IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LAWRENCE DIXON,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

Docket No. 87091
District Court No. CV0023141

RESPONDENT'S ANSWERING BRIEF

Appeal from Denial of a Writ of Habeas Corpus (Post-Conviction)
Sixth Judicial Distract Court, County of Humboldt
The Honorable Michael Montero

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JURISDICTIONAL STATEMENT

The Respondent does not object to Appellant's jurisdictional statement.

ROUTING STATEMENT

The Respondent does not object to Appellant's routing statement, as this case is properly assigned to the Nevada Court of Appeals under *Nevada Rules of Appellate Procedure (NRAP) 17(b)(3).*

STATEMENT OF THE ISSUES

Respondent objects to Appellant's statement of the issues and notes the issues as follows:

ISSUE I: DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT HELD THAT APPELLANT'S TRIAL COUNSEL WAS NOT INEFFECTIVE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS TO WHETHER THE JURY WAS ADEQUATELY INSTRUCTED ON A VOLUNTARY INTOXICATION DEFENSE?

ISSUE II: DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT HELD THAT APPELLANT'S TRIAL COUNSEL WAS NOT INEFFECTIVE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS TO WHETHER THE JURY WAS ADEQUATELY INSTRUCTED ON ANY LESSOR INCLUDED OFFENSES?

ISSUE III: DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT HELD THAT APPELLANT'S COUNSEL WAS NOT INEFFECTIVE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION?

STATEMENT OF THE CASE

The Respondent does not object to Appellant's statement of the case but adds that the District Court below entered its *Order Denying Petition for Writ of Habeas Corpus*

(Postconviction), filed July 21, 2023, after the District Court granted an extension of time of ninety (90) days for Appellant to file his Supplemental Petition for Writ of Habeas Corpus, and before the Respondent had the opportunity to file a responsive pleading thereto. (*See Appellant's Appendix Volume 2, pages 309-310*).

STATEMENT OF FACTS

On January 12, 2018, the Respondent filed a two count Information against the Appellant charging him with one count of Arson-Forth Degree, a Category D Felony, in violation of *NRS 205.025*, and one count of Child Abuse, Neglect, or Endangerment, a Gross Misdemeanor in violation of *NRS 200.508.*[1] (*See Appellant's Appendix Volume 1, pages 1-5*). On September 20, 2018, Appellant was found guilty after a jury trial of count one, namely that of Arson-Forth Degree, a Category D Felony, in violation of *NRS 205.025,* and on November 13, 2018, the District Court sentenced the Appellant to a term of imprisonment in the Nevada Department of Corrections for a minimum term of twelve (12) months and a maximum term of thirty-four months (34) months, with credit for time served of twenty-two days. (*See Appellant's Appendix Volume 1, pages 236-239*).

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[1] Appellant was found not guilty of Count II in the Information of Child Abuse, Neglect, or Endangerment, a Gross Misdemeanor in violation of *NRS 200.508.* (*See Appellant's Opening Brief, filed December 4, 2023, page 3* and *Appellant's Appendix Volume 1, pages 234-235*).

The facts of this case arose on or about December 13, 2017, in Humboldt County, Nevada, where the Appellant attempted to set fire to and/or burn a mirror on a wall inside his mobile home, as well as allegedly throwing a glass beer bottle at a vehicle where an unnamed nine (9) year old minor child was an occupant, and where he could have suffered physical pain or mental suffering. (*See Appellant's Appendix Volume 1, pages 1-5*).

As a matter of procedural history, the Judgment of Conviction in the present case was filed on November 19, 2018. (*See Appellant's Appendix Volume 1, pages 236-239*). On direct appeal, the Judgment of Conviction was affirmed in this case on May 6, 2021, with the Remitter issued on June 1, 2021. (See Nevada Supreme Court Remitter in *Dixon vs. State, Case #77537).* The Appellant then filed a Petition for Writ of Habeas Corpus (Post-Conviction), on July 11, 2022, and a Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), filed December 22, 2022, which was denied by the District Court below by *Order Denying Petition for Writ of Habeas Corpus (Postconviction), filed July 21, 2023.* (*See Appellant's Appendix Volume 2, pages 309-330*). The Appellant then filed his timely Notice of Appeal in the District Court on August 4, 2023. (*See Appellant's Appendix Volume 2, Page 331-332*).

In his present appeal, Appellant alleges three instances of ineffective assistance of counsel under the *Sixth Amendment to the U.S. Constitution* and the *Fourteenth Amendment to the U.S. Constitution*, and that the District Court's dismissal of both his Petition for Writ of Habeas Corpus (Post-Conviction) and his Supplemental Petition

for Writ of Habeas Corpus (Post-Conviction) violated his Due Process Rights under the *Fifth Amendment to the U.S. Constitution*, as well as the *Fourteen Amendment to the U.S. Constitution*. As discussed below, all of the Appellant's contentions lack legal merit and should be dismissed by this Court.

STANDARD OF REVIEW

The Respondent argues that the standard of review for Issue I through Issue III is an abuse of discretion standard of review, as discussed below.

ARGUMENT

ISSUE I: THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT APPELLANT'S TRIAL COUNSEL WAS NOT INEFFECTIVE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS TO WHETHER THE JURY WAS ADEQUATELY INSTRUCTED ON A VOLUNTARY INTOXICATION DEFENSE.

The applicable law as to ineffective assistance of counsel claims is clear in Nevada and involves a two-prong analysis of ineffective assistance of counsel laid down by the United States Supreme Court in *Strickland v. Washington,* 488 U.S. 668 (1984). In discussing the two-prong analysis of ineffective assistance of counsel laid down by the United States Supreme Court in *Strickland v. Washington,* 488 U.S. 668 (1984), the U.S. Supreme Court subsequently in *Lee v. US,* 582 U.S. 357, 137 S. Ct. 1958 (2017), held that the defendant there was prejudiced by his counsel's erroneous advice, and noted:

> "A claim of ineffective assistance of counsel will often involve a claim of attorney error "during the course of a legal proceeding" — for example,

> that counsel failed to raise an objection at trial or to present an argument on appeal. *Roe v. Flores-Ortega,* 528 U.S. 470, 481, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). A defendant raising such a claim can demonstrate prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., at 482, 120 S.Ct. 1029 (*quoting Strickland,* 466 U.S., at 694, 104 S.Ct. 2052; internal quotation marks omitted). But in this case counsel's "deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself." *Flores-Ortega,* 528 U.S., at 483, 120 S.Ct. 1029. When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of that trial "would have been different" than the result of the plea bargain. That is because, while we ordinarily "apply a strong presumption of reliability to judicial proceedings," "we cannot accord" any such presumption "to judicial proceedings that never took place." *Id.,* at 482-483, 120 S.Ct. 1029 (internal quotation marks omitted). We instead consider whether the defendant was prejudiced by the "denial of the entire judicial proceeding ... to which he had a right." *Id.,* at 483, 120 S.Ct. 1029. As we held in *Hill v. Lockhart,* 474 U.S. 52, 106 S. Ct. 366 (1985), when a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 474 U.S., at 59, 106 S.Ct. 366. (*See Lee v. US*, 137 S. Ct. at 1964-1965).

In the present case, the key fact here is that Appellant freely exercised his right to have a jury trial, and as the U.S. Supreme Court noted in *Lee, supra*, there is "a strong presumption of reliability to judicial proceedings," and also compared to *Lee, supra,* Appellant here was not prejudiced by the "denial of the entire judicial proceeding ... to which he had a right." (*Emphasis original*). *See Lee v. US*, 137 S. Ct. at 1965. Furthermore, similar to the case in *Nika v. State*, 124 Nev. 1272, 198 P.3d 839, (2008), Appellant never indicated to the Court, before his trial in September of 2018,

that he desired to plead guilty or that his trial counsel prevented him from doing so, nor does Appellant contend that his trial counsel failed to approach the Respondent with a specific plea offer or that a specific offer was ever made by the Respondent. *See Nika v. State*, 198 P.3d *supra* at 852.

Additionally, as to the District Court *Order Denying Petition for Writ of Habeas Corpus (Post Conviction), filed July 21, 2023*, this Court noted in *State v. Rincon,* 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006), that a district court's findings of fact are entitled to deference and will not be disturbed on appeal if they were supported by substantial evidence, which was clearly the case here. (*See Appellant's Appendix Volume I, pages 309-330*). Furthermore, the record here does not reflect, a "deficient" level of performance of Appellant's trial counsel, nor has Appellant shown here that for such trial's counsel's deficiency, he has been prejudiced to the extent that a different result would have occurred, and having failed to meet either of his burdens under the two prong *Strickland standard, supra*, Petitioner's three allegations of ineffective assistance of counsel lacks any merit and must fail.

In order to establish an objective standard of reasonableness, the Court must look to the "prevailing professional norms" of legal practice, *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 688). Additionally, effectiveness does not mean errorless and courts have noted that effectiveness means performance "within the range of competence demanded of attorneys in criminal cases." *Jackson v. Warden, Nev. State Prison*, 91 Nev. 430, 43[2], 537 P,2d 473, 474 (1975)

(quoting *McMann v. Richardson,* 397 U.S. 759, 771 (1970)). Courts have noted that effectiveness encompasses making "sufficient inquiry into the information that is pertinent" to the case in order to make "a reasonable strategy decision on how to proceed with a client's case." *See Doleman v, State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (*citing Strickland*, 466 U.S. at 690-91). Furthermore, courts have held that strategic decisions made by trial counsel are assumed to be intentional and are "virtually unchallengeable." *Doleman,* 112 Nev. at 848, 921 P,2d at 280 (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), strategic decisions based on an incomplete investigation are reasonable "precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, *supra* 466 U.S. at 690-91).

Secondarily, even if a Petitioner can establish deficient performance of his trial counsel, he must then establish "prejudice" by a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. (*Id.* at 687.) Proving prejudice requires the defendant to "show that there is a reasonable probability that, "but" for counsel's unprofessional errors, the result of the proceeding would have been different. In these situations, reasonable probability is defined as "a probability sufficient to undermine the confidence of the outcome" with a court hearing claims of ineffective assistance of counsel considering the totality of the evidence in determining prejudice. *Id.*

In the present case, as the District Court noted below, the Appellant initially "contends that his trial counsel was ineffective at the jury instruction stage by failing to include a voluntary intoxication instruction that would negate the specific intent elements of malice" for the Respondent's count one in the Information, namely Arson-Forth Degree, a Category D Felony, in violation of *NRS 205.025*. (*See Appellant's Appendix Volume 1, pages 311-312*). While the District Court held that "trial counsel's failure to include a voluntary intoxication instruction fell below an objective standard of reasonableness, the record just as well reflects that trial counsel's decision not to include a voluntary intoxication instruction was a strategic decision made by trial counsel, which are assumed to be intentional and are "virtually unchallengeable." *Doleman,* 112 Nev. at 848, 921 P,2d at 280 (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), strategic decisions based on an incomplete investigation are reasonable "precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland, supra* 466 U.S. at 690-91). (*See Appellant's Appendix Volume 1, page 312*).

Regardless of the District Court's first finding, it went on to hold that Appellant "*fails to show that but for trial counsel's deficient performance, a different result would have occurred at trial.*" (*Emphasis added*). (*Id.*). Furthermore, in explaining its rationale, that the Appellant failed to meet the second prong of *Strickland, supra* and it was unconvinced that a voluntary intoxication instruction would have produced a different result, the District Court, *citing NRS 193.0175*, noted that "[m]alicious

intent "import[s] an evil intent, wish or design to vex, annoy o[sic] injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty. (*See Appellant's Appendix Volume 1, page 313*). The District Court went on to conclude that a plain reading of *NRS 193.220*, (dealing with the effect of voluntarily intoxication on purpose, motive or intent), shows that "voluntary intoxication does not negate the malicious intent element as Petitioner suggests;"[2]...that the "jury *may* have considered Petitioner's [Appellant's] intoxication in determining malicious intent;" that the "jury was not required to consider it;" that there was "evidence presented showing that Petitioner [Appellant] was intoxicated at the time of the crime," and that the "jury was therefore fully aware of Petitioner's [Appellant's] condition when he set fire mirror, and still found malicious intent." (*Emphasis original*). (*See Appellant's Appendix Volume 1, page 314*).

In summary, Appellant has simply not shown any prejudicial error to meet the second prong of the test in *Strickland, supra*, and it is pure speculation that for trial counsel's deficiency, if there was any at all here, in not seeking a voluntary intoxication instruction, a different result would have occurred at trial. As a result,

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[2] Appellant fully admits his intention of his acts in his Opening Brief and at trial, where he stated that he wanted to just "destroy the mirror," that was attached on the wall of the house. (*See Appellant's Opening Brief, filed December 4, 2023, page 12* and *Appellant's Appendix Volume 1, page 179*).

Appellant's first allegation of ineffective assistance of counsel lacks any legal merit and must fail.

ISSUE II: THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT APPELLANT'S TRIAL COUNSEL WAS NOT INEFFECTIVE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS TO WHETHER THE JURY WAS ADEQUATELY INSTRUCTED ON ANY LESSOR INCLUDED OFFENSES.

Appellant next contends that his trial counsel was ineffective under the Sixth and Fourteenth Amendments to the U.S. Constitution for failing to have the jury instructed on a lesser included offense of destruction of property under *NRS 206.310.* While, the District Court held that "trial counsel's failure to include a lesser included instruction for destruction of property under *NRS 206.310* fell below an objective standard of reasonableness, the record reflects that trial counsel's decision not to propose a lesser included instruction in this case was again a strategic decisions made by trial counsel, which are assumed to be intentional and are "virtually unchallengeable." *Doleman,* 112 Nev. at 848, 921 P,2d at 280 (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), strategic decisions based on an incomplete investigation are reasonable "precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland, supra* 466 U.S. at 690-91). (*See Appellant's Appendix Volume 1, page 312*).

Nonetheless here, although the District Court's found below that the trial counsel's failure to have the jury instructed on a lesser included offense of destruction of property under *NRS 206.310,* fell below an objective standard of

reasonableness, it went on to hold that Appellant "*fails to show that but for trial counsel's deficient performance, a different result would have occurred at trial.*" (*Emphasis added*). (*See Appellant's Appendix Volume 1, pages 314-315*).

The District Court in the present case ruled that Appellant failed to show the underlying facts of his claim of a lesser included instruction for *NRS 206.310* by a ponderance of the evidence and that the District Court "was without sufficient evidence to determine whether the inclusion of a lesser-included offense instruction would have produced a different result at trial," and that Appellant failed as a result to meet the second prejudice prong of *Stickland, supra.* (*See Appellant's Appendix Volume 1, pages 315-316*). A review of the record below simply fails to show that the District Court abused its discretion in finding that there was a lack of prejudice shown by Appellant by not asking for a lesser included instruction in this case.

In summary, Appellant has simply not shown any prejudicial error to meet the second prong of the test in *Strickland, supra*, and again, it is pure speculation that for trial's counsel's deficiency, if there was any at all here, in not seeking a lesser included instruction for destruction of property under *NRS 206.310,* a different result would have occurred at trial. As a result, Appellant's second allegation of ineffective assistance of counsel lacks any legal merit and must fail as well.

ISSUE III: THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT APPELLANT'S COUNSEL WAS NOT INEFFECTIVE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

In the present case, Appellant raises four issues that he alleges his appellant counsel failed to include on appeal, that rendered him ineffective under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, namely appellate counsel's failure to raise the issues of admission of asserted "prejudicial" bad act evidence; insufficiency of the evidence; jury instruction error and the lack of a chain of custody. (*See Appellant's Opening Brief, filed December 4, 2023, page 20).* As discussed below, Appellant has failed to show that any of these four asserted issues would have had a reasonable probability of success on appeal.

In *Morales v. State*, 412 P.3d 1081 (Nev. 2018), this Court held that to prove ineffective assistance of appellate counsel a petitioner "must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal," *citing Kirksey v. State,* 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996), *Morales, supra* at page 8. The *Morales* court further noted that "Appellate counsel is not required to raise every non-frivolous issue on appeal," *citing Jones v. Barnes,* 463 U.S. 745, 751 (1983), and that "[r]ather, appellate counsel will be most effective when every conceivable issue is not raised on appeal," *citing Ford v. State,* 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), *Morales, supra* at page 8. Third, the *Morales* court also noted that "[b]oth components of the inquiry must be shown," *citing Strickland v. Washington,* 466 U.S. 668, 697 (1984), and that they will "give deference to the court's factual findings if supported by substantial evidence and not clearly

erroneous but review the court's application of the law to those facts de novo," *citing Lader v. Warden,* 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), *Morales, supra* at page 9.

A. Alleged Bad Act Evidence:

The District Court below looked at bad act evidence admitted against the Appellant consisting of Appellant's other criminal proceeding; any domestic violence, infidelity, and threats after the incident, and concluded, contrary to Appellant's current assertions, that they were minimal in light of the nature and quality of the evidence supporting Appellant's conviction. (*See Appellant's Opening Brief, page 22; Appendix Volume 1, page 317*). In *citing Ledbetter v. State*, 122 Nev 252, 129 P.3d 671,678 (2006), for the holding of this Court that "the nature of the quality of the evidence supporting the Defendant's conviction beyond the prior act evidence itself" is paramount to a decision whether admittance of prior act evidence was prejudicial, held that the evidence presented in this case was enough for the jury to find Petitioner guilty of fourth degree arson under the elements of *NRS 205.025. Ledbetter v. State*, supra, 122 at 262 Fn.16, 129 P.3d at 678. (*See Appellant's Appendix Volume 1, pages 317-318*). The District Court noted the fact that the Appellant had been arguing with his wife at the time of the incident, was intoxicated, set a mirror aflame in the home and sat on the couch without intending to extinguish it. (*See Appellant's Appendix Volume 1, page 317*). Thereafter, the District Court ultimately held that Appellant's counsel of appeal may have chosen not to appeal the prior bad act evidence because it was

meritless under the provisions of *NRS 48.045*, and that the "*decision not to raise a meritless issue on appeal does not amount to ineffective assistance,*" *citing Kirksey, supra.* (*Emphasis added*). (*See Appellant's Appendix Volume 1, page 319*). Appellant has simply not shown here that the District Court abused its discretion in finding that the alleged "bad act evidence" issues would have had a reasonable probability of success on appeal.

B. Insufficiency of the Evidence:

In the present case below, the District Court concluded that the known facts in this case likely constituted circumstantial evidence sufficient to convict the Appellant of Fourth Degree Arson, and concluded that the Appellant failed to show that the insufficient evidence claim had a reasonable success on appeal.. (*See Appellant's Appendix Volume 1, pages 325-326*). In so concluding, the District Court pointed to the fact that Appellant had been arguing with his wife; drank several beverages; set fire to a plastic mirror on the wall in the home; sat on the couch doing nothing to extinguish the fire; and the fact that Appellant admitted that he intended to harm his wife's property. (*See Appellant's Appendix Volume 1, page 325*). As to this issue of sufficiency of the evidence, Appellant again has simply not shown here that the District Court abused its discretion in finding that the sufficiency of the evidence issue would have had a reasonable probability of success on appeal.

C. Jury Instruction Error:

In the present case, Appellant asserts that Appellant's counsel could have raised the issue of the failure to instruct the jury on Voluntary Manslaughter, but that

the review would have been for plain error due to trial counsel's failure to seek a proper jury instruction. (*See Appellant's Opening Brief, filed December 4, 2023, page 24.* As to this issue below, the District Court held that the Appellant "*fails to show that the omitted lesser-included instruction issue would have a reasonable probability of success on appeal, and this ineffective assistance claim must be denied.*" (*Emphasis added*).(*See Appellant's Appendix Volume 1, page 322*). A review of the record below shows that this issue lacks merit and under *Kirksey, supra,* a "decision not to raise a meritless issue on appeal does not amount to ineffective assistance." *See Kirksey, supra.* Again, Appellant has simply not shown here that the District Court abused its discretion in finding that the lack of an omitted lesser-included instruction would have had a reasonable probability of success on appeal.

D. Lack of a Chain of Custody as to the Mirror:

Appellant finally raises the issue that there was no chain of custody as to the mirror admitted in this case, and that the admission of the mirror should have been objected to at trial and raised on appeal. As to this issue, the District Court concluded that the "introduction of the substituted mirror would have likely constituted harmless error; that there is no element in *NRS 205.025* for Fourth Degree Arson that requires damage to property; that the Respondent must have only shown that Appellant willfully and maliciously attempted to set fire or attempted to burn a dwelling, before concluding that the Court was "*unconvinced that the introduction of a mirror with more of less damage would have affected the verdict, or that the induction of the real*

mirror would have produced a different result," before noting that Appellant failed to "*show that the mirror issue has a reasonable probability of success on appeal.*" (*Emphasis added*).(*See Appellant's Appendix Volume 1, pages 323-324*). For a final time, a review of the record below shows that this issue lacks merit and under *Kirksey, supra,* a "decision not to raise a meritless issue on appeal does not amount to ineffective assistance." *See Kirksey, supra.* Appellant here has simply not shown that the District Court abused its discretion in finding that the chain of custody issue, as to the mirror, would have had a reasonable probability of success on appeal.

In summary, as discussed above Appellant has failed to show that any of these four asserted issues would have had a reasonable probability of success on appeal, leading to the conclusion that Appellant's third issue on ineffective assistance of counsel lacks any legal merit, and that Appellant has failed to show that the District Court abused its discretion as to any of the four proposed appellate issues, Appellant asserts should have been raised on appeal.

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CONCLUSION

Based on the arguments above, the State of Nevada respectfully asks this Court to deny the appeal of Appellant's Writ of Habeas Corpus (Post-Conviction) in this case.

Furthermore, pursuant to *NRS 239B.030*, the undersigned hereby affirms this document does not contain the social security number of any person.

Dated this 20TH day of February, 2024.

KEVIN L. PASQUALE
Humboldt County District Attorney

By Anthony R Gordon
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ATTORNEY CERTIFICATION OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of *NRAP 32(a)(4)*, the typeface requirements of *NRAP 32(a)(5)* and the type style requirements of *NRAP 32(a)(6)* because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in type face of 14 point and Garamond type face.

I further certify that this brief complies with the page or type volume limitations of *NRAP 32(a)(7)* because, excluding the parts of the brief exempted by *NRAP 32(a)(7)(c)*, it does not exceed 30 pages.

Finally, I hereby certify that I have read the respondent brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for an improper purpose. I further certify that this brief complies with all the applicable Nevada Rules of Appellate Procedure, in particular *NRAP 23(e)(1),* which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the mater relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of

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the Nevada Rules of Appellate Procedure.

Dated this the 20TH day of February, 2024.

KEVIN L. PASQUALE
Humboldt County District Attorney

By Anthony R Gordon

ANTHONY R. GORDON
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 20TH day of February, 2024, I mailed/delivered a copy of the **RESPONDENT'S ANSWERING BRIEF** to:

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