

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

Electronically Filed  
Apr 01 2024 11:57 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

RODERICK STEPHEN SKINNER,

Petitioner,

vs.

Sup. Ct. Case No. 88296

Case No. CR14-0644

Dept. 8

WARDEN OLSEN, NNCC, NEVADA  
ATTORNEY GENERAL, ET AL,

Respondents.

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RECORD ON APPEAL

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1 RENO, NEVADA, TUESDAY, SEPTEMBER 26, 2019, 1:15 P.M.  
2 THE COURT: Thank you.  
3 Please be seated.  
4 Okay. We're back on the record.  
5 Mr. Reed, please call Mr. Skinner.  
6 MR. REED: Yes. Thank you, Your Honor.  
7 (Witness sworn.)  
8 THE COURT: All right. Thank you.  
9 Please proceed.  
10 RODERICK STEPHEN SKINNER,  
11 called as a witness on behalf of the Petitioner,  
12 first having been duly sworn,  
13 was examined and testified as follows:  
14 DIRECT EXAMINATION  
15 BY MR. REED:  
16 Q. Now, would you please state your full name, and spell  
17 your last name for the benefit of the court reporter.  
18 A. Roderick Stephen Skinner: S-k-i-double n-e-r.  
19 Q. And, Mr. Skinner, where are you originally from?  
20 A. Australia.  
21 Q. And when did you first arrive in the United States?  
22 A. That was January the 8th, 2013.  
23 Q. What was the purpose for your trip here?  
24 A. I was traveling through to quarantine my dog on the

1 way back to Australia from southeast Asia.

2 Q. Now, what was your occupation in Australia?

3 A. The last one was, I was a state police officer for  
4 the Queensland police. And prior to that, I was a police  
5 officer for the Australian federal police for two and a half  
6 years, before I transferred to the state. And prior to that,  
7 after leaving high school, I was a bank teller for one year.

8 Q. Were you injured in the line of duty?

9 A. Yes.

10 Q. And can you describe your injuries?

11 A. My injuries?

12 THE COURT: Well, you lost your legs; is that right?

13 THE WITNESS: Amongst other things, yes, sir.

14 This left leg -- it was a T-intersection, and I was  
15 traveling through a green light, and a car came through the  
16 red light the other way and picked me up and put me into a  
17 telegraph pole and ripped this leg off.

18 This one was still okay for a while, but it was in a  
19 hundred pieces, and they couldn't fix it.

20 I also had a ruptured liver, collapsed lungs, broken  
21 ribs. Oh, yeah. And all my teeth are false here because  
22 they got smashed out.

23 BY MR. REED:

24 Q. Were you riding a motorcycle at the time?

1 A. I was a motorcycle police officer, on duty.

2 Q. Now, I notice both of your legs have been amputated.

3 Do you suffer pain from this double amputation?

4 A. Horrendous. Well, though, it's controlled now  
5 with -- mostly controlled, about 90 percent of the time, with  
6 medication.

7 Q. Can you describe the pain?

8 A. It's -- the ones I get, mostly electric shocks. It's  
9 like as if somebody is administering some sort of brief  
10 electric shock. And then there might be a respite of several  
11 seconds, maybe even up to 30, 40, 50, and then it -- it  
12 varies -- and then the shock will come again. Sometimes I've  
13 had it for two days in a row.

14 Q. Like, say, a scale of 1 to 10, 10 being the worst  
15 pain, how would you describe it?

16 A. I've had them -- I've had them up to about 8, 8 out  
17 of 10. Normally, when they come on, they're 1, 2, or 3 out  
18 of 10. And if I'm lucky, they'll go away, or they'll fade  
19 off. But if I'm unlucky, they kind of increase, and you just  
20 hope that they go away after a couple of hours. But  
21 sometimes they have remained on for a long time.

22 But, on average, I would say that I'll get hit with  
23 2s, 3s, and 4s, and it might last more than about two hours.  
24 And then there's exceptions.

1 Q. If it gets beyond 8, are you still conscious at that  
2 point?

3 A. No. If it gets past about 6, it's unbearable. I  
4 generally put a towel or something on that, so I don't bite  
5 my tongue.

6 Q. And what other medical issues do you have?

7 A. I have Crohn's, the Crohn's disease, which is -- for  
8 the information of everyone, it's an intestinal inflammation  
9 type of a disease, that I was born with. It's a hereditary  
10 disease.

11 And what that does, it gets set off by various  
12 things: stress, certain sorts of food. And what that does  
13 is, it gives you -- gives me pain in the intestine, usually  
14 on this side, down low, as if somebody is squeezing in there  
15 really hard. And it's very painful. And sometimes it will  
16 block up, in which case it's a medical emergency.

17 Q. And you have had this how long now?

18 A. I've had it -- supposedly, the doctors and everybody  
19 have said that it's something I was born with. But I didn't  
20 really get any symptoms or any problems until I was about 22,  
21 23. And then, from that point forward, it became an  
22 increasingly ever-worsening problem.

23 Q. And how old were you when you had your accident?

24 A. 27.

1 Q. And that would have been what year?

2 A. 1988. September 23rd.

3 Q. And you went into jail July 21st, 2013?

4 A. Yes.

5 Q. And then your conviction was about 13 months later;  
6 is that right?

7 A. Yes. I thought it was '14. But, yeah.

8 Q. '13 or '14. So that would have been around September  
9 of 2014 that you were convicted and went into prison?

10 A. Yes.

11 Q. Now, did you have any other health issues while you  
12 were in jail in that period?

13 A. Pretty well constantly. When I first went in there,  
14 they didn't give me my medication for the nerve pain -- yeah,  
15 nerve pain, that I have in the amputated limbs. It's called  
16 amputee phantom limb nerve pain. But there's another name  
17 for it: neuropathic nerve pain. And that's the, like,  
18 electrical shocks that happen. And you can feel it in the  
19 missing parts. For instance, most of the time I get it in my  
20 feet or my big toes. And that's an electric shock sensation.  
21 It can really be severe sometimes.

22 Q. Do you feel like -- even though you've lost your  
23 legs, you feel like you can still feel something in your  
24 feet?

1       A.    I can still wiggle my toes right now.  I can feel  
2 everything.

3       Q.    Did you ever have any cancer while you were in jail?

4       A.    I had a problem with my neck, which is right here, on  
5 this side.  There was a cyst that developed.  And it was  
6 because, when I went into jail, my belly wasn't completely  
7 healed from -- it had ruptured open.  It was like a fistula  
8 or something that happened because of the Crohn's disease.  
9 And I got MRSA infection in there.  And it transferred to a  
10 shaving cut or something in my neck, and I got this cyst,  
11 which got bigger and bigger, and filled with blood.  It was  
12 kind of a big lump there, almost nearly the size of a golf  
13 ball.  And they kept on sucking blood out of it on a regular  
14 basis.

15           And this went on for about eight months, until they  
16 finally decided they couldn't cure it or do something with it  
17 that way, and I went into Saint Mary's Hospital, and they cut  
18 it out.

19       Q.    Any other health issues while in jail?

20       A.    I've got clinical depression for some reason, which  
21 I've had since I was about a teenager.  And it's never really  
22 got any better.  But it's controlled by medication most of  
23 the time.

24       Q.    Anything related to your appendix?



1       A.    The first time -- my appendix ruptured in 1985.  And  
2   it was associated with some Crohn's disease-type situation.  
3   And my appendix was removed in Queen Elizabeth, II Hospital  
4   in my city.  And they treated me for Crohn's problem at that  
5   time.  My whole belly was cut open, so they could fix all  
6   that.

7               And then the second Crohn's -- major Crohn's event  
8   occurred in 1988.  '88, I think it was.  Same sort of thing,  
9   the big intestinal rupture thing.  And they had to address  
10  that medically, because it was giving me -- spilling out, and  
11  peritonitis poisoning in the abdominal cavity, things like  
12  that.  Pretty -- not a medical description, but it was kind  
13  of serious.

14       Q.    Did anything happen while you were in jail with  
15  regard to your appendix?

16       A.    Yeah.  It was -- it was the 26th of August.  Yeah,  
17  26th of August.  And from the 20th of August, I was --  
18  sorry -- I was starting to get Crohn's pain.  And they had  
19  been treating it.  They treated it on the 4th of August,  
20  initially.  And the 8th of August there was problems because  
21  there was some sort of a fissure here, where it was open.  
22  And they treated that in early August of 2013 by packing it.  
23  And they tended it every day.

24               And then, around about the 15th or 16th of August, it

1 didn't need treating anymore because it was closing up, and  
2 they felt they just needed something to keep it clean, to let  
3 it fully heal up a bit.

4 But then, four days later, on the 20th of August, I  
5 started getting the Crohn's pain on this side again, which is  
6 where it comes, in this area here.

7 And I asked them, "I've got to see the doctor. Can I  
8 see the doctor about this, because I'm getting the Crohn's  
9 pain?"

10 And they already knew the situation that I had with  
11 the medical problem. And they said -- there were two regular  
12 nurses, Nurse Taylor and Nurse Fister, who used to do the  
13 pill call rounds, and I would see them twice a day.

14 And when I saw them twice a day, I would ask them,  
15 "Can I see the doctor about this?"

16 And they said, "Put in a kite," which is a medical  
17 request form.

18 So I put in the medical request form to be seen by  
19 the doctor.

20 And the next day, the pain was still there, but a  
21 little bit worse. And I still hadn't seen the doctor. This  
22 went on through the 26th of August, so there was about five  
23 days there where I had been asking each day, several times a  
24 day, to see the doctor because of the Crohn's pain.

1           And I always really worried about it because it  
2 wasn't getting better, it was getting worse. And that's a  
3 bad sign in the Crohn's. When it gets worse, it's almost  
4 like you can predict that it's going to reach a point where  
5 there's going to be some emergency intervention needed. And  
6 that's actually what happened on the 26th of August, at about  
7 5:30 p.m.

8           I was in a cell. The jail was locked down because  
9 there was some incident going on somewhere else in the jail.  
10 And the two officers who were normally inside the unit,  
11 supervising, weren't there. But they did have an officer  
12 walking around at one point, doing what they call a cell  
13 inspection. And I heard him come in. I heard the door open,  
14 and somebody coming in. I looked through the little gap in  
15 the door, the glass in the door, and I see a guard starting  
16 to come around. So I waited for him to come all the way  
17 around.

18           When he got close, I tapped on the window with my  
19 fingernail, and said, "I need to see the doctor. I've got  
20 this real bad problem."

21           And this was out here like a balloon at that stage,  
22 like way out here, and excruciating pain. And he was kind of  
23 rude to me, and left.

24           He said something pretty horrible. I don't know if I

1 | should say it.

2 |           THE COURT: Well, what did he say?

3 |           THE WITNESS: It was an expletive. He said -- he  
4 | looked in, and saw me, and he said, "Shut the fuck up." Just  
5 | like that.

6 |           THE COURT: Okay.

7 | BY MR. REED:

8 |       Q.   What eventually happened with regard to that issue?

9 |       A.   So what happened after that, what happened was, I got  
10 | left in there. That was about 5:30. I can't really remember  
11 | the great details of what went on after that.

12 |           But the shift changed over at 7:00 p.m. to a  
13 | different set of guards, because that's when they start their  
14 | next shift. At some point -- and I really don't know what  
15 | point that was -- during the evening, I got taken to the  
16 | infirmary. I believe it was maybe even 10:00 or 11:00 p.m.  
17 | before I got seen, taken into the infirmary.

18 |           And then they made a -- I stayed there for a while,  
19 | actually. And then they made some decision to transfer me to  
20 | Saint Mary's Hospital. And I eventually had emergency  
21 | surgery at 4:00 o'clock in the morning, after they had done  
22 | an MRI scan and a few other things.

23 |           And they cut out -- I am going with what the report  
24 | said, the medical reports -- they cut out a section of the

1 small intestine, which was inflamed, and joined it up again.

2 MR. REED: Your Honor, may I sit down? Because my  
3 knee is starting to hurt me.

4 THE COURT: Sure.

5 MR. REED: Thank you.

6 BY MR. REED:

7 Q. I want to ask you, with regard to your phantom nerve  
8 pain, did the jail adequately treat that?

9 A. No. It was a constant problem. They had me on my  
10 regular medication, which at the time was 300 milligrams of  
11 Neurontin, twice a day, which is a specific medication for  
12 that problem, which used to control it 90 percent of the  
13 time.

14 But oftentimes I would turn up for the pill call,  
15 morning or afternoon, and they would say things like, "We ran  
16 out, and it might be in tomorrow." And sometimes it wasn't  
17 in for a couple of days. And then it would be in, and then  
18 it wouldn't be in. And it was constantly interrupted  
19 medication regime because a lot of the time they just said,  
20 "We don't have it."

21 Q. Did you ever have any episodes of severe pain during  
22 the period of time that you were out of the medication?

23 A. Yeah. All the time. Multiple times. Many times.

24 Q. Do you have any idea how many -- in the 14 months you

1 were in jail, how many times that occurred?

2 A. In 14 months, in a whole year, a hundred times. At  
3 least twice a week, I guess. Maybe three times a week, even.  
4 It varies. And the intensity of it varies, as well.

5 Q. What about -- other than the incident you described  
6 with your Crohn's disease and your stomach blowing up, did  
7 they treat your Crohn's disease adequately in the jail?

8 A. They -- I was on such a lot of different drugs, I  
9 can't remember all the different names. There was things  
10 like Remeron, Vistaril. There was a ton of different pills  
11 that they kept on switching me on and off, and try this, try  
12 that. But they didn't actually give me anything which was  
13 specifically for the Crohn's. I don't remember if they gave  
14 me anything which was specifically for Crohn's. It was -- I  
15 don't even know what some of those pills did that they gave  
16 me.

17 So that's about as much as I can say about that,  
18 without looking at the medical records.

19 Q. Now, can you describe the circumstances of your  
20 arrest when you were first arrested in July of 2013?

21 A. Okay. It was about 4:00 o'clock in the afternoon.  
22 There was a knock on the door. And there was two  
23 detectives -- Detective Brown, and another female I don't  
24 know -- at the door, and they wanted to talk to me. They

1 said, "Can we come in?"

2 And I said -- and the dog was going crazy. I've got  
3 a little Jack Russell dog. He was the reason I came to  
4 America: to quarantine him, and then get back to Australia.  
5 And he was going crazy.

6 And the next-door neighbors work night shifts, so I  
7 said to them, "I'll come outside, and then the dog will stop  
8 barking, and I'll talk to you."

9 And they made an allegation. And they said, did I  
10 want to come down to the police station?

11 I said, "No, I don't want to. I don't want to come  
12 down to the police station. If you've got something to say,  
13 tell me here."

14 And then we ended up -- they said, "Well, we have to  
15 wait for more information to come in."

16 And we ended up waiting around there, outside the  
17 door, just like right outside the door, for another two and a  
18 half hours, till about 6:30. And then they received some  
19 sort of information on the radio, whatever it was, and then I  
20 got to be under arrest, and they took me to the Washoe County  
21 Jail.

22 Q. Was there any period of time when you told them that  
23 you needed medication, or anything like that?

24 A. It was early on in that, like probably half --

1 probably within a half an hour. I started getting the pangs  
2 of the nerve pain. I asked them if I could have my  
3 medication from inside.

4 And Detective Brown said, "You're not going back in  
5 there."

6 I said, "But I need my medication from inside. I can  
7 tell you where it is. It's in the top kitchen drawer. You  
8 could get it for me, maybe," you know.

9 And he said, "No," and that was it.

10 So for the rest of the time I didn't get that.

11 And then, when we got to the jail, I didn't get it  
12 for another five, six days.

13 Q. Now, after you were arrested and in jail, and Chris  
14 Frey was appointed your counsel, did you ever tell him about  
15 the problems receiving adequate medical treatment in the  
16 jail?

17 A. Constantly. He was -- he was sympathetic, and he was  
18 compassionate. And I'm sure he wanted the best situation for  
19 me in a medical regard, and otherwise. But nothing really  
20 happened with that.

21 I ended up having to ring the consulate, Australian  
22 Consulate, about 24 times, begging them for assistance. And  
23 each time they would ring the jail, and the medication would  
24 resume.



1           But this was over a period of time, at least 24 times  
2 I had to ring them, and it was the same story each time,  
3 pretty well.

4       Q.    Now, when you got to the United States, what, if any,  
5 computer equipment did you have with you at the time?

6       A.    I had a laptop, which used to travel with me.  Mainly  
7 for the purpose of having Skype phone, which is an internet  
8 phone, so that my daughter in Australia, and other friends in  
9 Australia, could contact me, if they wanted to.

10           We're good friends with some lawyers in Australia for  
11 15 years or so, and they were really good friends.  So there  
12 was a lot of various people who would, you know, possibly go,  
13 "How's it going?" blah, blah, blah.  So I just had the  
14 internet phone for that.  It's handy to have, you know, some  
15 sort of communication while traveling.

16       Q.    And did you have any other computer equipment?

17       A.    There was a couple of external hard drives that, when  
18 I came to America, they had about 450 movies on there, like  
19 Hollywood movies.

20       Q.    When did you first acquire your laptop?

21       A.    That was -- I got it off of eBay in Australia.  Wow.  
22 The laptop, when I got arrested, was about five or six years  
23 old, so whatever that works out to.  But I bought it off  
24 eBay, for \$1,100, actually, it was.  So that was like some

1 sort of trading thing, you can buy goods and stuff like that.

2 Q. Did you ever -- after you got your laptop, did you  
3 ever install another hard drive in it?

4 A. Yeah. The first one, when I was in -- when I was in  
5 Thailand, the first one was kind of -- it was a 40-gig, so it  
6 was pretty small. And it was pretty old, and it wasn't  
7 working really very properly. So I went to a shop there,  
8 over there, near the hospital, and they upgraded it to a  
9 120-gigabyte hard drive. And it kind of worked better after  
10 that. And they put extra RAM into it, by the way.

11 Q. And what did you use this computer for, primarily?

12 A. Mostly the internet phone and downloading music. I  
13 was -- when I was married, in Vietnam, before we had gone to  
14 Thailand, she used to use it for downloading lots of  
15 Vietnamese type of songs. Which all sound the same to me,  
16 but, you know, that's what she liked. She would download a  
17 lot of those. I like Elvis Presley and all the old songs you  
18 can't really get hold of anymore, like the '60s- and  
19 '50s-type songs. So, you know, you can download that sort of  
20 thing, which is not readily available elsewhere.

21 Q. And did you have a file-sharing program on your  
22 laptop?

23 A. Yeah. We used the program called Kazaa. It's  
24 K-a-zed-a-a.

1 Q. K-a-z-a-a?

2 A. Sorry. Z. We say "zed."

3 Q. What was it used for, primarily?

4 A. The music, download more music. We had thousands of  
5 songs. She had, like, a crazy number of songs.

6 Q. Now, was this when you were living in Vietnam, or  
7 Australia, or --

8 A. When I was in Vietnam, my Vietnamese wife, she  
9 downloaded all the songs.

10 And then I moved to Thailand -- what happened, it was  
11 a pretty sad situation. My Vietnamese wife and her mother  
12 took the baby away, John.

13 Q. Your baby?

14 Did you have any idea that child pornography may have  
15 been on your computer?

16 A. No. No, not at all.

17 Q. What about a file-sharing program for child  
18 pornography?

19 A. There was a file-sharing program on there, which was  
20 the Kazaa that was for the music.

21 But what I was going to say was, my first -- my  
22 Vietnamese wife and her mother took the baby away because it  
23 was kind of a cultural thing that the firstborn boy is  
24 important. And they didn't -- and they -- and they didn't

1 want him to leave the country.

2 Q. So he's not allowed to leave with you when you left?

3 A. No. But that's what I wanted. I wanted him to be  
4 multi-cultural, like two cultures. But they didn't want  
5 that.

6 Q. Now, when you sat down with Mr. Frey to talk about  
7 the charges in this case, did he go over the elements with  
8 you?

9 A. No. No. He said, "You're liable to get 10 life  
10 sentences, and you should take a deal; otherwise, you're  
11 going to get 10 life sentences." And he just kept on saying  
12 that it's better if I took a deal.

13 Q. And he told --

14 A. I didn't want to take a deal.

15 Q. He told you the possible sentences?

16 A. Yeah, he told me the sentences. He said, "This is a  
17 life sentence thing. They've charged 10 charges, and you  
18 could possibly get 10 life sentences."

19 He said, "You're better off to take a deal and take  
20 one, and I'll make sure you get probation."

21 And he said, "This is a probationable charge. And if  
22 you plead guilty to one charge, then you'll get probation,  
23 and you'll be deported to Australia."

24 Q. It sounds like he almost guaranteed that.

1       A.    It was pretty much a done deal.  In fact, he  
2 organized -- at the time that he said he was doing this,  
3 there was two times that ICE came out, which is the  
4 immigration people and customs enforcement from here,  
5 America.  They came out, and they did a comprehensive  
6 interview with me on the computer, on their computer.  And  
7 they were asking me questions, and typing the answers.

8           And the impression I get from this, and from those  
9 people who were doing it, the officers, was that this was  
10 some sort of a mandatory, routine-type situation in order to  
11 facilitate the deportation to Australia.

12          And then, about seven or 10 days later, they came out  
13 again, and did the same thing.  And then very shortly  
14 thereafter it was going to court to accept a guilty plea to  
15 one charge.  So it was -- that's what happened.

16       Q.   Now, when you were arraigned on this charge, what, if  
17 anything, did Mr. Frey tell you to say in response to the  
18 judge's questions?

19       A.   He said, "You have to own this."  And that was --  
20 that was when we were in the jury room.  Actually, that jury  
21 room right there.  We were in there five minutes before we  
22 came in to see Judge Hardy.

23           And he said to me, in that room, "You're going to  
24 have to own this.  You have to own this."  And then, "Agree

1 with everything the judge says, and just don't disagree with  
2 anything. Just go along with what is being said in the  
3 courtroom, and you'll end up getting probation and going  
4 home, and you can get the medical care that you need."

5 That's pretty much word for word.

6 Q. And, so, if you would tell the judge, kind of in a  
7 nutshell, why you ended up pleading guilty.

8 A. There was a couple things.

9 One, I even said to the consulate, I said, "I'm not  
10 sure I'm going to survive being here. I think I might end up  
11 dying here." I was really worried that I was going to die in  
12 that jail. I had to get out of there. It was terrible.  
13 There was no medical treatment. There was all that pain they  
14 were ignoring.

15 And also there was a problem with Sophie, who was two  
16 years old at the time. She had been taken by Children's  
17 Services. It's my other daughter, from the Vietnamese  
18 marriage.

19 And we were already a long time -- many months into  
20 Sophie having been taken away by Children's Services. And at  
21 the 12-month mark they told me that she automatically gets  
22 adopted out. Which was, really, life-threatening to me. I  
23 couldn't stand that.

24 So that was one aspect of the reason why we had to

1 stop that from happening somehow. Because it would have been  
2 an automatic thing, and they said that she just gets scooped  
3 away, and you never see her again.

4 Q. So you at least wanted to get out of that jail to get  
5 better medical treatment?

6 A. Medical treatment was a big part of it, too, with  
7 that pain. I was constantly under-medicated in there,  
8 obviously.

9 And with the Crohn's, the Crohn's thing, sure, they  
10 did take me to hospital in the end. If they wouldn't have  
11 taken me when they did, I'm sure, like, I only had a couple  
12 hours left to live. The doctor spent a really long time  
13 getting all the peritonitis out of my belly.

14 Q. Now, you were living in an apartment in Sparks?

15 A. Yes.

16 Q. And who did you rent the apartment from?

17 A. I met -- when I was in Thailand, I met this person  
18 called Joe -- Joseph Chiappetto, C-h-i-a-p-p-e-t-t-o -- at  
19 the dentist in Thailand, when I was getting my crowns fixed  
20 up in the front here. And I got to know him because he was  
21 an English-speaker. He used to -- he ran the paddle boat  
22 business at the Sparks Marina.

23 He used to go to Thailand for three months of the  
24 year, when it was winter over here, when it was really cold,

1 and the business was not working. And he would take that as  
2 a holiday, or something like that. And I met him over there  
3 in the dentist's. And he got to know my situation.

4 And I've got a little dog, Milo. He's a Jack  
5 Russell. He's called Milo. Great little guy. I have had  
6 him since a pup. And he has traveled around with me all the  
7 time. And I couldn't travel directly back to Australia from  
8 Vietnam because it's a rabies country, and Australia has  
9 really strict quarantine rules. So I had to spend six months  
10 quarantined somewhere, or put him in doggie jail, at \$25 a  
11 day, in Australia. Didn't really want him to go in there.

12 So Joe suggested, "Why don't you come to Sparks? You  
13 can have a six-month holiday. Quarantine the dog here,  
14 because the rules are allowed here. And then you can go  
15 straight back to Australia."

16 So that's what I did. He rented an apartment for me,  
17 over here in Sparks, and picked me up from the airport, and  
18 drove me to the apartment. And we lived in there while we  
19 were doing the quarantine thing.

20 Q. Did he have a set of keys to the apartment?

21 A. Yeah. It was his apartment. He rented it in his  
22 name. He had a set of keys. Yeah. It was all set up when I  
23 got there.

24 Q. Did he ever come into the apartment when you were not



1 | there?

2 |       A.    I don't know.  He used to come over a lot, pretty  
3 | well every day.  He ran a bookstore here in Sparks, called  
4 | the Book Gallery.  It had hundreds of books in it --  
5 | thousands of books, and comics.  He had this thing about  
6 | classic comics, Superman, Justice League, all those really  
7 | good classic ones.  The ones that I like, actually.  And he  
8 | had 30,000 of these comics.

9 |           And he gave me a job to sort them all into subject  
10 | matter, and put them in boxes, so that he could take them to  
11 | the bookstore and sell them.  Some of these comics sold for  
12 | \$30 each.  So I spent a long time sorting those out for him.

13 |           And he had -- all these things were stored in the  
14 | back room, which is like a one-bedroom apartment, so it was  
15 | all in the bedroom part.  And they were all lined up around  
16 | the wall, this high, with all these boxes of books and comics  
17 | and stuff.

18 |       Q.    What did Mr. Frey tell you, if anything, about the  
19 | chances that you would be convicted?

20 |       A.    He didn't really talk about conviction of anything.  
21 | He was only talking about making a deal.  He was just,  
22 | like, "Deal, deal, deal."  And, "You've got to take this  
23 | deal, and then it will be okay.  You'll get probation.  It's  
24 | a first offense.  You have no criminal history.  And, you

1 know, you're a foreigner. You're not even legally in this  
2 country. They'll probation you out, and you'll be deported."

3 He never really went down the track of, "Yeah, we can  
4 defend this," or anything like that. But in actual fact, he  
5 did talk to someone about a defense forensic report. And he  
6 told me that there was a defense forensic report that existed  
7 that confirmed what the police said.

8 And I went, "What?"

9 And he goes, "Yeah, yeah."

10 So I asked him for this report. And he never gave it  
11 to me, never showed me any report.

12 And my lawyers in Australia, they asked for it, as  
13 well.

14 And he said to them in the e-mails, "I can't give you  
15 a copy of the report because Mr. Skinner has to authorize  
16 it."

17 So I did authorize it. I wrote him a letter.  
18 "Please provide my lawyers in Australia with a copy of this  
19 defense forensic report, because they want to see what's in  
20 it."

21 And he never did.

22 Q. And you thought --

23 A. He never --

24 Q. You thought he had a written report, then?

1       A.    Yeah.

2           And he said, "This report confirms what the police  
3 are saying, and you're going to have to take a deal for one  
4 charge, and then they'll probation you."

5           I never saw the report. I asked him lots of times;  
6 on the phone, and in letters, as well.

7       Q.    So if I understand your testimony, the main reason  
8 you took this deal was, well, number one, to get out of poor  
9 medical treatment, get better medical treatment than in the  
10 jail; and that you thought certainly that you would get  
11 probation?

12       A.   Not just to get better medical treatment. I thought  
13 I was going to die in there. And I told the consulate  
14 exactly that.

15           And yes, sir. The answer to the question is: Yes.

16       Q.   You pretty much were -- you felt pretty sure you  
17 would get probation?

18       A.   Oh, it was -- it was almost an absolute. From the  
19 information that I had from what Mr. Frey was saying, he  
20 painted it as just that. And I thought: Well, I don't  
21 really want to.

22           And even in the colloquy, when the judge asked me  
23 directly, "Are you guilty of this offense?" I sort of, like,  
24 hung up there, and I didn't -- I couldn't say anything,

1 because I wanted to say "No." But then Frey told me, "Just  
2 agree, agree, agree." So there was a lot of pregnant pause  
3 of about five or six seconds.

4 And then Mr. Frey jumped up quickly and said, "We  
5 plead guilty to the facts and circumstances," or something  
6 like that. The factual basis of the charge, Your Honor.

7 And so he kind of spoke over me. I was still in  
8 hesitant mode. I didn't really want to do it. And that came  
9 out. But that's what happened.

10 MR. REED: That's all the questions I have, Your  
11 Honor.

12 THE COURT: Thank you.

13 Are you doing okay for examination from the State, or  
14 do you need a break?

15 THE PETITIONER: Yes, sir. No, I'm okay.

16 THE COURT: We're good.

17 Please proceed.

18 MS. NOBLE: Your Honor, because Mr. Skinner is  
19 seated, I don't feel comfortable talking over him at the  
20 podium. Is it okay if I move my chair and just ask my  
21 questions from there?

22 THE COURT: It is. You may.

23 MS. NOBLE: Thank you.

24

1 CROSS-EXAMINATION

2 BY MS. NOBLE:

3 Q. Good afternoon, sir.

4 My name is Jenny Noble. I represent the State.

5 A. Miss Noble.

6 Q. And part of the purpose of my questions today are to  
7 understand your claims --

8 A. Okay.

9 Q. -- or the factual allegations underlying them. I'm  
10 going to try really hard to arrange my examination sort of  
11 temporally, so, starting with the arrest --

12 A. Oh, okay.

13 Q. -- and then negotiation phase, pleading, and --

14 A. What was that?

15 Q. The plea phase.

16 A. Oh, pleading.

17 Q. Arraignment, plea, and sentencing.

18 A. Yes.

19 Q. So trying to kind of keep it in the order in which  
20 things happen, because I find that it makes things go a  
21 little bit smoother.

22 A. Okay.

23 Q. Okay. Great.

24 So what is your level of education?

1       A.    Grade 12.  And I did two years of college, with the  
2 police.

3       Q.    And how long were you a police officer?

4       A.    The federal police is two and a half years.  And the  
5 state police was five and a half years.  So that's like eight  
6 years, if you combine those two.

7           And I also returned to the Queensland state police,  
8 the same state police, as an academy driving instructor, for  
9 a two-year contract, after the accident.

10      Q.    Okay.  So it sounds like about seven years you were  
11 in law enforcement.

12      A.    Yeah.

13      Q.    Prior to your accident?

14      A.    Yes.  And then the accident happened.  And I tried to  
15 go back for about 12 months, and it just became too hard,  
16 because that was the 12 months where I had -- there was seven  
17 operations, in all.  So it was a little bit hard to struggle  
18 back all the time, even though they really helped me out a  
19 lot.  They'd come and get me, stuff like that.

20           But then I had about two years of convalescence,  
21 recovering from various different operations that they had to  
22 do, not just on the legs.

23           And I was pretty well-known, you know.  Like very  
24 well-known.  I was on the national news, and everything like

1 that. So pretty well everybody knew. But the police  
2 department, Queensland police really knew about it. And they  
3 wanted me to be an instructor for driver training because I  
4 had already done the advanced driver training in -- along  
5 with my being a Highway Patrol officer.

6 And they said, "You'd be the ideal candidate to  
7 inspire the recruits as an instructor." So I did the  
8 instructor's course, which only had four students. And two  
9 out of the four students didn't pass, but I was one that did  
10 pass.

11 And believe it or not, I drove a normal vehicle, with  
12 an artificial leg, which is kind of scary, thinking about it  
13 in the beginning. But I got very good at it. Mainly because  
14 you're doing the same thing over and over again. And it  
15 was -- like I said, it was an inspiration to the recruits,  
16 because these are all young guys coming in in the first 12  
17 months of their training in the actual academy. And our  
18 course was three weeks long. And, you know, they said, "We  
19 can hardly do this. This guy with no legs can do it." So it  
20 kind of inspired them.

21 Q. So you were able to do all of that after your  
22 accident in the 1980s?

23 A. It took a while. I had a couple years of break there  
24 between the 12 months after the accident, when all these

1 seven operations happened. And there's things like I got  
2 skin grafts here that they took to put over the skin that was  
3 missing here. And this leg, when it got ripped off, didn't  
4 get completely ripped off. It was about this much bone left  
5 on the top. And it was giving me so much irritation and  
6 infection and stuff, they had to take the whole thing out in  
7 another operation. Just things like that. And there was  
8 about seven different styles of operation going on in that  
9 regard.

10 And then that's when I had the two years' break to,  
11 you know, get human again. And then the contract came up,  
12 and they proposed this idea that I be an instructor.

13 Q. Okay. So I want to ask you. During the time before  
14 your accident that you said you did mostly Highway Patrol  
15 type -- what we'd understand as like Nevada Highway Patrol  
16 does here; is that right?

17 A. Similar.

18 Q. So traffic enforcement, traffic safety?

19 A. Yeah. Mostly, we used to concentrate on drunk  
20 drivers, which we called UALs. But over here it's like DUIs,  
21 I think they call it. Drunk drivers, there was a quota, you  
22 had to get so many drunk drivers a month. Which wasn't a bad  
23 idea, because there was a lot of them out there. That was  
24 one of their primary activities. But we'd pick up a lot of



1 | druggies and people like that in the course of doing those  
2 | things. It was crazy. Just all sorts of things went on.

3 | Q. So in the context of that, did you ever testify in  
4 | court?

5 | A. A couple of times, yeah. I didn't go to court a lot  
6 | because, you know, I'd like to think that I was fair in what  
7 | I did. And I never -- I didn't get a lot of contested  
8 | arrests, you know. In fact, I don't think I've ever had a  
9 | contested drunk driver arrest in court. There were --

10 | THE COURT: Excuse me, Mr. Skinner.

11 | Some of the questions that the attorney for the State  
12 | of Nevada is going to ask you are really yes-or-no questions.

13 | THE WITNESS: I'm sorry.

14 | THE COURT: If you need to explain your answer to  
15 | make sure it's more accurate or fully understood by the  
16 | Court, we'll give you the opportunity. And if Mr. Reed  
17 | believes that you've been cut off or --

18 | THE WITNESS: Okay.

19 | THE COURT: -- that I should understand better --

20 | THE WITNESS: Sorry.

21 | THE COURT: But if you take these yes-or-no-type  
22 | questions and run with them this long, this hearing is going  
23 | to last a week.

24 | THE WITNESS: I'm sorry.

1 THE COURT: And probably it would be more than the  
2 Court needs to make an informed decision here.

3 THE WITNESS: I understand.

4 THE COURT: Thank you.

5 Please proceed.

6 BY MS. NOBLE:

7 Q. And based on what the judge just said, I'm going to  
8 try to keep us on track without interrupting you. If I try  
9 to move on to the next question, I'm not trying to be rude,  
10 but just to keep us on track. Okay?

11 A. Okay.

12 Q. So in the context of your employment as a police  
13 officer, did you receive any training on how to testify in  
14 court?

15 A. No. They didn't really train us for that.

16 Q. So after your accident, you were able to travel to  
17 Vietnam; correct?

18 A. Yeah. Yes, I mean. That was years later, though.

19 Q. Okay. How many years later?

20 A. Twenty years later.

21 Q. Okay. And you were also able to travel to Thailand;  
22 isn't that right?

23 A. After we left Vietnam, I went to Thailand, because I  
24 couldn't take the dog back to Australia. I was going to go

1 back through that way.

2 Q. And I wanted to ask you, just while we are talking  
3 about Vietnam and Thailand, in reading the pleadings and the  
4 papers that you had filed, I had an understanding that Sophie  
5 had a mother from Thailand. Is that wrong?

6 A. No. Her mother is Vietnamese. But when I left  
7 Vietnam, I knew her mother socially, and she didn't want me  
8 to leave Vietnam. I said, "I'm leaving." And she was, like,  
9 really emotional about that, and wouldn't let me leave, you  
10 know. I was going to go, but I felt so bad about it. So I  
11 said, "Look. Maybe we can go -- I can't stay in Vietnam" --  
12 sorry, Your Honor.

13 There was reasons I didn't want to stay in Vietnam.

14 Q. Okay.

15 A. And she didn't want me to leave, and she wouldn't  
16 take no for an answer, so I said, "Look, let's go to Thailand  
17 and think about it, and then I'll go back to Australia."

18 Q. So you and Sophie's mom went from Vietnam to  
19 Thailand?

20 A. Yeah. Yeah.

21 Q. And prior to that, the little boy that you testified  
22 was taken by your Vietnamese mother, that was a different  
23 mother; correct?

24 A. It was a different mother.

1 Q. How did you meet that mother?

2 A. Her? Her name was Lynn. Lynn, you said it like  
3 that. When you wander around the streets in Saigon, you meet  
4 pretty well everyone that's there.

5 Q. Fair enough.

6 A. Everybody is outside all the time.

7 Q. Okay. So now I want to get to the time of your  
8 arrest in 2013.

9 A. Yeah.

10 Q. So you're arrested. And you described being  
11 confronted or talked to by police officers outside the  
12 apartment you were staying in; correct?

13 A. Correct.

14 Q. And what led the police to come to your door?

15 A. Some mother in the apartment complex had made a  
16 complaint that something had happened between me and her  
17 daughter, who used to come over and babysit Sophie.

18 Q. And to be more accurate -- and I'm not trying to  
19 embarrass you, but the allegations that the child made --

20 A. Yeah.

21 Q. -- and testified to later at the preliminary hearing,  
22 was that you had Sophie on your lap, who was two, with your  
23 penis exposed, masturbating.

24 A. No.

1 Q. That wasn't the accusation?

2 A. No, that was the accusation. But that didn't happen.

3 Q. But that was what led them to your door; correct?

4 A. Yes.

5 Q. And after that, police got a warrant for -- to search  
6 your computer; correct?

7 A. Right.

8 Q. And I know you have issues with the warrant. You  
9 don't believe it's sufficient.

10 A. Yeah. That's something that came up, I guess, yeah.

11 Q. And did you discuss any of those sort of Fourth  
12 Amendment or search and seizure issues with Mr. Frey?

13 A. Yeah. I think it's one of the grounds, actually.

14 Q. But so you discussed them with your trial attorney,  
15 Mr. Frey?

16 A. Yeah.

17 Q. And what did he tell you about whether or not he was  
18 going to make any Fourth Amendment challenges?

19 A. He said there was something wrong with the search  
20 warrant, and he was going to look into it. And then, about a  
21 week later, he totally dropped that idea and kept on going.

22 Q. Did you know why he dropped it?

23 A. It was the probable cause -- the probable cause was  
24 the issue that we brought up. And I don't know why he

1 dropped it.

2 Q. Okay. Now I want to talk to you about the original  
3 charges. So in that case with the girl and the allegation  
4 that you just talked about, that was the open and gross  
5 lewdness charge; correct?

6 A. Right.

7 Q. And that went to preliminary hearing?

8 A. It did.

9 Q. And the victims testified; correct?

10 A. Yes.

11 Q. And that was bound over to the District Court?

12 A. Yes. In questionable circumstances, I might say.

13 Q. Okay. And now, in this case, do you remember what  
14 the original charges were in the Criminal Complaint in this  
15 case that we're here about today?

16 A. I think there were 10 possession and 10 -- what do  
17 they call it? -- promotion charges.

18 Q. Okay. So does this sound right? Ten counts of  
19 promoting sexual performance of a minor under 14, and then 10  
20 possession of visual pornography of a minor?

21 A. Right.

22 Q. And then one count of misuse of encryption software?

23 A. Yes, that would be right.

24 Q. Do you recall, for the 10 counts of promotion of the

1 sexual performance for a minor under 14, do you remember what  
2 the possible penalties were?

3 A. I think they were what they call a one-to-six, which  
4 means one year to six years.

5 Q. Okay. I think you've got a good memory. So that's  
6 the possession of visual pornography. So one to six.

7 A. Yeah, yeah.

8 Q. And then for those promoting sexual performance, the  
9 related --

10 A. They were -- I think they were 10 to life.

11 Q. Ten to life. So, all in all, I think, by my count --  
12 and I was an English major, so I apologize; my math is bad --  
13 but that's 21 charges in that original Complaint.

14 A. Right.

15 Q. Also by my math, that's over a hundred possible years  
16 in prison.

17 A. It's a lot.

18 Q. Right. That's a lot.

19 A. Yeah.

20 Q. Now, in your petition, you allege that Mr. Frey  
21 failed to investigate your case. What did you ask Mr. Frey  
22 to do in terms of investigation that he failed to do?

23 A. What did I ask him to do? I said, "You've got to  
24 look into this, because you need to fix this up."

1 Q. Look into what?

2 A. Look into these charges.

3 Q. Okay. Anything else specific about the charges?

4 A. I don't think so.

5 Q. Did you tell Mr. Frey that you didn't commit the  
6 crime that you were charged with?

7 A. Right.

8 Q. And what do you say -- or what are you alleging that  
9 more investigation would have showed, if he had done more  
10 investigation?

11 A. What am I alleging? Oh. I'm just saying that I  
12 wasn't right for this; and that, if he could investigate it  
13 and fix it up, that's what should be done. But then he moved  
14 into this plea bargain mode.

15 Q. And so when you say -- did you say, "I wasn't right  
16 for this," or "ripe for this"?

17 A. "Right."

18 Q. "Right."

19 A. That's an Australian saying.

20 Q. Right. I had heard it before. My sister-in-law is  
21 from Australia.

22 A. Right: r-i-g-h-t.

23 Q. Now I want to talk to you about those negotiations.  
24 Did Mr. Frey ever tell you he was unwilling to go to trial?



1 A. No.

2 Q. In fact, do you remember a trial date was set in this  
3 case?

4 A. I don't really remember that, but, probably, yeah.

5 Q. And then you discussed a little bit the conversations  
6 you had with Mr. Frey about the expert and his -- that he  
7 consulted; right?

8 A. Yes. Yes, yes.

9 Q. And he said that that expert, defense expert,  
10 verified the allegations in the police reports about --

11 A. Yeah, he said that.

12 Q. And I'll just finish really quick. About what  
13 Sergeant Carry put.

14 A. Right.

15 Q. And did he explain to you how that affected your  
16 chances of acquittal?

17 A. No.

18 Q. I'm sorry if I'm asking this question again. Did he  
19 tell you he was unwilling to go to trial?

20 A. No. No, he didn't say that.

21 Q. Now, eventually, there was a negotiation struck in  
22 this case; right?

23 A. Yes.

24 Q. And that was that you would plead to a single count

1 of promotion of a sexual performance by a minor over the age  
2 of 14.

3 A. Yes, that was it.

4 Q. And do you remember what -- I think you probably  
5 do -- what the sentencing ranges for that single count are?

6 A. Right. That was what they call a five-to-life. That  
7 was the differentiation between what they charged and what  
8 they said was a fictitious charge, he called it.

9 Q. So legal fiction charge?

10 A. Right.

11 Q. And that was to allow the charge to put you at  
12 exposure for less time, five to life versus 10 to life.

13 A. Yes.

14 Q. As part of those negotiations, the other case, the  
15 gross-misdemeanor case, was dropped?

16 A. Yes.

17 Q. And all the other charges.

18 A. I was vehemently defending the gross-misdemeanor one.  
19 But it got lumped into this deal thing that went on.

20 Q. So we call that lumping into a deal like a global  
21 resolution.

22 A. Okay.

23 Q. Part of the global resolution was to get rid of the  
24 gross misdemeanor.

1 A. Right.

2 Q. And then to get rid of 20 of the 21 counts in the  
3 Complaint in this case.

4 A. Yes.

5 Q. Now, in your petition, you allege that you couldn't  
6 understand the negotiations. Was that because Mr. Frey  
7 didn't explain them to you?

8 A. I don't understand what you mean by that question,  
9 that I couldn't understand the negotiations.

10 Q. Okay. Let me ask you in another way.

11 A. Okay.

12 Q. Did you understand the negotiations in this case?

13 A. Yeah. My understanding was that there was going to  
14 be a plea of guilty to one charge, and then it was a  
15 probationable charge, and I would be deported to Australia.

16 Q. And you allege that, I believe, in your petition,  
17 that you didn't understand the nature of the elements of the  
18 charge.

19 A. That's right. It was some -- I thought it was -- I  
20 was thinking along the lines of, it's a possession type of  
21 illegal material charge.

22 Q. So, no. So did Mr. Frey ever explain to you the  
23 nature of that charge?

24 A. I don't think so, no.

1 Q. Did you ask him --

2 A. I'm going to say no. But if he did, I don't really  
3 remember that he ever did. And he didn't make a big point of  
4 what I now know to be the elements of the charge. Because  
5 ever since I've been in the prison here, I've studied a lot  
6 of law, virtually for five years. And back then I didn't  
7 know anything about what was going on.

8 Q. Now, when you pleaded guilty, you were provided with  
9 a guilty-plea memorandum; right?

10 A. Right.

11 Q. Do you remember that that guilty-plea memorandum said  
12 that you understood the negotiations?

13 A. There was a lot -- there was like four or five pages,  
14 or something like that. I don't think I really read through  
15 it all. It was just a matter of skimming and signing.

16 Q. You didn't read through it all? Would it help you to  
17 take a look at the guilty-plea memorandum?

18 A. Sure.

19 Q. Okay. One second here. I have to move all my stuff.  
20 I've got it right here. Perfect.

21 MS. NOBLE: Approach the witness, Your Honor?

22 Your Honor, may I approach the witness?

23 THE COURT: Yes. I'm sorry.

24 Go right ahead.

1 MS. NOBLE: That's okay.

2 BY MS. NOBLE:

3 Q. Here you go, sir. Can you turn the pages?

4 A. Yes.

5 Q. Okay. Great.

6 So looking at this guilty-plea memorandum, it's --  
7 what? -- several pages. And I want to direct your attention  
8 to page 2, paragraph 4.

9 A. Okay.

10 Q. And that says, "I understand the charge against me,  
11 and the elements of the offense."

12 A. That's what it says.

13 Q. Okay. And did you read that part before you signed  
14 it?

15 A. I think I did read that part, yeah.

16 Q. And it also described the charges; correct?

17 A. Hang on. Is that underneath the part -- underneath  
18 the "4"?

19 Q. That's probably line 16 to 24.

20 A. Okay. Hang on. Let me check that.

21 Right. Okay. I did read that.

22 Q. And I'm going to take you to the next page, page 3,  
23 paragraph 5. "I understand that I admit the facts which  
24 support all of the elements of the offense by pleading

1 guilty." Do you see that part?

2 A. Yeah, I see it.

3 Q. Do you recall reading that?

4 A. I've read that.

5 Q. You've read that. Okay. What about paragraph 6,  
6 understanding the consequences of the plea of guilt?

7 A. Yeah. Mr. Frey explained that.

8 Q. He did explain that?

9 A. Yeah. He said it was -- that he was doing a  
10 five-to-life, some sort of negotiation, instead of the 10 to  
11 life original thing.

12 Q. And it's your understanding that five to life was  
13 probationable; right?

14 A. He said it was probationable. He said both of them  
15 were, actually, the 10 and the 5.

16 Q. Oh. Okay. Now, did he ever guarantee you were going  
17 to get probation?

18 A. He didn't use that word, "guarantee." But he was  
19 pretty convincing. And I've got to give him credit. He did  
20 put a big effort into that situation of there were hundreds  
21 and hundreds and hundreds of pages of his brief trying to  
22 organize the probation.

23 Q. I'm going to take you now to page 4. And it's page  
24 4, paragraph 12.

1 A. Okay.

2 Q. And that advised you that the Court wasn't bound by  
3 the agreement of the parties.

4 A. No, it says that.

5 Q. Sentencing is up to the judge; right?

6 A. Yes.

7 Q. Did you read that part?

8 A. I did read it.

9 Q. Okay. I want to take you to --

10 A. Mr. Frey explained it, too.

11 Q. He did? Okay. Thank you.

12 Page 5, line 8 to 9. "I am satisfied with my  
13 counsel's advice and representations leading to the  
14 resolution of this case."

15 A. I kind of wasn't really satisfied, but I signed it,  
16 anyway.

17 Q. "And I'm aware that, if I am not satisfied with my  
18 counsel, I should advise the Court at this time."

19 Did you read that?

20 A. Yeah. And I wasn't satisfied, and I didn't advise  
21 the Court.

22 Well, that's not quite true, because I was going to  
23 advise the Court, but then -- in that pregnant pause, but  
24 then Mr. Frey sort of jumped in and kept it all going. I was

1 really hesitant right at that point.

2 A. Okay.

3 Q. Now, paragraph 15, on that same page, "My plea of  
4 guilty is voluntary, not the result of threats, coercion, or  
5 leniency."

6 A. That's kind of true. You know, there is a measure of  
7 truth in there, a good measure of truth in that. But there  
8 were influences which made it kind of not voluntary.

9 Q. I don't have more questions about that, so, if it's  
10 okay, I'm going to take that document back from you.

11 A. Thanks. Thank you.

12 Q. Now, I want to talk to you about when you came to  
13 court at the arraignment, where you say that Mr. Frey entered  
14 the plea for you, and you didn't really plead.

15 A. Right.

16 Q. Okay. So you recall that hearing, it sounds like.

17 A. Absolutely.

18 Q. Okay. And do you recall that, at the time, the judge  
19 put you under oath before he asked you the questions?

20 A. Yes.

21 Q. So you swore that your answers would be truthful.

22 A. Yes.

23 Q. Okay. And is it your testimony today that they  
24 weren't truthful?



1       A.    I guess you could say, like, in a perfect sense, no,  
2 they weren't all that truthful, because there was that  
3 element of: I didn't really want to. But Mr. Frey had said,  
4 "Just go along with the judge."

5       Q.    Okay. So you would agree with me that you told the  
6 Court or answered the Court that your attorney had accurately  
7 stated the negotiations.

8       A.    He made a deal. He made this deal. And he said, "We  
9 need to go along with this deal. You need to own this."

10       Q.    Let me rephrase my question.

11           THE COURT: Hold on, Mr. Skinner.

12           The question is: Do you agree that the judge asked  
13 you --

14           HE WITNESS: Oh, the judge.

15           THE COURT: -- if your lawyer had identified what the  
16 terms of the negotiations were?

17           THE WITNESS: Oh, yes. I believe that the judge did  
18 say that.

19           THE COURT: How did you respond to that question by  
20 the judge?

21           THE WITNESS: I said, "Yes, Your Honor."

22           THE COURT: All right. Thank you.

23 BY MS. NOBLE:

24       Q.    Okay. Same question with regard to the Court's

1 questioning about no one had forced you to plead guilty  
2 today, and it was your decision.

3 A. Yeah. I said, "No, Your Honor," that nobody had  
4 forced me.

5 Q. And you recall the prosecutor reading the elements of  
6 the offense?

7 A. It kind of went on for a long time. Prosecutor read  
8 out a lot of stuff. So I guess it was in that.

9 Q. Okay. And the Court asked you if you had adequate  
10 time to consult with your attorney. Do you remember that?

11 A. I had plenty of time to consult with the attorney.

12 Q. Thank you. And do you recall Judge Hardy telling you  
13 that the sentencing decision was his, and you had no promise  
14 of sentence?

15 A. He did say that.

16 Q. Now, the attorney represented that you accepted the  
17 factual basis of the plea; correct?

18 A. That's what Mr. Frey said.

19 Q. Was that without your permission?

20 A. He jumped in over the top and said -- there was no  
21 permission or non-permission. It just happened.

22 Q. Did you tell him afterward, "You didn't have my  
23 permission to do that"?

24 A. I didn't say that.

1 Q. Did you tell him prior to that hearing, "I'm not  
2 pleading guilty today"?

3 A. No. No, I didn't.

4 Q. Thank you. I want to talk to you a little bit about  
5 the experience you described in the Washoe County Jail, and  
6 the medical duress sort of aspect of the petition you filed.

7 Did you ever file a grievance related to your claims  
8 of mistreatment in the Washoe County Jail?

9 A. Well, all that bad mistreatment and everything which  
10 led up to the intestinal rupture happened after about 30  
11 days. And then, after I had gone to the hospital and come  
12 back, I put in a couple of grievances about six months later,  
13 about other unrelated things.

14 Q. So you put in grievances, but not about that?

15 A. No.

16 Q. And is it your testimony today that you were not able  
17 to enter a knowing, voluntary, and intelligent plea because  
18 you were in so much pain with the phantom limb pain and the  
19 Crohn's issues you described?

20 A. Yes.

21 Q. Did you tell Mr. Frey that?

22 A. He knew.

23 Q. He knew you were not capable of entering a knowing,  
24 voluntary, intelligent plea because you were in so much pain?

1 A. He knew.

2 Q. And he let you plead, anyway. That's your testimony  
3 today.

4 A. Yes.

5 Q. Thank you. Now, you sued the Washoe County Jail in  
6 Federal Court, didn't you?

7 A. It's still going.

8 Q. Well, the District Court granted summary judgment in  
9 your Section 1983 claim -- didn't they? -- in 2018.

10 A. They did. And I appealed to the Ninth Circuit, and  
11 the Ninth Circuit panel reversed and vacated that judgment.

12 Q. For further proceedings?

13 A. For further proceedings.

14 Q. And didn't they say in that judgment it didn't appear  
15 you had filed any grievances related to your medical  
16 problems?

17 A. Yeah. They described it accurately.

18 Q. Now, I want to talk to you about sentencing. And I'm  
19 winding down my examination, so if you're getting tired, let  
20 me know.

21 A. I'm okay.

22 Q. You had three sentencing hearings; right?

23 A. Yes.

24 THE COURT: Say that again.

1 MS. NOBLE: Three sentencing hearings.

2 THE COURT: Sorry. Thank you.

3 BY MS. NOBLE:

4 Q. It was broken into three parts?

5 A. Yes. The judge kept running out of time.

6 Q. So during one of those sentencing hearings, did you  
7 ever tell Chris Frey, "Hey, when you said we stipulated to  
8 the factual basis, that was against my will," or, "I don't  
9 agree with that, and I want to withdraw my plea"?

10 THE COURT: Or words to that effect.

11 THE WITNESS: Words to that effect? No, I don't  
12 think I said anything.

13 BY MS. NOBLE:

14 Q. Did you tell him during the sentencing that you were  
15 in too much pain to understand what was going on?

16 A. At what point?

17 Q. During the -- any of the sentencing hearings.

18 A. No.

19 Q. Why not?

20 A. Because sometimes I wasn't in pain.

21 Q. So sometimes you understood things perfectly?

22 A. Yes.

23 Q. Okay. Which parts did you not understand because you  
24 were in too much pain?

1       A.    It was the colloquy, the very first part, when we  
2   went there the first time, before the sentencing.

3       Q.    So the plea colloquy.

4       A.    Right.  That's when the bad times were happening.

5       Q.    Okay.  Do you remember that Mr. Frey filed a detailed  
6   sentencing memorandum on your behalf?

7       A.    Yeah.  That was on the last day.  And I'm not even  
8   sure that made it into the record, because it was 600 pages,  
9   and Rebecca Druckman, the prosecutor, was objecting to its  
10   admission.  And I'm not even sure it made it in.

11      Q.    Let me try to refresh your memory.  And if this  
12   sounds wrong, you let me know.

13               There were three sentencing hearings.  One of them  
14   was continued to give Rebecca a chance to look at that.  Does  
15   that sound right to you?

16      A.    Yeah, it sounds right.

17      Q.    So in one of those sentencing hearings Mr. Frey  
18   called your friend, Ms. Wellner.

19      A.    She's my lawyer in Australia, and family friend.

20      Q.    Your lawyer in Australia.  And she testified to your  
21   good character; isn't that right?

22      A.    She did.

23      Q.    And the next sentencing hearing, which I believe was  
24   the middle one, the beginning in reverse, your daughter,

1 Courtney, who is an adult, testified on your behalf, as well.

2 A. I don't know which one, but, yes, she did. Which  
3 hearing it was.

4 Q. Oh, yes. Okay.

5 A. But my daughter did testify, yes, via phone. Yeah,  
6 by phone. Mrs. Wellner came over in person. She flew here  
7 to testify.

8 Q. I'm sorry. Okay. I misread it. So it was in  
9 person?

10 A. Yeah. Mrs. Wellner flew over here to testify. And  
11 my daughter, Courtney, was testifying by phone.

12 Q. And Courtney had care of Sophie; isn't that right?

13 A. Yes.

14 Q. Do you recall that, between the second and third  
15 sentencing hearings, there was some information that was  
16 alleged that perhaps made Mr. Frey's request for probation a  
17 bit difficult?

18 A. Yeah. It was something to do with Sophie being  
19 examined over there by a doctor.

20 Q. And the examination, in fact, revealed that she had a  
21 sexually-transmitted disease at the age of three years old.

22 A. That's what they told me, yeah. Which I couldn't  
23 believe. Still don't believe them.

24 Q. You don't believe she has a sexually-transmitted

1 disease?

2 A. No. For the primary reason that Child Services had  
3 her over here, and they did examinations on her during the  
4 time that they had her, the six or eight months, or whatever  
5 it was, and they said, "Everything is fine."

6 Q. Okay.

7 A. They had their own doctor do it over here. And then,  
8 when she ended up in Australia, for some reason this --  
9 because it's arbitrary reporting over there for such things,  
10 then the doctor came up with this thing, and out of the blue,  
11 and we --

12 Q. The doctor your daughter took her to; right?

13 A. Right.

14 Q. And were you also aware that there were allegations  
15 by the Australian police and by the federal authorities that  
16 you had been under investigation since 2008 for sex tourism  
17 in Asia?

18 A. I heard about that in the course of all this stuff  
19 going on, but I had no idea about that.

20 Q. No idea about that?

21 A. No. No one ever spoke to me about anything like that  
22 until I heard it come up in the sentencing thing.

23 Q. Okay. We're almost done. I promise.

24 A. Okay.



1 Q. I want to talk to you a little bit about your  
2 allegations against John Petty, your appellate attorney.

3 A. Okay.

4 Q. What issues did you want John Petty to raise that he  
5 didn't raise?

6 A. I wrote him letters; several letters, actually. I  
7 said that he needed to -- I can't remember what was in the  
8 letters. But I said that he needed to present certain  
9 grounds that he wasn't presenting.

10 This abuse of discretion ground that he went with,  
11 that the judge had abused his discretion in sentencing, was  
12 not even an issue, really, that should have been raised on  
13 appeal, and other things should have been raised on appeal.  
14 And I wrote Mr. Petty a letter saying as much.

15 Q. Do you remember completing a statement for the  
16 Division of Parole and Probation prior to being sentenced?

17 A. Yeah.

18 Q. Do you remember writing in that statement that you  
19 had betrayed the values of our community?

20 A. Yeah. Mr. Frey told me to write nice things in  
21 there.

22 THE COURT: Hold on. Go ahead and finish your  
23 answer. What was your response?

24 THE WITNESS: Mr. Frey told me to write things in

1 | there that would facilitate the probation.

2 | BY MS. NOBLE:

3 | Q. Okay. So what did you mean by that?

4 | A. Well, it's because these are sort of, like, horrible  
5 | charges, then that's the kind of thing that I needed to say  
6 | to demonstrate remorse or repentance, or something like that,  
7 | so that the judge would understand that I wasn't some  
8 | callous, horrendous person.

9 | Q. So you wrote it, but you didn't mean it because you  
10 | hadn't done anything wrong, in your mind?

11 | A. Yeah, it's true.

12 | Q. You wrote, "It is in the spirit of deep regret and  
13 | shameful dishonor" --

14 | A. It is shameful.

15 | Q. What is shameful?

16 | A. These charges.

17 | Q. But not what you did?

18 | A. I didn't do anything.

19 | Q. Okay. "I am under no delusion that my failing here  
20 | is a serious breach of the law."

21 | You also wrote that, didn't you?

22 | A. Right.

23 | Q. What did you mean by that?

24 | A. That's just how you describe -- if you're a police

1 officer or someone, that's how you think.

2 Q. I'm sorry. I don't understand.

3 A. Okay. The law is the law, and it's supposed to be  
4 obeyed. And these charges are alleged that I didn't obey the  
5 law, and it's a serious breach, if that's the case, and --

6 Q. So what's the --

7 A. -- that I understand that.

8 Q. Okay. Sorry for interrupting.

9 What's the "failing" you're referencing?

10 A. Not being, like, a model citizen.

11 Q. How are you not a model citizen?

12 A. I got charged with these things.

13 Q. But you're innocent, and so you just wrote that down  
14 to try to appease the Court?

15 A. No, not to appease the Court. Because Mr. Frey said,  
16 "Write things along the lines which would assist you in  
17 getting probation."

18 And I wanted to convey to the Court that I wasn't  
19 just some thug in the street, and that I had an understanding  
20 of the wrongs and rights of society. And that's kind of how  
21 I write things.

22 Q. And so when you wrote about "the betrayal of those I  
23 had an absolute obligation to be a better person toward,"  
24 what did you mean?

1 A. My family in Vietnam.

2 Q. Okay. And so how had you betrayed them?

3 A. Because I left there. Because I left them, I wanted  
4 to leave.

5 Q. But you weren't charged with leaving your family in  
6 Vietnam.

7 A. No. But it was a bad thing to do, in hindsight.

8 Q. Why would you write that in your mitigation or your  
9 report for the Division? How does that have anything to do  
10 with sentencing?

11 A. Well, it does, because I shouldn't have left my child  
12 in Vietnam.

13 Q. So you weren't referencing masturbating in front of  
14 Sophie?

15 A. No, no. Not at all. No.

16 Q. Do you remember talking to the judge before being  
17 sentenced?

18 A. Not really. I don't really remember it.

19 Q. Okay.

20 A. I remember the colloquy part. And then there was all  
21 these other things went on. But I'm not sure about talking  
22 to the judge after that.

23 Q. So you don't remember, during sentencing hearing,  
24 addressing the Court?

1 A. Not really, no.

2 Q. And you don't recall telling Judge Hardy -- quote --  
3 "I'm ripe for it"?

4 A. No, no. I didn't say "ripe." They misspelled that.  
5 I remember that in the transcript. But that -- once again,  
6 that was r-i-g-h-t, not r-i-p-e. As I've come to learn, this  
7 means something else in America.

8 Q. What do you mean by, "I'm right for it"?

9 A. I was -- once again, Mr. Frey said, "Go along with  
10 everything the judge says." So I just responded as an Aussie  
11 will respond and say, "Yeah, I'm right for that."

12 Q. I was wondering. You were talking about -- and I  
13 know I'm going back a little bit; I said I wouldn't do  
14 that -- but you're talking about the different medications at  
15 the jail, you didn't even know what some of them were.

16 A. A whole heap of them, lots of different ones. And  
17 they changed it all the time.

18 Q. You've traveled internationally; right?

19 A. Yes.

20 Q. And would you agree that the names of medications in  
21 the U.S. are often different than those in Australia?

22 For example, let me give you an example. My  
23 sister-in-law, if I have a headache, she will say, "Take a  
24 Panadol." She means Tylenol here.

1 A. We say "Panadol."

2 Q. Right. So is it possible that you might have been  
3 getting some of the medications that were necessary for your  
4 ailments, but you didn't recognize the names of them?

5 A. When you say it like that, it's possible. I can't  
6 say what they were, and I don't know what they did. But I do  
7 know there was a lot of different ones all the time, and they  
8 constantly got switched around a lot. But, sure.

9 Q. Okay.

10 A. For instance, psych meds --

11 Q. There's no pending question right now, sir.

12 A. Okay. Sorry.

13 Q. So how much did you pay for your laptop?

14 A. It was 1,100.

15 Q. And you got --

16 A. Australian.

17 Q. And you used external hard drives to expand storage;  
18 right?

19 A. No, not initially. We bought a couple of those in  
20 Vietnam, in Saigon, for the music.

21 Q. Wouldn't that be cheaper to do than replacing a hard  
22 drive?

23 A. But they go on the outside. They're just like  
24 storing things. They're like a storage shed.

1 Q. And I have one more question for you, I think.

2 You talked about Joseph, your friend, who owned -- I  
3 think, owned the apartment.

4 A. He's not a friend anymore.

5 Q. Okay. The man that you knew, acquaintance --

6 A. Yeah.

7 Q. -- that owned the apartment in which you were  
8 staying --

9 A. Right.

10 Q. -- in America. And did you ever tell Mr. Frey about  
11 Joseph?

12 A. Yes.

13 Q. Did you tell Mr. Frey that Joseph accessed your  
14 apartment all the time?

15 A. Yes.

16 Q. Unsupervised?

17 A. Yes.

18 MS. NOBLE: Court's indulgence.

19 THE COURT: Sure.

20 MS. NOBLE: I have no further questions for  
21 Mr. Skinner.

22 Thank you, sir, for your patience.

23 THE COURT: Thank you.

24 Mr. Reed.

## REDIRECT EXAMINATION

1  
2 BY MR. REED:

3 Q. Well, Mr. Skinner, why would you sign the guilty-plea  
4 memorandum if you were not guilty?

5 A. Mr. Frey was very adamant that I'd get probation, and  
6 he said, "You'll be able to get the medical treatment you  
7 need in Australia, once they release you." And I did need  
8 medical treatment pretty bad.

9 Q. So did you feel you had any other choice but to sign  
10 the memorandum?

11 A. It looked like the option was going to possibly save  
12 my life. I was worried about not making it while I was in  
13 the jail, and I said so to the consulate. And it looked like  
14 the best option to do to get a result where I wasn't going to  
15 be dying in the jail or suffering any more horrendous pain.

16 Q. And you did file a lawsuit based on your treatment in  
17 the jail?

18 A. Yes. Over exactly these issues, and more. It was  
19 over the intestinal rupture.

20 MR. REED: That's all the questions I have.

21 THE COURT: Any re-cross?

22 MS. NOBLE: No, Your Honor. Thank you.

23 THE COURT: Thank you, Mr. Skinner. You can go back  
24 to the table.



1 The Court is going to be in recess for 15 minutes.

2           If there are additional witnesses that the petitioner  
3 would like the Court to hear from, please have them ready.

4 If not, the Court will hear from the State's witnesses.

5 We will be in recess for about 15 minutes.

6 (Recess.)

7 THE COURT: Thank you.

8 Please be seated.

9           Mr. Reed, will the petitioner have any other  
10 witnesses it would like the Court to hear from?

11 I realize you reserve your right to examine any  
12 witness called by the State.

13 MR. REED: No, Your Honor, we have no other  
14 witnesses.

15                   The petitioner rests.

16 THE COURT: You're anticipating taking testimony from  
17 Mr. Petty, and also from Mr. Frey, depending on what they  
18 say?

19 MR. REED: Am I suspending taking testimony?

20 THE COURT: No. Are you expecting to take testimony  
21 from them, as well?

22 MR. REED: No. I didn't call them. They're not our  
23 witnesses.

24 THE COURT: Okay. Thank you very much.

1           Have a seat.

2           All right. Then at this time I invite the State to  
3 present testimony through its witnesses.

4           MS. NOBLE: Thank you, Your Honor.

5           The State would call John Petty first.

6           THE COURT: Thank you.

7           Let me ask this while we're waiting for Mr. Petty.

8           Can somebody educate the Court? Mr. Reed -- and I  
9 don't want to jump to the end here yet -- but what are you  
10 asking the Court to do by this hearing?

11           In other words, if you're successful, what does the  
12 order look like from Judge Breslow? That your client is  
13 allowed to withdraw his guilty plea?

14           MR. REED: Well, we're asking that the charges be  
15 dismissed; that the writ issue, the habeas corpus writ issue;  
16 and that the charges be dismissed against --

17           THE COURT: In full?

18           MR. REED: -- Mr. Skinner.

19           THE COURT: Because what I thought was being asked  
20 for -- and somebody -- I will hear from the State in a  
21 moment -- is, the defense says, "Hey, the representation of  
22 counsel fell below what is required under Strickland, and it  
23 prejudiced the defendant's rights." What I'm getting is,  
24 with respect to the guilty plea, he wasn't well enough, he

1 didn't understand his rights, his lawyer didn't make a good  
2 enough investigation; so, ergo, he should be allowed to  
3 withdraw his guilty plea. In which case, if the Court were  
4 to agree with that, the finding would be set aside, and the  
5 matter would be set back for trial.

6 Now, understanding that the evidence that the State  
7 would intend to use to prove some or all of the charges is  
8 not available anymore, the State might have to decide which  
9 charges, if any, to continue to pursue.

10 But in the event that I allow the defendant to  
11 withdraw his guilty plea, instead of having the charges  
12 dismissed, then isn't he just being -- looking down some  
13 charges that might have more serious consequences than what  
14 he pled to?

15 So think on that for a minute.

16 Ms. Noble, what do you think?

17 MS. NOBLE: Your Honor, respectfully, a  
18 post-sentencing withdrawal of guilty plea is not a procedural  
19 vehicle or something that can happen in Nevada.

20 If this Court were to grant relief on any of the --  
21 on any of the grounds in the petition, the effect of that  
22 relief would be that the conviction would be vacated. At  
23 that time, I would ask the Court to stay those proceedings,  
24 and the State would try to pursue some sort of appellate

1 remedy, assuming we lost. Then that would be the end of it.

2 THE COURT: What does the loss look like? The  
3 judgment is thrown out, and there are no further proceedings?

4 MS. NOBLE: No. We start over at square one, with  
5 the ability to prosecute Mr. Skinner on all the original  
6 charges.

7 THE COURT: All 21 charges, that could lead to, if  
8 convicted, and run consecutive to, more than a hundred years  
9 in prison?

10 MS. NOBLE: That's correct, Your Honor.

11 THE COURT: That's if the matter is stayed, and then  
12 the Nevada Supreme Court were to affirm any decision by this  
13 Court to set aside the conviction.

14 MS. NOBLE: Yes, Your Honor; correct.

15 THE COURT: So a win here for the petitioner, success  
16 for the petitioner, doesn't necessarily mean this criminal  
17 justice matter is over. This is just it gets stayed, if the  
18 Court agrees, and then the State has the right to file  
19 whatever charges it believes it could prove.

20 MS. NOBLE: That's correct, Your Honor.

21 THE COURT: I just wanted to make sure I understand  
22 that. As well, the sentence that was imposed here by Judge  
23 Hardy was five to life. And that judgment was entered when?

24 MS. NOBLE: 2014.

1 THE COURT: So five years ago; right?

2 MR. REED: Yes. And we've discussed that issue, I  
3 have, with Mr. Skinner.

4 THE COURT: You don't have to disclose the nature of  
5 your strategy or your discussions, but I just want to make  
6 sure I understand the lay of the land here.

7 The State is -- you both educated the Court that it's  
8 not a question of the Court granting the petition, and at  
9 some level allowing Mr. Skinner to merely withdraw his guilty  
10 plea. Rather, the victory for the petitioner, success for  
11 the petitioner, would result in the judgment being set aside,  
12 and proceedings stayed or not while appellate review is  
13 sought, and then, depending on how the appellate tribunal  
14 viewed what I had done, what this department had done, then  
15 the State may or may not pursue the original charges.

16 MS. NOBLE: Yes, Your Honor.

17 THE COURT: Do I have that right?

18 MS. NOBLE: That's correct, Your Honor.

19 It's my hunch that the perception is that there would  
20 be a spoliation argument to be made at a subsequent trial.  
21 And I think probably Mr. Reed and I have different  
22 evaluations about how that would go.

23 THE COURT: Would the spoliation be mission-critical  
24 on all 21 claims charged?

1 MS. NOBLE: Yes, I believe so.

2 THE COURT: Okay. Just trying to understand what the  
3 Court is being asked here in the procedural posture, which is  
4 merely informative to the Court, not dispositive, not  
5 persuasive in any way. Just wanted to educate the Court on  
6 how these types of hearings go, and what the ask is here.

7 So the ask is, petition be granted, judgment be set  
8 aside, in which case the State will decide what to do with  
9 respect to staying the proceedings pending appellate review.  
10 And then, at a later time, depending on how that goes, the  
11 State decides to pursue some or all of the charges, or not at  
12 all; right?

13 MS. NOBLE: Correct, Your Honor.

14 THE COURT: Is that correct, Mr. Reed, as far as you  
15 understand that?

16 MR. REED: Yes, I think so. But I just don't see,  
17 with the evidence having been destroyed, how the State could  
18 really maintain --

19 THE COURT: Well, that's what Ms. Noble was  
20 suggesting here.

21 MR. REED: Right, right.

22 THE COURT: And whether the State could maintain some  
23 of the charges, all of the charges, or none of the charges,  
24 that's a decision for the State to make at a later time, if

1 and when it got to that point.

2           Okay. All right. Let's re-set ourselves. At this  
3 point, then, the Court will invite Mr. Petty to come up, be  
4 sworn, and take the witness stand.

5 (Witness sworn.)

6 THE COURT: Mr. Petty, good afternoon.

7 THE WITNESS: Good afternoon, Your Honor.

8 THE COURT: Please make yourself comfortable. Slide  
9 in, adjust the microphone, please, so it's near your mouth.  
10 And please state your name.

11 THE WITNESS: My name is John Petty.

12 I'm a Chief Deputy with the Washoe County Public  
13 Defender's Office. And I've held that position since 1994.

14 THE COURT: Thank you very much.

15 Please proceed.

16 MR. NAUGHTON: Thank you, Your Honor.

17 JOHN PETTY,  
18 called as a witness on behalf of the State,  
19 first having been duly sworn,  
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. NAUGHTON:

23 Q. Mr. Petty, how long have you been licensed as an  
24 attorney in the State of Nevada?

1       A.    In Nevada, I was licensed in 1980, so almost 40  
2 years.

3           And I was licensed in California in 1979.

4       Q.    You indicated that you have held the position of  
5 Chief Deputy Public Defender since 1994, I believe.

6       A.    Yes.

7       Q.    Were you previously employed by the Public Defender  
8 prior to holding that position?

9       A.    I was.  Prior to becoming the Appellate Deputy in the  
10 Public Defender's Office in 1994, I was a trial deputy in the  
11 Public Defender's Office between 1985 and towards the end of  
12 1987.  And then I -- between 1987 and '94, I was the  
13 Discovery Master for this court.

14      Q.    All told -- and I don't mean to put you on the spot  
15 here -- can you estimate how many years you have in defense  
16 practice, overall?

17      A.    Well, in defense practice, the majority of my  
18 practice has been defense practice.  When I started, I spent  
19 about two years as a prosecutor at the City, you know, here  
20 in Reno.  And then I was in private practice, with a mixed  
21 practice, including criminal defense.  Then I was with the  
22 Public Defender's Office as a trial deputy doing trials.  And  
23 then I was the Discovery Master.  And then from '94 to  
24 today's date I have been writing appeals for the Public



1 Defender's Office.

2 Q. Over the course of that time since 1994, can you  
3 estimate how many appellate briefs you've authored?

4 A. Hundreds. I mean, it's -- I'll say hundreds. It's  
5 probably thousands.

6 Q. Has this been your only area of practice since 1994?

7 A. In the Public Defender's Office, in addition to  
8 overseeing the Appellate Division, from time to time, between  
9 '94 to today's date, I've also, in addition to the work I did  
10 as Appellate Deputy, supervised the Juvenile Division;  
11 supervised the Family Law Division of our office; helped  
12 assist and supervise parole revocation proceedings in the  
13 prison system. A little bit of everything. And including  
14 over the course of those years doing some co-counseling in  
15 trial, trial practices, including capital cases.

16 Q. As the Chief Deputy Public Defender in the Appellate  
17 Division, how are cases brought to your attention?

18 A. So, currently, the way a case is brought to my  
19 attention is, the trial deputy will inform me, after  
20 sentencing, that the client wishes to file an appeal. And  
21 they will bring me a -- sort of a memo, with some idea of the  
22 issues they think might be fruitful to explore, and a copy of  
23 the judgment.

24 And then I take that judgment -- and I need that

1 judgment because of calculating the time to file the notice,  
2 because it's a jurisdictional issue. And then I take it from  
3 there.

4 Q. Do you recall Mr. Skinner's case?

5 A. I do.

6 Q. Do you recall how that case was brought to your  
7 attention?

8 A. Mr. Frey, the trial deputy in that case, indicated to  
9 me that Mr. Skinner wished to file an appeal.

10 Q. Did you file that appeal?

11 A. I did.

12 Q. Did you file the necessary documents at the District  
13 Court to perfect that appeal?

14 A. I did. And those necessary documents are, the notice  
15 of appeal, case appeal statement, request for necessary  
16 transcripts. In this case, it was a guilty plea, sentencing  
17 appeal, so I filed a request. I know I filed a request for  
18 the preparation of the sentencing transcript. Oftentimes,  
19 the entry of plea, change of plea transcript is already in  
20 the District Court file. And if it's already there, then I  
21 have access to it through the District Court.

22 If that transcript is not available, then I'll order  
23 the change of plea transcript and the sentencing transcript.

24 So either one of those two ways. But I have both of

1 the transcripts in this case.

2 Q. Do you recall reviewing all of the transcripts in  
3 this case?

4 A. I do.

5 Q. Were there any that were unavailable to you?

6 A. There may have been some, initially, and I may have  
7 ordered -- I didn't look at my request for transcripts,  
8 because I usually file -- or I will file a request for  
9 transcripts designating, like, the sentencing transcript. If  
10 it were a trial case, I might ask for motion hearing  
11 transcripts, status hearing transcripts, depending on what  
12 the minutes of the Court's file tell me what took place at  
13 those hearings.

14 In this particular case, I don't have an independent  
15 recollection of what other motions or what other transcripts  
16 might have been out there. But I know that it was a  
17 sentencing appeal.

18 Q. Did you review the transcripts that were available to  
19 you prior to filing your appellate brief in this case?

20 A. Prior to filing the appellate brief, yes. Because --  
21 and I'll tell you why -- because, in addition, in Nevada,  
22 when you file your appellate brief, if you're the appellant,  
23 you also have to file the -- what, essentially, is the record  
24 on appeal, what we call the joint appendix. And that joint

1 appendix will contain copies of the charging document, the  
2 guilty-plea memorandum, the change of plea transcript, the  
3 sentencing transcript, the judgment, and the notice of  
4 appeal.

5           And you need to have those essential documents  
6 because there are certain things that you need to put in the  
7 very beginning stages of the opening brief to allow the Court  
8 to appreciate that it has jurisdiction of the case.

9       Q. Did reviewing those documents inform your strategy on  
10 appeal?

11       A. They did, yes.

12       Q. And can you identify what you -- excuse me. Can you  
13 describe for us what you identified as the potential issues  
14 to pursue on appeal?

15       A. Sure. Pardon me.

16           So this was a sentencing appeal. Because it was a  
17 guilty plea, the guilty plea itself, essentially, cuts off  
18 any appellate challenges to any pre-trial motion practice  
19 that took place and any rulings that may have flown from that  
20 practice.

21           When the defendant enters a guilty plea, those  
22 pre-trial motions, unless they are reserved for appellate  
23 purposes -- and there's a statute that allows you to do that;  
24 it's 174.035, Subsection (3) -- unless they're reserved under

1 that statute, then those pre-trial motions are essentially  
2 abandoned for appellate purposes.

3           There was no reservation of issues in this case, so  
4 the appeal was essentially a sentencing appeal. And on  
5 appeal, those types of appeals are reviewed under an abuse of  
6 discretion standard of review. So the issue on appeal  
7 was: Did the District Court judge -- in this case Judge  
8 Hardy -- did Judge Hardy abuse his discretion by imposing a  
9 period of incarceration, as opposed to a grant of probation,  
10 because Mr. Skinner was eligible for a probationary grant?

11       Q. And is that the only issue that you approached on  
12 appeal?

13       A. That was the only issue, was the abuse of discretion  
14 issue.

15       Q. Were there any other issues that were brought to your  
16 attention that you could --

17       A. No.

18       Q. -- pursue on appeal?

19       A. No. And the transcript didn't admit any.

20       Q. Did you receive any letters from Mr. Skinner during  
21 the appellate process in this case?

22       A. I received numerous correspondence from Mr. Skinner.

23       Q. Do you recall, generally, what the requests were in  
24 those letters?

1       A.    I don't have a specific recollection of specific  
2 requests.  I know that he was unhappy.  He thought that there  
3 should be more -- different kinds of issues that should be  
4 raised.  I think there may have even been an assertion that I  
5 should have been raising ineffective assistance of counsel  
6 claims.  I can't recall, specifically.  But the claim of  
7 ineffective assistance of counsel cannot be raised on direct  
8 appeal.

9       Q.    Do you recall him requesting any relief related to  
10 the entry of his plea?

11       A.    I don't.  But you cannot challenge the validity of a  
12 guilty plea on direct appeal.  That's something that has to  
13 be reserved for -- or litigated in post-conviction.

14       Q.    Did any of the things that he brought to your  
15 attention in those letters highlight any issues that you  
16 believed might get traction with the appellate court in  
17 Nevada?

18       A.    None.

19       Q.    Do you recall what the outcome of the appeal was?

20       A.    The Supreme Court -- it was either the Supreme  
21 Court -- it may have been the Court of Appeals -- affirmed  
22 the judgment of Judge Hardy.

23       Q.    Do you recall receiving a letter from -- excuse me --  
24 an e-mail from an acquaintance of the defendant in Australia?

1       A.    I had correspondence with a -- I want to say an  
2 attorney from -- a female attorney from Australia, who was  
3 both a friend -- I think, represented she was both a friend  
4 and an attorney for Mr. Skinner. And we corresponded several  
5 times.

6       Q.    Did she raise any additional issues with you that you  
7 thought you might pursue on appeal?

8       A.    She may have. I believe I sent her a copy of the  
9 brief. I believe I may have explained to her the limitations  
10 of appellate review for sentencing appeals.

11            If there had been something that was brought to my  
12 attention that might have traction on appeal, I would have  
13 used it. The fact that I didn't suggests there was nothing  
14 there.

15           MR. NAUGHTON: Thank you.

16           I have no further questions, Your Honor.

17           THE COURT: Thank you.

18           Mr. Reed.

19                           CROSS-EXAMINATION

20 BY MR. REED:

21       Q.    Mr. Petty, Mr. Skinner, in his habeas corpus  
22 petition, has made a claim that you failed to federalize the  
23 claims on direct appeal. Are you familiar with that ground  
24 of --

1       A.    I read that, yes.

2       Q.    What is your response to that?

3           THE COURT:  What does that mean to you, first; and,  
4 then, what's your response?

5           THE WITNESS:  You know, it has a variety of meanings  
6 to a variety of practitioners in a broad sense.  It means  
7 that State practitioners should strive to inject a thorough  
8 constitutional claim at any particular stage that they can.  
9 At the State trial level, you may have cause to raise Sixth  
10 Amendment claims and such, Fifth Amendment claims, Fourth  
11 Amendment claims.

12           In this sentencing appeal, I would -- I would be  
13 hard-pressed to think what federal claim -- what  
14 federalization claim I could make under an abuse of  
15 discretion sentencing.

16           There was not a claim that the sentence was  
17 unconscionable or was excessive.  It was a sentence that was  
18 provided for by the statute.  The statute wasn't  
19 unconstitutional.  So there were no constitutional claims to  
20 this -- as to the actual sentencing statute.

21           The sentence that was imposed, five to -- a minimum  
22 term of five years to a life sentence, is not so excessive as  
23 to shock the conscience.  So those kind of claims weren't  
24 raised.



1 I suspect that in a sentencing appeal where -- in  
2 fact, I can think of an appeal that I finished sometime back  
3 where there was a consecutive -- there was the imposition of  
4 consecutive sentences that gave the defendant, the appellant,  
5 a sentence of something like 260 years to life, that we  
6 raised an excessiveness claim.

7 THE COURT: That wasn't in play here.

8 THE WITNESS: But that wasn't in play here.

9 So I am saying that that might be something you might  
10 think about. But in this case, there would not really be any  
11 federalization claim.

12 MR. REED: Thank you.

13 I have no further questions.

14 THE COURT: Anything else?

15 MS. NOBLE: No further questions, Your Honor.

16 THE COURT: Okay. Don't step down just yet. I want  
17 to look at this.

18 It was the Court of Appeals, by the way.

19 THE WITNESS: The Court of appeals.

20 THE COURT: Yeah.

21 The Court has no questions of Mr. Petty.

22 Thank you very much. You may step down.

23 THE WITNESS: If I may just make a comment.

24 THE COURT: Sure. I mean, if the parties --

1 THE WITNESS: It's actually a procedural comment.  
2 It's talking about why it went to the Court of appeals.

3 Under Rule 17 of the Nevada Rules of Appellate  
4 Procedure, sentencing appeals, guilty-plea appeals are  
5 presumptively assigned to the Court of Appeals. That's why  
6 it went there.

7 THE COURT: Unless the Supreme Court would -- pulls  
8 it back up.

9 THE WITNESS: Unless the Supreme Court wants to hold  
10 on to it. Otherwise, they push it over.

11 THE COURT: Understood. Thank you for clarifying  
12 that.

13 Please step down.

14 THE WITNESS: Thank you.

15 May I be excused?

16 THE COURT: Yes.

17 (Witness excused.)

18 MS. NOBLE: Your Honor, the State has one more  
19 witness: Chris Frey. He's outside the courtroom.

20 THE COURT: Please ask Mr. Frey to come in.

21 MS. NOBLE: Yes, Your Honor.

22 (Witness sworn.)

23 THE COURT: Mr. Frey, good afternoon.

24     Make yourself comfortable.

1 THE WITNESS: Thank you.

2 THE COURT: Please slide in, adjust the microphone  
3 any way you'd like so it's near your face.

4 Please state your name, and spell your last name.

5 THE WITNESS: Chris Frey: F-r-e-y.

6 THE COURT: Thank you.

7 Please proceed.

8 MS. NOBLE: Thank you, Your Honor.

9 CHRIS FREY,

10 called as a witness on behalf of the State,

11 first having been duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NOBLE:

15 Q. Mr. Frey, what's your occupation?

16 A. I'm a Federal Public Defender at the moment.

17 Q. How long have you been a Federal Public Defender?

18 A. Three years.

19 Q. Before that, where did you work?

20 A. I was with the Washoe County Public Defender's  
21 Office.

22 Q. And can I assume you're licensed to practice in the  
23 State of Nevada?

24 A. That's correct.

1 Q. And how long were you with the Washoe County Public  
2 Defender's Office?

3 A. Just shy of seven years.

4 Q. During the course of your employment with the Washoe  
5 County Public Defender's Office, do you have any idea how  
6 many folks you defended?

7 A. I'd say hundreds. Maybe more.

8 Q. Did you go to jury trial?

9 A. I did.

10 Q. During that time around 2013 -- we have a car alarm  
11 issue; I apologize -- did you happen to represent a Roderick  
12 Skinner?

13 A. I did.

14 Q. Do you see Mr. Skinner in the courtroom?

15 A. I do.

16 Q. Could you just briefly describe where he's at, what  
17 he's wearing?

18 A. Mr. Skinner is with post-conviction counsel, wearing  
19 a blue shirt. He's in a wheelchair.

20 Q. What stage of the representation or the case did you  
21 come on?

22 A. Well, the case was really bifurcated between two  
23 matters that originated as an open and gross lewdness case  
24 that evolved into a child pornography case. I handled both

1 matters. They were in separate case numbers, separate  
2 matters, but, obviously, there was an evidentiary overlap in  
3 each case.

4 Q. And could you expand on that evidentiary overlap a  
5 little bit?

6 A. Yes. So I think there was motion practice to the  
7 effect of the State's effort to join the evidence in the open  
8 and gross lewdness case. I mean, it didn't involve a contact  
9 offense, but it involved an allegation of Mr. Skinner  
10 masturbating in front of two young girls that were within the  
11 apartment complex, while he had his two-year-old daughter  
12 perched on the side of his wheelchair.

13 There was an effort, I think, under NRS 48.045, to  
14 bring that evidence into the child pornography trial, should  
15 we have proceeded to that trial, for purposes of  
16 demonstrating motive, knowledge, intent.

17 Q. Okay. And it was that open and gross lewdness set of  
18 facts that led the police to Mr. Skinner's door; correct?

19 A. Yes.

20 Q. And led to seek a search warrant for his computer,  
21 ultimately?

22 A. Correct.

23 Q. And did you review the search warrant supporting  
24 affidavits?

1 A. Yes.

2 Q. And review the police reports in this case?

3 A. Yes.

4 Q. And in reviewing that information, did you identify  
5 any Fourth Amendment issues that you believed would gain  
6 traction with the Court?

7 A. I reviewed the affidavits. I reviewed the face of  
8 the search warrants. From that review, I didn't glean any  
9 information that would lend itself to a meritorious Fourth  
10 Amendment challenge, so we declined to pursue any sort of  
11 Fourth Amendment litigation.

12 Q. Now, have you filed motions to suppress before?

13 A. Very routinely. Yes.

14 Q. But in this case, you didn't see one?

15 A. No, I did not.

16 Q. Now, the other -- we talked about the open and gross  
17 lewdness case. And then the case that we're here about today  
18 was the felony case; correct?

19 A. Correct.

20 Q. And that case involved about 21 charges, 20 of them  
21 having to do with child pornography. Do you recall that?

22 A. I do.

23 Q. And do you recall about how much time your client was  
24 potentially exposed to, if he were convicted on all the

1 charges?

2 A. Worst-case scenario?

3 Q. Yes.

4 A. The possession counts, as I recall, carried between  
5 one to six years in prison. The promotion counts carried  
6 life sentences, with parole eligibility after 10 years is  
7 served.

8 I think at that point in time, you know, he is  
9 certainly looking at life exposure, with 10 years fixed,  
10 before he could even appear before the Parole Board.

11 Q. And so you don't know what Judge Hardy might have  
12 done in terms of running those counts consecutive or  
13 concurrent, if it went to trial, and there was a guilty  
14 verdict?

15 A. No, not at all. Obviously, I think Judge Hardy at  
16 that moment in time was cautious to remind everyone about his  
17 sentencing discretion, and so I was, in kind, cautious about  
18 reminding my client that sentencing is really up to the  
19 discretion of the judge, especially in this courtroom, and  
20 so, indeed, if he was convicted at trial, consecutive  
21 sentencing could have been a possibility.

22 Q. Now, you've had probably over a hundred clients,  
23 hundreds of clients --

24 A. Yes.

1 Q. -- correct? And do you remember this representation  
2 for any reason in particular?

3 A. I remember distinctly, for a number of reasons.

4 Q. Why?

5 A. Well, Mr. Skinner is a bilateral amputee. He is a  
6 foreign national. I was sympathetic to the fact that he was  
7 facing charges abroad. The representation occurred over the  
8 course of a number of months, I believe, over the course of a  
9 year. I sympathized with his predicament. And it was a case  
10 that, quite frankly, I remember very well.

11 Q. What was your relationship like with him? Was it  
12 acrimonious? Congenial?

13 A. We had a very good working relationship. Mr. Skinner  
14 is one of the most intelligent clients I've ever represented.  
15 He was communicative with me. He assisted in my formulation  
16 of defense strategy. It was a reciprocal kind of dialogue  
17 that I would have with Mr. Skinner. We would communicate  
18 frequently about his case.

19 I got to know members of his family, his friends. In  
20 particular, the Wellners, both of them were attorneys in  
21 Australia; and his daughter, Courtney.

22 I compiled a sentencing memorandum that attached a  
23 number of mitigation documents. In the process of gathering  
24 those documents for him, I became very familiar with Mr.



1 Skinner and who he was and the trajectory of his life.

2 Q. Did you ever have any concern during your  
3 representation, throughout the course of your representation,  
4 that Mr. Skinner's medical problems or any kind of pain he  
5 was in rendered him unable to understand what you were  
6 telling him?

7 A. No.

8 Q. Same question with respect to what the Court might  
9 have been telling him at arraignment.

10 A. No.

11 Q. Did you go over the guilty-plea memorandum with him?

12 A. Yes.

13 Q. And did he indicate he understood it?

14 A. Yes.

15 Q. Did you tell him to lie to the judge when he was  
16 canvassed during the colloquy?

17 A. Absolutely not.

18 Q. Okay. Now, sorry. I want to backtrack a little bit.  
19 A negotiation was ultimately reached in this case; but prior  
20 to that, what, if any, investigation did you or your office  
21 undertake?

22 A. We had been in touch with Courtney Skinner,  
23 obviously. We had interviewed a man by the name of Joseph  
24 Chiappetto. We had subpoenaed school records related to the

1 two young girls who had made the initial report that Mr.  
2 Skinner was playing adult pornography and masturbating in  
3 front of them. We had served subpoenas on the Washoe County  
4 Sheriff's Office, I believe, with respect to protocols,  
5 practices, as those related to forensic examinations of hard  
6 drives.

7 Q. Now, with respect to Mr. Chiappetto, I believe it is,  
8 you interviewed him. What, if anything, did you learn from  
9 that interview; and how did that affect your strategy in the  
10 case?

11 A. I sat down with Mr. Chiappetto in my office building,  
12 with my investigator, Ivo Novak. We discussed a number of  
13 things that we thought were pertinent to the case.

14 Mr. Chiappetto apparently was a bookstore owner at  
15 some point in time, and a resident of Sparks. He, I believe,  
16 owned the apartment that Mr. Skinner was living in. And,  
17 obviously, he's mentioned throughout the discovery. But that  
18 interview didn't impact the way that we defended the case.

19 Q. Did your client ever tell you that Mr. Chiappetto had  
20 unrestricted access to his computer, and would go into his  
21 apartment all the time, and suggest that perhaps you base a  
22 defense around the idea that Mr. Chiappetto was, in fact, the  
23 person who had put the pornography on the computer?

24 A. You know, I don't specifically recall that as a

1 defense strategy that we entertained. If we entertained it,  
2 it was for a brief moment.

3           You know, Mr. Chiappetto appeared to have been the  
4 owner of the apartment. But the forensics from the computer  
5 clearly indicated to me, and my assessment would have been  
6 that it would have indicated to a jury, that the user of the  
7 computer was Roderick Skinner.

8           Q. Let's talk about that forensic information. So you  
9 don't have any specific specialty in computer forensics;  
10 right, Mr. Frey?

11          A. No, I don't.

12          Q. Did you seek out an expert to look at the reports and  
13 data provided by Dennis Carry of the Washoe County Sheriff's  
14 Office?

15          A. I did. I contacted Leon Mare, from, I believe,  
16 Expert Digital Forensics, in Las Vegas.

17          Q. How did you get Mr. Mare's name?

18          A. You know, I had known about Mr. Mare for quite some  
19 time. To the best of my recollection, I believe that he had  
20 been an expert on a number of Federal Public Defender child  
21 pornography cases. And so my assessment, I think, at that  
22 time was, well, he was experienced, and he would be suitable  
23 for this particular case.

24          Q. And did you provide Mr. Mare with all the reports you

1 received from the Sheriff's Office?

2 A. Yes.

3 Q. All the spreadsheets?

4 A. There was a series of reports produced by Dennis  
5 Carry. All of those were produced, in turn, to Leon Mare.  
6 And Leon Mare was cautioned not to formulate a final opinion  
7 until he had full discovery with respect to the forensics;  
8 and, indeed, had come up to Washoe County over the course of  
9 two days and examined the hard drive himself.

10 Q. And that information included in the Sheriff's Office  
11 reports included dates and times of alleged access of child  
12 pornography; correct?

13 A. Yes. But the reports were cumulative in the sense  
14 that they built off of the previous report. And then I think  
15 the full picture emerged once the final report was in.

16 Q. And the reports included search terms the law  
17 enforcement alleged that your client used?

18 A. Yes. There was evidence of file-sharing software on  
19 the computer. There were a number of programs, five or more,  
20 I believe. One file-sharing program, I think, was used  
21 predominantly, and the search terms gathered from that  
22 program were voluminous. All were associated with child  
23 pornography.

24 Q. Did you ask him -- this may be duplicative -- did you

1 ask Mr. Mare to do a full analysis of all the information on  
2 the computer?

3 A. Yes. So there was a forensic image done at the  
4 Washoe County Sheriff's Office. Leon Mare was asked to come  
5 to Washoe County, come to the Sheriff's Office, go down to  
6 the Sheriff's Office, and perform his own independent  
7 examination, in effect, repeating the steps that Dennis Carry  
8 went through, and try to replicate the examination, and see  
9 if, in fact, he could verify the conclusions and findings in  
10 Dennis Carry's report.

11 Q. Was he able to verify that?

12 A. Yes.

13 Q. So did anything that your expert told you suggest  
14 that Mr. Carry's report was inaccurate?

15 A. No, not at all. He said that, based upon his review,  
16 that he verified that the findings and conclusions of Dennis  
17 Carry were corroborated.

18 And when asked to assess the merits of the plea  
19 negotiations on the table, he, quite frankly, said that Mr.  
20 Skinner should -- quote/unquote -- jump on it.

21 Q. You met with Mr. Reed prior to today; right?

22 A. I did. Well, maybe a year ago Mr. Reed came to my  
23 office, and we spoke.

24 Q. Did you share with him that you had consulted an

1 expert with respect to the forensics?

2 A. You know, I can't recall. I believe that I did.  
3 It's not a detail that I would withhold for any reason.

4 Q. Okay. And when your expert told you that what the  
5 Sheriff's Office alleged in the report was accurate, based on  
6 his independent examination, did that surprise you?

7 A. No, it didn't surprise me. No. Part of the due  
8 diligence in a case like this, number one, you view the  
9 images; which I did, personally, with Mr. Carry.

10 Number two, you have a forensic examiner, such as  
11 Mr. Mare, on board to the representations, so that he can  
12 make the technical assessments that he did.

13 So with assurances from Mr. Mare, and having  
14 personally inspected the pornography myself, I think  
15 certainly we did our due diligence with respect to consulting  
16 with Mr. Skinner about the merits of a plea deal here.

17 Q. So fair to say none of the information that Mr. Mare  
18 provided you would have been exculpatory or help your client?

19 A. No.

20 Q. Was there anything your client told you that was  
21 inconsistent with the findings of your expert?

22 A. At moments, I think that Mr. Skinner had trouble  
23 accepting some of the findings of Dennis Carry. And, in  
24 turn, I would imagine that he would have trouble accepting

1 the findings of our independent expert, as well. So, as a  
2 general matter, I think he had trouble coming to terms with  
3 those findings and conclusions. But nothing specific.

4 Q. Did he deny accessing child pornography, your client?

5 A. You know, I think he, to my recollection, wavered  
6 between denial and acceptance.

7 Q. Could you expand on that a bit, please?

8 A. Yeah. I think, initially, when we were devising a  
9 defense strategy, intellectually we were both approaching the  
10 case with an eye towards: Well, how can we demonstrate that  
11 perhaps there's a deficit of proof on the element of  
12 knowledge, to the extent that we're going to run a defense of  
13 unknowing possession?

14 I think that our conversation certainly implied that,  
15 well, if we're going to prove that up, then Mr. Skinner is  
16 going to endorse the idea that he never knew. But once the  
17 evidence began to compile, and Dennis Carry began to produce  
18 these cumulative reports, and the forensics were corroborated  
19 through our own expert, it appeared as if Mr. Skinner was  
20 able to process the fact that perhaps there was evidence here  
21 sufficient to convict him, and his degree of acceptance of  
22 responsibility changed.

23 I'd cite the remarks of Mr. Skinner during  
24 sentencing. Those are representative, I think, of his state

1 of mind, once the evidence began to certainly compound.

2 Q. I guess what I'm trying to ask you, Mr. Frey,  
3 is: Did he maintain his innocence throughout your  
4 representation?

5 A. No. I didn't drag him kicking and screaming to that  
6 table right there, and coerce him into a plea, to the extent  
7 that's the suggestion from petitioner's counsel.

8 Q. Did he make comments to you suggesting that, to some  
9 degree, he knew he was guilty?

10 A. Yes.

11 Q. What did he say?

12 A. Well --

13 THE COURT: Or how did he act?

14 MS. NOBLE: Yes, Your Honor.

15 THE COURT: Because Mr. Frey is trying to answer this  
16 question two or three times, and I'm getting the sense it  
17 might have been verbal, non-verbal, a combination, or  
18 something else.

19 MS. NOBLE: Your Honor, I think also, if I may,  
20 especially from the federal public defenders, it's quite  
21 uncomfortable for them, with the waiver of attorney-client  
22 privilege, and so I think I just -- I know that on the  
23 record --

24 THE COURT: For purposes of this hearing, to pursue



1 the relief that's being sought, the waiver has been  
2 established, so you can freely speak about the  
3 representation, including discussions you had directly with  
4 your client.

5 THE WITNESS: Mr. Skinner was completely lucid. He  
6 understood the terms and conditions of the plea agreement; he  
7 understood the charge; he understood the elements; he  
8 understood the facts. I had no qualms about proceeding to an  
9 entry of plea with Mr. Skinner endorsing that as the next  
10 step in the representation whatsoever. He did not protest.  
11 He did not indicate a lack of understanding. He endorsed the  
12 plea. He took acceptance of responsibility, so to speak, for  
13 the conduct that was memorialized within the guilty-plea  
14 memorandum.

15 And there were no tears; there was no hesitation;  
16 there was no reluctance; there were no non-verbal cues that  
17 indicated that he had second thoughts. It was a joint  
18 decision over the course of a number of weeks, I think,  
19 consulting about the contents of the guilty-plea memo. I  
20 believe I produced it to him weeks in advance. So he had an  
21 opportunity to review it.

22 I don't know if he consulted his Australian attorneys  
23 in that interval of time. Perhaps he did; perhaps he did  
24 not. I have no idea. But he had the document for quite some

1 time, and was familiar with it. So I had zero qualms about  
2 proceeding to an entry of plea in the case.

3 BY MS. NOBLE:

4 Q. I want to talk about the arraignment.

5 Let me back up. So it's fair to say that you shared  
6 discovery with your client, talked to him about what was in  
7 the discovery?

8 A. Yes.

9 Q. Now, did you ever have the expert prepare a report?

10 A. I did not.

11 Q. Why not?

12 A. Because the findings were adverse. And if the  
13 findings were adverse, should we have proceeded to trial, and  
14 used that expert, it could have been exposed in the discovery  
15 process, subjected the expert to damaging impeachment, and  
16 would have only, I think, corroborated the State's case,  
17 when, obviously, the job of defending a case is to do quite  
18 the opposite.

19 Q. So the expert's conclusions, fair to say, informed  
20 your strategy?

21 A. Yes. We held off on the entry of plea until the  
22 expert had full discovery, had completed his own independent  
23 exam, and we got his findings and conclusions.

24 Q. If your client had told you that he was innocent, and

1 he wanted to go to trial, would you have gone to trial?

2 A. Absolutely.

3 Q. If your client told you that the only reason he was  
4 pleading guilty was that, although he was innocent, he was  
5 worried that he was going to die in the Washoe County Jail?

6 A. Can you repeat that question? I'm sorry.

7 Q. Did your client --

8 THE COURT: Well, you need to finish by  
9 saying: Would you have gone to trial, or would you have  
10 changed your strategy? It was an incomplete question, so try  
11 again, please.

12 BY MS. NOBLE:

13 Q. Mr. Frey, did your client communicate to you in the  
14 context of the decision to plead guilty that he was only  
15 making that decision because he was afraid he was going to  
16 die in the Washoe County Jail, but that he was innocent?

17 A. No.

18 Q. Okay. Thank you. Can you describe your sentencing  
19 strategy.

20 A. Develop as much mitigation as possible in support of  
21 a request for probation, in addition to the documentary  
22 evidence supporting mitigating factors in Mr. Skinner's life.

23 We coordinated for an out-of-country witness to  
24 appear in person, Robin Wellner, a character witness, who

1 also acted as something of a fact witness with respect to  
2 certain legal matters.

3 We coordinated a phone call for Courtney Skinner to  
4 testify from the Wellners' office in, I believe, Brisbane.

5 We compiled a sentencing memorandum, which I think in  
6 State practice is not the norm.

7 And I think that the sentencing transcript reveals  
8 that we fought our heart out for Mr. Skinner.

9 Q. And, in fact, that sentencing was done over the  
10 course of three hearings; correct?

11 A. It was. It was a very lengthy sentencing.

12 Q. Now, between the sentencing hearings, between the  
13 settings and, I believe, between the second and the third,  
14 did you come across any new information or allegations from  
15 Australian law enforcement or the DA's Office that  
16 complicated your request for probation, or made it more of a  
17 long shot?

18 A. Yes. So I'd been in touch with a number of different  
19 agencies: the Australian Consulate in San Francisco, the  
20 federal police from Australia, as well as the Queensland  
21 police department. We had done a number of things with  
22 respect to those agencies in terms of verifying he had no  
23 criminal history in Australia.

24 But those same agencies were also put in touch, by

1 me, at the request of the judge, with the Division of Parole  
2 and Probation. And upon further investigation, it was  
3 discovered that the young daughter of Mr. Skinner, Sophie,  
4 was, in effect, repatriated back to the country through Child  
5 Protective Services. Upon arrival, she was evaluated by a  
6 medical professional and found to have a sexually-transmitted  
7 disease, I believe, in her anal region.

8 Q. Do you remember about how old Sophie was at that  
9 time?

10 A. I think she was -- she was either two, or just about  
11 to turn three. And I think the diagnosis was genital warts.

12 Q. Did you ever promise your client probation?

13 A. Absolutely not.

14 Q. Did you ever suggest that it was almost a hundred  
15 percent likely or extraordinarily likely that he would  
16 receive it?

17 A. Absolutely not. What I promise my clients is my best  
18 efforts. I cannot guarantee a result. The negotiation was  
19 crystal-clear from the bindover and the prelim waiver from  
20 Justice Court all the way up to the guilty-plea memorandum  
21 through the canvass of the Court.

22 Q. So he understood that sentencing was solely up to the  
23 judge's discretion?

24 A. Absolutely.

1 MS. NOBLE: Court's indulgence.

2 THE COURT: Okay.

3 MS. NOBLE: I have nothing further.

4 Thank you, Mr. Frey.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you, Ms. Noble.

7 Mr. Reed.

8 CROSS-EXAMINATION

9 BY MR. REED:

10 Q. Mr. Frey, you were aware of Mr. Skinner's serious  
11 medical condition, were you not?

12 A. I knew he had two surgeries, I believe, in custody.  
13 And he also has symptoms that I think flow from his  
14 amputation.

15 Q. And what were those symptoms?

16 A. I think phantom nerve pain, neuralgia. The  
17 sentencing memo went into more detail with respect to those  
18 symptoms.

19 Q. Were you ever made aware by Mr. Skinner or otherwise  
20 of how serious this phantom nerve pain was?

21 A. I think he was medicated as a result. I know that  
22 custody was certainly more intense for Mr. Skinner. I was on  
23 notice of that because that was one of the arguments in the  
24 sentencing memorandum in mitigation. So I think that his

1 physical condition was certainly front and center in the  
2 presentation that we advanced for probation.

3 Q. Now, did you actually review Mr. Carry's report,  
4 forensic report?

5 A. Yes.

6 Q. And did your expert, Leon Mare, did he -- how  
7 thorough a report did he do? Did he just do the same type of  
8 review that Mr. Mare had done, which is --

9 THE COURT: Mr. Carry.

10 MR. REED: Pardon me?

11 THE COURT: Did Mr. Mare do the same type of report  
12 that Mr. Carry had done? Is that what you're asking?

13 MR. REED: Right.

14 BY MR. REED:

15 Q. Did Mr. Mare do the same kind of report that  
16 Mr. Carry had done, which he labeled as either a preview or  
17 preliminary examination? Is that your understanding?

18 A. Mr. Mare did not do a report. He did a forensic  
19 examination of --

20 Q. I'm sorry. I mean the type of examination that was  
21 done by Mr. Mare, was it the same examination that -- the  
22 same type of examination that Mr. Carry had done, which  
23 Mr. Carry had labeled as either preview or preliminary  
24 examination?

1       A.    You know, I don't know exactly whether it replicated  
2 Dennis Carry's examination, went beyond it, stayed within the  
3 scope of it, or supplemented it. But the intent of the  
4 examination was to corroborate or disconfirm the findings and  
5 conclusions of Detective Carry.

6       Q.    Were you aware that Detective Carry in his report  
7 stated that additional -- or, "Further analysis of the  
8 computer is necessary to locate additional evidence to either  
9 clear or incriminate Skinner"? Do you ever recall seeing  
10 that?

11       A.    That would have been in the preliminary report, which  
12 was prior to the final report. I don't know or recall  
13 whether or not Detective Carry is referencing the fact that  
14 much of the CP content appeared to have been encrypted. But  
15 that sounds like a fair entry in that report, yes.

16       Q.    I can represent to you that only an initial preview  
17 was done, but not a final report. That was the findings of  
18 Mr. Carry.

19            MS. NOBLE: Objection. Those facts are not in  
20 evidence.

21            THE COURT: Well, the Court has been informed that  
22 Sergeant Carry's at least initial view was a preview or  
23 preliminary -- I'm not sure what those words were --  
24 interchangeable.



1           So the question that Mr. Reed is asking Mr. Frey  
2 is: Does Mr. Frey know or recall if the forensic expert,  
3 Leon Mare, went beyond the level of review and analysis that  
4 Sergeant Carry did?

5           So either he knows he did, he knows he did not, or  
6 he's not sure. That's what I'm assuming the response would  
7 be.

8           MS. NOBLE: Your Honor, if I may. I think it's not  
9 completely clear. I understand that we had the other  
10 expert's testimony today. But during her testimony it was  
11 also apparent that she perhaps hadn't received all documents.

12          THE COURT: Well, I did review -- I read Sergeant  
13 Carry's deposition transcript. Today, in fact. So the Court  
14 was informed that Sergeant Carry used a word like  
15 "preliminary," "quick view," "initial review," something  
16 along those lines. So I appreciate that.

17          So let me ask the witness here if he can  
18 differentiate between the level of analysis, the thoroughness  
19 of analysis, the completeness of analysis, as between  
20 Sergeant Carry, whatever level it was, and what the retained  
21 forensic expert did, Mr. Mare. If you know.

22          THE WITNESS: I know that two reports were produced.  
23 So, presumably, the first report was a preliminary report,  
24 and then there was the final report. We had delayed Mr.

1 Skinner's case on occasion to allow the State to complete its  
2 forensic examination.

3 I was not there with Mr. Mare. I did not see him  
4 perform the examination. I did not know if it was a mirror  
5 image of the examination conducted by Sergeant Carry.

6 THE COURT: Got it. For all -- for our benefit,  
7 counsel and Mr. Skinner, the two reports that I'm  
8 understanding Mr. Frey to be referring to might have been the  
9 November, and then the March. So that's what I take -- what  
10 the Court's informed by the witness' testimony.

11 All right. Please continue.

12 BY MR. REED:

13 Q. But do you know whether or not Mr. Mare's forensic  
14 analysis was in greater detail than what Mr. Carry did?

15 A. Again, I can't say if it was within the scope, beyond  
16 the scope, whether it was the same, different, or otherwise.

17 Q. Did you ever talk with Mr. Skinner about the  
18 possibility that, if a more thorough examination were done of  
19 the forensic images, that possibly he could even be cleared  
20 of the charges?

21 A. I think that was part of the reason why we got the  
22 examination in the first place. If Mr. Mare couldn't  
23 corroborate the findings of the detective, then certainly we  
24 would have had evidence that would have suggested that

1 perhaps the findings were not to be trusted, or lacked  
2 credibility.

3 Q. Did you ever give an indication to Mr. Skinner that  
4 he was assured to get probation?

5 A. I think I answered that question. It's an absolute  
6 no.

7 Q. Are you aware that the evidence in this case has now  
8 been destroyed?

9 A. I am aware of that.

10 MR. REED: Court's indulgence.

11 THE COURT: Yes.

12 MR. REED: I think that's all the questions I have,  
13 Your Honor.

14 THE COURT: Thank you.

15 Anything further from the State?

16 MS. NOBLE: Yes, Your Honor.

17 THE COURT: Please proceed.

18 REDIRECT EXAMINATION

19 BY MS. NOBLE:

20 Q. Mr. Frey, you testified previously that the Federal  
21 Public Defender's Office referred you to Leon Mare as an  
22 expert to use in your case; correct?

23 A. I was aware that he had worked on cases for the  
24 Federal Public Defender's office, so I can't say that the

1 Federal Public Defender's Office actually referred him  
2 directly. But my understanding was, at the time, that he was  
3 very well-known in the Las Vegas area, and had been  
4 contracted by that office.

5 Q. Did you gather any information or were you aware of  
6 his general reputation as a defense expert in this area?

7 A. I had no reason to distrust his qualifications  
8 whatsoever.

9 Q. Now, when he gave you an explanation of his findings  
10 as to the access of Mr. Skinner of the child pornography, as  
11 well as the other portions of Mr. Carry's report regarding  
12 images and encryption software, were you satisfied with that  
13 explanation?

14 A. Yes. After his independent examination over the  
15 course of two days, his access to the material, and his  
16 ability to replicate the exam of Dennis Carry, if he did  
17 that -- and I assume that he did -- I was completely  
18 comfortable that I had a qualified, professional forensic  
19 examiner telling me that the findings and conclusions of  
20 Dennis Carry were corroborated and supported.

21 MS. NOBLE: Thank you.

22 I have no further questions, Mr. Frey.

23 THE COURT: Thank you.

24 Mr. Reed, anything further?

1 MR. REED: Nothing further.

2 THE COURT: All right. Mr. Frey, thank you very  
3 much. You may step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Does the State have additional witnesses?

7 MS. NOBLE: We do not, Your Honor.

8 THE COURT: Any rebuttal witnesses from the  
9 petitioner?

10 MR. REED: No, Your Honor.

11 THE COURT: What we're going to do is take a  
12 10-minute recess. I'll let each side gather their thoughts.  
13 When I come back, I'll hear argument on what each side  
14 believes has occurred here this morning and this afternoon,  
15 and what the ask is of the Court.

16 We will be in recess for approximately 10 minutes.

17 (Recess.)

18 THE COURT: Okay. We're back on the record at this  
19 time.

20 Mr. Reed, please proceed with argument.

21 MR. REED: Thank you.

22 Your Honor, this case presents an interesting picture  
23 in that Mr. Skinner has been precluded from being able to  
24 fully present his habeas corpus case because of the

1 destruction of the evidence by the Washoe County Sheriff's  
2 Office pending with Sergeant Dennis Carry. This destruction  
3 was carried out with a full approval of the District  
4 Attorney's Office, as demonstrated by the evidence release  
5 submitted into evidence.

6           The testimony of Tami Loehrs has demonstrated that  
7 Mr. Skinner's claims of innocence, and that he pled guilty  
8 because he was coerced into it because of unbearable pain and  
9 the promise of release from jail where he was being  
10 under-medicated, are plausible.

11           Mr. Carry only did a preliminary examination of the  
12 evidence that he later destroyed. Miss Loehrs has stated a  
13 number of matters that could have indicated that Mr. Skinner  
14 did not knowingly commit the crime for which he was  
15 convicted.

16           Miss Loehrs wanted to review the evidence as part of  
17 her testimony today, but was precluded from doing so. His  
18 destruction of the evidence before Mr. Skinner's remedies  
19 were complete has clearly prejudiced Mr. Skinner, in that he  
20 maintains that a full examination of the forensic evidence  
21 would have proven that he was not guilty of this crime, which  
22 would support his allegations in his petition that he was  
23 coerced, and was innocent of the charges. But, alas, since  
24 the evidence was destroyed, with the full approval of the

1 State, he's precluded from doing so.

2 The destruction of this evidence is so unusual and  
3 damaging that, regardless of the strength or weakness of the  
4 petitioner's case, it warrants some kind of relief.

5 Mr. Skinner filed his habeas corpus in a timely  
6 manner, within a year of the remittitur of his conviction,  
7 and the State should have known not to destroy it, and under  
8 the principles of due process, under the Fifth and Fourteenth  
9 Amendments, should have some responsibility for this. For  
10 the cases I've cited, the bad faith and prejudice as shown,  
11 the case has to be dismissed. And in this case, there's  
12 nothing that says that these cases would not apply to  
13 post-conviction.

14 THE COURT: So, dismissed, with prejudice?  
15 Dismissed, never to be filed again? Dismissed, until and  
16 unless the State wants to seek to re-file?

17 MR. REED: I think, with a trial case, it would be --  
18 the case would have to be dismissed. I think that's the law.  
19 With the habeas corpus, since this may be a case of first  
20 impression, I would submit that the habeas corpus should be  
21 granted. And then I guess you would possibly go back to  
22 square one in the case before the entry of the plea.

23 So I submit, clearly, that prejudice has been shown.  
24 A foreign hard drive was apparently put into this computer at

1 some point. And Mr. Skinner was under enormous stress from  
2 his medical condition. Miss Loehrs testified that, without  
3 seeing the evidence, there was no way to make a  
4 determination.

5 But there were plenty of instances where --  
6 especially where there multiple users over time --  
7 potentially, that a particular individual did not know about  
8 the child porn. Mr. Skinner has maintained his innocence  
9 from day one; that he did not know -- we cited an individual,  
10 the owner of the apartment, did have access to his apartment.

11 There's no way to prove it now, clearly. And since  
12 there's really no remedy -- further remedy for Mr. Skinner to  
13 prove his innocence, I submit that the writ should be issued,  
14 and Mr. Skinner's conviction should be overturned, and that  
15 would allow him to return to his homeland of Australia,  
16 eventually.

17 Thank you.

18 THE COURT: Thank you, Mr. Reed.

19 Mr. Naughton.

20 MR. NAUGHTON: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 MR. NAUGHTON: Your Honor, the State would reiterate  
23 many of the arguments that we made in our pre-hearing  
24 memorandum that we filed earlier this week.



1           As we expected, the State would submit there has been  
2 a failure of proof today, and the legal standards have not  
3 been met.

4           Under Strickland, it's a two-prong finding that this  
5 Court has to make on the ineffective assistance of counsel  
6 claims. And I would submit that neither prong has been met  
7 on any of the ineffective assistance of counsel claims.

8           The burden, pursuant to Means, is on the defendant --  
9 excuse me -- on the petitioner in this case to prove those  
10 claims by a preponderance of the evidence. That has not been  
11 done here today.

12           The --

13           THE COURT: Is it the State's position there's been  
14 some evidence, but it doesn't rise to the level of a  
15 preponderance; or there's been an abject absence of evidence  
16 whatsoever?

17           MR. NAUGHTON: I'll get into that, Your Honor.

18           I think on some of the claims there's been a total  
19 lack of evidence to support them. And on the other claims,  
20 where there was competing testimony between primarily Mr.  
21 Skinner and Mr. Frey, that the weight of the evidence, the  
22 credibility of the witnesses ought to weigh in favor of  
23 denial of the claims.

24           Specifically, when we're talking about the

1 ineffective assistance of counsel claims as they relate to  
2 Mr. Frey, we have to weigh the credibility of these  
3 witnesses. And I would submit to you that Mr. Frey's  
4 testimony is the more credible testimony in this case, and  
5 should be given far more weight than the testimony of Mr.  
6 Skinner.

7           Mr. Skinner specifically testified today that, when  
8 he was sworn in under oath at his arraignment, he understood  
9 the questions that were being asked of him, and that he was  
10 less than honest about some of those issues.

11           In his written statement attached to the presentence  
12 investigation report, he indicated that he was writing things  
13 that he believed the Court wanted to hear, and not things  
14 that he necessarily agreed with.

15           Ms. Noble asked him a series of questions that  
16 purported to be related to his possession of child  
17 pornography on his computer in this case. And he said that  
18 he was writing those because they were things that he felt  
19 that the judge would want to hear, so that they would  
20 understand that he wasn't a thug in the streets; that he  
21 wasn't a monster; and that he could be trusted on probation.

22           This is somebody who has sworn under oath now and  
23 admitted that he has been less than truthful with courts in  
24 the past. And when you compare that with Mr. Frey's

1 testimony -- which I would submit is very credible; it was  
2 very detailed -- he had very good reasons to recall this  
3 case; both because of the unique circumstances presented by  
4 Mr. Skinner, both physically and as a result of his  
5 nationality; as a result of the length that this  
6 representation went on for; and the circumstances of the case  
7 itself. He recalled in great detail many of the things that  
8 Mr. Skinner suggests resulted in ineffective assistance here.

9           Mr. Skinner, when asked directly, was unable to  
10 provide specifics about Mr. Frey's alleged failures to  
11 investigate. He couldn't identify anything that he asked Mr.  
12 Frey to do that Mr. Frey failed to do.

13           He admits that Mr. Frey put in a big effort on his  
14 behalf. He, at several times, added, in response to  
15 questions about the guilty-plea memorandum and the plea  
16 colloquy, that not only did he read it, not only did he  
17 understand it, but that Mr. Frey also went out of his way to  
18 explain it to him. And that was supported by Mr. Frey's  
19 testimony that he went over this guilty-plea memorandum with  
20 Mr. Skinner over the course of weeks leading up to his  
21 arraignment.

22           Mr. Skinner acknowledged that he read the portion of  
23 the guilty-plea memorandum that specifically instructed him  
24 to advise the Court that he was unsatisfied with Mr. Frey's

1 representations, or that he had some concerns, and he says  
2 now that he wasn't being completely honest at that point in  
3 time.

4 I would submit to Your Honor that the weight of the  
5 evidence as it was presented at that point in time, both in  
6 the form of Mr. Carry's initial report and final forensic  
7 report, as confirmed by the defense expert in this case, Mr.  
8 Mare, informed Mr. Skinner's decision to plead guilty.

9 He understood the benefit of the negotiations that he  
10 received in this case. He was able to plead away 20 charges  
11 in the single case, the possession of child pornography case.  
12 He pled away a gross-misdemeanor case with witnesses who  
13 would have testified against him at preliminary examination.  
14 And he avoided the potential of multiple consecutive life  
15 sentences, with 10-year minimums on the bottom end. In  
16 exchange for all of that, he got five years.

17 As Mr. Frey related Mr. Mare's comment on that, "He  
18 should jump on it." I think that's exactly what Mr. Skinner  
19 did in this case, given the weight of that evidence.

20 Notably, Mr. Frey was adamant that he never promised  
21 Mr. Skinner that he would get probation. He said that that's  
22 not something that he would have done.

23 And Mr. Skinner, when asked specifically, "Did Mr.  
24 Frey guarantee you that you would get probation?" he says,

1 "He didn't use that word." When pressed, he said that it  
2 wasn't a guarantee, but that it was something that he felt he  
3 had a good chance at.

4 And so there was no promises made to Mr. Skinner,  
5 there was no overt coercion in this case, there was no undue  
6 pressure on Mr. Skinner in this case -- based upon the record  
7 that's been related today, the record of the sentencing  
8 hearings, the record of the arraignment transcript -- that  
9 would suggest that the defendant's plea was -- the  
10 petitioner's plea -- excuse me -- was anything other than  
11 knowing, voluntary, and intelligent in this case.

12 As it relates to the due-process claim that makes up  
13 ground 1 of the supplemental petition, Your Honor brought up  
14 the point of the Constitution this morning. And the United  
15 States Supreme Court has considered this, the Ninth Circuit  
16 has considered this, as it relates to pre-trial preservation  
17 of evidence by the State. And specifically relying on the  
18 precedent cited by Mr. Reed, which is Arizona versus  
19 Youngblood and California v. Trombetta, the Ninth Circuit has  
20 held -- this is in United States versus Hernandez, at 109  
21 Federal 3d, 1450, a 1997 case -- "The mere failure to  
22 preserve evidence which could have been subjected to tests  
23 which might have exonerated the defendant does not constitute  
24 a due-process violation."

1           And that's pre-trial. We're talking about  
2 post-conviction at this point.

3           Mr. Reed, in his memorandum that was filed with the  
4 Court, acknowledges that this is an issue of first impression  
5 because there's no authority that supports the contention  
6 that Trombetta, that Youngblood, that their progeny applies  
7 to this type of proceeding.

8           THE COURT: Should it?

9           MR. NAUGHTON: No, Your Honor.

10          THE COURT: Because the Supreme Court Justices -- at  
11 least one that I'm remembering -- has reminded this Court  
12 that it's a misnomer that the Nevada Supreme Court makes the  
13 law. Rather, it's the District Court that makes the law.  
14 The Supreme Court just settles the law. So maybe this is the  
15 time to make the law, if there's a gap here.

16          MR. NAUGHTON: Your Honor, I would submit to you the  
17 argument that the defendant is entitled to due process in the  
18 form of preservation of evidence, it's already occurred in  
19 this case.

20          The defendant had his opportunity at due process.  
21 The defendant was represented by counsel. Counsel had the  
22 opportunity to examine the reports that were conducted by  
23 Sergeant Carry in this case. The defendant was able to  
24 procure an expert, through counsel, to examine those reports;

1 and, in fact, to examine the hard drive itself, which is what  
2 Ms. Loehrs' testimony this morning was primarily focused  
3 upon. That expert arrived at an adverse conclusion for Mr.  
4 Skinner.

5 That was his due process. That's the due process  
6 that's discussed in Youngblood; that's the due process that's  
7 discussed in Trombetta. There's no violation of the  
8 defendant's -- petitioner's due process in this particular  
9 case. He's had that opportunity.

10 Due process does not require the State or any other  
11 entity to maintain evidence for years, for decades, until  
12 time immemorial, for the purposes of the defendant, a  
13 petitioner, anybody in post-conviction, to continue to hire  
14 experts to try to come up with other alternative explanations  
15 that might better suit his theory.

16 Due process was met in this case. He was able to  
17 examine the evidence in this case, he was able to challenge  
18 the evidence in this case, and it wasn't favorable in this  
19 scenario.

20 And, in fact, the description of what occurred in  
21 this case where Mr. Frey employed Mr. Mare to conduct an  
22 examination, the results of that examination were relayed to  
23 him orally, and he elected not to have him compile a report,  
24 is exactly what Miss Loehrs said she would do if the findings

1 were adverse in her analysis.

2 Miss Loehrs' testimony essentially stands for the  
3 premise that she doesn't know what she would be able to find;  
4 that had it been available, she would have conducted an  
5 analysis similar to what Sergeant Carry had done, to what  
6 Mr. Mare had done, and then made the determination to issue a  
7 report, or not, depending on the review at that point in  
8 time.

9 Due process does not require that the evidence be  
10 maintained so that a multitude of experts can continue to  
11 examine it until one of them comes up with a scenario that  
12 fits the defense theory.

13 As to ground 2 of the supplemental petition, that was  
14 the claim that Mr. Frey had promised the defendant -- the  
15 petitioner that he would get probation.

16 THE COURT: We talked about that.

17 MR. NAUGHTON: I think there was a total failing of  
18 evidence on that point, as well.

19 All of the evidence in this case, Your Honor, that  
20 was put forth today, all of the credible evidence, I think  
21 shows that the defendant received -- the petitioner -- excuse  
22 me -- it's going to take me a long time to break that habit,  
23 I think -- that the petitioner received effective assistance  
24 throughout the entire proceedings from Mr. Frey; that Mr.



1 Frey did exactly what Miss Loehrs' opinion suggested should  
2 have been done. That a defense expert should have examined  
3 this and determined whether or not there was a viable defense  
4 here, that was done. It didn't pan out. That was the end of  
5 it.

6 The destruction of the evidence here is not unusual.  
7 And it was not done with the -- I forget the phrase that Mr.  
8 Reed used, but it was not done with the blessing of the  
9 District Attorney's Office, for lack of a better term.

10 The District Attorney's Office, the DA's Office,  
11 signed an evidence release form that granted the Sheriff's  
12 Office permission to destroy the evidence or otherwise  
13 dispose of it, pursuant to their departmental regulations.  
14 So this wasn't done at the request of the District Attorney's  
15 Office. This was done in the ordinary course of business, as  
16 described by Mr. Carry in his deposition. There are no  
17 regulations, there are no rules, there are no statutes that  
18 require the maintenance of this evidence after a conviction.

19 And I believe, as Mr. Carry pointed out, particularly  
20 in cases that weren't litigated all the way through a trial,  
21 it's not uncommon that these are destroyed on a regular basis  
22 after a conviction has been achieved through a plea  
23 negotiation. And that's what we have here.

24 The defendant admitted his guilt in the form of that

1 plea negotiation. It was over; it was litigated. He had the  
2 opportunity to test the strength of the State's evidence. It  
3 did not work out in his favor, and now he has buyer's  
4 remorse. That's really what it is. And that's not enough to  
5 grant the relief that he seeks today.

6           So the State's position is that the petition and the  
7 supplemental petition should both be denied in their  
8 entirety.

9           THE COURT: Thank you.

10          Mr. Reed, response.

11          MR. REED: Yes.

12          To say that -- first of all, we're not saying that  
13 you have to preserve the evidence for decades, or whatever.  
14 We're talking about through the statutory period that Mr.  
15 Skinner has to, after his appeal is done, to file a petition  
16 for writ of habeas corpus. That's all we're saying. The  
17 evidence should at least be maintained through that period.

18          And to say that because way back at the trial the  
19 evidence was available to be examined, and all that, so he's  
20 had his due process, well, I can't buy that. I mean, he's in  
21 his habeas corpus. He has a right to file a habeas corpus.  
22 He has a right to review the evidence against him in a habeas  
23 corpus. It's a statutorily-approved proceeding in the United  
24 States Constitution. And so I think there's been a clear

1 violation of his Fifth and Fourteenth Amendment rights to due  
2 process of law.

3 Thank you.

4 THE COURT: Thank you.

5 This matter will stand submitted.

6 I want to compliment both sides for the thorough  
7 presentation today, the informative briefing in advance, and  
8 the professionalism and respect that all have shown to the  
9 Court, including the petitioner himself, Mr. Skinner.

10 So I don't know how this is going to shake out for  
11 you. I have to give this more thought, review the law a  
12 little more thoroughly, review my notes. But however it  
13 shakes out, the Court does recognize the respect for the  
14 process that you've shown today. It's much appreciated.

15 We'll be in recess.

16 Thank you very much.

17 (Recess.)

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1 STATE OF NEVADA )

2 COUNTY OF WASHOE )

3

4 I, ISOLDE ZIHN, a Certified Shorthand Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, do hereby certify:

7 That I was present in Department 8 of the  
8 above-entitled court on Thursday, September 26, 2019, at the  
9 hour of 10:35 a.m. of said day, and took verbatim stenotype  
10 notes of the proceedings had upon the matter of RODERICK  
11 SKINNER, Petitioner, versus THE STATE OF NEVADA, Respondent,  
12 Case No. CR14-0644, and thereafter reduced to writing by  
13 means of computer-assisted transcription as herein appears;

14 That the foregoing transcript, consisting of pages 1  
15 through 202, all inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19 Dated at Reno, Nevada, this 8th day of December,  
20 2019.

21

22

23

24

\_\_\_\_\_/s/ Isolde Zihn\_\_\_\_\_  
Isolde Zihn, CCR #87

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

12-08-2019:11:02:17

**Clerk Accepted:**

12-08-2019:11:02:47

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Transcript

**Filed By:**

Isolde Zihn

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-18-2020:10:25:27

**Clerk Accepted:**

03-18-2020:10:27:42

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ex-Parte Mtn

**Filed By:**

Edward Torrance Reed

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STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF  
NEVADA

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

RODERICK SKINNER,

Petitioner,

Case No. CR14-0644

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.  
\_\_\_\_\_/**ORDER DENYING EX-PARTE MOTION FOR PAYMENT OF  
TRANSCRIPTS AT PUBLIC EXPENSE**

The Court is in receipt of an *Ex-Parte Motion for Payment of Transcripts at Public Expense* ("Motion"), filed March 18, 2020, by Petitioner RODERICK SKINNER. This being an ex-parte motion, no response appears on the record.

Skinner requests payment for the transcripts of the post-conviction evidentiary hearing held on September 26, 2019. However, the Court has been informed that the court reporter, Isolde Zihn, has already been paid for the transcripts in question.

Therefore, the *Motion* is **DENIED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

**DATED** this 24 day of March, 2020.



BARRY L. BRESLOW  
District Judge

**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 24 day of March, 2020, I electronically filed the following 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.

John Petty, Esq.

Christopher Frey, Esq.

Edward T. Reed, Esq.

The Division of Parole and Probation

  
\_\_\_\_\_  
Judicial Assistant

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03-24-2020:15:14:45

**Clerk Accepted:**

03-24-2020:15:15:20

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ord Denying

**Filed By:**

Judicial Asst. CKuhl

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JOHN REESE PETTY, ESQ. for RODERICK  
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**CHRISTOPHER FREY, ESQ.** - Notification received on 2020-05-07 15:16:03.235.

**EDWARD REED, ESQ.** - Notification received on 2020-05-07 15:16:03.372.

**CHRISTINE BRADY, ESQ.** - Notification received on 2020-05-07 15:16:03.346.



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

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

05-07-2020:15:07:54

**Clerk Accepted:**

05-07-2020:15:15:30

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ex-Parte Mtn

- \*\*Continuation

**Filed By:**

Edward Torrance Reed

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:**

EDWARD TORRANCE REED, ESQ. for  
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2020-05-18 14:04:27.392.

**JOHN PETTY, ESQ.** - Notification received on 2020-05-18 14:04:27.315.

**DIV. OF PAROLE & PROBATION** - Notification received on 2020-05-18 14:04:27.291.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2020-05-18 14:04:27.267.

**EDWARD REED, ESQ.** - Notification received on 2020-05-18 14:04:27.364.

**CHRISTINE BRADY, ESQ.** - Notification received on 2020-05-18 14:04:27.339.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

05-18-2020:13:58:23

**Clerk Accepted:**

05-18-2020:14:03:45

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Notice

**Filed By:**

Krista Meier, Esq.

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.

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF  
NEVADA

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

RODERICK SKINNER,

Petitioner,

vs.

Case No. CR14-0644

THE STATE OF NEVADA,

Dept. No. 8

Respondent.

**ORDER APPROVING ATTORNEY'S FEES**  
**(Post Conviction)**

Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby confirmed, approved and adopted as to the amount of \$5,206.47. This amount may not be the same as the Administrator's recommendation. Counsel is notified that he may request a prove-up hearing for any non-approved amounts before the Chief Judge of the District.

Counsel, Edward T. Reed, Esq., shall be reimbursed by the State of Nevada Public Defender's Office attorney fees in the amount of \$5,206.47.

DATED this 20<sup>th</sup> day of May, 2020.



CHIEF DISTRICT JUDGE

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2020-05-20 11:30:01.284.

**JOHN PETTY, ESQ.** - Notification received on 2020-05-20 11:30:01.208.

**DIV. OF PAROLE & PROBATION** - Notification received on 2020-05-20 11:30:01.184.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2020-05-20 11:30:01.161.

**EDWARD REED, ESQ.** - Notification received on 2020-05-20 11:30:01.257.

**CHRISTINE BRADY, ESQ.** - Notification received on 2020-05-20 11:30:01.232.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

05-20-2020:11:28:56

**Clerk Accepted:**

05-20-2020:11:29:29

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ord Approving

**Filed By:**

Judicial Asst. BWard

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STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2020-07-30 11:45:07.697.  
**JOHN PETTY, ESQ.** - Notification received on 2020-07-30 11:45:07.363.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2020-07-30 11:45:07.333.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2020-07-30 11:45:07.297.  
**EDWARD REED, ESQ.** - Notification received on 2020-07-30 11:45:07.658.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2020-07-30 11:45:07.626.

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

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

07-30-2020:11:38:32

**Clerk Accepted:**

07-30-2020:11:44:37

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ex-Parte Mtn

**Filed By:**

Edward Torrance Reed

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STEPHEN SKINNER

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STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2020-08-24 08:29:34.498.  
**JOHN PETTY, ESQ.** - Notification received on 2020-08-24 08:29:34.417.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2020-08-24 08:29:34.392.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2020-08-24 08:29:34.348.  
**EDWARD REED, ESQ.** - Notification received on 2020-08-24 08:29:34.471.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2020-08-24 08:29:34.444.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

08-21-2020:17:21:18

**Clerk Accepted:**

08-24-2020:08:29:01

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Notice

**Filed By:**

Krista Meier, Esq.

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

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STEPHEN SKINNER

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STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

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

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

**Supreme Court No. 79981**

District Court Case No. CR140644

**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: August 19, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch  
Deputy Clerk

**Notification List**

Electronic

Edward T. Reed

Washoe County District Attorney \ Jennifer P. Noble\ Kevin P. Naughton

Paper

Hon. Barry L. Breslow, District Judge

Jacqueline Bryant, Washoe District Court Clerk



**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2020-08-24 14:38:23.032.

**JOHN PETTY, ESQ.** - Notification received on 2020-08-24 14:38:22.955.

**DIV. OF PAROLE & PROBATION** - Notification received on 2020-08-24 14:38:22.93.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2020-08-24 14:38:22.905.

**EDWARD REED, ESQ.** - Notification received on 2020-08-24 14:38:23.004.

**CHRISTINE BRADY, ESQ.** - Notification received on 2020-08-24 14:38:22.979.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

08-24-2020:14:37:10

**Clerk Accepted:**

08-24-2020:14:37:52

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Court Notice

**Filed By:**

Deputy Clerk YViloria

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

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STEPHEN SKINNER

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STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

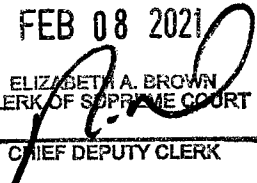
## IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

No. 79981-COA

**FILED**

FEB 08 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  CHIEF DEPUTY CLERK*ORDER OF AFFIRMANCE*

Roderick Stephen Skinner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus originally filed on July 13, 2016, and a supplemental petition filed on January 12, 2018.<sup>1</sup> Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Skinner argues the district court erred by denying his claim that his due process rights were violated when the State destroyed all evidence of his guilt after his conviction was final but before his postconviction petition was litigated. In his supplemental petition below, he argued the State should have retained this evidence and he was prejudiced by the State's failure because he was unable to litigate one of the grounds raised in his petition.<sup>2</sup> Arguing that postconviction proceedings are "a continuation of the defense," Skinner relied on cases that held a

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<sup>1</sup>Skinner's petition did not include a verification statement. The district court dismissed the petition without prejudice to allow Skinner to cure the defect. Skinner refiled his petition with verification on October 7, 2016.

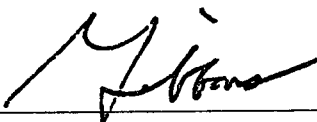
<sup>2</sup>Skinner's initial petition listed 14 grounds for relief, and his supplement raised the instant due-process claim and one other ground for relief.


defendant's due process rights may be violated where evidence was lost, not preserved, or not collected by the State *prior to trial*. See *Arizona v. Youngblood*, 488 U.S. 51 (1988); *Crockett v. State*, 95 Nev. 859, 603 P.2d 1078 (1979); *Howard v. State*, 95 Nev. 580, 600 P.2d 214 (1979); *Higgs v. State*, 126 Nev. 1, 222 P.3d 648 (2010).


Postconviction proceedings are not the same as direct appeals and are not part of the criminal proceedings. See *Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987) ("Postconviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature."). And convicted persons do not have the same due process rights as those who are presumed innocent. See *District Attorney's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68-69 (2009). Skinner's reliance on cases addressing only the pretrial destruction of evidence did not demonstrate his due process rights were violated. Accordingly, we cannot conclude the district court erred by denying Skinner's due process argument.

Skinner does not challenge on appeal the district court's conclusions that his conviction should not be reversed. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Barry L. Breslow, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2021-02-11 14:18:54.235.  
**JOHN PETTY, ESQ.** - Notification received on 2021-02-11 14:18:54.165.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2021-02-11 14:18:54.141.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-02-11 14:18:54.118.  
**EDWARD REED, ESQ.** - Notification received on 2021-02-11 14:18:54.212.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2021-02-11 14:18:54.189.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

02-11-2021:14:17:39

**Clerk Accepted:**

02-11-2021:14:18:08

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Court Order Affirming

**Filed By:**

Deputy Clerk YViloria

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

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**The following people were served electronically:**

EDWARD TORRANCE REED, ESQ. for  
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JENNIFER P. NOBLE, 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.):

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2021-03-24 13:11:07.173.

**JOHN PETTY, ESQ.** - Notification received on 2021-03-24 13:11:07.097.

**DIV. OF PAROLE & PROBATION** - Notification received on 2021-03-24 13:11:07.069.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-03-24 13:11:07.042.

**EDWARD REED, ESQ.** - Notification received on 2021-03-24 13:11:07.147.

**CHRISTINE BRADY, ESQ.** - Notification received on 2021-03-24 13:11:07.122.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-24-2021:12:36:47

**Clerk Accepted:**

03-24-2021:13:10:39

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ex-Parte Mtn

**Filed By:**

Edward Torrance Reed

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

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RODERICK SKINNER,

Petitioner,

vs.

Case No. CR14-0644

THE STATE OF NEVADA,

Dept. No. 8

Respondent.

-----/

**ORDER APPROVING ATTORNEY'S FEES**  
**(Post Conviction)**

Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby confirmed, approved and adopted as to the amount of \$1,330.00. This amount may not be the same as the Administrator's recommendation. Counsel is notified that he may request a prove-up hearing for any non-approved amounts before the Chief Judge of the District.

Counsel, Edward T. Reed, Esq., shall be reimbursed by the State of Nevada Public Defender's Office attorney fees in the amount of \$1,330.00.

DATED this 24<sup>th</sup> day of March, 2021.

  
\_\_\_\_\_  
CHIEF DISTRICT JUDGE

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2021-03-24 13:14:18.412.

**JOHN PETTY, ESQ.** - Notification received on 2021-03-24 13:14:18.334.

**DIV. OF PAROLE & PROBATION** - Notification received on 2021-03-24 13:14:18.308.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-03-24 13:14:18.281.

**EDWARD REED, ESQ.** - Notification received on 2021-03-24 13:14:18.386.

**CHRISTINE BRADY, ESQ.** - Notification received on 2021-03-24 13:14:18.36.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-24-2021:13:13:09

Clerk Accepted:

03-24-2021:13:13:45

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

Document(s) Submitted:

Ord Approving

Filed By:

Judicial Asst. BWard

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**JENNIFER NOBLE, ESQ.** - Notification received on 2021-04-05 07:45:00.458.  
**JOHN PETTY, ESQ.** - Notification received on 2021-04-05 07:45:00.385.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2021-04-05 07:45:00.361.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-04-05 07:45:00.337.  
**EDWARD REED, ESQ.** - Notification received on 2021-04-05 07:45:00.434.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2021-04-05 07:45:00.409.

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

PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

04-03-2021:20:35:26

**Clerk Accepted:**

04-05-2021:07:44:29

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Notice

**Filed By:**

Krista Meier, Esq.

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Petitioner,

vs.

Case No. CR14-0644

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Dept. No. 8

Respondent.

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**(Post Conviction)**

Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of justice, IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby confirmed, approved and adopted as to the amount of \$1,570.00. This amount may not be the same as the Administrator's recommendation. Counsel is notified that he may request a prove-up hearing for any non-approved amounts before the Chief Judge of the District.

Counsel, Edward T. Reed, Esq., shall be reimbursed by the State of Nevada Public Defender's Office attorney fees in the amount of \$1,570.00.

DATED this 5<sup>th</sup> day of April, 2021.



CHIEF DISTRICT JUDGE

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2021-04-05 13:02:07.609.

**JOHN PETTY, ESQ.** - Notification received on 2021-04-05 13:02:07.258.

**DIV. OF PAROLE & PROBATION** - Notification received on 2021-04-05 13:02:07.222.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-04-05 13:02:07.195.

**EDWARD REED, ESQ.** - Notification received on 2021-04-05 13:02:07.582.

**CHRISTINE BRADY, ESQ.** - Notification received on 2021-04-05 13:02:07.488.

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

**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

04-05-2021:13:00:45

**Clerk Accepted:**

04-05-2021:13:01:31

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ord Approving

**Filed By:**

Judicial Asst. BWard

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:**

EDWARD TORRANCE REED, ESQ. for  
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

## IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

CR14-0644

No. 79981

FILED

JUN 25 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Alicia L. Lerud*  
DEPUTY CLERK

## ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.

*Hardesty*, C.J.  
Hardesty

*Parraguirre*, J.  
Parraguirre

*Stiglich*, J.  
Stiglich

*Cadish*, J.  
Cadish

*Silver*, J.  
Silver

*Pickering*, J.  
Pickering

*Herndon*, J.  
Herndon

cc: Hon. Barry L. Breslow, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk



**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2021-06-30 13:58:39.9.  
**JOHN PETTY, ESQ.** - Notification received on 2021-06-30 13:58:39.817.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2021-06-30 13:58:39.789.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-06-30 13:58:39.762.  
**EDWARD REED, ESQ.** - Notification received on 2021-06-30 13:58:39.872.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2021-06-30 13:58:39.844.

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

**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

06-30-2021:13:57:35

**Clerk Accepted:**

06-30-2021:13:58:10

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Court Order Denying

**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:**

EDWARD TORRANCE REED, ESQ. for  
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

Supreme Court No. 79981  
District Court Case No. CR140644

D8

REMITTITUR

TO: Alicia L. Lerud, 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: June 28, 2021

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo  
Deputy Clerk

cc (without enclosures):

Edward T. Reed

Washoe County District Attorney \ Jennifer P. Noble


Washoe County District Attorney \ Kevin P. Naughton

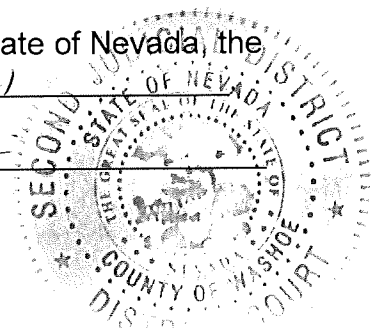
Attorney General/Carson City \ Aaron D. Ford, Attorney General

Hon. Barry L. Breslow, District Judge

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on 7-1-2021

  
District Court Clerk



## IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

**Supreme Court No. 79981**  
District Court Case No. CR140644

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, 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 the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 8th day of February, 2021.

**JUDGMENT**

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

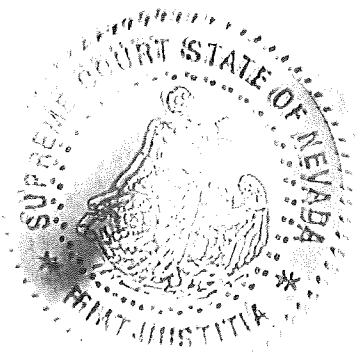
"Petition denied."

Judgment, as quoted above, entered this 25th day of June, 2021.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
June 28, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo  
Deputy Clerk



## IN THE SUPREME COURT OF THE STATE OF NEVADA

CR14-0644

D8

No. 79981

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

FILED

JUN 25 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY Alicia L. Lerud  
DEPUTY CLERK

## ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.

Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Cadish, J.  
Cadish

Silver, J.  
Silver

Pickering, J.  
Pickering

Herndon, J.  
Herndon

cc: Hon. Barry L. Breslow, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk



This document is a full, true and correct copy of the original on file and of record in my office.

DATE: 6/28/21  
Supreme Court Clerk, State of Nevada

By [Signature] Deputy

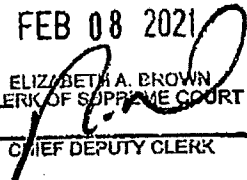
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN OF NNCC,  
Respondent.

No. 79981-COA

CR14-6644  
08 FILED

FEB 08 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Roderick Stephen Skinner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus originally filed on July 13, 2016, and a supplemental petition filed on January 12, 2018.<sup>1</sup> Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Skinner argues the district court erred by denying his claim that his due process rights were violated when the State destroyed all evidence of his guilt after his conviction was final but before his postconviction petition was litigated. In his supplemental petition below, he argued the State should have retained this evidence and he was prejudiced by the State's failure because he was unable to litigate one of the grounds raised in his petition.<sup>2</sup> Arguing that postconviction proceedings are "a continuation of the defense," Skinner relied on cases that held a

<sup>1</sup>Skinner's petition did not include a verification statement. The district court dismissed the petition without prejudice to allow Skinner to cure the defect. Skinner refiled his petition with verification on October 7, 2016.

<sup>2</sup>Skinner's initial petition listed 14 grounds for relief, and his supplement raised the instant due-process claim and one other ground for relief.

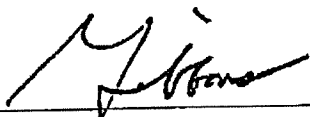


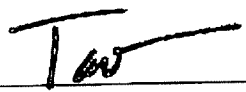
defendant's due process rights may be violated where evidence was lost, not preserved, or not collected by the State *prior to trial*. See *Arizona v. Youngblood*, 488 U.S. 51 (1988); *Crockett v. State*, 95 Nev. 859, 603 P.2d 1078 (1979); *Howard v. State*, 95 Nev. 580, 600 P.2d 214 (1979); *Higgs v. State*, 126 Nev. 1, 222 P.3d 648 (2010).

Postconviction proceedings are not the same as direct appeals and are not part of the criminal proceedings. See *Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987) ("Postconviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature."). And convicted persons do not have the same due process rights as those who are presumed innocent. See *District Attorney's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68-69 (2009). Skinner's reliance on cases addressing only the pretrial destruction of evidence did not demonstrate his due process rights were violated. Accordingly, we cannot conclude the district court erred by denying Skinner's due process argument.

Skinner does not challenge on appeal the district court's conclusions that his conviction should not be reversed. Accordingly, we


ORDER the judgment of the district court AFFIRMED.

  
Gibbons, C.J.

  
Tao, J.

  
Bulla, J.

cc: Hon. Barry L. Breslow, District Judge  
Edward T. Reed  
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: 6/28/21  
Supreme Court Clerk, State of Nevada  
By Adriana Deputy

## Return Of NEF

### Recipients

**JENNIFER NOBLE, ESQ.** - Notification received on 2021-07-01 13:42:11.5.  
**JOHN PETTY, ESQ.** - Notification received on 2021-07-01 13:42:11.424.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2021-07-01 13:42:11.398.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2021-07-01 13:42:11.373.  
**EDWARD REED, ESQ.** - Notification received on 2021-07-01 13:42:11.476.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2021-07-01 13:42:11.45.

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

**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

07-01-2021:13:41:08

**Clerk Accepted:**

07-01-2021:13:41:38

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Court Remittitur

Supreme Ct Clk's Cert & Judg

Supreme Court Order Denying

Supreme Court Order Affirming

**Filed By:**

Deputy Clerk YViloria

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:**

EDWARD TORRANCE REED, ESQ. for  
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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

JENNIFER P. NOBLE, 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.):

RODERICK SKINNER

(Name)  
NNCC # 1126964(I.D. Number)  
Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, NV 89702

Petitioner, In Proper Person

FILED

2022 MAR 29 AM 7:40

JUDICIAL DISTRICT COURT  
CLERK OF THE COURT  
BY *Sheylita A*IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF WASHOERODERICK SKINNERCase No.: CR14-0644

Petitioner,

Dept. No.: 15

vs.

W OLSEN, WARDEN N.N.C.C.**PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION)**  
(Non Death Penalty)STATE OF NEVADA et al. Respondent.**INSTRUCTIONS:**

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

1 institution. If you are not in a specific institution of the department but within its custody, name the  
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your  
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing  
5 future petitions challenging your conviction and sentence.

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

11 (7) When the petition is fully completed, the original and copy must be filed with the  
12 clerk of the state district court for the county in which you were convicted. One copy must be mailed  
13 to the respondent, one copy to the attorney general's office, and one copy to the district attorney of  
14 the county in which you were convicted or to the original prosecutor if you are challenging your  
15 original conviction or sentence. Copies must conform in all particulars to the original submitted for  
16 filing.

# 17 PETITION

18 1. Name of institution and county in which you are presently imprisoned or where and  
19 how you are presently restrained of you liberty: N.N.C.C. CARSON CITY

20 2. Name and location of court which entered the judgment of conviction under attack:

21 SECOND JUDICIAL DISTRICT COURT OF STATE OF NEVADA

22 3. Date of judgment of conviction: 10<sup>TH</sup> SEPT. 2014

23 4. Case Number: CR14-0644

24 5. (a) Length of sentence: 5 → LIFE



6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes \_\_\_\_\_ No ☒

If "yes", list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged: \_\_\_\_\_

PROMOTE THE SEXUAL PERFORMANCE OF MINOR OVER 14 YEARS BY  
MEANS OF FILE SHARING SOFTWARE

8. What was your plea? (check one)

(a) Not guilty \_\_\_\_\_ (c) Guilty but mentally ill \_\_\_\_\_

(b) Guilty ☒ (d) Nolo contendere \_\_\_\_\_

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

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

(a) Jury \_\_\_\_\_

(b) Judge without a jury \_\_\_\_\_

11. Did you testify at the trial? Yes \_\_\_\_\_ No \_\_\_\_\_

12. Did you appeal from the judgment of conviction?

Yes ☒ No \_\_\_\_\_

13. If you did appeal, answer the following:

(a) Name of court: RENO DISTRICT COURT.

(b) Case number or citation: CR14-0644

(c) Result: APPEAL DENIED

(d) Date of result: 2014

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

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

16. If you answer to No. 15 was "yes," give the following information:

- (a) (1) Name of court: US DISTRICT COURT RENO  
 (2) Name of proceeding: HABEAS CORPUS PETITION  
 (3) Grounds raised: NO CORPUS DELICTI

NB: STATE HABEAS CORPUS PETITION PRECEDED THE ABOVE.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☒ No ☐

(5) Result: DENIED AT STATE HABEAS, PENDING AT FEDERAL

(6) Date of result: \_\_\_\_\_

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

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

(1) Name of court: RENO DISTRICT COURT

(2) Nature of proceeding: HABEAS CORPUS PETITION

(3) Grounds raised: ① IAC AT SENTENCING  
② IAC AT DIRECT APPEAL

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No PENDING.

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: \_\_\_\_\_

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

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

(1) First petition, application or motion?

Yes ☒ No ☐

(2) Second petition, application or motion?

Yes ☐ No ☐

(3) Third or subsequent petitions, applications or motions?

Yes ☐ No ☐

Citation or date of decision.

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

N/A

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

(a) Which of the grounds is the same: N/A

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

N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

PER N.R.S. 34-810(1)(a) I WAS PROCEDURALLY BARRED FROM RAISING THESE  
GROUND AT THE TIME I FILED MY INITIAL PETITION FOR WRIT OF HABEAS CORPUS.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) YES, I REITERATE THE STATEMENT MADE AT  
NUMBER 18 OF THIS PETITION.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No ☐

If yes, state what court and the case number: U.S. DISTRICT COURT, RENO.  
3: 21-cv-00318-MMB-CLB

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: PRETRIAL COUNSEL: CHRISTOPHER FREY  
APPELLATE COUNSEL: JOHN REESE PETTY

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

Yes \_\_\_\_\_ No ☒

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One:

SIXTH AMENDMENT INEFFECTIVE ASSISTANCE OF COUNSEL  
AT SENTENCING.

Supporting Facts:

SENTENCING COUNSEL WAS INEFFECTIVE FOR FAILING TO INTRODUCE  
MENTAL HEALTH DIAGNOSIS AND TREATMENT RELATED TO SENTENCING  
THAT MAY HAVE RESULTED IN A DOWNWARD DEPARTURE OF SENTENCE.  
- COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO A SENTENCE  
MR SKINNER WAS UNAWARE THAT WOULD BE IMPOSED OUTSIDE OF  
THE SENTENCE IN WHICH WAS RELAYED TO HIM BY THE PROSECUTOR  
THROUGH TRIAL COUNSEL.

- COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE  
MITIGATING FACTORS AND PRESENT THESE MITIGATING FACTORS  
THAT MAY HAVE AFFECTED HIS SENTENCE.

ADDITIONALLY, MR SKINNER IS PREPARED TO OFFER HIS MENTAL HEALTH  
MEDICAL RECORDS FROM WASHOE COUNTY JAIL REGARDING HIS TREATMENT  
FOR CLINICAL DEPRESSION AT THE TIME OF SENTENCING.

COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE STATE'S MATERIAL BREACH OF THE PLEA AGREEMENT RELATED TO SENTENCING BECAUSE, IF THE DISTRICT COURT HAD PROPERLY BEEN MADE AWARE THAT PETITIONER'S GUILTY PLEA WAS PURSUANT TO AN AGREEMENT IN WHICH THE STATE PROMISED TO RECOMMEND PROBATION AND ALLOW ME TO RETURN TO MY HOME COUNTRY TO RECEIVE THE SPECIALTY MEDICAL TREATMENT I SO DESPERATELY NEEDED, THERE WAS A REASONABLE PROBABILITY THAT THE DISTRICT COURT WOULD NOT HAVE IMPOSED THE SENTENCE RECEIVED BY MR SKINNER.

PETITIONER WAS DENIED EQUAL PROTECTION AND DUE PROCESS OF SENTENCING PURSUANT TO NRS 34.724(b)(2) AND U.S.C.A. 5 citing TOWNSEND v BURKE. THE ERRORS ARE OF A CONSTITUTIONAL MAGNITUDE. THEY ARE NOT HARMLESS AS THE PETITIONER WAS DENIED LENIENCY DUE TO MENTAL HEALTH ISSUES NOT PRESENTED BY TRIAL COUNSEL, RENDERING HIM INEFFECTIVE.

ACCORDINGLY, NRS 43.810(1)(a) DOES NOT PROCEDURALLY BAR MR SKINNER / FROM RAISING A CLAIM THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE, AS HE DID NOT VOLUNTARILY WAIVE HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, AND ACCORDINGLY, HE IS ENTITLED TO AN EVIDENCIARY HEARING ON THIS ISSUE.

(b) Ground Two:

DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT  
APPEAL; PURSUANT TO KIMMELMAN v MORRISON, 106 S.Ct.  
2576, STRICKLAND v WASHINGTON, 104 S.Ct. 2052 AND NEV. CONST. ART  
1 SUBSECTION 8, 6SS.6 PER U.S.C.A.6 citing BUFFALO v STATE.

Supporting Facts:

DIRECT APPEAL COUNSEL WAS INEFFECTIVE WITHIN THE DEFINITION OF NRS 34-810  
(1) THROUGH (3) WHEN HE FAILED TO INVESTIGATE THE RECORD BEYOND SENTENCING  
TO BRING UP THE ISSUE OF PLAIN ERROR REVIEW IN THE CONTEXT TO THE  
PLEA COLLOQUY, NEGOTIATIONS AND CONSTITUTIONAL VIOLATIONS.

THE CONSTITUTIONAL RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL  
EXTENDS TO A DIRECT APPEAL.

NEITHER THE GUILTY PLEA MEMORANDUM FILED IN MR SKINNER'S CASE, NOR  
AT ANY TIME DURING THE PLEA CANVASS DID MR SKINNER WAIVE HIS  
CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL ON  
DIRECT APPEAL. STATE STATUTE IS NOT A VEHICLE BY WHICH A  
CONSTITUTIONAL RIGHT MAY BE WAIVED WITHOUT THE VOLUNTARY  
CONSENT OF A DEFENDANT. See, GONZALES v STATE, 429 P.3d 556 (2021).  
ACCORDINGLY NRS 34 810 (1)(a) DOES NOT PROCEDURALLY BAR MR SKINNER  
FROM RAISING A CLAIM THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE,  
AS HE DID NOT VOLUNTARILY WAIVE HIS RIGHT TO THE EFFECTIVE  
ASSISTANCE OF APPELLATE COUNSEL, AND ACCORDINGLY, HE IS  
ENTITLED TO AN EVIDENCIARY HEARING ON THIS ISSUE.

## CONCLUSION

MR SKINNER HAS PRESENTED FACTUAL SUPPORT FOR HIS CLAIMS THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED AS SET FORTH ABOVE.

A PETITIONER IS ENTITLED TO AN EVIDENCIARY HEARING ONLY IF HE SUPPORTS HIS CLAIMS WITH FACTUAL ALLEGATIONS THAT IF TRUE, WOULD ENTITLE HIM TO RELIEF.

AT THE TIME OF MR SKINNER'S ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS, N.R.S. 34.810(1)(a)'S INTERPRETATION PROCEDURALLY BARRED HIM FROM RAISING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING OR DIRECT APPEAL RELATING TO EVENTS THAT DID NOT AFFECT THE VALIDITY OF THE GUILTY PLEA. AT THAT TIME, GONZALES WAS NOT SETTLED LAW. See, GONZALES v STATE, 136 Nev. Op. 60, 5 (Nev. App. Oct 1, 2020).

HOWEVER ON JULY 29, 2021, GONZALES v STATE BECAME SETTLED LAW ALLOWING PETITIONERS' TO RAISE CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING AND DIRECT APPEAL REGARDLESS OF THE EFFECT ON THE GUILTY PLEA.

See, GONZALES v STATE, 492 P.3D 556 (JULY 29, 2021).

MR SKINNER RESPECTFULLY REQUESTS THAT THIS COURT SET THESE MATTERS FOR AN EVIDENCIARY HEARING ON ALL GROUNDS FOR RELIEF STATED IN THIS PETITION.



1 WHEREFORE, petitioner prays that the court grant petitioner  
2 Relief to which he may be entitled in this proceeding.

3 EXECUTED at NNCC PRISON, Nevada on the 21<sup>ST</sup>

4 Day of MARCH, 2022.

5  
6  
7 Rod Skinner.

8  
9 RODERICK SKINNER

10 N.N.C.C. #1126964

11 P.O. Box 7000 CARSON CITY  
12 NEVADA 89702.

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document. PETITION FOR WRIT  
OF HABEAS CORPUS (POST-CONVICTION)

(Title of Document)

filed in case number: CR14-0644



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS125B.055)

Date: 21<sup>ST</sup> MARCH 2022

Rod Skinner

(Signature)

ROD SKINNER pro-se

(Print Name)

(Attorney for)

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Rod Skinner

Petitioner  
ROD SKINNER  
NNCC #1126964

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 21<sup>ST</sup> day of MARCH 20 22, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

① WARDEN OLSEN  
P.O. BOX 7000,  
CARSON CITY NV 89702

② WASHOE COUNTY D.A.  
1<sup>ST</sup> SIERRA ST,  
RENO NV. 89501.

\_\_\_\_\_, Nevada 89 \_\_\_\_\_

Rod Skinner

Signature of Petitioner In Pro Se

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

RODERICK SKINNER

Case No. CR14-0644

Petitioner,

Dept. No. 8

vs.

W. OLSEN, Warden NNCC,  
STATE OF NEVADA, et al.,

Respondent.


**ORDER STRIKING REQUEST FOR SUBMISSION**

Before the Court is a *Petition for Writ of Habeas Corpus* filed by Petitioner, RODERICK SKINNER, on March 29, 2022. The Petitioner contemporaneously filed a *Request for Submission*. The Court finds the request for submission to be procedurally irregular because it submits the matter before allowing the State of Nevada adequate time to respond.

Accordingly, the Court **ORDERS** the *Request for Submission*, filed March 29, 2022, is **STRICKEN. IT IS HEREBY ORDERED** the Clerk of the Court of the Second Judicial District shall strike this document from the record.

**IT IS SO ORDERED.**

**DATED** this 29 day of March, 2022.

  
BARRY L. BRESLOW  
District Judge

**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 29 day of March, 2022, 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:

Roderick Skinner, #1126964  
NNCC  
PO BOX 7000  
Carson City, NV 89702

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 29 day of March, 2022, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

EDWARD REED, ESQ.

JOHN PETTY, ESQ.

CHRISTOPHER FREY, ESQ.

JENNIFER NOBLE, ESQ.

DIV. OF PAROLE AND PROBATION

  
\_\_\_\_\_  
Judicial Assistant

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2022-03-29 13:23:42.632.

**JOHN PETTY, ESQ.** - Notification received on 2022-03-29 13:23:42.116.

**DIV. OF PAROLE & PROBATION** - Notification received on 2022-03-29 13:23:41.835.

**CHRISTOPHER FREY, ESQ.** - Notification received on 2022-03-29 13:23:41.647.

**EDWARD REED, ESQ.** - Notification received on 2022-03-29 13:23:42.35.

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

-

A filing has been submitted to the court RE: CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-29-2022:13:23:01

**Clerk Accepted:**

03-29-2022:13:23:22

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ord Striking

**Filed By:**

Judicial Asst. CKuhl

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:**

EDWARD TORRANCE REED, ESQ. for  
RODERICK STEPHEN SKINNER

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JENNIFER P. NOBLE, 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.):

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER



RODERICK SKINNER(Name)  
NNCC # 1126964(I.D. Number)  
Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, NV 89702

Petitioner, In Proper Person

FILED

2022 APR -4 AM 8:11

JUDICIAL DISTRICT COURT  
CLERK OF THE COURT  
BY ShawnaIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF WASHOERODERICK SKINNER

Petitioner,

vs.

W OLSEN, WARDEN N.N.C.C.,STATE OF NEVADA et al. Respondent.Case No.: CR14-0644Dept. No.: 15**PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION)**  
(Non Death Penalty)**INSTRUCTIONS:**

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

1 institution. If you are not in a specific institution of the department but within its custody, name the  
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your  
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing  
5 future petitions challenging your conviction and sentence.

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

11 (7) When the petition is fully completed, the original and copy must be filed with the  
12 clerk of the state district court for the county in which you were convicted. One copy must be mailed  
13 to the respondent, one copy to the attorney general's office, and one copy to the district attorney of  
14 the county in which you were convicted or to the original prosecutor if you are challenging your  
15 original conviction or sentence. Copies must conform in all particulars to the original submitted for  
16 filing.

17 PETITION

18 1. Name of institution and county in which you are presently imprisoned or where and  
19 how you are presently restrained of your liberty: N.N.C.C. CARSON CITY

20 2. Name and location of court which entered the judgment of conviction under attack:

21 SECOND JUDICIAL DISTRICT COURT OF STATE OF NEVADA

22 3. Date of judgment of conviction: 10<sup>TH</sup> SEPT. 2014

23 4. Case Number: CR14-0644

24 5. (a) Length of sentence: 5 → LIFE

25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes \_\_\_\_\_ No ☒

If "yes", list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged: \_\_\_\_\_

PROMOTE THE SEXUAL PERFORMANCE OF MINOR OVER 14 YEARS BY  
MEANS OF FILE SHARING SOFTWARE

8. What was your plea? (check one)

(a) Not guilty \_\_\_\_\_ (c) Guilty but mentally ill \_\_\_\_\_

(b) Guilty ☒ (d) Nolo contendere \_\_\_\_\_

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

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

(a) Jury \_\_\_\_\_

(b) Judge without a jury \_\_\_\_\_

11. Did you testify at the trial? Yes \_\_\_\_\_ No \_\_\_\_\_

12. Did you appeal from the judgment of conviction?

Yes ☒ No \_\_\_\_\_

13. If you did appeal, answer the following:

(a) Name of court: RENE DISTRICT COURT.

(b) Case number or citation: CR14-0644

(c) Result: APPEAL DENIED

(d) Date of result: 2014

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

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

16. If you answer to No. 15 was "yes," give the following information:

- (a) (1) Name of court: US DISTRICT COURT RENO  
(2) Name of proceeding: HABEAS CORPUS PETITION  
(3) Grounds raised: NO CORPUS DELICTI

NB: STATE HABEAS CORPUS PETITION PRECEDED THE ABOVE.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☒ No ☐

(5) Result: DENIED AT STATE HABEAS, PENDING AT FEDERAL

(6) Date of result: \_\_\_\_\_

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

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

(1) Name of court: RENO DISTRICT COURT

(2) Nature of proceeding: HABEAS CORPUS PETITION

(3) Grounds raised: ① IAC AT SENTENCING  
② IAC AT DIRECT APPEAL

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No PENDING.

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: \_\_\_\_\_

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

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

(1) First petition, application or motion?

Yes ☒ No ☐

(2) Second petition, application or motion?

Yes ☐ No ☐

(3) Third or subsequent petitions, applications or motions?

Yes ☐ No ☐

Citation or date of decision.

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

N/A

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

(a) Which of the grounds is the same: N/A

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

N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

18. If any of the grounds listed in Nos. 23(a, (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

PER N.R.S. 3A-810(1)(a) I WAS PROCEDURALLY BARRED FROM RAISING THESE  
GROUND AT THE TIME I FILED MY INITIAL PETITION FOR WRIT OF HABEAS CORPUS.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) YES, I REITERATE THE STATEMENT MADE AT  
NUMBER 18 OF THIS PETITION.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No ☐

If yes, state what court and the case number: U.S. DISTRICT COURT, RENO.  
3:21-CV-00318-MMD-CLB

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: PRETRIAL COUNSEL: CHRISTOPHER FREY  
APPELLATE COUNSEL: JOHN REESE PETTY

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

Yes \_\_\_\_\_ No ☒

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One:

SIXTH AMENDMENT INEFFECTIVE ASSISTANCE OF COUNSEL  
AT SENTENCING.

Supporting Facts:

SENTENCING COUNSEL WAS INEFFECTIVE FOR FAILING TO INTRODUCE  
MENTAL HEALTH DIAGNOSIS AND TREATMENT RELATED TO SENTENCING  
THAT MAY HAVE RESULTED IN A DOWNWARD DEPARTURE OF SENTENCE.  
- COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO A SENTENCE  
MR SKINNER WAS UNAWARE THAT WOULD BE IMPOSED OUTSIDE OF  
THE SENTENCE IN WHICH WAS RELAYED TO HIM BY THE PROSECUTOR  
THROUGH TRIAL COUNSEL.

- COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE  
MITIGATING FACTORS AND PRESENT THESE MITIGATING FACTORS  
THAT MAY HAVE AFFECTED HIS SENTENCE.

ADDITIONALLY, MR SKINNER IS PREPARED TO OFFER HIS MENTAL HEALTH  
MEDICAL RECORDS FROM WASHOE COUNTY JAIL REGARDING HIS TREATMENT  
FOR CLINICAL DEPRESSION AT THE TIME OF SENTENCING.

(b) Ground Two:

DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT  
APPEAL; PURSUANT TO KIMMELMAN v MORRISON, 106 S.Ct.  
2576, STRICKLAND v WASHINGTON, 104 S.Ct. 2052 AND NEV. CONST. ART  
1 SUBSECTION 8, 6SS.6 PER U.S.C.A.6 citing BUFFALO v STATE.

Supporting Facts:

DIRECT APPEAL COUNSEL WAS INEFFECTIVE WITHIN THE DEFINITION OF NRS 34-810  
(1) THROUGH (3) WHEN HE FAILED TO INVESTIGATE THE RECORD BEYOND SENTENCING  
TO BRING UP THE ISSUE OF PLAIN ERROR REVIEW IN THE CONTEXT TO THE  
PLEA COLLOQUY, NEGOTIATIONS AND CONSTITUTIONAL VIOLATIONS.

THE CONSTITUTIONAL RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL  
EXTENDS TO A DIRECT APPEAL.

NEITHER THE GUILTY PLEA MEMORANDUM FILED IN MR SKINNER'S CASE, NOR  
AT ANY TIME DURING THE PLEA CANVASS DID MR SKINNER WAIVE HIS  
CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL ON  
DIRECT APPEAL. STATE STATUTE IS NOT A VEHICLE BY WHICH A  
CONSTITUTIONAL RIGHT MAY BE WAIVED WITHOUT THE VOLUNTARY  
CONSENT OF A DEFENDANT. See, GONZALES v STATE, 429 P.3d 556 (2021).  
ACCORDINGLY NRS 34 810 (1)(a) DOES NOT PROCEDURALLY BAR MR SKINNER  
FROM RAISING A CLAIM THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE,  
AS HE DID NOT VOLUNTARILY WAIVE HIS RIGHT TO THE EFFECTIVE  
ASSISTANCE OF APPELLATE COUNSEL, AND ACCORDINGLY, HE IS  
ENTITLED TO AN EVIDENCIARY HEARING ON THIS ISSUE.



COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE STATE'S MATERIAL BREACH OF THE PLEA AGREEMENT RELATED TO SENTENCING BECAUSE, IF THE DISTRICT COURT HAD PROPERLY BEEN MADE AWARE THAT PETITIONER'S GUILTY PLEA WAS PURSUANT TO AN AGREEMENT IN WHICH THE STATE PROMISED TO RECOMMEND PROBATION AND ALLOW ME TO RETURN TO MY HOME COUNTRY TO RECEIVE THE SPECIALTY MEDICAL TREATMENT I SO DESPERATELY NEEDED, THERE WAS A REASONABLE PROBABILITY THAT THE DISTRICT COURT WOULD NOT HAVE IMPOSED THE SENTENCE RECEIVED BY MR SKINNER.

PETITIONER WAS DENIED EQUAL PROTECTION AND DUE PROCESS OF SENTENCING PURSUANT TO NRS 34.724(b)(2) AND U.S.C.A. 5 citing TOWNSEND v BURKE. THE ERRORS ARE OF A CONSTITUTIONAL MAGNITUDE. THEY ARE NOT HARMLESS AS THE PETITIONER WAS DENIED LENIENCY DUE TO MENTAL HEALTH ISSUES NOT PRESENTED BY TRIAL COUNSEL, RENDERING HIM INEFFECTIVE.

ACCORDINGLY, NRS 43.810(1)(a) DOES NOT PROCEDURALLY BAR MR SKINNER, FROM RAISING A CLAIM THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE, AS HE DID NOT VOLUNTARILY WAIVE HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, AND ACCORDINGLY, HE IS ENTITLED TO AN EVIDENCIARY HEARING ON THIS ISSUE.

## CONCLUSION

MR SKINNER HAS PRESENTED FACTUAL SUPPORT FOR HIS CLAIMS THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED AS SET FORTH ABOVE. A PETITIONER IS ENTITLED TO AN EVIDENCIARY HEARING ONLY IF HE SUPPORTS HIS CLAIMS WITH FACTUAL ALLEGATIONS THAT IF TRUE, WOULD ENTITLE HIM TO RELIEF.

AT THE TIME OF MR SKINNER'S ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS, N.R.S. 34.810(1)(a)'S INTERPRETATION PROCEDURALLY BARRED HIM FROM RAISING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING OR DIRECT APPEAL RELATING TO EVENTS THAT DID NOT AFFECT THE VALIDITY OF THE GUILTY PLEA. AT THAT TIME, GONZALES WAS NOT SETTLED LAW. See, GONZALES v STATE, 136 Nev. Op. 60, 5 (Nev. App. Oct 1, 2020).

HOWEVER ON JULY 29, 2021, GONZALES v STATE BECAME SETTLED LAW ALLOWING PETITIONERS' TO RAISE CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING AND DIRECT APPEAL REGARDLESS OF THE EFFECT ON THE GUILTY PLEA. See, GONZALES v STATE, 492 P.3d 556 (JULY 29, 2021).

MR SKINNER RESPECTFULLY REQUESTS THAT THIS COURT SET THESE MATTERS FOR AN EVIDENCIARY HEARING ON ALL GROUNDS FOR RELIEF STATED IN THIS PETITION.

1 WHEREFORE, petitioner prays that the court grant petitioner  
2 Relief to which he may be entitled in this proceeding.

3 EXECUTED at NNCC PRISON, Nevada on the 21<sup>ST</sup>

4 Day of MARCH, 2022.

5  
6  
7 Rod Skinner

8  
9 RODERICK SKINNER  
10 N.N.C.C. #1126964  
11 P.O. Box 7000 CARSON CITY  
12 NEVADA 89702.  
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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Rod Skinner

Petitioner  
ROD SKINNER  
NNCC #1126964

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 21<sup>ST</sup> day of MARCH 20 22, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

① WARDEN OLSEN  
P.O. BOX 7000,  
CARSON CITY NV 89702

② WASHOE COUNTY D.A.  
1<sup>ST</sup> SIERRA ST,  
RENO NV. 89501.

\_\_\_\_\_, Nevada 89 \_\_\_\_\_

Rod Skinner

Signature of Petitioner In Pro Se

**CERTIFICATE OF SERVICE**

I, RODERICK SKINNER certify that on this date I did serve a true and correct copy of the foregoing Request upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

WARDEN OLSEN NNCC

P.O. Box 7000

CARSON CITY N.V. 89702

AND

WASHOE COUNTY DISTRICT ATTORNEY

1 5TH SIERRA ST

RENO, 89501

Dated this 21<sup>ST</sup> day of MARCH, 2022.

By: Rod Skinner

Movant, In Proper Person

**AFFIRMATION PURSUANT TO NRS 239B.030**

\*\* I certify that the foregoing document DOES NOT contain the social security number of any Persons.

21<sup>ST</sup> MARCH 2022  
(Date)

Rod Skinner  
(Signature)

13

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

RODERICK SKINNER

Case No. CR14-0644

Petitioner,

Dept. No. 8

vs.

W. OLSEN, Warden NNCC,  
STATE OF NEVADA, et al.,

Respondent.

**ORDER STRIKING REQUEST FOR SUBMISSION**

Before the Court is a *Petition for Writ of Habeas Corpus* filed by Petitioner, RODERICK SKINNER, on April 4, 2022. The Petitioner contemporaneously filed a *Request for Submission*. The Court finds the request for submission to be procedurally irregular because it submits the matter before allowing the State of Nevada adequate time to respond.

Accordingly, the Court **ORDERS** the *Request for Submission*, filed April 4, 2022, is **STRICKEN. IT IS HEREBY ORDERED** the Clerk of the Court of the Second Judicial District shall strike this document from the record.

**IT IS SO ORDERED.**

**DATED** this 4th day of April, 2022.



BARRY L. BRESLOW  
District Judge

**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 4th day of April, 2022, 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:

Roderick Skinner, #1126964  
NNCC  
PO BOX 7000  
Carson City, NV 89702

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 4th day of April, 2022, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

EDWARD REED, ESQ.

JOHN PETTY, ESQ.

CHRISTOPHER FREY, ESQ.

JENNIFER NOBLE, ESQ.

CHRISTINE BRADY, ESQ.

DIV. OF PAROLE AND PROBATION

  
\_\_\_\_\_  
Judicial Assistant

## Return Of NEF

### Recipients

**JENNIFER NOBLE, ESQ.** - Notification received on 2022-04-04 13:30:20.391.  
**JOHN PETTY, ESQ.** - Notification received on 2022-04-04 13:30:19.844.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2022-04-04 13:30:19.579.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2022-04-04 13:30:19.36.  
**EDWARD REED, ESQ.** - Notification received on 2022-04-04 13:30:20.11.



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

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

04-04-2022:13:29:38

**Clerk Accepted:**

04-04-2022:13:29:59

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ord Striking

**Filed By:**

Judicial Asst. CKuhl

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:**

JENNIFER P. NOBLE, ESQ. for STATE OF  
NEVADA

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

EDWARD TORRANCE REED, ESQ. for  
RODERICK STEPHEN SKINNER

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

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

FILED

RODERICK SKINNER # 1126964

Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, NV 89702

Plaintiff, In Proper Person

2022 APR 14 AM 10:55

ALICIA L LERUD  
CLERK OF THE COURT,  
BY Solabianchi  
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF WASHOERODERICK SKINNER,

Petitioner,

vs.

WARDEN OLSEN, NNCC et alNEVADA ATTY GENERAL Respondent(s),Case No: CR14-0644Dept. No. 15MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, Petitioner, RODERICK SKINNER, in his proper person, and respectfully requests this Honorable Court to appoint Counsel, to further litigate his pending Petition for Writ of Habeas Corpus (Post Conviction).

The Motion is made and based on Nevada Revised Statute 34.750, all papers and pleadings on file herein as well as the following:

1. Petitioner is indigent and not able to afford counsel. See accompanying Motion for Leave to Proceed In Forma Pauperis.
2. The issues involved in this matter are very complex.
3. The issues involved in this case will require further investigation that Petitioner cannot complete due to his incarceration
4. Petitioner has very limited knowledge of the applicable laws and procedures in this matter.

Dated this 30<sup>th</sup> day of MARCH, 2022.

By: Rod Skinner

Petitioner, In Proper Person

RODERICK SKINNER

**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to NRCP Rule 5(b), I hereby certify that on this date I did serve a true and correct copy of the foregoing document: MOTION FOR APPOINTMENT OF COUNSEL, upon the following:

Dated this 3<sup>TH</sup> day of ~~MARCH~~, 2022.  
07<sup>TH</sup> APRIL

① WARDEN OLSEN  
N.N.C.C. P.O. BOX 7000  
CARSON CITY NV. 89702

② WASHOE COUNTY  
DISTRICT ATTORNEY  
1 5TH SIERRA ST  
RENO, 89501

AND

③ Nevada Attorney General  
100 South Carson Street  
Carson City, NV 89701-4717

BY: Rod Skinner  
RODERICK SKINNER  
N.N.C.C. # 1126964  
P.O. BOX 7000 CARSON CITY NV. 89702

In Proper Person

**AFFIRMATION PURSUANT TO NRS 239B.030**

\*\* I certify that that the foregoing document DOES NOT contain the social security number of any persons.

30<sup>TH</sup> MARCH 2022  
 (Date)

Rod Skinner  
 (Signature)

CODE No. 2520  
CHRISTOPHER J. HICKS  
#7747  
One South Sierra Street  
Reno, Nevada 89501  
(775) 328-3200  
districtattorney@da.washoecounty.gov  
Attorney for Respondents

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

IN AND FOR THE COUNTY OF WASHOE

\*\*\*

RODERICK SKINNER,

Petitioner,

Case No. CR14-0644

v.

Dept. No. 8

WARDEN OLSEN, NNCC,  
NEVADA ATTY GENERAL, ET AL.,

Respondents.

\_\_\_\_\_ /

NOTICE OF APPEARANCE

COMES NOW, Kevin Naughton, Appellate Deputy, and hereby gives notice of appearance as counsel for the Respondents in the above-captioned matter.

Respondent requests that the Court and all parties herein update their service list and add Kevin Naughton's name and address in order to facilitate timely service of all documents in the matter.

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AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: April 22, 2022.

CHRISTOPHER J. HICKS  
District Attorney

By /s/ Kevin Naughton  
KEVIN NAUGHTON  
Appellate Deputy  
Nevada Bar No. 12834

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 April 22, 2022, 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:

Roderick Skinner #1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

/s/ Tatyana Kazantseva  
TATYANA KAZANTSEVA

CODE No. 2645  
CHRISTOPHER J. HICKS  
#7747  
One South Sierra Street  
Reno, Nevada 89501  
(775) 328-3200  
districtattorney@da.washoecounty.gov  
Attorney for Respondents

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

\*\*\*

RODERICK SKINNER,

Petitioner,

Case No. CR14-0644

v.

Dept. No. 8

WARDEN OLSEN, NNCC,  
NEVADA ATTY GENERAL, ET AL.,

Respondents.

\_\_\_\_\_ /

**OPPOSITION TO MOTION FOR APPOINTMENT OF COUNSEL**

COMES NOW, Respondents, by and through CHRISTOPHER J. HICKS, District Attorney, and Kevin Naughton, Appellate Deputy, and hereby opposes the Motion for Appointment of Counsel filed by Roderick Skinner (hereinafter, "Petitioner") on April 14, 2022. This Opposition is based on the pleadings and papers on file with this Court, and the following points and authorities.

///

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**Procedural History**

The Petitioner pled guilty and was convicted of one count of Promotion of a Sexual Performance of a Minor, Age 14 or Older, and sentenced to a term of life imprisonment with parole eligibility after five years. See Judgment of Conviction filed September 11, 2014.

The Petitioner appealed his conviction, alleging that the Court abused its discretion by sentencing him to prison rather than placing him on probation. The Court of Appeals rejected the Petitioner's argument. See Skinner v. State, Docket No. 66666-COA (Order of Affirmance, July 14, 2015).

The Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction) ("First Petition") on July 13, 2016. The Petitioner perfected the First Petition with a verified petition on October 7, 2016. The Court ordered the State to file an answer within 45 days of October 11, 2016. The State filed an answer on November 22, 2016.

The Petitioner requested the appointment of counsel on December 12, 2016, and counsel was subsequently appointed in an order filed February 6, 2017. Counsel filed a Supplemental Petition for Writ of Habeas Corpus (Post Conviction) ("First Supplemental Petition") on January 12, 2018. The State filed an answer to the First Supplemental Petition on February 26, 2018.

The Court held an evidentiary hearing on the First Petition and First Supplemental Petition on September 26, 2019. Following that hearing, the Court entered an Order Denying Petition for Writ of Habeas Corpus on October 9, 2019. The Petitioner appealed and the Court of Appeals affirmed this Court's decision. See Skinner v. Baca, Docket No. 79981-COA (Order of Affirmance, February 8, 2021). The Petitioner



sought review of the Court of Appeals' decision by the Nevada Supreme Court. The Nevada Supreme Court denied the petition for review on June 25, 2021. See Skinner v. Baca, Docket No. 79981 (Order Denying Petition for Review, June 30, 2021).

On March 29, 2022, the Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction) ("Second Petition") and requested submission on the same day. The Court entered an order striking the Petitioner's request for submission. The Petitioner re-filed the Second Petition on April 4, 2022.<sup>1</sup> The Petitioner again requested submission on the same day the Second Petition was re-filed and this Court again struck the request for submission.

On April 14, 2022, the Petitioner filed a Motion for Appointment of Counsel. This Opposition follows.

### Argument

The Motion for Appointment of Counsel should be denied. In determining whether to appoint counsel, the district court "may consider, among other things, the severity of the consequences facing the petitioner and whether: (a) The issues presented are difficult; (b) The petitioner is unable to comprehend the proceedings; or (c) Counsel is necessary to proceed with discovery." NRS 34.750(1). Additionally, the Court need only consider these factors if the "petition is not dismissed summarily...." *Id.*

The State intends to file a Motion to Dismiss the Second Petition. As set out more fully in that Motion, the Second Petition should be summarily dismissed because it is successive, untimely, constitutes an abuse of the writ, and is barred by laches.

<sup>1</sup> The State has compared these two filings and they appear identical in content. They differ in the filing date and in the numbering of pages 7 through 9. All references to the Second Petition in this Opposition shall refer to the April 4, 2022, version of the Second Petition.

The Second Petition is successive because it is the second post-conviction petition challenging the validity of the Petitioner's conviction. NRS 34.745(4). As a result, it must be summarily dismissed. *Id.*

Additionally, the Second Petition is untimely. A post-conviction petition for a writ of habeas corpus must be filed "within 1 year after the appellate court [...] issues its remittitur" absent a showing of good cause for the delay and undue prejudice if the petition is denied as untimely. NRS 34.726(1). The Petitioner directly appealed his conviction, and the Court of Appeals affirmed his conviction on July 14, 2015. Remittitur issued on August 10, 2015, and was filed before this Court on August 18, 2015. The Second Petition is filed nearly six and a half years late and must be dismissed. NRS 34.726(1).

The Second Petition asserts new and different grounds for relief, constituting an abuse of the writ. As a result, it must be dismissed. NRS 34.810(2).

Finally, the Second Petition must be dismissed due to the delay in filing. A rebuttable presumption of prejudice exists when a period of more than 5 years passes between the filing of a judgment of conviction and the filing of a post-conviction petition challenging the validity of that judgment and the State specifically pleads laches. NRS 34.800(2). Because more than 5 years have passed since Remittitur issued on August 10, 2015, the State specifically pleads laches.

The Petitioner asserts that he has good cause to overcome the procedural bars. The State will address that argument fully in its Motion to Dismiss the Second Petition. For the purposes of this Opposition, because the Second Petition should be summarily dismissed, the Court should deny the Petitioner's request for the appointment of counsel.

Conclusion

The Second Petition should be summarily dismissed for being successive, untimely, constituting an abuse of the writ, and due to laches. Therefore, counsel should not be appointed and the Motion should be denied.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: April 22, 2022.

CHRISTOPHER J. HICKS  
District Attorney

By /s/ Kevin Naughton  
KEVIN NAUGHTON  
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 April 22, 2022, 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:

Roderick Skinner #1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

/s/ Tatyana Kazantseva  
TATYANA KAZANTSEVA

CODE No. 2300  
CHRISTOPHER J. HICKS  
#7747  
One South Sierra Street  
Reno, Nevada 89501  
(775) 328-3200  
districtattorney@da.washoecounty.gov  
Attorney for Respondents

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

IN AND FOR THE COUNTY OF WASHOE

\* \* \*

RODERICK SKINNER,

Petitioner,

Case No. CR14-0644

v.

Dept. No. 8

WARDEN OLSEN, NNCC,  
NEVADA ATTY GENERAL, ET AL.,

Respondents.

\_\_\_\_\_ /

**MOTION TO DISMISS SECOND PETITION**

COMES NOW, Respondents, by and through Kevin Naughton, Appellate Deputy, and moves to dismiss Petitioner Roderick Skinner's (hereinafter "Petitioner") Petition for Writ of Habeas Corpus (Post-Conviction) filed on March 29, 2022, and April 4, 2022. This Motion is based upon the records of this Court and the following points and authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**Procedural History**

The Petitioner pled guilty and was convicted of one count of Promotion of a Sexual Performance of a Minor, Age 14 or Older, and sentenced to a term of life

imprisonment with parole eligibility after five years. *See* Judgment of Conviction filed September 11, 2014.

The Petitioner appealed his conviction, alleging that the Court abused its discretion by sentencing him to prison rather than placing him on probation. The Court of Appeals rejected the Petitioner's argument. *See Skinner v. State*, Docket No. 66666-COA (Order of Affirmance, July 14, 2015).

The Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction) ("First Petition") on July 13, 2016. The Petitioner perfected the First Petition with a verified petition on October 7, 2016. The Court ordered the State to file an answer within 45 days of October 11, 2016. The State filed an answer on November 22, 2016.

The Petitioner requested the appointment of counsel on December 12, 2016, and counsel was subsequently appointed in an order filed February 6, 2017. Counsel filed a Supplemental Petition for Writ of Habeas Corpus (Post Conviction) ("First Supplemental Petition") on January 12, 2018. The State filed an answer to the First Supplemental Petition on February 26, 2018.

The Court held an evidentiary hearing on the First Petition and First Supplemental Petition on September 26, 2019. Following that hearing, the Court entered an Order Denying Petition for Writ of Habeas Corpus on October 9, 2019. The Petitioner appealed, and the Court of Appeals affirmed this Court's decision. *See Skinner v. Baca*, Docket No. 79981-COA (Order of Affirmance, February 8, 2021). The Petitioner sought review of the Court of Appeals' decision by the Nevada Supreme Court. The Nevada Supreme Court denied the petition for review on June 25, 2021. *See Skinner v. Baca*, Docket No. 79981 (Order Denying Petition for Review, June 30, 2021).

/ / /

On March 29, 2022, the Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction) (“Second Petition”) and requested submission on the same day. The Court entered an order striking the Petitioner’s request for submission. The Petitioner re-filed the Second Petition on April 4, 2022.<sup>1</sup> The Petitioner again requested submission on the same day the Second Petition was re-filed, and this Court again struck the request for submission. This Motion to Dismiss Second Petition follows.

On April 14, 2022, the Petitioner filed a Motion for Appointment of Counsel. The State has filed a contemporaneous Opposition to Motion for Appointment of Counsel, relying on the analysis in the instant Motion to Dismiss.

### Argument

The Second Petition sets forth two grounds for relief: 1. Trial counsel was ineffective for failing to present evidence of the Petitioner’s mental health diagnosis at the time of sentencing, and 2. Appellate counsel was ineffective for failing to investigate the record and raise an issue related to the Petitioner’s plea colloquy. Second Petition, pp. 7-7A.

1. The Second Petition should be dismissed because it is untimely, successive, and constitutes an abuse of the writ.

NRS 34.726(1) provides that absent “good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction ... issues its remittitur.”

<sup>1</sup> The State has compared these two filings and they appear identical in content. They differ in the filing date and in the numbering of pages 7 through 9. All references to the Second Petition in this Motion to Dismiss refer to the April 4, 2022, version of the Second Petition.

Here, the Court of Appeals issued its remittitur on the Petitioner's direct appeal on August 10, 2015. The Second Petition filed on March 29, 2022, and it is thus untimely and subject to the NRS 34.726(1) procedural bar.

NRS 34.745(4) requires that the Court summarily dismiss a second or successive petition challenging the validity of a judgment of conviction or sentence. This is the Petitioner's second post-conviction petition for habeas relief. Therefore, absent a showing of good cause, it must be summarily dismissed.

NRS 34.810(2) provides that a second or successive petition must be dismissed if new and different grounds are alleged and this Court "finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ." The Petitioner acknowledges that the grounds presented in the Second Petition are different from those presented in his First Petition and First Supplemental Petition. Second Petition, pp. 5-6. Because these grounds were available to Petitioner at the time of filing the First Petition, the Court should find that the Second Petition constitutes an abuse of the writ, and it must be dismissed.

"[A]pplication of procedural bars is mandatory... but a petitioner may overcome the bars in one of two ways: (1) by demonstrating good cause and actual prejudice..., or (2) by demonstrating actual innocence, such that a fundamental miscarriage of justice would result were the underlying claims not heard on the merits...." Branham v. Baca, 134 Nev. 814, 815, 434 P.3d 313, 315 (Nev. App. 2018) *citing* State v. Eighth Judicial Dist. Court (Riker), 121 Nev., 225, 231, 112 P.3d 1070, 1074 (2005) and Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). "NRS Chapter 34 requires a petitioner to identify the applicable procedural bars for *each* claim presented and the good cause that excuses those procedural bars." Chappell v. State, 137 Nev. Adv. Op. 83,

501 P.3d 935, 949 (2021) (emphasis in original) *citing* NRS 34.735, 34.726(1), and 34.810(3). “A petitioner’s explanation of good cause and prejudice for each procedurally barred claim must be made on the face of the petition” and “to avoid dismissal under NRS 34.726(1) or NRS 34.810, a petitioner cannot rely on conclusory claims for relief but must provide supporting specific factual allegations that if true would entitle him to relief.” *Id.* (cleaned up).

The Second Petition asserts that good cause exists in this case because he was procedurally barred from raising claims related to ineffective assistance of counsel at sentencing pursuant to NRS 34.810(1)(a) until the Nevada Supreme Court’s recent decision in Gonzales v. State, 137 Nev. Adv. Op. 40, 492 P.3d 556 (Nev. July 29, 2021). This analysis is faulty.

Gonzales did not remove an otherwise applicable procedural bar. Instead, it reiterated that the purpose of NRS 34.810(1)(a) “was to preclude wasteful litigation of certain *pre-plea* violations.” 492 P.3d at 561 (emphasis in original). The Nevada Supreme Court explained that “[i]n sum, we explicitly hold today what has been implicit in our caselaw for decades. The core claims prohibited by NRS 34.810(1)(a) are ‘independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea’ that do not allege that the guilty plea was entered involuntarily or unknowingly or without the effective assistance of counsel.” 492 P.3d at 562 *quoting* Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602 (1973). Gonzales did not create a new rule; it merely provided an explicit interpretation of law that has been applicable for decades.

“When a decision merely interprets and clarifies an existing rule[...], the court’s interpretation is merely a restatement of existing law.” Buffington v. State, 110 Nev.



124, 127, 868 P.2d 643, 645 (1994) *citing* Gier v. District Court, 106 Nev. 208, 213, 789 P.2d 1245, 1248 (1990). New rules of law may be applied prospectively, but a restatement of existing law does not announce a new rule. As a result, there was no procedural bar precluding the Petitioner from raising claims of ineffective assistance of counsel at sentencing in his First Petition. Therefore, the Gonzales decision does not provide good cause to overcome application of the procedural bars to the Second Petition.

## 2. Laches

A rebuttable presumption of prejudice exists when a period of more than 5 years passes between the filing of a judgment of conviction and the filing of a post-conviction petition challenging the validity of that judgment and the State specifically pleads laches. NRS 34.800(2). Because more than 5 years have passed since the Judgment was filed on February 5, 2015, the State specifically pleads laches.

Even if the Court finds that the Petitioner can demonstrate good cause to overcome the procedural bars set forth above, the laches bar is wholly separate and must also be overcome. *See, e.g., Pellegrini v. State*, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001) (holding that “it is conceivable that a petitioner could demonstrate good cause for failure to comply with the one-year time limit and actual prejudice, but laches would nevertheless bar the claim because of prejudice to the State and failure to demonstrate a fundamental miscarriage of justice....”). The Second Petition fails to address, much less overcome, the presumption of prejudice to the State.

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Conclusion

The Petition should be denied without an evidentiary hearing. It is untimely, successive, constitutes an abuse of the writ, and is subject to laches. Additionally, the Second Petition's claim that the Nevada Supreme Court's recent decision in Gonzales provides good cause to overcome the procedural bars is contradicted by Gonzales's own language explaining that it was merely restating law that has been applicable for decades and was applicable at the time the Petitioner filed his First Petition. As a result, the Petitioner has failed to demonstrate good cause and this Court is obligated to apply the procedural bars.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: April 22, 2022.

CHRISTOPHER J. HICKS  
District Attorney

By /s/ Kevin Naughton  
KEVIN NAUGHTON  
Appellate Deputy  
Nevada Bar No. 12834

**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 April 22, 2022, 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:

Roderick Skinner #1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

/s/ Tatyana Kazantseva  
TATYANA KAZANTSEVA

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2022-04-22 10:20:39.846.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2022-04-22 10:20:39.128.  
**JOHN PETTY, ESQ.** - Notification received on 2022-04-22 10:20:38.784.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2022-04-22 10:20:38.378.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2022-04-22 10:20:38.05.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2022-04-22 10:20:40.378.  
**EDWARD REED, ESQ.** - Notification received on 2022-04-22 10:20:39.534.

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

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

04-22-2022:10:13:48

**Clerk Accepted:**

04-22-2022:10:20:10

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Notice of Appearance

Opposition to Mtn

Mtn to Dismiss Pet

**Filed By:**

Kevin Naughton

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:**

JENNIFER P. NOBLE, ESQ. for STATE OF  
NEVADA

KEVIN P. NAUGHTON, ESQ. for STATE OF  
NEVADA

JOHN REESE PETTY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

EDWARD TORRANCE REED, ESQ. for  
RODERICK STEPHEN SKINNER

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

FILED

2022 APR 22 PM 1:55

Code: 3860  
 Name: RODERICK SKINNER  
 Address: NNCC # 1126964  
P.O. Box 7000 CARSON CITY  
 Telephone: NEVADA 89702  
 Email: \_\_\_\_\_

ALICIA L. LERUD  
 CLERK OF THE COURT  
 BY Solabianchi  
 DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RODERICK SKINNER

Plaintiff,

Case No. CR14-0644

vs.

Dept. No. 15WARDEN OLSEN, N.N.C.C. et al

Defendant,

REQUEST FOR SUBMISSION

I request that the MOTION FOR APPOINTMENT OF COUNSEL that was filed  
 (Print the name of the document(s) to be submitted to the Court)

on 14<sup>TH</sup> APRIL 2022 be submitted to the Court for decision.  
 (Date the document was filed)

This document does not contain the personal information of any person as defined by  
 NRS 603A.040.

I declare under penalty of perjury under the law of the State of Nevada the foregoing is true and  
 correct.

Date: 19<sup>TH</sup> APRIL 2022Your Signature Rod SkinnerPrint Your Name RODERICK SKINNER

1 EDWARD T. REED, ESQ.  
2 EDWARD T. REED, PLLC  
3 Nevada State Bar No. 1416  
4 P.O. Box 34763  
5 Reno, NV 89533-4763  
6 (775) 996-0687

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

9 RODERICK SKINNER,

10 Petitioner,

Case No. CR14-0644

11 vs.

Dept. 8

12 ISIDRO BACA. WARDEN, NORTHERN  
13 NEVADA CORRECTIONAL CENTER,

14 Respondent.  
15 \_\_\_\_\_/

16 **NOTICE OF WITHDRAWAL OF COUNSEL**

17 EDWARD T. REED. ESQ., withdraws as counsel of record for Petitioner  
18 RODERICK SKINNER in the above-entitled matter pursuant to Nevada Supreme Court  
19 Rule 46.  
20

21 All future pleadings and correspondence should be forwarded to:

22 Roderick Skinner #1126964  
23 P.O. Box 7000  
24 Carson City, NV 89702

25 **Pursuant to NRS 239B.030**, the undersigned does hereby affirm that the preceding  
26 document does not contain the social security number of any person.  
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Respectfully submitted this 22<sup>nd</sup> day of April, 2022.

/s/ Edward T. Reed  
EDWARD T. REED, PLLC  
Nevada State Bar No. 1416  
P.O. Box 34763  
Reno, NV 89533-4763  
(775) 996-0687

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Edward T. Reed, PLLC, and that on this date I electronically filed the foregoing with the Clerk of the Second Judicial District Court by using the eflex system which will send a notice of electronic filing to the following:

Washoe County District Attorney's Office

And by United States Postal Service, postage prepaid to:

Roderick Skinner #1126964  
P.O. Box 7000  
Carson City, NV 89702

DATED this 22nd day of April, 2022.

/s/ Edward T. Reed  
EDWARD T. REED