

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

Sup. Ct. Case No. 87505

Case No. CR02-0147

Dept. 10

RECORD ON APPEAL

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DISTRICT CASE NO: CR02-0147
STATE OF NEVADA vs FERRILL J. VOLPICELLI
DATE: NOVEMBER 17, 2023

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APPEAL INDEX
SUPREME COURT NO: 87505
DISTRICT CASE NO: CR02-0147
STATE OF NEVADA vs FERRILL J. VOLPICELLI
DATE: NOVEMBER 17, 2023

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APPEAL INDEX
SUPREME COURT NO: 87505
DISTRICT CASE NO: CR02-0147
STATE OF NEVADA vs FERRILL J. VOLPICELLI
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
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Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-06-20 15:42:51.737.
JOHN KADLIC, ESQ. - Notification received on 2014-06-20 15:42:51.58.
TAMMY RIGGS, ESQ. - Notification received on 2014-06-20 15:42:51.643.
KATHERINE LYON, ESQ. - Notification received on 2014-06-20 15:42:51.705.
DIV. OF PAROLE & PROBATION - Notification received on 2014-06-20 15:42:51.674.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

06-20-2014:15:41:41

Clerk Accepted:

06-20-2014:15:42:21

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

1 CODE: 3370
2
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8 FERRILL JOSEPH VOLPICELLI,
9
10 Petitioner,

11 vs.

Case No. CR02-0147

Dept. No. 9

12 THE STATE OF NEVADA,
13

14 Respondent.
15 _____/

16 ORDER

17 The Court is in receipt of Petitioner FERRILL JOSEPH VOLPICELLI (hereinafter
18 "Petitioner") *Motion to Correct Illegal Sentence NRS 176.555* filed on May 19, 2014.

19 The Court orders the Washoe County District Attorney's Office to file a responsive pleading
20 to Petitioner's *Motion to Correct Illegal Sentence NRS 176.555* within twenty (20) days from the
21 date of this order.

22 DATED: this 8th day of July, 2014.

23 
24 _____
25 DISTRICT JUDGE
26
27
28


CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8th day of July, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill Joseph Volpicelli, #79565
LCC
1200 Prison Road
Lovelock, NV 89419

Further, I certify that on the 8th day of July, 2014, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

TAMMY RIGGS, ESQ.
DIV. OF PAROLE & PROBATION
JOHN KADLIC, ESQ. for FERRILL JOSEPH VOLPICELLI
KATHERINE LYON, ESQ. for STATE OF NEVADA
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA



Brianne Buzzell
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-08 11:08:04.395.
JOHN KADLIC, ESQ. - Notification received on 2014-07-08 11:08:04.239.
TAMMY RIGGS, ESQ. - Notification received on 2014-07-08 11:08:04.301.
KATHERINE LYON, ESQ. - Notification received on 2014-07-08 11:08:04.364.
DIV. OF PAROLE & PROBATION - Notification received on 2014-07-08 11:08:04.333.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

07-08-2014:11:06:54

Clerk Accepted:

07-08-2014:11:07:30

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Ord to File

Filed By:

Judicial Asst. BBuzzell

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TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

1 CODE 3880
Richard A. Gammick
2 #001510
P.O. Box 11130
3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 FERRILL JOSEPH VOLPICELLI,

10 Petitioner,

Case No. CR02-0147

11 v.

Dept. No. D09

12 THE STATE OF NEVADA,

13 Respondent.

14 _____/
15 **STATE'S RESPONSE TO MOTION TO CORRECT ILLEGAL SENTENCE**

16 COMES NOW, the State of Nevada by and through RICHARD A.
17 GAMMICK, District Attorney for Washoe County and KATHERINE H. LYON,
18 Deputy District Attorney, and hereby submits its Response to
19 Defendant Volpicelli's Motion to Correct Illegal Sentence.

20 This Response is based upon Nevada statutes and the
21 materials contained on file herein.

22 Pursuant to NRS 176.0913, any defendant convicted of a
23 felony shall be ordered to submit a biological specimen for the
24 purpose of determining genetic markers, and for inclusion in CODIS
25 (Combined DNA Indexing System). The defendant was convicted of two
26 counts of Burglary in CR98-2160 and therefore ordered to submit a

1 sample. He was also convicted of qualifying offenses in CR02-0147
2 and ordered to submit a sample. However, NRS 176.0913(5) provides:
3 "A court shall not order a biological specimen to be obtained from a
4 defendant who has previously submitted such a specimen for conviction
5 of a prior offense unless the court determines than an additional
6 sample is necessary."

7 Based upon information obtained from the Nevada Department
8 of Public Safety, Division of Probation and Parole, a sample was
9 collected from defendant pursuant to the Judgment of Conviction
10 issued in CR98-2160 on May 31, 2001. State CODIS Administrator
11 confirmed to undersigned the sample had been obtained and properly
12 entered into CODIS.

13 Therefore, the State does not object to the Judgment of
14 Conviction entered in CR02-0147 be amended to redact reference to a
15 further DNA sample.

16 AFFIRMATION PURSUANT TO NRS 239B.030

17 The undersigned does hereby affirm that the preceding
18 document does not contain the social security number of any person.

19 Dated this 25 day of July, 2014.

20 RICHARD A. GAMMICK
21 District Attorney
22 Washoe County, Nevada

23
24 By /s/ Katherine H. Lyon
25 KATHERINE H. LYON
26 Deputy District Attorney

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 JOHN KADLIC E.S.Q.
9 ONE E. FIRST ST. 3RD FLOOR.
10 P.O. BOX 1900
 RENO, NV 89505

11 Additionally, I deposited for mailing at Reno, Washoe
12 County, Nevada, a true copy of the foregoing document, addressed to:

13 FERRILL JOSEPH VOLPICELLI ID#79565
14 LCC
15 1200 PRISON ROAD
 LOVELOCK, NV 89419

16 Dated this 25 day of July, 2014.

17
18 /s/Gladis Estrada
19 GLADIS ESTRADA
20
21
22
23
24
25
26

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-25 12:50:29.76.
JOHN KADLIC, ESQ. - Notification received on 2014-07-25 12:50:29.588.
TAMMY RIGGS, ESQ. - Notification received on 2014-07-25 12:50:29.65.
KATHERINE LYON, ESQ. - Notification received on 2014-07-25 12:50:29.713.
DIV. OF PAROLE & PROBATION - Notification received on 2014-07-25 12:50:29.682.

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-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

07-25-2014:10:18:23

Clerk Accepted:

07-25-2014:12:50:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Response

Filed By:

Katherine H. Lyon

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DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR02-0147

FERRILL VOLPICELLI,

Dept. No. 9

Defendant.
_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 29th day of July, 2014, I electronically filed Volumes 1 through 6 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court through the file transfer process (FTP) and deposited Volume 7 containing sealed documents in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701

I further certify that the transmitted record is a certified copy of the original pleadings on file with the Second Judicial District Court in accordance NRAP 11(2)(b).

Dated this 29th day of July, 2014.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/Annie Smith
Annie Smith
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-29 10:29:02.988.
JOHN KADLIC, ESQ. - Notification received on 2014-07-29 10:29:02.847.
TAMMY RIGGS, ESQ. - Notification received on 2014-07-29 10:29:02.894.
KATHERINE LYON, ESQ. - Notification received on 2014-07-29 10:29:02.956.
DIV. OF PAROLE & PROBATION - Notification received on 2014-07-29 10:29:02.925.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

07-29-2014:10:27:55

Clerk Accepted:

07-29-2014:10:28:28

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk ASmith

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

CR02-0147
DC-09900059141-027
STATE VS FERRILL JOSEPH VOLP 2 Pages
District Court 08/22/2014 10:54 AM
Washoe County 3960
LBRARRAG

1 Case No. CR 02-0147
2 Dept. No. 9

FILED
2014 AUG 22 AM 10:54
JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY [Signature]
DEPUTY

3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 FERRILL T. VOLP)
10 PETITIONER)
11 -vs-)
12 STATE OF NEVADA)
13 RESPONDENT)
14

REQUEST FOR SUBMISSION
OF MOTION

15 It is requested that the Motion To Correct
16 Prison Sentence
17 which was filed on the 19 day of May, 2014, in
18 the above-entitled matter, be submitted to the Court for
19 decision.

20 Dated this 20 day of AUGUST, 2014.

21
22 FERRILL VOLP # 77565
23 Lovelock Correctional Center
24 1200 Prison Road
25 Lovelock, Nevada 89419
26 PETITIONER In Pro Se
27
28

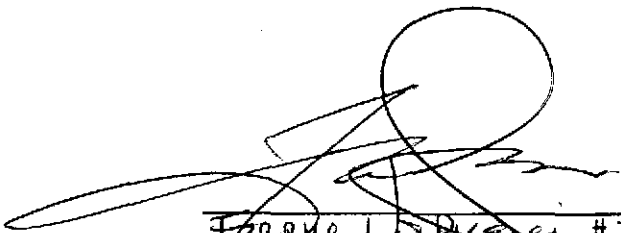
LCC LL FORM 26.090

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 20 day of August, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WATKINS COUNTY
DISTRICT ATTORNEY

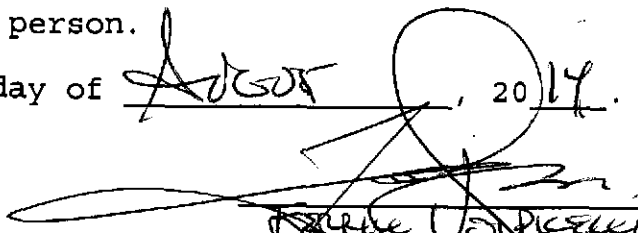
Box 30083
Reno, NV 89520


Eugene Vukobratovic # 77025
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
E. Vukobratovic In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 20 day of August, 2014.


Eugene Vukobratovic
E. Vukobratovic In Pro Se

CR02-0147
DC-09900059873-006
STATE VS FERRILL JOSEPH VQLP 2 Pages
District Court 09/24/2014 10:10 AM
Washoe County 3860
nnc
IARR000

Case No. CR02-0147Dept. No. 9

FILED

2014 SEP 24 AM 10:10

JOEY ORDUNA HASTINGS
CLERK OF THE COURTBY [Signature]
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF Washoe

* * * * *

FERRILL JOSEPHPETITIONER

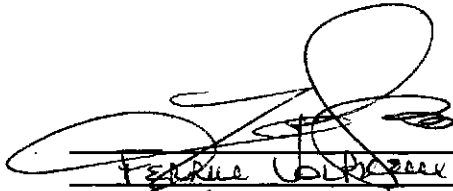
-VS-

STATE OF NEVADARESPONDERREQUEST FOR SUBMISSION
OF MOTIONIt is requested that the Motion to Correct ErrorSentence NRS 176.555which was filed on the 19 day of May, 2014, in
the above-entitled matter, be submitted to the Court for
decision, as Respondents have Responded with a New OppositionDated this 19th day of September, 2014.FERRILL JOSEPH # 79825
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419PETITIONER In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 19 day of September, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

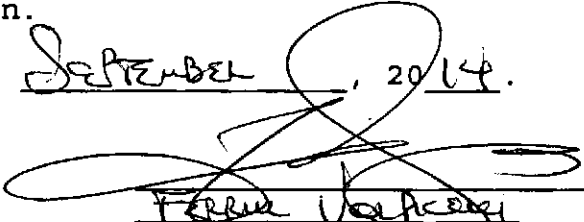
WASHE COUNTY
DISTRICT ATTORNEY
75 COURT ST
RENO, NV 89501


Petitioner # 72061
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 19 day of September, 2014.


Petitioner In Pro Se

1 CODE: 3370
2
3
45 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
78 FERRILL JOSEPH VOLPICELLI,
9

Case No. CR02-0147

Dept. No. 9

10 Petitioner,
1112 vs.
1314 THE STATE OF NEVADA
1516 Respondent.
1718 ORDER
19

20 Before the Court is a *Motion to Correct Illegal Sentence* filed by Petitioner FERRILL
21 JOSEPH VOLPICELLI filed on May 19, 2014. The Court ordered a response to this *Motion*, on
22 July 25, 2014 the State filed a *Response to Motion to Correct Illegal Sentence*. On May 28, 2014,
23 Petitioner also filed a *Notice of Appeal* to the Nevada Supreme Court. Therefore, this Court will not
24 decide any motions in this matter prior to the outcome of said appeal.

25 THEREFORE, IT IS HEREBY ORDERED Petitioner Ferrill Joseph Volpicelli's *Motion to*
26 *Correct Illegal Sentence* will not be considered prior to the Nevada Supreme Court's decision of
27 Petitioner's Appeal. The Nevada Supreme Court has jurisdiction over this proceeding at this time.

28 DATED: This 20 day of October, 2014.
DISTRICT JUDGE

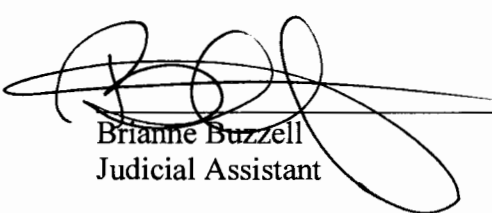
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20th day of October, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill Joseph Volpicelli, #79565
LCC
1200 Prison Road
Lovelock, NV 89419

Further, I certify that on the 20th day of October, 2014, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

TAMMY RIGGS, ESQ.
DIV. OF PAROLE & PROBATION
JOHN KADLIC, ESQ. for FERRILL JOSEPH VOLPICELLI
KATHERINE LYON, ESQ. for STATE OF NEVADA
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA



Brianne Buzzell
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-10-20 16:14:40.952.
JOHN KADLIC, ESQ. - Notification received on 2014-10-20 16:14:40.811.
TAMMY RIGGS, ESQ. - Notification received on 2014-10-20 16:14:40.874.
KATHERINE LYON, ESQ. - Notification received on 2014-10-20 16:14:40.92.
DIV. OF PAROLE & PROBATION - Notification received on 2014-10-20 16:14:40.889.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

10-20-2014:16:13:34

Clerk Accepted:

10-20-2014:16:14:10

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Order...

Filed By:

Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65786

CR02-0147
D9

FILED

DEC 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a "motion to amend judgment/correct judgment." Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

On October 27, 2014, this court received a proper person notice to withdraw the appeal. Cause appearing, we will treat this motion as a motion to dismiss the appeal and grant the motion. Accordingly, we

ORDER this appeal DISMISSED.

Gibbons, C.J.

Pickering, J.
Pickering

Saitta, J.
Saitta

cc: Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-12-18 10:10:05.37.
JOHN KADLIC, ESQ. - Notification received on 2014-12-18 10:10:05.229.
TAMMY RIGGS, ESQ. - Notification received on 2014-12-18 10:10:05.276.
KATHERINE LYON, ESQ. - Notification received on 2014-12-18 10:10:05.339.
DIV. OF PAROLE & PROBATION - Notification received on 2014-12-18 10:10:05.307.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

12-18-2014:10:08:58

Clerk Accepted:

12-18-2014:10:09:33

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Ct Ord Dismiss Appeal

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

CR02-0147
DC-09900052346-009
STATE VS. FERRILL JOSEPH VOLP 4 Pages
District Court 12/18/2014 02:58 PM
Washoe County 2490
LBARRAGO
NOC

Case No. CR02-0147

FILED

Dept. No. _____

2014 DEC 18 PM 2:58

JACQUELINE BRYANT

ACTING CLERK OF THE COURT

BY [Signature]
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF Washoe

* * * * *

FERRILL JOSEPH VOLPPETITIONER.

-VS-

STATE OF NEVADARESPONDENT.Motion to Take
JUDICIAL NOTICE
AND TO RECONSIDER

PETITIONER, FERRILL JOSEPH VOLP, Moves the Court to
take JUDICIAL NOTICE that this Court now
has Jurisdiction to Reconsider this matter as
the pending appeal in the Nevada Supreme
Court was Dismissed and Remittitur has issued,
(Attachment). Further, that this matter is here
for Decision as the Respondents are UNAPPOSED
to the Relief Requested.

Dated this 16th day
of December 2014

[Signature]
FERRILL JOSEPH VOLP
Petitioner in law

ATTACHMENT 1

ATTACHMENT 1

FERRILL VOLPICELLI #79565
LCC - 1200 PRISON RD
VELLMAN NV 89404

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65786

FILED

DEC 12 2014


TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

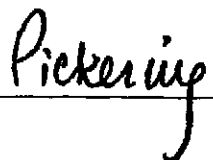
ORDER DISMISSING APPEAL


This is a proper person appeal from an order of the district court denying a "motion to amend judgment/correct judgment." Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

On October 27, 2014, this court received a proper person notice to withdraw the appeal. Cause appearing, we will treat this motion as a motion to dismiss the appeal and grant the motion. Accordingly, we

ORDER this appeal DISMISSED.

, C.J.
Gibbons

, J.
Pickering


, J.
Saitta

cc: Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli ✓
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Motion to Take Judicial Notice & to Reconsider to the below address(es) on this 16 day of December, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

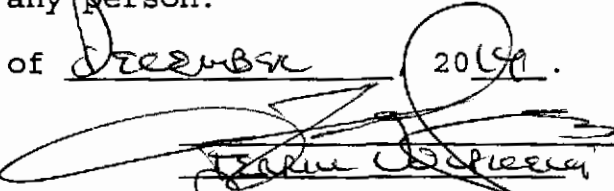
Washoe County
District Attorney
75 Court St
Reno, NV 89501


Terrence J. O'Connell #78026
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Terrence J. O'Connell In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to Take Judicial Notice & to Reconsider filed in District Court Case No. CR2-20147 does not contain the social security number of any person.

Dated this 16 day of December, 2014.


Terrence J. O'Connell In Pro Se

CR02-0147
DC-09900062346-010
JOSEPH VOLP 2 Page
STATE VS FERRILL
District Court
Washoe County
NOC
12/18/2014 02:58 PM
386
LBARRAGP

Case No. CR02-0147
Dept. No. 9

FILED
2014 DEC 18 PM 2:58
JACQUELINE BRYANT
ACTING CLERK OF THE COURT
BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHE

* * * * *

FERRILL J. VOLPICKER,
PRISONER,
-vs-
STATE OF NEVADA,
RESPONDENT.

REQUEST FOR SUBMISSION
OF MOTION

It is requested that the Motion to Take Judicial
Notice and to Reconsider
which was filed on the 16 day of December, 2014, in
the above-entitled matter, be submitted to the Court for
decision.

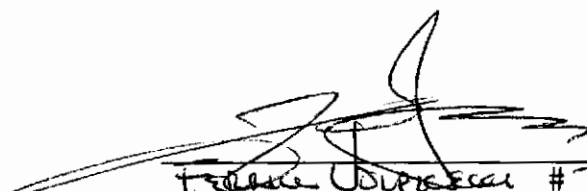
Dated this 16 day of December, 2014.

[Signature]
FERRILL VOLPICKER #78568
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
PRISONER In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 16 day of December, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

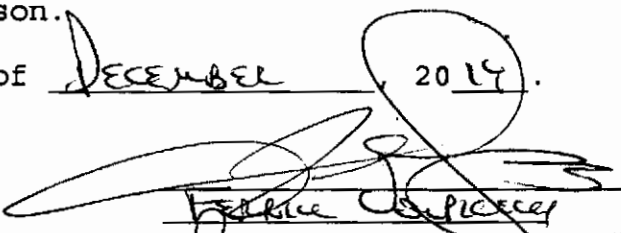
WASHOE COUNTY
DISTRICT ATTORNEY
75 COURT ST
RENO, NV 89501


Petitioner # 79845
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
PETITIONER In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 16 day of DECEMBER, 2014.


Petitioner In Pro Se

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 65786
District Court Case No. CR020147

JG

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

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

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

DATE: January 07, 2015

Tracie Lindeman, Clerk of Court

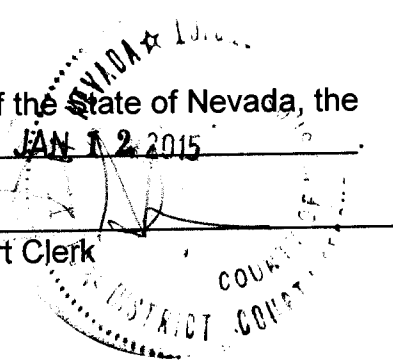
By: Rory Wunsch
Deputy Clerk

cc (without enclosures):
Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 12 2015

[Signature]
District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 65786
District Court Case No. CR020147

39

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 12th day of December, 2014.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 07, 2015.

Tracie Lindeman, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65786

FILED

DEC 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a "motion to amend judgment/correct judgment." Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

On October 27, 2014, this court received a proper person notice to withdraw the appeal. Cause appearing, we will treat this motion as a motion to dismiss the appeal and grant the motion. Accordingly, we

ORDER this appeal DISMISSED.

Gibbons

C.J.

Pickering

J.

Saitta

J.

cc: Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: January 7th 2015
Supreme Court Clerk, State of Nevada
By [Signature] Deputy
JUSTITIA

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-01-12 09:20:40.033.
JOHN KADLIC, ESQ. - Notification received on 2015-01-12 09:20:39.892.
TAMMY RIGGS, ESQ. - Notification received on 2015-01-12 09:20:39.939.
KATHERINE LYON, ESQ. - Notification received on 2015-01-12 09:20:40.001.
DIV. OF PAROLE & PROBATION - Notification received on 2015-01-12 09:20:39.97.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

01-12-2015:09:19:40

Clerk Accepted:

01-12-2015:09:20:11

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Ct Ord Dismiss Appeal

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

1 Case No. CR02-0147
 2 Dept. No. 9

FILED

2015 FEB 17 PM 2:07

JACQUELINE BRYANT
CLERK OF THE COURTBY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF Washoe

* * * * *

9 FERRIE J. Lovelock
 10 PRISONER,
 11 -vs-
 12 STATE of NEVADA,
 13 RESPONDENT.

SECOND
 REQUEST FOR SUBMISSION
OF MOTION

15 It is requested that the Motion to Take Judicial
 16 Notice and to Reconsider 13 Oct. 10, 2014 order
 17 which was filed on the 18 day of December, 2014, in
 18 the above-entitled matter, be submitted to the Court for
 19 decision.

20 Dated this 11th day of FEBRUARY, 2015.


[Signature]
FERRIE LOVELOCK # 72025
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock, Nevada 89419
PRISONER In Pro Se

LCC LL FORM 26.090

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 11th day of FEBRUARY, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

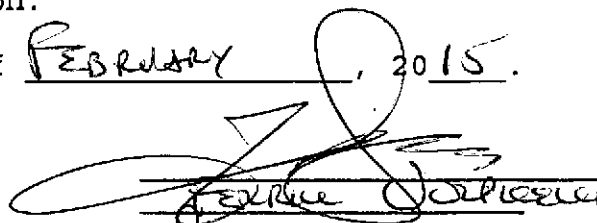
WASHOE COUNTY
DISTRICT ATTORNEY
75 COURT ST
RENO, NV 89501


Felice J. Piccini #78965
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
PETITIONER In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 11th day of FEBRUARY, 2015.


Felice J. Piccini
PETITIONER In Pro Se

1 CODE: 3370
2
3
45 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
78 FERRILL JOSEPH VOLPICELLI,
9Case No. CR02-0147
Dept. No. 910 Petitioner,
1112 vs.
1314 THE STATE OF NEVADA
1516 Respondent.
17 /18 ORDER
19

20 Before the Court is a *Motion to Correct Illegal Sentence* filed by Petitioner FERRILL
21 JOSEPH VOLPICELLI on May 19, 2014. The Court ordered a response to this *Motion*, on July 25,
22 2014 the State filed a *Response to Motion to Correct Illegal Sentence*. On May 28, 2014, Petitioner
23 also filed a *Notice of Appeal* to the Nevada Supreme Court. On October 20, 2014, this Court entered
24 an *Order* declining to decide the *Motion* for lack of jurisdiction as Petitioner had filed a *Notice of*
25 *Appeal* to the Nevada Supreme Court. On December 12, 2014, the Nevada Supreme Court entered
26 an *Order Dismissing Appeal*. On December 18, 2014, Petitioner filed a *Motion to Take Judicial*
27 *Notice and To Reconsider*.
28

As a preliminary matter, Petitioner requests this Court "take judicial notice that the Court
now has jurisdiction to reconsider this matter as the pending appeal in the Nevada Supreme Court
was dismissed and remittitur has issued." See (Mot. to Reconsider, p.1). As the Nevada Supreme
Court has dismissed the Petitioner's *Appeal*, and has issued a *Remittitur*, the Court finds it has
proper jurisdiction to consider Petitioner's *Motion to Correct Illegal Sentence*. Further, in Nevada,
judicial notice may be taken at any stage of the proceeding prior to submission to the court or jury.

1 NRS 47.170. The facts subject to judicial notice are facts in issue or facts from which they may be
2 inferred. NRS 47.130. A judicially noticed fact must be: (a) generally known within the territorial
3 jurisdiction of the trial court; or (b) capable of accurate and ready determination by resort to
4 sources whose accuracy cannot reasonably be questioned. *Id.* Here, the Court finds the Nevada
5 Supreme Court's *Order Dismissing Appeal* and *Remittitur* have been filed with this Court and are
6 thus matters of public record and may be referred to as such. Accordingly, it is a fact not reasonably
7 open to dispute and the Court shall take judicial notice of such fact.

8
9 Petitioner next seems to request the Court to take his *Motion to Correct Illegal Sentence*
10 under consideration. NRS 176.555 provides the district court "may correct an illegal sentence at any
11 time." There is no time limit for filing a motion to correct an illegal sentence. NRS 176.555. A
12 motion to correct an illegal sentence challenges the facial legality of the sentence imposed. *Edwards*
13 *v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The facial legality of a sentence depends on
14 two factors: 1) whether the district court was without jurisdiction to impose a sentence, or 2)
15 whether the sentence imposed exceeds the statutory maximum. *Id.*

16 Here, Petitioner requests the Court amend the *Judgment of Conviction* entered in CR02-
17 0147 to redact the reference to a further DNA sample requirement. See (Mot. to Correct Illegal
18 Sentence, p.1). Specifically, Petitioner argues such a DNA sample is duplicative under NRS
19 176.0913 as he was previously ordered to give a DNA sample in CR98-2160. *Id.* The State does not
20 object to the *Judgment of Conviction* being amended to redact reference to a further DNA sample.
21 See (Response, p.2).

22 Any defendant convicted of a felony shall be ordered to submit a biological specimen for
23 the purpose of determining genetic markers and for inclusion in CODIS (Combined DNA Indexing
24 System). NRS 176.0193. NRS 176.0913(5) provides "[i]f it is determined that a defendant's
25 biological specimen has previously been submitted for conviction of a prior offense, an additional
26 sample is not required." Here, the record indicates Petitioner has already provided a sample
27 pursuant to the *Judgment of Conviction* issued in CR98-2160 on May 31, 2001. Accordingly, as a
28

1 sample was already collected from Petitioner and as the State has no objection, the Petitioner's
2 *Motion to Correct Illegal Sentence* is granted.

3 Accordingly, and good cause appearing, the Court's order is as follows:

4 IT IS HEREBY ORDERED Petitioner's *Motion to Take Judicial Notice and To Reconsider*
5 filed on December 18, 2014 is GRANTED.

6 IT IS FURTHER ORDERED Petitioner's *Motion to Correct Illegal Sentence* filed on May
7 19, 2014 is GRANTED.

8 IT IS FURTHER ORDERED the *Judgment of Conviction* shall be amended to redact
9 reference to a further DNA sample.

10 DATED: This 2 day of ^{June}February, 2015.

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28

DISTRICT JUDGE

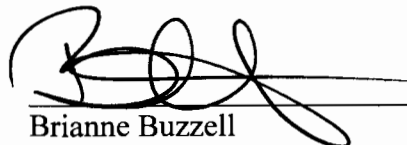
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 2nd day of March, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill Joseph Volpicelli, #79565
LCC
1200 Prison Road
Lovelock, NV 89419

Further, I certify that on the 2nd day of March, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

TAMMY RIGGS, ESQ.
DIV. OF PAROLE & PROBATION
JOHN KADLIC, ESQ. for FERRILL JOSEPH VOLPICELLI
KATHERINE LYON, ESQ. for STATE OF NEVADA
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA



Brianne Buzzell
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-02 11:07:17.236.
JOHN KADLIC, ESQ. - Notification received on 2015-03-02 11:07:17.095.
TAMMY RIGGS, ESQ. - Notification received on 2015-03-02 11:07:17.142.
KATHERINE LYON, ESQ. - Notification received on 2015-03-02 11:07:17.205.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-02 11:07:17.173.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-02-2015:11:06:05

Clerk Accepted:

03-02-2015:11:06:45

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Ord Granting Mtn

Filed By:

Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

3

1 CODE NO. 1855

2

3

4

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR02-0147

11 vs.

Dept. No. 9

12 FERRILL JOSEPH VOLPICELLI,

13 Defendant.

14 /

15 AMENDED JUDGMENT

16 The Defendant having been found Guilty by a jury, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him, the
18 Court rendered judgment as follows:

19 That Ferrill Joseph Volpicelli is guilty of the crimes of Indecent Exposure, a
20 violation of NRS 201.220, a felony, as charged in Count I of the Amended Information and
21 Open or Gross Lewdness, a violation of NRS 201.210, a felony, as charged in Count II of
22 the Amended Information, and that he be punished by imprisonment in the Nevada
23 Department of Corrections for the minimum term of twelve (12) months to a maximum term
24 of forty-eight (48) months and by payment of a fine in the amount of Five Thousand Dollars
25 (\$5,000.00), as to each of Counts I and II. The sentence in Count II shall run concurrently
26 with the sentence in Count I. The Defendant is further ordered to pay the statutory Twenty-
27 Five Dollar (\$25.00) administrative assessment fee, an Eight Hundred Dollar (\$800.00)
28 Psychosexual Evaluation fee and reimburse the County of Washoe the sum of One

1 Thousand Dollars (\$1,000.00) for legal representation by the Washoe County Public
2 Defender's Office. The Defendant is given credit for two hundred twenty-eight (228) days
3 time served.

4 DATED this 2nd day of March, 2015,
5 nunc pro tunc to December 12, 2003.

6
7 
8 _____
9 DISTRICT JUDGE
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Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-02 15:49:32.746.
JOHN KADLIC, ESQ. - Notification received on 2015-03-02 15:49:31.263.
TAMMY RIGGS, ESQ. - Notification received on 2015-03-02 15:49:32.184.
KATHERINE LYON, ESQ. - Notification received on 2015-03-02 15:49:32.699.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-02 15:49:32.636.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-02-2015:15:48:12

Clerk Accepted:

03-02-2015:15:48:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Judgment of Conviction-Amended

Filed By:

Court Clerk GBartlett

You may review this filing by clicking on the following link to take you to your cases.

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-

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DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

CR02-0147
STATE VS FERRILL JOSEPH VOLP 2 Pages
District Court 03/10/2015 04:00 PM
Washoe County 2515
NAC

Case No. CR02-0147
Dept. No. 9

FILED

2015 MAR 10 PM 4:00

JACQUELINE BRYANT
CLERK OF THE COURTBY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Washoe

* * * * *

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERRILL J. VOLPICKY

Defendant.

NOTICE OF APPEAL

NRS 47
WITH ERRATUM ISSUES FOR
PRESENTATION

FRAP 28 et seq; FRP 201

NRS 47 et seq.

JUDICIAL NOTICE OF ATTACHED

NOTICE IS GIVEN that Defendant, FERRILL J. VOLPICKY,

in pro se, hereby appeals to the Nevada Supreme Court the

MOTION TO CORRECT JUDGMENT OF CONVICTION'S ORDERfiled/entered on or about the 9th day of March, 2015.

in the above-entitled Court.

Dated this 9th day of March, 2015.

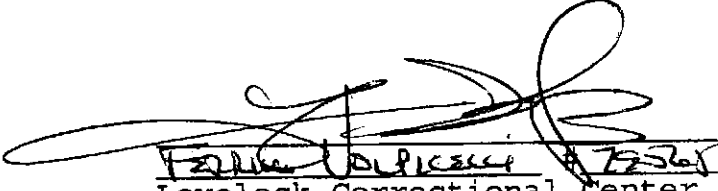
FERRILL VOLPICKY #72565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this _____ day of _____, 20 15, by placing same in the U.S. Mail via prison law library staff:

WASHOE COUNTY
DISTRICT ATTORNEY
POB 30083
REMY NV 89520-3083


Fernan Volpescu
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. C102-0147 does not contain the social security number of any person.

Dated this _____ day of _____, 20 15.


Fernan Volpescu

Defendant In Pro Se

DC-09900064856-004
CR02-0147 JOSEPH VOLP 2 Pages
STATE VS FERRILL 03/10/2015 04:00 PM
District Court 1650
Washoe County
RSMTH

Case No. CR02-0147Dept. No. 9

FILED

2015 MAR 10 PM 5:00

JACQUELINE BRYANT
CLERK OF THE COURTBY [Signature] DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE of NEVADA,)
)
Plaintiff,)
)
-vs-)
FERRILL T. VOLPICELLI,)
)
Defendant.)

ERRAND Notice of Appeal
ISSUES TO BE RAISED
NRAP 3C, FRE 251, FRAP 28 et seq.
NRS 47.130-47.170.

CERTIFICATION OF ISSUES

COMES NOW, FERRILL T. VOLPICELLI, in Pro Se to file this
ERRAND of ISSUES FOR DIRECT APPEAL within the
ACCOMPLISHING MEMORANDUM in Support Hereof.
PURSUANT TO ERICKSON v PAROUS, 551 US 89 (2007), Pro Se
LITIGANTS ARE ENTITLED TO BE LIBERALLY CONSIDERED.
PETITIONER FERRILL T. VOLPICELLI HEREBY CERTIFIES THE
FOLLOWING ISSUES FOR APPEAL IN THE INSTANT CASE
FROM THE AMENDED JUDGMENT OF CONVICTION, DATED
ON OR ABOUT MARCH 2, 2015, PROVIDING INEFFECTIVE
ASSISTANCE OF COUNSEL ISSUES; HEREBY DENYING
PETITIONER DYE PROCESS AND EXECUTE PROSECUTION. ALL
ISSUES ARE VERIFIED AND PETITIONER DECARES HE
KNOWS THE CONTENTS HEREIN.

DATED MARCH 8, 2015FERRILL T. VOLPICELLI V5.742

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing ERRAND Notice of Appeal / ISSUES TO BE RAISED to the below address(es) on this 8th day of March, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY
DISTRICT ATTORNEY
POB 30083
RENO, NV 89520-3003

For the Undersigned #72525
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding ERRAND Notice of Appeal / ISSUES TO BE RAISED filed in District Court Case No. CR20147 does not contain the social security number of any person.

Dated this 8th day of March, 2015.

For the Undersigned
Defendant In Pro Se

Code 1310

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

Case No. CR02-0147

vs.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Ferrill Joseph Volpicelli.
2. This appeal is from an order entered by the Honorable Judge Scott Freeman.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Ferrill Joseph Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Terrance McCarthy, Esq., SBN: 2745
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a

6. Appellant was represented by appointed counsel in District Court.
7. Appellant is not represented by counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed November 20, 2009 in the District Court.
9. Proceeding commenced by the filing of an Information on February 6, 2002.
10. This is a criminal proceeding and the Appellant is appealing Amended Judgment filed March 2, 2015.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 42603, 65192, 65786 and 50595.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 11th day of March, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR02-0147

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 11th day of March, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 11th day of March, 2015

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-11 16:15:33.505.
JOHN KADLIC, ESQ. - Notification received on 2015-03-11 16:15:33.349.
TAMMY RIGGS, ESQ. - Notification received on 2015-03-11 16:15:33.411.
KATHERINE LYON, ESQ. - Notification received on 2015-03-11 16:15:33.474.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-11 16:15:33.443.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-11-2015:16:14:24

Clerk Accepted:

03-11-2015:16:15:01

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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-

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DIV. OF PAROLE & PROBATION

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VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67563
District Court Case No. CR020147



RECEIPT FOR DOCUMENTS

TO: Ferrill Joseph Volpicelli
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/13/2015 Appeal Filing Fee waived. Criminal.

03/13/2015 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: March 13, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-18 11:45:15.342.
JOHN KADLIC, ESQ. - Notification received on 2015-03-18 11:45:15.201.
TAMMY RIGGS, ESQ. - Notification received on 2015-03-18 11:45:15.248.
KATHERINE LYON, ESQ. - Notification received on 2015-03-18 11:45:15.31.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-18 11:45:15.279.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-18-2015:11:44:14

Clerk Accepted:

03-18-2015:11:44:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

Case No. CR02-0147Dept. No. 9

FILED

2015 MAR 19 PM 4:07

JACQUELINE BRYANT
CLERK OF THE COURTBY [Signature]
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Washoe

State of Nevada,)Plaintiff,)

-vs-

Ferris T. Volpiceci,)Defendant.)MEMORANDUM OF
POINTS AND AUTHORITIES
IN SUPPORT OF NOTICE
OF APPEAL ISSUES, NLS 4708

Comes now Defendant, Ferris T. Volpiceci, in
 pro se and submits this Memorandum of Points
 and Authorities in support of his Direct Appeal
 in the above case. Defendant respectfully requests
 that the Nevada Supreme Court Review each
 of the following grounds constitutionally
 for Due Process and Equal Protection
 Transgressions under the First and Fourteenth
 Amendments; and then, again, separately as
 ineffective assistance of Counsel under the Sixth
 and Fourteenth Amendments.

This Memorandum is based on NRS 3C et seq.
 are taken on file herewith, as well as the
 following Points and Authorities.

CR02-0147
 DC-09900064898-004
 STATE VS FERRIS T. VOLPICECI
 District Court
 Washoe County
 03/19/2015 04:07 PM
 1955
 ASMTTU

LCC LL FORM 26.014

STATEMENT OF FACTS.

Defendant Volpicelli was released on parole from the Nevada Department of Corrections in June of 2001, at which time the Northern Nevada Repeat Offender Program commenced with periodic surveillance through and up until Volpicelli's arrest on October 17, 2001 for a parole violation. Of the numerous surveillance reports documented, only seven days were apparently deemed relevant by the State and made part of the discovery in the instant case and CR03-1263. (See Attachment I). Said reports purported Volpicelli's daily activities including, but not limited to, running errands, of significance are notes of Volpicelli frequenting retail establishments, whereby he occasionally erected partitions in the vehicle while parked in the shopping centers designated parking areas. Volpicelli was eventually booked on the charges specific to this case while in custody at Washoe County Sheriff's office. A trial was held two (2) years later wherein numerous detectives testified concerning Volpicelli's alleged activities.

1 AT TRIAL, THE STATE PRESENTED TESTIMONY
 2 OF KEND POLICE OFFICER PATRICIA BROWN'S
 3 ACCOUNT OF THE EVENTS ON SEPTEMBER 25,
 4 2001, SHE STATED THAT SHE WAS DIRECTED
 5 TO APPROXIMATE VOLPICELLI'S PARKED VEHICLE
 6 WITHIN THE SAFEMAX / STOPKO PARKING LOT
 7 ON N. McCORMEN BLVD. (TT p. 44 // 4-11)
 8 SHE TESTIFIED THAT WHEN SHE FIRST SAW
 9 VOLPICELLI, HE WAS IN THE BACK SEAT OF
 10 THIS VEHICLE. (TT p. 62 // 16-18). ALL SHE COULD
 11 SEE OF HIM WAS HIS HEAD AND HIS UPPER
 12 CHEST TO HIS HEAD. (TT p. 62 // 19-22). SHE
 13 FURTHER TESTIFIED THAT THERE WAS A PARTITION
 14 WHICH COVERED PART OF THE DEFENDANT'S
 15 BODY WHICH WAS IN THE BACK SEAT OF THIS
 16 VEHICLE. (TT p. 62 / 23 - p. 63 / 22). SHE STATED
 17 THAT SHE OBSERVED THE DEFENDANT, LEFT,
 18 AND THEN TURNED AROUND AND CAME BACK
 19 WHICH SURPRISED THE DEFENDANT. (TT p. 64 // 8-29).
 20 ULTIMATELY, SHE TESTIFIED THAT SHE VOLUNTARILY
 21 WALKED BY THE VEHICLE WITH THE IDEA OF
 22 SPECIFICALLY LOOKING INTO THE VEHICLE. (TT. p. 66 /
 23 14-18). MOST SIGNIFICANTLY, SHE TESTIFIED
 24 THAT WITHOUT DELIBERATELY LOOKING INTO THE
 25 VEHICLE (i.e. CASUAL PASSERBY) SHE COULD NOT
 26 SEE THE DEFENDANT OR WHAT HE WAS DOING.
 27
 28

(TT p. 66 / 19 - p. 68 / 11). As a result of officer Allen purposefully looking into the vehicle in an exploratory fashion, (despite the display of a partition), she was able to glimpse Volpicelli allegedly manipulating his penis which is the basis of the state's charges. (TT, p. 69 (5-12)).

ADDITIONAL TESTIMONY BY officer Allen purported that throughout their investigation of Volpicelli's activities while he was on parole^①, there were NO COMPLAINTS of suspicious conduct or criminal acts. (TT p. 65 / 18-25). It was from this testimony that the defendant Volpicelli was convicted of INDECENT EXPOSURE AND GROSS LEWDNESS,

Ferrill J. Volpicelli
Pro Se Litigant

① Volpicelli was also in compliance with all state and federal conditions of his state parole and federal supervised release.

①
GROUND 1A

THE STATES SOLICITATION OF MULTIPLE
REFERENCES TO A 1983 PRIOR CONVICTION TO
THE JURY DENIED VOLPICELLI OF A FAIR TRIAL
GUARANTEED BY THE FIFTH AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND 1B

COUNSEL (HEREINAFTER TRULY COUNSEL) WAS
INEFFECTIVE IN NOT OBJECTING TO THE STATES'
SOLICITATION OF MULTIPLE REFERENCES TO A 1983
PRIOR CONVICTION TO THE JURY DENYING VOLPICELLI
OF A FAIR TRIAL WITH EFFECTIVE ASSISTANCE
OF COUNSEL GUARANTEED BY THE FIFTH, SIXTH
AND FOURTEENTH AMENDMENTS TO THE UNITED
STATES CONSTITUTION.

VOLPICELLI AGREES THAT THE STATES' INTENTIONAL
AND PURPOSEFUL SOLICITATION OF A PREJUDICIAL
REFERENCE IN SEVERAL INSTANCES TO A 1983
PRIOR CONVICTION TO THE TRIAL JURY, AS WELL
AS COUNSEL'S FAILURE TO OBJECT TO SAME
VIOLATED DUE PROCESS AND THE GUARANTEES

① THROUGHOUT THE MEMORANDUM OF POINTS & AUTHORITIES ALL
GROUNDS *A AND *B INCORPORATE THE SAME DUE PROCESS/
EQUAL PROTECTION TRANSGRESSIONS WITH *B ADDING I.A.C.

1 of A Fair Trial with effective Assistance
 2 of Counsel. (See Attachment 2)
 3 THE INTRODUCTION OF UNFAIRLY PREJUDICIAL
 4 EVIDENCE AGAINST A DEFENDANT IN A
 5 CRIMINAL PROCEEDING IS CONTRARY TO
 6 GOVERNING LAW. NRS 48.069, NRS 50.090,
 7 NRS 172.135 (2), FRE 403. (DUE PROCESS
 8 VIOLATION FOUND WHERE EVIDENCE OF THE
 9 DEFENDANT'S OTHER SIMILAR ACTS (PRIOR CONVICTIONS).
 10 BURGETT V. U.S., 88 Sct 258 (TX 1967).
 11 McKINNEY V REES, 993 F2d 1378, 1386 (9th Circuit).
 12 STATE'S SOLLICITATION OF THE 1983 CONVICTION
 13 IS REFERENCED NUMEROUS TIMES IN THE
 14 DEFENDANT'S CRIMINAL INFORMATION, PREPARED
 15 BY THE STATE AND PROVIDED TO THE JURY, WAS
 16 UNFAIRLY PREJUDICIAL AS IT CONSTITUTES
 17 PROPENSITY EVIDENCE, AS WELL AS AN INTERFERENCE
 18 TO QUESTIONABLE CHARACTER.
 19 EDWARDS V STATE, 132 P3d 581, 582 (2006)
 20 (CITING OLD CHIEF V U.S., 117 Sct 647 (1997)).
 21 DUE PROCESS REQUIRED THE STATE COURTS IN
 22 CONDUCTING CRIMINAL PROCEEDINGS TO PROCEED
 23 CONSISTENTLY WITH THAT OF FUNDAMENTAL
 24 FAIRNESS WHICH IS ESSENTIAL TO THE VERY
 25 CONCEPT OF JUSTICE. DOWNS V U.S.
 26
 27
 28

1 493 US 342, 352 (1980)

2 LOBBEN V. CA, 314 US 219, 236 (1941).

3 Hence, Because of the State's errors, and
4 counsel's ineffectiveness, the jury, as
5 well as the Court, relied upon the
6 probative evidence. Volpicelli is entitled
7 as a matter of law to a reversal of
8 this judgment of conviction and a new trial.
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Ferrill J. Volpicelli
Pro Se Litigant

GROUND 2A

THE STATE DENIED VOLPICELLI A FAIR TRIAL BY KNOWINGLY PRESENTING TO THE COURT AT TRIAL PREJUDICIAL EVIDENCE SECURED IN VIOLATION OF HIS RIGHTS GUARANTEED BY THE FOURTH, FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

VOLPICELLI ASSERTS THAT OFFICER ALLEN'S SEARCH ON SEPTEMBER 25, 2001 WAS UNCONSTITUTIONAL BECAUSE IT WAS EXECUTED WITHOUT PROBABLE CAUSE AND CONSTITUTED AN INTRUSION OF PRIVACY. OFFICER ALLEN'S WINDOW CONSTITUTED A WARRANTLESS SEARCH. UNDER THE TRADITIONAL APPROACH, THE TERM 'SEARCH' IS SAID TO IMPLY SOME EXPLORATORY INVESTIGATION OR INVASION AND QUEST, A LOOKING FOR OR SEEKING OUT. (WAYNE R. LAFAVE, SEARCH AND SEIZURE - A TREATISE ON THE FOURTH AMENDMENT § 21(2) (4TH ED. 2004)). THE SUPREME COURT, IN U.S. V. COLVER, 278 US 367, HELD THAT ALTHOUGH THERE MAY BE NO COMPETING REASONS TO DIFFERENTIATE SEARCHES ON THEIR INTRUSIVENESS, THE FACT

Ferrill J. Volpicelli
Pro Se Litigant

REMAINS THAT THERE IS NOT A SINGLE SUPREME COURT CASE THAT HAS UPHOLD A SEARCH ON REASONABLE SUSPICION BECAUSE IT WAS MINIMALLY INTRUSIVE.

IN DETERMINING WHETHER A SEARCH OF THIS TYPE IS CONTEMPLATED UNDER THE FOURTH AMENDMENT PROTECTIONS, THE COURT SHOULD CONSIDER WHETHER THE INDIVIDUAL, BY HIS CONDUCT, HAS EXHIBITED AN ACTIVE EXPECTATION OF PRIVACY AND WHERE THE INDIVIDUAL'S EXPECTATION OF PRIVACY IS ONE THAT SOCIETY IS PREPARED TO RECOGNIZE AND RESPECT.

BOND V. U.S., 529 U.S. 337. HOWEVER, A REASONABLE EXPECTATION OF PRIVACY MAY BE CONSTITUTIONALLY PROTECTED EVEN THOUGH THE EXPECTATION IS OF LESS THAN TOTAL PRIVACY.

KATZ V. U.S. 389 U.S. 347. SIMPLY PUT, THE FOURTH AMENDMENT PROTECTS PEOPLE, NOT PLACES. KATZ @ 351. A PERSON DOES NOT LEAVE HIS PRIVACY BEHIND WHEN HE WALKS OUT HIS FRONT DOOR.

IN KATZ, THE COURT CLEARLY HEED THAT WHAT ONE SEEKS TO PRESERVE AS PRIVATE, EVEN IN AN AREA ACCESSIBLE TO THE PUBLIC, MAY BE CONSTITUTIONALLY PROTECTED. KATZ @ 357. WITH THE ASSUMPTION THAT VOLPICELLI HAD AN EXPECTATION OF PRIVACY, WHICH REASONABLE INDIVIDUALS WOULD RECOGNIZE

1 When confronted with someone using
2 partitions within his own legally parked
3 vehicle on private property, the question arises
4 of whether there was reasonable
5 probable cause for Agent to search
6 Volpeanu. The Supreme Court has traced
7 the line of constitutionally unreasonable
8 evidentiary searches at 'probable cause'.
9 ARIZONA V. GILES, 480 US 321, 329 (1987).

10 THE SAME HIGH COURT HAS HELD THAT THE
11 REASONABLENESS OF AN OFFICER'S SUSPICIONS
12 MUST BE MEASURED BY WHAT THE OFFICER(S)
13 KNEW BEFORE HE OR SHE CONDUCTED THE SEARCH.
14 FLORIDA V. J.L. 529 US 266, 271 (2000).

15 IN THIS CASE, THE COURT RECORD IS REPLET
16 WITH TESTIMONY AND SURVEILLANCE REPORTS
17 CLEARLY PURPORTING INNOCENT ACTIVITIES OF
18 Volpeanu OVER PROLONG PERIODS OF TIME
19 UP AND TO THE CONTROVERTED SEARCH ON
20 SEPTEMBER 25, 2001, (SEE ATTACHMENT I)

21 MOREOVER, THERE EXISTS AN INFINITE NUMBER
22 OF REASONABLE EXPLANATIONS, UNRELATED TO ANY
23 CRIMINAL BEHAVIOR, AS TO WHY Volpeanu
24 SOUGHT STAYING IN HIS VEHICLE.

25 COURTS HAVE CONCERNS ABOUT THE INCUMBRANCE
26 OF THE GOVERNMENT TOWARD USING WHATEVER
27
28

FACTS ARE PRESENT, NO MATTER HOW INNOCENT,
 AS INDICATOR OF SUSPICIOUS ACTIVITY. COURTS
 MUST LOOK AT THE TOTALITY OF THE
 CIRCUMSTANCES AND AN OFFICER OF THE
 GOVERNMENT MUST DO MORE THAN SIMPLY
 LABEL A BEHAVIOR SUSPICIOUS TO MAKE IT SO.
 THE GOVERNMENT MUST ALSO BE ABLE TO
 ARTICULATE WHY A PARTICULAR BEHAVIOR IS
 LIKELY INDICATIVE OF SOME MORE SINISTER
 ACTIVITY THAN MAY APPEAR AT FIRST GLANCE.
ORNEAS V U.S., 517 U.S. 695.

VOLPICELLI'S SURVEILLED ACTIVITIES DID NOT
 PURPORT CRIMINAL CONDUCT SO AS TO JUSTIFY
 THE GENERAL EXPLORATORY SEARCH CONDUCTED
 BY OFFICER AGEN SOLELY TO FIND EVIDENCE
 OF GUILT, A PRACTICE CONDEMNED BY FEDERAL
 LAW.

FURTHERMORE, OFFICER AGEN'S SEARCH DID NOT
 FALL WITHIN THE EXCUSION OF THE PLAIN VIEW
 DOCTRINE. TO JUSTIFY A WARRANTLESS SEARCH
 OF VOLPICELLI, OFFICER AGEN MUST HAVE
 BEEN LAWFULLY PRESENT TO PEER INTO VOLPICELLI'S
 VEHICLE AND IN BETWEEN PARTITIONS, AND THAT
 ANY DISCOVERY MADE BE INADVERTENT.

COURAGE V. NEW HAMPSHIRE. 403 U.S. 433, 440.

IN KATZ V. U.S., 439 U.S. 128 (1978), THE
 SUPREME COURT INTERPRETED KATZ TO HOLD
 THAT CAPACITY TO CURE THE PROTECTION OF THE
 FOURTH AMENDMENT DEPENDS NOT UPON A
 PROPERTY RIGHT IN THE INDIVIDUAL PLACE, BUT
 UPON WHETHER THE PERSON WHO CURES THE
 PROTECTION OF THE AMENDMENT HAS A REASONABLE
 EXPECTATION OF PRIVACY IN THE INVADED PLACE. Id.

VOLPICELLI'S CONDUCT TO EXCLUDE OTHERS WITH
 THE USE OF PARTITIONS IS NO DIFFERENT THAN
 A STATE SECURITY GUARD BEING CONFINED
 PRESENT TO ENTER A CHANGING AREA. ONCE
 THE INDIVIDUAL CROSSES THE SPACE DOWN,
 EVEN PARTIALLY, THE POINT VIEW DOORWAY IS
 NO LONGER VISIBLE TO DEFEND THAT INDIVIDUAL'S
 EXPECTATION OF PRIVACY.

HENCE, IT WAS DISINGENUOUS OF THE GOVERNMENT
 TO INVADGE VOLPICELLI'S MANIFESTED PRIVACY
 WITHIN HIS OWN LEGALLY PARKED VEHICLE.
 COURTS HAVE HELD THAT SUCH LAWLESS INVASIONS
 OF THE CONSTITUTIONAL RIGHTS OF CITIZENS
 PRECLUDE THE USE OF THE FRUITS OF SUCH ACTS,
 AND THE EXCLUSIONARY RULE COMPELS ALL
 SUCH EVIDENCE IN VIOLATION OF THE FOURTH
 AMENDMENT BE SUPPRESSED. REVERSE REQUESTED.

GROUND 2 B

COUNSEL WAS INEFFECTIVE IN NOT OBJECTING AND
FILING MOTIONS TO SUPPRESS OR DISMISS EVIDENCE
BASED ON AN ILLEGAL SEARCH RESULTING IN A
DENIAL OF VOLPICELLI'S RIGHTS UNDER THE FOURTH,
FIFTH, SIXTH AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION:

VOLPICELLI ASSERTS THAT COUNSEL WAS INEFFECTIVE
IN THAT COUNSEL FAILED TO EFFECTIVELY INVESTIGATE
THE CIRCUMSTANCES OF THE SEARCH ON SEPTEMBER
25, 2001, INCLUDING THE APPLICATION OF THE
FUNDAMENTAL PRINCIPLES OF THE FOURTH AMENDMENT
CASE LAW TO VOLPICELLI'S CASE, (WHICH SHOULD
HAVE BEEN APPARENT TO COUNSEL); AND THE
TIMELY FILING OF MOTIONS DURING THE
PROCEEDINGS TO SUPPRESS THE EVIDENCE OF SAID
SEARCH AND/OR DISMISSAL OF THE CHARGES
IN THEIR ENTIRETY.

AS EXPLAINED IN GROUND 2.A, THE RECORD
REFLECTS THAT THE SEARCH EXECUTED BY OFFICER
ALLEN ON SAID DATE WAS UNCONSTITUTIONAL
AND THERE IS NO INDICATION THAT A MOTION
TO SUPPRESS EVIDENCE RESULTING FROM HER
SEARCH WOULD HAVE BEEN FUTILE.

Ferrill J. Volpicelli
Pro Se Litigant

IN CONSIDERING whether something is
 "EXPOSED" to the public as that Term was
 USED IN KATZ, WE ASK NOT WHAT ANOTHER
 PERSON CAN PHYSICALLY AND MAY LAWFULLY DO.
 BUT RATHER WHAT A REASONABLE PERSON EXPECTS
 ANOTHER MIGHT LAWFULLY DO. SEE CALIFORNIA
V. GREENWOOD, 486 US 35, 40 (1988).

PROLONGED SURVEILLANCE REVEALS TYPES OF
 INFORMATION NOT REVEALED BY SHORT-TERM
 SURVEILLANCE, SUCH AS WHAT A PERSON DOES
 REPEATEDLY, WHAT HE DOES NOT DO, AND WHAT
 HE DOES ENSEMBLE. THE HIGHLY DETAILED
 SURVEILLANCE LOG REFERENCED IN THIS CASE
 CONSTITUTED TORTIOUS INVASION OF PRIVACY...
 WHEREIN THE STATE'S INVESTIGATIONS, ASSENT
 PROBABLE CAUSE, INSINUATED THEMSELVES
 INTO THE VERY FABRIC OF VOLPICELLI'S LIFE.
 A REASONABLE PERSON DOES NOT EXPECT
 ANYONE TO MONITOR AND RETAIN A RECORD
 OF EVERYTIME VOLPICELLI DRIVES HIS CAR,
 INCLUDING HIS ORIGIN, DESTINATION & WITH
 SUCH TIME NOTATIONS. HE EXPECTS SUCH
 MOVEMENTS TO REMAIN DISCONNECTED AND
 ANONYMOUS. NADER V GEN. MOTORS CORP.
 25 N.Y. 2d 560, 572 (1970).

1 COUNSEL COULD HAVE FURTHER ARGUED
 2 THAT THE PROLONGED SURVEILLANCE OF Volpicelli,
 3 OVER THE MONTHS OF SEPTEMBER AND OCTOBER,
 4 OF WHICH SEVEN (7) DAYS WERE OF
 5 INTEREST TO THE STATE'S CASE, REQUIRES
 6 A WARRANT. SEARCHES CONDUCTED WITHOUT
 7 A WARRANT ARE 'PER SE UNREASONABLE
 8 UNDER THE FOURTH AMENDMENT SUBJECT ONLY
 9 TO A FEW SPECIFICALLY ESTABLISHED AND WELL
 10 DELINEATED EXCEPTIONS. KATZ, 389 US 357.
 11 COUNSEL COULD HAVE ASSERTED THAT THE
 12 TOTALITY OF Volpicelli's MOVEMENTS OVER
 13 THE COURSE OF THE TWO (2) MONTHS —
 14 WAS NOT EXPOSED TO THE PUBLIC. FIRST,
 15 UNLIKE ONE'S MOVEMENTS DURING A
 16 SINGLE JOURNEY, THE WHOLE OF ONE'S
 17 MOVEMENTS OVER THE COURSE OF TWO (2) MONTHS
 18 IS NOT ACTUALLY EXPOSED TO THE PUBLIC
 19 BECAUSE THE LIKELIHOOD ANYONE WILL OBSERVE
 20 ANY OF Volpicelli's MOVEMENTS IS EFFECTIVELY
 21 NIL. SECOND, THE WHOLE OF ONE'S
 22 MOVEMENTS IS NOT EXPOSED CONSTRUCTIVELY
 23 EVEN THOUGH EACH INDIVIDUAL MOMENT IS
 24 EXPOSED, BECAUSE THE WHOLE REVEALS MORE —
 25 SOMETIMES A GREAT DEAL MORE — THAN
 26 DOES THE SUM OF ITS PARTS,
 27
 28

1 THE UNJUSTIFIABLE INCOMPETENCE OR DECISION
 2 NOT TO SEEK TO SUPPRESS THE EVIDENCE
 3 BASED ON A VIOLATION OF VOLPICELLI'S
 4 FOURTH AMENDMENT RIGHTS IS BEYOND THE
 5 REACH OF AN ORDINARY REASONABLE STRATEGY.
 6 VOLPICELLI HAS DEMONSTRATED THAT HE
 7 RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL
 8 AND THAT HE SUFFERED PREJUDICE, AS THE
 9 OUTCOME OF THIS CASE WOULD HAVE RESULTED
 10 IN EITHER AN ACQUITTAL OR DISMISSAL OF
 11 THE CHARGES AGAINST HIM ABSENT THE
 12 CONTROVERSIAL EVIDENCE OBTAINED BY OFFICER AGEN.
 13 Porter v. McCollum, 135 S.Ct. 447, 452 (2002).

14 Acas Street, 448 F.3d @ 705 (STATING THAT WHEN
 15 THE CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL
 16 ARE BASED UPON COUNSEL'S FAILURE TO PRESENT
 17 A MOTION TO SUPPRESS, THE COURT REQUIRED
 18 THAT A DEFENDANT PROVE THE MOTION MERITORIAL)
 19 (CITING U.S. v. Cieslowski, 410 F.3d 353, 360
 20 (7th Cir. 2005)).

21 FOR LESSONS SET FORTH IN BOTH GRAMOS,
 22 VOLPICELLI HAS MET HIS BURDEN OF PROOF,
 23 AND THE COURT SHOULD REVERSE VOLPICELLI'S
 24 CONVICTIONS.

GROUND 3

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO INVESTIGATE, INTERVIEW WITNESSES AND PROFFER A DEFENSE ON BEHALF OF VOLPICELLI, DENYING HIM THIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL GUARANTEED BY THE FIRST, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

VOLPICELLI PRESENTED A VIABLE DEFENSE TO COUNSEL DEMONSTRATING THE NEED TO SECURE MEDICAL RECORDS CONCERNING THE ALLEGED THAT HE TREATED IN THE PRIVACY OF HIS VEHICLE. VOLPICELLI WAS COMPELLED TO OBTAIN HIS OWN COPIES OF THE CRIMINAL MEDICAL RECORDS WHICH WERE EVENTUALLY MADE PART OF THE RECORD POST CONVICTION. SAID MEDICAL RECORDS CLEARLY PURPORT A REGIMENT OF MEDICATION BEING APPLIED TO THE EXACT AREA OF THE CROWN WHICH WAS OBSERVED BY OFFICER ALLEN. THE COURT RECORD IS REplete WITH DOCUMENTS INDICATING THAT NEITHER KADUC, ALLEN OR THE SUPPOSEDLY ASSIGNED

INVESTIGATOR IN THE CASE RESPONDED
 TO VOLPICELLI'S TELEPHONE AND WRITTEN
 INQUIRIES TO PRESENT SAID MEDICAL DEFENSE.
 THE ISSUE IS WHETHER THE COUNSEL'S
 FAILURE TO INVESTIGATE, INTERVIEW AND
 PROVIDE WITNESSES FOR PETRONEL VOLPICELLI'S
 MEDICAL DEFENSE PREVENTED COUNSEL FROM
 PUTTING FORTH ANY MEANINGFUL DEFENSE.
 A DEFENSE THAT WAS NOT BASED ON BARE
 OR NAKED CLAIMS AND DID NOT RELY
 SOLELY UPON THE PROSECUTOR'S FILE.

THOMAS V. LOCKHART, 738 F.2d 304, 308 (8th Cir 1984)

MOST SIGNIFICANTLY, HAD THE MEDICAL DEFENSE
 BEEN PRESENTED TO THE JURY, THERE WAS A
 REASONABLE OUTCOME LIKELY IN WHICH THE
 GROSS LEADERS COUNT WOULD HAVE BEEN
 DISMISSED OR AN ACCUSATION OF SOME.

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 Pro Se Litigant

GROUND 4

TRIAL COUNSEL FAILED TO PROTECT VOLPICELLI FROM ERRONEOUS CONVICTIONS BASED ON INSUFFICIENT EVIDENCE TO SUPPORT THE 'INTENT' AND 'PUBLIC VIEW' ELEMENTS OF SAID COUNTS, THEREBY DENYING VOLPICELLI OF A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL, AS GUARANTEED BY THE FIRST, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION,

VOLPICELLI ASSERTS THAT JURY INSTRUCTIONS 11, 13, 14 AND 20, IN CONTRADICTION WITH THE EVIDENCE ADDUCED AT TRIAL, EVINCE A DIFFERENT PERSPECTIVE AND CLEARLY DEMONSTRATE THAT SAID CRUCIAL ELEMENTS OF 'INTENT' AND 'PUBLIC VIEW' WERE NOT PROVEN BEYOND A REASONABLE DOUBT IN EACH OF THE OFFENSES.

COUNSEL FAILED TO ARGUE THAT JURY INSTRUCTION 11 PURPORTED 'WHAT A DEFENDANT DOES OR FAILS TO DO MAY INDICATE INTENT OR LACK OF INTENT TO COMMIT THE OFFENSE CHARGED'

COUNSEL FAILED TO ARGUE THAT JURY INSTRUCTION 14 PURPORTED 'THAT THE BURDEN RESTS UPON THE PROSECUTION TO ESTABLISH EVERY ELEMENT OF THE CRIME WITH WHICH THE DEFENDANT IS CHARGED.'

1 COUNSEL COULD HAVE ARGUED THAT A
 2 PUBLIC PLACE, RELATIVE TO THE CHARGES
 3 IN THIS CASE, WERE EXACTLY DEFINED BY
 4 THE NEW YORK COURT OF APPEALS IN
 5 PEACE V. McNAMARA, 78 N.Y. 2d 626 (1991)
 6 (FROM U.S. V. DOE, 884 F.2d 71, 80-82.
 7 THEREIN, THE COURT OF APPEALS FOUND THAT
 8 THE STATUTES PROHIBITING INDECENT EXPOSURE
 9 AND GROSS LEWDNESS WERE ENACTED TO PREVENT
 10 THE OPEN FLOUTING OF SOCIETAL CONVENTIONS,
 11 NOT TO PROHIBIT THE ACTS OF PERSONS WHO
 12 DESIRE PRIVACY AND WHO TAKE THE ACTS OF
 13 PERSONS WHO DESIRE PRIVACY AND WHO TAKE
 14 REASONABLE MEASURES TO SECURE IT.
 15 McNAMARA @ 793, IT IS IN THIS CONTEXT
 16 THAT THE McNAMARA COURT HELD THAT THE
 17 INTERIOR OF A PARKED VEHICLE AT A STATED
 18 ADDRESS IS NOT ITSELF A PUBLIC PLACE, BUT IT
 19 MAY BECOME ONE UNDER CERTAIN CIRCUMSTANCES
 20 INDICATING THAT THE CAR'S INTERIOR MAY BE
 21 VISIBLE TO A MEMBER OF THE PUBLIC PASSING BY...
 22 Id. @ 793. (SEE PAGE 3 # 25-28).
 23 COUNSEL COULD HAVE ARGUED THAT BUT
 24 LESS THAN COMPLETE PRIVACY IS NOT THE
 25 EQUIVALENT OF NO PRIVACY AT ALL. THAT THEN
 26
 27
 28

1 COUNSEL FAILED TO AGREE THAT JURY
 2 INSTRUCTION 13 PURPORTED THAT 'IN EVERY
 3 CRIME THERE MUST EXIST A UNION OR
 4 JOINT OPERATION OF ACT AND INTENT.
 5 FURTHER, COUNSEL FAILED TO AGREE THAT
 6 JURY INSTRUCTION 20 PURPORTED THAT 'THE
 7 REQUIRED CRIMINAL INTENT WAS USUALLY
 8 ESTABLISHED BY SOME ACTION IN WHICH A
 9 DEFENDANT DRAWS ATTENTION TO HIS EXPOSED
 10 CONDITION, OR BY A DISPLAY IN A PLACE
 11 SO PUBLIC THAT IT MUST BE PRESUMED IT
 12 WAS INTENDED TO BE SEEN BY OTHERS.'
 13 CERTAINLY, THERE IS SUFFICIENT EVIDENCE IN
 14 THE COURT RECORD DEMONSTRATING THAT
 15 THE USE OF PARTITIONS AND THE CONDUCT OF
 16 RELYSING ONESELF ON THE REAR SEAT OF
 17 ONE'S OWN VEHICLE, BEHIND HIGH BACK
 18 SEATS AND TINTED GLASS, IN SUCH A MANNER
 19 SO AS TO NOT BE VISIBLE, PORTEND A
 20 STATE OF MIND INDICATIVE OF CONCEALMENT.
 21 HERE, THE 'INTENT' ELEMENT IS QUESTIONABLE,
 22 LEAVING THE 'IN A PUBLIC PLACE' FACTOR
 23 TO CONSIDER. TO THIS, VOLPICELLI ASSENTS
 24 THAT HIS ACTIVITIES DID NOT OCCUR IN
 25 A PUBLIC PLACE FOR PURPOSES OF THE
 26 CONSPIRACY AND THE INSTANT CHARGES.

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Fourth Amendment protects limited privacy -
 which, after all, is the only kind people
 ordinarily know. Houses, offices, private
 automobiles and taxicabs are like
 windows exposing portions of their
 interiors, and the intrusion of police
 officers into these places may violate
 the Fourth Amendment. SMAYDA v. U.S.
 352 F.2d 251, 260 (9th Cir. 1965).

Most significantly, and relative to
 officer Allen's testimony, she testified
 that without deliberately looking into the
 vehicle, she could not see the defendant or
 what he was doing. (Tr. p. 66 / 19- p. 68 / 11).
 Hence, counsel could have emphasized that
 plain view from a passerby was not an
 issue, and that the Government had not
 met its burden as to the critical
 elements of 'intent' and 'public view'
 relative to both indecent exposure and/or
 gross lewdness.

As such, Volpicelli is entitled to a
 reversal of the convictions and a new
 trial with effective assistance of counsel.

Ferrill J. Volpicelli
 Pro Se Litigant

GROUND 5A

Volpicelli's proceedings were frustrated with the prosecution's Double Jeopardy Transgressions, thereby Denying Volpicelli of Due Process and Equal Protection as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Volpicelli contends that his convictions for both Counts I and II violate Double Jeopardy. The counts were multiplicitous, Count I was a lesser-included offense to that of Count II; and the convictions for both Counts I & II based on the same observed evidence of unlawful conduct show redundancy.

Regarding Jury instruction 16 specific to Count I (Indecent exposure).

As applicable to Count I, the elements of indecent exposure are that the Defendant, Ferrill Joseph Volpicelli, did:

1. ON OR ABOUT THE 25th DAY OF SEPTEMBER, 2007,
2. AT AND WITHIN THE COUNTY OF WASHOE, STATE OF NEVADA,
3. IN A PUBLIC PLACE, TO WIT, A PUBLIC PARKING LOT DURING DAYTIME HOURS,
4. MAKE AN OPEN AND INDECENT OR OBSCENE

exposure of his person to Patricia Anne Brown,

5. IN THAT THE DEFENDANT DID FLAUNTATE INSIDE A VEHICLE.

REGARDING OPEN AND GROSS LEWENESS, THE JURY INSTRUCTED WAS AS FOLLOWS.

JURY INSTRUCTION 17, AS APPLICABLE TO COUNT II, THE ELEMENTS OF OPEN OR GROSS LEWENESS ARE THAT THE DEFENDANT, FERRIC VOSEPH VOJPCIC, DID:

1. ON OR ABOUT THE 20TH DAY OF SEPTEMBER 2001,
2. AT OR WITHIN THE COUNTY OF WADSWORTH, STATE OF NEBRASKA
3. BY A PUBLIC PLACE; TO WIT, A PUBLIC PARKING LOT DURING DAYTIME HOURS,
4. COMMIT AN ACT OF LEWENESS

HENCE, THE OVERLAP OR INCLUSIVENESS OF THE ELEMENTS IS ABUNDANTLY CLEAR. THE DIFFERENCE BEING IN THAT JURY INSTRUCTION 16 CARRIES THE OBSERVATION OF FLAUNTATION, AND JURY INSTRUCTION 17 TRENDS THE OBSERVATION A LEWD ACT. BUT, MORE IMPORTANTLY, THE OBSERVABLE EVIDENCE WAS UNIFORM. THE STATE PROVIDED NO EVIDENCE REGARDING THE SEVENTEENTH THING OF WHEN COUNT II BEGAN AND ENDED, KNOWING WITH THAT OF COUNT II BEGINNING & ENDING.

IN CALDWELL V. STATE, 120 Nev. 638, 651-3 (2005), the Nevada Supreme Court addressed a similar situation in which both counts charged were mutually exclusive and concerned the same conduct based on a single occurrence and cannot stand. (Citing BRAUNSTEIN, 40 P3d 413, 414 (2002)).

Volpicelli further asserts that count I was independent of count II, and that count II could not have been executed without count I. Hence, count I was a lesser offense to that of count II. As such, the prosecution failed to address the Court with the fact that a defendant is entitled to an instruction on a lesser-included offense if the evidence would enable the jury reasonably to find him guilty of a lesser offense and to acquit him of the greater.

The Double Jeopardy clause prevents multiple punishment for the same conduct or crime. How many times must Volpicelli be punished? Could the State not also have charged him and punished him with DISORDERLY CONDUCT? How much is enough?

Based on the foregoing, count II should be reversed.

GROUND 50

COUNSEL WAS INEFFECTIVE IN FAILURE TO PROTECT VOLPICELLI FROM DOUBLE JEOPARDY TRANSGRESSIONS BY THE PROSECUTION, THEREBY DENYING VOLPICELLI HIS RIGHTS TO A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL AS SECURED BY THE FIRST, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

COUNSEL WAS INEFFECTIVE IN NOT MOVING TO STRIKE THE INDECENT EXPOSURE COUNT ON THE BASIS OF A DOUBLE JEOPARDY VIOLATION. COUNSEL COULD HAVE ARGUED THE REDUNDANT DOCTRINE, AS WELL AS THE LARGER DOCTRINE AT SENTENCING. COUNSEL COULD HAVE ARGUED THE LESSER-INCLUDED OFFENSE DOCTRINE AND INSISTED THE PROSECUTION TENDER JURY INSTRUCTIONS RELEVANT TO THE LESSER OFFENSE OF INDECENT EXPOSURE. FURTHER, THAT THE LESSER-INCLUDED OFFENSE CANNOT BE REFUSED ON THE GROUNDS THAT THE EVIDENCE CERTAINLY SHOWED GUILT ABOVE THE LESSER OFFENSE; AND THAT A DEFENDANT WAS NOT REQUIRED TO PRESENT A DEFENSE ON EVIDENCE CONSISTENT WITH OR SOME CULPABILITY FOR A LESSER-INCLUDED OFFENSE IN ORDER TO OBTAIN SUCH AN INSTRUCTION. ROSS V STATE, 140 P.3D 110 (2006)

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1 AS SUCH, COUNSEL'S REPRESENTATION FREE BEING
 2 THE STANDARD OF REASONABLENESS AND VOLUNTARINESS
 3 WAS PREJUDICED WITH MULTIPLE CONVICTIONS
 4 AND CUMULATIVE PUNISHMENT FOR A UNITARY ACT.
 5 AT THE VERY LEAST, COUNT I⁽¹⁾ OF INDECENT
 6 EXPOSURE SHOULD BE REVERSED.
 7
 8 /
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(1) ACTS CONSTITUTING INDECENT EXPOSURE WERE NECESSARY TO
 PROVE GROSS LEWENITY. SACCO V STATE, 784 P.2D 947, 949 (1982)

GROUND 6A.

Volpicelli was PREJUDICED AT SENTENCING WITH AN ERRONEOUS ENHANCEMENT BASED ON A PRIOR CONVICTION'S CONSTITUTIONALLY INFIRM PLEA CAUSING, DENYING HIM EQUAL PROTECTION AND DUE PROCESS GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND 6B.

COUNSEL WAS INEFFECTIVE AT SENTENCING IN NOT FEDERALIZING HIS ARGUMENTS OF THE PREJUDICIAL REVERSE OF THE COURT ON A PRIOR CONVICTION'S CONSTITUTIONALLY INFIRM PLEA CAUSING, DENYING Volpicelli EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FIRST, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Volpicelli asserts it is INFERREDLY PREJUDICIAL TO ~~ADMIT~~ A CONSTITUTIONALLY INFIRM PLEA AGAINST A DEFENDANT AT A SUBSEQUENT TRIAL ON A NEW OFFENSE. SIZEMORE V. DISTRICT COURT. 735 F.2d 204, 206 (1984). THE GOVERNING STANDARD AS TO WHETHER A PLEA OF GUILTY IS VOLUNTARY FOR PURPOSES

OF THE FEDERAL CONSTITUTION IS A QUESTION
OF FEDERAL LAW. PAULKE V. RACEY, 113 S Ct
517, 526 (KY 1992).

IT IS A CONSTITUTIONALLY PROTECTED RIGHT IN
QUESTION WHEN FIFTH AND SIXTH AMENDMENT
RIGHTS ARE WAIVED BY THE DEFENDANT BY PLEADING
GUILTY. ID. 524.

HENCE, THE REVIEWING COURT SHOULD COMB THE
RECORD FOR ANY ERROR PREJUDICIAL TO THE PETITIONER.
BOYKIN V. ALABAMA, 89 S Ct 1709, 1711 (1969).

IN THE BOYKIN CASE, THE COURT PROCLAIMED
THAT THE TRIAL COURT, WHEN ACCEPTING A PLEA,
MUST 'CANVASS THE MATTER WITH THE ACCUSED TO
MAKE SURE HE HAS A FULL UNDERSTANDING OF WHAT
THE PLEA CONNOTES AND OF ITS CONSEQUENCES.
SUPRA, SIZEMORE, @ 207.

IF A PLEA OF GUILTY IS MADE WITH A WRITTEN
AGREEMENT/WAIVER, THE AGREEMENT MUST BE IN
SUBSTANTIALLY THE FORM PRESCRIBED IN NRS 174.063.

KIDDER V. STATE, 234 P2d 254, 257. (NV)

IN THE INSTANT CASE, THE RECORD DEMONSTRATES
THAT THERE WAS NO WRITTEN WAIVER FOR PURPOSES
OF COMPENSATING ANY CANVASS DEFICIENCIES.

IN LOOKING AT THE PRIOR CONVICTION, IT ALSO
SHOWS THAT THE DISTRICT COURT FAILED TO ASK
THE PETITIONER HOW HE WISHED TO PLEA. (A.A. p36).

' A.A. REFERS TO DIRECT APPEAL DOCUMENTS OR ORIGINAL JUDGMENT
OF CONVICTION.

1 RELEVANT TO THAT ISSUE, PETITIONER SUBMITS THAT
 2 THERE HAS NEVER BEEN A DECISION BY THE NEVADA
 3 COURTS SPECIFIC TO WHETHER A DEFENDANT MUST
 4 AFFIRMATIVELY ENTER A GUILTY PLEA TO A CHARGE
 5 IN ORDER FOR IT TO BE CONSTITUTIONALLY VALID
 6 FOR PURPOSES OF CONVICTIONS (AA. 8-9).

7 EVEN THOUGH THE STATES ARE FREE TO PROVIDE
 8 SUCH PROCEDURES AS THEY CHOOSE, FOR PURPOSES
 9 OF ENTERING A PLEA, IT IS PARAMOUNT THEY DO
 10 NOT INFRINGE UPON GUARANTEES IN THE FEDERAL
 11 CONSTITUTION. BURGETT V. TEXAS, 88 S.Ct. 208, 261 (1967).

12 IN REVIEWING VALIDITY OF GUILTY PLEAS
 13 UNDERLYING PRIOR CONVICTIONS, THE COURT MAY
 14 NOT REACH THE QUESTION OF THEIR VALIDITY
 15 UNDER STATUTORY AND CASE LAW IN THE STATES
 16 IN WHICH THE PLEAS WERE TAKEN, AS THE
 17 RELEVANT INQUIRY FOR DUE PROCESS PURPOSES IS
 18 WHETHER THE CONVICTION USED TO SUPPORT GUILTY
 19 OR INCREASED PUNISHMENT IS CONSTITUTIONALLY
 20 INFIRM AND IN COMPLIANCE WITH STATE LAW IS NOT
 21 NECESSARILY EQUIVALENT TO SATISFACTION OF THE
 22 CONSTITUTIONAL REQUIREMENT. LACY V PEEKER, 775 P.2d 1, 4.
 23 NOW, THERE ARE CASES FROM OTHER STATES
 24 WHICH SPECIFICALLY ADDRESS THE ISSUE OF WHAT
 25 CONSTITUTES A GUILTY PLEA.

26 IN COMMONWEALTH V. NIKAS, 727 N.E.2d
 27 1166 (2000), THE SUPREME JUDICIAL COURT
 28

OF MASSACHUSETTS, MIDDLESEX, STATED AT P. 1168
 AS FOLLOWS: THERE ARE TWO CONSTITUTIONALLY
 PERMISSIVE WAYS TO ESTABLISH A DEFENDANT'S
 GUILT WITHOUT A TRIAL... A DEFENDANT MAY
 ADMIT HIS GUILT IN OPEN COURT.... OR, AS WAS
 THE CASE HERE, A DEFENDANT MAY MAKE A
 PLEA OF GUILTY ACCOMPANIED BY A CLAIM OF
 INNOCENCE IN ACCORDANCE WITH THE STANDARDS OF
NORTH CAROLINA V. ALFORD... (AA p.8).

IN DAVIS V. STATE, 675 N.E. 2d 1097 (1980)
 THE SUPREME COURT OF INDIANA, AT P. 1101,
 STATED AS FOLLOWS: AN INDIANA DEFENDANT
 MUST ADMIT THE OFFENSE TO WHICH HE IS PLEADING
 GUILTY. (AA p.8)

HENCE, IT IS CLEAR FROM BOTH OF THOSE DECISIONS
 THAT IN ORDER FOR A DEFENDANT TO PLEAD GUILTY,
 FROM A CONSTITUTIONALLY VALID PERSPECTIVE, THERE
 MUST BE AN AFFIRMATIVE ACT ON HIS PART,
 TO WIT; A PLEA TO THE CHARGE. (AA p.8)

IN ADDITION TO THE FOREGOING DEFECT IN THE
 TRIAL COURT'S CANVASS, THE COURT FAILED TO
 ADVISE PETITIONER OF HIS RIGHT TO SUBROENA
 WITNESSES. BUT OF PARTICULAR RELEVANCE, THERE
 WAS NO DISCUSSION CONCERNING POSSIBLE
 DEFENSES - A CONFLECT WHICH THE PETITIONER
 CITES AS AN ISSUE IN GRAMNO ~~5~~ OF THIS
 CASE, AS WELL AS NO DISCUSSION OF THE

RIGHT TO APPEAL. (AA p 3-6).

THE PETITIONER WAS NEVER ASKED IF HE COULD READ AND WRITE WELL ENOUGH TO UNDERSTAND THE PLEA AGREEMENT. THE PETITIONER WAS NEVER ASKED IF HE HAD ADEQUATE TIME TO CONSULT WITH HIS ATTORNEY. THE PETITIONER WAS NEVER ASKED IF HE WAS UNDER THE INFLUENCE OF ANY DRUGS, ALCOHOL OR MEDICATION AS HE STOOD THERE IN OPEN COURT ENTERING HIS PLEA.

AN INQUIRY BY THE TRIAL COURT INTO WHETHER THE DEFENDANT FULLY UNDERSTANDS THE RIGHTS HE IS WAIVING AND THE NATURE OF CHARGES AGAINST HIM IS OF UTMOST IMPORTANCE IN CONNECTION WITH CHARGES REQUIRING PROOF OF SPECIFIC INTENT. LACY V PEPPER, 775 P2d 1, 6. HEREIN, THE RECORD MUST HAVE DEMONSTRATED THE PETITIONER UNDERSTOOD ANY MENTAL STATE ELEMENT OF THE CRIME TO WHICH HE PLEA GUILTY ON THAT PRIOR. Id., @ 6.

THE TRIAL RECORD ON THE PRIOR CONVICTION IS VAGUE AT BEST, ON SO MANY ISSUES. A PETITIONER'S RESPONSE OF 'YES' TO THE COURT'S QUESTIONS WHETHER HE FULLY UNDERSTOOD THE NATURE OF THE OFFENSE THAT WAS INVOLVED, IS NOT, IN OUR VIEW, THE SUBSTANTIVE EQUIVALENT OF A MEANINGFUL UNDERSTANDING. - WATKINS V PEOPLE 605 P2d 834, 838 (CO. 1982). AND, PETITIONER MADE NO FORMAL STATEMENTS WHICH WOULD CONSTITUTE AN ADMISSION TO THE CRIME. WHITE V STATE, NV 670 P2d 577.

EVEN WHERE THE RECORD SHOWS DEFENSE
COUNSEL HAS GIVEN SOME EXPLANATION TO HIS
CLIENT OF THE COUNT TO WHICH THE PLEA OF
GUILTY IS TENDERED, WE HAVE HELD THAT THIS
SHOWING BY ITSELF DOES NOT CONSTITUTE THE
TYPE OF DEMONSTRATION SUFFICIENT TO JUSTIFY
THE CONCLUSION THAT THE DEFENDANT KNEW THE
CRITICAL ELEMENTS OF THE CHARGE WHEN THE
PLEA OF GUILTY WAS ENTERED. WATKINS V. PEOPLE,
Id. QUOTING PEOPLE V. MASON, 491 P2d 1383.

MOREOVER, A GUILTY PLEA MAY BE INVOLUNTARY
IN THE CONSTITUTIONAL SENSE EITHER BECAUSE
THE DEFENDANT DOES NOT UNDERSTAND THE NATURE
OF THE ELEMENTS OF THE OFFENSE, OR ALL THE
CONSTITUTIONAL PROTECTIONS WHICH HE IS WAIVING.
Id. QUOTING HENDERSON V. MORGAN, 96 Sct 2253, 2257.

AS THE U.S. SUPREME COURT STATED IN BOYKIN,
THE DISTRICT COURT JUDGE HAS A SOLEMN DUTY
TO PERSONALLY FULLY CANVASS A DEFENDANT PRIOR
TO ACCEPTING A PLEA. BOYKIN, @ 1759.

WHEN THE DISTRICT COURT JUDGE DISCHARGED
THAT FUNCTION, HE LEFT A RECORD ADEQUATE
FOR ANY REVIEW THAT MAY BE SOUGHT LATER.

SUPRA, BOYKIN - QUOTING GARNER V. LOUISIANA,
82 Sct. 248, 256.

IN THIS COURT'S REVIEW, FRCP 11 MANDATES
THAT JUDGES MAKE CERTAIN THAT DEFENDANTS
ENTERING GUILTY PLEAS UNDERSTAND THEY ARE

1 WAIVING SPECIFIC CONSTITUTIONAL RIGHTS.
2 FURTHER, IT REQUIRES JUDGES TO INFORM DEFENDANTS
3 ENTERING GUILTY PLEAS ABOUT THE NATURE OF THE
4 CHARGES AND THE MANDATORY MINIMUM AND
5 MAXIMUM POSSIBLE PENALTY, INCLUDING THE EFFECTS
6 OF ANY SPECIAL CONDITIONS OF PAROLE (PROBATION
7 TERMS... STATE v. FREESE, 13 P3d 442, 450 (DISSENTING)
8 ALTHOUGH THE PROCEDURE EMBODIED IN RULE 11
9 HAS NOT BEEN HELD TO BE CONSTITUTIONALLY
10 MANDATED, IT IS DESIGNED TO ASSIST THE DISTRICT
11 JUDGE IN MAKING THE CONSTITUTIONALLY REQUIRED
12 DETERMINATION THAT A DEFENDANT'S GUILTY PLEA
13 IS TRULY VOLUNTARY. Id. at 450.

14 IN THE CASE AT BAR, THE CANNVASS WAS
15 WHOLLY DEFICIENT TO MAKE THE CONSTITUTIONALLY
16 REQUIRED DETERMINATION THAT THE PETITIONER'S
17 PLEA WAS TRULY VOLUNTARY, KNOWING & INTELLIGENT.
18 DUE TO THE INADEQUACY OF THE PRIOR CONVICTION'S
19 SENTENCING HEARING, THE PETITIONER SUSTAINED
20 HIS INITIAL BURDEN OF MAKING A PRIMA
21 FACIE SHOWING THAT HIS PLEA OF GUILTY WAS
22 NOT UNDERSTANDABLY MADE IN A CONSTITUTIONAL
23 MANNER.

24 INsofar AS HARMLESS ERROR IS CONCERNED, THE
25 ADMISSION OF A PRIOR CRIMINAL CONVICTION,
26 WHICH WAS INTRODUCED FOR PURPOSES OF
27 ENHANCING PUNISHMENT, AND WHICH WAS
28

1 CONSTITUTIONALLY INFIRM BECAUSE OF PRESUMPTION
 2 THAT DEFENDANT WAS DENIED [CERTAIN PROSECUTOR
 3 GUARANTEES AT HIS 1983 SENTENCING] WAS
 4 INHERENTLY PREJUDICIAL... AND DID NOT RENDER
 5 CONSTITUTIONAL ERROR HARMLESS BEYOND A
 6 REASONABLE DOUBT. BURGESS V. TEXAS, 88 SCt.
 7 258, 262, (U.S. TX 1967).

8 WE CONCLUDE THAT PREJUDICE INTERFERES IN A
 9 FAILURE TO COMPLY... FOR NON COMPLIANCE
 10 DEPRIVES THE PETITIONER OF THE RULES PROSECUTOR
 11 SAFEGUARD THAT ARE DESIGNED TO FACILITATE A
 12 MORE ACCURATE DETERMINATION OF HIS PLEA.
 13 McCAULEY V. U.S., 89 SCt 1166, 1174, (JUL 1969).

14 FURTHERMORE, IF THE PETITIONER PRESENTS EVIDENCE
 15 WHICH REFUTES THE PRESUMPTION OF REGULARITY,
 16 THE BURDEN THEN FALLS TO THE STATE TO PROVE THAT
 17 THE UNDERLYING JUDGMENTS WERE ENTERED IN A
 18 MANNER WHICH DID, IN FACT, PROTECT ALL THE
 19 RIGHTS OF THE PETITIONER. A SILENT RECORD
 20 WILL NOT SUFFICE. DUNN V. SIMMONS, 877 F2d 1220, 1221
 21 (KY 1989).

22 A PRIMA FACIE SHOWING IN THE CONTEXT OF
 23 THIS CASE MEANS EVIDENCE WHICH, WHEN CONSIDERED
 24 IN A LIGHT MOST FAVORABLE TO THE PETITIONER
 25 WITH ALL THE REASONABLE INFERENCES DRAWN IN
 26 THIS FACTS, WILL PERMIT THE COURT TO CONCLUDE
 27 THAT THE PETITIONER'S PLEA OF GUILTY WAS
 28

UNDERSTANDABLY AND CONSTITUTIONALLY SOUND.

WATKINS V. PEOPCE, 655 P2d 834, 838.

IT IS FOR THIS REASON THAT WE HAVE URGED THE
THAT COURTS NOT TO SIMPLY RELY UPON A PETIT
MEMORANDUM, BUT TO ALSO CONDUCT A THOROUGH
CANVASS. HUDSON V. WARDEN, 22 P3d 1154, 1162
(Nev. 2001). AND, THAT GIVEN THE SPLIT OPINION
WITHIN THIS COURT ON MATTERS, AND GIVEN
THE VARIANCES IN APPROVED STATEWIDE, WE
SHOULD EXAMINE THE POSSIBILITY OF DEFERRING
A MANDATORY ORAL CANVASS WHICH IS THOROUGH
AND WOULD MINIMIZE UNCERTAINTIES IN THE
DELT PROCESS. Id C 1163. (CONCURRING OPINION).
AS SUCH, VOLPICELLI WAS PREJUDICED WHEN
THE DISTRICT COURT ERRED IN ITS RELIANCE
ON THE PRIOR CONVICTIONS' CONSTITUTIONALITY
INFORM PETIT CANVASS TO ENHANCE VOLPICELLI'S
SENTENCE, AND COUNSEL FACED TO EFFECTIVELY
ARGUE THE COMPELLING FEDERAL CONSTITUTIONAL
STANDARDS DEMONSTRATING THE ERROR AND
PREJUDICE.

HENCE, THE JUDGMENT OF CONVICTION SHOULD
BE REVERSED AND THE MATTER REMANDED TO
THE DISTRICT COURT FOR RESENTENCING ~~ASSET~~
THE PREJUDICIAL ENHANCEMENT.

GROUND 7

COUNSEL WAS INEFFECTIVE AT SENTENCING WHEN HE FAILED TO INVESTIGATE AND/OR PRESENT MITIGATIVE EVIDENCE IN SUPPORT OF A LESSER AVAILABLE SENTENCE; THUS DEPRIVING PETITIONER VOLPICELLI OF EFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

UNDER THE SIXTH AMENDMENT, A DEFENDANT HAS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

STRICKLAND V. WASHINGTON, 466 US 668, 691-92 (1984).

THE STRICKLAND ANALYSIS OF EFFECTIVE ASSISTANCE OF COUNSEL APPLIES TO BOTH THE GUILT AND PENALTY PHASES OF A TRIAL. Id. 696-97.

UNDER THIS RIGHT, A DEFENDANT CAN REASONABLY EXPECT THAT BEFORE HIS COUNSEL UNDERTAKES AN ACT, OR TO NOT ACT, HE OR SHE WILL MAKE A RATIONAL AND INFORMED DECISION OF STRATEGY AND TACTICS FOUNDED ON ADEQUATE INVESTIGATION AND PREPARATION. KIMMELMAN V. MORRISON, 477 US 365, 384 (1986).

VOLPICELLI MAINTAINS THAT HE WAS COMPELLED TO SECURE HIS OWN RECORD^①

① SEE ATTACHMENT 3) (VOLPICELLI'S STATEMENT SENT TO ATTORNEYS ALAN AND KADUC FOR A DEFENSE & INVESTIGATION - ALL TO NO AVAIL.

1 RECORDS FROM THIS PHYSICIAN AND WASHOE
 2 COUNTY SHERIFF'S OFFICE DUE TO COUNSEL'S
 3 FAILURE TO DO SO. SAID MEDICAL RECORDS
 4 AND TESTIMONY FROM AN ATTENDING PHYSICIAN
 5 AT THE SKIN CANCER AND DERMATOLOGY
 6 INSTITUTE WOULD HAVE BEEN CRITICAL TESTIMONY
 7 AT SENTENCING IN TERMS OF EXPLAINING
 8 WHY VOLPICELLI WAS IN THE CAR AND OBSERVED
 9 TREATING HIMSELF.

10
 11 MOREOVER, COUNSEL FAILED TO REQUEST A
 12 LESSER AVAILABLE SENTENCE SUCH AS PROBATION.
 13 IN FACT, COUNSEL WAS AT SUCH LOGGERS
 14 WITH VOLPICELLI AT THIS POINT IN THE COURT
 15 PROCEEDINGS, AND LIKE AS A RESULT OF ALL
 16 THE COMPLAINTS OF CONFLICT OF INTEREST ISSUES,
 17 COUNSEL MERELY STOOD SILENT AT SENTENCING
 18 WHILE THE PROSECUTION REQUESTED THE
 19 MAXIMUM AVAILABLE SENTENCE, INCLUDING
 20 OUTRAGEOUS FINES EXCEEDING \$10,000 (THE
 21 MAXIMUM ALLOWED BY STATUTE FOR BOTH COUNTS);
 22 OF WHICH MADE NO JUDICIAL OR PENALOGICAL
 23 SENSE IN VIEW OF PETITIONER'S INDIGENCY,
 24 MULTIPLE LIFE SENTENCES IN AN UNREPEATED
 25 CASE, AND THAT THE CRIMES PURPORTED BY
 26 PAROLE AND PROBATION WERE VICTIMLESS IN
 27 NATURE. (SEE ATTACHMENT 4) (PSI REPORT), (p. 47)
 28

1 THE RIGHT TO EFFECTIVE COUNSEL GUARANTEED BY
2 THE CONSTITUTION MEANS MORE THAN JUST THE
3 OPPORTUNITY TO BE PHYSICALLY ACCOMPANIED BY A
4 PERSON PERMITTED TO PRACTICE LAW AT THE PENALTY
5 PHASE OF CRIMINAL PROCEEDINGS. PATRASSO
6 V. NELSON, 121 F3d 297 (7th CIR. 1997).
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GROUND 8A

PETITIONER WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION DUE TO THE DISTRICT COURT'S DECISION TO ALLOW ACTUAL-CONFUGI-COURT APPOINTED COUNSEL TO REPRESENT DEFENDANT AT TRIAL, SENTENCING AND ON DIRECT APPEAL FROM THE ORIGINAL JUDGMENT OF CONVICTION.

GROUND 8B

PETITIONER WAS DENIED DUE PROCESS AND EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION DUE TO ACTUAL-CONFUGI-COURT APPOINTED COUNSEL'S DECISION TO REMOVE HIMSELF FROM REPRESENTING DEFENDANT AT TRIAL, SENTENCING AND ON DIRECT APPEAL FROM THE ORIGINAL JUDGMENT OF CONVICTION.

VOLPICELLI WAS REPRESENTED AT TRIAL, SENTENCING AND ON DIRECT APPEAL FROM THE ORIGINAL JUDGMENT OF CONVICTION BY ACTUAL-CONFUGI-COURT APPOINTED ATTORNEY JOHN

1 KADUC, ESQ. JOHN KADUC WAS A JUDGE
 2 IN 1993 FOR WASHOE COUNTY JUSTICE COURT.
 3 IN OR ABOUT APRIL OF 1993, FORMER JUDGE
 4 KADUC, IN HIS CAPACITY AS A JUSTICE COURT
 5 JUDGE, AUTHORIZED AN INVESTIGATION OF VOLPICELLI
 6 THROUGH NUMEROUS SEARCH WARRANTS IN
 7 CONJUNCTION WITH THE RENO POLICE DEPARTMENT
 8 AND THE CALIFORNIA DEPARTMENT OF JUSTICE
 9 RELEVANT TO THE SAME ACTIVITIES THAT
 10 INVESTIGATORS WERE SURVEILLING PETROSPER
 11 WHEN VOLPICELLI WAS OBSERVED IN HIS VEHICLE
 12 BY DETECTIVES IN THE INSTANT CASE.

13 IN THE MIDDLE OF THE INSTANT CASE'S COURT
 14 PROCEEDINGS, VOLPICELLI BECAME AWARE OF SAID
 15 CONFLICT OF INTEREST AND ACTED ACCORDINGLY
 16 BY FILING NO LESS THAN TWO (2) PLEADINGS SO
 17 AS TO BRING THE MATTER TO THE COURT'S ATTENTION;
 18 ALL TO NO AVAIL. SAID PLEADINGS ARE PART
 19 OF THE COURT RECORD AND INCLUDE MOTIONS,
 20 LETTERS TO THE JUDGE & AFFIDAVITS, ALL OF
 21 WHICH SURPRISE CLAIMS OF UNRESOLVED,
 22 ONGOING ISSUES CONCERNING THE COLLATERAL
 23 CONSEQUENCES OF SAID WARRANTS, SEIZED
 24 PROPERTY AND A FEDERAL CASE. (USDC 96-46-HDM-RAM)
 25 NEVADA SUPREME COURT RULE 162 (FORMER
 26
 27
 28

Ferrill J. Volpicelli
 Pro Se Litant

JUDGE OR ARBITRATOR) STIPULATES IN PERTINENT PART:

1. EXCEPT AS STATED IN SUBSECTION 4, A LAWYER SHALL NOT REPRESENT ANYONE IN CONNECTION WITH A MATTER IN WHICH THE LAWYER PARTICIPATED PERSONALLY AND SUBSTANTIALLY AS A JUDGE OR OTHER ADJUDICATIVE OFFICER, ARBITRATOR OR LAW CLERK TO SUCH PERSON, UNLESS ALL PARTIES TO THE PROCEEDINGS CONSENT AFTER DISCLOSURE.

THE UNITED STATES' COURTS HAVE ABIDED BY A SIMILAR RULE TO WIT:

18 USC 207 (a)(1) AND 5 C.F.R. 2637.201 (d), WHEREIN IT HAS BEEN HELD THAT A DEFENDANT MAY NOT BE REPRESENTED BY COUNSEL THAT HAS SUBSTANTIALLY PARTICIPATED IN PRIOR JUDICIAL PROCEEDINGS AND/OR INVESTIGATIONS AGAINST HIS CLIENT. SEE U.S. v MARTIN, 39 FS 2d 1333 (D. UTAH, 1999).

THE FACTS OF THE INSTANT CASE ARE OVER- WHELMINGLY SIMILAR TO MARTIN IN THAT THE NORTHERN NEVADA REPEAT OFFENDER PROGRAM (R.O.P.) HAD VOIPICELLI UNDER SURVEILLANCE AS A RESULT OF INVESTIGATIONS DATING BACK TO

1 1993 when former Judge Kaduc entered
 2 warrants against petitioner for the same
 3 same activities. Volpicelli's attempts to
 4 bring the matter of said conflict to the
 5 court's attention, even so far as filing
 6 motions for withdrawal of Counselor
 7 Kaduc due to the apparent conflicts
 8 affects on Counsel's performance; again, were
 9 all to no avail. The District Court
 10 failed to investigate or inquire sufficiently
 11 to resolve the conflict of interest and act
 12 at the detriment of the petitioner.
 13 Volpicelli need not show prejudice as a
 14 result of Counsel's conflict of interest, as
 15 prejudice is presumed. See Cuyler v. Sullivan,
 16 406 U.S. 335 (1970). Sullivan mandates a
 17 reversal when the trial court has
 18 failed to place a sufficient inquiry even
 19 though it knows or reasonably should
 20 have known the affects of such conflict.
 21 450 U.S. 272, n.18. See also Lickens v.
 22 Taylor, 535 U.S. ____ (2002).

23 The District Court was made aware of
 24 the affects of said conflict of interest,
 25 and Counsel knew of the conflict due to
 26
 27
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1 Volpicelli's extensive complaints to the
2 Court and Counsel, as evinced by the
3 Court Record. Volpicelli now respectfully
4 Requests a Reversal of the Conviction
5 Due to an Actual Conflict of Interest
6 and a New Trial.
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GROUND 9

Volpicelli was Deprived His First, Sixth AND
 Fourteenth Amendments to Due Process, Equal
 Protection, Effective Assistance of Counsel, AND
 A Fair Tribunal, DUE TO THE CUMULATIVE
 EFFECT OF ERRORS COMMITTED BY COUNSEL, THE
 PROSECUTOR, AND THE COURT, RESULTING IN A
 WRONGFUL CONVICTION AND PREJUDICIAL SENTENCES.

Volpicelli's CONVICTIONS AND SENTENCES ARE
 VIOLATED UNDER THE FEDERAL AND STATE
 CONSTITUTIONAL GUARANTEES OF DUE PROCESS,
 EQUAL PROTECTION, EFFECTIVE ASSISTANCE OF
 COUNSEL, AND A FAIR TRIBUNAL, DUE TO THE
 CUMULATIVE EFFECT OF ERRORS, AS PRESENTED
 HEREIN, SUCH AS THE PREJUDICIAL ADMITTANCE
 OF ILLEGALLY OBTAINED EVIDENCE, THE CUMULATIVE
 CONSEQUENCES OF DULCE TESTARDY ERRORS,
 AS WELL AS THE SYSTEMIC DEPRIVATION OF
 EFFECTIVE ASSISTANCE OF COUNSEL STEMMING
 FROM A CONFLICT OF INTEREST. SAID ERRORS
 ARE APLY PRESENTED IN THE AFOREMENTIONED
 GROUNDS, (1A, 1B, 2A, 2B, 3, 4, 5A, 5B, 6A, 6B, 7, 8A, 8B)
IN UNITED STATES V FIEDRICK, 78 F3d 1370,

Ferrill J. Volpicelli
 Pro Se Litigant

1381, (9th Cir. 1990), the Ninth Circuit Court of Appeals opined that:

IN SOME CASES, ALTHOUGH NO SINGLE TRIAL ERROR EXAMINED IN ISOLATION IS SUFFICIENTLY PREJUDICIAL TO WARRANT REVERSAL, THE CUMULATIVE EFFECT OF MULTIPLE ERRORS MAY STILL PREJUDICE A DEFENDANT. WHERE, AS HERE, THERE ARE A NUMBER OF ERRORS THROUGHOUT THE PROCEEDINGS, A BALKANIZED ISSUE-BY-ISSUE HARMLESS ERROR REVIEW IS FAR LESS EFFECTIVE THAN ANALYZING THE OVERALL EFFECT OF ALL THE ERRORS IN THE CONTEXT OF THE EVIDENCE INTRODUCED AT TRIAL AGAINST THE DEFENDANT, AS WELL AS THE INEFFECTIVENESS OF COUNSEL. IN SUCH CASES AS THIS, A DEFENDANT IS MORE LIKELY TO BE PREJUDICED BY THE EFFECT OF CUMULATIVE ERRORS.


ALTHOUGH INDIVIDUAL ERRORS BY COUNSEL, THE PROSECUTION AND THE COURT MAY NOT RISE TO THE LEVEL OF REVERSIBLE ERROR, THE CUMULATIVE EFFECT MAY NEVERTHELESS BE SO PREJUDICIAL AS TO REQUIRE REVERSAL. UNITED STATES V. NEOROCHE, 986 F.2d 1273 (9th Cir. 1993).

UNLESS AN AGGREGATE HARMLESSNESS DETERMINATION
 CAN BE MADE, CORRECTIVE ERROR WILL
 MANDATE REVERSAL, JUST AS SURELY AS WILL
 INDIVIDUALIZED ERROR THAT CANNOT BE
 CONSIDERED HARMLESS. UNITED STATES V RIVERA,
 900 F2d 1467, 1470 (CA 11 1990).

CONCLUSION

BASED ON THE FOREGOING GROUNDS IN SUPPORT
 OF SUBSTANTIVE TRANSGRESSIONS OF VOLPICELLI'S
 CONSTITUTIONAL RIGHTS TO A FAIR TRIAL
 AND EFFECTIVE ASSISTANCE OF COUNSEL, THIS
 COURT SHOULD GRANT VOLPICELLI RELIEF WITH
 EITHER A REVERSAL IN PART AS TO COUNT I
 OR II, OR BOTH COUNTS I AND II WITH
 A REMAND FOR A NEW TRIAL.

DATED this 12 DAY
 of March, 2014

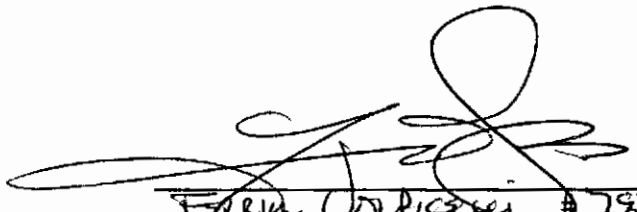

 FERRILL J. VOLPICELLI

DEFENDANT IN PARS

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Memorandum of Points & Authorities on Appeal to the below address(es) on this 8th day of March, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):


Wesley County
District Attorney
25 Court St
Leno, NV 89501


Felicia J. Williams # 78305
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Memorandum of Points & Authorities on Appeal filed in District Court Case No. CR02-0147 does not contain the social security number of any person.

Dated this 8th day of March, 2015.


Felicia J. Williams
Defendant In Pro Se

ATTACHMENT 1

ATTACHMENT 1

FERRILL VOLPICELLI #79565
LCC - 1200 PRISON RD
LOVELOCK, NV 89419

VOLPICELLI SURVEILLANCE LOG

TUESDAY SEPTEMBER 4, 2001

- 1040 Surveillance is initiated during Volpicelli's meeting w/Barbara Hunt at Federal P&P. Target parks his car on the east side of City Hall on Sinclair St.
- 1050 Target exits Federal P&P and walks to his car.
- 1115 Target drives a circuitous route while talking on a cell phone in the Wells Ave. area. He eventually drives to the Wal Mart on Northtowne Lane.
- 1130 Det. Armitage observes Volpicelli copying barcode information in the Sporting Goods section near the golf equipment. He appears to be copying the information on a small rectangular piece of paper. He only does this for about 2 minutes.
- 1135 Volpicelli leaves Wal Mart and drives west on McCarran.
- 1145 ****Volpicelli arrives at the Shopko parking lot at Mae Anne and McCarran. He changes his parking space 3 times but never enters a store. Volpicelli climbs into the rear of the vehicle and tries to set up some sort of partition. Vehicle is not running, as confirmed by Det Lodge, and it is approximately 90 degrees F outside. Target is in the rear of the vehicle for approx. 45 minutes. Target exits the vehicle from the passenger side without his shirt on. He combs his hair as he walks around to the drivers side door. Target drives away and goes east on I-80, S. on U.S. 395, and west on Plumb.**
- 1245 Target arrives at the Costco parking lot and parks between Costco and the sub shop on the south side of the lot. Goes into an unknown store.
- 1253 Leaves the lot after going to an unknown store. Travels west on Plumb and arrives at a counseling meeting on Casazza.
- 1400 Leaves his meeting and drives to the Postal Depot on California Ave. He apparently has a P.O. box at this location. After leaving he begins driving erratically, driving up and down alley's. We believe he may suspect that he's being followed so we terminate the surveillance.
- 1405 SURVEILLANCE TERMINATED

TUESDAY SEPTEMBER 11, 2001

- 1015 Initiate surveillance on Casazza while target is at his counseling meeting.

1423 Target leaves residence and is N/B on Lakeside, E/B Mt. Rose, N/B Holcomb to Sinclair and E/B Liberty. Arrives at Sigstad Inc.

1453 W/B on Liberty, W/B California, arrives at Hunter Lake School to pick up Logan.

1508 SURVEILLANCE TERMINATED.

- 1408 Gets in his car and drives to his residence at 2955 Lakeside Dr. #214.
- 1415 Arrives at residence and parks on the north end of the lot on the Lakeside Drive side of the complex.
- 1441 Gets back into the van and drives to the S/W side of the parking lot near the laundry room.
- 1450 Drives to Anderson Elementary School @ Hunter Lake and Mayberry where he presumably picks up his 10 year old son.
- 1455 SURVEILLANCE TERMINATED

TUESDAY SEPTEMBER 25, 2001

- 1015 Target arrives for his weekly counseling meeting on Casazza dressed in tan Dockers and a yellow short sleeve shirt. Target is driving the Mazda MPV. Surveillance is initiated.
- 1104 Leaves his meeting and goes to the Shoppers Square parking lot where he parks. He begins looking around.
- 1108 ****Target climbs into the rear area of his vehicle, as he has done on several occasions on prior dates, and sets up his "partition". We suspect he is once again masturbating in the rear of his vehicle.**
- 1125 Target gets out of the passenger side of his vehicle and walks around to the drivers side of the car. He starts playing around with something under the front driver's seat. Target then gets into his vehicle and leaves. While leaving he takes note of Det. Armitage's vehicle. Leaves S/B on Virginia, W/B on Brinkby and N/B on Lakeside where he arrives at his residence at 1135 hours.
- 1156 Target comes out of his residence and walks to his vehicle. He retrieves what appears to be some sort of window shade (possibly his masturbation partition) and a typewriter and goes back to his apartment.
- 1222 Travis Volpicelli arrives driving the rented Lincoln Navigator. He meets the target where they talk for awhile. Travis leaves and goes to the Nevada State Bank on Moana & Lakeside.
- 1236 Della and Armitage follow Travis as he arrives back at Reno High School. Meanwhile, our target leaves N/B on Lakeside. Della advises that Travis is apparently playing hooky and not going back to class. Target goes East on Plumb and North on Virginia. Target drives into the Shoppers Square parking lot and goes into the Ben Franklin door.

- 1055 Target leaves and drives S/B to Plumb, N on Arlington, W on California, W to McCarran, N to Mae Anne where he arrives at Shopko at Mae Anne and McCarran.
- 1110 Det.'s Mike Brown and Teasley follow him into Shopko and watches as he purchases misc. items such as paper towels, soap, a plastic wash basin, etc. Det. Lodge looks into his vehicle but finds nothing noteworthy.
- 1130 ****Target exits Shopko and places the purchased items in the back of his van. We are able to see the back and it does not appear to be full of any other items. Target moves his vehicle to another part of the parking lot in front of the Safeway. Target changes his parking spot several times and then climbs into the rear of the vehicle, puts up a partition and remains in the rear of his vehicle for approx. 20 minutes. We suspect he is masturbating in the rear of his vehicle.**
- 1150 Target leaves the parking lot and travels S/B on McCarran.
- 1200 Target arrives at Home Depot where he enters the store with what appears to be a yellow tool box. Det.'s Lodge and Mike Brown observe target return the tool box. He does not appear to have a credit card in his possession but has Master Card #5490 9901 6005 7541. Target signs the return receipt with the name STEVE CREEDONI, cell #530-3886.
- 1210 Det. Lodge advises that the target is walking up and down each isle of the store recording bar code numbers for \$30 and \$40 items on a piece of paper.
- 1231 Sgt. Della advises that Fraud Detectives are researching the number.
- 1255 Target exits H.D. w/pen and paper in hand and goes to his car. Target drives N/B on McCarran, E/B on I-80, S/B on Wells and E/B on Vassar.
- 1308 Pulls into driveway at 1060 Vassar. This is apparently the home of the ex-wife's parents.
- 1332 Target & a WF in her 20's (possibly Ashley Schilling) load the vehicle w/laundry and several boxes.
- 1345 Leaves W/B on Vassar.
- 1350 Turns around and goes back to the Vassar address.
- 1353 Leaves E/B on Vassar, S/B on Kietzke, W/B Plumb, S/B Virginia, W/B Moana, Makes a U-turn and goes E/B Moana, Pulls into Independence Square on Moana.
- 1405 Goes into an unknown business. Moves car and then goes into and unknown 2nd business.

1129 Target carries a few boxes into his residence.

1215 SURVEILLANCE TERMINATED

THURSDAY SEPTEMBER 27, 2001

0800 Surveillance initiated at his residence. Target takes Logan to the skateboard park before school.

0900 Drops Logan off at school then drives very slowly W/B on Mayberry then N/B on McCarran. He pulls into a convenience store on McCarran & I-80 and then drives to the Shopko parking lot at 0910 hours.

0910 Drives around the parking lot for several minutes.

0915 Target goes into Shopko where he uses a credit card to purchase personal items (kids Neat Squeeze and a Styling Kit for \$12.85). He uses VISA credit card #4833 4900 2290 1670.

0935 Drives across the street to the Albertson's. He puts his partition up and climbs into the back of the vehicle. Target is once again masturbating.

1000 Target finishes his act and as he leaves the lot, he deposit's what appears to be a wad of paper towels in a trash can. Det. Phay collects the paper towels and advises it was the only thing in the trash can and that it appears to have a wet substance on it. It is later booked by Det. Phay.

1005 Target drives E/B I-80, S/B 395 and W/B Moana Lane. Target goes into the Smith's Food Store and buys a bagel. Target then drives home.

1030 SURVEILLANCE TERMINATED

FRIDAY SEPTEMBER 28, 2001

1130 Det. Mike Brown calls me at home and advises that he is at the North Towne Lane Home Depot returning items. I call Sgt. Della and respond. Det Lodge joins us.

1145 I learn that he returned a shower head type item. He had a receipt and received cash back.

1155 Returns approx. \$600 worth of items at Office Depot across the street from H.D.

1215 Returns 2 Lego type games at Toys R' Us. Has a receipt and gets cash back.

1520 SURVEILLANCE TERMINATED

WEDNESDAY SEPTEMBER 26, 2001

0545 Surveillance Initiated

0600 Target drives to European Fitness where he apparently works out.

0726 Target leaves fitness center and drives home.

0808 Target leaves residence w/Logan Volpicelli. Vehicle is loaded with a lot of big boxes and his partition. Target drives to Raley's on Mayberry and then drives to the skateboard park at Idlewild Park. Target then drops his son off at Hunter Lake School at 0855 hours.

Target drives N/B Keystone and E/B I-80. Arrives at Aussie Storage in Sparks where he subsequently takes some boxes into the storage unit (#B-114).

0920 Target leaves storage unit and pulls into the Windsor parking lot where he subsequently goes into the I-Hop restaurant.

0925 Target leaves I-Hop and drives to Sierra Sid's. Target then leaves and goes to the Iron Horse Shopping Center in Sparks where he uses the payphone next to the Great Basin Credit Union. He then parks in front of the Target store where he is in the rear of his vehicle for quite some time most likely masturbating once again. He then drives over to the Albertson's parking lot.

1010 Target drives across the street and parks in front of the Mervyn's. He does not leave the vehicle and Det. P.J. Brown advises he has once again climbed into the back seat of his vehicle and is most likely masturbating again.

1027 Drives back to parking lot at Apollo Loco and uses the payphone.

1038 Drives W/B on Prater and pulls into the Taco Bell across the street. Walks around his car and fiddles with something inside the passenger side door. Travels W on Prater, N on Pyramid, W on Oddie.

1051 Target is briefly lost but soon picked up by Det. Mike Brown S/B on El Rancho. Target travels W/B I-80, S/B 395 at 1055 hours.

1101 Target exits at Plumb Lane and goes into the Costco parking lot. Target goes inside and looks at bicycles and has lunch.

1119 Leaves Costco lot. S/B Kietzke, W/B Gentry and arrives home at 1125 hours.

1232 Goes to Wal Mart south and copies barcode and price information in the bicycle section.

1330 SURVEILLANCE TERMINATED.

TUESDAY OCTOBER 2, 2001

1010 Initiated Surveillance on Cassaza.

1050 Volpicelli exits his meeting and drives N/B Kirman, E/B Vassar, N/B Kietzke and stopped at the Smart & Final.

1110 S/B Kietzke, W/B Mill, W/B Ryland, S/B Sinclair, parked on Stewart St. and went into the Federal Building at 1122 hrs. Has a box of furniture in the back seat. Notepad on the front seat w/phone number "for rest" 831-3258.

1126 In vehicle, E/B Sinclair, S/B on Holcomb, E/B Vassar, S/B Kietzke.

1135 E/B Plumb from Kietzke, S/B Harvard and pulled into the Costco parking lot where he parked 3 spaces away from the front door, set up his "partition" and climbed into the rear of his vehicle where he is apparently masturbating once again.

1200 W/B on Apple, N/B Kirman, W/B Plumb Ln., S/B Virginia, W/B Hillcrest, and he pulled into the BXI business.

1213 Exits and goes W/B Hillcrest then drove back to his residence.

1305 Target exits residence and drives to his P.O. Box at 316 California Ave. Picks up a lot of mail.

1322 Departs and travels E/B California Ave., E/B Ryland, S/B Wells, cut over to Virginia and went S/B Virginia, W/B Brinkby at arrived home at 1332 hours.

1340 Goes to the Bank of the West on Kietzke Lane.

1349 Goes to the Albertson's parking lot across the street. Goes inside.

1355 W/B McCarran, N/B Lakeside and gets home at 1400 hrs.

1409 I notice that Chanel Volpicelli's blue Ford Explorer, which Travis drives, is on scene. I also call Budget Rent-A-Car and they tell me that Volpicelli turned in the Lincoln Navigator on 9-29-01 and got a white Ford F-150 truck bearing NV. 384-LCV. It is rented until 10-15-01.

- Det. Lodge follows him inside where he advises that the target talks to a cellular phone man and then buys a muffin @ My Favorite Muffin.
- 1245 Target leaves and goes N/B on Wells. Drives to Cordone Avenue where he apparently has a P&P meeting with Mary Isbister.
- 1340 Target leaves the meeting and goes W/B on Vassar.
- 1343 Pulls into the lot of the U.S. Bank at Vassar and Wells and goes inside. Note: We later find out that he takes a loan application and tells employees that he wants to put \$14,000 down on a car for his daughter.
- 1348 Leaves the bank. Goes North on Wells and uses the pay phone at 7-11 on Wells.
- 1357 N/B on Wells. Drives to the YWCA parking lot at Saddler and Valley and goes inside. He has two daughters (Ashley & Chanel) that work there.
- 1403 Target leaves the YWCA in a 1997 light blue Ford Explorer bearing CA. 4TCL040. Vehicle is registered to Chanel and Ferrill Volpicelli at a Truckee, CA. address.
- 1410 Travels W/B I-80 and drives very erratically. He ultimately ends up at a row of businesses to the rear of Bully's on Mae Anne and Sierra Highlands. There is a Christian Fellowship there, an accountant and a dentist, Dr. Payne.
- 1425 Leaves the business and drives to the Safeway parking lot on Mae Anne. He moves his vehicle several times while looking around and ultimately parks backed into a space.
- 1445 Det. Wygnanski relates that Volpicelli appears to be undressing inside of his vehicle. Det Wygnanaski then relates that he can see Volpicelli bouncing up and down inside of his vehicle and he can see the vehicle shaking as well. He believes that Volpicelli is masturbating. We drop Det. P.J. Brown off in the lot near Volpicelli's vehicle. As she walks by the vehicle and looks inside she sees Volpicelli put his hands on the partition he has set up and pulls it down to get a look at her. Brown then walks past again and sees that Volpicelli is lying in the back seat, has his pants pulled down and underwear pulled off of his hips to his mid-thigh area. Volpicelli is rapidly moving his hand in an up and down motion in his crotch obviously masturbating. Volpicelli sees Det. Brown and immediately ceases his action and begins to get dressed. He then drives away S/B at McCarran, E/B on Mayberry, N/B on River Run, N/B on Riverberry, E/B Idlewild, S/B Hunter Lake.
- 1456 He parks in the Raley's parking lot, walks to the school to pick up his 9 year old son, Logan, walks back to the Raley's and uses the pay phone. He then leaves and drives back to his residence using Hunter Lake, Webster, Skyline, Arlington, Urban, Plumas and then Brinkby to his residence.

ATTACHMENT 2

ATTACHMENT 2

FERRILL VOLPICELLI #79565
LCC - 1200 PRISON RD
LOVELOCK, NV 89419

DA #213988

RPD RP01-213180
RP01-217923

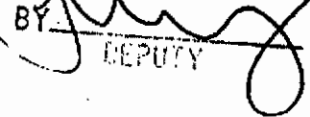
CODE 1800

Richard A. Gammick
#001510P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

FILED

2003 FEB 21 PM 3:00

RONALD L. LEBRON, JR.

BY  DEPUTY

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR02-0147

FERRILL JOSEPH VOLPICELLI,

Dept. No. 9

Defendant.

AMENDED INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that FERRILL JOSEPH VOLPICELLI, the defendant above named, has committed the crimes of:

COUNT I. INDECENT EXPOSURE, a violation of NRS 201.220, a felony, (F570) in the manner following:

That the said defendant on or between the 25th day of September A.D. 2001, and the 27th day of September A.D. 2001, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully and

1 unlawfully on one or more occasions make an open and indecent or
2 obscene exposure of his person to Detective PATRICIA BROWN and/or
3 the public at large, in a public parking lot during daytime
4 hours, located at 10500 North McCarran Boulevard, and/or 5150 Mae
5 Anne Boulevard, Reno, County of Washoe, State of Nevada, in that
6 the said defendant did masturbate inside a vehicle, after having
7 been previously convicted of Indecent Exposure on November 22,
8 1984, for an offense which occurred on April 15, 1983, in Sparks,
9 Nevada.

10 COUNT II. OPEN OR GROSS LEWDNESS, a violation of NRS
11 201.210, a felony, (F755) in the manner following:

12 That the said defendant on or between the 25th day of
13 September A.D. 2001, and the 27th day of September A.D. 2001, or
14 thereabout, and before the filing of this Information, at and
15 within the County of Washoe, State of Nevada, did willfully and
16 unlawfully on one or more occasions commit an act of open or
17 gross lewdness in a public parking lot during daytime hours,
18 located at 10500 North McCarran Boulevard, AND/OR 5150 Mae Anne
19 Boulevard, Reno, Washoe County, Nevada, in that the said
20 defendant did masturbate inside a vehicle, after having been
21 previously convicted of Indecent Exposure on November 22, 1984,
22 for an offense which occurred on April 15, 1983, in Sparks,
23 Nevada.

24 ///

25 ///

26 ///

1 All of which is contrary to the form of the Statute in
2 such case made and provided, and against the peace and dignity of
3 the State of Nevada.

4 RICHARD A. GAMMICK
5 District Attorney
6 Washoe County, Nevada

7 By: 

8 SEAN B. SULLIVAN

9 7534

10 Deputy District Attorney
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ATTACHMENT 3

ATTACHMENT 3

FERRILL VOLPICELLI #79565
LCC - 1200 PRISON RD
LOVELOCK, NV 89419

KENNY C. GUINN
Governor

DAVE KIECKBUSCH
Acting Director

DISTRICT OFFICES

10 STATE STREET
CARSON CITY, NEVADA 89501
(775) 688-1000

CAMPOS BUILDING
100 E. BONANZA ROAD
CARSON CITY, NEVADA 89101
(702) 486-3001

10 E. HAWK STREET
CARSON CITY, NEVADA 89501
(775) 738-4088

118 E. LONG STREET
CARSON CITY, NEVADA 89701
(775) 887-5045



PAROLE AND PROBATION

1445 Hot Springs Road, Suite 104
Carson City, Nevada 89706
Telephone (775) 687-5040 Fax (775) 687-5402
www.ps.state.nv.us

Presentence Report
November 25, 2003

The Honorable James Hardesty
Department IX
2nd Judicial District

FILED

DEC 03 2003

RONALD A. LONGTON, JR., CLERK
By: *[Signature]*
DEPUTY

Prosecutor: Tammy Riggs

PSI #: 134346

Defense Attorney: John Kadlic, appointed {322-7099}

I. Case Information:

Defendant: Ferrill Joseph Volpicelli

Date of Birth: 12/30/55

SS #: ~~000-00-0000~~

Aliases: Ferrill Joseph Colpicelu, Ferrance Joseph
Bolpicelli, Ferrill Wolpicelli

Address: 5733 Capeswood Dr., Rancho Palos
Verdes, CA 90275

Phone: 310-373-3471

Driver's License: n/A

State:

Status:

POB: Syracuse, N.Y.

Case #: CR02-0147

DA #: 213988

PCN: 81788376 (Count I), 81625263 (Count II)

P&P Bin #: 21073

FBI #: 735522N7

SID: NV01351650

US Citizen: Yes

Alien Registration #: N/A

Sex Offender Tier Level: Pending

II. Charge Information:

Offense: Count I: Indecent Exposure (F)

NRS: 201.220 **Category:** D

NOC Code: 00188

Penalty: 1 to 4 years, and may be fined NTE \$5,000

Offense: Count II: Open or Gross Lewdness (F)

NRS: 201.210 **Category:** D

NOC Code: 00186

Penalty: 1 to 4 years, and may be fined NTE \$5,000

Convicted: 7/10/03 by Jury

Sentencing Set: 12/5/03

IX. Plea Negotiations:

N/A

X. Custody Status/Credit For Time Served:

Custody Status: Washoe County Jail

CTS: 10/18/01 to 4/29/03 = 0; NV Parolee
4/29/03 to 12/5/03 = 221 daysXI. Aggravating / Mitigating Factors:A. Aggravating Factors:

1. Significant criminal history
2. Failed parole
3. Federal supervision revocation pending
4. Subsequent conviction
5. Pending case

B. Mitigating Factors:

1. Victimless crime

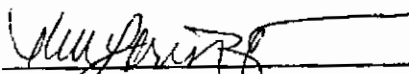
XII. Recommendations:

1. \$25.00 AAF
2. \$1000 Attorney fee
3. \$150 DNA Fee/Genetic Marker Testing
4. \$800 Psychosexual fee
5. **Count I:** 12 to 36 months NDOC
6. **Count II:** 12 to 36 months NDOC *concurrent* to Count I.

RESPECTFULLY SUBMITTED,

AMY WRIGHT, CHIEF

APPROVED:


JO EWALD #338
SPECIALIST IV
TROY DILLARD #456
UNIT MANAGER

je/cl

ATTACHMENT 4

Ferrill Volpicelli

79565

Lovelock Correctional Center

1200 Prison Road

Lovelock, NV 89419

ATTACHMENT 4

Skin Cancer & Dermatology Institute

Bret S. Blackhart, M.D.

Kevin L. Kiene, M.D.

Dan E. Rowe, M.D.

Anthony E. Albregts, M.D.

Kimberly A. Kolar, M.D.

890 Mill Street, Ste. 400
Reno, NV 89502
(775) 324-0699

75 Pringle Way, Ste 509
Reno, NV 89502
(775) 323-2135

1177 N. Division Street, Ste. 2
Carson City, NV 89703
(775) 882-8777

1520 Virginia Ranch Rd.
Gardnerville, NV 89410
(800) 784-0422

212 Elk Point Dr., Ste. 200
Zephyr Cove, NV 89448
(800) 784-0422

801 E. Williams St., Ste 2208
Fallon, NV 89406
(800) 784-0422

152 A. Pioneer Lane
Bishop, CA 93514
(800) 784-0422

185 Sierra Park Rd.
Mammoth Lakes, CA 93546
(800) 784-0422

RELEASE OF RECORDS FROM SCDI

FROM:

Dr. Standlee
SCDI Doctor's Name

RE:

FERRILL J. VOLPICELLI
Patient's Name

12-30-55
Date of Birth

[Signature]
Patient's Signature

10-10-02
Date

Please release my medical records to the Skin Cancer and Dermatology Institute (SCDI) to the following address:

FERRILL VOLPICELLI
~~Doctor's Name~~

BOX 607
Address

C
Address

CARSON CITY NV 89702
City State, Zip

Thank you.

TACK ALAN ESQ
360 W. LIBERTY
RENO, NV 89509
775-7864211

V5. 819

STATEMENT

That on 9/25/01, the defendant drove his daughter's Ford Explorer to Crawford Insurance Adjuster's office to resolve an insurance claim. That unbeknownst to the defendant, he was under surveillance by ROP. That on all other occasions of surveillance referenced in the police reports, the defendant drove his brother's Mazda van. That at approximately 2:30pm in the afternoon on 9/25/01, the defendant left Crawford Adjuster's office feeling extreme discomfort due to his recurring skin condition. That the defendant's medical records will show he has waged a battle with skin rashes and infections typically exacerbated by perspiration in the hot summer months. That the defendant has sought medical attention for this matter with Dr. Standlee, a Reno dermatologist, as well as during his incarceration at the facility's infirmary. That in the past, the defendant was prescribed a treatment regime to include the use of topical medications in conjunction with other remedies. That to relieve his conditions, the defendant dries the areas with either powder, tissue or clothing and then applies ointment or cream upwards of 3X daily. That on that particular afternoon of 9/25/01, the defendant immediately pulled into the parking lot across the street from Crawford Adjusters at 500 Mae Anne to tend to his situation. That the defendant diligently sought to park AWAY from the store frontage and backed into a spot where vehicles were sparsely populated. That the defendant was pressed for time as he had to pick up his son twenty minutes later, (approx. 2:50pm) at Hunter Lake school, clear on the other side of town. That the defendant hurriedly hopped into the back seat of the TWO door Explorer, and rummaged frantically for an article to clean and dry his sweaty lower extremities. That the defendant gathered make shift partitions and suspended them in the front windshield and along the passenger side sport window facing the store front. That the defendant removed both his yellow Polo shirt and T-shirt. That the defendant immediately returned the yellow Polo shirt to his person with the intent to use the T-shirt for drying the infected areas of his groin and rectal areas. That prior to applying the ointment for relief, and just as the defendant was about to apply the medication, a woman was observed passing in front of the vehicle; seemingly en route to her vehicle a few spaces away. That as she passed, the defendant resumed with laying down on his left side on the backseat COMPLETELY OUT OF SIGHT FROM PUBLIC VIEW. That his pants were unbuttoned and lowered sufficiently to continue with the process. That within the ensuing minute, the woman surprisingly, and purposefully, had circled back around the front and along side the passenger side of the defendant's car. That even though she continued walking, and despite the partitions

n

for privacy, the high bucket seats, and the reclined position of the defendant, she still managed to make an effort to peer in for a second at the defendant. That the woman's statement of the defendant's position on the back seat, coupled with her relatively limited view, could leave considerable doubt as to the defendant's true actions. That the defendant was startled, embarrassed and felt violated for the woman's overt intention to surreptitiously seek out and observe the defendant while he discreetly tended with his medical condition. That the defendant immediately regrouped by sitting up, buttoning his pants, and removing the partitions. That within a minute of being violated, the defendant left the parking lot in frustration on a ten minute ride to pick up his son. That the defendant never felt that there was any wrong doing or that he violated any laws. That the defendant still wonders to this day what the true motives were of this determined undercover detective.

Exhibits

The T-shirt found in the Explorer which tested negative for any semen.

A letter to Dr. Standlee requesting documentation which will substantiate defendant's medical ailment. ie. medical records.

Washoe County Sheriff's Office lab results confirming negative presence of semen on the T-shirt and anywhere within the interior of the Ford Explorer.

Photos of the Explorer illustrating TWO doors, possessing tinted windows, and that interior having high bucket seats.

DISCUSSION

Probably the first issue to contend with concerns the Jury's thoughts as to why I was under scrutiny in the first place. Without the mention of ROP, along with the other surveillances being excluded because they deal with the Mazda van, the detective is going to appear as an overzealous investigator. Or, the Jury will likely believe something is awry and that all the details of the case are not being revealed. This matter has to be dealt with delicately. Next, I'd like to draw attention to detective Brown's conflicting statement in her police report. Specifically, this deals with her position walking along the passenger side of the Explorer relative to her limited view of the interior of the vehicle. It also states that she never stopped for any length of time to make absolutely sure of

her interpretation of the defendant's actions. After all, due to the tinted windows, the high bucket seats and my implementation of partitions, coupled with my discreet position on the back seat, the detective's split-second glimpse of my person could not place her in a position to accurately view me or determine my actions. Since I can't demonstrate this scenario at trial, another individual could readily illustrate the following. If I was laying down on my left side on the back seat, with my left leg extending outward from the seat, and my right leg was such that my knee was facing upwards, then with my pants lowered to just above my knees, ONLY my posterior, which was shrouded by my white undershorts, could be revealed relative to her angle of view. This, combined with the other factors hindering her glimpse of my person would likely cast doubt on the detective's interpretation of the incident. The exhibits of my medical records will substantiate my medical condition and that, just possibly, the motion the detective interpreted as masturbation could have been the mere process of tending to my medical situation in the privacy of my vehicle.

CHRONOLOGY OF EVENTS

9/25/01 - SURVEILLED INCIDENT - North Reno
 10/17/01 - PAROLE VIOLATION ARREST - South Reno.
 2/6/02 - CHARGED IN CR02-0147 (CRIME II) - WCSO
 12/31/01 - RETURNED TO NDC - CARSON CITY
 10/02 - 'STATEMENT' TYPED AT NDC - CARSON CITY
 10/02 - 'STATEMENT' SENT TO ATTORNEYS - RENO.
 11/02 - VALUENI REQUESTS MEDICAL RECORDS - RENO.
 7/0/03 - TRIAL CR02-0147 - WCSO
 12/12/03 - SENTENCED CR02-0147 - WCSO

COUNSEL WAS MADE AWARE OF MY
 DEFENSE AND HAD RECEIVED MEDICAL RECORDS
 WELL IN ADVANCE OF TRIAL.

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67563
District Court Case No. CR020147

9

NOTICE TO TRANSMIT REQUIRED DOCUMENT

TO: Jacqueline Bryant, Washoe District Court Clerk ✓

This appeal was docketed in the Supreme Court pursuant to the 1996 amendments to the Nevada Rules of Appellate Procedure. The copies of the notice of appeal transmitted to the Supreme Court of Nevada were not accompanied by the document(s) indicated below:

Judgment of Conviction filed on 12/12/03.

Please forward a certified copy of the document to the Supreme Court Clerk's Office within 10 days of the date of this notice. If your office is unable to comply with this request, please provide this office with a written explanation stating why you cannot transmit the document.

DATE: March 20, 2015

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll
Deputy Clerk

Notification List

Electronic

Washoe County District Attorney \ Terrence P. McCarthy
Attorney General/Carson City \ Adam Paul Laxalt, Attorney General

Paper

Ferrill Joseph Volpicelli

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-31 12:46:05.913.
JOHN KADLIC, ESQ. - Notification received on 2015-03-31 12:46:05.555.
TAMMY RIGGS, ESQ. - Notification received on 2015-03-31 12:46:05.82.
KATHERINE LYON, ESQ. - Notification received on 2015-03-31 12:46:05.882.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-31 12:46:05.851.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-31-2015:12:44:56

Clerk Accepted:

03-31-2015:12:45:34

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Court Notice

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

**FERRILL JOSEPH VOLPICELLI,
Petitioner,**

Case No. CR02-0147

Vs,

Dept. No. 9

**THE STATE OF NEVADA,
Respondent.**

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 1st day of April, 2015, I electronically filed to the Supreme Court the Judgment filed December 12, 2003.

The Judgment is transmitted pursuant to the Supreme Court's Notice to Transmit Required Document dated March 20, 2015.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 1st day of April, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/Annie Smith
Annie Smith
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-01 09:26:00.218.
JOHN KADLIC, ESQ. - Notification received on 2015-04-01 09:26:00.015.
TAMMY RIGGS, ESQ. - Notification received on 2015-04-01 09:26:00.078.
KATHERINE LYON, ESQ. - Notification received on 2015-04-01 09:26:00.171.
DIV. OF PAROLE & PROBATION - Notification received on 2015-04-01 09:26:00.124.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

04-01-2015:09:24:54

Clerk Accepted:

04-01-2015:09:25:29

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR02-0147
No. 67563 D9

FILED

APR 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from "the Motion to Correct Judgment of Conviction's Order filed/entered on or about the 2nd day of March, 2015." Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.


On March 2, 2015, the district court entered an amended judgment of conviction nunc pro tunc to December 12, 2003, the date of the original judgment of conviction, which corrects a clerical error changing the reference to "Nevada State Prison" to the "Nevada Department of Corrections," and removing a testing fee of \$150. Our review of this appeal reveals a jurisdictional defect. The amended judgment of conviction makes no substantive changes to appellant's rights; therefore appellant is not an aggrieved party. *See* NRAP 3B; NRS 177.015(1). The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal by

a non-aggrieved party. Therefore we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.¹

 J.
Parraguirre

 J.
Douglas

 J.
Cherry

cc: Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

¹ Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents.

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-22 15:36:19.253.
JOHN KADLIC, ESQ. - Notification received on 2015-04-22 15:36:19.097.
TAMMY RIGGS, ESQ. - Notification received on 2015-04-22 15:36:19.159.
KATHERINE LYON, ESQ. - Notification received on 2015-04-22 15:36:19.221.
DIV. OF PAROLE & PROBATION - Notification received on 2015-04-22 15:36:19.19.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

04-22-2015:15:35:12

Clerk Accepted:

04-22-2015:15:35:48

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Ct Ord Dismiss Appeal

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67563
District Court Case No. CR020147

DA

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk ✓

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

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

DATE: May 18, 2015

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):

Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____

District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67563
District Court Case No. CR020147

SA

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

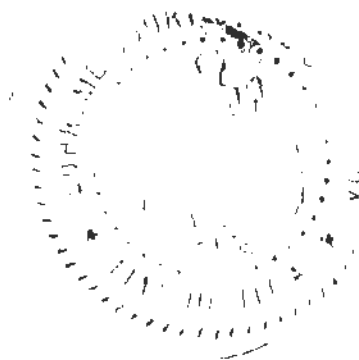
"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 21st day of April, 2015.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
May 18, 2015.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67563

Clerk 0147
39**FILED**

APR 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK*ORDER DISMISSING APPEAL*

This is an appeal from "the Motion to Correct Judgment of Conviction's Order filed/entered on or about the 2nd day of March, 2015." Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

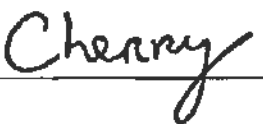
On March 2, 2015, the district court entered an amended judgment of conviction nunc pro tunc to December 12, 2003, the date of the original judgment of conviction, which corrects a clerical error changing the reference to "Nevada State Prison" to the "Nevada Department of Corrections," and removing a testing fee of \$150. Our review of this appeal reveals a jurisdictional defect. The amended judgment of conviction makes no substantive changes to appellant's rights; therefore appellant is not an aggrieved party. See NRAP 3B; NRS 177.015(1). The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal by

a non-aggrieved party. Therefore we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.¹


 J.
Parraguirre

 J.
Douglas

 J.
Cherry

cc: Hon. Scott N. Freeman, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹ Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents.


CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: May 18th 2015
Supreme Court Clerk State of Nevada
By: Daisy Williams Deputy

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-05-21 15:21:47.082.
JOHN KADLIC, ESQ. - Notification received on 2015-05-21 15:21:46.926.
TAMMY RIGGS, ESQ. - Notification received on 2015-05-21 15:21:46.973.
KATHERINE LYON, ESQ. - Notification received on 2015-05-21 15:21:47.051.
DIV. OF PAROLE & PROBATION - Notification received on 2015-05-21 15:21:47.004.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

05-21-2015:15:20:35

Clerk Accepted:

05-21-2015:15:21:15

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Court Order Affirming

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

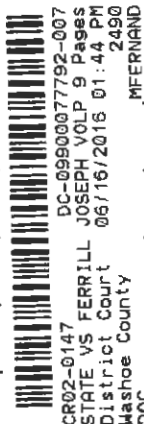
The following people were served electronically:

TAMMY M. RIGGS, ESQ.
DIV. OF PAROLE & PROBATION
JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI
KATHERINE H. LYON, ESQ. for STATE OF
NEVADA
TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA



FERRILL J. VOLPICELLI
79565 @ LCC
1200 PRISON ROAD
LOVELOCK, NV 89419

FILED

2016 JUN 16 PM 1:44

PETITIONER IN PRO SE:

JACQUELINE BRYANT
CLERK OF THE COURT
Infirmed

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE.

XXXX

FERRILL J. VOLPICELLI,
PETITIONER,

CASE No. CR02-09147

vs.

DEPT. No. 9

STATE OF NEVADA,
RESPONDENT,

MOTION TO AMEND, CORRECT OR MODIFY PRE SENTENCE CREDIT

FERRILL J. VOLPICELLI (Volpicelli), PETITIONER, MOVES
THE COURT TO AMEND, CORRECT OR MODIFY PRE SENTENCE
CREDIT IN THE ABOVE REFERENCED CASE.

THE INSTANT MOTION IS BROUGHT PURSUANT TO THE
APPLICABLE NRCP, AS THEY APPLY TO NRS 176.035
IN WHICH THE PETITIONER'S JURISDICTIONAL CLAIM CAN
BE FILED AT ANY TIME.

SAID MOTION IS BASED ON THE DOCUMENTS, PAPERS
AND EXHIBITS HEREIN, AS WELL AS THE ACCOMPANYING
POINTS AND AUTHORITIES.

FURTHER, THIS COURT HAS JURISDICTION IN THIS
MATTER AS THE APPLICABLE NEVADA REVISED
STATUTES ALLOW FOR SUCH A MOTION AT ANY TIME.
(NRS. 176.035).

POINTS AND AUTHORITIES

STATEMENT OF FACTS

IN CASE CR98-2160, VOLPICELLI WAS SENTENCED ON NOVEMBER 3, 1998 TO TWO (2) CONSECUTIVE 72 MONTH SENTENCES OF IMPRISONMENT FOR TWO (2) COUNTS OF BURGLARY, A VIOLATION OF NRS 205.060.

IN OR ABOUT THE SECOND WEEK OF JUNE, 2001, VOLPICELLI WAS RELEASED ON PAROLE AND PROBATION FROM THE NEVADA DEPARTMENT OF CORRECTIONS (NDOC). ON OCTOBER 17, 2001, VOLPICELLI WAS ARRESTED FOR PAROLE VIOLATIONS AND HE WAS RETURNED TO THE NDOC UNTIL EXPIRATION OF HIS SENTENCES. IN CUSTODY AT NEVADA STATE PRISON (NSP), AND PRIOR TO EXPIRING HIS SENTENCE, VOLPICELLI COMPLETED A SEVEN (7) MODULE FORMAL INSTRUCTION PROGRAM ON DECEMBER 12, 2002, (SEE APPENDIX I)

Said Program's completion ENTITLED VOLPICELLI TO FIFTY (50) DAYS MERITORIOUS CREDIT PURSUANT TO NRS 209.4465.

WHILE IN CUSTODY AT THE NDOC, VOLPICELLI WAITED PATIENTLY FOR OVER FOUR (4) MONTHS FOR THE NDOC ADMINISTRATION TO POST THE 50 DAYS CREDIT TOWARDS HIS EXPIRATION DATE IN CR98-2160; ALL TO NO AVAIL.

IN OR ABOUT THE SECOND WEEK OF APRIL 2003, VOLPICELLI WAS BROUGHT TO WASHOE

COUNTY DISTRICT COURT TO APPEAR FOR CHARGES FROM ALLEGED CRIMINAL CONDUCT WHILE ON PAROLE IN 2001.

WHILE STILL IN OFFICIAL CUSTODY OF THE NDOC FOR CR98-2160, THE COURT ORDERED VOLPICELLI TO BE CONFINED AT WASHOE COUNTY SHERIFF'S OFFICE (WCSO).

VOLPICELLI REMAINED AT WCSO THROUGH THE EXPIRATION OF HIS SENTENCE IN CR98-2160. VOLPICELLI ASSUMED THE NDOC ADMINISTRATION HAD POSTED AND INCORPORATED THE 30 DAYS OF EARNED RECREATION CREDIT TOWARDS THE EXPIRATION DATE.

WHILE STILL IN CUSTODY AT WCSO, VOLPICELLI SENT A LETTER OF INQUIRY TO THE WARDEN OF PROGRAMS AT NSI ON AUGUST 8, 2003. (SEE APPENDIX 2)

ON AUGUST 18, 2003, WARDEN BAX REPLIED IN A LETTER INDICATING THAT THE 30 DAYS WERE NEVER POSTED.

FURTHERMORE, THAT VOLPICELLI'S EXPIRED SENTENCE PRECLUDED THE APPLICATION OF SAID CREDIT.

VOLPICELLI'S PURPORTED EXPIRATION DATE WAS ON OR ABOUT APRIL 27, 2003 - ABSENT THE THIRTY (30) DAYS CREDIT.

VOLPICELLI REMAINED AT WCSO THROUGH HIS CRIMINAL PROCEEDINGS IN CASES

CRO2-0147 AND CRO2-0148:

VOLPICELLI BROUGHT THE MATTER OF PRE-SENTENCE CREDITS OF THE 30 DAYS TO THE ATTENTION OF BOTH THE PAROLE AND PROBATION INVESTIGATOR PREPARING THE PRESENTENCE REPORT, AS WELL AS HIS ATTORNEY(S) - ALL TO NO AVAL.

IN CONSEQUENCE VOLPICELLI WAS GIVEN ONLY 228 DAYS OF PRESENTENCE CONFINEMENT CREDIT FOR CASES CRO2-0147 AND CRO2-0148, WHEN, SINCE BOTH CASES SENTENCES RAN CONCURRENT, THE CORRECT TOTAL INCLUSIVE OF THE 30 DAYS MERITORIALS CREDIT SHOULD HAVE BEEN 258.

VOLPICELLI'S CORRECT EXPIRATION DATE OF CRO2-2161 AND COMMENCEMENT OF CONSECUTIVE SENTENCES FOR CRO2-0147 & CRO2-0148 SHOULD HAVE BEEN DATED 28, 2003 - IN LIEU OF THE APRIL 27, 2003 DATE.

ARGUMENTS

VOLPICELLI WAS DENIED DUE PROCESS AND EQUAL PROTECTION, AS WELL AS EFFECTIVE REPRESENTATION FROM COURT-APPOINTED COUNSEL, WHEN THE STATE OF NEVADA, BY AND THROUGH THE NDC & THE DEPARTMENT OF PAROLE AND PROBATION, DEPRIVED HIM OF THIRTY (30) DAYS MERITORIALS CREDIT; AND COUNSEL FAILED TO CHALLENGE SAID TRANSFERRED;

Are in Violation of Volpieri's Fifth, Sixth and Fourteenth Amendment's Rights Guaranteed by the Nevada and United States Constitutions

(a) Volpieri has a Liberty Interest in the Earned Meritorious Credits

The Fourteenth Amendment protects individuals against Governmental Deprivations of Life, Liberty or Property without Due Process of Law.

U.S. CONSTITUTION, AMENDMENT XIV § 1.

NRS 209.4465 APPLIES TO ALL INMATES EQUALLY AND ALLOWS FOR MERITORIOUS CREDITS DULY EARNED TO POST FOR A SENTENCE REDUCTION FOR ALL DIRECTOR APPROVED PROGRAMS.

THE NINTH CIRCUIT HAS STATED THAT LAWS AND REGULATIONS UNDER THE STATE CREATE AN ENTIREMENT TO SENTENCE CREDITS, BIGGS V TETTER, 334 F3d 914 (9th 2003).

PRISON REGULATORY schemes CAN CAUSE A LIBERTY INTEREST PROTECTED BY DUE PROCESS EVEN IF ITS THE FAILURE OF THE APPLICATION OF SENTENCE CREDITS. HAYGOOD V YOUNGER, 769 F2d 1350 (9th 1995)

VOLPIERI HAS BEEN PREJUDICED WITH THE 30 DAY MERITORIOUS CREDIT DEPRIVATION THROUGH NO FAULT OF HIS OWN AND DUE TO THE REBORNERS ERRORS AND/OR INTENTION.

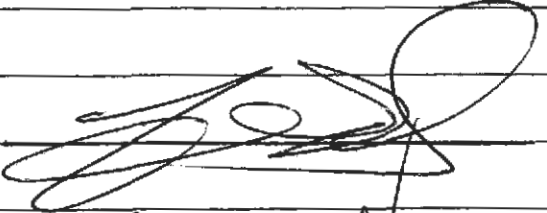
(b) Volpicelli suffers Prejudice
with the Deprivation of Credits

Volpicelli's Deprivation of the Thirty (30) Months Credits adversely affects his entire sentence structure as it is continuous and on going. More specifically, the expiration date of CR98-2160 and commencement dates of CR02-0147 and CR02-0148 are affected by the deprivation. That, in turn, affected the expiration dates of CR02-0147 and CR02-0148, as well as the commencement of CR03-1263. And, although CR03-1263 involves life sentences, collateral consequences exist as to Volpicelli's protected expectation of parole eligibility for said life sentences. (The right to apply for a timely parole is constitutionally protected; rather it is the expectancy of release on parole that is not protected.) KELSO v ARMSTRONG, 616 F.S.367, 369 (D. Nev. 1985) (citing SEVERANCE v ARMSTRONG, 624 P.2d 1004, 1005 (1981)). Courts have recognized that prisoners maintain a liberty interest in their parole eligibility dates, as such affects the length of a prison term and, consequently, affects the measure of punishment attached to the original crime. HINES v THOMPSON, 366 F.3d 848, 854 (9th Cir 2003). Hence, Volpicelli has demonstrated injury.

CONCLUSION:

Based on the foregoing, the Court should issue an order amending the judgment of convictions in CR2-0148 and CR2-0149 (since they run concurrently) to reflect 258 days/credits for time served in presentence confinement, as determined by the interests of fairness, due process and equal protection.

DATED this 13 Day
of JUNE, 2016


FERRILL VEDICCI
79565 ELCC
1200 PRISON ROAD
LOVELOCK, NV 89419

PETITIONER IN PRO SE

BOARD OF COMMISSIONERS
KENNY C. GUINN
GOVERNOR
FRANKIE SUE DEL PAPA
ATTORNEY GENERAL
DEAN HELLER
SECRETARY OF STATE

STATE OF NEVADA



JACKIE CRAWFORD
Director
MICHAEL J. BUDGE
Warden

DEPARTMENT OF CORRECTIONS

Leading Nevada Corrections Into the Future

3301 E. 5th Street
PO Box 607
Carson City, Nevada 89702
(775) 882-8588
Fax: (775) 887-3420

August 18, 2003

Ferrill Volpicelli -03-06889
Washoe County Sheriff Office
Detention Center
911 Parr Blvd.
Reno NV 89512-1000

Dear Mr. Volpicelli

I am in receipt of your letter dated August 8, 2003. I researched your involvement in our "Survive and Change" program.

Roger Hundall, staff psychologist, confirms you completed the course. You were submitted for 30 meritorious credits for completion of this course.

During the course of those credits being submitted, you discharged your sentence. The Nevada Department of Corrections does not apply meritorious credits to a sentence once discharged.

Should you want a copy of your certificate of completion for the course, I would be happy to forward it to you.

James Baca, Associate Warden of Programs
Nevada State Prison
P.O. Box 607
Carson City, Nevada 89701

Sincerely,

A handwritten signature in black ink that reads "JAMES BACA".

James Baca, Assoc. Warden Programs
Nevada State Prison

JB: yf

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Motion to Amend, Notify or Correct to the below address(es) on this 13 day of JUNE, 2016, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY
DISTRICT ATTORNEY
75 COURT ST
RENO, NV 89501

FERRER # 72805
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

FERRER In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to Amend, Correct Notify filed in District Court Case No. CR2016 does not contain the social security number of any person.

Dated this 13 day of JUNE, 2016.

FERRER
FERRER In Pro Se

1 CODE #2645
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Plaintiff
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. CR02-0147

12 FERRILL J. VOLPICELLI,

Dept. No. 9

13 Defendant.
14 _____/

15 OPPOSITION TO MOTION TO AMEND, CORRECT OR MODIFY PRE-SENTENCE CREDIT

16 COMES NOW, the State of Nevada and opposes the motion to correct pre-sentence
17 credit filed by Defendant Volpicelli. This opposition is based upon the records of this court and
18 the following points authorities.

19 POINTS AND AUTHORITIES

20 Defendant Volpicelli has filed yet another motion in a long line of attacks on his
21 conviction. This one apparently claims that while confined in the Washoe County Jail, he
22 should have expired another sentence and if he had then he would have been entitled to an
23 additional 30 days credit against the sentence imposed in the instant case. Assuming that to be
24 true, the motion should be denied because the claim that he should have expired another
25 sentence is not the same as a claim that he did indeed expire the sentence. Furthermore, there
26 is no reason to believe, from the motion alone, that the sole reason for defendant's

1 incarceration at the relevant time was due to the instant charges. Finally, and most
2 importantly, an argument for additional credit against a sentence must be brought in a post-
3 conviction habeas corpus petition, not in a motion. *See Griffin v. State*, 122 Nev. 737, 137 P.3d
4 1165 (2010). Such petitions have all sorts of procedural requirements and they cannot be
5 avoided by simply calling the attack a “motion.” *Id.* Accordingly, the motion should be denied.

6 AFFIRMATION PURSUANT TO NRS 239B.030

7 The undersigned does hereby affirm that the preceding document does not contain the
8 social security number of any person.

9 DATED: June 17, 2016.

10 CHRISTOPHER J. HICKS
11 District Attorney

12 By /s/ TERRENCE P. McCARTHY
13 TERRENCE P. McCARTHY
14 Chief Appellate Deputy
15
16
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on June 17, 2016, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Ferrill J. Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-06-17 10:34:29.46.
BRUCE HAHN, ESQ. - Notification received on 2016-06-17 10:34:29.32.
JOHN KADLIC, ESQ. - Notification received on 2016-06-17 10:34:29.211.
KATHERINE LYON, ESQ. - Notification received on 2016-06-17 10:34:29.382.
DIV. OF PAROLE & PROBATION - Notification received on 2016-06-17 10:34:29.507.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

06-17-2016:09:31:44

Clerk Accepted:

06-17-2016:10:33:58

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

BRUCE C. HAHN, ESQ.

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

1 CODE #3860
2 CHRISTOPHER J. HICKS
3 #7747
4 P. O. Box 11130
5 Reno, Nevada 89520
6 (775)328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 FERRILL J. VOLPICELLI,

14 Petitioner,

15 v.

Case No. CR02-0147

16 THE STATE OF NEVADA,

Dept. No. 9

17 Respondent.
18 _____/

19 REQUEST FOR SUBMISSION

20 It is requested that Petitioner's Motion to Amend, Correct or Modify Pre Sentence
21 Credit, filed on June 16, 2016, be submitted to the Court for decision.

22 AFFIRMATION PURSUANT TO NRS 239B.030

23 The undersigned does hereby affirm that the preceding document does not contain the
24 social security number of any person.

25 DATED: July 25, 2016.

26 CHRISTOPHER J. HICKS
District Attorney

By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on July 25, 2016, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Ferrill J. Volpicelli #79565
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-07-25 09:41:35.631.
BRUCE HAHN, ESQ. - Notification received on 2016-07-25 09:41:34.976.
JOHN KADLIC, ESQ. - Notification received on 2016-07-25 09:41:34.523.
KATHERINE LYON, ESQ. - Notification received on 2016-07-25 09:41:35.085.
DIV. OF PAROLE & PROBATION - Notification received on 2016-07-25 09:41:35.787.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

07-25-2016:08:33:33

Clerk Accepted:

07-25-2016:09:40:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Request for Submission

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

BRUCE C. HAHN, ESQ.

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

1 Code: 3370
2
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8 FERRILL J. VOLPICELLI,

Case No.: CR02-0147

Dept. No.: 9

9 Petitioner,

10 v.

11 STATE OF NEVADA,

12 Respondent.
13

ORDER TRANSFERING PETITIONER'S MOTION TO AMEND, CORRECT OR MODIFY

PRE-SENTENCE CREDIT

15 The Court is in receipt of Petitioner, FERRILL J. VOLPICELLI's *Motion to Amend,*
16 *Correct or Modify Pre-Sentence Credit* filed on June 16, 2016. Respondent THE STATE OF
17 NEVADA filed an *Opposition to Motion to Amend, Correct or Modify Pre-Sentence Credit* on June
18 17, 2016.

19 Upon careful review of the moving papers, exhibits, and record, the Court finds orders the
20 Clerk of Court to transfer Petitioner's motion to the Sixth Judicial District Court in Pershing
21 County, Nevada pursuant to NRS 34.738. Petitioner asserts in his *Motion to Amend, Correct or*
22 *Modify Pre-Sentence Credit* that he is entitled to thirty-days credit from case no. CR98-2160
23 against the sentence imposed in this case. Pursuant to *Griffin v. State*, 122 Nev. 737, 741, 137 P.3d
24 1165, 1167 (2006), "a claim for presentence credit [is] a challenge to the computation of time
25 served." Under NRS 34.738,

26 1. A petition that challenges the validity of a conviction or sentence must be filed
27 with the clerk of the district court for the county in which the conviction occurred.
28 *Any other petition must be filed with the clerk of the district court for the county in*
which the petitioner is incarcerated.

2. A petition that is not filed in the district court for the appropriate county:

...

1 (b) *Must* be transferred by the clerk of that court to the clerk of the district court for
2 the appropriate county.

3 (emphasis added). Here, Petitioner's motion questions the Department of Corrections' application of
4 pre-sentence credits. Thus, his motion should have been filed in the county of his confinement,
5 Pershing County, Nevada.

6 THEREFORE, and good cause appearing, the Court ORDERS Petitioner's *Motion to*
7 *Amend, Correct or Modify Pre-Sentence Credit* is HEREBY TRANSFERRED to the Sixth Judicial
8 District Court in Pershing County, Nevada.

9 DATED: this 14 day of September, 2016.

10 
11 _____
12 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

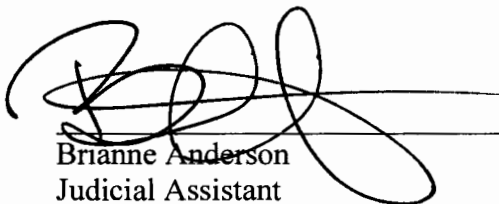
Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 14th day of September, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

Clerk of the Court
Sixth Judicial District Court
PO Box H
Lovelock, NV 89419

Further, I certify that on the 14 day of September, 2016, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

BRUCE HAHN, ESQ.
DIV. OF PAROLE & PROBATION
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA
KATHERINE LYON, ESQ. for STATE OF NEVADA


Brianne Anderson
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-09-14 13:35:17.734.
BRUCE HAHN, ESQ. - Notification received on 2016-09-14 13:35:17.672.
KATHERINE LYON, ESQ. - Notification received on 2016-09-14 13:35:17.703.
DIV. OF PAROLE & PROBATION - Notification received on 2016-09-14 13:35:17.766.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

09-14-2016:13:34:08

Clerk Accepted:

09-14-2016:13:34:46

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Order...

Filed By:

Judicial Asst. BAnderson

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

BRUCE C. HAHN, ESQ.

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

CODE 1356

FILED
Electronically
CR02-0147
2016-09-16 01:55:17 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5712094 : mcho

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,**Plaintiff,****vs.****Case No. CR02-0147****Dept. No. 9****STATE OF NEVADA,****Defendant**

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court, County of Washoe, and that on the 16th day of September, 2016, I deposited in the County mailing system for postage and certified mailing, Certified Mail Tracking Number 7016 1370 0000 2092 0138, with the U.S. Postal Service in Reno, Nevada, imaged copies of the original following documents from the above entitled case: Certified copy of Order Transferring Petitioner's Motion to Amend, Correct or Modify Pre-Sentence Credit; Motion to Amend, Correct or Modify Pre Sentence Credit; Opposition to Motion to Amend, Correct or Modify Pre-Sentence Credit; Request for Submission

And addressed to the following:

Sixth Judicial District Court
P.O. Box 820
Lovelock, NV 89419

Attorney General's Office (regular mail)
100 N. Carson Street
Carson City, NV 89701-4717

Dated this 16th day of September, 2016.

/s/ Mia Cholico
Deputy Clerk

1 **CODE 1356**

3 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

4 **IN AND FOR THE COUNTY OF WASHOE**

6 **FERRILL J. VOLPICELLI,**

7 **Plaintiff,**

8 **vs.**

Case No. CR02-0147

9 **Dept. No. 9**

10 **STATE OF NEVADA,**

11 **Defendant**

13 **CERTIFICATE OF MAILING**

14 I hereby certify that I am an employee of the Second Judicial District Court,
15 County of Washoe, and that on the 16th day of September, 2016, I deposited in the
16 County mailing system for postage and certified mailing, Certified Mail Tracking Number
17 7016 1370 0000 2092 0138, with the U.S. Postal Service in Reno, Nevada, imaged copies
18 of the original following documents from the above entitled case: Certified copy of Order
19 Transferring Petitioner's Motion to Amend, Correct or Modify Pre-Sentence Credit; Motion
20 to Amend, Correct or Modify Pre Sentence Credit; Opposition to Motion to Amend, Correct
21 or Modify Pre-Sentence Credit; Request for Submission

22 And addressed to the following:

23 Sixth Judicial District Court
24 P.O. Box 820
25 Lovelock, NV 89419

26 Attorney General's Office (regular mail)
27 100 N. Carson Street
28 Carson City, NV 89701-4717

Dated this 16th day of September, 2016.

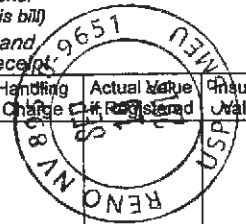
/s/ Mia Cholico
Deputy Clerk

CR02-0147 DC-0990000693-003
STATE VS FERRILL JOSEPH VOLP 3 Pages
District Court 09/16/2016 01:55 PM
Washoe County 1356
RR00P1G11

Name and Address of Sender
V5. 872
 Jacqueline Bryant
 Clerk of the Court
 Second Judicial District Court
 75 Court Street
 Reno, NV 89501

Check type of mail or service: **CR02-0147 M. Chblco**
☐ Adult Signature Required
☒ Certified Mail
☐ COD
☐ Delivery Confirmation
☐ Express Mail
☐ Insured
☐ Adult Signature Restricted Delivery
☐ Recorded Delivery (International)
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 Date of Receipt



7016 1370 0000 2092 0138

Article Number	Address (Name, Street, City, State & ZIP Code™)	Postage	Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Se if CO
1.	Sixth Judicial District Court P.O. Box 820 Lovelock, NV 89419						
2.							
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8.							

Total Number of Pieces Listed by Sender: **1**
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Certified Mail Fee \$ _____	Postmark Here
Extra Services & Fees (check box, add fee as appropriate) <input type="checkbox"/> Return Receipt (hardcopy) \$ _____ <input type="checkbox"/> Return Receipt (electronic) \$ _____ <input type="checkbox"/> Certified Mail Restricted Delivery \$ _____ <input type="checkbox"/> Adult Signature Required \$ _____ <input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
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Sixth Judicial District Court P.O. Box 820 Lovelock, NV 89419	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <input checked="" type="checkbox"/> <i>Barre Medeiros</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Sixth Judicial District Court P.O. Box 820 Lovelock, NV 89419		B. (Received by (Printed Name)) <i>Barre Medeiros</i>	
2. Article Number (Transfer from service label) 7016 1370 0000 2092 0138		C. Date of Delivery D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery		<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
9590 9402 1830 6104 2698 08		Domestic Return Receipt	
PS Form 3811, July 2015 PSN 7530-02-000-9053			

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-09-16 13:56:44.975.
BRUCE HAHN, ESQ. - Notification received on 2016-09-16 13:56:44.912.
KATHERINE LYON, ESQ. - Notification received on 2016-09-16 13:56:44.944.
DIV. OF PAROLE & PROBATION - Notification received on 2016-09-16 13:56:45.006.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

09-16-2016:13:55:17

Clerk Accepted:

09-16-2016:13:56:16

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Certificate of Mailing

Filed By:

Deputy Clerk MCholico

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

BRUCE C. HAHN, ESQ.

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

V5. 877

Ferrill Joseph Volpicelli
#79565 @ LCC
1200 Prison Road
Lovelock, Nevada 89419

FILED
Electronically
CR02-0147
2021-01-08 08:30:35 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 8236887 : khudson

In the Second Judicial Court of The State of Nevada

In and For the County of Washoe

Ferrill Joseph Volpicelli,
Petitioner,
vs.

Cases Nos: CR98-2160,
CR02-0147 and CR02-0148

Dept. No: 9

State of Nevada,
Respondents,

Motion for Elimination of Fees

Petitioner, Ferrill Joseph Volpicelli, (Volpicelli) hereby submits the instant motion for elimination of fees in the above noted cases. This motion is made and based upon all papers on file herein, the applicable Nevada Rules of Civil Procedure, as well as the following points and authorities.

Nature of the Motion

The instant motion moves the court for an elimination, remission, or commutation of **all** court-imposed fees in each of the above referenced cases. The court has jurisdiction and discretion to do so based on the extenuating circumstances in Volpicelli's life, as well as in the interest of fairness and justice.

V5. 877

Points and Authorities

Background

Volpicelli has been in **continuous** federal and state custody since 1996. He is a sexagenarian currently in custody at Lovelock Correctional Center. In addition, he will be in his **seventies** at his earliest possible release date with his multiple life sentences in CR03-1263.

Volpicelli suffers from age related ailments which preclude his ability to earn any money during his custody. Undoubtedly, this factor will continue to be an issue at his eventual release from custody in 2026. As per the accompanying exhibits, he is facing an onslaught of **hundreds of thousands of dollars** of indebtedness stemming from all his cases. This includes his judgments from his criminal and civil cases relevant to his offences, taxes and divorce. He has no assets whatsoever and expects a social security¹ income of less than \$800 per month at his eventual release.

Aggregate Indebtedness to Society

Exhibit No.	AA ²	Fines	PD ³	Psych Exam	DNA	Restitution	Child Support	Taxes
CR-N-96-46	200	3000						
CV-03-2634							30,000 ⁴	
CR98-2160	25	5000			250			
CR-02-0147	25	10,000	1000	800				
CR02-0148	25		500					
CR03-1263	25				150 ⁵	10,339.16 ⁶		
IRS								192,240.41 ⁷

(SEE APPENDICES)

¹ Exhibit 1 is a copy of his anticipated monthly benefit from the government within a couple of months of his release in 2026.

² Administrative assessment.

³ Public Defender for representation with defense.

⁴ This is a guesstimate with accrued interest. The actual amount is on file with the Washoe County District Attorney's office.

⁵ This duplicative DNA fee was eventually removed by Judge Sattler because the DNA fee in CR98-2160 was previously paid.

⁶ This fee is for restitution in CR03-1263 and is not being considered in the remission of fees.

⁷ This amount due to the IRS is a guesstimate as of 1/13/04. With accruing interest, it is likely three times that figure.

*Arguments***At No Point in Time Will Volpicelli Be Able
to Make Payments as To His Indebtedness to Society.**

Based on the figures above and in the accompanying exhibits, Volpicelli faces an insurmountable debt from his many civil and criminal cases. This court has the inherent authority to provide relief to him so that he can survive on what little income he is expecting from his meager social security. NRS 178.3975(2) would allow him a remission for the recoupment of expenses for his defense based on his status as an indigent. However, based on the enormity of the situation, the court could take the matter one step further to include all court-imposed fees which work, and will continue to work, to Volpicelli's disadvantage in the future.

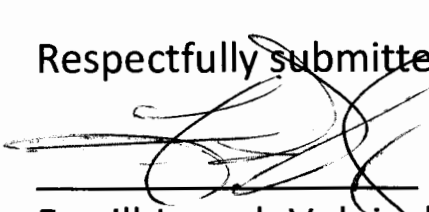
On May 14, 2013, the Honorable Judge Sattler eliminated a duplicative DNA fee which was previously paid, as well as the public defender recoupment fee. (CR03-1263).

On October 25, 2015, this court denied Volpicelli's request for a remission of his public defender fee in case CR02-0148. Evidently, Volpicelli failed to convey to the court his inability to pay his court appointed fees. If the totality of Volpicelli's indebtedness, as compared to his anticipated meager income derived from social security fails to convey a justifiable reason to eliminate his fees in their entirety, then he would be interested in what degree of financial devastation is necessary? Additionally, if the court feels that future employment prospects remain feasible, then Volpicelli wants to know what employer would be interested in hiring an elderly, disabled felon on lifetime parole, with a designation as a habitual criminal, and after spending the past thirty years in prison on psychotropic medication for that entire duration?

Conclusion

Based on the foregoing, the court should order the elimination of any and all court-imposed fees within relevant cases inherent to this court's jurisdiction. (CR98-2160, CR02-0147 and CR 02-1048). Volpicelli further requests that such order be made nunc pro tunc.

Respectfully submitted this 29 day of December, 2020.



Ferrill Joseph Volpicelli
Petitioner in Pro Se

Verification

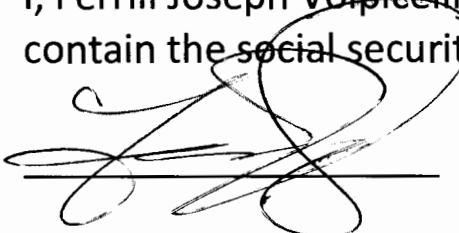
Under penalty of perjury, I declare that I am the indigent person in the foregoing pleading, ad know the contents thereof. Further. That the pleading is of my own knowledge, except as to those matters which I believe to be true. I further certify that I make this motion in good faith for the purposes set forth herein, and do so under penalty of perjury without the benefit of a notary pursuant to NRS 208.165.

Certificate of Service

I, Ferrill Joseph Volpicelli, do hereby affirm that under penalty of perjury, that on this 29 day of December 2020, I deposited a true and correct copy of the instant motion with the prison staff, postage prepaid, to the following addressed individuals. Washoe County District Attorney @ 75 Court St. Reno NV 89501

Affirmation Pursuant to Applicable Statute

I, Ferrill Joseph Volpicelli, hereby affirm that the instant motion does not contain the social security number of any individuals.



Ferrill Joseph Volpicelli
Petitioner in Pro Se.

EXHIBIT 1

EXHIBIT 1



Your payment would be about
\$791 a month
 at full retirement age

000032869 I=000000 0929 11 SSS



32851 1 AT 0.403



FERRILL J. VOLPICELLI
 PO BOX 359
 LOVELOCK NV 89419-0359

September 29, 2014

Your Social Security Statement

Are you thinking about retirement? Are you ready for retirement?

We have tools that can help you!

- Estimate your future retirement benefits at www.socialsecurity.gov/estimator
- Apply for retirement, spouse's, Medicare or disability benefits at www.socialsecurity.gov/applyforbenefits
- And once you receive benefits, manage your benefits at www.socialsecurity.gov/myaccount

Your *Social Security Statement* tells you about **how much you or your family would receive** in disability, survivor or retirement benefits. It also includes our record of your lifetime earnings. Check out your earnings history, and **let us know right away if you find an error.** This is important because we base your benefits on our record of your lifetime earnings.

Social Security benefits are not **intended to be your only source of income when you retire.** On average, Social Security will replace about

To view your *Social Security Statement* online anytime create a **my Social Security** account today!



my Social Security
www.socialsecurity.gov/myaccount

40 percent of your annual preretirement earnings. You will need other savings, investments, pensions or retirement accounts to live comfortably when you retire.

To view your *Statement* online anytime, create a **my Social Security account** at www.socialsecurity.gov/myaccount.

Carolyn W. Colvin

Carolyn W. Colvin
 Acting Commissioner

Follow the Social Security Administration at these social media sites.



ATTACHMENT

Appendices

Appendix 1

Federal Tax Case Court-Imposed Fee & Fine.

Appendix 2

State Case 98-2160 Court-Imposed Fees and Fine.

Appendix 3

State Case 02-0147 Court-Imposed Fees & Fines.

Appendix 4

State Case 02-0148 Court-Imposed Fees.

Appendix 5

State Case 03-1263 Court-Imposed Fees & Restitution.

Appendix 6

Federal Tax Case Court-Imposed Civil Assessment.

Appendix 7

State Family Case 03-2634 Court-Imposed Child Support Obligations.

CSLAC
PAGE 002

*

PUBLIC INFORMATION
INMATE DATA
AS OF 08-16-1999

*

03-12-2015
10:24:19

REGNO...: 31441-048 NAME: VOLPICELLI, FERRILL J

RESP OF: SAF

PHONE...: 928-428-6600 FAX: 928-348-1331

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S PRIOR COMMITMENT.
THE INMATE WAS SCHEDULED FOR RELEASE: 08-16-1999 VIA GCT REL

-----PRIOR JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEVADA
DOCKET NUMBER.....: CR-N-96-46-HDM (RAM)
JUDGE.....: MCKIBBEN
DATE SENTENCED/PROBATION IMPOSED: 05-13-1997
DATE COMMITTED.....: 02-05-1998
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$200.00	\$00.00	\$3,000.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----PRIOR OBLIGATION NO: 010 -----

OFFENSE CODE.....: 192
OFF/CHG: 26:7206(1) TAX PERJURYSENTENCE PROCEDURE.....: 3559 SRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 22 MONTHS
TERM OF SUPERVISION.....: 1 YEARS
DATE OF OFFENSE.....: 07-23-1993

G0002 MORE PAGES TO FOLLOW . . .

FILED

NOV 3 1998
BETTY J. LEWIS, ClerkBy [Signature] Deputy Clerk

1 No. CR98-2160

2 Dept. No. 9

3
4 **IN THE SECOND JUDICIAL DISTRICT COURT**5 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**6
7
8 **STATE OF NEVADA,**

Reporter: D. Vieira

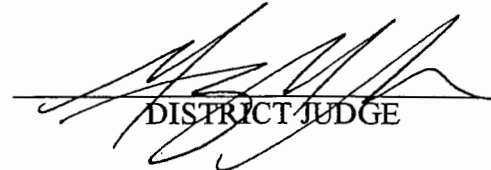
9 **Plaintiff,**10 **vs.****J U D G M E N T**11 **FERRILL JOSEPH VOLPICELLI,**12 **Defendant.**
13 _____/14 The Defendant, having entered a plea of Guilty, and no sufficient cause being shown
15 by Defendant as to why judgment should not be pronounced against him, the Court rendered
16 judgment as follows:17 That Ferrill Joseph Volpicelli is guilty of the crime of Burglary, a violation of NRS
18 205.060, a felony, as charged in Counts I and II of the Information, and that he be punished by
19 imprisonment in the Nevada State Prison for a minimum term of twenty-four (24) months to a
20 maximum term of seventy-two (72) months and by payment of a fine in the amount of Five Thousand
21 Dollars (\$5,000.00) on Count I, to run consecutively to the Federal prison term he is obligated to
22 serve; a minimum term of sixteen (16) months to a maximum term of seventy-two (72) months
23 Nevada State Prison on Count II, to run consecutively to Count I. The sentence is suspended as to
24 Count II and the Defendant is placed on probation for a period of time not to exceed three (3) years,
25 to run consecutively to Count I and consecutively to the Federal prison term. The Defendant is given
26 credit for eighty-seven (87) days time served. It is further ordered that the Defendant pay the

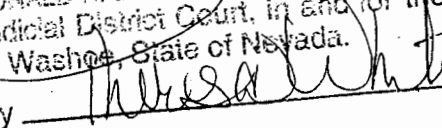
27 //

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1 statutory Twenty-Five Dollar (\$25.00) administrative assessment fee and pay the DNA fees of Two
2 Hundred Fifty Dollars (\$250.00).

3 Dated this 3rd day of November, 1998.

4
5
6 
7 DISTRICT JUDGE
8
9
10

11 CERTIFIED COPY
12 The document to which this certificate is
13 attached is a full, true and correct copy of
14 the original on file and of record in my office.
15 DATE: MAY 9 2002
16 RONALD A. LONGTIN, JR., Clerk of the Second
17 Judicial District Court, in and for the County
18 of Washoe, State of Nevada.
19 By  Deputy
20
21
22
23
24
25
26
27
28

1 CODE NO. 1855
2
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5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR02-0147

11 vs.

Dept. No. 9

12 FERRILL JOSEPH VOLPICELLI,

13 Defendant.
14 _____/

15 AMENDED JUDGMENT

16 The Defendant having been found Guilty by a jury, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him, the
18 Court rendered judgment as follows:

19 That Ferrill Joseph Volpicelli is guilty of the crimes of Indecent Exposure, a
20 violation of NRS 201.220, a felony, as charged in Count I of the Amended Information and
21 Open or Gross Lewdness, a violation of NRS 201.210, a felony, as charged in Count II of
22 the Amended Information, and that he be punished by imprisonment in the Nevada
23 Department of Corrections for the minimum term of twelve (12) months to a maximum term
24 of forty-eight (48) months and by payment of a fine in the amount of Five Thousand Dollars
25 (\$5,000.00), as to each of Counts I and II. The sentence in Count II shall run concurrently
26 with the sentence in Count I. The Defendant is further ordered to pay the statutory Twenty-
27 Five Dollar (\$25.00) administrative assessment fee, an Eight Hundred Dollar (\$800.00)
28 Psychosexual Evaluation fee and reimburse the County of Washoe the sum of One

XIX

FILED

Electronically

09-23-2013:04:14:15 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 40154731 CODE NO. 1850
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4
56 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

* * *

9 THE STATE OF NEVADA,
10Plaintiff,
11Case No. CR02-0148
12vs.
13Dept. No. 9
14FERRILL JOSEPH VOLPICELLI,
15Defendant.
16THIRD AMENDED JUDGMENT
1718 The Defendant having been found Guilty by a jury, and no sufficient cause
19 being shown by Defendant as to why judgment should not be pronounced against him, the
20 Court rendered judgment as follows:
2122 That Ferrill Joseph Volpicelli is guilty of the crime of Aiding and Abetting in the
23 Commission of Attempting to Obtain Money by False Pretenses, a violation of NRS
24 193.330, NRS 195.020 and NRS 205.380, a felony, as charged in Count II of the
25 Information, and that he be punished by imprisonment in the Nevada Department of
26 Corrections for the minimum term of twelve (12) months to a maximum term of forty-eight
27 (48) months, to run concurrently with the sentence imposed in CR02-0147. The Defendant
28 is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative
assessment fee and reimburse the County of Washoe the sum of Five Hundred Dollars

///

///

Appendix 4

FILED

Electronically
06-18-2013:08:18:50 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3794602

1 CODE 1850

2 79565
3
4
56 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
89 **STATE OF NEVADA,**10 **Plaintiff,****Case No. CR03-1263**11 **vs.****Dept. No. 10**12 **FERRILL JOSEPH VOLPICELLI,**13 **Defendant.**
1415 **AMENDED JUDGMENT**16 Pursuant to the Order Granting Motion to Correct Judgment of Conviction filed on
17 June 4, 2013, **IT IS HEREBY ORDERED** that the below Judgment is amended:18 The Defendant having been found guilty by jury, and no sufficient cause being
19 shown as to why judgment should not be pronounced against him, the Court rendered judgment as
20 follows:21 That Ferrill Joseph Volpicelli is guilty of the crime of Conspiracy to Commit Crimes
22 Against Property, a violation of NRS 199.480, NRS 205.060, NRS 205.0832, NRS 205.090, NRS
23 205.110, NRS 205.220, NRS 205.240, NRS 205.380 and NRS 205.965, a gross misdemeanor, as
24 charged in Count I of the Indictment, Burglary, a violation of NRS 205.060, a felony, as charged in
25 Counts II through IX of the Indictment and Unlawful Possession, Making, Forgery or
26 Counterfeiting of Inventory Pricing Labels, a violation of NRS 205.965(2) and (3), a felony, as
27 charged in Count X of the Indictment and the Court having adjudged the Defendant to be an
28 Habitual Criminal as provided under NRS 207.010, the Court hereby sentences the Defendant by**Appendix 5****V5. 890**

1 imprisonment in the Washoe County Jail for the term of twelve (12) months, as to Count I, to run
2 concurrently with the sentences imposed in Counts II through X. As to Count II, he be punished by
3 imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after
4 ten (10) years has been served. As to Count III, he be punished by imprisonment in the Nevada
5 State Prison for the term of Life with parole eligibility beginning after ten (10) years has been
6 served, to run concurrently with Count II. As to Count IV, he be punished by imprisonment in the
7 Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has
8 been served, to run concurrently with Count III. As to Count V, he be punished by imprisonment in
9 the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years has
10 been served, to run concurrently with Count IV. As to Count VI, he be punished by imprisonment
11 in the Nevada State Prison for the term of Life with parole eligibility beginning after ten (10) years
12 has been served, to run concurrently with Count V. As to Count VII, he be punished by
13 imprisonment in the Nevada State Prison for the term of Life with parole eligibility beginning after
14 ten (10) years has been served, to run concurrently with Count VI. As to Count VIII, he be
15 punished by imprisonment in the Nevada State Prison for the term of Life with parole eligibility
16 beginning after ten (10) years has been served, to run concurrently with Count VII. As to Count IX,
17 he be punished by imprisonment in the Nevada State Prison for the term of Life with parole
18 eligibility beginning after ten (10) years has been served, to run concurrently with Count VIII. As
19 to Count X, he be punished by imprisonment in the Nevada State Prison for the term of Life with
20 parole eligibility beginning after ten (10) years has been served, to run consecutively to Counts II
21 through IX. The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00)
22 administrative assessment fee, restitution in the amount of Ten Thousand Three Hundred Thirty-
23 Nine Dollars and Sixteen Cents (\$10,339.16). The Defendant is given zero (0) days time served.

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1 It is further ordered the above sentence shall run consecutively to any other sentence
2 the Defendant is obligated to serve.

3 Dated this 14 day of June, 2013
4 NUNC PRO TUNC to the 1st day of April, 2004.

5
6 
7 DISTRICT JUDGE
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DATE: January 13, 2004

TELEPHONE NUMBER

REPLY TO: Internal Revenue Service

OF IRS OFFICE: 775-824-2234 x268

Lori Harris
675 W Moana Lane
Reno NV 89509

NAME AND ADDRESS OF TAXPAYER:
Ferrill J. Volpicelli
911 Parr Blvd
Reno NV 89512

TO: Reno Police Department
Attn: Karen Fraley, Dep. City Atty
PO Box 1900
Reno NV 89505

IDENTIFYING NUMBER(S): 572-76-7620

THIS ISN'T A BILL FOR TAXES YOU OWE. THIS IS A NOTICE OF LEVY WE ARE USING TO COLLECT MONEY OWED BY THE TAXPAYER NAMED ABOVE.

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/1989	\$903.41	\$5,687.74	\$6,591.15
1040	12/31/1990	\$35,106.62	\$20,769.04	\$55,875.66
1040	12/31/1991	\$47,728.10	\$28,620.59	\$76,348.69
1040	12/31/1992	\$33,256.26	\$20,168.65	\$53,424.91
THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. →				
				Total Amount Due
				\$192,240.41

We figured the interest and late payment penalty to 02/15/2004

The Internal Revenue Code provides that there is a lien for the amount that is owed. Although we have given the notice and demand required by the Code, the amount owed hasn't been paid. This levy requires you to turn over to us this person's property and rights to property (such as money, credits, and bank deposits) that you have or which you are already obligated to pay this person. However, don't send us more than the "Total Amount Due."

Money in banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must be held for 21 calendar days from the day you receive this levy before you send us the money. Include any interest the person earns during the 21 days. Turn over any other money, property, credits, etc. that you have or are already obligated to pay the taxpayer, when you would have paid it if this person asked for payment.

Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying numbers(s) shown on this form. Don't offset money this person owes you without contacting us at the telephone number shown above for instructions. You may not subtract a processing fee from the amount you send us.

To respond to this levy —

1. Make your check or money order payable to **United States Treasury**.
2. Write the taxpayer's name, identifying number(s), kind of tax and tax period shown on this form, and "LEVY PROCEEDS" on your check or money order (not on a detachable stub).
3. Complete the back of Part 3 of this form and mail it to us with your payment in the enclosed envelope.
4. Keep Part 1 of this form for your records and give the taxpayer Part 2 within 2 days.

If you don't owe any money to the taxpayer, please complete the back of Part 3, and mail that part back to us in the enclosed envelope.

Signature of Service Representative
Lori Harris

Title
Revenue Officer

CV03-02634
 DC-09900071713-069
 FERRILL VOLPI 5 Pages
 District Court 01/10/2006 09:06 AM
 1945
 Washoe County

1945

ORIGINAL

FILED

JAN 10 2006

RONALD A. LONGTIN, JR., CLERK
 By: *[Signature]*
 DEPUTY

IN THE FAMILY DIVISION
 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

LORI INMAN,

CASE NO. CV03-02634

Obligee,

DEPT. NO. UM/5

vs.

FERRILL VOLPICELLI,

Obligor.

MASTER'S FINDINGS RECOMMENDATIONS AND ORDER

The above-entitled matter came before the UIFSA Master pursuant to Obligee's Motion To Determine Arrearages filed October 11, 2005; Obligor's Response to Motion to Determine Arrearages filed October 20, 2005; and Obligee's Reply to Response to Motion to Determine Arrearages filed October 25, 2005.

Obligee's child support interest is represented by Susan Hallahan, Chief Deputy District Attorney, Washoe County Family Support Division. Obligor represents himself.

This Court having considered the Points and Authorities submitted by both Parties hereby finds and recommends:

///

///

///

Appendix 7

BACKGROUND

The Parties were divorced June 19, 1998. Obligor was ordered to pay \$100.00 per month as and for child support for the Parties' three minor children. Two of the children are now emancipated.

On July 13, 2003, the UIFSA Master recommended that Obligor pay \$100.00 per month as and for child support for the Parties' minor child, Logan, born September 12, 1991. A hearing to determine arrears was set for a later date.

On September 18, 2003, after taking extensive testimony from both Parties, the UIFSA Master found and recommended that Obligor owed nothing for past child support and recommended that he pay \$100.00 per month child support and \$175.06 per month for one-half of the minor child's medical insurance. Obligor appealed that recommendation to District Court.

January 27, 2004, Judge Schumacher affirmed the Master's Recommendation as to child support and arrears, but reversed it regarding the cost of health insurance. Obligor was ordered to pay one-half of the insurance premium in the amount of \$52.15 per month; not the \$175.06 as was recommended by the Master.

On September 28, 2005, the Nevada Supreme Court affirmed Judge Schumacher's Order of January 27, 2004.

On October 11, 2005, the Washoe County Family Support Division filed a Motion to Determine Arrearages in the instant case. The audit prepared by the DA's Office charged Mr. Volpicelli \$100.00 per month child support and \$52.15 for medical insurance pursuant to the prior Orders.

Mr. Volpicelli filed an Opposition to the Motion stating five different reasons why the Motion was incorrect.

FINDINGS AND RECOMMENDATION

Obligor's five points disputing the Motion to Determine Arrears fail to state a claim or valid defense to Obligor's Motion. As Obligor's Motion to Determine Arrearages is based upon Judge Schumacher's Order that was affirmed by the Nevada Supreme Court, arrearages will be reduced to judgment in the requested amount.

Pursuant to the audit prepared by the Washoe County Family Support Division and attached to Oblige's Motion, Obligor owes \$2,4000 principal plus \$230.00 in penalties for total of \$2,630.00 from September 2003 through August 2005. In addition, the Court finds that Obligor owes \$1,251.60 principal plus \$120.06 penalties for a total of \$1,371.66 as and for medical insurance arrears from September 2003 through August 2005. The Master waives interest on both child support and medical insurance arrears and makes a finding that to charge interest in the present case would cause an undue hardship to Obligor as he has been incarcerated for the entire time period the child support and insurance costs have accrued.

Good cause appearing, Obligor shall pay \$100.00 per month as and for ongoing child support and \$52.15 per month for one-half cost of the health insurance pursuant to the prior Orders. Obligor shall pay \$10.00 per month toward the arrears, which is ten percent of the ongoing amount pursuant to NRS 31A.

All other prior provisions of the previous Orders shall remain in full force and effect.


UIFSA Master


Date

Any Party may appeal a recommendation by a Master by filing and serving a request for hearing before the District Court within ten (10) days after receiving notice of the Master's findings and recommendations.

If no hearing by the District Court is requested, the findings and recommendations by the Master shall become an order or decree of the Court upon being confirmed by the Court.

The foregoing Master's Findings and Recommendation is hereby ratified and approved.


District Court Judge


Date

Ferrill Joseph Volpicelli
#79565 @ LCC
1200 Prison Road
Lovelock, Nevada 89419

FILED
Electronically
CR02-0147
2021-01-08 08:30:35 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 8236887 : khudson

In the Second Judicial Court of The State of Nevada

In and For the County of Washoe

Ferrill Joseph Volpicelli,
Petitioner,
vs.

Cases Nos: CR98-2160,
CR02-0147 and CR02-0148

Dept. No: 9

State of Nevada,
Respondents,

Motion to Recuse

Petitioner, Ferrill Joseph Volpicelli, (Volpicelli) hereby submits the instant motion to recuse in the above noted cases. This motion is made and based upon all papers on file herein, the applicable Nevada Rules of Civil Procedure, as well as the following points and authorities.

Nature of the Motion

The instant motion moves the court for a recusal of Judges Polaha and Freeman in the review of the accompanying motion for elimination, remission, or commutation of **all** court-imposed fees in each of the above referenced cases. The court has jurisdiction and discretion to do so based on the fact that each of the aforementioned judges represented Volpicelli in the past with his criminal cases cited herein.

Points and Authorities

Background

Volpicelli has been in continuous federal and state custody since the inception of his federal tax perjury case through present day with his multiple life sentences. His custody commenced with federal case CR-N 96-46 in 1996 in which he was represented by Judge Polaha when the judge was formerly in private practice. Thereafter, Volpicelli was represented by the Law Offices of Judge Freeman and Houston in consecutive state case CR 98-2160.

Volpicelli is currently seeking an elimination of all his court-imposed fees in cases CR98-2160, CR02-0147 and CR 02-1048. Judge Freeman's department nine (9) currently has jurisdiction in each of these cases on this matter.

Arguments

Prejudice Is Presumed When There Is A Conflict That Exists Herein.

Based on the facts in the background section of this motion, as well as the corresponding exhibits within the accompanying motion to eliminate Volpicelli's court-imposed fees, state and federal case precedence warrants a recusal of Judge Polaha and Judge Freeman. Cuyler vs. Sullivan, (SCOTUS, 'prejudice is presumed where government officials previously represented defendant while in private practice'.) The prejudice herein stems from a falling out with both of the aforementioned judges' law offices during a time when they were both in private criminal practice. Said falling out stems from payment of fees for services rendered in connection with their representation.

Conclusion

Based on the foregoing, the court should recuse itself from hearing the pending motion for elimination of fees and transfer said matter to a court other than that of Judge Polaha.

Respectfully submitted this 29 day of December, 2020.



Ferrill Joseph Volpicelli
Petitioner in Pro Se

Verification


Under penalty of perjury, I declare that I am the indigent person in the foregoing pleading, and know the contents thereof. Further, That the pleading is of my own knowledge, except as to those matters which I believe to be true. I further certify that I make this motion in good faith for the purposes set forth herein, and do so under penalty of perjury without the benefit of a notary pursuant to NRS 208.165.

Certificate of Service

I, Ferrill Joseph Volpicelli, do hereby affirm that under penalty of perjury, that on this 29 day of December, 2020, I deposited a true and correct copy of the instant motion with the prison staff, postage prepaid, to the following addressed individuals. Washoe County District Attorney @ 75 Court St. Reno NV 89501

Affirmation Pursuant to Applicable Statute

I, Ferrill Joseph Volpicelli, hereby affirm that the instant motion does not contain the social security number of any individuals.



Ferrill Joseph Volpicelli
Petitioner in Pro Se.

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-01-08 08:32:16.888.
KATHERINE LYON, ESQ. - Notification received on 2021-01-08 08:32:16.857.
DIV. OF PAROLE & PROBATION - Notification received on 2021-01-08 08:32:16.918.
ZACH YOUNG, ESQ. - Notification received on 2021-01-08 08:32:16.828.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

01-08-2021:08:30:35

Clerk Accepted:

01-08-2021:08:31:44

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Motion

Motion

Filed By:

Deputy Clerk KHudson

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ZACH YOUNG, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

CR02-0147
DC-09900089252-621
STATE VS FERRILL JOSEPH VOLPI 1 Page
District Court 01/26/2021 03:26 PM
Washoe County 3860

CODE 3860

FILED

JAN 26 2021

JACQUELINE BRYANT, CLERK

By: [Signature]
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA

Plaintiff,

vs.

FERRILL J. VOLPICELLI

Defendant.

Case No. CR98-2160, CR02-0147, CR02-0148Dept. No. 9**REQUEST FOR SUBMISSION OF MOTION**It is requested that the motion for RECALL

_____, which was filed on the 8 day of
JANUARY, 2021, in the above-entitled matter be submitted to the Court
for decision.

The undersigned certifies that a copy of this request has been mailed to all
counsel of record.

DATED this 15 day of JANUARY, 2021.

[Signature]

1 CODE: 3370
2
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 FERRILL J. VOLPICELLI,
9

Case No.: CR02-0147

10 Petitioner,

Dept. No.: 9

11 v.

12 THE STATE OF NEVADA,

13 Respondent.
14

15 **ORDER RECUSING JUDGE SCOTT N. FREEMAN**

16 Pursuant to Nevada's Code of Judicial Conduct ("NCJC") Rule 2.11(A), the Honorable
17 Judge Scott N. Freeman hereby recuses himself from the above-entitled matter.

18 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that the above-
19 entitled matter is referred to the Clerk of the Court for random reassignment.

20 DATED: this 16th day of March, 2021.

21 
22 DISTRICT JUDGE
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28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 16th day of March, 2021, I deposited for mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill J. Volpicelli, #79565
1200 Prison Road
Lovelock, NV 89419

Further, I certify that on the 16th day of March, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

JENNIFER NOBLE, ESQ. for STATE OF NEVADA
KATHERINE LYON, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
ZACH YOUNG, ESQ.



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-03-16 11:51:10.437.
KATHERINE LYON, ESQ. - Notification received on 2021-03-16 11:51:10.412.
DIV. OF PAROLE & PROBATION - Notification received on 2021-03-16 11:51:10.626.
ZACH YOUNG, ESQ. - Notification received on 2021-03-16 11:51:10.387.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-16-2021:11:49:56

Clerk Accepted:

03-16-2021:11:50:40

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Ord of Recusal

Filed By:

Judicial Asst. BWard

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

ZACH YOUNG, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

CODE 1312

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

STATE OF NEVADA,

Plaintiff,

Case No: CR98-2160

vs.

CR02-0147

CR02-0148

FERRILL J. VOLPICELLI,

Dept. No: 9

Defendant.

_____ /

CASE ASSIGNMENT NOTIFICATION

I hereby certify that the above-entitled matters have been randomly
reassigned to Department 10, from Department 9.

Additional information:

On March 16, 2021, an **ORDER RECUSING JUDGE SCOTT N. FREEMAN**
was filed.

Dated March 16, 2021.

JACQUELINE BRYANT

Clerk of the Court

By _____ **/s/N. Mason**

N. Mason- Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR98-2160, CR02-0147, CR02-0148

I certify that I am an employee of the Second Judicial District Court; that on March 16, 2021, I electronically filed the Case Assignment Notification with the clerk of the Court System which will send a notice of electronic filing to the following:

HONORABLE KATHLEEN SIGURDSON

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

KATHERINE H. LYON, ESQ. for STATE OF NEVADA

DIV. OF PAROLE & PROBATION

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court, and that on March 16, 2021, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated March 16, 2021.

/s/N. Mason

N. Mason

Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-03-16 12:18:22.331.

KATHERINE LYON, ESQ. - Notification received on 2021-03-16 12:18:22.388.

ZACH YOUNG, ESQ. - Notification received on 2021-03-16 12:18:22.36.

DIV. OF PAROLE & PROBATION - Notification received on 2021-03-16 12:18:22.273.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

03-16-2021:12:17:06

Clerk Accepted:

03-16-2021:12:17:49

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Case Assignment Notification

Filed By:

Deputy Clerk NMason

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

ZACH YOUNG, ESQ.

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

2021-04-07 11:53:50 AM

Jacqueline Bryant
Clerk of the Court

Transaction # 8382572

1 Case No. CR98-2160, CR02-0147, CR02-0148
 2 Dept. No. 9

3
 4
 5
 6 IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 7 IN AND FOR THE COUNTY OF Washoe

* * * * *

8
 9 Ferris Vukobratovic,)
 10 Petitioner,)
 11 -vs-)
 12 STATE of Nevada,)
 13 Respondent.)
 14

REQUEST FOR SUBMISSION
OF MOTION

15 It is requested that the Motion for Examination
 16 of Fees,
 17 which was filed on the 8 day of January, 2021, in
 18 the above-entitled matter, be submitted to the Court for
 19 decision.

20 Dated this 2 day of April, 2021.

21
 22 Ferris Vukobratovic # 2254
 23 Lovelock Correctional Center
 24 1200 Prison Road
 25 Lovelock, Nevada 89419
 26 Petitioner In Pro Se
 27
 28

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 2 day of April, 2021, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County District Attorney

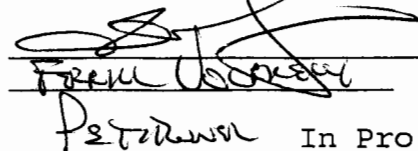


Fern Johnson #72525
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Peterson In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 2 day of April, 2021.



Fern Johnson
Peterson In Pro Se

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-04-07 11:55:33.518.

KATHERINE LYON, ESQ. - Notification received on 2021-04-07 11:55:33.783.

ZACH YOUNG, ESQ. - Notification received on 2021-04-07 11:55:33.545.

DIV. OF PAROLE & PROBATION - Notification received on 2021-04-07 11:55:33.462.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

04-07-2021:11:53:50

Clerk Accepted:

04-07-2021:11:54:58

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Request for Submission

Filed By:

Deputy Clerk KHudson

You may review this filing by clicking on the following link to take you to your cases.

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-

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

ZACH YOUNG, ESQ.

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

2021-04-07 12:00:43 PM

Jacqueline Bryant
Clerk of the Court

Transaction # 8382603

1 Case No. CR08-2160, CR02-0147, CR02-0148
 2 Dept. No. 9

3
 4
 5
 6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 7 IN AND FOR THE COUNTY OF CLATSOP

* * * * *

8
 9 FERRIE VOJICEK,)
 10 Plaintiff,)
 11 -vs-)
 12 STATE of Nevada,)
 13 Defendant.)
 14

SECONDREQUEST FOR SUBMISSION
OF MOTION

15 It is requested that the Motion to Revoke
 16 _____,
 17 which was filed on the 8 day of JANUARY, 2021, in
 18 the above-entitled matter, be submitted to the Court for
 19 decision.

20 Dated this 2 day of APRIL, 2021.



22 FERRIE VOJICEK # 72565
 23 Lovelock Correctional Center
 24 1200 Prison Road
 25 Lovelock, Nevada 89419

26 Plaintiff In Pro Se
 27
 28

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 2nd day of April, 2021, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County District Attorney



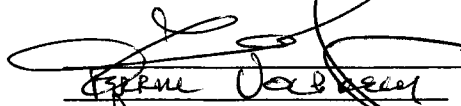
Fernando #28565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

PETITIONER In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 2 day of April, 2021.



PETITIONER In Pro Se

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-04-07 12:01:52.04.

KATHERINE LYON, ESQ. - Notification received on 2021-04-07 12:01:52.096.

ZACH YOUNG, ESQ. - Notification received on 2021-04-07 12:01:52.068.

DIV. OF PAROLE & PROBATION - Notification received on 2021-04-07 12:01:51.987.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

04-07-2021:12:00:43

Clerk Accepted:

04-07-2021:12:01:21

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Request for Submission

Filed By:

Deputy Clerk KHudson

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ZACH YOUNG, ESQ.

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

KATHERINE H. LYON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA
JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

3370

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FERRILL J. VOLPICELLI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: CR02-0147

Dept. No.: 10

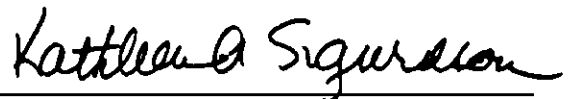
ORDER

Pending before the Court is Petitioner's *Second Request for Submission* ("Request") filed on April 7, 2021. In the Request, Petitioner submits for the Court's consideration Petitioner's *Motion to Recuse* ("Motion") filed on January 8, 2021.

However, the Motion has already been granted by the *Order of Recusal* filed on March 16, 2021, wherein the Honorable Scott N. Freeman of Department 9 recused himself from this matter. On March 16, 2021, a *Case Assignment Notification* was filed and the case matter has been reassigned to Department 10 before the Honorable Kathleen A. Sigurdson.

Accordingly, IT IS HEREBY ORDERED Petitioner's Request is DENIED as MOOT.

DATED this 9th day of June, 2021.



DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO.: CR02-0147

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF WASHOE; that on the 9th day of June, 2021, I electronically filed the foregoing **ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JENNIFER NOBLE, ESQ. for STATE OF NEVADA
- ZACH YOUNG, ESQ.
- DIV. OF PAROLE & PROBATION
- KATHERINE LYON, ESQ. for STATE OF NEVADA

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

- FERRILL JOSEPH VOLPICELLI, #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ Michael Decker
JUDICIAL ASSISTANT

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2021-06-09 15:59:49.317.

KATHERINE LYON, ESQ. - Notification received on 2021-06-09 15:59:49.367.

ZACH YOUNG, ESQ. - Notification received on 2021-06-09 15:59:49.342.

DIV. OF PAROLE & PROBATION - Notification received on 2021-06-09 15:59:49.266.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

06-09-2021:15:58:42

Clerk Accepted:

06-09-2021:15:59:16

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Ord Denying

Filed By:

Judicial Asst. MDecker

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

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NEVADA

ZACH YOUNG, ESQ.

DIV. OF PAROLE & PROBATION

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NEVADA

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FERRILL JOSEPH VOLPICELLI for FERRILL
JOSEPH VOLPICELLI

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VOLPICELLI