

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAISY LYNNE MEADOWS, f/k/a ROY
JAMES TROST,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Electronically Filed
Nov 13 2023 03:19 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No: 08C247731
Related Case A-23-873087-W
Docket No: 87426

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
DAISY LYNNE MEADOWS # 1027585,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

08C247731

The State of Nevada vs Daisy Lynne Meadows

I N D E X

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CLERK OF THE COURT

INFO
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUMMER CLARKE
Deputy District Attorney
Nevada Bar #008988
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 09/15/2008
9:00 A.M.
PUBLIC DEFENDER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

Case No: C247731
Dept No: XXI

INFORMATION

STATE OF NEVADA)
COUNTY OF CLARK) ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That ROY JAMES TROST, the Defendant above named, having committed the crimes of **SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.364, 200.366, 193.165); SEXUAL ASSAULT (Category A Felony - NRS 200.364, 200.366); FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320);** and **SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366)**, in the manner following, to-wit: That the said Defendant, on or between the 31st day of May, 2007, and the 18th day of May, 2008, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

1 COUNT 1 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

2 did then and there willfully, unlawfully, and feloniously sexually assault and subject
3 MELISSA SUDDUTH, a female person, to sexual penetration, to-wit: sexual intercourse,
4 by said Defendant placing his penis into the genital opening of the said MELISSA
5 SUDDUTH, against her will, said Defendant using a deadly weapon, to-wit: a knife, during
6 the commission of said crime.

7 COUNT 2 - SEXUAL ASSAULT

8 did then and there willfully, unlawfully, and feloniously sexually assault and subject
9 AMBERLY CURFMAN, a female person, to sexual penetration, to-wit: fellatio, by said
10 Defendant placing his penis on or in the mouth of the said AMBERLY CURFMAN, against
11 her will.

12 COUNT 3 - FIRST DEGREE KIDNAPPING

13 did willfully, unlawfully, feloniously, and without authority of law, seize, confine,
14 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away AMBERLY CURFMAN, a
15 human being, with the intent to hold or detain the said AMBERLY CURFMAN against her
16 will, and without her consent, for the purpose of committing sexual assault.

17 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

18 did then and there willfully, unlawfully, and feloniously sexually assault and subject
19 SARAH QUINN, a female child under sixteen years of age, to sexual penetration, to-wit:
20 digital penetration by said Defendant placing his finger into the genital opening of the said
21 SARAH QUINN, against her will, or under conditions in which Defendant knew, or should
22 have known, that the said SARAH QUINN was mentally or physically incapable of resisting
23 or understanding the nature of Defendant's conduct.

24 COUNT 5 - SEXUAL ASSAULT

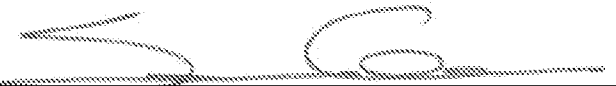
25 did then and there willfully, unlawfully, and feloniously sexually assault and subject
26 LACEY MARION, a female person, to sexual penetration, to-wit: digital penetration, by
27 said Defendant placing his finger into the genital opening of the said LACEY MARION,
28 against her will.

1 COUNT 6 - FIRST DEGREE KIDNAPPING

2 did willfully, unlawfully, feloniously, and without authority of law, seize, confine,
3 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away LACEY MARION, a human
4 being, with the intent to hold or detain the said LACEY MARION against her will, and
5 without her consent, for the purpose of committing sexual assault.

6
7 DAVID ROGER
DISTRICT ATTORNEY
8 Nevada Bar #002781

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10 BY


SUMMER CLARKE
Deputy District Attorney
Nevada Bar #008988

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NUMBERED PAGE(S)
4 - 42
WILL FOLLOW VIA
U.S. MAIL

1 **GMEM**
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 SUMMER CLARKE
6 Deputy District Attorney
7 Nevada Bar #008988
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702)671-2500
11 Attorney for Plaintiff

ORIGINAL

FILED IN OPEN COURT
SEP 23 7 00 PM 20
EDWARD A. FRIEDLAND
CLERK OF THE COURT
BY Denise Husted
DENISE HUSTED, DEPUTY

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ROY JAMES TROST,
13 #2679137

14 Defendant.

CASE NO: C247731
DEPT NO: XXI

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: COUNT 1 - SEXUAL ASSAULT WITH USE OF
17 A DEADLY WEAPON (Category A Felony); COUNTS 2 & 5 - SEXUAL ASSAULT
18 (Category A Felony); COUNTS 3 & 6 - FIRST DEGREE KIDNAPPING (Category A
19 Felony); and COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN
20 YEARS OF AGE (Category A Felony), as more fully alleged in the charging document
21 attached hereto as Exhibit "1".

22 My decision to plead guilty is based upon the plea agreement in this case which is as
23 follows:

24 Both parties stipulate that Counts 1, 2 and 3 will run consecutively to one another.
25 Further, both parties stipulate that Counts 4, 5 and 6 will run consecutively to one another.
26 Both parties retain the right to argue as to whether Counts 4 through 6 will run concurrently
27 or consecutively to Counts 1 through 3. Additionally, this plea is conditional upon the Court
28 accepting the aforesaid stipulation.

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1 license to practice in this state or a psychiatrist license to practice medicine in this state
2 certifies that I was under observation while confined in an institution of the department of
3 corrections that I do not represent a high risk to reoffend based upon a currently accepted
4 standard of assessment.

5 I further understand that the Court will include as part of my sentence, in addition to
6 any other penalties provided by law, lifetime supervision commencing after any period of
7 probation or any term of imprisonment and period of release upon parole; said special
8 sentence of lifetime supervision must begin upon release from incarceration.

9 I further understand that the Court will include as part of my sentence, in addition to
10 any other penalties provided by law, pursuant to NRS 179D.450, I must register as a sex
11 offender within 48 hours of release from custody.

12 I also understand that I must submit to blood and/or saliva tests under the Direction of
13 the Division of Parole and Probation to determine genetic markers and/or secretor status.

14 I understand that if more than one sentence of imprisonment is imposed and I am
15 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
16 the sentences served concurrently or consecutively.

17 I also understand that information regarding charges not filed, dismissed charges, or
18 charges to be dismissed pursuant to this agreement may be considered by the judge at
19 sentencing.

20 I have not been promised or guaranteed any particular sentence by anyone. I know
21 that my sentence is to be determined by the Court within the limits prescribed by statute.

22 I understand that if my attorney or the State of Nevada or both recommend any
23 specific punishment to the Court, the Court is not obligated to accept the recommendation.

24 I understand that if the State of Nevada has agreed to recommend or stipulate a
25 particular sentence or has agreed not to present argument regarding the sentence, or agreed
26 not to oppose a particular sentence, such agreement is contingent upon my appearance in
27 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).

28 I understand that if I fail to appear for the scheduled sentencing date or I commit a new

1 criminal offense prior to sentencing the State of Nevada would regain the full right to argue
2 for any lawful sentence.

3 I understand if the offenses to which I am pleading guilty to was committed while I
4 was incarcerated on another charge or while I was on probation or parole that I am not
5 eligible for credit for time served toward the instant offenses.

6 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
7 United States, I may, in addition to other consequences provided for by federal law, be
8 removed, deported, excluded from entry into the United States or denied naturalization.

9 I understand that the Division of Parole and Probation will prepare a report for the
10 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
11 sentencing, including my criminal history. This report may contain hearsay information
12 regarding my background and criminal history. My attorney and I will each have the
13 opportunity to comment on the information contained in the report at the time of sentencing.
14 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
15 may also comment on this report.

16 WAIVER OF RIGHTS

17 By entering my plea of guilty, I understand that I am waiving and forever giving up
18 the following rights and privileges:

19 1. The constitutional privilege against self-incrimination, including the right to refuse
20 to testify at trial, in which event the prosecution would not be allowed to comment to the
21 jury about my refusal to testify.

22 2. The constitutional right to a speedy and public trial by an impartial jury, free of
23 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
24 assistance of an attorney, either appointed or retained. At trial the State would bear the
25 burden of proving beyond a reasonable doubt each element of the offense charged.

26 3. The constitutional right to confront and cross-examine any witnesses who would
27 testify against me.

28 4. The constitutional right to subpoena witnesses to testify on my behalf.

1 5. The constitutional right to testify in my own defense.

2 6. The right to appeal the conviction, with the assistance of an attorney, either
3 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
4 or other grounds that challenge the legality of the proceedings and except as otherwise
5 provided in subsection 3 of NRS 174.035.

6 VOLUNTARINESS OF PLEA

7 I have discussed the elements of all of the original charges against me with my
8 attorney and I understand the nature of the charges against me.

9 I understand that the State would have to prove each element of the charges against
10 me at trial.

11 I have discussed with my attorney any possible defenses, defense strategies and
12 circumstances which might be in my favor.

13 All of the foregoing elements, consequences, rights, and waiver of rights have been
14 thoroughly explained to me by my attorney.

15 I believe that pleading guilty and accepting this plea bargain is in my best interest,
16 and that a trial would be contrary to my best interest.

17 I am signing this agreement voluntarily, after consultation with my attorney, and I am
18 not acting under duress or coercion or by virtue of any promises of leniency, except for those
19 set forth in this agreement.

20 I am not now under the influence of any intoxicating liquor, a controlled substance or
21 other drug which would in any manner impair my ability to comprehend or understand this
22 agreement or the proceedings surrounding my entry of this plea.

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1 My attorney has answered all my questions regarding this guilty plea agreement and
2 its consequences to my satisfaction and I am satisfied with the services provided by my
3 attorney.

4 DATED this 21 day of September, 2008.

5 
6 ROY JAMES TROST
7 Defendant

8 AGREED TO BY:

9 
10 SUMMER CLARKE
11 Deputy District Attorney
12 Nevada Bar #008988
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charges to
5 which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 21 day of September, 2008.

19 
20 ATTORNEY FOR DEFENDANT

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28 hjc/SVU

Conrad, Howard

From: Garst, Mary Ann [GarstM@clarkcountycourts.us] on behalf of Clerk Register of Actions [clerkroa@clarkcountycourts.us]
Sent: Thursday, September 11, 2008 8:32 AM
To: Conrad, Howard
Subject: RE: TROST, ROY

C247731

From: Conrad, Howard [mailto:Howard.Conrad@ccdandv.com]
Sent: Wednesday, September 10, 2008 2:46 PM
To: Clerk Register of Actions
Subject: TROST, ROY

Howard Conrad
Special Victims Unit
Clark County District Attorney
(702) 671-2790

"Honk if you love Justice!"

210

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CLERK OF THE COURT

INFO
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUMMER CLARKE
Deputy District Attorney
Nevada Bar #008988
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 09/15/2008
9:00 A.M.
PUBLIC DEFENDER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

Case No: C247731
Dept No: XXI

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

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1 COUNT 1 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

2 did then and there willfully, unlawfully, and feloniously sexually assault and subject
3 MELISSA SUDDUTH, a female person, to sexual penetration, to-wit: sexual intercourse,
4 by said Defendant placing his penis into the genital opening of the said MELISSA
5 SUDDUTH, against her will, said Defendant using a deadly weapon, to-wit: a knife, during
6 the commission of said crime.

7 COUNT 2 - SEXUAL ASSAULT

8 did then and there willfully, unlawfully, and feloniously sexually assault and subject
9 AMBERLY CURFMAN, a female person, to sexual penetration, to-wit: fellatio, by said
10 Defendant placing his penis on or in the mouth of the said AMBERLY CURFMAN, against
11 her will.

12 COUNT 3 - FIRST DEGREE KIDNAPPING

13 did willfully, unlawfully, feloniously, and without authority of law, seize, confine,
14 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away AMBERLY CURFMAN, a
15 human being, with the intent to hold or detain the said AMBERLY CURFMAN against her
16 will, and without her consent, for the purpose of committing sexual assault.

17 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

18 did then and there willfully, unlawfully, and feloniously sexually assault and subject
19 SARAH QUINN, a female child under sixteen years of age, to sexual penetration, to-wit:
20 digital penetration by said Defendant placing his finger into the genital opening of the said
21 SARAH QUINN, against her will, or under conditions in which Defendant knew, or should
22 have known, that the said SARAH QUINN was mentally or physically incapable of resisting
23 or understanding the nature of Defendant's conduct.

24 COUNT 5 - SEXUAL ASSAULT


25 did then and there willfully, unlawfully, and feloniously sexually assault and subject
26 LACEY MARION, a female person, to sexual penetration, to-wit: digital penetration, by
27 said Defendant placing his finger into the genital opening of the said LACEY MARION,
28 against her will.

1 COUNT 6 - FIRST DEGREE KIDNAPPING

2 did willfully, unlawfully, feloniously, and without authority of law, seize, confine,
3 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away LACEY MARION, a human
4 being, with the intent to hold or detain the said LACEY MARION against her will, and
5 without her consent, for the purpose of committing sexual assault.

6
7 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

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10 BY


SUMMER CLARKE
Deputy District Attorney
Nevada Bar #008988

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26 DA#08F10691X/hjc/SVU
LVMPD EV#0805180480
27 SAWDW; SA; 1stKN;
28 SAM<16 - F
(TK08)

FILED AFTER HOURS

FILED AFTER HOURS

ORIGINAL

RAO

EDWARD A. FRIEDLAND
CLERK OF THE COURT

RECEIVED IN
EXPRESS BOX
EDWARD A. FRIEDLAND
CLERK OF THE COURT

District Court

Clark County, Nevada 2009 SEP 29 A 8:47

SEP 29 2008

STATE OF NEVADA

Plaintiff,

vs.

ROY TROST

Defendant

Case No.: 08F10691X

Dept No.: Dept 21

MEDIA REQUEST AND ORDER FOR CAMERA
ACCESS TO COURT PROCEEDINGS

MIRIAM FIRESTONE of KVBC, requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in the courtroom of Dept. No. 21, the Honorable Adair, commencing on the 10th day of SEPTEMBER, 2008. 9:30 am
17th November

I certify that I am familiar with the contents of Nevada Supreme Court Rule 230, et seq., and understand this form MUST be submitted to the Court at least SEVENTY-TWO (72) hours before the proceedings commence, unless good cause can be shown.

DATED this 10TH day of SEPTEMBER, 2008.

MIRIAM FIRESTONE

Media Representative

The Court determines camera access to proceedings, in compliance with the court's policy, ☐ WOULD ☒ WOULD NOT distract participants, impair the dignity of the court or otherwise materially interfere with the achievement of a fair trial or hearing herein;

Therefore, the Court hereby ☐ DENIES ☒ GRANTS permission for camera access to MIRIAM FIRESTONE of KVBC as requested for each and every hearing on the above-entitled case, at the discretion of the judge, and unless otherwise notified. This Order is in accordance with Nevada Supreme Court Rule 230, et seq., and is subject to reconsideration upon motion of any party to the action.

IT IS FURTHER ORDERED that this entry shall be made a part of the record of the proceedings in this case.

DATED this 26 day of September, 2008.

Valerie Adams
District Court Judge

Eighth Judicial District Court
Clark County, Nevada

Case No.: C247731

Dept No.: 27

**NOTIFICATION OF
MEDIA REQUEST**

**NOTIFICATION OF
MEDIA REQUEST**

You are hereby notified pursuant to Nevada Supreme Court Rules 229-249, inclusive, that media representatives have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

E. M. Elhanev
Eighth Judicial District Court

I hereby certify that on the 24 day of Sept., 2008, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-249, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

Defendant

Public Defender

455-5112

Eric Elhanez
Eighth Judicial District Court

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
56 - 65
WILL FOLLOW VIA
U.S. MAIL**

JOCP

FILED

2008 NOV 25 A 6:44

ORIGINAL

E. L. Smith
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C247731

DEPT. NO. XXI

ROY J. TROST
#2679137

Defendant.

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of COUNT 1 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165, COUNTS 2 & 5 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366, COUNTS 3 & 6 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320 and COUNT 4 – SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN (16) YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; thereafter, on the 17TH day of November, 2008,

1 the Defendant was present in court for sentencing with his counsel JEFFREY
2 MANINGO, Deputy Public Defender, and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
4 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
5 including testing to determine genetic markers, the Defendant is sentenced as follows:

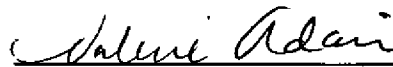

6 As to COUNT 1 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY OF
7 PAROLE after ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department
8 of Corrections (NDC), plus an EQUAL and CONSECUTIVE term of LIFE WITH THE
9 POSSIBILITY of PAROLE after ONE HUNDRED TWENTY (120) MONTHS MINIMUM
10 in the Nevada Department of Corrections (NDC) and pay \$357.00 Restitution; as to
11 COUNT 2 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE with
12 a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS in the
13 Nevada Department of Corrections (NDC), COUNT 2 to run CONSECUTIVE to
14 COUNT 1 and pay \$2,551.88 Restitution; as to COUNT 3 – TO A MAXIMUM term of
15 LIFE WITH THE POSSIBILITY of PAROLE after SIXTY (60) MONTHS in the Nevada
16 Department of Corrections (NDC), COUNT 3 to run CONSECUTIVE to COUNT 2; as
17 to COUNT 4 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE
18 after THREE HUNDRED (300) MONTHS in the Nevada Department of Corrections
19 (NDC), COUNT 4 to run CONSECUTIVE to COUNT 3; as to COUNT 5 – TO A
20 MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE after ONE HUNDRED
21 TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), COUNT 5
22 to run CONSECUTIVE to COUNT 4 and pay \$472.26 Restitution; and as to COUNT 6
23 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE after SIXTY
24
25
26
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28

1 (60) MONTHS in the Nevada Department of Corrections (NDC), COUNT 6 to run
2 CONSECUTIVE to COUNT 5; with ONE HUNDRED SIXTY-THREE (163) days credit
3 for time served.
4

5 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
6 is imposed to commence upon release from any term of imprisonment, probation or
7 parole.
8

9 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
10 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
11 release from custody.
12

13 DATED this 19th day of November, 2008.
14

15 
16 VALERIE ADAIR
17 DISTRICT JUDGE 
18
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28

C247731
1 CASE NO. C247731
2
3 ORIGINAL
4 FILED

5 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
6 COUNTY OF CLARK, STATE OF NEVADA

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Dec 1 12 13 PM '08

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 vs.)
10 ROY JAMES TROST,)
11 Defendant.)
12)

CASE NO. 08F10961X
CLERK OF COURT

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REPORTER'S TRANSCRIPT OF
WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ANN E. ZIMMERMAN,
JUSTICE OF THE PEACE

WEDNESDAY, SEPTEMBER 10, 2008
9:00 A.M.

18 APPEARANCES:

19 For the State: G. O'BRIEN, ESQ.
DEPUTY DISTRICT ATTORNEY
20
21 For the Defendant: J. MANINGO, ESQ.
DEPUTY PUBLIC DEFENDER
22
23
24
25

25 Reported by: CHRISTA BROKA, CCR. No. 574

3
1 Both parties have the right to argue. In order to get
2 into that penalty phase we had to do some waiving of the
3 defects and make it somewhat of a fictional plea.

4 MR. MANINGO: Because both of the offenses
5 occurred before July of this year and would be under the
6 old law which was 20 to life. We are waiving the
7 defects so that -- we are using the new law.

8 MR. O'BRIEN: That's correct.

9 THE COURT: Mr. Trost, do you understand
10 that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you wish to accept the
13 State's offer?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand you have a
16 right to a preliminary hearing in this matter?

17 THE DEFENDANT: Yes.

18 THE COURT: You have the right to confront
19 and cross-examine the witnesses the state presents; you
20 have the right to present witnesses and evidence on your
21 behalf; you have the right to testify and you have the
22 right to remain silent and that may not be used against
23 you. Do you understand you're waiving these rights
24 today?

25 THE DEFENDANT: Yes.

2
1 LAS VEGAS, CLARK COUNTY, NEVADA,
2 SEPTEMBER 10, 2008 AT 9:00 A.M.
3 PROCEEDINGS
4
5

6 THE COURT: This is the time set for the
7 State of Nevada versus Roy James Trost, 08F10961X.

8 MS. CLARKE: Summer Clarke and Glen O'Brien
9 for the state.

10 MR. MANINGO: Jeff Maningo for Mr. Trost.
11 Mr. Trost is present in custody. Judge, we are going to
12 unconditionally waive preliminary hearing for the
13 negotiations of two counts of sexual assault on a minor
14 under the age of 16. We are going in Count 1 name
15 victims Sara Quinn and Melissa Suta and in Count 2
16 victims Amberly Kirkman and Lacy Marion. We are going
17 -- it will be right to argue as far as consecutive or
18 concurrent. We are going to waive any defects because
19 it is a fictional plea because of the age of the victims
20 and also as to the dates of the offenses in order to get
21 that penalty range.

22 MR. O'BRIEN: That's correct, Judge. It's
23 going to be the new penalty range which is the minimum
24 35 years in prison. It's a life sentence with the
25 minimum parole eligibility of 35 years for each count.

4
1 THE COURT: When you get to District Court
2 if you change your mind about these negotiations, you'll
3 proceed to trial on the original charge. You will not
4 be able to come back to Justice Court for a preliminary
5 hearing. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: The Court having found from the
8 criminal complaint on file herein that crimes have been
9 committed, to wit: Five counts of sexual assault with
10 use of a deadly weapon; one count of battery with use of
11 a deadly weapon with intent to commit sexual assault
12 with substantially bodily harm; Sexual assault with a
13 minor under the age of 16 years; burglary with use of a
14 deadly weapon; two counts of coercion with use of a
15 deadly weapon; two counts of first degree kidnapping
16 with use of a deadly weapon; two counts of open and
17 gross lewdness with use of a deadly weapon; two counts
18 of robbery with use of a deadly weapon, and there's
19 probable cause to believe that Roy James Trost has
20 committed said crimes. I'm holding you to answer to
21 said charges in the Eighth Judicial District Court on
22 the date my clerk gives you.
23
24
25

* * * * *

ATTEST: FULL, TRUE AND ACCURATE

RECEIVED
DEC 01 2008
CLERK OF THE COURT

TRANSCRIPT OF PROCEEDINGS.

CHRISTA D. BROKA, CCR 574

ATTEST: I further certify that I am not
interested in the events of this action.

CHRISTA D. BROKA, CCR 574

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

-o0o-

STATE OF NEVADA,)
Plaintiff,)

vs.) Case No. 08F10691X

ROY JAMES TROST,) ATTEST RE: NRS 239B.030
Defendant,)

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Christa D. Broka, a Certified Shorthand
Reporter within and for the county of Clark and the
State of Nevada, do hereby certify:

That REPORTER'S TRANSCRIPT OF PROCEEDINGS was
reported in open court pursuant to NRS 3.360 regarding
the above proceedings in Justice Court Department 8, 200
Lewis Avenue, Las Vegas, Nevada.

That said TRANSCRIPT:

X Does not contain the Social Security number
of any person.

Contains the Social Security number of a
person.

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
71 - 76
WILL FOLLOW VIA
U.S. MAIL**

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
77 - 78
WILL FOLLOW VIA
U.S. MAIL

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FILED

NOV 10 2009

John L. Johnson
CLERK OF COURT

Roy James Trost

Petitioner/In Propria Persona
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

District Court

Clark County, Nevada

Roy James Trost

Petitioner,

vs.

State of Nevada
County of Clark

Respondent(s).

Case No. C247731

Dept. No. XXI

Docket _____

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

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 Request 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 institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED

NOV 10 2009

CLERK OF THE COURT

1 Failure to raise all grounds I this petition may preclude you from filing future petitions challenging
2 your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief from
4 any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your
5 petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that
6 claim will operate to waive the attorney-client privilege for the proceeding in which you claim your
7 counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one
9 copy must be filed with the clerk of the district court for the county in which the conviction occurred.
10 Petitions raising any other claim must be filed with the clerk of the district court for the county in
11 which you are incarcerated. One copy must be mailed to the respondent, one copy to the attorney
12 general's office, and one copy to the district attorney of the county in which you were convicted or to
13 the original prosecutor if you are challenging your original conviction or sentence. Copies must
14 conform in all particulars to the original submitted for filing.

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: Po Box 650, Indian Springs, Nevada 89070 HDSP

18 2. Name the location of court which entered the judgment of conviction under attack: Valerie
19 Adair Department XXI, Clark County Eighth Judicial District Court

20 3. Date of judgment of conviction: November 17th 2008

21 4. Case number: C 247731

22 5. (a) Length of sentence: 2-35 year to Life Sentences running concurrently

23 (b) If sentence is death, state any date upon which execution is scheduled: N/A

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
25 this motion:

26 Yes ☐ No ☒ If "Yes", list crime, case number and sentence being served at this time: _____

27 7. Nature of offense involved in conviction being challenged: Count 1: Sexual Assault
28 with use of a Deadly Weapon (F) category A, Count 2 and 5: Sexual
assault (F) category A, Count 3 and 6: First Degree Kidnapping (F)
category A, Count 4 Sexual Assault with a minor under 16 years of
age category A (F)

8. What was your plea? (Check one)

(a) Not guilty _____

(b) Guilty ☒

(c) Nolo contendere _____

9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea

to another count of an indictment or information, or if a guilty plea was negotiated, give details: *Both parties stipulate that counts 1, 2, and 3 will run consecutively to one another. Further, both parties stipulate that counts 4, 5 and 6 will run consecutively to one another. Both parties retain the right to argue as to whether counts 4 through 6 will run concurrently or consecutively to counts 1 through 3. Additionally, this plea is conditional upon the Court accepting the aforesaid stipulation.*

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

N/A (a) Jury _____

(b) Judge without a jury _____

N/A 11. Did you testify at trial? Yes _____ No ☒

12. Did you appeal from the judgment of conviction?

N/A Yes _____ No ☒

13. If you did appeal, answer the following:

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) Date of appeal:

(Attach copy of order or decision, if available).

14.) If you did not appeal, explain briefly why you did not: *I know nothing about*

the law, My Attorney informed me that he would file a Motion

and petition and failed to do so. I have not been able to contact my

Legal Council. My attorney made all decisions.

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 ☒

1 16. If your answer to No 15 was "Yes", give the following information:

2 N/A (a) (1) Name of court: N/A

3 (2) Nature of proceedings: N/A

4
5 (3) Grounds raised: N/A

6
7
8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 N/A Yes ___ No ___

10 (5) Result: N/A

11 (6) Date of result: N/A

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each
13 result: N/A

14 (b) As to any second petition, application or motion, give the same information:

15 (1) Name of Court: N/A

16 (2) Nature of proceeding: N/A

17 (3) Grounds raised: N/A

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes ___ No ___ N/A

20 (5) Result: N/A

21 (6) Date of result: N/A

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each
23 result: N/A

24 (c) As to any third or subsequent additional application or motions, give the same information
25 as above, list them on a separate sheet and attach. N/A

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action
2 taken on any petition, application or motion? N/A

3 (1) First petition, application or motion?

4 Yes ☒ No ☐

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ☐ No ☐

8 Citation or date of decision: N/A

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain
10 briefly why you did not. (You may relate specific facts in response to this question. Your response
11 may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not
12 exceed five handwritten or typewritten pages in length). N/A

13
14 17. Has any ground being raised in this petition been previously presented to this or any other
15 court by way of petition for habeas corpus, motion or application or any other post-conviction
16 proceeding? If so, identify: N/A

17 (a) Which of the grounds is the same: N/A

18
19 (b) The proceedings in which these grounds were raised: N/A

20
21 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in
22 response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached
23 to the petition. Your response may not exceed five handwritten or typewritten pages in length). N/A

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). N/A Never Filed anything else before

7
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
10 (You must relate specific facts in response to this question. Your response may be included on paper
11 which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or
12 typewritten pages in length). No, I'm Filing within one year
13 of Judgment of Conviction

14
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes ___ No ☒

18 If "Yes", state what court and the case number: N/A

19
20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Jeffrey S. Maningo, DPD

22
23
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the
25 judgment under attack?

26 Yes ___ No ☒ If "Yes", specify where and when it is to be served, if you know: _____

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: Ineffective Assistance of Counsel

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): While in Custody at the Clark County Detention Center in Las Vegas Nevada after Being Transferred From California By US Extradition Services, I was unable to afford my own self appointed lawyer. So therefore was appointed a DPP by the Court Jeffrey S. Maningo, I also had a Investigator that was also appointed by the State of Nevada, And there was also another attorney that had been appointed by the state to my case.

While in the County Jail my lawyer was hard to get ahold of, there was very little investigating done on my case by my legal team for my defense. I was only visited by my attorney a very few times, and was eventually Coerced into making a plea agreement by my attorney out of fear of having to spend the rest of my life locked up in a Prison Facility Behind Bars.

I do not feel that I had adequate legal representation in and throughout my case, And after my sentencing Date on November 17th 2008 my attorney Mr. Jeffrey S. Maningo informed me that he would

1 start Filing Petitions and Motions to get me back
2 into Court, and he also informed me that he would
3 keep in touch with me, and talk to me again before
4 being transported to MSP High Desert State Prison.

5 I have never been able to get ahold of
6 my attorney since my sentencing, I have not received
7 mail from him, visits, or been able to contact with
8 him over the phone. I have been trying to get
9 ahold of him for the past 6 to 9 months and have
10 been unable to do so.

11 I myself know nothing about the law, and
12 I don't know if my attorney has filled any petitions
13 or motions to the court or even if he's still working
14 on my case. My attorney failed to file motions.
15 he failed to prepare for court. He didn't research
16 for my case or defense.

23. (b) GROUND TWO: Prior Bad Acts

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

During Court hearing, my Prior Criminal offenses that were committed as a juvenile from 1997-2003 my whole Juvenile record was allowed into court and used against me. None of my Juvenile criminal offenses had any similarities of the current charges, and my Juvenile record should not have been allowed in Court.

My Attorney allowed the evidence into court and my Juvenile record into Court without my permission. None of my prior Juvenile Record or any of my previous Jail incarcerations after that as an adult should have been allowed into Court.

23. (c) GROUND THREE: In competence

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): at the time of my case I was unable to fully understand or comprehend what was going on. I was never able to see a psychiatrist, and never had a psych evaluation done. I have been Add all my life. I didn't know anything about the legal system, and was also unaware of the punishment that was possible as of the crime's. ~~But were even~~

I was also Confused about what was happening during the plea agreement, and did not understand what was happening. And could not fully understand the advice that my attorney gave me.

I was never placed on any psych medication, even though I clearly needed it.

23. (d) GROUND FOUR: Double Jeopardy

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): I
was charged on Seperate Charges of Kidnapping
when the two people were together in the same
car, and was also charged with a Robbery and
use of a deadly weapon against the same 2
people who were in a group together and went
off of all the same Facts once some of
the charges were reduced.

(a) Ground Five: Self-Incrimination / Miranda Rights

Supporting FACTS (Tell your story briefly without citing cases or law.): When I was arrested in California I was never Read my Miranda Rights.

(b) Ground Six: Prosecutorial Misconduct

Supporting FACTS (Tell your story briefly without citing cases or law.): The Prosecutor in my case, Clark Summers, lied to me about evidence and to the judge about the weapon used in the crime saying that it was a red loaded gun when it was a fake gun, and also said that there was evidence that didn't exist, and also said that the witnesses she presented were all telling the truth.

(c) Ground Seven: Right To Counsel

Supporting FACTS (Tell your story briefly without citing cases or law.): When I was arrested in California and locked up in the LA County Jail and City Jail I asked to see an attorney but was never appointed a lawyer in the 2 weeks I was there. I had no legal counsel.

(d) Ground Eight: Brady Violation

Supporting FACTS (Tell your story briefly without citing cases or law.): Let a witness Sarah Allen lied about what happened to her, and cops caught in lies, even said that she was lying out of her mind. The Prosecutor knew that she was lying but still went forward with charges.

(a) Ground Nine: Direct Appeal

Supporting FACTS (Tell your story briefly without citing cases or law.): After my Sentencing hearing my Attorney told me that he would file for an appeal and never did so. And the Court never appointed Counsel for me to file for a direct appeal, even though they knew that I was unable to afford the services of an attorney.

(b) Ground Ten: Enhanced Sentencing

Supporting FACTS (Tell your story briefly without citing cases or law.): The Judge used my prior Juvenile convictions and my prior arrest to sentence me, and to give me the maximum sentence possible.

(c) Ground Eleven: Incomplete Record

Supporting FACTS (Tell your story briefly without citing cases or law.): I was indigent and was never given any of my transcripts. Even though I was continuously asking my Attorney for them, he continuously informed me that he would get them for me, but never did so.

(d) Ground Twelve: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

1 WHEREFORE, Roy Trost #1027585 prays that the court grant said
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at High Desert State Prison P.O. Box 650 Indian Springs, NV, 89070
4 on the 4th day of November, 2009

5
6 
Signature of Petitioner

7
8 **VERIFICATION**

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is
10 the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is
11 true and correct of his own personal knowledge, except as to those matters based on information and
12 belief, and to those matters, he believes them to be true.

13
14 
Signature of Petitioner

15
16
17 None NA
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, Roy James Frost, hereby certify, pursuant to NRCP 5(b), that on this 4th day of November, 2009, I mailed a true and correct copy of the foregoing, "Petition For writ of Habeas Corpus (Post Conviction)" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Warden D. Neven
HDSP
PO Box 650
Indian Springs, NV
89070-0650

Clark County Clerk of Court
300 E. Lewis
89155

Nevada Attorney General's Office
555 East Washington Ave
Las Vegas, NV
89101-0000

David Rogers
200 South Third Street
Las Vegas, NV
89154-2212

CC:FILE

DATED: this 4th day of November, 2009.

Courtney D. Frost
Roy James Frost #1027885
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition

For writ of Habeas Corpus (Post-Conviction)
(Title of Document)

filed in District Court Case number C247731

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

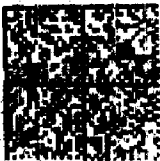
November 7th 2009
Date

Roy James Trost
Print Name

Inmate
Title

James Frost
#1027585 41036
Desert State Prison
P.O. Box 650
Indian Springs, Nevada
89070-0650

Wendy King



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CLERK OF COURT

Roy James Trust
Defendant/In Propria Persona
Post Office Box 650 (HDSP)
Indian Springs, Nevada. 89018

DISTRICT COURT
CLARK COUNTY, NEVADA

Roy James Trust)
Plaintiff,)
vs.)
State of Nevada)
County of Clark Defendant.)

Case No. C247731
Dept. No. XXI
Docket _____

MOTION TO APPOINT COUNSEL

DATE OF HEARING: TBD

TIME OF HEARING: TBD

COMES NOW the Defendant Roy James Trust, in proper persona and moves this court for an Order granting him counsel in the proceeding action.

This motion is made and based upon all papers and pleadings on file herein and attached points and authorities.

Dated this 4th day of November, 2009.

RECEIVED
NOV 10 2009
CLERK OF THE COURT

Respectfully Submitted,
Carolee [Signature]

1 Roy James Trust
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 Roy James Trust
9
10 vs.
11 State of Nevada
12 County of Clark

Case No. C247731
Dept No. XXI
Docket _____

13
14 **NOTICE OF MOTION**

15 YOU WILL PLEASE TAKE NOTICE, that _____

16 TBD

17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____
18 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

19
20 CC:FILE

21
22 DATED: this 4th day of November, 2009.

23
24 BY: Roy James Trust
25 Christy Lynn Jones #103885
26 In Propria Personam
27
28

1
2 **POINTS AND AUTHORITIES**

3 NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition;
4 response to dismiss.

5 "If the Court is satisfied that the allegation of indigency is true and the petition is not
6 dismissed summarily, the Court may appoint counsel to represent the petitioner."

7 NRS 171.188 Procedure for appointment of attorney for indigent defendant.

8 "Any defendant charged with a public offense who is an indigent may, be oral statement to the
9 District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to
10 represent him."

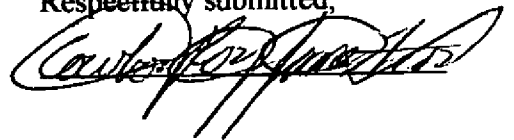
11 NRS 178.397 Assignment of counsel.

12 "Every defendant accused of a gross misdemeanor or felony who is financially unable
13 to obtain counsel is entitled to have counsel assigned to represent him at every stage of the
14 proceedings from his initial appearance before a magistrate or the court through appeal, unless he
15 waives such appointment."

16 WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to
17 allow him the assistance that is needed to insure that justice is served.

18
19 Dated this 4th day of November, 2007

20
21 Respectfully submitted,

22 
23
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25
26
27
28

CERTIFICATE OF SERVICE BY MAILING

I, Roy James Trost, hereby certify, pursuant to NRCP 5(b) that on this 4th
day of November, 2009, I mailed a true and correct copy of the foregoing "Motion to appoint Counsel"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, Fully prepaid,
addressed as follows:

Clark County Clerk of Court
200 E. Lewis
Las Vegas, Nevada
89155

DATED: THIS 4th day of November, 2009.

Roy James Trost
/In Propria Persona
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada. 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding motion

to Appoint Counsel
(Title of Document)

filed in District Court Case number C247731

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

Nov 4th 2009
Date

Roy James Trost
Print Name

Prisoner
Title

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PPH

FILED

NOV 10 2009

CLERK OF COURT

Roy James Trust
Inmate No. 1027585
HDSP to Roy (680)
Indian Springs, NV
89040

IN THE XXI JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Roy James Trust
Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No. C247731

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL
AND REQUEST FOR EVIDENTIARY
HEARING

COMES NOW Petitioner Roy James Trust, in Proper Person, and moves this Court
for its order allowing the appointment of counsel for Petitioner and for evidentiary hearing. This
motion is made and based in the interest of justice.

Pursuant to NRS 34.750(1),

A petition may allege that the petitioner is unable to pay the costs of
the proceedings or to employ counsel. If the court is satisfied that the
allegation of indigency is true and the petitioner is not dismissed
summarily, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

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CLERK OF THE COURT

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- (a) The issues presented are difficult;
 - (b) The petitioner is unable to comprehend the proceedings, or
 - (c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at HDSP Indian Spring NV
Nevada, where he is unemployed, indigent and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Further Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claim without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint counsel and set a date for evidentiary hearing for the reasons stated above.

DATED this 4th day of November, 2007.

Respectfully submitted,


Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Roy James Host, hereby certify pursuant to N.R.C.P. 5(b), that on this 4th day of November, 2002, I handed to a prison official for mailing a true and correct copy of the foregoing REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING addressed to: Clark County Clerk of Court
200 E Lewis
89155

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Ex Parte

motion For appointment of counsel and Request For
(Title of Document) Evidentiary Hearing

filed in District Court Case number C247731

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

November 11th 2009
Date

Roy James Trost
Print Name

Prisoner
Title

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
105 - 105
WILL FOLLOW VIA
U.S. MAIL**

14

PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
NOV 23 2009
Clerk of Court

ROY JAMES TROST,

Petitioner,

vs.

STATE OF NEVADA COUNTY OF
CLARK,

Respondent,

Case No: C247731
Dept No: 21

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on November 10, 2009. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 19th day of January, 2010, at the hour of

9:30 AM o'clock for further proceedings.

Valerie Adair
District Court Judge

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CLERK OF THE COURT

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1 TRAN

2
3 ORIGINAL

DISTRICT COURT

4 CLARK COUNTY, NEVADA

5
6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 ROY J. TROST,

10 Defendant.

CASE NO. C247731
DEPT. XXI

11
12
13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 TUESDAY, SEPTEMBER 23, 2008

15 RECORDER'S TRANSCRIPT OF HEARING RE:
16 ARRAIGNMENT CONTINUED

17 APPEARANCES:

18 FOR THE STATE:

GLEN P. O'BRIEN, ESQ.
Chief Deputy District Attorney
SUMMER C. CLARK, ESQ.
Deputy District Attorney

21 FOR THE DEFENDANT:

JEFFREY S. MANINGO, ESQ.
Deputy Public Defender

23
24
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

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CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., TUES., SEPT. 23, 2008

2
3 THE COURT: State versus Roy Trost. Mr. Trost is present in custody with
4 Mr. Maningo. We've got Mr. O'Brien and Ms. Clark for the State, and this is a
5 continued arraignment.

6 And do we have anything that needs to be filed this morning?

7 MR. MANINGO: I do, Judge.

8 THE COURT: That is the Guilty Plea Agreement?

9 MR. MANINGO: Yes, ma'am.

10 THE COURT: And was there an Amended Indictment or Information filed?

11 MR. O'BRIEN: The original Information filed reflects the plea.

12 THE COURT: All right. Very good.

13 MR. MANINGO: And, Judge, this matter is negotiated. Mr. Trost will be
14 pleading to six counts, and as we discussed in chambers and I'll discuss now for the
15 record, they will stack a certain way.

16 Count 1 will be a sexual assault with the use of a deadly weapon. So
17 that is a 10 to life with another 10 to life for the weapon enhancement. So a 20 to
18 life, and the named victim in that count will be Melissa Suddeth.

19 Count 2 will be a sexual assault. That is a 10 to life. The named victim
20 in that will be Amberly Curfman.

21 And Count 3 will be a kidnapping, a 5 to life which is also Amberly
22 Curfman as the named victim.

23 Those three counts are stipulated to run consecutively with one
24 another.

25 Count 4, Sexual assault on a minor under the age of 14, that is a 20 to

1 life, and the named victim is Sarah Quinn.

2 Count 5 is a sexual assault. That is a 10 to life, named victim Lacey
3 Marion.

4 And Count 6, a kidnapping, a 5 to life with the named victim Lacey
5 Marion.

6 Count 4, 5, and 6 stipulated to run consecutive.

7 And both sides to retain the right to argue as to whether the set of
8 counts 1, 2 and 3 will run consecutive or concurrent with Counts 4, 5 and 6.

9 THE COURT: All right.

10 Yes, Mr. O'Brien.

11 MR. O'BRIEN: Judge, that's all correct with the exception of it's sexual
12 assault with a minor under 16 as opposed to under 14.

13 MR. MANINGO: I'm sorry, yes, that's correct.

14 MR. O'BRIEN: And just for the record, as we told the Court in chambers, the
15 reason for this was the deal we had struck in justice court was going to be simply
16 two counts, both carrying a 35 to life with the possibility of the State arguing for
17 consecutive, the defense arguing for concurrent, but both parties agreeing it was a
18 35 to life.

19 When we realized when we looked at it we simply couldn't do that
20 under the law, that's when we fashioned the current plea that comes out the exact
21 same way for the defendant. It's more charges, but it comes out to the exact same
22 penalty, and both parties are in the same position for arguing for consecutive or
23 concurrent.

24 THE COURT: All right. Thank you.

25 MR. MANINGO: Correct.

1 THE COURT: All right. Mr. Trost, the Court is in possession of a written plea
2 of guilty which was signed by you. Before I may accept your written plea of guilty, I
3 must be satisfied that your plea is freely and voluntarily given.

4 Are you making this plea freely and voluntarily?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Other than what's contained in the written plea of guilty and
7 what has been stated here this morning in open court by your attorney Mr. Maningo
8 as well as the Deputy District Attorney Mr. O'Brien, have any promises or threats
9 been made to induce you to enter your plea?

10 THE DEFENDANT: No.

11 THE COURT: All right. Before you signed the written plea of guilty, did you
12 read it?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Did you understand everything contained in the written plea of
15 guilty?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. And you understand that you're stipulating essentially to
18 35 to life and 35 to life?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. And the State will probably argue that that be imposed
21 consecutively, which would be 70 to life. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And Mr. Maningo, I'm sure, will argue that that be imposed
24 concurrently which would be 35 to life, two sentences run concurrently?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And that will be up to the Court as to whether to impose those
2 sentences concurrently or consecutively. Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Now, before -- you said you read the guilty plea
5 agreement; is that right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And did you also read the information charging you with
8 Counts 1 through 6 to which you'll be pleading today?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Now, did you understand everything contained in the
11 guilty plea agreement as well as in the information?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Did you have a full opportunity to discuss your plea of guilty as
14 well as the charges to which you are pleading guilty with your attorney Mr. Maningo?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. Before the Court accepts your plea of guilty, is there
17 anything you would like to ask me about your plea or about the charge to which you
18 are pleading guilty -- charges, excuse me?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: All right. We're going to start with Count No. 1. Tell me in your
21 own words what you did on or between May 31, 2007, and May 18, 2008, that
22 causes you to plead guilty to Count No. 1, Sexual assault with use of a deadly
23 weapon.

24 THE DEFENDANT: I sexually assaulted a prostitute, and I had a knife.

25 THE COURT: All right. And do you acknowledge the name of the victim was

1 Melissa Suddeth?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. And in order to get her to comply against her will, you
4 brandished a knife; is that correct, or held it to her or whatever?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. And the way you sexually assaulted her was by placing
7 your penis into her genital opening; is that correct?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And that was by means of force and against her will; is that
10 true?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. Tell me then in your own words what you did
13 between that period within Clark County, Nevada, that causes you to plead guilty to
14 Count No. 2, Sexual Assault.

15 THE DEFENDANT: I sexually assaulted two girls in the parking lot of the
16 Desert Springs Hospital.

17 THE COURT: Okay.

18 MR. MANINGO: And, Judge, if I may, that is for Counts 2, 3, 5 and 6.

19 THE COURT: Okay. Now, was one of those girls a girl or woman by the
20 name of Amberly Curfman?

21 THE DEFENDANT: Yes, it was.

22 THE COURT: And did you sexually assault her by placing your penis in her
23 mouth?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And that was done against her will and without her consent; is

1 that right?

2 THE DEFENDANT: Yes, it was.

3 THE COURT: All right. And in order to accomplish that, did you -- well, how
4 did you accomplish that?

5 THE DEFENDANT: Well, I do want to bring this to the attention that it wasn't
6 a deadly weapon.

7 THE COURT: Well, this one you're not pleading to a deadly weapon with
8 respect to Ms. Amberly Curfman.

9 THE DEFENDANT: Okay.

10 THE COURT: Did you restrain her? Did you carry her away from
11 someplace? Did you keep her --

12 THE DEFENDANT: Oh, yeah, they were in a car.

13 THE COURT: All right. And did you make them go to another location, or
14 what did you do?

15 THE DEFENDANT: They were getting into their car, and I just got in their car.

16 THE COURT: Okay. And you forced them to remain in the vehicle; is that
17 right?

18 THE DEFENDANT: Correct.

19 THE COURT: All right. Mr. O'Brien.

20 MR. O'BRIEN: Judge, the only thing I was going to supplement the facts with,
21 he probably is disputing what he had. The girls, however, would have testified that
22 he had what appeared to them to be a deadly weapon, a firearm. I think he's going
23 to allege it was a BB gun or a toy or something like that, but that was what he used
24 to force them to comply although he's not charged with a deadly weapon, that's how
25 he forced them to comply with the kidnapping and the sexual assault.

1 MR. MANINGO: We can argue that at sentencing, but for the purpose of --

2 THE COURT: But for the purposes of today it's not a deadly weapon.

3 So you confined them within the vehicle for the purpose of committing
4 sexual assault; is that right?

5 THE DEFENDANT: That is correct.

6 THE COURT: And you detained them within the vehicle thereby committing
7 the crime of first degree kidnapping; is that correct?

8 THE DEFENDANT: Correct.

9 THE COURT: And the other woman or girl in the car was an individual by the
10 name of Sarah Quinn; is that right?

11 MR. MANINGO: No, Judge.

12 THE COURT: Oh, that's a different one.

13 MR. O'BRIEN: Lacey Marion.

14 THE COURT: Okay. Was a girl by the name of Lacey Marion; is that right?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And you also kept Ms. Lacey Marion in the car against her will
17 thereby detaining her for the purpose of committing sexual assault; is that right?

18 THE DEFENDANT: That is correct.

19 THE COURT: All right. And you digitally penetrated her by placing your
20 finger into her genital opening; is that right?

21 THE DEFENDANT: That is correct.

22 THE COURT: All right. And then finally, Count No. 4, Sexual assault with a
23 minor under 16 years of age. Tell me what you did that causes you to plead guilty to
24 Count No. 4, Sexual assault with a minor under 16 years of age.

25 THE DEFENDANT: I inappropriate touched a girl that was under the age of

1 16, sexual.

2 THE COURT: All right. Did you touch her by placing your finger into her
3 genital opening?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And you acknowledge that she was under the age of 16; is that
6 right?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. And that was done against her will or under
9 conditions where she could not resist or understand what you were doing?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Is that acceptable with the State?

12 MR. O'BRIEN: Yes, Your Honor.

13 THE COURT: All right. Mr. Trost, the Court finds that your pleas of guilty
14 have been freely and voluntarily given and hereby accepts your plea of guilty.

15 The matter is referred to the Department of Parole and Probation for
16 presentence investigation report and set over for rendition of sentencing, and what
17 we discussed in chambers is there's going to be a number of speakers. We're going
18 to do this at 10:30, and that way the other inmates --

19 And I believe, Mr. Maningo, you had requested that; is that right?

20 MR. MANINGO: Yes, Judge, that's correct.

21 MR. O'BRIEN: Judge, and we'll have some time because there's certain --
22 We want to all actually have time to bring the facts to the Court's light, put on some
23 sort of a presentation and the witnesses. So I'm anticipating a minimum of an hour
24 perhaps even two hours for the State to put on what it wants to present because this
25 Court was not able to hear the trial, and I think it's important you know all the facts

1 around this case.

2 So I know that's pretty late in the morning. Is that going to have any
3 effect on lunch or something like that as far as your staff goes? I just want to make
4 sure we've got enough time for the Court to hear all we have to give.

5 THE COURT: You are so considerate. We do what we have to do. We could
6 actually, I guess, put it on for a Monday, which we don't normally have a calendar,
7 and that's not a problem because you guys are on a specialty team.

8 Let's see. This would be a 45 day set.

9 MR. O'BRIEN: There's no psychosexual required so.

10 THE COURT: Right. Let's go ahead and do Monday, November 10 --

11 MR. O'BRIEN: Judge, I apologize. We're both out of the jurisdiction, I think,
12 on that day. So is it possible to do the Monday after the 17th?

13 Not together.

14 THE COURT: Well, I know Mr. O'Brien has an upcoming wedding so that
15 really would be very bad form, Mr. O'Brien.

16 MR. O'BRIEN: I wasn't going to say that on the record, Judge, but that's
17 where I'll be.

18 THE CLERK: November 17th, and you want to do this --

19 THE COURT: Let's do it at -- is that a Monday?

20 We'll do it at 9:30.

21 MR. O'BRIEN: On the 17th?

22 THE COURT: Right.

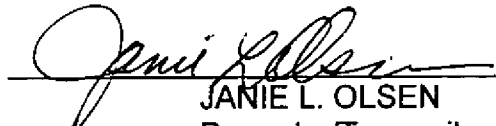
23 MR. O'BRIEN: And actually, just to correct myself, it looks like I would have
24 been back by that date but my cocounsel would not. So the 17th is fine.

25 / / /

1 MR. MANINGO: Judge, I'll be working all those days.

2 -oOo-

3 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
4 proceedings in the above-entitled case to the best of my ability.

5 
6 JANIE L. OLSEN
7 Recorder/Transcriber
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ORIGINAL

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 H. LEON SIMON
6 Deputy District Attorney
7 Nevada Bar #000411
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

DEC - 8 2009

John L. ...
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)

9 Plaintiff,

10 -vs-

11 ROY J. TROST,
12 #2679137

13 Defendant.

CASE NO: C247731

DEPT NO: XXI

ORDER FOR TRANSCRIPT

14 Upon the ex-parte application of the State of Nevada, represented by DAVID
15 ROGER, District Attorney, by and through, H. LEON SIMON, Deputy District Attorney,
16 and good cause appearing therefor,

17 IT IS HEREBY ORDERED that a transcript of the Hearing heard on the 23rd day of
18 September, 2008, at 9:30 A.M., be prepared by Janie Olsen, Court Reporter/Recorder for the
19 above-entitled Court.

20 DATED this 30th day of November, 2009.

21 *Valerie Aden*
22 DISTRICT JUDGE

23 DAVID ROGER
24 District Attorney
25 Nevada Bar #002781

26 BY

H. Leon Simon
27 H. LEON SIMON
28 Deputy District Attorney
Nevada Bar #000411

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CLERK OF THE COURT

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CLERK OF THE COURT

RSPN
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
	)	CASE NO: C247731
Plaintiff,)	
	)	DEPT NO: XXI
-vs-)	
)	
ROY J. TROST,)	
#2679137)	
)	
Defendant.)	

STATE'S RESPONSE TO DEFENDANT'S PETITION
FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE OF HEARING: JANUARY 19, 2010
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through W. JAKE MERBACK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal
4 Complaint with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count
5 2 – Burglary With Use of a Deadly Weapon, Counts 3 and 4 – Coercion With Use of a
6 Deadly Weapon, Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon,
7 Counts 7 and 8 – Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault,
8 Counts 10 and 11 – Open and Gross Lewdness, and Counts 12 and 13 – Robbery With Use
9 of a Deadly Weapon.

10 On July 31, 2008, the State filed an Amended Criminal Complaint, charging
11 Defendant with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual
12 Assault With Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon
13 With Intent to Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual
14 Assault With a Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a
15 Deadly Weapon, Count 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion
16 With Use of a Deadly Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly
17 Weapon, Count 9 – First Degree Kidnapping With Use of a Deadly Weapon, Count 10 –
18 Sexual Assault With a Deadly Weapon, Count 11 – Sexual Assault With a Deadly Weapon,
19 Count 12 – Sexual Assault With a Deadly Weapon, Count 13 – Open and Gross Lewdness
20 With Use of a Deadly Weapon, Count 14 – Open and Gross Lewdness With Use of a Deadly
21 Weapon, Count 15 – Robbery With Use of a Deadly Weapon, and Count 16 – Robbery With
22 Use of a Deadly Weapon.

23 On September 11, 2008, the State charged Defendant by way of Information with
24 Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3
25 – First Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of
26 Age, Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

27 //

28 //

1 On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the
2 charges as contained in the Information filed September 11, 2008. The Guilty Plea
3 Agreement (GPA), in which both parties stipulated that Counts 1-3 will run consecutively to
4 each other and Counts 4-6 will run consecutively to each other but both parties retain the
5 right to argue whether the two sets of counts would run concurrently or consecutively, was
6 filed in open court the same day.

7 On November 17, 2008, Defendant was sentenced as to Count 1 – Life with the
8 possibility of parole after one hundred twenty (120) months, plus an equal and consecutive
9 term of Life with the possibility of parole after one hundred twenty (120) months; as to
10 Count 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2
11 to run consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty
12 (60) months, Count 3 to run consecutive to Count 2; as to Count 4 – Life with the possibility
13 of parole after three hundred (300) months, Count 4 to run consecutive to Count 3; as to
14 Count 5 – Life with the possibility of parole after one hundred twenty (120) months, Count 5
15 to run consecutive to Count 4; as to Count 6 – Life with the possibility of parole after sixty
16 (60) months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a
17 special sentence of lifetime supervision and register as a sex offender upon any release from
18 custody. Defendant was also given one hundred sixty-three (163) days credit for time
19 served. The Judgment of Conviction was filed on November 25, 2008.

20 On December 9, 2008, at the State's request, the Court modified Defendant's
21 sentence as to Count 4, making the sentence Life with the possibility of parole after two
22 hundred forty (240) months, instead of three hundred (300) months.

23 On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas
24 Corpus (Post-conviction), motion for appointment of counsel, and request for evidentiary
25 hearing. The State's Response is as follows.

26 //

27 //

28 //

ARGUMENT

I. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

In Defendant's first ground for relief, he alleges that his former counsel was ineffective for not visiting him often enough and failing to investigate his case. However, Defendant's claims of ineffective assistance of counsel lack merit.

The Sixth Amendment to the United State Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." This court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006). Trial counsel has the “immediate and
3 ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and
4 what defenses to develop. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

5 Based on the above law, the role of a court in considering allegations of ineffective
6 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
7 whether, under the particular facts and circumstances of the case, trial counsel failed to
8 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
9 711 (1978). This analysis means the court should neither “second guess reasoned choices
10 between trial tactics nor does it mean that defense counsel, to protect himself against
11 allegations of inadequacy, must make every conceivable motion no matter how remote the
12 possibilities are of success.” Id. To be effective, the constitution “does not require that
13 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
14 counsel cannot create one and may disserve the interests of his client by attempting a useless
15 charade.” U.S. v. Cronin, 466 US 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

16 “There are countless ways to provide effective assistance in any given case. Even the
17 best criminal defense attorneys would not defend a particular client in the same way.”
18 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
19 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
20 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
21 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
22 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
23 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

24 Even if a defendant can demonstrate that his counsel's representation fell below an
25 objective standard of reasonableness, he must still demonstrate prejudice and show a
26 reasonable probability that, but for counsel's errors, the result of the trial would have been
27 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
28 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability

1 sufficient to undermine confidence in the outcome.” McNelton, 115 Nev. at 403, 990 P.2d at
2 1268 (citing Strickland, 466 U.S. at 687-89 & 694, 104 S. Ct. at 2064-65 & 2068).

3 There is a strong presumption that appellate counsel's performance was reasonable
4 and fell within “the wide range of reasonable professional assistance.” See United States v.
5 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at
6 2065. The federal courts have held that a claim of ineffective assistance of appellate counsel
7 must satisfy the two-prong test set forth by Strickland, 466 U.S. at 687-688, 694, 104 S. Ct.
8 at 2065, 2068; Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United
9 States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir.
10 1991). In order to satisfy Strickland’s second prong, the defendant must show that the
11 omitted issue would have had a reasonable probability of success on appeal. See Duhamel v.
12 Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

13 This Court has held that all appeals must be “pursued in a manner meeting high
14 standards of diligence, professionalism and competence.” Burke v. State, 110 Nev. 1366,
15 1368, 887 P.2d 267, 268 (1994). In Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308,
16 3312 (1983), the Supreme Court recognized that part of professional diligence and
17 competence involves “winnowing out weaker arguments on appeal and focusing on one
18 central issue if possible, or at most on a few key issues.” Id. at 751 -752, at 3313. In
19 particular, a “brief that raises every colorable issue runs the risk of burying good arguments .
20 . . in a verbal mound made up of strong and weak contentions.” Id. at 753, at 3313. The
21 Court also held that, “for judges to second-guess reasonable professional judgments and
22 impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client
23 would disserve the very goal of vigorous and effective advocacy.” Id. at 754, at 3314.

24 Here, Defendant first claims that his counsel was ineffective for not properly
25 investigating his case. However, a defendant who contends that his attorney was ineffective
26 because he did not adequately investigate must show how a better investigation would have
27 rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533
28 (2004). In his petition, Defendant merely claims his counsel did not investigate his case

1 without giving any factual basis for that claim whatsoever. Defendant does not even allege
2 what a better investigation would have revealed, let alone how any possible additional
3 information would have made a more favorable outcome probable. As such, Defendant fails
4 to meet his burden per Molina and he is not entitled to relief.

5 Defendant also claims that his counsel was ineffective because he only visited him a
6 few times. However, a defendant is not entitled to a particular “relationship” with his
7 attorney. Morris v. Slappy, 461 U.S. 1, 103 S. Ct. 1610 (1983). There is no requirement for
8 any specific amount of communication as long as counsel is reasonably effective in his
9 representation. Id. First, Defendant does not offer any factual allegations for his claim.
10 Second, even if true, Defendant is not entitled to relief per Morris v. Slappy.

11 Further, neither of these claims entitle Defendant to relief, as they are bare allegations
12 which are insufficient. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984)
13 (holding that bare or naked allegations are insufficient to entitle a defendant to post-
14 conviction relief). Defendant’s bare allegations also fail to show either one of the Strickland
15 requirements and has therefore entirely failed to meet his burden of proof. Accordingly,
16 these claims of ineffective assistance of counsel should be denied.

17 **II. DEFENDANT’S PLEA OF GUILTY WAS FREELY, KNOWINGLY** 18 **AND VOLUNTARILY GIVEN.**

19 Also in ground one of Defendant’s Petition, Defendant claims that he was coerced
20 into pleading guilty by his attorney. Further, in ground three, Defendant claims he was
21 incompetent during the negotiations and did not understand what was happening. However,
22 Defendant’s arguments that he did not enter into his guilty plea knowingly, freely and
23 voluntarily are belied by the record.

24 A plea of guilty is presumptively valid, particularly where it is entered into on the
25 advice of counsel. Jeziarski v. State, 107 Nev. 395, 812 P.2d 355 (1991). The Defendant
26 has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v.
27 State, 102 Nev. 268, 721 P.2d 364 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980);
28 Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985). In determining whether the

1 guilty plea is knowingly and voluntarily entered, the Court is required to review the totality
2 of the circumstances surrounding the Defendant's plea. Id. In Bryant, the Nevada Supreme
3 Court made it very clear that in reviewing the sufficiency of plea canvasses, the Court is
4 permitted to review the "totality of the facts and circumstances of a Defendant's case." In so
5 doing, the reviewing Court may look at matters which extend beyond the formal entry of the
6 plea. Id.

7 This standard requires the court to personally address the defendant at the time he
8 enters his plea in order to determine whether he understands the nature of the charges to
9 which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely
10 simply on a written plea agreement without some verbal interaction with a defendant. Id.
11 Thus, a "colloquy" is constitutionally mandated, and a "colloquy" is but a conversation in a
12 formal setting, such as that occurring between an official sitting in judgment of an accused at
13 plea. See id. However, the court also need not conduct a ritualistic oral canvass. State v.
14 Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of pleas of
15 guilty "do not require the articulation of talismanic phrases. It required only 'that the record
16 affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly
17 and voluntarily.'" Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); Brady
18 v. United States, 397 U.S. 742, 747-748, 90 S. Ct. 1463, 1470 (1970).

19 On September 23, 2008, Defendant entered into a guilty plea agreement which was
20 filed in open court. This Agreement, signed by Defendant, specifically reads in pertinent
21 part as follows:

22 CONSEQUENCES OF PLEA

23 I understand that by pleading guilty *I admit the facts* which
24 support all the elements of the offense(s) to which I now plead
as set forth in Exhibit "1".

25 I understand that as a consequence of my plea of guilty as to

26 Count 1 - the Court must sentence me to LIFE with the
27 possibility of parole with parole eligibility beginning at ten (10)
28 years with and equal and consecutive term of LIFE with the
possibility of parole with parole eligibility beginning at ten (10)
years for the use of a deadly weapon; as to

1 When Defendant signed the GPA, he agreed that he accepted the language, including the
2 statements quoted above. Essentially, Defendant is asking this Court is disregard the legal
3 agreement he made as well as the assertions he previously made to the court. Further,
4 Defendant not only signed the GPA and agreed with its contents, he also swore under oath
5 that he was guilty of Sexual Assault with Use of a Deadly Weapon, Sexual Assault, First
6 Degree Kidnapping, and Sexual Assault With a Minor Under Sixteen Years of Age on
7 September 23, 2008. The court's canvass of Defendant included the following:

8 THE COURT: Mr. Trost, the Court is in possession of a written
9 guilty plea signed by you. Before I can accept your guilty plea,
10 I must be satisfied that your plea is freely and voluntarily given.
Are you making this plea freely and voluntarily?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Other than what's contained in the written plea
13 of guilty and what has been stated here this morning in open
14 court by your attorney Mr. Maningo as well as the Deputy
District Attorney Mr. O'Brien, have any promises or threats
been made to induce you to enter your plea?

15 THE DEFENDANT: No.

16 THE COURT: All right. Before you signed the written plea of
guilty, did you read it?

17 THE DEFENDANT: Yes, ma'am

18 THE COURT: *Did you understand everything contained in the*
19 *written plea of guilty?*

20 THE DEFENDANT: *Yes, ma'am.*

21 THE COURT: *Okay. And you understand that you are*
22 *stipulating essentially to 35 to life and 35 to life?*

23 THE DEFENDANT: *Yes, ma'am.*

24 THE COURT: *Okay. And the State will probably argue that*
25 *that be imposed consecutively, which would be 70 to life. Do*
26 *you understand that?*

27 THE DEFENDANT: *Yes, ma'am.*

28 THE COURT: *And Mr. Maningo, I'm sure, will argue that*
that be imposed concurrently which would be 35 to life, two
sentences running concurrently?

THE DEFENDANT: *Yes, ma'am.*

1 THE COURT: And that will be up to the Court as to whether to
2 impose those sentences concurrently or consecutively. Do you
understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Now, before -- you said you read the
5 guilty plea agreement; is that right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: *Okay. Now, did you understand everything*
8 *contained in the guilty plea agreement as well as in the*
information?

9 THE DEFENDANT: *Yes, ma'am.*

10 THE COURT: Did you have a full opportunity to discuss your
11 plea of guilty as well as the charges to which you are pleading
guilty with your attorney Mr. Maningo?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay, Before the Court accepts your plea of
14 guilty, is there anything you would like to ask me about your
pleas or about the charge to which you are pleading guilty --
charges, excuse me?

15 THE DEFENDANT: No, ma'am.

16 Arraignment Transcript (AT), 9-23-08, p. 4-5 (emphasis added).

17 Clearly, the record belies Defendant's current claims that he did not understand the
18 proceedings and that he was coerced. In fact, the Court then asked Defendant what he did to
19 cause him to plead guilty as to each of the six counts. AT, p. 5-9. During this colloquy,
20 Defendant was not just an inactive participant, answering yes and no. He made admissions
21 in his own words, such as: "I sexually assaulted a prostitute, and I had a knife;" "I sexually
22 assaulted two girls in the parking lot of the Desert Springs Hospital;" and "I inappropriate
23 touched a girl that was under the age of 16, sexual." AT, p. 5:24, 6:15-16, 8:25-9:1. Further,
24 Defendant had the presence of mind to dispute whether he actually had a deadly weapon
25 during one of his attacks as follows:

26 THE COURT: And did you sexually assault her by placing your
27 penis in her mouth?

28 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And that was done against her will and without
2 her consent; is that right?

3 THE DEFENDANT: Yes, it was.

4 THE COURT: All right. And in order to accomplish that, did
5 you -- well, how did you accomplish that?

6 THE DEFENDANT: *Well, I do want to bring this to the*
7 *attention that it wasn't a deadly weapon.*

8 THE COURT: Well, this one you're not pleading to a deadly
9 weapon with respect to Ms. Amberly Curfman.

10 THE DEFENDANT: Okay.

11 THE COURT: Did you restrain her? Did you carry her away
12 from someplace? Did you keep her --

13 THE DEFENDANT: Oh, yeah, they were in a car.

14 THE COURT: All right. And did you make them go to another
15 location, or what did you do?

16 THE DEFENDANT: They were getting into their car, and I just
17 got into their car.

18 THE COURT: Okay. And you forced them to remain in the
19 vehicle; is that right?

20 THE DEFENDANT: Correct.

21 AT, p. 6-7 (emphasis added).
22

23 Defendant's plea canvass distinctly shows that Defendant understood the specific
24 negotiations in his case and that he felt free to dispute anything with which he disagreed.
25 Yet, he chose to plead guilty on only six of the sixteen counts with which he was charged in
26 the Amended Criminal Complaint. As such, his claims of lack of voluntariness and
27 understanding are completely without merit, as they are belied by the record. Accordingly,
28 Defendant is not entitled to relief and his petition should be denied.

1 **III. ALL OTHER CLAIMS IN DEFENDANT’S PETITION ARE NOT**
2 **COGNIZABLE AND MUST BE DISMISSED.**

3 The remaining grounds in Defendant’s Petition – Ground Two: Prior Bad Acts,
4 Ground Four: Double Jeopardy, Ground Five: Self-Incrimination/Miranda Rights, Ground
5 Six: Prosecutorial Misconduct, Ground Seven: Right to Counsel, Ground Eight: Brady
6 Violation, Ground Ten: Enhanced Sentencing, Ground Eleven: Incomplete Record – are
7 inappropriate for a post-conviction petition for relief. Thus, they must be dismissed.

8 NRS 34.810(1)(a) states:

9 1. The court shall dismiss a petition if the court determines that:

10 (a) The petitioner's conviction was upon a plea of guilty or
11 guilty but mentally ill and the petition is not based upon an
12 allegation that the plea was involuntarily or unknowingly
 entered or that the plea was entered without effective assistance
 of counsel

13 Moreover, it is well established that once a defendant pleads guilty, he waives all
14 defects that occurred before the plea, including constitutional errors. Webb v. State, 91 Nev.
15 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267, 93 S.
16 Ct. 1602, 1608 (1973)); Kirksey v. State, 112 Nev. 980, at 999, 923 P.2d 1102, 1114 (1996)
17 (citing Warden, Nevada State Prison v. State, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984)).

18 Here, Defendant’s claims in these grounds are not only barred by NRS 34.810(1)(a),
19 but they are also rendered moot as Defendant waived any defect in the evidence. Further, as
20 Defendant waived any defect in the proceedings, even if his claims were not belied by the
21 record, which they are, Defendant is not entitled to relief. Accordingly, these claims must be
22 dismissed.

23 **IV. DEFENDANT IS NOT ENTITLED TO COURT APPOINTED COUNSEL.**

24 There is no federal constitutional right under the Sixth Amendment and no state
25 constitutional right to counsel in post-conviction relief proceedings. Coleman v. Thompson,
26 501 U.S. 722, 725, 111 S. Ct. 2546, 2552 (1991); McKague v. Warden, 112 Nev. 159, 163,
27 912 P.2d 255, 257-258 (1996). However, a district court judge has the discretion to appoint
28 counsel under the following conditions pursuant to NRS 34.750:

1 A petition may allege that the petitioner is unable to pay the costs
2 of the proceedings or to employ counsel. If the court is satisfied
3 that the allegation of indigency is true and the petition is not
4 dismissed summarily, the court may appoint counsel at the time
the court orders the filing of an answer and a return. In making
its determination, the court may consider whether:

- 5 (a) the issues are difficult;
- 6 (b) the petitioner is unable to comprehend the proceedings; or
- 7 (c) counsel is necessary to proceed with discovery.

8 NRS 34.750 (1999).

9 Furthermore, to be entitled to counsel, a defendant “must show that the requested
10 review is not frivolous before he may have an attorney appointed.” Peterson v. Warden,
11 Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
12 177.345(2)).

13 Here, Defendant has pled guilty and has been sentenced, so he is not entitled to post-
14 conviction counsel under Coleman or McKague. Further, Defendant has failed to make the
15 threshold showing, per NRS 34.750. In fact, none of those requirements are met in this case:
16 Defendant has not raised any complex issues; Defendant has given no indication that he is
17 unable to comprehend the proceedings, instead simply states he has limited knowledge of the
18 law; and there is no discovery required in any of the issues he has raised thus far. In
19 addition, Defendant has not met his burden of showing that his requested review is not
20 frivolous as required by Peterson. In fact, Defendant’s motion provides no information
21 specific to the issues Defendant has raised or plans to raise. Accordingly, Defendant’s
22 motion should be denied.

23 **V. DEFENDANT IS ONLY ENTITLED TO A VERY LIMITED**
24 **EVIDENTIARY HEARING.**

25 A defendant is entitled to an evidentiary hearing when his petition is supported by
26 specific factual allegations, which, if true, would entitle him to relief, unless the factual
27 allegations are belied by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
28 605 (1994). “The judge or justice, upon review of the return, answer, and all supporting

documents which are filed, shall determine whether an evidentiary hearing is required.” NRS 34.770(1). However, “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record.” Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Here, given the unique facts of this case, Defendant is entitled to a very limited evidentiary hearing to resolve a single issue. Specifically, Defendant is entitled to a hearing to resolve his claim the counsel was seeking post-conviction relief on his behalf; specifically, in Ground One that counsel told Defendant that he would file post-conviction motions for him and in Ground Two that counsel told Defendant he would file a direct appeal. As Defendant’s Petition can be resolved without expanding the record as to every other issue, he is not entitled to a hearing on those claims, per Marshall. As such, Defendant’s request for an evidentiary hearing should be denied as to all of his grounds, except for the depreviation of an appeal or other post-conviction motion for relief.

CONCLUSION

Based on the aforementioned argument, the State respectfully requests that this court grant a very limited evidentiary hearing to resolve the single issue of whether former counsel told Defendant that he would file a direct appeal or other post-conviction motions for relief on his behalf. The State further respectfully requests this Court DENY Defendant's Motion for Appointment of Counsel and Petition for Writ of Habeas Corpus (Post-Conviction) as to all the other grounds.

DATED this 11th day of January, 2010.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ W. JAKE MERBACK
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 11th day of
January, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY TROST, BAC#1027585
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

/s/ HOWARD CONRAD
Secretary for the District Attorney's Office

hjc/SVU

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Ann L. Quinn
CLERK OF THE COURT

OPI
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada, 89155-2211
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

Case No. C247731

Dept No. XXI

ORDER FOR PRODUCTION OF INMATE

ROY JAMES TROST, BAC # 1027585

DATE OF HEARING: MARCH 2, 2010

TIME OF HEARING: 10:30 A.M.

TO: DWIGHT NEVEN, WARDEN, HIGH DESERT STATE PRISON

TO: DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID ROGER, District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and good cause appearing therefor,

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CLERK OF THE COURT

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JAN 25 2010

CLERK OF THE COURT

IT IS HEREBY ORDERED that DWIGHT NEVEN, WARDEN of HIGH DESERT STATE PRISON shall be, and is, hereby directed to produce ROY JAMES TROST, Defendant in Case No. C247731, on a charge of SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, SEXUAL ASSAULT, FIRST DEGREE KIDNAPPING and SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said Defendant is currently incarcerated in the HIGH DESERT STATE PRISON located in Indian Springs, Nevada, and his presence will be required in Las Vegas, Nevada, commencing on MARCH 2, 2010, at the hour of 10:30 o'clock a.m. and continuing until completion of the prosecution's case against the said Defendant.

IT IS FURTHER ORDERED that DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada, shall accept and retain custody of the said Defendant in the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or in the alternative shall make all arrangements for the transportation of the said Defendant to and from the Nevada Department of Corrections facility which are necessary to insure the Defendant's appearance in Clark County pending completion of said matter, or until further Order of this Court.

DATED this 22nd day of January, 2010.

DISTRICT JUDGE

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY H. Leon Simon for
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

hjc/SVU


CLERK OF THE COURT

1 **NOH**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 H. LEON SIMON
6 Chief Deputy District Attorney
7 Nevada Bar #000411
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,)
11 Plaintiff,) Case No. C247731
12 -vs-) Dept No. XXI
13 ROY JAMES TROST,)
14 #2679137)
15 Defendant.)

16
17 **NOTICE OF EVIDENTIARY HEARING**

18 **TO: ROY JAMES TROST, BAC#1027585.**

19 **YOU AND EACH OF YOU ARE HEREBY NOTIFIED** that an Evidentiary
20 Hearing for the above entitled matter will be heard in District Court, **Department XXI**,
21 Clark County, 200 Lewis Avenue, Las Vegas, NV 89155 on the **2ND day of MARCH, 2010**
22 **at 10:30 A.M.** or as soon thereafter as counsel may be heard.

23 DATED this 29th day of January, 2010.

24 DAVID ROGER
25 Clark County District Attorney
26 Nevada Bar#002781

27 BY /s/ H. LEON SIMON
28 H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 29th day of January, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY JAMES TROST, BAC#1027585
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ HOWARD CONRAD
Secretary, District Attorney's Office

hjc/SVU

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1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

MAR 25 9 25 AM '10

CLERK OF COURT

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 ROY TROST,
14 #2679137)

15 Defendant.)

CASE NO: C247731

DEPT NO: XXI

16 **FINDINGS OF FACT, CONCLUSIONS OF**

17 **LAW AND ORDER**

18 DATE OF HEARING: MARCH 2, 2010
19 TIME OF HEARING: 10:30 A.M.

20 THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR,
21 District Judge, on the second day of March, 2010, the Petitioner being present, Proceeding
22 IN FORMA PAUPERIS, the Respondent being represented by DAVID ROGER, District
23 Attorney, by and through FELICIA QUINLAN, Deputized Law Clerk, and the Court having
24 considered the matter, including briefs, transcripts, oral arguments, and documents on file
25 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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CLERK OF THE COURT

FINDINGS OF FACT

1. On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary With Use of a Deadly Weapon, Counts 3 and 4 – Coercion With Use of a Deadly Weapon, Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 – Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Counts 10 and 11 – Open and Gross Lewdness, and Counts 12 and 13 – Robbery With Use of a Deadly Weapon.
2. On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.
3. On September 11, 2008, the State charged Defendant by way of Information with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

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- 1 4. On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the
2 charges as contained in the Information filed September 11, 2008. The Guilty Plea
3 Agreement (GPA), in which both parties stipulated that Counts 1-3 will run
4 consecutively to each other and Counts 4-6 will run consecutively to each other but
5 both parties retain the right to argue whether the two sets of counts would run
6 concurrently or consecutively, was filed in open court the same day.
- 7 5. On November 17, 2008, Defendant was sentenced as to Count 1 – Life with the
8 possibility of parole after one hundred twenty (120) months, plus an equal and
9 consecutive term of Life with the possibility of parole after one hundred twenty (120)
10 months; as to Count 2 – Life with the possibility of parole after one hundred twenty
11 (120) months, Count 2 to run consecutive to Count 1; as to Count 3 – Life with the
12 possibility of parole after sixty (60) months, Count 3 to run consecutive to Count 2; as
13 to Count 4 – Life with the possibility of parole after three hundred (300) months,
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15 parole after one hundred twenty (120) months, Count 5 to run consecutive to Count 4;
16 as to Count 6 – Life with the possibility of parole after sixty (60) months, Count 6 to
17 run consecutive to Count 5. Defendant was further ordered to a special sentence of
18 lifetime supervision and register as a sex offender upon any release from custody.
19 Defendant was also given one hundred sixty-three (163) days credit for time served.
20 The Judgment of Conviction was filed on November 25, 2008.
- 21 6. On December 9, 2008, at the State's request, the Court modified Defendant's
22 sentence as to Count 4, making the sentence Life with the possibility of parole after
23 two hundred forty (240) months, instead of three hundred (300) months.
- 24 7. On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas
25 Corpus (Post-conviction), motion for appointment of counsel, and request for
26 evidentiary hearing. The State filed its response on January 11, 2010.

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- 1 8. On March 2, 2010, the district court held a limited evidentiary hearing to resolve the
2 issue of whether Defendant's counsel promised to file an appeal on his behalf.
3 Defendant's former counsel, Jeffrey Maningo, Esq., testified that he did not recall
4 telling Defendant he would file an appeal, either immediately after sentencing or any
5 other time. Mr. Maningo further testified that he would have pursued an appeal by
6 seeking the advice of the Public Defender's appellate division supervisor in an effort
7 to find appealable issues if he could not find any on his own. He would have noted
8 the file regarding Defendant asking for an appeal and any follow-up work he would
9 have done to pursue an appeal, but there are no such notes in Defendant's file. Mr.
10 Maningo testified that he felt very badly for Defendant because he thought, based on
11 the mitigating evidence he presented to the court, Defendant would not have gotten
12 such a harsh sentence; however, there was no basis for an appeal in Defendant's case.
- 13 9. Mark LaPerna also testified at the evidentiary hearing on March 2, 2010, as he was
14 Defendant's friend and roommate at the time of the commission of the crimes and
15 Defendant's arrest. He testified that he knew Defendant wanted an appeal and that he
16 tried to contact Mr. Maningo by calling four times. However, these four phone calls
17 occurred before Defendant was sentenced, not during the time Mr. LaPerna and
18 Defendant discussed his desire to appeal. Mr. LaPerna testified that he did not
19 attempt to contact Mr. Maningo after discovering Defendant wanted an appeal.
- 20 10. Defendants claims in grounds two – prior bad acts, four – double jeopardy, five –
21 Self-Incrimination/Miranda Rights, six – Prosecutorial Misconduct, seven – Right to
22 Counsel, eight – Brady Violation, ten – Enhanced Sentencing, and eleven –
23 Incomplete Record, do not entitle him to relief as they are not cognizable claims.
- 24 11. Defendant received effective assistance of counsel.
- 25 12. Defendant entered his guilty plea freely, knowingly, and voluntarily.
- 26 13. Defendant has not shown by a preponderance of the evidence that he was deprived of
27 his right to an appeal.
- 28 14. Defendant is not entitled to court appointed post-conviction counsel.

CONCLUSIONS OF LAW

- 1
2 1. To prevail on a claim of ineffective assistance of trial counsel a defendant must prove
3 he was denied "reasonably effective assistance" of counsel by satisfying the two-
4 prong test of Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also State v.
5 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under the Strickland test, a
6 defendant must show first that his counsel's representation fell below an objective
7 standard of reasonableness, and second, that but for counsel's errors, there is a
8 reasonable probability that the result of the proceedings would have been different.
9 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v.
10 Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-
11 part test). "[T]here is no reason for a court deciding an ineffective assistance claim to
12 approach the inquiry in the same order or even to address both components of the
13 inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S.
14 at 697, 104 S. Ct. at 2069.
- 15 2. The court begins with the presumption of effectiveness and then must determine
16 whether the defendant has demonstrated by a preponderance of the evidence that
17 counsel was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004).
18 "Effective counsel does not mean errorless counsel, but rather counsel whose
19 assistance is '[w]ithin the range of competence demanded of attorneys in criminal
20 cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).
- 21 3. Counsel cannot be ineffective for failing to make futile objections or arguments. See
22 Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006). Trial counsel has the
23 "immediate and ultimate responsibility of deciding if and when to object, which
24 witnesses, if any, to call, and what defenses to develop. Rhyne v. State, 118 Nev. 1,
25 8, 38 P.3d 163, 167 (2002).
- 26 4. Based on the above law, the role of a court in considering allegations of ineffective
27 assistance of counsel is "not to pass upon the merits of the action not taken but to
28 determine whether, under the particular facts and circumstances of the case, trial

1 counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.
2 671, 675, 584 P.2d 708, 711 (1978). This analysis means the court should neither
3 “second guess reasoned choices between trial tactics nor does it mean that defense
4 counsel, to protect himself against allegations of inadequacy, must make every
5 conceivable motion no matter how remote the possibilities are of success.” Id. To be
6 effective, the constitution “does not require that counsel do what is impossible or
7 unethical. If there is no bona fide defense to the charge, counsel cannot create one
8 and may disserve the interests of his client by attempting a useless charade.” U.S. v.
9 Cronic, 466 US 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

10 5. “There are countless ways to provide effective assistance in any given case. Even the
11 best criminal defense attorneys would not defend a particular client in the same way.”
12 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel
13 after thoroughly investigating the plausible options are almost unchallengeable.”
14 Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State,
15 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must “judge the
16 reasonableness of counsel's challenged conduct on the facts of the particular case,
17 viewed as of the time of counsel's conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at
18 2066.

19 6. Even if a defendant can demonstrate that his counsel's representation fell below an
20 objective standard of reasonableness, he must still demonstrate prejudice and show a
21 reasonable probability that, but for counsel's errors, the result of the trial would have
22 been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999)
23 (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a
24 probability sufficient to undermine confidence in the outcome.” McNelton, 115 Nev.
25 at 403, 990 P.2d at 1268 (citing Strickland, 466 U.S. at 687-89 & 694, 104 S. Ct. at
26 2064-65 & 2068).

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- 1 7. There is a strong presumption that appellate counsel's performance was reasonable
2 and fell within "the wide range of reasonable professional assistance." See United
3 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at
4 689, 104 S. Ct. at 2065. The federal courts have held that a claim of ineffective
5 assistance of appellate counsel must satisfy the two-prong test set forth by Strickland,
6 466 U.S. at 687-688, 694, 104 S. Ct. at 2065, 2068; Williams v. Collins, 16 F.3d 626,
7 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir.
8 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991). In order to satisfy
9 Strickland's second prong, the defendant must show that the omitted issue would
10 have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955
11 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.
- 12 8. A post-conviction petition for writ of habeas corpus must contain specific factual
13 allegations which, if true, would entitle a defendant to relief; therefore, bare or naked
14 allegations are insufficient to entitle a defendant to post-conviction relief. Hargrove
15 v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).
- 16 9. A defendant who contends that his attorney was ineffective because he did not
17 adequately investigate must show how a better investigation would have rendered a
18 more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).
- 19 10. A defendant is not entitled to a particular "relationship" with his attorney. Morris v.
20 Slappy, 461 U.S. 1, 103 S. Ct. 1610 (1983).
- 21 11. A plea of guilty is presumptively valid, particularly where it is entered into on the
22 advice of counsel. Jeziarski v. State, 107 Nev. 395, 812 P.2d 355 (1991). The
23 Defendant has the burden of proving that the plea was not entered knowingly or
24 voluntarily. Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Wynn v. State, 96
25 Nev. 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73
26 (1985).

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1 12. In determining whether the guilty plea is knowingly and voluntarily entered, the
2 Court is required to review the totality of the circumstances surrounding the
3 Defendant's plea. Id. In Bryant, the Nevada Supreme Court made it very clear that in
4 reviewing the sufficiency of plea canvasses, the Court is permitted to review the
5 "totality of the facts and circumstances of a Defendant's case." In so doing, the
6 reviewing Court may look at matters which extend beyond the formal entry of the
7 plea. Id.

8 13. This standard requires the court to personally address the defendant at the time he
9 enters his plea in order to determine whether he understands the nature of the charges
10 to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
11 rely simply on a written plea agreement without some verbal interaction with a
12 defendant. Id. Thus, a "colloquy" is constitutionally mandated, and a "colloquy" is
13 but a conversation in a formal setting, such as that occurring between an official
14 sitting in judgment of an accused at plea. See id.

15 14. However, the court also need not conduct a ritualistic oral canvass. State v. Freese,
16 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of pleas of
17 guilty "do not require the articulation of talismanic phrases. It required only 'that the
18 record affirmatively disclose that a defendant who pleaded guilty entered his plea
19 understandingly and voluntarily.'" Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d
20 1403, 1404 (1973); Brady v. United States, 397 U.S. 742, 747-748, 90 S. Ct. 1463,
21 1470 (1970).

22 15. NRS 34.810(1)(a) states:

23 1. The court shall dismiss a petition if the court determines that:

24 (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and
25 the petition is not based upon an allegation that the plea was involuntarily or
26 unknowingly entered or that the plea was entered without effective assistance of
27 counsel

28 16. It is well established that once a defendant pleads guilty, he waives all defects that
occurred before the plea, including constitutional errors. Webb v. State, 91 Nev. 469,
470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267, 93

1 S. Ct. 1602, 1608 (1973)); Kirksey v. State, 112 Nev. 980, at 999, 923 P.2d 1102,
2 1114 (1996) (citing Warden, Nevada State Prison v. State, 100 Nev. 430, 432, 683
3 P.2d 504, 505 (1984)).

4 17. Factors to be considered in determining whether a defendant was denied his right to
5 an appeal include: 1) whether his conviction was the result of a guilty plea or a trial;
6 2) whether the defendant asked his attorney to appeal; and 3) whether the defendant
7 had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528 U.S. 470, 120
8 S.Ct. 1029 (2000).

9 18. NRS 177.015(4) provides:

10 Except as otherwise provided in subsection 3 of NRS 174.035,
11 the defendant in a criminal case shall not appeal a final
12 judgment or verdict resulting from a plea of guilty, guilty but
13 mentally ill or nolo contendere that the defendant entered into
14 voluntarily and with a full understanding of the nature of the
15 charge and the consequences of the plea, unless the appeal is
16 based upon reasonable constitutional, jurisdictional or other
17 grounds that challenge the legality of the proceedings. The
18 Supreme Court may establish procedures to require the
19 defendant to make a preliminary showing of the propriety of the
20 appeal.

21 19. There is no federal constitutional right under the Sixth Amendment and no state
22 constitutional right to counsel in post-conviction relief proceedings. Coleman v.
23 Thompson, 501 U.S. 722, 725, 111 S. Ct. 2546, 2552 (1991); McKague v. Warden,
24 112 Nev. 159, 163, 912 P.2d 255, 257-258 (1996).

25 20. A district court judge has the discretion to appoint counsel under the conditions
26 pursuant to NRS 34.750.

27 21. NRS 34.750 provides:

28 A petition may allege that the petitioner is unable to pay the costs
of the proceedings or to employ counsel. If the court is satisfied
that the allegation of indigency is true and the petition is not
dismissed summarily, the court may appoint counsel at the time
the court orders the filing of an answer and a return. In making
its determination, the court may consider whether:

- (a) the issues are difficult;
- (b) the petitioner is unable to comprehend the proceedings; or

- 1 (c) counsel is necessary to proceed with discovery.
- 2 22. To be entitled to post-conviction counsel, a defendant "must show that the requested
- 3 review is not frivolous before he may have an attorney appointed." Peterson v.
- 4 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former
- 5 statute NRS 177.345(2)).
- 6 23. At an evidentiary hearing on a petition for a post-conviction writ of habeas corpus,
- 7 the defendant has the burden of proving contested facts by a preponderance of the
- 8 evidence. Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004).

9 **ORDER**

10 THEREFORE, **IT IS HEREBY ORDERED** that the Petition for Post-Conviction


11 Relief shall be, and is, hereby DENIED.

12 DATED this 12th day of March, 2010.

13 
14 DISTRICT JUDGE

15

16 DAVID ROGER
17 DISTRICT ATTORNEY
18 Nevada Bar #002781

19 BY  for
20 FELICIA QUINLAN
21 Deputized Law Clerk
22 Nevada Bar #011690

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28 hjc/SVU

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FILED

MAR 30 2010

NOED

DISTRICT COURT
CLARK COUNTY, NEVADA

Steven D. Grierson
CLERK OF COURT

ROY TROST,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C247731
Dept No: XXI

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on March 25, 2010, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 30, 2010.

STEVEN D. GRIERSON, CLERK OF THE COURT

By:

Heather Lofquist
Heather Lofquist, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 30 day of March 2010, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the District Court Clerk of:
Clark County District Attorney's Office
Attorney General's Office - Appellate Division

☒ The United States mail addressed as follows:

Roy Trost # 1027585
P.O. Box 650
Indian Springs, NV 89070

Heather Lofquist
Heather Lofquist, Deputy Clerk

ORIGINAL

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CLERK OF COURT

ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
ROY TROST,
#2679137
Defendant.

CASE NO: C247731
DEPT NO: XXI

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: MARCH 2, 2010
TIME OF HEARING: 10:30 A.M.

THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR, District Judge, on the second day of March, 2010, the Petitioner being present, Proceeding IN FORMA PAUPERIS, the Respondent being represented by DAVID ROGER, District Attorney, by and through FELICIA QUINLAN, Deputized Law Clerk, and the Court having considered the matter, including briefs, transcripts, oral arguments, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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CLERK OF THE COURT

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4. Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial

counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis means the court should neither “second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success.” Id. To be effective, the constitution “does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade.” U.S. v. Cronin, 466 US 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

5. “There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.
6. Even if a defendant can demonstrate that his counsel’s representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel’s errors, the result of the trial would have been different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” McNelson, 115 Nev. at 403, 990 P.2d at 1268 (citing Strickland, 466 U.S. at 687-89 & 694, 104 S. Ct. at 2064-65 & 2068).

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- 1 7. There is a strong presumption that appellate counsel's performance was reasonable
2 and fell within "the wide range of reasonable professional assistance." See United
3 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at
4 689, 104 S. Ct. at 2065. The federal courts have held that a claim of ineffective
5 assistance of appellate counsel must satisfy the two-prong test set forth by Strickland,
6 466 U.S. at 687-688, 694, 104 S. Ct. at 2065, 2068; Williams v. Collins, 16 F.3d 626,
7 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir.
8 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991). In order to satisfy
9 Strickland's second prong, the defendant must show that the omitted issue would
10 have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955
11 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.
- 12 8. A post-conviction petition for writ of habeas corpus must contain specific factual
13 allegations which, if true, would entitle a defendant to relief; therefore, bare or naked
14 allegations are insufficient to entitle a defendant to post-conviction relief. Hargrove
15 v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).
- 16 9. A defendant who contends that his attorney was ineffective because he did not
17 adequately investigate must show how a better investigation would have rendered a
18 more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).
- 19 10. A defendant is not entitled to a particular "relationship" with his attorney. Morris v.
20 Slappy, 461 U.S. 1, 103 S. Ct. 1610 (1983).
- 21 11. A plea of guilty is presumptively valid, particularly where it is entered into on the
22 advice of counsel. Jeziarski v. State, 107 Nev. 395, 812 P.2d 355 (1991). The
23 Defendant has the burden of proving that the plea was not entered knowingly or
24 voluntarily. Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Wynn v. State, 96
25 Nev. 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73
26 (1985).

27 //

28 //

1 12. In determining whether the guilty plea is knowingly and voluntarily entered, the
2 Court is required to review the totality of the circumstances surrounding the
3 Defendant's plea. Id. In Bryant, the Nevada Supreme Court made it very clear that in
4 reviewing the sufficiency of plea canvasses, the Court is permitted to review the
5 "totality of the facts and circumstances of a Defendant's case." In so doing, the
6 reviewing Court may look at matters which extend beyond the formal entry of the
7 plea. Id.

8 13. This standard requires the court to personally address the defendant at the time he
9 enters his plea in order to determine whether he understands the nature of the charges
10 to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
11 rely simply on a written plea agreement without some verbal interaction with a
12 defendant. Id. Thus, a "colloquy" is constitutionally mandated, and a "colloquy" is
13 but a conversation in a formal setting, such as that occurring between an official
14 sitting in judgment of an accused at plea. See id.

15 14. However, the court also need not conduct a ritualistic oral canvass. State v. Freese,
16 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of pleas of
17 guilty "do not require the articulation of talismanic phrases. It required only 'that the
18 record affirmatively disclose that a defendant who pleaded guilty entered his plea
19 understandingly and voluntarily.'" Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d
20 1403, 1404 (1973); Brady v. United States, 397 U.S. 742, 747-748, 90 S. Ct. 1463,
21 1470 (1970).

22 15. NRS 34.810(1)(a) states:

23 1. The court shall dismiss a petition if the court determines that:

24 (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and
25 the petition is not based upon an allegation that the plea was involuntarily or
26 unknowingly entered or that the plea was entered without effective assistance of
27 counsel

28 16. It is well established that once a defendant pleads guilty, he waives all defects that
occurred before the plea, including constitutional errors. Webb v. State, 91 Nev. 469,
470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267, 93

1 S. Ct. 1602, 1608 (1973)); Kirksey v. State, 112 Nev. 980, at 999, 923 P.2d 1102,
2 1114 (1996) (citing Warden, Nevada State Prison v. State, 100 Nev. 430, 432, 683
3 P.2d 504, 505 (1984)).

4 17. Factors to be considered in determining whether a defendant was denied his right to
5 an appeal include: 1) whether his conviction was the result of a guilty plea or a trial;
6 2) whether the defendant asked his attorney to appeal; and 3) whether the defendant
7 had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528 U.S. 470, 120
8 S.Ct. 1029 (2000).

9 18. NRS 177.015(4) provides:

10 Except as otherwise provided in subsection 3 of NRS 174.035,
11 the defendant in a criminal case shall not appeal a final
12 judgment or verdict resulting from a plea of guilty, guilty but
13 mentally ill or nolo contendere that the defendant entered into
14 voluntarily and with a full understanding of the nature of the
15 charge and the consequences of the plea, unless the appeal is
16 based upon reasonable constitutional, jurisdictional or other
17 grounds that challenge the legality of the proceedings. The
18 Supreme Court may establish procedures to require the
19 defendant to make a preliminary showing of the propriety of the
20 appeal.

21 19. There is no federal constitutional right under the Sixth Amendment and no state
22 constitutional right to counsel in post-conviction relief proceedings. Coleman v.
23 Thompson, 501 U.S. 722, 725, 111 S. Ct. 2546, 2552 (1991); McKague v. Warden,
24 112 Nev. 159, 163, 912 P.2d 255, 257-258 (1996).

25 20. A district court judge has the discretion to appoint counsel under the conditions
26 pursuant to NRS 34.750.

27 21. NRS 34.750 provides:

28 A petition may allege that the petitioner is unable to pay the costs
of the proceedings or to employ counsel. If the court is satisfied
that the allegation of indigency is true and the petition is not
dismissed summarily, the court may appoint counsel at the time
the court orders the filing of an answer and a return. In making
its determination, the court may consider whether:

- (a) the issues are difficult;
- (b) the petitioner is unable to comprehend the proceedings; or

1 (c) counsel is necessary to proceed with discovery.

2 22. To be entitled to post-conviction counsel, a defendant "must show that the requested
3 review is not frivolous before he may have an attorney appointed." Peterson v.
4 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former
5 statute NRS 177.345(2)).

6 23. At an evidentiary hearing on a petition for a post-conviction writ of habeas corpus,
7 the defendant has the burden of proving contested facts by a preponderance of the
8 evidence. Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004).

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
11 Relief shall be, and is, hereby DENIED.

12 DATED this 22nd day of March, 2010.

13 
14 DISTRICT JUDGE

15
16 DAVID ROGER
17 DISTRICT ATTORNEY
18 Nevada Bar #002781

19 BY  for
20 FELICIA QUINLAN
21 Deputized Law Clerk
22 Nevada Bar #011690

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28 hjc/SVU

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

7 *State of Nevada*
8
9 **Plaintiff,**
10 vs. *Roy Trost*
11
12 **Defendant,**

Case No. *C247731*
Dept. No. *XXI*
Docket _____

13
14 **ORDER**

15 Upon reading the motion of defendant, *Roy Trost*, requesting
16 withdrawal of counsel, *Attorney Jeffrey S. Maningo*, Esq., of the Clark county Public
17 Defender's Office, and Good Cause Appearing,

18 **IT IS HEREBY ORDERED** that defendant's Motion for Withdrawal of Counsel is
19 **GRANTED.**

20 **IT IS HEREBY FURTHER ORDERED** that Counsel deliver to defendant at his address, all
21 documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

22
23 DATED and DONE this _____ day of _____, 20____.

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27 08C247731
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28 **DISTRICT COURT JUDGE**

Defendant

Trost, Roy # *1027585*

Defendant/In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

*Please stamp
Copy and Return*

FILED

APR 06 2011

John L. Blum
CLERK OF COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

4/19/11

State of Nevada

Plaintiff,

vs. *Roy Trost*

Defendant,

Case No. *C247731*

Dept. No. *XXI*

Docket _____

MOTION TO WITHDRAW COUNSEL

Date of Hearing: _____

Time of Hearing: _____

'ORAL ARGUMENT REQUESTED, Yes _____ No ☒

COMES NOW, Defendant, *Roy Trost*, proceeding in proper person,

moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
of record in the proceeding action, namely,

Attorney Jeffrey S. Maningo

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
which are hereby incorporated by this reference, the Points and Authorities herein, and attached
Affidavit of Defendant.

DATED: this *31st* day of *March*, 2011.

BY: *Roy James Trost* # *1027585*
Roy James Trost
Defendant/In Propria Personam

08C247731
MDC
Motion to Dismiss Counsel
1334219



RECEIVED
APR 05 2011
CLERK OF COURT

1 Roy Trost
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 State of Nevada
8 Plaintiff
9
10 vs. Roy, Trost
11
12
13

Case No. C247731
Dept No. XXI
Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that _____
16

17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____,
18 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

19
20 CC:FILE

21
22 DATED: this 31st day of March, 2011.

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24 BY: [Signature]
25 Roy James Trost #1027585
26 /In Propria Personam
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POINTS AND AUTHORITIES

NRS 7.055 states in pertinent part:

1. An attorney who has been discharged by his client shall upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.
2. . . . If the court finds that an attorney has, without just cause, refused or neglected to obey its order given under this section, the court may, after notice and fine or imprison him until the contempt purged. If the court finds that the attorney has, without just cause, withheld the client's papers, documents, pleadings, or other property, the attorney is liable for costs and attorney's fees.

Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant does not owe counsel any fees.

WHEREFORE, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other tangible property which belong to or were prepared for the Defendant to allow Defendant the proper assistance that is needed to insure that justice is served.

DATED: this 3rd day of March, 2011.

Respectfully submitted,

BY: [Signature]
Ray James Trust #1027385
Defendant/In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

NAME: Roy Trost # 1027585

HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

DATE: March 31st 2011

TO: Attorney Jeffreys
Maningo
200 Lewis Avenue
Las Vegas, NV
89155

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C247731

DEPT. NO.: XXI

CASE NAME: Roy Trost

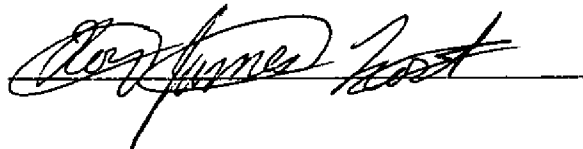
Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,



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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding motion to
withdraw counsel
(Title of Document)

filed in District Court Case number C247731

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

March 31st 2011
Date

Roy Trost
Print Name

Title

CERTIFICATE OF SERVICE BY MAILING

I, Roy Trost, hereby certify, pursuant to NRCP 5(b), that on this 3rd
day of March, 20 11, I mailed a true and correct copy of the foregoing, "Motion
to withdraw counsel / termination letter"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

* Attorney Jeffrey S. Manning
200 Lewis Ave
Las Vegas, Nevada
89155

* Court Clerk
200 Lewis Ave 3rd Floor
Las Vegas, Nevada
89155

CC:FILE

DATED: this 3rd day of March, 20 11.

Roy Trost
1022885
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

89070

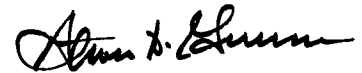
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[illegible]

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant



CLERK OF THE COURT

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

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 v.)

10 ROY JAMES TROST,)

11 Defendant.)

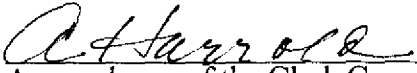
CASE NO. C247731

12
13 **CERTIFICATE OF MAILING**

14 This is to certify that on the 12th day of May, 2011 a true and correct copy of the
15 following documents: Notice of Entry of Decision and Order; Findings of Fact, Conclusions Of
16 Law and Order; Order For Petition For Writ Of Habeas Corpus; [2] sketches; Identification Card;
17 Motion To Withdraw Counsel; Media Reports; Recorder's Transcript of Hearing Re: Arraignment
18 Continued; Criminal Complaint; Amended Criminal Complaint; Parole and Probation Presentence
19 Investigation Report dated November 4, 2008; Las Vegas Metropolitan Police Department
20 Voluntary Statement -- Brittany Evans; Las Vegas Metropolitan Police Department Voluntary
21 Statement -- Ashlee Henry; Las Vegas Metropolitan Police Department Voluntary Statement --
22 Mark LaPerna; Las Vegas Metropolitan Police Department Voluntary Statement -- Sarah Quinn;
23 Las Vegas Metropolitan Police Department Voluntary Statement -- Brittany Evans; Las Vegas
24 Metropolitan Police Department - N Madsen Declaration of Warrant/Summons; Las Vegas
25 Metropolitan Police Department - John Baltas Declaration of Warrant/Summons; Las Vegas
26 Metropolitan Police Department Incident Report; Las Vegas Metropolitan Police Department
27 Voluntary Statement - Leticia Campbell; Las Vegas Metropolitan Police Department Voluntary
28 Statement -- Roy Trost; Las Vegas Metropolitan Police Department - Property Report; Las Vegas

1 Metropolitan Police Department Incident Recall; Las Vegas Metropolitan Police Department
2 Crime Scene Report; Las Vegas Metropolitan Police Department Forensic Laboratory
3 biology/DNA Detail; Las Vegas Metropolitan Police Department Photo Line-Up Witness
4 Instructions; Justice Court, Las Vegas Township Commitment and Order to Appear; Guilty Plea
5 Agreement; Motion To Proceed In Forma Pauperis; Las Vegas Metropolitan Police Department
6 Temporary Custody Record; Clark County Detention Center Arrest Warrant; Justice Court, Las
7 Vegas Township – Request For Arrest Warrant; Justice Court Pretrial Services Information Sheet;
8 Notice To Place On Calendar; Justice Court Las Vegas Township court minutes; Justice Court,
9 Las Vegas Township Media Request; Judgment of Conviction (Plea of Guilty); journal; Reporter's
10 Transcript of Waiver of Preliminary Hearing dated September 10, 2008; Pre-dispositional and
11 Social History Report; Memorandum – Confidential Communication Protected By Attorney-Client
12 and Work Product Privileges; and Reporter's Transcript dated September 23, 2008 Arraignment
13 Continued; were deposited in the United States mail in Las Vegas, Nevada, in a sealed envelope,
14 postage prepaid to:

15 Roy Trost #1027585
16 High Desert State Prison
17 PO Box 650
18 Indian Springs, Nevada 89070-0650

19 
20 An employee of the Clark County
21 Public Defender's Office
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MC
PP
DA

Case No. C247731
Dept. No. 9

Allen D. Johnson

CLERK OF THE COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

THE STATE OF NEVADA,

Plaintiff,

-vs-

Roy Trust 1027585,

Defendant.

Hearing Date: 2-2-16

Time of Hearing : 9:30am

**MOTION FOR ORDER DIRECTING
CLERK TO ISSUE PRESENTENCE
INVESTIGATION REPORT
TO DEFENDANT**

COMES NOW Defendant, Roy Trust, in pro se, and submits
his Motion for Order Directing Clerk to Issue Presentence Investigation
Report to Defendant, moving the Court to direct its clerk to provide him a
copy of his Presentence Investigation Report ("PSI") as prepared in this case
per NRS 176.135. This motion is made and based upon all papers, pleadings and
documents on file herein; NRS Ch. 176; the Court's authority to grant the
motion; and the following points and authorities.

POINTS AND AUTHORITIES

Pursuant to NRS 176.135, a PSI was generated in this case, and was
considered by the Court in sentencing matters per NRS 176.156. While
Defendant's PSI was disclosed to him via his counsel, he was never provided
a copy to keep for himself. In fact, Defendant's attorney seems to have
maintained the PSI, despite Defendant's entitlement to same under NRS

176.156(1).

LCC LL FORM 26-050
JAN 08 2016
CLERK OF THE COURT

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1 Defendant's PSI contains information which is relied upon by both prison
2 officials in their placement and treatment of him, U.S. v. Kerr, 876 F.2d
3 1440, 1445-46 (9th Cir. 1989), and parole commissioners when deciding whether
4 to grant him parole, U.S. v. Petitto, 767 F.2d 607, 610 (9th Cir. 1985).
5 Defendant needs a copy of his PSI so as to be able to address factual
6 disputes, discrepancies, or even misunderstandings which arise in the prison
7 context, and which affect his institutional setting.

8 NRS 176.156(1) certainly envisions Defendant possessing his PSI; however,
9 as his PSI is a confidential document, NRS 176.156(5), this Court need issue
10 an order directing the Clerk of the Court to issue and serve same upon the
11 Defendant.

12 CONCLUSION

13 This Court should direct the Clerk of the Court to issue to Defendant a
14 copy of his PSI report, sending same to him at his place of confinement at
15 the address below.

16 *Loy Jones Trust #1027585 Lovelock Correctional*
Center 1200 Prison Road Lovelock
Nevada 89419 #1027585
17 Lovelock Correctional Center
18 1200 Prison Road
Lovelock, Nevada 89419

19 Defendant In Pro Se

20 / / /

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CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR ORDER DIRECTING CLERK TO ISSUE PRESENTENCE INVESTIGATION REPORT TO DEFENDANT to the below address(es) on this 28th day of December, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRC 5(b):

County District Attorney

301 Elkh Ave #100
Las Vegas, Nevada 89101

Attorney For Plaintiff

Roy Trost, Lovelock Corr Center
PO Box 1000 Lovelock NV # 89419
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR ORDER DIRECTING CLERK TO ISSUE PRESENTENCE INVESTIGATION REPORT TO DEFENDANT does not contain the social security number of any person.

Dated this 28th day of December, 2015.

[Signature]
Roy Trost at Prison
Defendant In Pro Se 1027885

R. Trust aka Daisy Meadows
#1027585

"Daisy Meadows"

Lowell Correctional Center
1200 Prison Road
Lowell, Nevada

89419

INMATE LEGAL
MAIL CONFIDENTIAL

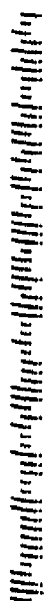
District Court

Judge Valerie Abair

~~301 E. Clark Ave #100~~
~~Las Vegas, NV~~

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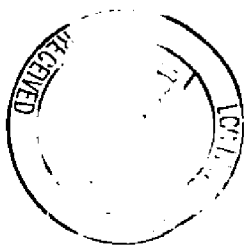
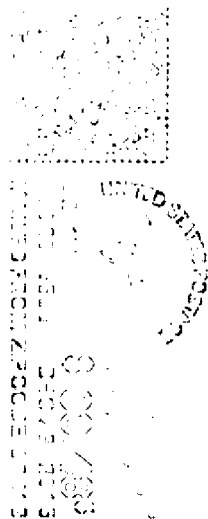
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JAN 07 2016

CLERK OF THE COURT



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Case No. C247731
Dept. No. 9

PLEASE FILE
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IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
-vs-)
)
Rox Fort #1027885,)
)
Defendant.)
)

ORDER

THE COURT, having considered Defendant's Motion for Order Directing Clerk to Issue Presentence Investigation Report to Defendant, and with good cause appearing, it is hereby ORDERED that the said motion is GRANTED.

The Clerk of the Court shall forthwith issue to Defendant a copy of his Presentence Investigation Report which was generated in the above-entitled case and serve same upon him at the Lovelock Correctional Center.

IT IS SO ORDERED.

Dated this _____ day of _____, 20____.

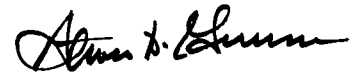
DISTRICT COURT JUDGE

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CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY J TROST,
#2679137

Defendant.

CASE NO: 08C247731

DEPT NO: XXI

**ORDER DENYING DEFENDANT'S MOTION FOR ORDER DIRECTING
CLERK TO ISSUE PRESENTENCE INVESTIGATION
REPORT TO DEFENDANT**

DATE OF HEARING: FEBRUARY 2, 2016
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 2ND day of FEBRUARY, 2016, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through KAREN MISHLER, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
177 - 190
WILL FOLLOW VIA
U.S. MAIL**

FILED

MAY 01 2023

Ann L. Blum
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff

CASE NO. C247731

DEPT. NO. XXI

v. Roy James Frost
FNA Mrs. Daisy Lynne Meadows
Defendant.

May 23, 2023
8:30 AM

MOTION TO WITHDRAW PLEA

COMES NOW, Defendant, *Mrs. Daisy Lynne Meadows*, proceeding in proper
person, and moves this Honorable Court for an Order granting ^{her} permission to withdrawal ^{her} Plea
Agreement in the the case number C247731, on the date of 9/13/08 in the month
of 9 in the year 2008 where defendant was then represented by J.S. Maningo, D.D. as
counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are
hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of
Defendant.

Dated this 18 day of April, 2023

Respectfully submitted,

[Signature]
Defendant in Proper Person

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw ^{her} his or plea.

Failure to adequately inform a defendant of the full consequences of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

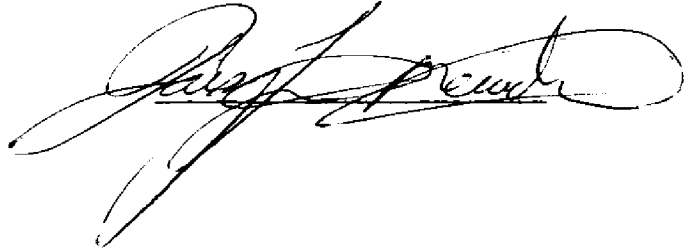
Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts: State made me out to be a "Sexual Predator" to Sensationalize my case and counsel urged me to sign plea on all counts. Counsel did not order a psych evaluation and I was in an obvious state of mind not anywhere near normal. Any Seasoned lawyer such as Attorney Maringo should have recognized my obvious mental state by my actions, and state of mental anguish from being charged with such crimes as count 4. I am innocent of count 4, the gravity of the accusation itself so Traumatic I was numb to court proceedings, yet counsel knew I was innocent, the alleged victim Failed a lie detector test, and Friend of the alleged victim who was in the same bed stated in the police Report that it didn't happen. Alleged victim's mother and I resumed our Relationship after the alleged victim admitted to lying. Counsel knew these facts as well as the accusations of Count 1 being False statements. In Count one the Alleged victim states she "was a College student Raped on the LV strip Sidewalk" Impossible. I engaged w/ the prostitute, alleged victim, behind the Peppermill Casino and was Jumped by her and her Pimp w/ my pants down in an attempt to Rob me there

1 was no "sexual assault" and Counsel knew this, yet had me sign
2 the plea. No Seasoned Attorney would advise a defendant ("client")
3 to take a life sentence knowing there were circumstances like these
4 involved. I was never informed by my counsel I'd be literally
5 signing my life away. A psyche evaluation would have at least
6 minimum exposed counsel, and myself, to a Reality check. Counts
7 1+4 should've been taken to trial or at least been subject to the
8 Rules of discovery and a plan of action for trial been at least
9 discussed. Counsel did none of this. Counsel's duty, per his obligation
10 as a Defense Lawyer for the State of NV was responsible to do
11 his due diligence for my specific circumstances. I am guilty
12 of Counts 2+5, and 3+6, with extenuating circumstances.
13 I don't even remember most of the Court proceedings but I do
14 know now from other legal research I was not supposed to sign
15 a plea for Case I could obviously have fought, and had plenty
16 of reasons to do so, considering I didn't do it and since there was
17 zero evidence against me for Count 4 and only false statements
18 for Count 1. Counsel knew this and should have never instructed
19 me to sign a plea on these counts and took advantage
20 of my mental state to help the prosecution. I wasn't
21 even told that my Case could be addressed separately. I
22 pray that this honorable Court grant my motion so I may
23 at the very least address these charges that I in Fact
24 Am Actually innocent of in the way promised every
25 defendant by our Constitution and our Judicial
26 System.

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 18 day of April, 2023.

Respectfully Submitted,



CERTIFICATE OF SERVICE BY MAILING

I, Mrs Darilynne Meadows, hereby certify, pursuant to NRCP 5(b), that on this 18 day of April, 2023, I mailed a true and correct copy of the foregoing Motion to Withdraw Plea, by depositing it in the High Derest State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

Attorney General
100 North Carson St.
Carson City, NV
89710

Warden Brian Williams
ADSP P.O. Box 650
Indian Springs, NV
89070

D.A. Steven B. Wolfson
200 Lewis Ave
Las Vegas, NV
89155

Clerk of the Court
200 Lewis Ave
Las Vegas, NV
89155

CC: File

Dated this 18th day of April, 2023

BY:


Mrs Darilynne Meadows
Rdy Trust

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Motion to withdraw Plea
(Title of Document)

filed in District Court Case number C247731

☒ Does not contain the social security number of any person.

-OR-

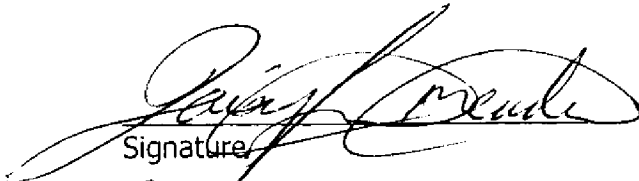
☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

4-18-23
Date

Roy Barrett Trust
FKA Mrs. Danylynn Meadows
Print Name

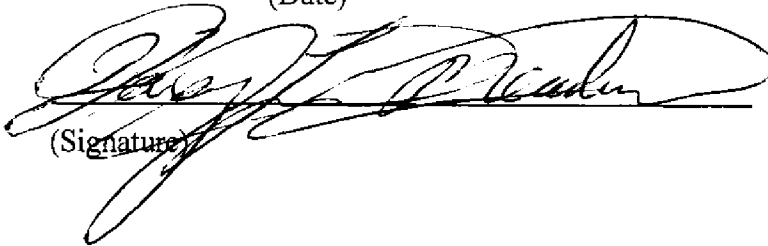
Prisoner
Title

Under Penalty of Perjury Statement

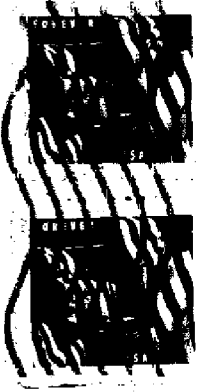
"I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct in accordance with NRS 208.165 and 28 USCA § 1746.

Executed on 4-18-23.

(Date)


(Signature)

Mrs Daisy Lynne Meadows Trust
P.O. Box 650
Indian Springs, NV
89070



LAS VEGAS NV 890
26 APR 2023 PM 5 L

Clerk of the Court
800 Lewis Ave
Las Vegas, NV
89155

Envelope
20FL

89155-999995

1 Mrs Daisy Lynne Meadows # 1027588
2 High Desert State Prison
3 PO Box 650
4 Indian Springs, NV 89026
5 Petitioner in Pro Se

FILED
MAY 01 2023
Clerk of Court

May 23, 2023
8:30 AM

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9 The State of Nevada,
10 Petitioner,
11 -vs- Roy James Trust
12 FNA Mrs Daisy Lynne Meadows
13 Respondents.

Case No. C247731

MOTION FOR
APPOINTMENT OF COUNSEL

14
15 COMES NOW Petitioner, Mrs Daisy Lynne Meadows ^{aka Trust}, in pro se, and moves
16 this Court for an order appointing ^{her} counsel in and for the instant § 2254
17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.
19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file
20 herein; and the following points and authorities.

POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

23 Petitioner is unable to afford counsel. See Application to Proceed In
24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex
26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of ^{her} incarceration, cannot investigate, take
28 depositions, or otherwise discover evidentiary materials on his own accord.

1 Petitioner's sentence structure is 10+life x3; 5+life x2; 20+life x1.

2 There ___ are ✓ are not additional facts attached hereto on additional
3 page(s) to be incorporated herein.

4 Counsel could not only assist Petitioner with a much better presentation
5 of the substantive and procedural issues before this Court, e.g., merits of the
6 claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise
7 make much easier this Court's task of discerning the issues and adjudicating
8 them as upon a competent counsel's ability to present same to the Court.

9 The ends of justice would best be served in this case via the appointment
10 of counsel, as Petitioner's sentence structure, in conjunction with the
11 complexities of the legal issues herein, plead for such an appointment.

12 II. ARGUMENT FOR APPOINTMENT

13 Appointment of counsel in § 2254 cases is authorized within 18 U.S.C.
14 § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint
15 counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d
16 295, 297-98 (9th Cir. 1995). This interest is best served when indigent
17 petitioners who are unable to "adequately present their cases" are appointed
18 counsel to do so for them. Id.

19 Although appointment is usually within this Court's sound discretion, a
20 handy formula for this Court's consideration is a balancing of the complexities
21 of the issues with a consideration of the severity of the petitioner's penalty.
22 Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023
23 (1987). Ultimately, however, absent a due process implication, this Court has
24 discretion to appoint counsel when it feels that it promotes justice in doing
25 so. Id. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980)(court
26 must appoint counsel where the complexities of the case are such that denial of
27 counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d
28 948 (8th Cir. 1970)(counsel must be appointed where petitioner is a person of

1 such limited education as to be incapable of presenting his claims fairly).

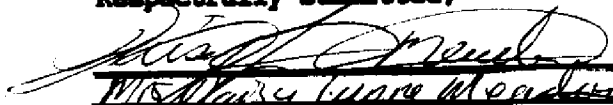
2 Petitioner submits that the facts above, in conjunction with these legal
3 principles, compel appointment of counsel. Indeed, the complexities of the
4 issues in relation to Petitioner's sentence, implicate the need of counsel to
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to
8 represent Petitioner in and for all further proceedings in this § 2254 habeas
9 corpus action.

10 Dated this 18th day of April, 20024.

11 Respectfully submitted,

12 
13 Mary Lynn Meadmont
14 TRSF, NV 1927588 HDSP
15 P.O. Box 650 Indian Springs
16 NV 89020
17 Petitioner In Pro Se

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- 3 and LAST -

CERTIFICATE OF SERVICE

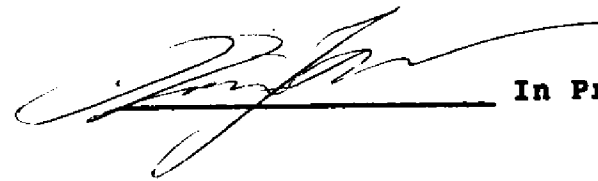
I do certify that I mailed a true and correct copy of the foregoing Motion For appointment of Counsel to the below address(es) on this 18 day of April, 20013, by placing same into the hands of prison staff for posting in the U.S. Mail, pursuant to FRCP 5(b):

Mrs. Daisy Lynne Meadows Trust
1027585 JH1D50
P.O. Box 680
Indian Springs NV, Nevada 89070

Counsel for _____

☒ check for additional addresses below

 *1027585

 In Pro Se

ADDRESS(ES) Continued from Above: (If applicable)

Clerk of the Court
200 Lewis Ave.
Las Vegas, NV
89155, Nevada 89155

_____, Nevada 89____

Roy James Trust FKA
Mrs Daisy Lynn Meadows
/ In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

FILED
MAY 01 2023

[Signature]
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada
vs.
Roy James Trust
AKA Mrs Daisy Lynn Meadows

Case No. C247731
Dept No. XXI
Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that _____

will come on for hearing before the above-entitled Court on the ____ day of _____, 20____
at the hour of ____ o'clock ____ M. In Department ____, of said Court.

CC:FILE

DATED: this 18th day of April, 2023

BY: *[Signature]*
Roy James Trust / In Propria Personam #1027585

RECEIVED
APR 27 2023
CLERK OF THE COURT



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

CASE NO: 08C247731

DEPT NO: XV

**STATE'S RESPONSE TO DEFENDANT'S PRO PER
MOTION TO APPOINT COUNSEL**

DATE OF HEARING: MAY 23, 2023

TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Pro Per Motion to Appoint Counsel.

This Response is made and based upon all the papers and pleadings on file herein, the attached Points and Authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint
4 with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary
5 With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly Weapon,
6 Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 –
7 Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10 and 11 –
8 Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Defendant by way of Information with Count
22 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

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1 On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the charges
2 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),
3 in which both parties stipulated the Counts 1-3 will run consecutively to each other and Counts
4 4-6 will run consecutively to each other but both parties retain the right to argue whether the
5 two sets of counts would run concurrently or consecutively, was filed in open Court the same
6 day.

7 On November 7, 2008, Defendant was sentenced as to Count 1 – Life with the
8 possibility of parole after one hundred twenty (120) months, plus an equal and consecutive
9 term of Life with the possibility of parole after one hundred twenty (120) months; as to Count
10 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2 to run
11 consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty (60)
12 months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a special
13 sentence of lifetime supervision and register as a sex offender upon any release from custody.
14 Defendant was also given one hundred sixty-three (163) days credit for time served. The
15 Judgement of Conviction was filed on November 25, 2008.

16 On December 9, 2008, at the State's request, the Court modified Defendant's sentence
17 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty
18 (240) months, instead of three hundred (300) months.

19 On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas Corpus
20 (Post-Conviction), Motion for Appointment of Counsel, and request for evidentiary hearing.
21 The State filed its response on January 11, 2010. The Court denied Defendant's Petition for
22 Writ of Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of
23 Fact, Conclusions of Law and Order denying Defendant's Petition.

24 On April 6, 2011, Defendant filed a Pro Per Motion to Withdraw Counsel. The matter
25 was heard and granted on April 19, 2011.

26 On May 1, 2023, Defendant filed a Motion for Appointment of Attorney and a Motion
27 to Withdraw Plea.

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1 Defendant cites no authority for appointment of counsel in a post-conviction setting to
2 assist with a Motion to withdraw plea. Motion for Appointment of Counsel 1-3. As such the
3 Court lacks authority to appoint counsel and the Motion should be denied. Should the Court
4 construe the Motion to withdraw plea as a Habeas Petition the request for counsel should still
5 be denied because the factors of NRS 34.750(1)(a)-(c) do not warrant appointment of counsel.

6 Defendant complains that his plea was involuntary because his counsel did not request
7 a psychological evaluation and he was in no condition to enter a plea. Motion to Withdraw
8 Plea 2-3. However, Defendant has failed to demonstrate how this issue is difficult. Moreover,
9 Counsel is not necessary to proceed with discovery. Defendant argues “[Defendant], by reason
10 of her incarceration, cannot investigate, take depositions, or otherwise discover evidentiary
11 materials on his own accord.” Motion for Appointment of Counsel 1. However, Defendant has
12 failed to explain what such discovery would be necessary for the Motion to Withdraw.

13 Defendant is able to comprehend the proceedings. Defendant argues that “the
14 substantive issues and procedural matters in this case are too complex for [Defendant’s]
15 comprehension and abilities. *Id.* However, in the Motion to Withdraw Defendant states that
16 he knows now from the legal research he has conducted that he should not have signed the
17 plea for his case. Motion to Withdraw 3. Because Defendant is able to conduct legal research,
18 he should be able to comprehend the proceedings. Moreover, Defendant provides reasoning
19 as to why he believes he is innocent as to counts one (1) and four (4) further showing that he
20 has the ability to comprehend the proceedings.

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CONCLUSION

Based on the arguments as set forth above, the State respectfully requests that the Court
DENY Defendant's Motion for the Appointment of Counsel.

DATED this 22nd day May, 2023.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Jonathan Vanboskerck
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 22nd day of May,
2023, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY JAMES TROST, BAC# 1027585
HIGH DESERT STATE PRISON
P. O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ E. Goddard
Secretary – District Attorney's Office



OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

CASE NO: 08C247731

DEPT NO: XV

**STATE'S OPPOSITION TO DEFENDANT'S PRO PER
MOTION TO WITHDRAW GUILTY PLEA AGREEMENT**

DATE OF HEARING: MAY 23, 2023
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and moves this Honorable Court for an order denying the Defendant's Pro Per Motion filed in the above-entitled matter.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached Points and Authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint
4 with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary
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6 Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 –
7 Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10 and 11 –
8 Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant
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11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Defendant by way of Information with Count
22 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

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1 On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the charges
2 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),
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4 4-6 will run consecutively to each other but both parties retain the right to argue whether the
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7 On November 7, 2008, Defendant was sentenced as to Count 1 – Life with the
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9 term of Life with the possibility of parole after one hundred twenty (120) months; as to Count
10 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2 to run
11 consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty (60)
12 months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a special
13 sentence of lifetime supervision and register as a sex offender upon any release from custody.
14 Defendant was also given one hundred sixty-three (163) days credit for time served. The
15 Judgement of Conviction was filed on November 25, 2008.

16 On December 9, 2008, at the State's request, the Court modified Defendant's sentence
17 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty
18 (240) months, instead of three hundred (300) months.

19 On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas Corpus
20 (Post-Conviction), Motion for appointment of counsel, and request for evidentiary hearing.
21 The State filed its response on January 11, 2010. The Court denied Defendant's Petition for
22 Writ of Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of
23 Fact, Conclusions of Law and Order denying Defendant's Petition for Writ of Habeas Corpus.

24 On April 6, 2011, Defendant filed a Pro Per Motion to Withdraw Counsel. The matter
25 was heard and granted on April 19, 2011.

26 On May 1, 2023, Defendant filed a Motion for Appointment of Attorney and a Motion
27 to Withdraw Plea.

28 ///

ARGUMENT

I. HARRIS REMAINS THE EXCLUSIVE REMEDY TO CHALLENGE A GUILTY PLEA AFTER SENTENCING

Defendant offers various complaints that are not properly raised in a Motion to withdraw a guilty plea. Defendant alleges that his plea was involuntary because his counsel did not request a psychological evaluation and he was in no condition to enter a plea. Such a claim is beyond the scope of a Motion to withdraw a guilty plea since a post-conviction Petition for a Writ of Habeas Corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing. Harris v. State, 130 Nev.437, 466, 329 P.3d 619, 628 (2014); NRS 34.724(2)(b). As such the Motion must be denied.

Harris remains the exclusive remedy for challenging a guilty plea after sentencing. Id. at 466, 329 P.3d. at 628. “Pursuant to NRS 34.724(2)(b), a post-conviction Petition for a Writ of Habeas Corpus comprehends and takes the place of all other common-law, statutory, or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.” Id. at 443, 329 P.3d. at 626 (internal quotations omitted).

Excepted from this exclusivity are remedies that are “incident to the proceedings in the trial Court.” Id. (citing NRS 34.724(2)(a)). However, the Harris Court clearly stated, “that a Motion is ‘incident to the proceedings in the trial Court’ when it is filed prior to sentencing.” Id., 130 Nev. at 437, 329 P.3d at 627. “Thus, a Motion to withdraw the guilty plea filed after sentencing is not ‘incident to the proceedings in the trial Court.’” Id.

Because Defendant filed his Motion on May 1, 2023, almost fifteen years after being sentenced, the Motion is not incident to the proceedings in the trial Court, as defined by the Nevada Supreme Court. Thus, Defendant’s Motion is not cognizable as a freestanding claim for relief. Therefore, Defendant’s only potential avenue for relief is a Petition for Writ of Habeas Corpus.

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1 **II. THE COURT SHOULD NOT CONSTRUE THE MOTION AS**
2 **A HABEAS PETITION**

3 NRS 34.735 directs Defendants to file Petitions in a manner substantially consistent
4 with the form provided by that statute. Defendant has failed to comply with the statute's
5 directive. He has failed to include in his Motion the date of the judgment of conviction, whether
6 or not he is currently serving a sentence under this case number or any other, whether he
7 appealed from the judgment of conviction – and if not, why not – whether he has previously
8 filed any Petitions, applications, or Motions with respect to the judgment in this case, or
9 whether any Petition or appeal with respect to this judgment of conviction is pending in any
10 Court. Additionally, Defendant has filed a previous Habeas Petition. Treating this pleading as
11 a Habeas Petition would require consideration of the procedural bars, something Defendant
12 has neglected. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d
13 1070, 1076 (2005) (District Courts have a duty to consider whether post-conviction claims are
14 procedurally barred).

15 Defendant's filing is not substantially consistent with the form provided by NRS
16 34.735. Therefore, this Court should decline to treat the Motion as a Habeas Petition. Should
17 this Court opt to treat Defendant's Motion as a Petition and desires a response from the State,
18 the Court should issue an order directing response and give the State 45 days to response as
19 required by NRS 34.7745(1).

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1 **CONCLUSION**

2 Based on the foregoing reasons, Defendant's Motion to Withdraw Guilty Plea
3 Agreement should be DENIED.

4 DATED this 22nd day of May, 2023.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #10539

9 BY /s/ Jonathan Vanboskerck
10 JONATHAN VANBOSKERCK
11 Deputy District Attorney
12 Nevada Bar #006528

13 **CERTIFICATE OF MAILING**

14 I hereby certify that service of the above and foregoing was made this 22nd day of May,
15 2023, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 ROY JAMES TROST, BAC# 1027585
17 HIGH DESERT STATE PRISON
18 P. O. BOX 650
19 INDIAN SPRINGS, NV 89070

20 BY /s/ E. Goddard
21 Secretary – District Attorney's Office
22
23
24
25
26
27
28

Heather A. Hume

CLERK OF THE COURT

FCL

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

CASE NO: 08C247731

DEPT NO: XV

FINDING OF FACTS, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: MAY 23, 2023

TIME OF HEARING: 8:30 AM

THIS MATTER having come on for hearing before the above-entitled Court on the 23rd day of May, 2023, the Defendant not being present, proceeding for Motion for Appointment of Counsel, Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ELAN A ELDAR, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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//

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1
2 **STATEMENT OF THE CASE**

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint
4 with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary
5 With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly Weapon,
6 Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 –
7 Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10 and 11 –
8 Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Defendant by way of Information with Count
22 1 – Sexual Assault with Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

25 On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the charges
26 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),
27 in which both parties stipulated the Counts 1-3 will run consecutively to each other and Counts
28 4-6 will run consecutively to each other but both parties retain the right to argue whether the

1 two sets of counts would run concurrently or consecutively, was filed in open court the same
2 day.

3 On November 7, 2008, Defendant was sentenced as to Count 1 – Life with the
4 possibility of parole after one hundred twenty (120) months, plus an equal and consecutive
5 term of Life with the possibility of parole after one hundred twenty (120) months; as to Count
6 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2 to run
7 consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty (60)
8 months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a special
9 sentence of lifetime supervision and register as a sex offender upon any release from custody.
10 Defendant was also given one hundred sixty-three (163) days credit for time served. The
11 Judgement of Conviction was filed on November 25, 2008.

12 On December 9, 2008, at the State’s request, the Court modified Defendant’s sentence
13 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty
14 (240) months, instead of three hundred (300) months.

15 On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas Corpus
16 (Post-Conviction), motion for appointment of counsel, and request for evidentiary hearing.
17 The State filed its response on January 11, 2010. The Court denied Defendant’s Petition for
18 Writ of Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of
19 Fact, Conclusions of Law and Order denying Defendant’s Petition.

20 On April 6, 2011, Defendant filed a Pro Per Motion to Withdraw Counsel. The matter
21 was heard and granted on April 19, 2011.

22 On May 1, 2023, Defendant filed a Motion for Appointment of Attorney and a Motion
23 to Withdraw Plea.

24 **ARGUMENT**

25 Defendant requested this Court to appoint counsel on his behalf. Motion for
26 Appointment of Counsel 2-3. Under the U.S. Constitution, the Sixth Amendment provides no
27 right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752,
28 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258

1 (1996), the Nevada Supreme Court similarly observed “[t]he Nevada Constitution...does not
2 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
3 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
4 the United States Constitution.” McKague held that with the exception of NRS 34.820(1)(a)
5 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
6 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
7 164, 912 P.2d at 258.

8 The Nevada Legislature has given courts the *discretion* to appoint post-conviction
9 counsel so long as “the court is satisfied that the allegation of indigency is true and the petition
10 is not dismissed summarily.” NRS 34.750. This statute states in relevant part:

11 A petition may allege that the petitioner is unable to pay the costs of the
12 proceedings or to employ counsel. If the court is satisfied that the allegation of
13 indigency is true and the petition is not dismissed summarily, the court may
14 appoint counsel to represent the petitioner. In making its determination, the court
15 may consider, among other things, the severity of the consequences facing the
16 petitioner and whether:

- 17 (a) The issues presented are difficult;
18 (b) The petitioner is unable to comprehend the proceedings; or
19 (c) Counsel is necessary to proceed with discovery.

20 NRS 34.750(1). As contemplated by the statute, the court may consider appointing counsel if
21 the defendant is indigent and if the petition is not summarily dismissed. A petition can be
22 summarily dismissed where the petitioner’s claims are conclusory, without specific factual
23 allegations, or are belied by the record.

24 Defendant did not cite any authority for appointment of counsel in a post-conviction
25 setting to assist with a motion to withdraw plea. Motion for Appointment of Counsel 1-3. As
26 such this Court lacks the authority to appoint counsel and Defendant’s motion is denied.

27 Defendant complained that his plea was involuntary because his counsel did not request
28 a psychological evaluation and he was in no condition to enter a plea. Motion to Withdraw
Plea 2-3. However, Defendant has failed to demonstrate how this issue is difficult. Moreover,
Counsel is not necessary to proceed with discovery. Defendant argued “[Defendant], by reason

1 of her incarceration, cannot investigate, take depositions, or otherwise discover evidentiary
2 materials on his own accord.” Motion for Appointment of Counsel 1. However, Defendant has
3 failed to explain what such discovery would be necessary for the Motion to Withdraw.

4 Defendant is able to comprehend the proceedings. Defendant argued that “the
5 substantive issues and procedural matters in this case are too complex for [Defendant’s]
6 comprehension and abilities. *Id.* However, in the Motion to Withdraw Defendant stated that
7 he now knows from the legal research he has conducted that he should not have signed the
8 plea for his case. Motion to Withdraw 3. Because Defendant is able to conduct legal research,
9 this Court finds that he is able to comprehend the proceedings. Moreover, Defendant provided
10 reasoning as to why he believes he is innocent as to counts one (1) and four (4), further
11 showing that he has the ability to comprehend the proceedings.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Motion for Appointment of
14 Counsel shall be, and is, hereby DENIED. **Dated this 31st day of May, 2023**

15 
16 _____
17 DISTRICT JUDGE

18 **59F 1CD EEEC 8E40**
19 **Joe Hardy**
20 **District Court Judge**

21 STEVEN B. WOLFSON
22 Clark County District Attorney
23 Nevada Bar #001565

24 BY /s/ Jonathan Vanboskerck
25 **JOHNATHAN VANBOSKERCK**
26 Chief Deputy District Attorney
27 Nevada Bar #6528

28 JV/kf/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Roy J
Troost

CASE NO: 08C247731

7 DEPT. NO. Department 15

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.
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FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ROY JAMES TROST,
#2679137

Defendant.

CASE NO: **08C247731**

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OR LAW AND ORDER

DATE OF HEARING: **MAY 23, 2023**
TIME OF HEARING: **8:30 AM**

THIS MATTER having come on for hearing before the above-entitled Court on the 23rd day of May, 2023, the Defendant not being present, proceeding for Motion to Withdraw Plea, Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ELAN A ELDAR, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint
4 with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary
5 With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly Weapon,
6 Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 –
7 Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10 and 11 –
8 Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Defendant by way of Information with Count
22 1 – Sexual Assault with Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

25 On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the charges
26 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),
27 in which both parties stipulated the Counts 1-3 will run consecutively to each other and Counts
28 4-6 will run consecutively to each other but both parties retain the right to argue whether the

1 two sets of counts would run concurrently or consecutively, was filed in open court the same
2 day.

3 On November 7, 2008, Defendant was sentenced as to Count 1 – Life with the
4 possibility of parole after one hundred twenty (120) months, plus an equal and consecutive
5 term of Life with the possibility of parole after one hundred twenty (120) months; as to Count
6 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2 to run
7 consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty (60)
8 months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a special
9 sentence of lifetime supervision and register as a sex offender upon any release from custody.
10 Defendant was also given one hundred sixty-three (163) days credit for time served. The
11 Judgement of Conviction was filed on November 25, 2008.

12 On December 9, 2008, at the State's request, the Court modified Defendant's sentence
13 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty
14 (240) months, instead of three hundred (300) months.

15 On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas Corpus
16 (Post-Conviction), motion for appointment of counsel, and request for evidentiary hearing.
17 The State filed its response on January 11, 2010. The Court denied Defendant's Petition for
18 Writ of Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of
19 Fact, Conclusions of Law and Order denying Defendant's Petition for Writ of Habeas Corpus.

20 On April 6, 2011, Defendant filed a Pro Per Motion to Withdraw Counsel. The matter
21 was heard and granted on April 19, 2011.

22 On May 1, 2023, Defendant filed a Motion for Appointment of Attorney and a Motion
23 to Withdraw Plea.

24 **ARGUMENT**

25 **I. HARRIS REMAINS THE EXCLUSIVE REMEDY TO CHALLENGE A** 26 **GUILTY PLEA AFTER SENTENCING**

27 Defendant offered various complaints that are not properly raised in a motion to
28 withdraw a guilty plea. Defendant alleged that his plea was involuntary because his counsel

1 did not request a psychological evaluation and he was in no condition to enter a plea. Such a
2 claim is beyond the scope of a motion to withdraw a guilty plea since a post-conviction petition
3 for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea
4 after sentencing. Harris v. State, 130 Nev.437, 466, 329 P.3d 619, 628 (2014); NRS
5 34.724(2)(b). As such the motion must be denied.

6 Harris remains the exclusive remedy for challenging a guilty plea after sentencing. Id.
7 at 466, 329 P.3d. at 628. “Pursuant to NRS 34.724(2)(b), a post-conviction petition for a writ
8 of habeas corpus comprehends and takes the place of all other common-law, statutory, or other
9 remedies which have been available for challenging the validity of the conviction or sentence
10 and must be used exclusively in place of them.” Id. at 443, 329 P.3d. at 626 (internal quotations
11 omitted).

12 Excepted from this exclusivity are remedies that are “incident to the proceedings in the
13 trial court.” Id. (citing NRS 34.724(2)(a)). However, the Harris Court clearly stated, “that a
14 motion is ‘incident to the proceedings in the trial court’ when it is filed prior to sentencing.”
15 Id., 130 Nev. at 437, 329 P.3d at 627. “Thus, a motion to withdraw the guilty plea filed after
16 sentencing is not ‘incident to the proceedings in the trial court.’” Id.

17 Because Defendant filed his Motion on May 1, 2023, almost fifteen years after being
18 sentenced, the motion is not incident to the proceedings in the trial court, as defined by the
19 Nevada Supreme Court. Thus, Defendant’s motion is not cognizable as a freestanding claim
20 for relief. Therefore, Defendant’s only potential avenue for relief is a petition for writ of habeas
21 corpus.

22 **II. THE COURT SHOULD NOT CONSTRUE THE MOTION AS A HABEAS** 23 **PETITION**

24 NRS 34.735 directs defendants to file petitions in a manner substantially consistent with
25 the form provided by that statute. Defendant has failed to comply with the statute’s directive.
26 He has failed to include in his Motion the date of the judgment of conviction, whether or not
27 he is currently serving a sentence under this case number or any other, whether he appealed
28 from the judgment of conviction – and if not, why not – whether he has previously filed any

1 petitions, applications, or motions with respect to the judgment in this case, or whether any
2 petition or appeal with respect to this judgment of conviction is pending in any court.
3 Additionally, Defendant has filed a previous habeas petition. Treating this pleading as a habeas
4 petition requires consideration of the procedural bars, something Defendant has neglected.
5 State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005)
6 (district courts have a duty to consider whether post-conviction claims are procedurally
7 barred).

8 Defendant's filing is not substantially consistent with the form provided by NRS
9 34.735. Therefore, this Court declines to treat the Motion as a Habeas Petition.

10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the Motion to Withdraw Plea shall be,
12 and is, hereby DENIED.

Dated this 31st day of May, 2023

13 
14

15 DISTRICT JUDGE

16 STEVEN B. WOLFSON
17 Clark County District Attorney
18 Nevada Bar #10539

F96 8D9 6366 164F
Joe Hardy
District Court Judge

19 BY /s/ Jonathan Vanboskerck
20 JOHNATHAN VANBOSKERCK
21 Chief Deputy District Attorney
22 Nevada Bar #6528
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28 JV/kf/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Roy J
Troost

CASE NO: 08C247731

7 DEPT. NO. Department 15

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.
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July 27, 2023
8:30 AM

FILED

JUL 06 2023

CLERK OF COURT

In the 8th Judicial District Court of the
State of Nevada in and For the County of Clark

ffx

The State of Nevada
Plaintiff

Mrs Daisy Lynne Meadows
Defendant

Case No. C 247731
Dept No. XX1

Motion To change name
on Judgement of Conviction

Come now, Defendant, Mrs Daisy Lynne Meadows,
Proceeding in Proper Person and moves this Honorable
Court For an Order to Change her name on
The Judgement of Conviction to her legal name
Daisy Lynne Meadows and Provide the NDOC
with a Copy of the Updated Judgement of Conviction
To Reflect the True Name legal name through a
Petition For change of Name and Received an order
From the Court Order Changing Name That Order
is being Provided along with Defendants Motion.
Dated this 26th Day of June, 2023

Sworn under Penalty of Perjury

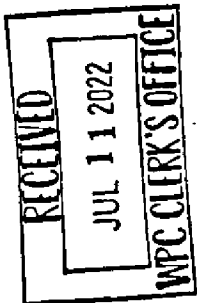
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JUL 03 2023

CLERK OF THE COURT

Daisy Lynne Meadows
NO 27585
HDSB P.O. Box 650
Indian Springs, NV
89070

EXHIBIT



Case No. CV2207034

Dept. No. 2

FILED

2023 JUN 15 P 2:58

NICHOLE STEPHEY
WHITE PINE COUNTY CLERK

IN THE Seventh JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
BY: [Signature] DEPUTY
IN AND FOR THE COUNTY OF White Pine

In the Matter of the)
Application of)
Mrs Trist aka Daisy Lynne)
Meadows 10275857)
Petitioner,)
For Change of Name.)

ORDER CHANGING NAME

The Petition of Roy Trist, seeking
an order from the Court changing ~~his~~^{her} name to Daisy Lynne
Meadows in place of ~~his~~^{her} present name, and proof
having been made to the satisfaction of the Court that notice
thereof was given as required by law, and no objections having
been filed by any person, and the Court being satisfied that
there is no reasonable objection to Petitioner assuming the name
proposed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the name of
Petitioner Roy Trist is hereby changed to
Daisy Lynne Meadows. IT IS SO ORDERED.

Dated this 15th day of JUNE, 2023.

[Signature]
District Court Judge

Ms Daisy Lynn Mcclain
11227585
High Desert State Prison
P.O. Box 650
Indian Springs, NV
89070 RECEIVED

JUL 03 2023

CLERK OF THE COURT
3762

Clerk of the Court
800 Lewis Ave
Las Vegas, NV

8910146300 0075

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U.S. POSTAGE
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JUN 13

POX In the 8th Judicial District Court of the
State of Nevada in and For the County of Clark

FILED

JUL 06 2023

CLERK OF COURT

July 27, 2023
8:30 AM

The State of Nevada
Plaintiff
v.

Mrs Daisy Lynne Meadows
Defendant

Case No. C24773

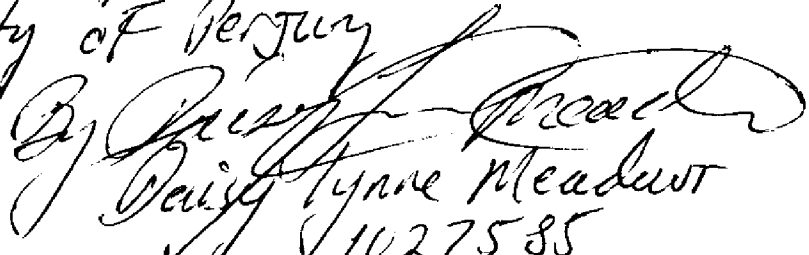
Dept No. XXI

Motion to Change Gender
Sex/Marker on Judgement
of Conviction

Come now, Defendant, Mrs Daisy Lynne Meadows,
Proceeding in Proper Person and move this Honorable
Court for an order to Change her Gender/Sex Marker
on the Judgement of Conviction Defendant is a
Female She Requests a order to Reflect that on her
Judgement of Conviction This is Defendants True
Gender and Sex,

Dated this 26th Day of June, 2023

Sworn under Penalty of Perjury

By 
Daisy Lynne Meadows

1027585
HDSB P.O. Box 650
Indian Springs, NV
89070


CERTIFICATE OF SERVICE BY MAILING

I, Daisy Lynne Meadows, hereby certify, pursuant to NRCP 5(b), that on this 26th
day of July, 2023, I mailed a true and correct copy of the foregoing, "Motion to
Change name on Judgment Commitment Order to 2"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
800 Lewis Ave
Las Vegas, NV
89155

CC:FILE

DATED: this 26th day of June, 2023


Daisy Lynne Meadows # 1027586
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

OGM

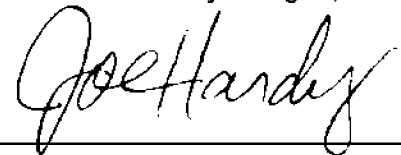
**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,	)	CASE NO. 08C247731
Plaintiff(s),	)	DEPT NO. XV
v.)	
DAISY LYNNE MEADOWS, fka Roy	)	<u>ORDER GRANTING</u>
James Trost,	)	<u>DEFENDANT'S MOTION TO</u>
	)	<u>CHANGE GENDER/SEX</u>
Defendant(s).	)	<u>MARKER ON JUDGMENT OF</u>
		<u>CONVICTION</u>

On July 6, 2023, Defendant, Daisy Lynne Meadows, filed a Motion to Change Gender/Sex Marker on Judgment of Conviction. A hearing was set for July 27, 2023. During the July 27, 2023 hearing, the Court GRANTED Defendant's motion, changing Defendant's gender/sex marker on her Judgment of Conviction from male to female.

THEREFORE, IT IS HEREBY ORDERED, Defendant's Motion to Change Gender/Sex Marker on Judgment of Conviction is **GRANTED**.

Dated this 2nd day of August, 2023



**09E 52C 9A4D DD41
Joe Hardy
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

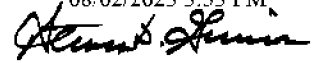
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6 The State of Nevada vs Roy J
Troost

CASE NO: 08C247731

7 DEPT. NO. Department 15

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9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
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CLERK OF THE COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	CASE NO. 08C247731
Plaintiff(s),	)	DEPT NO. XV
v.)	
	)	<u>ORDER GRANTING MOTION</u>
DAISY LYNNE MEADOWS, fka Roy	)	<u>TO CHANGE NAME OF</u>
James Trost,	)	<u>JUDGMENT OF CONVICTION</u>
Defendant(s).)	

On July 6, 2023, Defendant, Daisy Lynne Meadows, filed a Motion to Change Name of Judgment of Conviction. A hearing was set for July 27, 2023. During the July 27, 2023 hearing, the Court GRANTED Defendant's motion, changing Defendant's name on her Judgment of Conviction from Roy James Trost to Daisy Lynne Meadows.

THEREFORE, IT IS HEREBY ORDERED, Defendant's Motion to Change Name of Judgment of Conviction is **GRANTED**.

Dated this 2nd day of August, 2023



**346 052 3807 7F4D
Joe Hardy
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Roy J
Troost

CASE NO: 08C247731

7 DEPT. NO. Department 15

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.

Heather L. Smith

CLERK OF THE COURT

AJOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAISY LYNNE MEADOWS,
#2679137

Defendant.

CASE NO. C247731

DEPT. NO. XV

AMENDED JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of COUNT 1 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165, COUNTS 2 & 5 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366, COUNTS 3 & 6 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320 and COUNT 4 – SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN (16) YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; thereafter, on the 17TH day of November, 2008,

1 the Defendant was present in court for sentencing with her counsel JEFFREY
2 MANINGO, Deputy Public Defender, and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
4 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
5 including testing to determine genetic markers, the Defendant is sentenced as follows:

6
7 As to COUNT 1 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY OF
8 PAROLE after ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department
9 of Corrections (NDC), plus an EQUAL and CONSECUTIVE term of LIFE WITH THE
10 POSSIBILITY of PAROLE after ONE HUNDRED TWENTY (120) MONTHS MINIMUM
11 in the Nevada Department of Corrections (NDC) and pay \$357.00 Restitution; as to
12 COUNT 2 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE with
13 a MINIMUM parole eligibility of ONE HUNDRED TWENTY (120) MONTHS in the
14 Nevada Department of Corrections (NDC), COUNT 2 to run CONSECUTIVE to
15 COUNT 1 and pay \$2,551.88 Restitution; as to COUNT 3 – TO A MAXIMUM term of
16 LIFE WITH THE POSSIBILITY of PAROLE after SIXTY (60) MONTHS in the Nevada
17 Department of Corrections (NDC), COUNT 3 to run CONSECUTIVE to COUNT 2; as
18 to COUNT 4 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE
19 after THREE HUNDRED (300) MONTHS in the Nevada Department of Corrections
20 (NDC), COUNT 4 to run CONSECUTIVE to COUNT 3; as to COUNT 5 – TO A
21 MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE after ONE HUNDRED
22 TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), COUNT 5
23 to run CONSECUTIVE to COUNT 4 and pay \$472.26 Restitution; and as to COUNT 6
24 – TO A MAXIMUM term of LIFE WITH THE POSSIBILITY of PAROLE after SIXTY
25
26
27
28

1 (60) MONTHS in the Nevada Department of Corrections (NDC), COUNT 6 to run
2 CONSECUTIVE to COUNT 5; with ONE HUNDRED SIXTY-THREE (163) days credit
3 for time served.
4

5 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
6 is imposed to commence upon release from any term of imprisonment, probation or
7 parole.
8

9 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
10 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
11 release from custody.
12

13 THEREAFTER, on the 27th day of July, 2023, the Defendant not present, and
14 pursuant to Defendant's Motion to Change Name and Gender on Judgment of
15 Conviction; COURT ORDERED, Motion GRANTED; Defendant's Name to change
16 from Roy James Trost to Daisy Lynne Meadows and Defendant's Gender to change
17 from Male to Female.
18
19
20
21

22 Dated this 9th day of August, 2023

23 
24 _____

25 511 FB0 4D09 794E
26 Joe Hardy
27 District Court Judge
28

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Roy J
Troost

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Daisy Lynne Meadows
1027535
HDS
PO Box 650
Indian Springs, NV
89670

UNITED STATES DISTRICT COURT
DISTRICT OF Nevada

FILED
AUG 15 2023

John J. Williams
CLERK OF COURT

Roy James Trost
1027535 - 2679137
Defendant

Case No 08C247731

Dept No: XV

September 5, 2023
8:30 AM

V.
The State of
Nevada
Plaintiff

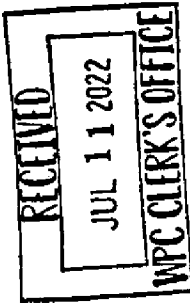
Motion to make correction
of Defendants Judgment
of Conviction JOC wrong
name on Conviction

CLERK OF THE COURT

AUG 14 2023

RECEIVED

Comes Now Plaintiff Daisy Lynne Meadows in Pro Se
Compelling this Honorable Court to change her name that
is on her Judgment of Conviction to that of Daisy
Lynne Meadows her legal True Name see Case No
CV2207054 Dept No. 2 In the Seventh Judicial
District Court of the State of Nevada In and For
the County of White Pine on June 15th 2023 signed
the order changing her name to Daisy Lynne Meadows
as such she seeks and Requests that this Honorable Court
issue her a new Judgment of Conviction to Reflect her
True Name Dated this 8th day of August, 2023 by *[Signature]*



Case No. CV2007034

Dept. No. 2

FILED

2023 JUN 15 P 2:58

NICOLE STEPHEY
WHITE PINE COUNTY CLERK
BY: [Signature] DEPUTY

IN THE Seventh JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF White Pine

* * * * *

In the Matter of the)
Application of)
Mrs Roy Trust aka Daisy Lynne)
Meadows 10275857)
Petitioner,)
For Change of Name.)

ORDER CHANGING NAME

The Petition of Roy Trust, seeking
an order from the Court changing ^{her} ~~his~~ name to Daisy Lynne
Meadows in place of ^{her} ~~his~~ present name, and proof
having been made to the satisfaction of the Court that notice
thereof was given as required by law, and no objections having
been filed by any person, and the Court being satisfied that
there is no reasonable objection to Petitioner assuming the name
proposed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the name of
Petitioner Roy Trust is hereby changed to
Daisy Lynne Meadows. IT IS SO ORDERED.

Dated this 15th day of JUNE, 2023.

[Signature]
District Court Judge

Mrs. Quist Lynn Alexander Trust
1027885
High Desert State Prison,
P.O. Box 650
Indian Springs, NV
89070

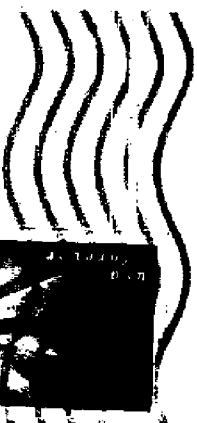
RECEIVED

AUG 14 2023

CLERK OF THE COURT

CLERK OF THE COURT
9 AUG 2023 PM 3 L

Clerk of the Court
Regional Justice Center
200 Lewis Avenue 3rd FL
Las Vegas, Nevada
89155



89104-630000

