.

8 THE COURT: So I'm going to write that in here and -- afterwards, but I
9 want to ask you if you understand. I know the deal is to recommend to me the
10 term of 50 years with parole eligibility beginning at 20, but I need for you to
11 understand that there are three possibilities here. One is life with parole
12 eligibility at 20 years, one with life with no parole, or the term of years which is
13 the 20 to 50; do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that all of those possible punishments
16 there is no option for any probation, that on a charge of murder you must be
17 sentenced to prison; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, and do you also understand that I am going to
20 write in the third option into this guilty plea agreement and I'm going to put my
21 initials by it so that you -- and this record will also indicate that you've been
22 advised of all the possible punishments that face you. Do you understand?

23 THE DEFENDANT: Yes. Yes.

24 THE COURT: I really need you to speak up.

25 On the other, Count 2, which is the battery with use of a deadly

1 weapon you face a minimum term of two years, not less than two years, and a
2 maximum term of not more than 10 years in the Nevada Department of
3 Corrections, and a possible fine of up to \$10,000; do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that sentencing is completely up to
6 the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay, so even if though they're recommending something
9 to me, sentencing is always completely up to the Court; do you understand
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. All right, before you signed this document, Mr.
13 Coleman, did you talk about your case with your attorney --

14 THE DEFENDANT: Yes.

15 THE COURT: -- Mr. Colucci?

16 THE DEFENDANT: Yes.

17 THE COURT: Did he answer all your questions?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay, are you pleading guilty because on or about July
20 10th, 2005, in Clark County, state of Nevada, you did willfully, feloniously
21 without authority of law, and with premeditation and deliberation with malice
22 aforethought kill Tanzie Austin, a human being, by you shooting at or into the
23 body of Tanzie Austin; is that what you did?

24 THE DEFENDANT: Yes.

25 THE COURT: And in Count 2, also on that date in Clark County, state

1 of Nevada, did you also willfully, unlawfully, and feloniously use force or
2 violence upon the person of another, Monica Ramsey and/or Andrea Cooper,
3 with use of a deadly weapon, you shooting at or into the body of Monica
4 Ramsey and/or Andrea Cooper?

5 THE DEFENDANT: Yes.

6 THE COURT: The Court finds Defendant's pleas are freely and
7 voluntarily given. He understands the nature and consequence of his pleas and
8 therefore accepts his plea. We'll set this over for sentencing on --

9 THE CLERK: It'll be July 24th at 8:30.

10 THE COURT: Thank you very much, Mr. Coleman and Mr. Colucci, and

11 --

12 MR. COLUCCI: Your Honor, before we adjourn may I approach with the
13 State?

14 THE COURT: Yes.

15 MR. COLUCCI: Thank you.

16 THE COURT: Do you need Mister -- have a seat Mr. Coleman.

17 [Bench conference]

18 THE COURT: All right, and then so -- did we get a sentencing date?

19 THE CLERK: Yeah, July 24th.

20 THE COURT: All right.

21 THE COURT: And thank you all very much for your work.

22 MR. COLUCCI: Judge, just for the record, in talking to Mr. Coleman
23 because he's now not understanding the possibilities here, I just wanted to put
24 on the record, if that's okay with the Court, that generally the Court will follow
25 the recommendation of the State and the defense unless there is some --

1 something drastic --

2 THE COURT: Extraordinary reason, but I mean this is something that
3 the two of you have agreed to. I will ordinarily follow what you've agreed to.
4 understand that this is what made this negotiation go forward. I can't say
5 100%, but in all likelihood it's what I'm going to do. So I just need you to
6 initial that so that you understand what all of the possible punishments are.
7 That doesn't mean I'm going to do it, it just means that I need for you to
8 understand it's possible.

9 All right, so let's file that and let's make sure that gets filed with
10 Sandra, and thank you all very much. Thank you Mr. Colucci.

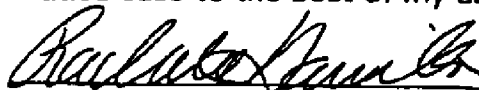
11 MR. COLUCCI: Thank you, Your Honor, for your patience.

12 THE COURT: No problem; and there you go Sandra, and we're all set.

13 Thank you, we'll see you at sentencing.
14
15
16

17 [Proceeding concluded]
18
19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/video recording in the above-entitled case to the best of my ability.

22 

23 RACHELLE HAMILTON
24 Recorder/Transcriber
25

Exhibit #2

Exhibit 2

1 **GMEM**
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DEMARENE COLEMAN,
13 #1963947

14 Defendant.

CASE NO: C215295
DEPT NO: V

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: **COUNT 1 - FIRST DEGREE MURDER**
17 **(Category A Felony - NRS 200.010, 200.030)** and **COUNT 2 - BATTERY WITH USE**
18 **OF A DEADLY WEAPON (Category B Felony - NRS 200.481)**, as more fully alleged in
19 the charging document attached hereto as Exhibit "1".

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

22 ~~Both Parties agree to recommend twenty (20) to fifty (50) years in the Nevada~~
23 ~~Department of Corrections. The State will not oppose concurrent time between the counts.~~

24 CONSEQUENCES OF THE PLEA

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

27 As to Count 1, I understand that as a consequence of my plea of guilty the Court
28 must sentence me to imprisonment in the Nevada Department of Corrections for life without

1 the possibility of parole OR a definite term of fifty (50) years with eligibility for parole
2 beginning at twenty ~~20~~ years plus an equal and consecutive term for use of a deadly weapon
3 enhancement. I understand that the law requires me to pay an Administrative Assessment
4 Fee.

5 As to Count 1, I understand that I am not eligible for probation for the offense to
6 which I am pleading guilty.

7 As to Count 2, I understand that as a consequence of my plea of guilty the Court
8 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
9 term of not less than TWO (2) years and a maximum term of not more than TEN (10) years.
10 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
11 term of imprisonment. I understand that I may also be fined up to \$10,000.00. I understand
12 that the law requires me to pay an Administrative Assessment Fee.

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

17 I understand that I am eligible for probation for the offense(s) to which I am pleading
18 guilty. I understand that, except as otherwise provided by statute, the question of whether I
19 receive probation is in the discretion of the sentencing judge.

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

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

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

28 I understand that if my attorney or the State of Nevada or both recommend any

1 specific punishment to the Court, the Court is not obligated to accept the recommendation.

2 I understand that if the State of Nevada has agreed to recommend or stipulate a
3 particular sentence or has agreed not to present argument regarding the sentence, or agreed
4 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
5 when the offense could have been treated as a felony, such agreement is contingent upon my
6 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
7 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
8 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
9 right to argue for any lawful sentence.

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

13 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
14 United States, I may, in addition to other consequences provided for by federal law, be
15 removed, deported, excluded from entry into the United States or denied naturalization.

16 I understand that the Division of Parole and Probation will prepare a report for the
17 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
18 sentencing, including my criminal history. This report may contain hearsay information
19 regarding my background and criminal history. My attorney and I will each have the
20 opportunity to comment on the information contained in the report at the time of sentencing.
21 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
22 may also comment on this report.

23 WAIVER OF RIGHTS

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

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

1 2. The constitutional right to a speedy and public trial by an impartial jury, free of
2 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
3 assistance of an attorney, either appointed or retained. At trial the State would bear the
4 burden of proving beyond a reasonable doubt each element of the offense charged.

5 3. The constitutional right to confront and cross-examine any witnesses who would
6 testify against me.

7 4. The constitutional right to subpoena witnesses to testify on my behalf.

8 5. The constitutional right to testify in my own defense.

9 6. The right to appeal the conviction, with the assistance of an attorney, either
10 appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional
11 or other grounds that challenge the legality of the proceedings and except as otherwise
12 provided in subsection 3 of NRS 174.035.

13 VOLUNTARINESS OF PLEA

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

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

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

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

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

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

27 I am not now under the influence of any intoxicating liquor, a controlled substance or
28 other drug which would in any manner impair my ability to comprehend or understand this

1 agreement or the proceedings surrounding my entry of this plea.

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

5 DATED this 29 day of May, 2007.

6 
7 DEMARENE COLEMAN
8 Defendant

9 AGREED TO BY:

10  
11 JAMES R. SWEETIN
12 Chief Deputy District Attorney
13 Nevada Bar #005144
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court 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. 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 Defendant.

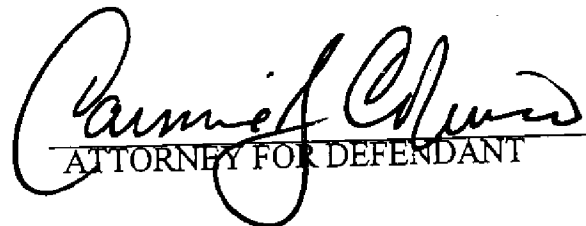
8 4. To the best of my knowledge and belief, the Defendant:

9 a. Is competent and understands the charges and the consequences of pleading
guilty as provided in this agreement.

10 b. Executed this agreement and will enter all guilty pleas pursuant hereto
11 voluntarily.

12 c. Was not under the influence of intoxicating liquor, a controlled substance or
13 other drug at the time I consulted with the defendant as certified in paragraphs
1 and 2 above.

14 Dated: This 29 day of May, 2007.

15 
ATTORNEY FOR DEFENDANT

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Exhibit #3

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

A determination of whether aggravating circumstances exist is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole.

5. A person convicted of murder of the second degree is guilty of a category A felony and shall be punished by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

6. As used in this section:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 202.4415;

(b) "Child abuse" means physical injury of a nonaccidental nature to a child under the age of 18 years;

(c) "School bus" has the meaning ascribed to it in NRS 483.160;

(d) "Sexual abuse of a child" means any of the acts described in NRS 432B.100; and

(e) "Sexual molestation" means any willful and lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or of the child.

HISTORY:

C&P 1911, § 121; 1915, p. 67; 1919, p. 468; 1947, p. 302; CL 1929 (1949 Supp.), § 10068; 1957, p. 330; 1959, p. 781; 1960, p. 399; 1961, pp. 235, 486; 1967, pp. 467, 1470; 1973, p. 1803; 1975, p. 1580; 1977, pp. 864, 1541, 1627; 1989, ch. 408, § 1, p. 865; 1989, ch. 631, § 1, p. 1451; 1995, ch. 168, § 1, p. 257; 1995, ch. 443, § 44, p. 1181; 1999, ch. 319, § 3, p. 1335; 2003, ch. 137, § 7, p. 770; 2003, ch. 470, § 4, p. 2944; 2007, ch. 35, § 1, p. 74; 2013, ch. 186, § 89, p. 689.

Editor's Notes

Exhibit # 4

Exhibit #4

FILED

AUG 22 8 01 AM '07

CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEMARENE COLEMAN
#1963947

Defendant.

CASE NO. C215295

DEPT. NO. V

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – FIRST DEGREE MURDER

(Category A Felony) in violation of NRS 200.010, 200.030, and COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.481;

thereafter, on the 14TH day of August, 2007, the Defendant was present in court for sentencing with his counsel CARMINE COLUCCI, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a

1 MAXIMUM of FIFTY (50) YEARS with a MINIMUM parole eligibility of TWENTY (20)
2 YEARS; as to COUNT 2 - to a MAXIMUM of ONE HUNDRED TWENTY (120)
3 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, to run
4 CONCURRENT with Count 1; with SEVEN HUNDRED FIFTY-FIVE (755) DAYS credit
5 for time served.
6

7
8 DATED this 20 day of August, 2007.

9
10 JACKIE GLASS

11 _____
12 JACKIE GLASS
13 DISTRICT JUDGE
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AFFIDAVIT

1 Affidavit of DEMARNE COLEMAN Defense Counsel
2 THOMAS GIBSON special public defender represented
3 me in this matter. Shortly after CARBINE
4 COLUCCI was appointed to represent me I insist
5 ed on going to trial I wanted to prove that the
6 victim attacked me. I shot the victim in self
7 defense. Trial counsel insisted that we not go to
8 trial.

9 On May 29th, 2007 trial counsel informed me of
10 a plea offer profered by the state. I read the
11 offer. I observed that on page one of the proposed
12 offer that the deal was 20-50 years in prison.
13 When I asked counsel how 20 to 50 years was a deal,
14 Counsel pointed to page 2 where it said 20 to 50
15 years with parole eligibility beginning in 2 years.
16 Trial Counsel informed me that although the offer
17 was 20 to 50 years I was already eligible for
18 parole because I had been incarcerated for 2 1/2
19 years to date. Trial Counsel told me that I was
20 technically eligible for parole right then but
21 the parole board would require that I do about
22 8 more years before being released. Counsel told
23 me that if I did not accept the deal things
24 could get worse. Counsel also told me that Nevada
25 has no self defense laws. Based on advise of counsel
26 I decided to plead guilty to First degree murder
27 so that I might take advantage of the deal 20 to 50

1 with parole eligibility beginning in two years
2 however, when I was taken before the judge to
3 be canvassed, the judge started to
4 change the deal. I asked counsel why was the
5 judge changing the deal? He informed me that the
6 deal was not changed and to just agree to what
7 ever the judge said. I responded to all of the judges
8 question in the manner instructed by Counsel.
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Request For Evidentiary Hearing Under NRS 34.770

Petitioner request an evidentiary hearing under NRS 34.770. The Evidentiary hearing is neccessary to show the critical evidence of collusion between the DA, Trial Counsel, and Judge. The collusion of the aforementioned worked to deprive petitioner of his sixth Amendment right to effective assistance of counsel and his 14th Amendment right to due process of law. The DA presented a misrepresentation of material Fraud in the inducement with the Guilty Plea Agreement to obtain a judgment. There is direct need for an Evidentiary Hearing.

" I Declare under penalty of prejury that the foregoing is true to the best of my knowledge.
Respectfully Submitted.

Dated this
March 13, 2023 Demarene Coleman
Demarene Coleman prose"

DpPPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Demarene Coleman,

Petitioner,

vs.

Warden Najera; Aaron Ford; State of Nevada;
Steven Wolfson,

Respondent,

Case No: A-23-868466-W
Department 6

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

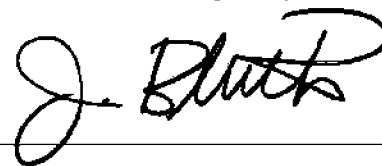
Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on April 05, 2023. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing 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 _____ day of June 20, 2023, 20____, at the hour of

9:30 a.m. clock for further proceedings.

Dated this 6th day of April, 2023



District Court Judge

**82A BA4 22D0 AC8B
Jacqueline M. Bluth
District Court Judge**

kj

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Demarene Coleman, Plaintiff(s) CASE NO: A-23-868466-W
7 vs. DEPT. NO. Department 6
8 Warden Najera, 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 4/7/2023

16 Demarene Coleman #1007335
17 SDCC
18 P.O. Box 208
Indian Springs, NV, 89070
19
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28



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEMARENE COLEMAN,
#1963947

Defendant.

CASE NO: A-23-868466-W

DEPT NO: VI

STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND COUNTERMOTION TO DISMISS PURSUANT TO
LACHES

DATE OF HEARING: JUNE 20, 2023
TIME OF HEARING: 9:30 AM

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

This opposition 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.

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 20, 2005, Demarene Coleman (hereinafter "Petitioner") was charged by
4 way of Information with MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS
5 200.010, 200.030, 193,165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
6 (felony – NRS 200.010, 200.030, 193.330, 193.165); and ACCESSORY TO MURDER
7 (Felony – NRS 200.010, 200.030, 195.030, 195.040).

8 On August 22, 2006, the district court held a hearing to determine Defendant's
9 competency. The court found that the Petitioner was not competent and remanded him to the
10 custody of the Division of Mental Health Development Services for detention and treatment.
11 An Order of Commitment was filed on August 28, 2006. On December 12, 2006, the district
12 court, after reviewing the doctor's reports, held that Petitioner was competent. On December
13 29, 2006, the court filed its Findings of Competency.

14 On May 29, 2007, Petitioner entered into a Guilty Plea Agreement and pled guilty to
15 FIRST DEGREE MURDER and BATTERY WITH USE OF A DEADLY WEAPON, the
16 charges set forth in the Amended Information filed that same day.

17 On July 24, 2007, the date set for sentencing, defense counsel Carmine Colucci
18 requested a continuance for leave to file a Motion to Withdraw Guilty Plea. That same day,
19 the court granted Petitioner's request for a continuance. On August 7, 2007, Petitioner filed a
20 Motion to Withdraw Guilty Plea. On August 13, 2007, the State filed its Opposition. On
21 August 14, 2007, the district court denied Petitioner's Motion to Withdraw Guilty Plea and
22 sentenced Petitioner as follows: As to Count 1 – to a MAXIMUM of FIFTY YEARS with a
23 MINIMUM of parole eligibility of FORTY-EIGHT (48) MONTHS to run CONCURRENT
24 with Count 1; with SEVEN HUNDRED FIFTY-FIVE DAYS credit for time served. A
25 Judgement of Conviction was filed on August 22, 2007.

26 On August 19, 2008, Petitioner filed a Petition for Writ of Habeas Corpus ("First
27 Petition"), Motion for Leave to Proceed in Forma Pauperis, and Motion for Appointment of
28 Counsel; Request for Evidentiary Hearing. The State filed its Response on October 28, 2008.

1 On November 18, 2008, the Court heard the matter. On February 26, 2009, the Court filed its
2 Findings of Fact, Conclusion of law Order denying the First Petition.

3 On August 14, 2019, Petitioner filed a second Petition for Writ of Habeas Corpus
4 (“Second Petition”) in case A-19-800228-W. The State filed its Response on October 2, 2019.
5 The Court denied Petitioner’s Second Petition on October 17, 2019.

6 On June 14, 2021, Petitioner filed a Motion for Appointment of Attorney. The Motion
7 was denied on July 9, 2021.

8 On January 7, 2022, Petitioner filed a Motion for Modification of Sentence. The State
9 filed its Opposition on January 25, 2022. On February 1, 2022, the Court heard the matter and
10 denied the Petitioner’s motion. The Court denied Petitioner’s motion on February 1, 2022. On
11 March 8, 2022, the Court filed its Order Denying Petitioner’s Motion for Modification of
12 Sentence. On August 3, 2022, the Nevada Supreme Court affirmed the district court’s decision
13 to deny Petitioner’s motion.

14 On April 5, 2023, Petitioner filed a third Petition for Writ of Habeas Corpus (“Third
15 Petition”). On April 13, 2023, Petitioner filed a Motion for Appointment of Attorney and
16 Request for Evidentiary Hearing.

17 **ARGUMENT**

18 **I. THE THIRD PETITION IS PROCEDURALLY BARRED**

19 **A. APPLICATION OF THE PROCEDURAL BARS ARE MANDATORY**

20 The Nevada Supreme Court has granted no discretion to the district courts regarding
21 whether to apply the statutory procedural bars. Instead, the Nevada Supreme Court has
22 emphatically and repeatedly stated that the procedural bars *must* be applied.

23 The district courts have *a duty* to consider whether post-conviction claims are
24 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112
25 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly
26 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192, 197,
27 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013)

1 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory, not*
2 *discretionary*” (emphasis added)).

3 Even “a stipulation by the parties cannot empower a court to disregard the mandatory
4 procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003);
5 accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6
6 (2004) (concluding that a petition was improperly treated as timely and that a stipulation to
7 the petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the
8 district court should have denied [a] petition” because it was procedurally barred. Sullivan,
9 120 Nev. at 542, 96 P.3d at 765.

10 The district courts have zero discretion in applying the procedural bars because to allow
11 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the
12 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker
13 Court noted:

14 Habeas corpus petitions that are filed many years after conviction are an
15 unreasonable burden on the criminal justice system. The necessity for a
16 workable system dictates that there must exist a time when a criminal conviction
is final.

17 Riker, 121 Nev. at 231, 112 P.3d at 1074.

18 Moreover, strict adherence to the procedural bars promotes the best interests of the
19 parties:

20 At some point, we must give finality to criminal cases. Should we allow
21 [petitioner’s] post-conviction relief proceeding to go forward, we would
22 encourage defendants to file groundless petitions for federal habeas corpus
23 relief, secure in the knowledge that a petition for post-conviction relief remained
24 indefinitely available to them. This situation would prejudice both the accused
and the State since the interests of both the petitioner and the government are
best served if post-conviction claims are raised while the evidence is still fresh.

25 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

26 **B. THE INSTANT PETITION IS UNTIMELY**

27 Under NRS 34.726(1):
28

1 1. Unless there is good cause shown for delay, a petition that challenges the
2 validity of a judgment or sentence must be filed within 1 year after entry of the
3 judgment of conviction or, if an appeal has been taken from the judgment, within
4 1 year after the Supreme Court issues its remittitur. For the purposes of this
5 subsection, good cause for delay exists if the petitioner demonstrates to the
6 satisfaction of the court:

(a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will unduly prejudice the
petitioner.

7 NRS 34.726(1). The Nevada Supreme Court noted that “the statutory rules regarding
8 procedural default are mandatory and cannot be ignored when properly raised by the State.”
9 Rike, 121 Nev. at 233, 112 P.3d at 1075.

10 Here, the Judgement of Conviction (JOC) in Petitioner’s case was filed on August 22,
11 2007. Petitioner never filed a direct appeal from his judgement. Accordingly, Petitioner had
12 until August 22, 2008, to file a timely petition. The instant petition was filed on April 5, 2023,
13 more than 14 years after the one-year deadline had expired. Such untimeliness can be excused
14 only if Petitioner can establish good cause for the delay. However, Petitioner has not even
15 attempted to demonstrate good cause for his delay as discussed *infra*. Thus, Petitioner’s claims
16 should be dismissed.

17 **C. MOST OF PETITIONER’S CLAIMS ARE WAIVED AND/OR BARRED**
18 **UNDER NRS 34.810.**

19 NRS 34.810 states:

20 1. The court shall dismiss a petition if the court determines that:

21 (a) The petitioner’s conviction was upon a plea of guilty or guilty but mentally ill
22 and the petition is not based upon an allegation that the plea was involuntarily
23 or unknowingly entered or that the plea was entered without effective assistance
24 of counsel.

...

25 Unless the court finds both cause for the failure to present the grounds and actual
26 prejudice to the petitioner.

27 2. A second or successive petition must be dismissed if the judge or justice
28 determines that it fails to allege new or different grounds for relief and that the
prior determination was on the merits or, if new and different grounds are

1 alleged, the judge or justice finds that the failure of the petitioner to assert those
2 grounds in prior petition constituted an abuse of the writ.

3 Accord, NRS 34.724(2)(a).

4 The Nevada Supreme Court held that “challenges to the validity of a guilty plea and
5 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
6 conviction proceedings . . . [A]ll other claims that are appropriate for a direct appeal must be
7 pursued on direct appeal, or they will be *considered waived in subsequent proceedings*.”
8 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
9 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A
10 court must dismiss a habeas petition if it presents claims that either were or could have been
11 presented in an earlier proceeding, unless the court finds both cause for failing to present the
12 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
13 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

14 On May 29, 2007, Petitioner entered a plea of guilty for Count 1 – First Degree Murder
15 (Category A Felony – NRS 200.010, 200.030) and Count 2 – Battery with Use of a Deadly
16 Weapon (Category B Felony – NRS 200.481). Guilty Plea Agreement (GPA) 1-5. In
17 Petitioner’s GPA, he was advised of the consequences of his plea, and the waiver of certain
18 rights and privileges. GPA 1-5. Petitioner voluntarily entered a plea of guilty, which he signed
19 and dated. Id.

20 To the extent Petitioner raises substantive claims asserting errors not related to his
21 guilty plea, Petitioner’s complaints could and should have been raised on direct appeal. The
22 instant petition constitutes the third habeas petition that Petitioner has filed. Petitioner filed his
23 first habeas petition on August 19, 2008, in case number 05C215295-1. On February 26, 2009,
24 the Court entered a Findings of Fact, Conclusion of Law and Order, denying Petitioner’s first
25 petition. On August 14, 2019, Petitioner filed his second Petition in case number A-19-800228-
26 W. On December 5, 2019, the Court denied the petition. Petitioner filed the instant petition on
27 April 5, 2023. Thus, Petitioner’s claims are successive under NRS 32.810(2).

28 The State will briefly address each of Petitioner’s claims contained in the Third Petition

1 in turn:

2 **Ground One**

3 Petitioner argues that his plea offer was illegal and the plea was fraudulently induced.
4 Third Petition 3-9. To the extent petition is raising substantive claims that should have been
5 raised on appeal, the claims are waived. Franklin, 110 Nev. at 752, 877 P.2d at 1059.

6 Petitioner asserts that the prosecutor did not have authority to offer the sentence which
7 he offered. Third Petition 4. This is a substantive claim that should have been raised on direct
8 appeal and is waived, is outside the scope of NRS 34.810(1), and could have been raised in a
9 previous petition and is, therefore, an abuse of the writ under NRS 34.810(2). The claim is
10 also barred under NRS 34.726. Petitioner demonstrates neither good cause nor prejudice for
11 failing to properly and timely raise this claim, and it must be denied.

12 Petitioner argues that he accepted the plea deal because he believed he would earn good
13 time work credits on his minimum parole eligibility. Third Petition 4. In Petitioner's Second
14 Petition he complained that the NDOC violated his due process rights under the Fourteenth
15 Amendment by prohibiting application of credit against him for minimum parole eligibility.
16 Second Petition 2-7. These two claims are essentially identical, and the State's full response
17 to this assertion can be found in case number A-19-800228-W. Response to Petition for Writ
18 of Habeas Corpus 2-5. Thus, this claim is successive and an abuse of the writ. Furthermore,
19 Petitioner has failed to demonstrate good cause for raising a successive claim. Thus, the claim
20 must be denied.

21 Petitioner's argues that when entering the plea, he was under the impression that he
22 would be eligible for parole after two years and not twenty. Third Petition 4. Petitioner has not
23 brought this claim up in prior pleadings, but it relates to advice counsel gave him when he
24 plead guilty. In Petitioner's First Petition, he made a complaint of ineffective assistance of
25 counsel. First Petition 8. Accordingly, Petitioner could have and should have raised this claim
26 in a previous pleading but failed to do so, thus this is an abuse of the writ. Moreover, because
27 it has been more than fourteen years since Petitioner could have filed this claim, the claim is
28 time barred. Petitioner has failed to demonstrate good cause for his abuse of the writ and for

1 his untimeliness. Therefore, this claim must be denied.

2 Petitioner's argues that his trial counsel improperly advised him about the sentencing
3 statute. Third Petition 4. Similar to Petitioner's second claim, Petitioner has not brought this
4 claim up in prior pleadings, but it relates to advice counsel gave him when he pleaded guilty.
5 Petitioner could and should have raised this claim in previous pleadings. Therefore, this is an
6 abuse of the writ under NRS 34.810(2). Moreover, because it has been more than fourteen
7 years since Petitioner could have filed this claim, the claim is time barred. Furthermore,
8 Petitioner has failed to demonstrate good cause for his abuse of the writ and for his
9 untimeliness. Thus, Petitioner's claim is an abuse of the writ.

10 Petitioner's argues that the terms of his agreement changed after it was signed. Third
11 Petition 3-9. Petitioner argued in his First Petition that he made his plea not voluntarily or
12 knowingly. First Petition 9-10. This is a similar, yet different claim Petitioner is making here,
13 because Petitioner is essentially saying that his plea was not voluntary. As such this claim is
14 successive and an abuse of the writ. Furthermore, Petitioner has failed to provide good cause
15 and/or prejudice for failing to properly raise this claim, and it must be denied.

16 Petitioner's also argues that trial counsel colluded against him and the plea agreement
17 was intentionally ambiguous and illegal. Third Petition 9. Both claims are new but could have
18 been raised in a previous petition because counsel's advice and the plea agreement itself have
19 remained unchanged since prior to the entry of the Judgement of Conviction. Thus, Petitioner's
20 claim is time barred. Also, Petitioner has failed to provide good cause to overcome the
21 procedural bars.

22 **Ground Two**

23 Petitioner complains that the prosecutor interfered with his defense lawyer's ability to
24 effectively represent him. Third Petition 10. This is a substantive claim that should have been
25 raised on direct appeal. Because Petitioner did not raise this claim on direct appeal it is waived
26 and outside the scope of NRS 34.810(1). Petitioner could and should have raised this issue in
27 a previous petition. As such, raising the claim now is an abuse of the writ. This claim is also
28 time-barred because it has been well over one year since the JOC was filed. Furthermore,

1 Petitioner has failed to demonstrate good cause and/or prejudice for failing to properly and
2 timely raise this claim. Thus, it must be denied.

3 **Ground Three**

4 Petitioner argues that trial counsels advise to plead guilty was not authorized by law.
5 Third Petition 12. In support of his complaint Petitioner claims that his attorney colluded
6 against him. Id. 14. This claim is new and could have been raised in a previous petition. In his
7 First Petition, Petitioner argued that his counsel was ineffective. First Petition 8. However, in
8 that petition he never brought up this claim. Petitioner could and should have brought this
9 claim in his First Petition but failed to do so. Bringing the claim now is an abuse of the writ.
10 Moreover, Petitioner is barred under NRS 34.726. Petitioner has failed to demonstrate good
11 cause and/or prejudice for failing to properly and timely raise this claim, and it must be denied.

12 Petitioner's argues that he entered his plea not knowing and intelligent. Third Petition
13 13. As stated above Petitioner made this complaint in his First Petition. Specifically, Petitioner
14 complained that he lacked the comprehension to understand the stipulations as the functional
15 equivalent of the guilty plea and failure to understand of the consequences of his pleading
16 guilty. First Petition 9. In the instant Petition, Petitioner argues that his plea was not knowing
17 and intelligent. Third Petition 13. These are essentially the same claim, and the State's
18 response to this can be found in the original Response. States Response to Defendant's Petition
19 for Writ of Habeas Corpus. Thus, Petitioner's claim is successive, an abuse of the writ, and
20 must be denied.

21 **Ground Four**

22 Petitioner complains that his plea agreement is contractual in nature and was violated.
23 Third Petition 16-26. Petitioner argues that the prosecutor, trial attorney, and judge all colluded
24 against him. Third Petition 16, 22. Petitioner's claims that the prosecutor and the judge
25 colluded against him are substantive and should have been brought on direct appeal. Because
26 Petitioner failed to bring these claims up on a direct appeal they are waived and are outside
27 the scope of NRS 34.810(1). Both claims could and should have been brought in a previous
28 petition. As such they are an abuse of the writ. Petitioner's claim regarding trial counsel is

1 discussed above under ground three. Accordingly, it is procedurally barred. Furthermore,
2 Petitioner has failed to demonstrate good cause to overcome the procedural bars, and it must
3 be denied.

4 Petitioner claims that under his plea agreement Petitioner was entitled to receive credit
5 for time he already served. Third Petition 20. As discussed above, this claim is successive and
6 procedurally barred.

7 **Ground Five**

8 Petitioner complains that the prosecutor's actions constitute outrageous government
9 conduct. Third Petition 27-29. This claim is substantive. It could and should have been raised
10 as a direct appeal. Because the Petitioner has failed to raise this issue on direct appeal it is
11 waived. Petitioner could and should have brought this claim in a previous petition and failed
12 to do so. Therefore, it is an abuse of the writ. Moreover, this claim is time barred under NRS
13 34.726. Furthermore, Petitioner fails to demonstrate neither good cause nor prejudice for
14 failing to properly and timely raise this claim. Thus, the claim must be denied.

15 **Ground Six**

16 Petitioner complains that all officers of the Court participated in fraud of the court.
17 Third Petition 30. This complaint is similar to Petitioner's claim under ground four. As such
18 it must be denied for the same reasons.

19 **Ground Seven**

20 Petitioner complains that the judge abused his discretion in accepting the "ill-gotten"
21 plea agreement. Third Petition 37-42. This is a substantive claim and should have been brought
22 on direct appeal and is waived and outside the scope of NRS 34.810(1). This claim could have
23 also been brought in previous petitions and is, therefore, an abuse of the writ under NRS
24 34.810(2). This claim is also barred under NRS 34.726. Furthermore, Petitioner demonstrated
25 neither good cause nor prejudice for failing to properly and timely raise this claim, and it must
26 be denied.

27 Petitioner argues that he should be allowed to withdraw his guilty plea. Id. 32-37.
28 Petitioner's claim that he should be allowed to withdraw his guilty plea is successive. On

1 August 7, 2007, Petitioner filed a Motion to Withdraw Guilty Plea. On August 14, 2007, the
2 district court denied Petitioner's motion. Thus, Petitioner's complaint is successive and an
3 abuse of the writ. Accordingly, it must be denied.

4 **D. NO GOOD CAUSE**

5 Under NRS 34.726, to overcome the procedural bars, a petitioner must demonstrate:
6 for the purposes of this subsection, good cause for delay exists if the petitioner demonstrates
7 to the satisfaction of the court: (a) That the delay is not the fault of the petitioner; and (b) That
8 dismissal of the petition as untimely will unduly prejudice the petitioner. To overcome
9 procedural bars under NRS 34.810, a petitioner must demonstrate: (1) good cause for delay in
10 filing his petition or for bringing new claims or repeating claims in a successive petition; and
11 (2) undue or actual prejudice. NRS 34.810(3).

12 "To establish good cause, petitioners must show that an impediment external to the
13 defense prevented their compliance with the applicable procedural rule. A qualifying
14 impediment might be shown where the factual or legal basis for a claim was not reasonably
15 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),
16 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);
17 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) ("In order to
18 demonstrate good cause, a petitioner must show that an impediment external to the defense
19 prevented him or her from complying with the state procedural default rules"); Pellegrini, 117
20 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician's
21 declaration in support of a habeas petition were sufficient "good cause" to overcome a
22 procedural default, whereas a finding by the Supreme Court that a defendant was suffering
23 from Multiple Personality Disorder was). An external impediment could be "that the factual
24 or legal basis for a claim was not reasonably available to counsel, or that 'some interference
25 by officials' made compliance impracticable." Id. (quoting Murray v. Carrier, 477 U.S. 478,
26 488, 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing
27 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).
28

1 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture
2 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
3 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
4 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by
5 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such
6 as the lack of assistance of counsel when preparing a petition as well as the failure of trial
7 counsel to forward a copy of the file to a petitioner have been found not to constitute good
8 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),
9 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
10 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

11 Petitioner fails to address good cause. Petitioner cannot demonstrate good cause
12 because all facts and law necessary to raise each of his complaints were available for direct
13 appeal or a prior habeas petition, as appropriate to each claim, and there was no impediment
14 external to the defense that prevented the claims from being raised at the appropriate time.
15 Therefore, Petitioner fails to establish good cause.

16 **E. INSUFFICIENT PREJUDICE TO IGNORE PETITIONER’S**
17 **PROCEDURAL DEFAULT**

18 Even if Petitioner was able to establish good cause, both good cause and actual
19 prejudice are required to avoid procedural default and Petitioner cannot demonstrate prejudice.
20 To overcome the procedural bars, a petition must: (1) demonstrate good cause for delay in
21 filing his petition or for bringing new claims or repeating claims in a successive petition; and
22 (2) demonstrated undue or actual prejudice. NRS 34.726(1); NRS 34.810(3).6. Prejudice exists
23 where “errors in the proceedings underlying the judgment worked to the petition’s actual and
24 substantial disadvantage.” Harris v. State, 133 Nev. 683, 691, 407 P.3d 348, 355 (Nev. App.
25 2017); State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012) cert. denied, 571 U.S.
26 1147, 133 S.Ct. 988 (2013), 184 L.Ed.2d 767. To demonstrate the prejudice required to
27 overcome the procedural bars, a defendant must show “not merely that the errors of [the
28 proceeding] created possibility of prejudice, but that they worked to his actual and substantial

disadvantage, in affecting the state proceedings with error of constitutional dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716 (internal quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545. Further, a finding of prejudice sufficient to disregard the procedural bars must be based upon prejudice sufficient to support a finding of ineffective assistance of counsel. Crump v. Warden, 113 Nev. 293, 304-05, 934 P.2d 247, 254 (1997) (error which rises to the level of ineffective assistance of counsel establishes cause and prejudice under NRS 34.810(1)(b)).

As discussed above, Petitioner’s claims are either time barred under NRS 34.726, or waived under NRS 34.810. As such, Petitioner’s substantive claims are irrelevant. Moreover, Petitioner has failed to demonstrate actual prejudice.

II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

Defendant requests that this Court grant him an evidentiary hearing. NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether 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.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.

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.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100 Nev. at 503, 686

1 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
2 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
3 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
4 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230.

5 Defendant cannot establish that an evidentiary hearing is warranted in this case,
6 particularly because all of Defendant’s claims are barred under NRS 34.810, NRS 34.726,
7 and/or NRS 34.800 as discussed *supra*. Therefore, Defendant is not entitled to have an
8 evidentiary hearing and his request should be summarily denied.

9 **III. THE STATE AFFIRMATIVELY PLEADS LACHES**

10 NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if “[a] period
11 exceeding 5 years [elapses] between the filing of a judgment of conviction, an order imposing
12 a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
13 filing of a petition challenging the validity of a judgment of conviction.” The Nevada Supreme
14 Court observed in Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984), how
15 “petitions that are filed many years after conviction are an unreasonable burden on the criminal
16 justice system” and that “[t]he necessity for a workable system dictates that there must exist a
17 time when a criminal conviction is final.” To invoke NRS 34.800(2)’s presumption of
18 prejudice, the statute requires that the State specifically plead laches.

19 Petitioner’s JOC was filed on August 22, 2007. JOC (August 22, 2007) 1. Therefore,
20 more than five years have elapsed between the JOC and the filing of Petitioner’s instant
21 petition. Accordingly, the State affirmatively pleads laches in this case. In order to overcome
22 the presumption of prejudice to the State, Petitioner has the heavy burden of proving a
23 fundamental miscarriage of justice. See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540,
24 545 (2001). Based on Petitioner’s representations and on what he has filed with this Court
25 thus far, Petitioner has failed to meet that burden. That being the case, this Court should
26 dismiss the petition pursuant to NRS 34.800(2).

27 **CONCLUSION**

28 Based on the arguments as set forth above, the State respectfully requests that the Court

1 DENY Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and GRANT the
2 State's Motion to Dismiss Pursuant to Laches.

3
4 DATED this _____ day May, 2023.

5 Respectfully submitted,

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

9 BY /s/JOHN AFSHAR

10 JOHN AFSHAR
11 Chief Deputy District Attorney
12 Nevada Bar #14408

13
14 CERTIFICATE OF MAILING

15 I hereby certify that service of STATE'S RESPONSE TO PETITIONER'S PETITION
16 FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND COUNTERMOTION
17 TO DISMISS PURSUANT TO LACHES, was made this 9th day of May 2023, by Mailing
18 to:

19 DEMARENE COLEMAN

20 Southern Desert Correctional Center

21 20825 Cold Creek Rd, Las Vegas, NV 89166

22
23 _____/S/A. BENNETT_____

24 Secretary for the District Attorney's Office
25
26
27
28

Steven D. Grierson

1 DEMARENE COLEMAN
2 . In Propria Personam
3 Post-Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

5 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF CLARK

9 DEMARENE COLEMAN

10 Plaintiff,

11 vs.
12 Warden Keyser, Aaron Ford, State of Nevada
13 Steven Wolfson

14 Defendant.

Case No. A-23-86846-W

Dept. No. 6

Docket _____

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,

18 DEMARENE COLEMAN, in and through his proper person, hereby
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or
20 dismissing the

21 PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

22 _____
23 ruled on the 20th day of June, 20 23

24 _____
25 Dated this 23th day of June, 20 23

Respectfully Submitted,

Demarene Coleman

CLERK OF THE COURT

JUN 28 2023

RECEIVED

Demetrius Coleman # 1007335

P.O. Box 208

S.D.C.

Indian Springs, NV 89070

LAS VEGAS NV 890

28 JUN 2023 544 L

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JUN 28 2023

CLERK OF THE COURT

Steven D Grierson

Clerk of the Court

200 Lewis Avenue 3rd Floor

Las Vegas NV, 89155-1160

89101-890000



ASTA

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

DEMARENE COLEMAN,

Plaintiff(s),

vs.

WARDEN NAJERA; AARON FORD ATTORNEY
GENERAL; STATE OF NEVADA; STEVEN B.
WOLFSON D.A.,

Defendant(s),

Case No: A-23-868466-W

Dept No: V1

CASE APPEAL STATEMENT

1. Appellant(s): Demarene Coleman

2. Judge: Jacqueline M. Bluth

3. Appellant(s): Demarene Coleman

Counsel:

Demarene Coleman #1007335
P.O. Box 208
Indian Springs, NV 89070

4. Respondent (s): Warden Majera; Aaron Ford Attorney General; State of Nevada; Steven B.
Wolfson D.A.

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: April 5, 2023

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 6 day of July 2023.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Demarene Coleman

Steven D. Grierson

Demarene Coleman
In Propria Personam
Post-Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018

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

DEMARENE COLEMAN Plaintiff,
vs.
WARDEN NAJERA
THE STATE OF NEVADA Defendant.

Case No. A-23-868466-W
Dept. No. C
Docket _____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
DEMARENE COLEMAN, in and through his proper person, hereby
appeals to the Supreme Court of Nevada from the ORDER denying and/or
dismissing the

HABEAS CORPUS POST CONVICTION

ruled on the 20th day of June, 20 23

Dated this 24th day of June, 20 23

Respectfully Submitted,

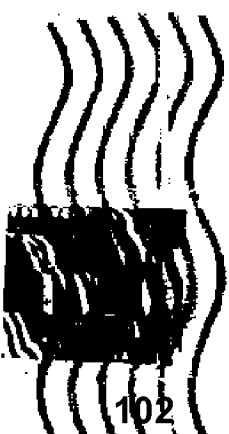
Demarene Coleman

RECEIVED
JUL 10 2023
CLERK OF THE COURT

Denise Colemen # 1007335
S.D.C.C
P.O. Box 208
Indian Springs, Nevada 89070

RECEIVED
JUL 10 2023
CLERK OF THE COURT

LAS VEGAS NV 890
6 JUL 2023 PM 3 L

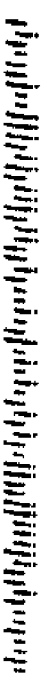


Steven D. Grierson
Clerk of the Court

200 Lewis Avenue 3rd Floor

Las Vegas NV. 89155-1160

89101-630003





ASTA

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

DEMARENE COLEMAN,

Plaintiff(s),

vs.

WARDEN NAJERA; AARON FORD ATTORNEY
GENERAL; STATE OF NEVADA; STEVEN B.
WOLFSON D.A.,

Defendant(s),

Case No: A-23-868466-W

Dept No: VI

CASE APPEAL STATEMENT

1. Appellant(s): Demarene Coleman

2. Judge: Jacqueline M. Bluth

3. Appellant(s): Demarene Coleman

Counsel:

Demarene Coleman #1007335
P.O. Box 208
Indian Springs, NV 89070

4. Respondent (s): Warden Majera; Aaron Ford Attorney General; State of Nevada; Steven B.
Wolfson D.A.

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: April 5, 2023

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 86923

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 12 day of July 2023.

Steven D. Grierson, Clerk of the Court

/s/ Cierra Borum

Cierra Borum, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Demarene Coleman

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408
8200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DEMARENE COLEMAN,
ID#1963947

Petitioner,

CASE NO: A-23-868466-W

-vs-

THE STATE OF NEVADA,

DEPT NO: VI

Respondent.

FINDINGS OF FACTS, CONCLUSION OF LAW, AND ORDER

DATE OF HEARING: June 20, 2023
TIME OF HEARING: 3:00 pm

THIS CAUSE having come on for hearing before the Honorable JACQUELINE M. BLUTH, District Judge, on the 20th day of June 2023, the Petitioner not present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JOHN AFSHAR, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law.

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1 **POINTS AND AUTHORITIES**

2 **PROCEDURAL HISTORY**

3 On September 20, 2005, Demarene Coleman (hereinafter "Petitioner") was charged by
4 way of Information with MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS
5 200.010, 200.030, 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
6 (felony – NRS 200.010, 200.030, 193.330, 193.165); and ACCESSORY TO MURDER
7 (Felony – NRS 200.010, 200.030, 195.030, 195.040).

8 On August 22, 2006, the district court held a hearing to determine Defendant's
9 competency. The court found that the Petitioner was not competent and remanded him to the
10 custody of the Division of Mental Health Development Services for detention and treatment.
11 An Order of Commitment was filed on August 28, 2006. On December 12, 2006, the district
12 court, after reviewing the doctor's reports, held that Petitioner was competent. On December
13 29, 2006, the court filed its Findings of Competency.

14 On May 29, 2007, Petitioner entered into a Guilty Plea Agreement and pled guilty to
15 FIRST DEGREE MURDER and BATTERY WITH USE OF A DEADLY WEAPON, the
16 charges set forth in the Amended Information filed that same day.

17 On July 24, 2007, the date set for sentencing, defense counsel Carmine Colucci
18 requested a continuance for leave to file a Motion to Withdraw Guilty Plea. That same day,
19 the court granted Petitioner's request for a continuance. On August 7, 2007, Petitioner filed a
20 Motion to Withdraw Guilty Plea. On August 13, 2007, the State filed its Opposition. On
21 August 14, 2007, the district court denied Petitioner's Motion to Withdraw Guilty Plea and
22 sentenced Petitioner as follows: As to Count 1 – to a MAXIMUM of FIFTY YEARS with a
23 MINIMUM of parole eligibility of FORTY-EIGHT (48) MONTHS to run CONCURRENT
24 with Count 1; with SEVEN HUNDRED FIFTY-FIVE DAYS credit for time served. A
25 Judgement of Conviction was filed on August 22, 2007.

26 On August 19, 2008, Petitioner filed a Petition for Writ of Habeas Corpus ("First
27 Petition"), Motion for Leave to Proceed in Forma Pauperis, and Motion for Appointment of
28 Counsel; Request for Evidentiary Hearing. The State filed its Response on October 28, 2008.

1 On November 18, 2008, the Court heard the matter. On February 26, 2009, the Court filed its
2 Findings of Fact, Conclusion of law Order denying the First Petition.

3 On August 14, 2019, Petitioner filed a second Petition for Writ of Habeas Corpus
4 ("Second Petition"). The State filed its Response on October 2, 2019. The Court denied
5 Petitioner's Second Petition on October 17, 2019.

6 On June 14, 2021, Petitioner filed a Motion for Appointment of Attorney. The Motion
7 was denied on July 9, 2021.

8 On January 7, 2022, Petitioner filed a Motion for Modification of Sentence. The State
9 filed its Opposition on January 25, 2022. On February 1, 2022, the Court heard the matter and
10 denied the Petitioner's motion. The Court denied Petitioner's motion on February 1, 2022. On
11 March 8, 2022, the Court filed its Order Denying Petitioner's Motion for Modification of
12 Sentence. On August 3, 2022, the Nevada Supreme Court affirmed the district court's decision
13 to deny Petitioner's motion.

14 On April 5, 2023, Petitioner filed a third Petition for Writ of Habeas Corpus ("Third
15 Petition"). On April 13, 2023, Petitioner filed a Motion for Appointment of Attorney and
16 Request for Evidentiary Hearing. On May 1, 2023, the State filed its Opposition to Petitioner's
17 Motion for Appointment of Attorney and Request for Evidentiary Hearing. On May 9, 2023,
18 the State filed its Response to Petitioner's Third Petition. On the same day the Court held a
19 hearing and denied Petitioner's Motion for Appointment of Attorney and Request for
20 Evidentiary Hearing. On June 20, 2023, the Court filed a Minute Order denying Petitioner's
21 Third Petition.

22 ANALYSIS

23 The Court Orders, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is
24 denied.

25 "Any person convicted of a crime and under sentence of death or imprisonment who
26 claims that the conviction was obtained, or that the sentence was imposed, in violation of the
27 Constitution of the United States or the Constitution or laws of this State, or who, after
28 exhausting all available administrative remedies, claims that the time the person has served

1 pursuant to the judgment of conviction has been improperly computed, may, without paying
2 a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the
3 conviction or sentence or to challenge the computation of time that the person has served."
4 NRS 34.724.

5 However, "[u]nless there is good cause shown for delay, a petition that challenges the
6 validity of a judgment or sentence must be filed within 1 year after entry of the judgment of
7 conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate
8 court of competent jurisdiction ... issues its remittitur." NRS 34.724(1). "[G]ood cause for
9 delay exists if the petitioner demonstrates to the satisfaction of the court: (a) That the delay is
10 not the fault of the petitioner; and (b) That dismissal of the petition as untimely will unduly
11 prejudice the petitioner." NRS 34.724(1)(a)-(b).

12 "Application of the statutory procedural default rules to post-conviction habeas
13 petitions is mandatory." State v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark, 121 Nev. 225,
14 231, 112 P.3d 1070, 1074 (2005).

15 Here, Petitioner has raised seven interrelated grounds for relief in his Petition revolving
16 around his guilty plea agreement in case number 05C215295-1. However, each ground fails
17 as they are subject to the above procedural bar.

18 Petitioner entered a plea of guilty and was sentenced on August 14, 2007. Judgment of
19 Conviction filed August 22, 2007, in 05C215295-1. Thereafter, Petitioner's judgment of
20 conviction was filed on August 22, 2007. Id. The instant Petition was filed on April 5, 2023.
21 Petition for Writ of Habeas Corpus (Post-Conviction) filed April 5, 2023. Clearly, the one-
22 year time limit of NRS 34.724(1) has lapsed and this Petition should be barred. In reviewing
23 Petitioner's Petition, at no point does he argue about, or provide a reason for, his Petition being
24 filed far after the one-year time limit expired. Even if Petitioner had provided argument
25 pertaining to good cause for delay, the Court notes that all of his grounds are premised on
26 events that occurred in 2007. Petitioner could have brought his claims much sooner than now.

1 Per the Petition, Petitioner was present for each event he now complains of. As such, the
2 Petition must be denied.

3 As this Petition is time-barred, there is no need for an evidentiary hearing. See NRS
4 34.770(1) ("The judge or justice, upon review of the return, answer and all supporting
5 documents which are filed, shall determine whether an evidentiary hearing is required."); see
6 also NRS 34.770(2) ("If the judge or justice determines that the petitioner is not entitled to
7 relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition
8 without a hearing.").

9 **ORDER**

10 Therefore, COURT ORDERS, Petitioner's Petition for Writ of Habeas Corpus is
11 DENIED and that the State's Countermotion to Dismiss Pursuant to Laches is DENIED as
12 MOOT.

13 ~~DATED this 25th day of July, 2023.~~

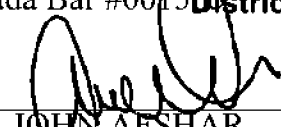
Dated this 25th day of July, 2023

14 

15
16 STEVEN B. WOLEBEN EB2 BF9 EC11 0143
17 Clark County District Attorney M. Bluth
18 Nevada Bar #00156 District Court Judge

kj

19 BY


20 JOHN AFSHAR
21 Chief Deputy District Attorney
22 Nevada Bar #14408

#10539 for

23
24
25
26
27
28 Mlb/L5

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Demarene Coleman, Plaintiff(s) | CASE NO: A-23-868466-W
7 vs. | DEPT. NO. Department 6
8 Warden Najera, 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 Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/25/2023

15 Steven Wolfson motions@clarkcountyda.com
16
17
18
19
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21
22
23
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28



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 DEMARENE COLEMAN,

6 Petitioner,

Case No: A-23-868466-W

Dept No: VI

7 vs.

8 WARDEN NAJERA; ET.AL.,

9 Respondent,
10

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

11 PLEASE TAKE NOTICE that on July 25, 2023, the court entered a decision or order in this matter, a true
12 and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 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 July 26, 2023.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk
18

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 26 day of July 2023, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23 ☒ The United States mail addressed as follows:

24 Demarene Coleman # 1007335
25 P.O. Box 208
26 Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather S. Hume

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408
8200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DEMARENE COLEMAN,
ID#1963947

Petitioner,

CASE NO: A-23-868466-W

-vs-

THE STATE OF NEVADA,

DEPT NO: VI

Respondent.

FINDINGS OF FACTS, CONCLUSION OF LAW, AND ORDER

DATE OF HEARING: June 20, 2023
TIME OF HEARING: 3:00 pm

THIS CAUSE having come on for hearing before the Honorable JACQUELINE M. BLUTH, District Judge, on the 20th day of June 2023, the Petitioner not present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JOHN AFSHAR, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law.

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9 delay exists if the petitioner demonstrates to the satisfaction of the court: (a) That the delay is
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8 without a hearing.").

9 **ORDER**

10 Therefore, COURT ORDERS, Petitioner's Petition for Writ of Habeas Corpus is
11 DENIED and that the State's Countermotion to Dismiss Pursuant to Laches is DENIED as
12 MOOT.

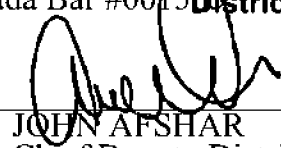
13 ~~DATED this 25th day of July, 2023.~~

Dated this 25th day of July, 2023

14 

15
16 STEVEN B. WOLEBEN EB2 BF9 EC11 0143 kj
17 Clark County District Attorney M. Bluth
18 Nevada Bar #00156 District Court Judge

19 BY


20 JOHN AFSHAR
21 Chief Deputy District Attorney
22 Nevada Bar #14408

#10539 for

23
24
25
26
27
28 Mlb/L5

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Demarene Coleman, Plaintiff(s) | CASE NO: A-23-868466-W
7 vs. | DEPT. NO. Department 6
8 Warden Najera, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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case as listed below:

14 Service Date: 7/25/2023

15 Steven Wolfson motions@clarkcountyda.com
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 20, 2023

A-23-868466-W Demarene Coleman, Plaintiff(s)
vs.
Warden Najera, Defendant(s)

June 20, 2023 3:00 AM Minute Order

HEARD BY: Bluth, Jacqueline M.

COURTROOM: Chambers

COURT CLERK: Kristen Brown

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED.

"Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, or who, after exhausting all available administrative remedies, claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served." NRS 34.724.

However, "[u]nless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction ... issues its remittitur." NRS 34.724(1). "[G]ood cause for delay exists if the petitioner demonstrates to the satisfaction of the court: (a) That the delay is not the fault of the petitioner; and (b) That dismissal of the petition as untimely will unduly prejudice the petitioner." NRS 34.724(1)(a)-(b).

PRINT DATE: 08/25/2023

Page 1 of 3

Minutes Date: June 20, 2023

"Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." *Sate v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

Here, Petitioner has raised seven interrelated grounds for relief in his Petition revolving around his guilty plea agreement in case number 05C215295-1. However, each ground fails as they are subject to the above procedural bar.

Petitioner entered a plea of guilty and was sentenced on August 14, 2007. Judgment of Conviction, filed August 22, 2007 in 05C215295-1. Thereafter, Petitioner's judgment of conviction was filed on August 22, 2007. *Id.* The instant Petition was filed on April 5, 2023. Petition for Writ of Habeas Corpus (Post-Conviction), filed April 5, 2023. Clearly, the one-year time limit of NRS 34.724(1) has lapsed and this Petition should be barred. In reviewing Petitioner's Petition, at no point does he argue about, or provide a reason for, his Petition being filed far after the one-year time limit expired. Even if Petitioner had provided argument pertaining to good cause for delay, the Court notes that all of his grounds are premised on events that occurred in 2007 and Petitioner could have brought his claims much, much sooner than now; per the Petition, Petitioner was present for each event he now complains of. As such, the Petition must be denied.

As this Petition is time-barred, there is no need for an evidentiary hearing. See NRS 34.770(1) ("The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required."); see also NRS 34.770(2) ("If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing.").

Therefore, COURT ORDERED, Petitioner's Petition is DENIED. COURT FURTHER ORDERED, as the Petition is denied, its setting on June 20, 2023 shall be VACATED. COURT FURTHER ORDERED, as the Petition is denied, the State of Nevada's Countermotion to Dismiss Pursuant to Laches is DENIED as MOOT. The State of Nevada is to prepare an order consistent with the Court's ruling.

CLERK'S NOTE: A copy of this minute order was electronically mailed to John Afshar, Deputy District Attorney and a copy mailed to the Petitioner./kb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 03, 2023

A-23-868466-W Demarene Coleman, Plaintiff(s)
vs.
Warden Najera, Defendant(s)

July 03, 2023 3:00 AM Minute Order

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** Chambers

COURT CLERK: Kristen Brown

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, the Findings of Facts, Conclusion of Law, and Order, filed June 22, 2023, shall be STRICKEN as it was inadvertently filed without the Court's signature.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated August 4, 2023, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 120.

DEMARENE COLEMAN,

Plaintiff(s),

vs.

WARDEN NAJERA; AARON FORD
ATTORNEY GENERAL; STATE OF
NEVADA; STEVEN B. WOLFSON D.A.,

Defendant(s),

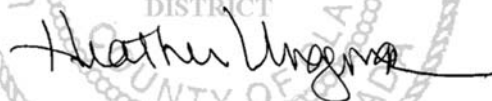
Case No: A-23-868466-W

Dept. No: VI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 25 day of August 2023.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

