

Electronically Filed
Dec 26 2023 10:32 AM
Elizabeth A. Brown
Clerk of Supreme Court

1 **NOASC**
2 STEVEN S. OWENS, ESQ
3 Nevada Bar No. 4352
4 1000 N. Green Valley #440-529
5 Henderson, Nevada 89074
6 Telephone: (702) 595-1171
7 owenscrimlaw@gmail.com
8 *Attorney for Petitioner Raekwon Robertson*

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 RAEKWON ROBERTSON,
9
10 Petitioner,
11 vs.
12 STATE OF NEVADA.
13
14 Respondent.

CASE NO.: A-20-823892-W
DEPT NO.: XII

NOTICE OF APPEAL

13 TO: THE STATE OF NEVADA, Respondent.

14 TO: DEPARTMENT XII OF EIGHTH JUDICIAL DISTRICT COURT

15 Notice is hereby given that RAEKWON ROBERTSON, Petitioner in the above-entitled
16 action, appeals to the Nevada Supreme Court from the Order Regarding Evidentiary Hearing on
17 Petition for Writ of habeas Corpus (Post-Conviction), filed on December 1, 2023.
18

19 DATED this 19th day of December, 2023.

20
21 /s/ Steven S. Owens, Esq.
22 STEVEN S. OWENS, ESQ.
23 Nevada Bar No. 4352
24 1000 N. Green Valley #440-529
25 Henderson, Nevada 89074
26 (702) 595-1171
27 Attorney for Petitioner
28 RAEKWON ROBERTSON

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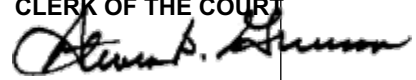
Attorney's Office by sending a copy via electronic mail to:

Steve Wolfson

Motions@clarkcountyda.com

BY:

Attorney for Petitioner
RAEKWON ROBERTSON



ASTA
STEVEN S. OWENS, ESQ
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, Nevada 89074
Telephone: (702) 595-1171
owenscrimlaw@gmail.com
Attorney for Petitioner Raekwon Robertson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RAEKWON ROBERTSON,

CASE NO.: A-20-823892-W

DEPT NO.: XII

Petitioner,

vs.

CASE APPEAL STATEMENT

THE STATE OF NEVADA.

Respondent.

1. Appellant filing this case appeal statement: RAEKWON ROBERTSON

2. Judge issuing the decision, judgment, or order appealed from:

Honorable Michelle Leavitt

3. Appellant and the name and address of counsel for each appellant:

STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, Nevada 89074
Attorney for Petitioner

RAEKWON ROBERTSON, Petitioner

4. Respondent and the name and address of appellate counsel:

STEVEN B. WOLFSON
Clark County, Nevada District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

STATE OF NEVADA, Respondent

5. Whether any attorney identified above is not licensed to practice law in Nevada:

1 Licensed

2 **6. Whether appellant was represented by appointed or retained counsel in the district**
3 **court:** Appointed

4 **7. Whether appellant is represented by appointed or retained counsel on appeal:**
5 Appointed

6 **8. Whether appellant was granted leave to proceed in forma pauperis, and the date of**
7 **entry of the district court order granting such leave:** N/A

8 **9. Date the proceedings commenced in the district court:** October 29, 2020

9 **10. Brief description of the nature of the action and result in the district court, including**
10 **the type of judgment or order being appealed and the relief granted by the district court:**

11 This is an appeal from the denial of petition for writ of habeas corpus (post-conviction) after a
12 remand for an evidentiary hearing.

13 **11. Whether the case has previously been the subject of an appeal to or original writ**
14 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number**
15 **of the prior proceedings:** Robertson v. State of Nevada, SC#81400 – direct appeal affirmed

16 Robertson v. State of Nevada, SC#85932-COA – Order Affirming in Part, Reversing in Part and
17 Remanding (for evidentiary hearing)

18 **12. Whether this appeal involves child custody or visitation:** No

19 **13. If this is a civil case, whether this appeal involves the possibility of settlement:** No

20 DATED this 19th day of December, 2023.

21
22 /s/ Steven S. Owens, Esq.
23 STEVEN S. OWENS, ESQ.
24 Nevada Bar No. 4352
25 1000 N. Green Valley #440-529
26 Henderson, Nevada 89074
27 (702) 595-1171
28 Attorney for Petitioner
RAEKWON ROBERTSON

CASE SUMMARY

CASE NO. A-20-823892-W

Rackwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§
§

Location: **Department 12**
 Judicial Officer: **Leavitt, Michelle**
 Filed on: **10/29/2020**
 Cross-Reference Case Number: **A823892**
 Supreme Court No.: **85932**

CASE INFORMATION

Related Cases

C-17-328587-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

12/08/2022 Other Manner of Disposition

Case Status: **12/08/2022 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-823892-W
 Court Department 12
 Date Assigned 10/29/2020
 Judicial Officer Leavitt, Michelle

PARTY INFORMATION






Plaintiff	Robertson, Rackwon	Owens, Steven S. <i>Retained</i> 7024556453(W)
Defendant	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

10/29/2020	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Robertson, Rackwon <i>[1] Post Conviction</i>
11/05/2020	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Robertson, Rackwon <i>[2] Post Conviction</i>
05/26/2022	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Robertson, Rackwon <i>[4] Post Conviction</i>
05/26/2022	 Motion for Appointment of Attorney Filed By: Plaintiff Robertson, Rackwon <i>[5] Ex Parte Motion for Appointment of Attorney and Request for Evidentiary Hearing</i>
06/07/2022	 Order <i>[6] Order Appointing Counsel</i>

CASE SUMMARY
CASE NO. A-20-823892-W

08/19/2022	 Supplemental Filed by: Plaintiff Robertson, Raekwon <i>[7] Supplemental Brief in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i>
10/05/2022	 Response <i>[8] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post Conviction) and Petitioner's Supplemental Post Conviction Petition for Writ of Habeas Corpus</i>
12/08/2022	 Findings of Fact, Conclusions of Law and Judgment <i>[9] Findings of Fact, Conclusions of Law and Order Denying Petition for Writ of Habeas Corpus (Post- Conviction) and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
12/13/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>[10] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
01/06/2023	 Notice of Appeal (Criminal) Party: Plaintiff Robertson, Raekwon <i>[11] Notice of Appeal</i>
01/06/2023	 Case Appeal Statement Filed By: Plaintiff Robertson, Raekwon <i>[12] Case Appeal Statement</i>
01/17/2023	 Request Filed by: Plaintiff Robertson, Raekwon <i>[13] Request for Transcript of Proceedings</i>
01/18/2023	 Recorders Transcript of Hearing <i>[14] Hearing re: Petition for Writ of Habeas Corpus, November 17, 2022</i>
09/06/2023	 NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part <i>[15] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed in Part, Reversed in Part and Remand</i>
09/06/2023	 Notice of Hearing <i>[17] Notice of Hearing</i>
09/15/2023	 Order for Production of Inmate <i>[18] Order for Audiovisual Appearance of Inmate Raekwon Robertson, BAC #1235056</i>
10/23/2023	 Exhibits Filed By: Plaintiff Robertson, Raekwon <i>[19] Exhibits in Support of Evidentiary Hearing</i>
12/01/2023	 Order <i>[20] Order Regarding Evidentiary Hearing on Petition for Writ of Habeas Corpus (Post-Conviction)</i>
12/06/2023	 Notice of Entry of Order <i>[21] Notice of Entry of Order</i>
12/19/2023	 Notice of Appeal (Criminal)

CASE SUMMARY
CASE NO. A-20-823892-W

Party: Plaintiff Robertson, Rackwon
[22] Notice of Appeal

12/19/2023



Case Appeal Statement

Filed By: Plaintiff Robertson, Rackwon
[23] Case Appeal Statement

HEARINGS

12/22/2020



At Request of Court (10:15 AM) (Judicial Officer: Leavitt, Michelle)

Inmate filed Petition

Stayed; Inmate filed Petition

Journal Entry Details:

Michael Sanft, Esq., present on behalf of the Petitioner. Petitioner not present. Court noted the concern of this matter and ORDERED, Petition STAYED as Mr. Sanft has filed the direct appeal. NDC;

06/02/2022



Appointment of Counsel (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Counsel Confirmed;

Journal Entry Details:

Mr. Owens advised he can ACCEPT appointment and confirmed a conflict check was completed. COURT ORDERED, matter SET for Status Check regarding briefing schedule. 07/07/22 8:30 AM STATUS CHECK: BRIEFING SCHEDULE;

07/07/2022



Status Check (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Status Check: Briefing Schedule

Briefing Schedule Set; Status Check: Briefing Schedule

Journal Entry Details:

COURT ORDERED, opening brief due 08/22/22; Response due 10/05/22; Hearing on the Petition for Writ of Habeas Corpus SET. 10/13/22 8:30 AM HEARING: PETITION FOR WRIT;

11/17/2022



Hearing (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Hearing Re: Petition for Writ of Habeas Corpus

Denied; Respondent's Motion to Dismiss Appeal for Lack of Jurisdiction

Journal Entry Details:

Following arguments by counsel, COURT ORDERED, Petition for Writ of Habeas Corpus DENIED. At request of Mr. Owens, COURT FURTHER ORDERED, Mr. Owens APPOINTED for the Appeal.;

09/06/2023



Minute Order (3:45 PM) (Judicial Officer: Leavitt, Michelle)

Minute Order - No Hearing Held;

Journal Entry Details:

Due to clerical error, COURT ORDERED, Notice of Hearing filed on 09/06/23 at 1:27 P.M is hereby STRICKEN. ;

09/14/2023



Status Check (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Set Evidentiary Hearing per Nevada Supreme Court Reversal and Remand

Hearing Set;

Journal Entry Details:

Mr. Owens confirmed as counsel. Following colloquy regarding Defendant's video appearance from prison, COURT ORDERED, matter SET for Evidentiary Hearing. 11/03/23 9:00 AM EVIDENTIARY HEARING;

11/03/2023



Evidentiary Hearing (9:00 AM) (Judicial Officer: Leavitt, Michelle)

Denied;

Journal Entry Details:

Mr. Chen waived the exclusionary rule. Testimony and exhibits presented. (See worksheets) Upon Court's inquiry, Defendant waived attorney client privilege for the purpose of this

CASE SUMMARY

CASE NO. A-20-823892-W

hearing. Following argument by counsel and statement by Defendant, COURT ORDERED, a Minute Order WILL ISSUE.;

DISTRICT COURT CIVIL COVER SHEET

A-20-823892-W

Dept. 12

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Raekwon Robertson

Defendant(s) (name/address/phone):

State of Nevada

Attorney (name/address/phone):

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

October 29, 2020

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

RAEKWON ROBERTSON,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No.: A-20-823892-W

DEPT. No.: XII

ORDER REGARDING EVIDENTIARY HEARING ON PETITION
FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: 11/3/23

TIME OF HEARING: 9:00 AM

The court conducted an evidentiary hearing on November 3, 2023 pursuant to an Order Affirming In Part, Reversing In Part and Remanding dated August 7, 2023. (*See* Order No. 85932-COA, August 7, 2023, In the Court of Appeals of the State of Nevada). The State of Nevada was represented by Mr. Alex Chen, Esq., and Mr. Robertson was present, appearing via Bluejeans and represented by Mr. Steve Owens, Esq.

The court limited the hearing to whether counsel for Mr. Robertson was ineffective at the time of trial for failing to investigate petitioner's mental health conditions or present evidence of them during the trial to demonstrate he did not have the specific intent to commit the crimes. The Petitioner alleged (1) he was off his mental health medications at the time of the offenses; (2) when he was off his medication, he would hear voices and suffer from paranoia and blackouts; and (3) he had no memory of the offense. Further, petitioner contends his counsel was ineffective for failing to argue for a specific sentence and present to the court his mental health issues or other mitigating evidence during the sentencing hearing.

1 To demonstrate ineffective assistance of counsel, Petitioner must show counsel's
2 performance was deficient in that it fell below an objective standard of reasonableness.
3 Further, petitioner must demonstrate prejudice resulted in that there was a reasonable
4 probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466
5 U.S. 668, 687-88 (1984; *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984)
6 (adopting the test in *Strickland*). Both components must be shown. The court is not required
7 to approach the inquiry in the same order or even to address both components of the inquiry
8 if petitioner makes an insufficient showing on one. *Strickland*, 466 U.S. at 697, 104 S. Ct. at
9 2069.

10 Petitioner called two witnesses to testify and introduced his mental health and school
11 district records. Mr. Sanft, Esq., trial counsel presented at the hearing and provided
12 testimony. He was not familiar with the mental health records admitted at the hearing, and
13 therefore, did not review them prior to trial. Mr. Sanft indicated he never had any indication
14 Mr. Robertson suffered from any mental health condition nor did petitioner convey to him
15 any mental health conditions that were relevant. Although the petitioner was referred to
16 competency court in November, 2017, Mr. Sanft was not aware of petitioner's history of
17 mental illness or his medication regiment, and whether petitioner was off his medication at
18 the time of the murder. Mr. Robertson never informed counsel of any mental health issues
19 that would be relevant in the trial phase according to his trial counsel.

20 Mr. Robertson was tried with a co-defendant, Mr. Wheeler. The defense at the time
21 of trial was that the State of Nevada could not prove petitioner was present at the time of the
22 robbery and responsible for the death of the victim by proof beyond a reasonable doubt. Mr.
23 Sanft attempted to undermine the certainty of petitioner's participation in the robbery/
24 murder. The defense argued Mr. Robinson –the testifying co-defendant–was not credible and
25 should not be believed. He was motivated by his desire to avoid adult custody and
26 responsibility for the death of the victim. Mr. Sanft cast doubt on a photographic depiction of
27 petitioner. From the start Mr. Sanft clearly sought to establish there was insufficient
28 evidence to convict petitioner because he was not in fact responsible for the murder of Mr.

1 Valenzuela. Mr. Sanft testified that Mr. Robertson participated in the preparation for trial
2 and he never gave his counsel the impression he (petitioner) suffered from any significant
3 mental health issues that were relevant to the trial proceedings.

4 Raising Petitioner's mental health issues to disprove specific intent would be
5 inconsistent with defense counsel's theory at trial. It would further be inconsistent with the
6 representations made to Mr. Sanft by the petitioner, who indicated he was not there.
7 Petitioner's counsel sought to establish the state could not prove Mr. Robertson was present
8 at the scene. Raising the mental health issues would be a tactic admission the petitioner was
9 present during the robbery /murder. Petitioner's counsel acted reasonably.

10 Petitioner further is critical of trial counsel for not presenting the mental health issues
11 and school records of petitioner's emotional, threatening behavior in school. Mr. Robertson
12 contends these records would have been mitigation evidence presented to the court and he
13 may have received a less severe sentence.

14 The underlying robbery/murder was not a spontaneous event based on opportunity.
15 The evidence presented at trial indicated the robbery was a premeditated plan. The state
16 introduced text messages wherein Petitioner sought the participation of his co-defendant's to
17 "hit a house tonight. " All four co-defendants were together at a convenience store shortly
18 before the murder occurred. Petitioner's co-defendant, Mr. Wheeler can be seen on video
19 surveillance open carrying a firearm. The state alleged thereafter the four men drove to
20 Dewey and Lindell in Lofton-Robinson (Co-defendant) white mercury Grand Marquis. The
21 four men were seen loitering around the area by a jogger who made a mental note of the
22 license plate of the vehicle. Shortly after midnight Gabriel Valenzuela, a young nursing
23 student returned to his home. He retrieved the family's mail from the mailbox and walked
24 passed the group of men on his way back to his house. Petitioner and his co-defendants
25 demanded the victim turn over all his property. The victim was then shot three times in the
26 head and torso. All four left the scene without taking any property from the victim.

27 Petitioner's counsel was not ineffective in failing to raise petitioner's mental health
28 issues and/or petitioner's school records and the emotional problems presented in the

1 records. Counsel made reasonable strategic decisions based on the facts and circumstances
2 presented at trial and based on petitioner's representations he was not present and was not
3 the shooter. The court is not required to second guess reasoned choices between trial
4 tactics. Counsel is not required to raise every issue or present inconsistent theories of
5 defense to protect him against allegations of inadequacy

6 Petitioner further contends his counsel was ineffective at sentencing. He contends
7 counsel was ineffective for failing to argue a specific sentence and present to the court his
8 mental health issues or other mitigating evidence. Petitioner contends that had the court
9 heard about his mental health struggles and reviewed his school records, his sentence would
10 not have been so harsh.

11 Prior to the commencement of jury selection, petitioner signed a Stipulation and
12 Order waiving his right to a penalty hearing if convicted of first degree murder. (*See*
13 Stipulation and Order filed February 11, 2020.) He agreed that should the jury return a
14 verdict of guilty on any offense, including First Degree Murder; the parties hereby waive the
15 penalty hearing before the jury as normally required under NRS 175.552(1) (a). The parties
16 agreed any sentence on any charge for which the defendant may be convicted would be
17 imposed by the court. *Id.*

18 To establish ineffectiveness in this context, the inquiry must focus on counsel's
19 performance as a whole. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102 (1996). Even if
20 petitioner can demonstrate his counsel's representation fell below an objective standard of
21 reasonableness, he must still demonstrate prejudice. He must show a reasonable probability
22 that the result would have been different but for counsel's errors. *McNelson v. State*, 115
23 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). A reasonable probability is a probability
24 sufficient to undermine the confidence in the outcome. *Id.* (citing *Strickland*, 466 U.S. at
25 694, 104 S. Ct. at 2068).

26 The court permitted both counsel and the petitioner to speak prior to the imposition of
27 sentence. Neither offered mitigation or other evidence. Counsel stated:

28 We're going to submit everything to the court. And the reason for that is

1 this, Mr. Robertson is intent on filing an appeal, is intent on going
2 forward with that aspect of it. I believe that ultimately what we
3 have here is a situation where Mr. Robertson's in a position
4 where the reason why he's not talking to the court or saying
5 anything to the court is because he wants to reserve that—that right.

6 *See* Sentencing Transcript at 5-6.

7 Petitioner's mental health issues and other evidence contained in the school records
8 could have been raised at the sentencing hearing. *See* NRS 175.552(3).Mr. Sanft, Esq.
9 conceded this fact at the evidentiary hearing. However, even if that amounts to
10 ineffectiveness on behalf of Mr. Sanft, petitioner failed to establish the requisite prejudice
11 for a valid ineffective assistance of counsel claim. Even if the records were presented and his
12 mental health issues presented to the court, there is not a reasonable probability of a different
13 outcome more favorable to petitioner.

14 The sentencing court heard all the evidence presented during the trial. The state
15 introduced evidence that petitioner and his three accomplices got together on August 8,
16 2017, with the intent to "hit a house". TT, day 3 at 24. The accomplices drove to a
17 neighborhood surveilling the area until they decided upon a victim. All but one of the
18 accomplices was carrying firearms. The court heard evidence of how the group decided upon
19 a plan to rob Gabriel Valenzuela, a young nursing student, and how they discharged multiple
20 bullets into the victim and left him to die on the driveway without taking any of his property.
21 Mr. Robinson testified that petitioner was the first one to fire on the victim with a .22 caliber
22 gun. The victim's wounds included a gunshot wound to his abdomen from a .22 caliber gun.
23 The petitioner was the only person who carried a .22 caliber firearm on the night of the
24 murder and the police recovered a .22 caliber gun with petitioner's DNA on it from his
25 home. The bullet recovered from the victim's abdomen at autopsy was too damaged to be
26 matched to the firearm recovered from petitioner's home. However, the gun could not be
27 eliminated as the firearm used. Moreover, ballistics evidence matched petitioner's firearm to
28 a cartridge case found at the crime scene.

1 The victim's mother provided a devastating victim impact statement. She testified
2 about the horrible suffering she endured since the death of her only child.

3 The petitioner could have received only three possible sentences all of which carried a
4 20 year minimum prior to parole eligibility. *See* NRS 200.030(4) (b). The jury found the
5 murder was perpetrated with the use of a deadly weapon, and therefore, the court was
6 required to impose a consecutive sentence of 1-20 years. *See* NRS 193.165. In determining
7 the appropriate sentence the court must consider the facts and circumstances of the crime and
8 the criminal history of the defendant. The court shall also consider the impact of the crime
9 on any victim, and any other mitigating factors or relevant information.


10 The state presented a very strong case against the petitioner. The robbery and murder
11 was a very violent event perpetrated by four young men carrying firearms looking to "hit a
12 house". It was planned and premeditated. Three of the co-defendants used a firearm and
13 the state presented overwhelming evidence the petitioner was a shooter. The victim's
14 mother testified at the hearing and provided a devastating victim impact statement about her
15 horrible suffering since the death of her only child.

16 Based on the foregoing, Mr. Sanft acted reasonably at the sentencing hearing
17 especially in light of his clients desire to maintain his innocence and proceed with the
18 appellate process. Even if counsel representation was ineffective, petitioner failed to show a
19 reasonable probability that offering evidence regarding his mental health and school records
20 would have resulted in a different outcome. Accordingly, the claim must be denied.

21 IT IS HEREBY ORDERD, ADJUDGED AND DECREED, that the Petition for Writ
22 of Habeas Corpus (post-conviction) is denied.

23
24 DATED THIS 1ST DAY OF DECEMBER, 2023.

25
26 Dated this 1st day of December, 2023

27 
28 _____

350 DD6 FD4A 0149
Michelle Leavitt
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify on the date filed, this document was electronically served to the email addresses and/or by Fax transmission or by standard mail to:

Alexander Chen
Chief Deputy District Attorney
alexander.chen@clarkcountydade.com

Steve Owens, Esq.
owenscrimlaw@gmail.com

Pamela Osterman

Pamela Osterman
Judicial Executive Assistant
to the Honorable Michelle Leavitt
District Court Department XII

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Raekwon Robertson, Plaintiff(s) | CASE NO: A-20-823892-W
7 vs. | DEPT. NO. Department 12
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/1/2023

15 Alexander Chen Alexander.chen@clarkcountyda.com
16 Steven Owens owenscrimlaw@gmail.com
17 Dept 12 Law Clerk dept12lc@clarkcountycourts.us
18 Eileen Davis eileen.davis@clarkcountyda.com
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NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RAEKWON ROBERTSON,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-20-823892-W

Dept. No: XII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on December 1, 2023, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on December 6, 2023.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 6 day of December 2023, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Raekwon Robertson # 1235056	Steven S. Owens, Esq.
P.O. Box 1989	1000 N. Green Valley, #440-529
Ely, NV 89301	Henderson, NV 89074

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

RAEKWON ROBERTSON,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No.: A-20-823892-W

DEPT. No.: XII

ORDER REGARDING EVIDENTIARY HEARING ON PETITION
FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: 11/3/23

TIME OF HEARING: 9:00 AM

The court conducted an evidentiary hearing on November 3, 2023 pursuant to an Order Affirming In Part, Reversing In Part and Remanding dated August 7, 2023. (*See* Order No. 85932-COA, August 7, 2023, In the Court of Appeals of the State of Nevada). The State of Nevada was represented by Mr. Alex Chen, Esq., and Mr. Robertson was present, appearing via Bluejeans and represented by Mr. Steve Owens, Esq.

The court limited the hearing to whether counsel for Mr. Robertson was ineffective at the time of trial for failing to investigate petitioner's mental health conditions or present evidence of them during the trial to demonstrate he did not have the specific intent to commit the crimes. The Petitioner alleged (1) he was off his mental health medications at the time of the offenses; (2) when he was off his medication, he would hear voices and suffer from paranoia and blackouts; and (3) he had no memory of the offense. Further, petitioner contends his counsel was ineffective for failing to argue for a specific sentence and present to the court his mental health issues or other mitigating evidence during the sentencing hearing.

1 To demonstrate ineffective assistance of counsel, Petitioner must show counsel's
2 performance was deficient in that it fell below an objective standard of reasonableness.
3 Further, petitioner must demonstrate prejudice resulted in that there was a reasonable
4 probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466
5 U.S. 668, 687-88 (1984; *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984)
6 (adopting the test in *Strickland*). Both components must be shown. The court is not required
7 to approach the inquiry in the same order or even to address both components of the inquiry
8 if petitioner makes an insufficient showing on one. *Strickland*, 466 U.S. at 697, 104 S. Ct. at
9 2069.

10 Petitioner called two witnesses to testify and introduced his mental health and school
11 district records. Mr. Sanft, Esq., trial counsel presented at the hearing and provided
12 testimony. He was not familiar with the mental health records admitted at the hearing, and
13 therefore, did not review them prior to trial. Mr. Sanft indicated he never had any indication
14 Mr. Robertson suffered from any mental health condition nor did petitioner convey to him
15 any mental health conditions that were relevant. Although the petitioner was referred to
16 competency court in November, 2017, Mr. Sanft was not aware of petitioner's history of
17 mental illness or his medication regiment, and whether petitioner was off his medication at
18 the time of the murder. Mr. Robertson never informed counsel of any mental health issues
19 that would be relevant in the trial phase according to his trial counsel.

20 Mr. Robertson was tried with a co-defendant, Mr. Wheeler. The defense at the time
21 of trial was that the State of Nevada could not prove petitioner was present at the time of the
22 robbery and responsible for the death of the victim by proof beyond a reasonable doubt. Mr.
23 Sanft attempted to undermine the certainty of petitioner's participation in the robbery/
24 murder. The defense argued Mr. Robinson –the testifying co-defendant-was not credible and
25 should not be believed. He was motivated by his desire to avoid adult custody and
26 responsibility for the death of the victim. Mr. Sanft cast doubt on a photographic depiction of
27 petitioner. From the start Mr. Sanft clearly sought to establish there was insufficient
28 evidence to convict petitioner because he was not in fact responsible for the murder of Mr.

1 Valenzuela. Mr. Sanft testified that Mr. Robertson participated in the preparation for trial
2 and he never gave his counsel the impression he (petitioner) suffered from any significant
3 mental health issues that were relevant to the trial proceedings.

4 Raising Petitioner's mental health issues to disprove specific intent would be
5 inconsistent with defense counsel's theory at trial. It would further be inconsistent with the
6 representations made to Mr. Sanft by the petitioner, who indicated he was not there.
7 Petitioner's counsel sought to establish the state could not prove Mr. Robertson was present
8 at the scene. Raising the mental health issues would be a tactic admission the petitioner was
9 present during the robbery /murder. Petitioner's counsel acted reasonably.

10 Petitioner further is critical of trial counsel for not presenting the mental health issues
11 and school records of petitioner's emotional, threatening behavior in school. Mr. Robertson
12 contends these records would have been mitigation evidence presented to the court and he
13 may have received a less severe sentence.

14 The underlying robbery/murder was not a spontaneous event based on opportunity.
15 The evidence presented at trial indicated the robbery was a premeditated plan. The state
16 introduced text messages wherein Petitioner sought the participation of his co-defendant's to
17 "hit a house tonight. " All four co-defendants were together at a convenience store shortly
18 before the murder occurred. Petitioner's co-defendant, Mr. Wheeler can be seen on video
19 surveillance open carrying a firearm. The state alleged thereafter the four men drove to
20 Dewey and Lindell in Lofton-Robinson (Co-defendant) white mercury Grand Marquis. The
21 four men were seen loitering around the area by a jogger who made a mental note of the
22 license plate of the vehicle. Shortly after midnight Gabriel Valenzuela, a young nursing
23 student returned to his home. He retrieved the family's mail from the mailbox and walked
24 passed the group of men on his way back to his house. Petitioner and his co-defendants
25 demanded the victim turn over all his property. The victim was then shot three times in the
26 head and torso. All four left the scene without taking any property from the victim.

27 Petitioner's counsel was not ineffective in failing to raise petitioner's mental health
28 issues and/or petitioner's school records and the emotional problems presented in the

1 records. Counsel made reasonable strategic decisions based on the facts and circumstances
2 presented at trial and based on petitioner's representations he was not present and was not
3 the shooter. The court is not required to second guess reasoned choices between trial
4 tactics. Counsel is not required to raise every issue or present inconsistent theories of
5 defense to protect him against allegations of inadequacy

6 Petitioner further contends his counsel was ineffective at sentencing. He contends
7 counsel was ineffective for failing to argue a specific sentence and present to the court his
8 mental health issues or other mitigating evidence. Petitioner contends that had the court
9 heard about his mental health struggles and reviewed his school records, his sentence would
10 not have been so harsh.

11 Prior to the commencement of jury selection, petitioner signed a Stipulation and
12 Order waiving his right to a penalty hearing if convicted of first degree murder. (*See*
13 Stipulation and Order filed February 11, 2020.) He agreed that should the jury return a
14 verdict of guilty on any offense, including First Degree Murder; the parties hereby waive the
15 penalty hearing before the jury as normally required under NRS 175.552(1) (a). The parties
16 agreed any sentence on any charge for which the defendant may be convicted would be
17 imposed by the court. *Id.*

18 To establish ineffectiveness in this context, the inquiry must focus on counsel's
19 performance as a whole. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102 (1996). Even if
20 petitioner can demonstrate his counsel's representation fell below an objective standard of
21 reasonableness, he must still demonstrate prejudice. He must show a reasonable probability
22 that the result would have been different but for counsel's errors. *McNelson v. State*, 115
23 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). A reasonable probability is a probability
24 sufficient to undermine the confidence in the outcome. *Id.* (citing *Strickland*, 466 U.S. at
25 694, 104 S. Ct. at 2068).

26 The court permitted both counsel and the petitioner to speak prior to the imposition of
27 sentence. Neither offered mitigation or other evidence. Counsel stated:

28 We're going to submit everything to the court. And the reason for that is

1 this, Mr. Robertson is intent on filing an appeal, is intent on going
2 forward with that aspect of it. I believe that ultimately what we
3 have here is a situation where Mr. Robertson's in a position
4 where the reason why he's not talking to the court or saying
5 anything to the court is because he wants to reserve that—that right.

6 *See* Sentencing Transcript at 5-6.

7 Petitioner's mental health issues and other evidence contained in the school records
8 could have been raised at the sentencing hearing. *See* NRS 175.552(3).Mr. Sanft, Esq.
9 conceded this fact at the evidentiary hearing. However, even if that amounts to
10 ineffectiveness on behalf of Mr. Sanft, petitioner failed to establish the requisite prejudice
11 for a valid ineffective assistance of counsel claim. Even if the records were presented and his
12 mental health issues presented to the court, there is not a reasonable probability of a different
13 outcome more favorable to petitioner.

14 The sentencing court heard all the evidence presented during the trial. The state
15 introduced evidence that petitioner and his three accomplices got together on August 8,
16 2017, with the intent to "hit a house". TT, day 3 at 24. The accomplices drove to a
17 neighborhood surveilling the area until they decided upon a victim. All but one of the
18 accomplices was carrying firearms. The court heard evidence of how the group decided upon
19 a plan to rob Gabriel Valenzuela, a young nursing student, and how they discharged multiple
20 bullets into the victim and left him to die on the driveway without taking any of his property.
21 Mr. Robinson testified that petitioner was the first one to fire on the victim with a .22 caliber
22 gun. The victim's wounds included a gunshot wound to his abdomen from a .22 caliber gun.
23 The petitioner was the only person who carried a .22 caliber firearm on the night of the
24 murder and the police recovered a .22 caliber gun with petitioner's DNA on it from his
25 home. The bullet recovered from the victim's abdomen at autopsy was too damaged to be
26 matched to the firearm recovered from petitioner's home. However, the gun could not be
27 eliminated as the firearm used. Moreover, ballistics evidence matched petitioner's firearm to
28 a cartridge case found at the crime scene.

1 The victim's mother provided a devastating victim impact statement. She testified
2 about the horrible suffering she endured since the death of her only child.

3 The petitioner could have received only three possible sentences all of which carried a
4 20 year minimum prior to parole eligibility. *See* NRS 200.030(4) (b). The jury found the
5 murder was perpetrated with the use of a deadly weapon, and therefore, the court was
6 required to impose a consecutive sentence of 1-20 years. *See* NRS 193.165. In determining
7 the appropriate sentence the court must consider the facts and circumstances of the crime and
8 the criminal history of the defendant. The court shall also consider the impact of the crime
9 on any victim, and any other mitigating factors or relevant information.

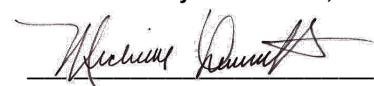
10 The state presented a very strong case against the petitioner. The robbery and murder
11 was a very violent event perpetrated by four young men carrying firearms looking to "hit a
12 house". It was planned and premeditated. Three of the co-defendants used a firearm and
13 the state presented overwhelming evidence the petitioner was a shooter. The victim's
14 mother testified at the hearing and provided a devastating victim impact statement about her
15 horrible suffering since the death of her only child.

16 Based on the foregoing, Mr. Sanft acted reasonably at the sentencing hearing
17 especially in light of his clients desire to maintain his innocence and proceed with the
18 appellate process. Even if counsel representation was ineffective, petitioner failed to show a
19 reasonable probability that offering evidence regarding his mental health and school records
20 would have resulted in a different outcome. Accordingly, the claim must be denied.

21 IT IS HEREBY ORDERD, ADJUDGED AND DECREED, that the Petition for Writ
22 of Habeas Corpus (post-conviction) is denied.

23
24 DATED THIS 1ST DAY OF DECEMBER, 2023.

25
26 Dated this 1st day of December, 2023

27 

28
350 DD6 FD4A 0149
Michelle Leavitt
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Raekwon Robertson, Plaintiff(s) | CASE NO: A-20-823892-W
7 vs. | DEPT. NO. Department 12
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/1/2023

15 Alexander Chen Alexander.chen@clarkcountyda.com
16 Steven Owens owenscrimlaw@gmail.com
17 Dept 12 Law Clerk dept12lc@clarkcountycourts.us
18 Eileen Davis eileen.davis@clarkcountyda.com
19
20
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 22, 2020

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

December 22, 2020 10:15 AM At Request of Court Inmate filed Petition

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Michael Sanft, Esq., present on behalf of the Petitioner. Petitioner not present.

Court noted the concern of this matter and ORDERED, Petition STAYED as Mr. Sanft has filed the direct appeal.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 02, 2022

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

June 02, 2022 8:30 AM Appointment of Counsel

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo
Reina Villatoro

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Owens, Steven S. Attorney
Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Mr, Owens advised he can ACCEPT appointment and confirmed a conflict check was completed.
COURT ORDERED, matter SET for Status Check regarding briefing schedule.

07/07/22 8:30 AM STATUS CHECK: BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 07, 2022

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**July 07, 2022 8:30 AM Status Check Status Check:
Briefing Schedule**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Owens, Steven S. Attorney
Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- COURT ORDERED, opening brief due 08/22/22; Response due 10/05/22; Hearing on the Petition for Writ of Habeas Corpus SET.

10/13/22 8:30 AM HEARING: PETITION FOR WRIT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 17, 2022

A-20-823892-W	Raekwon Robertson, Plaintiff(s) vs. State of Nevada, Defendant(s)
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November 17, 2022	8:30 AM	Hearing	Respondent's Motion to Dismiss Appeal for Lack of Jurisdiction
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HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Owens, Steven S. Pesci, Giancarlo	Attorney Attorney
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JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, Petition for Writ of Habeas Corpus DENIED.
At request of Mr. Owens, COURT FURTHER ORDERED, Mr. Owens APPOINTED for the Appeal.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 06, 2023

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

September 06, 2023 3:45 PM Minute Order

HEARD BY: Leavitt, Michelle

COURTROOM: Chambers

COURT CLERK: Reina Villatoro

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Due to clerical error, COURT ORDERED, Notice of Hearing filed on 09/06/23 at 1:27 P.M is hereby STRICKEN.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 14, 2023

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

September 14, 2023 8:30 AM Status Check

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Kimberly Gonzalez
Reina Villatoro

RECORDER: Connie Coll

REPORTER:

PARTIES

PRESENT:	Owens, Steven S.	Attorney
	Robertson, Raekwon	Plaintiff
	State of Nevada	Defendant

JOURNAL ENTRIES

- Mr. Owens confirmed as counsel. Following colloquy regarding Defendant's video appearance from prison, COURT ORDERED, matter SET for Evidentiary Hearing.

11/03/23 9:00 AM EVIDENTIARY HEARING

November 03, 2023

Minutes Date: December 22, 2020

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER REGARDING EVIDENTIARY HEARING ON PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

RAEKWON SETREY ROBERTSON,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-20-823892-W

Dept No: XII

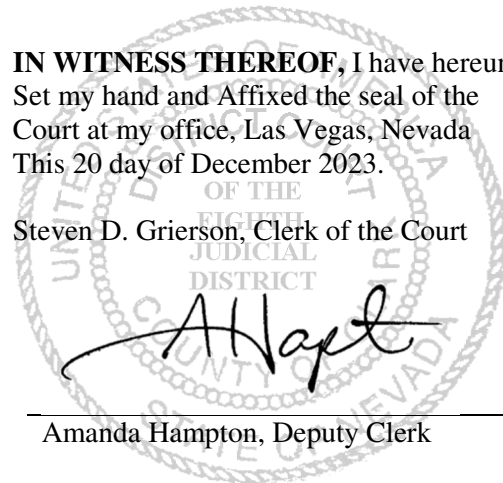
now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 20 day of December 2023.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk





**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

December 20, 2023

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: RAEKWON SETREY ROBERTSON vs. THE STATE OF NEVADA
D.C. CASE: A-20-823892-W

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed December 19, 2023. Due to extenuating circumstances the exhibits list(s) has not been included.

We do not currently have a time frame for when the list(s) will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk