

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

PLEADING	DATE FILED	VOL.	PAGE NO.
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DATE: NOVEMBER 17, 2023

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Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2022-06-29 14:40:18.812.

ZACH YOUNG, ESQ. - Notification received on 2022-06-29 14:40:18.156.

DIV. OF PAROLE & PROBATION - Notification received on 2022-06-29 14:40:17.609.

NICKOLAS GRAHAM, ESQ. - Notification received on 2022-06-29 14:40:17.812.

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

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

06-29-2022:14:39:34

Clerk Accepted:

06-29-2022:14:39:58

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

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JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

Address: JOHN J. KADLIC, ESQ.
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

STATE OF NEVADA for STATE OF NEVADA

Address: STATE OF NEVADA
ONE SOUTH SIERRA
STREET
RENO, NV 89501

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

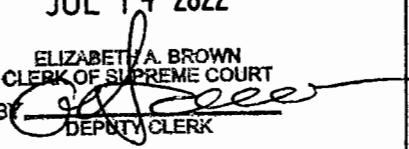
No. 84921

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

No. 84922

FILED

JUL 14 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER CONSOLIDATING APPEALS, DIRECTING TRANSMISSION
OF RECORDS, DENYING MOTIONS, AND REGARDING BRIEFING*

These are pro se appeals from district court orders denying a motion to remit legal defense fees. In the interest of judicial economy, these appeals are consolidated. *See* NRAP 3(b).

This court has concluded that its review of the complete records is warranted (CR02-0147 and CR02-0148). *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court records of these appeals. *See* NRAP 11(a)(2). The records shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The records shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Appellant has filed motions to appoint counsel. Appellant is not entitled to appointed counsel at state's expense in postconviction proceedings. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014); *see also Coleman v. Thompson*, 501 U.S. 722, 755 (1991). Accordingly, the motions are denied.

Appellant has filed informal briefs. NRAP 28(k). Respondents need not file a response to the briefs unless ordered to do so by this court. NRAP 46A(c). This court generally will not grant relief without providing an opportunity to file a response. *Id.*

It is so ORDERED.

 C.J.

cc: Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2022-07-18 13:19:44.054.

ZACH YOUNG, ESQ. - Notification received on 2022-07-18 13:19:43.413.

DIV. OF PAROLE & PROBATION - Notification received on 2022-07-18 13:19:42.71.

NICKOLAS GRAHAM, ESQ. - Notification received on 2022-07-18 13:19:43.054.

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

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

07-18-2022:13:18:56

Clerk Accepted:

07-18-2022:13:19:23

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

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JOSEPH VOLPICELLI

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH
VOLPICELLI

Address: JOHN J. KADLIC, ESQ.
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

STATE OF NEVADA for STATE OF NEVADA

Address: STATE OF NEVADA
ONE SOUTH SIERRA
STREET
RENO, NV 89501

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,

Case No. CR02-0147

vs.

Dept. No. 10

FERRILL J. VOLPICELLI,

SCN. No. 84921

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 21st day of July, 2022, I electronically filed Volumes 1 through 9 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 10 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

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 in accordance NRAP 11(2)(b).

Dated this 21st day of July, 2022.

Alicia L. Lerud
Clerk of the Court
By /s/Y.Viloria
Y.Viloria
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2022-07-21 11:24:14.181.

ZACH YOUNG, ESQ. - Notification received on 2022-07-21 11:24:13.634.

DIV. OF PAROLE & PROBATION - Notification received on 2022-07-21 11:24:13.197.

NICKOLAS GRAHAM, ESQ. - Notification received on 2022-07-21 11:24:13.416.

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

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

07-21-2022:11:23:35

Clerk Accepted:

07-21-2022:11:23:55

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Certificate of Clerk

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Deputy Clerk YViloria

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DIV. OF PAROLE & PROBATION

ZACH YOUNG, ESQ.

JENNIFER P. NOBLE, ESQ. for STATE OF
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VOLPICELLI

Address: JOHN J. KADLIC, ESQ.
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

STATE OF NEVADA for STATE OF NEVADA

Address: STATE OF NEVADA
ONE SOUTH SIERRA
STREET
RENO, NV 89501

**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. 84921/84922
District Court Case No. CR020147

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

NOTICE OF TRANSFER TO COURT OF APPEALS

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: September 29, 2022

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

Notification List

Electronic
Washoe County District Attorney \ Jennifer P. Noble

Paper
Hon. Kathleen A. Sigurdson, District Judge
Ferrill Joseph Volpicelli
Alicia L. Lerud, Washoe District Court Clerk

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

STEVEN ANTHONY HAAG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84797
District Court Case No. CR031520

NOTICE OF TRANSFER TO COURT OF APPEALS

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: September 29, 2022

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

Notification List

Electronic
Washoe County District Attorney \ Jennifer P. Noble

Paper
Hon. Connie J. Steinheimer, District Judge
Steven Anthony Haag
Alicia L. Lerud, Washoe District Court Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2022-10-04 10:53:25.674.

ZACH YOUNG, ESQ. - Notification received on 2022-10-04 10:53:28.503.

DIV. OF PAROLE & PROBATION - Notification received on 2022-10-04 10:53:26.283.

NICKOLAS GRAHAM, ESQ. - Notification received on 2022-10-04 10:53:27.94.

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

Judge:

HONORABLE KATHLEEN SIGURDSON

Official File Stamp:

10-04-2022:10:52:28

Clerk Accepted:

10-04-2022:10:52:56

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI
(D10)

Document(s) Submitted:

Supreme Court Notice

Filed By:

Deputy Clerk YViloria

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DIV. OF PAROLE & PROBATION

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Address: JOHN J. KADLIC, ESQ.
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

STATE OF NEVADA for STATE OF NEVADA

Address: STATE OF NEVADA
ONE SOUTH SIERRA
STREET
RENO, NV 89501

FERRILL J. VOLPKEN
79565 E LCE
1200 PRISON ROAD
LOVELOCK, NV 89419

PETITIONER IN PRO SE

FILED

2022 OCT 18 PM 1:37

In the Second Judicial District Court of the State of Nevada
IN AND FOR THE COUNTY OF WASHOE

ALICIA L. LERUD
CLERK OF THE COURT
DEPUTY

xxx

FERRILL J. VOLPKEN
PETITIONER

CASE NO: CR20-0147

vs.
WARDEN CORRECTION,
RESPONDENT

DEPT NO: 9

MOTION TO STAY PETITION
PENDING REMITTANCE

PETITIONER, FERRILL J. VOLPKEN (VOLPKEN) MOVES THE COURT TO STAY THIS PETITION FOR RELIEF BASED ON A COURT ORDERANCE PENDING TO NRS 34.900 et seq. PENDING THE REMITTANCE ISSUE IN NEVADA SUPREME COURT CASE NOS. 84921/84922. THE INSTANT MOTION IS FILED CONCOMITANT WITH SAID PETITION AND IS BASED UPON THE APPLICABLE NRS AND THIS COURT'S LOCAL RULES.

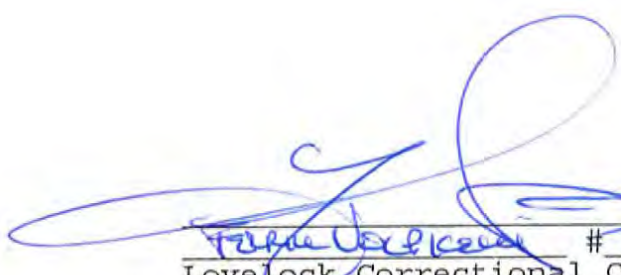
DATED THIS 14TH DAY
OF OCTOBER, 2022

FERRILL J. VOLPKEN
PETITIONER IN PRO SE

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the
 foregoing Motion to Stay Petition
 to the below address(es) on this 14 day of October,
 2022, by placing same in the U.S. Mail via prison law library
 staff, pursuant to NRCP 5(b):

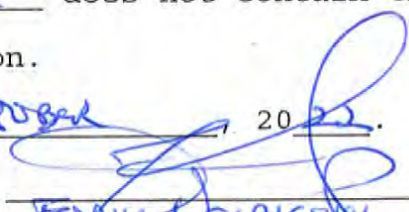
WASHOE COUNTY
 DISTRICT COURT
 RENO, NV 89501


Fernando # 77265
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock, Nevada 89419
Fernando In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding
Motion to Stay Petition filed in
 District Court Case No. CR2-0147 does not contain the
 social security number of any person.

Dated this 14 day of October, 2022.


Fernando In Pro Se

FERRILL J. VOLKEM
 9565 E LCC
 1200 PRISON ROAD
 LOVELOCK, NV 89419
 PETITIONER in Pro Se

FILED

2022 OCT 18 PM 1:37

ALICIA L. LERUD
 CLERK OF THE COURT
 BY *[Signature]*
 DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

xxx

FERRILL J. VOLKEM,
 PETITIONER,

CASE No: CR22-0147

vs,

WARDEN GARRETT,
 RESPONDENT,

DEPT No: 9

PETITION FOR RELIEF BASED
 ON ACTUAL INNOCENCE
 PURSUANT TO NRS 34.200 et seq

PETITIONER, FERRILL J. VOLKEM, (VOLKEM) SUBMITS
 THE INSTANT PETITION FOR RELIEF BASED ON ACTUAL
 INNOCENCE PURSUANT TO NRS 34.200 et seq.
 THIS PETITION FOR RELIEF IS MADE AND BASED
 UPON VOLKEM'S ACTUAL AND FACTUAL INNOCENCE,
 ANY AND ALL APPLICABLE NEVADA RULES OF
 CIVIL PROCEDURE, THIS COURT'S LOCAL RULES, AS
 WELL AS THE FOLLOWING POINTS AND AUTHORITIES,
 WITH ACCOMPANYING AFFIDAVIT AND EXHIBIT 1
 (ATTACHMENT)

POWERS AND AUTHORITIES

I STATEMENT OF CASE

VOLPICELLI ASSERTS HIS ACTUAL INNOCENCE AS TO THE CONVICTION IN THIS CASE BASED UPON A COMPARISON OF THE COURT'S RECORD OF EVIDENCE, IN CONTRAST WITH EVIDENCE NEVER PRESENTED TO THE COURT.

NOT UNCONSEQUENTLY, VOLPICELLI IS RETURNED WITH A MISNOMER OF JUSTICE WHERE THE UNITED STATES SUPREME COURT HAS HELD CAN BE REVIEWED AS A SETTLER PROCEDURAL CLAIM OF ACTUAL INNOCENCE, AS WELL AS A ~~HEALTH~~ SUBSTANTIVE CLAIM OF ACTUAL INNOCENCE.

VOLPICELLI SEEKS, AS A MINIMUM, RELIEF WITH AN EVIDENTIARY HEARING, AND ultimately A NEW TRIAL BASED UPON EVIDENCE WHICH DEMONSTRATES HIS ACTUAL INNOCENCE AS TO HIS CONDUCT IN QUESTION OF SEPTEMBER 25, 2001.

II PROCEDURAL HISTORY

VOLPICELLI WAS ARRAIGNED ON CHARGES Stemming FROM A COMPLAINT AND AMENDED COMPLAINT ON FEBRUARY 13th 2002, AND FEBRUARY 15, 2002, RESPECTIVELY.

Volpelli Pled Not Guilty to the charges of VIOLATING NRS 201.210 AND NRS 201.220, AND WAS SCHEDULED FOR TRIAL ON JULY 10, 2003. MID TRIAL, COUNTS WERE DISMISSED FOR EVIDENTIARY REASONS, AND VOLPELLI WAS EVENTUALLY CONVICTED OF 1 COUNT OF INDECENT EXPOSURE AND ANOTHER COUNT OF OPEN LEWDNESS. VOLPELLI WAS EVENTUALLY SENTENCED TO IMPRISONMENT OF 12-48 MONTHS AND FINES/FEES IN EXCESS OF \$10,000.

VOLPELLI APPEALED HIS CONVICTION AND SENTENCE TO THE NEVADA SUPREME COURT RESULTING IN AN ORDER OF AFFIRMATION ON MAY 12, 2004.

ON OCTOBER 7, 2004 VOLPELLI LODGED A PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) WITH THE DISTRICT COURT. THE STATE MOVED TO DISMISS THE PETITION WITHOUT AN EVIDENTIARY HEARING ON FEBRUARY 3, 2005.

THE DISTRICT COURT'S JUNE 22, 2007 ORDER DISMISSED THE PETITION IN ITS ENTIRETY. NOTICE OF APPEAL WAS EVENTUALLY PERFECTED, AND THE NEVADA SUPREME COURT ISSUED ITS ORDER OF AFFIRMANCE ON MARCH 5, 2008.

III Statement of Facts

Volpinski was on parole in the summer of 2001 stemming from a 1998 Commercial Burglary Conviction (CR9P-2160) for a couple of months and up until his arrest on October 17, 2001 on an unrelated matter, Volpinski was being supervised by the Northern Nevada Repeat Offender Program.

On September 25 and 27 of 2001, Detectives supervised Volpinski's conduct as they observed him parked in North Reno shopping centers. It was this conduct which formed the basis for the aforementioned charges. But Volpinski was not arrested on the days of said observed conduct. In fact, Volpinski's parole officer never mentioned any problems until the arrest aforementioned on October 17, 2001 for a parole violation. While in custody at Washoe County Sheriff's office, and awaiting a return to the Nevada Department of Corrections to discharge his sentence in CR9P-2160, Volpinski was arraigned in February of 2002 as to the charges in this case. He pled Not Guilty and eventually

RETURNED TO THE NEWARK DEPARTMENT OF CORRECTIONS.

IN THE SPRING OF 2003, VOLPICELLI WAS TRANSPORTED TO WASHOE COUNTY SHERIFF'S OFFICE FOR THE INSTANT CASE, AND ANOTHER CASE STEMMING FROM VOLPICELLI'S ARREST ON OCTOBER 17, 2001.

ON JULY 10, 2003, TRIAL COMMENCED WITH LEAD DETECTIVES TESTIFYING AS TO THE OBSERVED CONDUCT IN SEPTEMBER OF 2001. VOLPICELLI'S CONVICTION ON 2 COUNTS IN THE CASE RELATES TO THE CONDUCT ON SEPTEMBER 25, 2001. THE STATE PRESENTED TESTIMONY FROM PATRICIA ALLEN, A POLICE OFFICER WITH THE CITY OF RENO. OTHER OFFICERS WHO ACCOMPANIED ALLEN ON THAT DAY ALSO OBSERVED VOLPICELLI PARKED IN A SHOPPING CENTER ON SAID DATE. ALL THE DETECTIVES' TESTIMONIES AT TRIAL STATED THAT (1) IT WAS SUSPICIOUS OF VOLPICELLI TO BE PARKED IN THE CAR WHEN IT WAS NOT A HOT AFTERNOON AND HIS ENGINE WAS NOT RUNNING; AND (2) THAT VOLPICELLI JUMPED INTO THE BACK SEAT OF HIS VEHICLE, WITHOUT LEAVING THE VEHICLE, AND ERECTED A PARTITION. DETECTIVE ALLEN TESTIFIED THAT WHEN SHE APPROXIMATED VOLPICELLI'S VEHICLE, SHE OBSERVED HIM IN THE BACK SEAT. FURTHER, THAT SHE

COULD SEE OF HIM WAS HIS HAND AND HIS UPPER CHEST TO HIS HEAD. MOST SIGNIFICANTLY, SHE TESTIFIED VOLPKIEWITZ HUNG A PARTITION WHICH COVERED PART OF VOLPKIEWITZ'S BODY AS HE SAT UPRIGHT IN THE REAR SEAT OF THE VEHICLE. DETECTIVE ALLEN THEN TESTIFIED THAT SHE LEFT THE AREA IN FRONT OF VOLPKIEWITZ'S VEHICLE AND, WITHIN A MINUTE, CIRCLED BACK AROUND THE RIGHT SIDE OF HIS VEHICLE. SHE FURTHER TESTIFIED THAT, DESPITE THE PARTITION, SHE SLOWLY PASSED BY THE VEHICLE, WITH THE SPECIFIC INTENT TO LOOK INSIDE THE VEHICLE, THEREBY SURPRISING VOLPKIEWITZ. BUT MOST IMPORTANTLY, HER TESTIMONY STATED THAT WITHOUT LOOKING INTO THE WINDOW, NEITHER SHE OR ANY OTHER PASSERBY WAS ABLE TO SEE WHETHER VOLPKIEWITZ WAS DOWN. LASTLY, AND FROM THAT LIMITED, MOMENTARY VIEW AS SHE CIRCLED BY THE RIGHT SIDE OF THE VEHICLE, THE DETECTIVE COULD BARELY SEE VOLPKIEWITZ LAYING DOWN ON THE REAR SEAT MANIPULATING HIS CONTROLS.

YET, WITH ALL THE DETECTIVES' TESTIMONY OF VOLPKIEWITZ'S CONDUCT ON SEPTEMBER 25, 2001, HE WASN'T ARRESTED FOR HIS CONDUCT IN THE VEHICLE ON THAT AFTERNOON.

INSTEAD, VOLPKIEWITZ WAS EVENTUALLY CHARGED

Almost 4 months later while in Wasatch County Sheriff's office on an unrelated matter.

IV. Arguments

(A) Volkwein is Actually Innocent.

(1) NRS 34.900 et seq

ALMOST 2 DECADES AFTER VOLKWEIN'S CONVICTION ON SEPTEMBER 25, 2001, THE NEVADA LEGISLATURE ENACTED A STATUTE PROVISION (NRS 34.900) WHICH ALLOWS THE ACTUALLY INNOCENT A SECOND CHANCE FOR RELIEF FROM A MISCONDUCT OF JUSTICE. AS SUCH, AND SO AS TO OVERCOME THE EVER-PRESENT PROCEEDINGS BARS FACING VOLKWEIN IN THIS CASE, VOLKWEIN NOW DEMONSTRATES GOOD CAUSE AND PREJUDICE BASED UPON HIS FACTUAL AND ACTUAL INNOCENCE. VOLKWEIN ASSERTS THAT EVIDENCE NEVER PRESENTED TO THE JURY, (NO THANKS TO HIS INEPT AND INEFFECTIVE ASSISTANCE OF COURT-APPOINTED COUNSEL,) ACTUALLY DEMONSTRATES OVERZEALOUS LAW ENFORCEMENT MISCONSTRUCTING HIS CONDUCT ON SEPTEMBER 25, 2001, WHEN, IN FACT, AND BASED UPON THE PARTICULARS

ARTLY DESCRIBED IN THE ACCOMPANYING AFFIDAVIT
 AND EXHIBITS CLEARLY DEMONSTRATE INNOCENT
 CONDUCT OF A CITIZEN CLEARLY EXCLUDING
 HIMSELF FROM PUBLIC VIEW, AND TREATING A
 GENUINE MEDICAL CONDITION BEHIND PARTITIONS,
 RETREATED AND FROZE ON THE BACK SEAT OF
 HIS VEHICLE IN A "SECRETIVE" MANNER.

(2) ACTUAL INNOCENCE STANDARD

OVER EIGHT DECADES AGO, THE UNITED STATES
 SUPREME COURT (SCOTUS) RECOGNIZED THAT BECAUSE
 THE PROSECUTOR IS IN A PEACETIME AND VERY DEFINITE
 SENSE THE SERVANT OF THE LAW, THE TWO-FOLD
 AIM OF WHICH IS THAT COULD STAY NOT
 ESCAPE OR INNOCENCE SUFFER...

BERGER V US, 295 US 78, 18 (1935).

IN TERRACE V GEORGIA, 506 US 390, 407 (1993), AND
LARRY W. THORPE V ILL., 547 US 511 (2000). SCOTUS
 WITHHELD A DECISION AS TO WHETHER A FREE-
 STANDING ACTUAL INNOCENCE CLAIM IS COGNIZABLE
 UNDER FEDERAL LAW. HOWEVER, THE COURT CANNOT
 THIS ASSUMED THAT SUCH A CLAIM IS POSSIBLE
 IF THE CLAIM GOES BEYOND DEMONSTRATING DUB
 ABOUT GUILT, AND AFFIRMATIVELY PROVES INNOCENCE.
CARRIGER V SEWATE, 132 F3d 463, 470 (8th 1997).
 SEE ALSO, JACKSON V CALIFORNIA, 211 F3d 1105 (V7. 1105).

AS SUCH, AND THEREIN, THIS COURT SHOULD FIRST ORDER AN EVIDENTIARY HEARING TO PERMIT FULL DEVELOPMENT OF VOLKOVICH'S CLAIMS, AT THAT POINT, AND IF THE HEARING ACHIEVES INNOCENCE STANDARD IS NOT MET, THEN THE COURT SHOULD CONSIDER A GATEWAY ACTUAL INNOCENCE CLAIM UNDER SCHUPP V DELOS, 115 S.Ct 805, 806-07; AND DETERMINE WHETHER THAT CLAIM WAS FACTUALLY MERITORIOUS PRIOR TO CONSIDERING WHETHER THE CLAIM WAS JURISDICTIONALLY BARRED. AFFIRM, THE GATEWAY ACTUAL INNOCENCE CLAIM PROVIDES A CONSTITUTIONAL EXCEPTION TO AEDPA'S BAR OF HEDONATIONS, AND THE PREVENTION OF A MISFEASANCE OF JUSTICE.

(3) THE EXPECTATION OF PRIVATE CONSIDERATION

VOLKOVICH ASSERTS THAT HIS OBSERVED CONDUCT BY AUTHORITIES ON SEPTEMBER 25, 2001, CLEARLY DEMONSTRATES TO OTHER AN OBVIOUSLY REASONABLE EXPECTATION OF PRIVATE. YET, INVESTIGATIONS IGNORED VOLKOVICH'S CONDUCT OF EXCLUDING OTHERS FROM THE PERSONAL AFFAIRS IN CONTRAVENTION OF HIS RIGHT TO PRIVATE GUARANTEED BY THE FOURTH AND AMENDMENT TO THE UNITED STATES AND NEVADA CONSTITUTIONS.

CENTRAL TO THE CLAIM THAT THE OVERZEALOUS INVESTIGATORS IN THIS CASE TRANSGRESSED VOAKREN'S CONSTITUTIONAL RIGHTS, THE UNITED STATES SUPREME COURT HAS HELD THAT 'WHAT A CITIZEN SEEKS TO PRESERVE AS PRIVATE, BASED UPON HIS OR HER ACTIONS, EVEN IN AN AREA ACCESSIBLE TO THE PUBLIC, MAY BE CONSTITUTIONALLY PROTECTED. (JUDGE HARLAN'S CONCURRING OPINION IN KATZ VS. U.S., 389 U.S. 347 (1965)).

CLEARLY VOAKREN'S DEMONSTRATED CONDUCT TO OTHERS, INCLUDING INVESTIGATORS IN THIS CASE, TO EXCLUDE OTHERS FROM VIEW OF HIS TREATMENT IN HIS VESTIBLE, WAS REASONABLE WHEN EVALUATING ALL THE EVIDENCE IN THE CASE - INCLUDING OF THAT WHICH VOAKREN'S COUNSEL FAILED TO BRING TO THE JURY'S ATTENTION. WHAT IF THE SITUATION WAS SLIGHTLY DIFFERENT? SUPPOSE VOAKREN WAS NOT PRESSED FOR TIME TO PICK UP HIS SON. INSTEAD, DEFECTIVES FOLLOWED HIM INTO THE COMMUNE DRESSING ROOM STALLS OF THE CLOTHING RETAINER. WOULD IT BE REASONABLE FOR A DEFECTIVE TO ENTER AN ADJACENT STALL TO VOAKREN AND PEER UNDER THE SPACE IN BETWEEN THE STALLS? CLEARLY NOT, ONCE VOAKREN'S ACTIONS OF CLOSING THE STALL DOOR DEMONSTRATED TO OTHERS AN EXPECTATION OF PRIVACY.

(B) Volpelli Committed No Crimes Under State Law.

As in all crimes, intent or mens rea is the sure and sure for establishing guilt. In this case, and as referenced in cases such as Young v State, 849 2d 336 (1993) and Ransom v State, 620 P2d 574 (1983), Volpelli's described conduct by detectives demonstrates a "lack of intent to intentionally expose" himself in public view, as well as treating his medical condition in a "secret" versus "open" manner. As such, he is both factually & legally innocent of committing crimes under NRS 201.210 and NRS 201.220.

(C) A Miscarriage of Justice

It is Volpelli's assertion that based upon the totality of evidence in this case, inclusive of the accompanying affidavit and exhibit never presented to this court's jurors, the reliability of the jury's verdict comes into doubt. Equally noteworthy is the notion that counsel had an obligation to present evidence of Volpelli treating his medical condition. In fact, the court's record in this case is replete with his failures

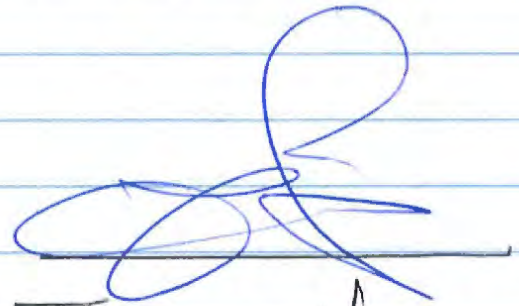
BY VOLPICKI AS TO THE CONFLICT OF INTEREST WITH COURT APPOINTED COUNSEL. NOT INCONSEQUENTLY, VOLPICKI STANDS EXONERATED OF INNOCENT CONDUCT IN WHICH NO CRIME WAS COMMITTED UNDER STATE LAW. HIS UNJUSTIFIABLE CONVICTIONS IN THIS CASE ARE BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL'S FAILURE TO PRESENT ANY AND ALL RELEVANT EVIDENCE IN SUPPORT OF VOLPICKI'S INNOCENCE. EVIDENCE THAT EVEN THE JURORS HAD A RIGHT TO HEAR BEFORE THEIR DELIBERATIONS. ABSENT SUCH, VOLPICKI REMAINS PRETYPED WITH AN ERRONEOUS SEXUAL CONVICTION WHICH LEAVES HIM IN CUSTODY SPECIFICALLY THOUSED WITH VIOLENT SEX OFFENDERS WHO HAVE ASSAULTED BOTH WOMEN AND CHILDREN.

IV Conclusion

BASED UPON THE FOREGOING, THE COURT SHOULD GRANT VOLPICKI THE OPPORTUNITY TO FURTHER CHALLENGE HIS MISCONDUCT OF JUSTICE WITH NEWLY COURT APPOINTED COUNSEL. THE BALANCE OF HARSHNESS FOR THE STATE TIL IN VOLPICKI'S FAVOR. IT IS INCUMBENT UPON THIS COURT TO

RESTORE THE INTEGRITY OF THESE JUDICIAL
 PROCEEDINGS WHICH HAVE VOLPERINI
 WRONGFULLY CONVICTED OF SEXUAL OFFENSES
 IN CONTRAVENTION OF ALL THE EVIDENCE
 AND UNDER STATE LAW. AS SUCH, THE
 COURT SHOULD CALL AN EMERGENCY
 HEARING ON THE MATTER OF VOLPERINI'S
 ACQUITTAL INNOCENCE.

DATED THIS 14 DAY
 OF October, 2022



Fern T. Volperini
 #79565 EICE
 1200 Preston Road
 Lombard, IL 60149

PERMANENTLY IN THE

ATTACHMENT

ATTACHMENT

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

AFFIDAVIT OF FERRIL JOSEPH VOLPKEK

STATE OF NEVADA }
 COUNTY OF PERSHING } ss:

COMES NOW, FERRIL JOSEPH VOLPKEK, who
 First Being duly sworn and on my own
 oath, DO DEPOSE AND STATE THE FOLLOWING:

1. I AM FERRIL JOSEPH VOLPKEK, THE PETITIONER
 IN THE ACCOMPANYING WRIT OF HABEAS
 CORPUS PURSUANT TO NRS 34.960 & 34.965.
2. I AM OVER THE AGE OF 18 AND I AM
 FULLY COMPETENT TO TESTIFY TO ALL MATTERS
 SET FORTH HEREIN, WHICH ARE OF MY
 OWN KNOWLEDGE.
3. IN JUNE OF 2001 I WAS ON PAROLE
 IN RENO.
4. ON SEPTEMBER 25, 2001, I WAS DRIVING
 MY DAUGHTER'S VEHICLE SO AS TO PICK UP
 MY SON FROM SCHOOL AT 3:00 PM.
5. BEING PRESSED FOR TIME AND AT THE SAME
 TIME NEEDING TO REMOVE THE DISCOMFORT
 FROM MY SKIN I PARKED IN A
 NEARBY NORTH RENO SHOPPING CENTER.
6. I SPECIFICALLY PARKED ADJACENT TO
 AN AUTOMOBILE WHERE I NOTICED

A WOMAN WAS DRESSED IN HER WORK
UNIFORM TO BEGIN THE SHIFT AT THE FOOD
RETAILER. IT WAS MY ASSUMPTION THAT
I WOULD NOT SEE HER AGAIN AS I DECIDED
TO TREAT MY SKIN CONDITION. IN FACT,
I NEVER DID SEE HER AGAIN. WITH HER
VEHICLE PARKED ON THE RIGHT SIDE OF MY
VEHICLE, I GATHERED ITEMS I NEEDED TO SECURE
MY PRIVATE AND TREAT MY MEDICAL CONDITION.
THEN, AND WITHOUT EXITING MY VEHICLE, I
HOPPED INTO THE BACK SEAT AND COMMENCED
TO HANG PARTITIONS TO EXCLUDE MY VIEW
FROM OTHERS.

WHILE HANGING MY FIRST PARTITION BETWEEN
THE FRONT AND BACK SEATS, A DIFFERENT
WOMAN SUDDENLY PASSED IN FRONT OF MY
VEHICLE AND STOPPED AT ME AS SHE WAS
PUSHING A SHOPPING CART TO THE CASH
COUNTER.

AFTER PLACING ANOTHER MAKEUP PARTITION
ON THE RIGHT REAR WINDOW, I LAYED
DOWN ON THE BACK SEAT, DROPPED MY PANTS
TO MY KNEES, AND TENDED TO DRAWING MY
MIDSECTION OF MY BODY AND APPLIED MEDICATION
TO MY CORRELATION & SURROUNDING AREAS.
UNEXPECTEDLY, I BLURRY SAW THE SHADOW
OF A PERSON OUT OF THE CORNER OF MY EYE

IN BETWEEN THE PARTICIPANTS, BOTH BUCKET
SEATS AND THE TINTED WINDOWS OF THE RIGHT
SIDE OF MY VEHICLE.

OFFENDED, FRUSTRATED AND CONCERNED, I QUICKLY
FINISHED TREATING THE AFFECTED AREAS, DRESSED
AND IMMEDIATELY JUMPED BACK TO THE DRIVER'S SEAT
TO PICK UP MY SON AT SCHOOL. SUBSEQUENT
TO THAT INCIDENT, I WAS NOT ARRESTED OR
CONTACTED BY MY PAROLE OFFICER AS TO COMPLAINTS.
WEEKS LATER, AND ON OCTOBER 17, 2001, I WAS
ARRESTED FOR A PAROLE VIOLATION ON AN
UNRELATED MATTER.

WHILE IN CUSTODY AT WASHOE COUNTY SHERIFF'S
OFFICE, AND AWAITING A PAROLE REVOCATION
HEARING I WAS APPOINTED COUNSEL.

I THEN RETURNED TO THE NORTHERN DEPARTMENT
OF CORRECTIONS TO DISCHARGE MY SENTENCE IN
CR 98-1160.

ON FEBRUARY 13, 2002, I WAS CHARGED AND
ARRAIGNED ON THE SEPTEMBER 25, 2001 CONDUCT -
ALMOST FOUR MONTHS AFTER THE FACT.

AT SAID ARRAIGNMENT, I PLEA NOT
GUILTY TO VIOLATING NRS 201.210 AND
NRS 201.220, WHICH CORRESPONDED TO INDECENT
EXPOSURE AND LEWD CONDUCT.

A YEAR LATER, AND IN THE SPRING OF 2003,
I DISCHARGED MY SENTENCE IN CR 98-1160.

AND WAS TRANSFERRED BACK TO WASHOE COUNTY SHERIFF'S OFFICE FOR TRIAL.

AT MY MEETING WITH COURT APPOINTED COUNSEL, I EXPLAINED THE CIRCUMSTANCES IN MY CASE RELEVANT TO TREATING MY MEDICAL CONDITION ON SEPTEMBER 25, 2001.

AT A PRE TRIAL HEARING IN JUNE OF 2003, MY ATTORNEY INFORMED ME THAT HE WOULD NOT ENTERAIN THE DEFENSE OF TREATING MY MEDICAL CONDITION IN MY VEHICLE; BASED UPON A LACK OF SCIENTIFIC EVIDENCE SUPPORTING MY CONDUCT ON SEPTEMBER 25, 2001.

AT TRIAL, I RECOGNIZED THE WOMAN WHO HAD PASSED IN FRONT OF MY VEHICLE ON SEPTEMBER 25, 2001.

MY ATTORNEY ARGUED A DEFENSE THAT THE WOMAN, WHO INVESTIGATED MY CONDUCT ON THAT DAY, WAS ACCURATELY DESCRIBED AS 'PEEPING PATRICIA,' BASED UPON THE CONDUCT OF VIOLATING THE SANCTITY OF MY PRIVACY ON THAT AFTERNOON. MOREOVER, THE CHARGES AS TO COUNTS 1 & 4 ON SEPTEMBER 27, 2001 WERE DISCUSSED BASED UPON NO EVIDENCE OF A CRIME.

THE JURY EVENTUALLY FOUND ME GUILTY OF COUNTS 1 & 2 FOR MY CONDUCT ON SEPTEMBER 25, 2001.

I WAS SENTENCED TO 48 MONTHS OF PRISON

ON DECEMBER 12, 2003, ALONG WITH AN EXORBITANT FINE OF \$10,000 DESPITE MY CONFIRMED STATUS AS INDIGENT. PRIOR TO SENTENCING, THE NEVADA DEPARTMENT OF PAROLE AND PROBATION SPECIFICALLY MADE REFERENCE IN ITS PRE-SENTENCE REPORT FOR THE COURT THAT MY CASE INVOLVED A 'VICTIMLESS CRIME' AS A MITIGATING CIRCUMSTANCE, ONLY RECENTLY, AND WITH THE ASSISTANCE OF A CONCERNED FAMILY MEMBER, I WAS ABLE TO OBTAIN MY MEDICAL FEE RELEVANT TO THE TREATMENT FOR MY SKIN CONDITION (EXHIBIT) UNDER A PHYSICIAN WHO HAD SINCE RETIRED AND MOVED AWAY.

THE FEE SPECIFICALLY REFERENCES TREATMENT OF MEDICATION TO MY CROWN AND SURROUNDING AREAS.

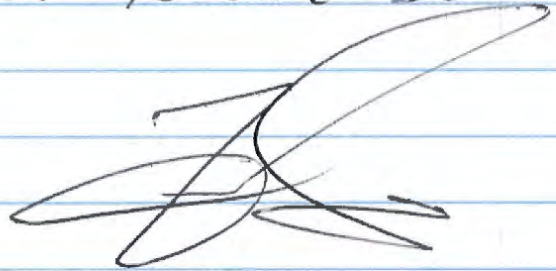
WITHIN A WEEK OF THE LAST VISIT TO MY PHYSICIAN, I WAS PLACED IN CUSTODY WHERE I HAD BEEN TREATING THE SAME CONDITION THROUGHOUT MY INCARCERATION AND WHILE ON PAROLE IN 2001.

HAD MY COURT APPOINTED COUNSEL PROCURED THIS DOCUMENTATION OF TREATMENT FOR MY SKIN CONDITION, COULDED WITH THE POSSIBILITY THAT THE FEMALE DEEDONE COULD HAVE MISCONSTRUED THE APPLICATION OF CURRENT

TO MY CONVICTION AS RAPE, IT
IS MORE LIKELY THAN NOT THE JURY
WOULD HAVE SECURED ME ON EITHER
COUNT 1 OR COUNT 2, AND POSSIBLY BOTH.

THIS AFFIDAVIT IS MADE UNDER PENALTY
OF PERJURY AND PURSUANT TO NRS
208.120, AS I AM AN INMATE IN
CUSTODY BENEFIT OF NOTARY SERVICES.

DATED THIS 4th DAY
OF DECEMBER, 2022



Fernand J. Vachereau

PERJUROR / AFFIANT
IN PRO SE

EXHIBIT

1

EXHIBIT

1

#001

LCC

THOMAS L. STANDLEE, M.D., LTD.
75 PRINGLE WAY, SUITE 509
RENO, NV 89502

VOLPICELLI, FERRILL
1-24-96

CC: Pigmentation left cheek
PI: Left cheek hyperpigmented macules, all less than 1 cm,
uniform-in-color.
DX: * Lentigines
* Actinic keratoses
RX: * Options of therapy discussed
* Solaquin forte prescription given
TLS:bj

11-12-97

CC: Wart left thumb and gluteal cleft rash.
PI: Gluteal cleft rash is improved (has had it for a year) since
stopping using Jockey shorts and wearing underwear and using topical
hydrocortisone. Thumb wart for 4-5 days, tender, thought there might be
a piece of glass in it. Has been using various topicals including
salicylic acid.
PE: Reveals a verrucoid macule with speckling crust of the left tip
thumb, which, on scalpel-shaving, dimensions its diameter. It is at 4
mm. Gluteal cleft erythema without ulceration or fissuring.
DX: * Intertrigo
* Wart
RX: * Cryo to wart after scalpel-shaving
* Mycolog ointment.
TLS:bj

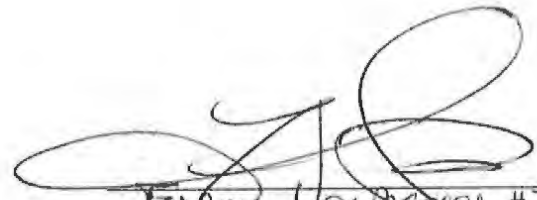
12-15-97

CC: Rash and warts
PI: Rash is clear. Warts recurred.
PE: 4.5 mm wart tip of left thumb.
DX: * Wart
RX: * Cryo today
* Transversal "6" to thumb wart qhs beginning 1-1-98.
TLS:bj

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing ABERS PETROW to the below address(es) on this 14 day of October, 2022, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY
DISTRICT ATTORNEY
RENO, NV 89501



Terrie Housh # 19305
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

PETROW In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding ABERS PETROW filed in District Court Case No CRO-0407 does not contain the social security number of any person.

Dated this 14 day of October, 2022.



Terrie Housh
PETROW In Pro Se